

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
R.S.C. 1985, c. C-36 AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF FIRST LEASIDE WEALTH MANAGEMENT INC.,  
FIRST LEASIDE FINANCE INC., FIRST LEASIDE SECURITIES INC.,  
FL SECURITIES INC., FIRST LEASIDE MANAGEMENT INC., FIRST  
LEASIDE ACCOUNTING AND TAX SERVICES INC., FIRST LEASIDE  
HOLDINGS INC., 2086056 ONTARIO INC., FIRST LEASIDE REALTY  
INC., FIRST LEASIDE CAPITAL INC., FIRST LEASIDE REALTY II  
INC., FIRST LEASIDE INVESTMENTS INC., 965010 ONTARIO INC.,  
1045517 ONTARIO INC., 1024919 ONTARIO INC., 1031628 ONTARIO  
INC., 1056971 ONTARIO INC., 1376095 ONTARIO INC., 1437290  
ONTARIO LTD., 1244428 ONTARIO LTD., PRESTONONE  
DEVELOPMENT (CANADA) INC., PRESTONTWO DEVELOPMENT  
(CANADA) INC., PRESTONTHREE DEVELOPMENT (CANADA) INC.,  
PRESTONFOUR DEVELOPMENT (CANADA) INC., 2088543 ONTARIO  
INC., 2088544 ONTARIO INC., 2088545 ONTARIO INC., 1331607  
ONTARIO INC., QUEENSTON MANOR GENERAL PARTNER INC.,  
1408927 ONTARIO LTD., 2107738 ONTARIO INC., 1418361 ONTARIO  
LTD., 2128054 ONTARIO INC., 2069212 ONTARIO INC., 1132413  
ONTARIO INC., 2067171 ONTARIO INC., 2085306 ONTARIO INC.,  
2059035 ONTARIO INC., 2086218 ONTARIO INC., 2085438 ONTARIO  
INC., FIRST LEASIDE VISIONS MANAGEMENT INC., 1049015  
ONTARIO INC., 1049016 ONTARIO INC., 2007804 ONTARIO INC.,  
2019418 ONTARIO INC., FL RESEARCH MANAGEMENT INC., 970877  
ONTARIO INC., 1031628 ONTARIO INC., 1045516 ONTARIO INC.,  
2004516 ONTARIO INC., 2192341 ONTARIO INC. and FIRST LEASIDE  
FUND MANAGEMENT INC. (collectively, the "Applicant")**

**RESPONDING MOTION RECORD OF  
THE TRUSTEES OF FIRST LEASIDE FUND AND WIMBERLY FUND  
(Returnable August 23, 2012)**

August 22, 2012

**TORKIN MANES LLP**  
Barristers & Solicitors  
151 Yonge Street, Suite 1500  
Toronto ON M5C 2W7

S. Fay Sulley (24257D)  
Tel: 416-777-5419  
Fax: 1-888-587-5769  
fsulley@torkinmanes.com  
Jeffrey J. Simpson (39663M)  
Tel: 416-777-5413  
Fax: 1-888-587-9143  
jsimpson@torkinmanes.com

Tel: 416-863-1188  
Fax: 416-863-0305

Lawyers for the Trustees of First Leaside Fund  
and Wimberly Fund

TO: ATTACHED SERVICE LIST

**TORKIN MANES LLP**

Barristers &amp; Solicitors

151 Yonge Street, Suite 1500

Toronto ON M5C 2W7

S. Fay Sulley (24257D)

Tel: 416-777-5419

Fax: 1-888-587-5769

fsulley@torkinmanes.com

Jeffrey J. Simpson (39663M)

Tel: 416-777-5413

Fax: 1-888-587-9143

jsimpson@torkinmanes.com

Tel: 416-863-1188

Fax: 416-863-0305

Lawyers for the Trustees of the First Leaside Fund and Wimberly Fund

**SERVICE LIST**

|        |                                                                                                                                                                                                                                                                                                                      |
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| TO:    | <b>CASSELS BROCK &amp; BLACKWELL LLP</b><br>2100 Scotia Plaza<br>40 King Street West<br>Toronto, ON M5H 3C2<br><br>John N. Birch<br>Tel: (416) 860-5225<br>Fax: (416) 640-3057<br>Email: jbirch@casselsbrock.com<br><br>David S. Ward<br>Tel: (416) 869-5960<br>Fax: (416) 360-3154<br>Email: dward@casselsbrock.com |
| AND TO | <b>FASKEN MARTINEAU DUMOULIN LLP</b><br>333 Bay St., Suite 2400<br>Toronto, ON M5H 2T6<br><br>Edmond F.B. Lamek<br>Tel: (416) 865-4506<br>Fax: (416) 364-7813<br>Email: elamek@fasken.com<br><br>Lawyers for the Toronto-Dominion Bank                                                                               |

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| AND TO: | <p><b>GOWLING LAFLEUR HENDERSON LLP</b><br/>1 First Canadian Place, Suite 1600<br/>100 King St. West<br/>Toronto, ON M5X 1G5</p> <p>Cliff Prophet<br/>Tel: (416) 862-7525<br/>Fax: (416) 863-3422<br/>Email: <a href="mailto:clifton.prophet@gowlings.com">clifton.prophet@gowlings.com</a></p> <p>Lilly Wong<br/>Tel: (416) 369-4630<br/>Fax: (416) 369-7230<br/>Email: <a href="mailto:lilly.wong@gowlings.com">lilly.wong@gowlings.com</a></p> <p>Lawyers for the Canadian Imperial Bank of Commerce</p> |
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| AND TO: | <p><b>TORYS LLP</b><br/>79 Wellington St. West,<br/>Suite 3000,<br/>Toronto, ON M5K 1 N2</p> <p>David Bish<br/>Tel: (416) 865-7353<br/>Fax: (416) 865-0040<br/>Email: <a href="mailto:dbish@torys.com">dbish@torys.com</a></p> <p>John A. Fabello<br/>Tel: (416) 865-8228<br/>Fax: (416) 865-0040<br/>Email: <a href="mailto:jfabello@torys.com">jfabello@torys.com</a></p> <p>Lawyers for the Independent Committee of the Board of Directors of First Leaside Wealth Management Inc.</p> |
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| AND TO: | <p><b>BENNETT JONES LLP</b><br/>1 First Canadian Place, Suite 3400<br/>Toronto, ON M5X 1A4</p> <p>Mark S. Laugesen.<br/>Tel: (416) 777-4802<br/>Fax: (416) 863-1716<br/>Email: laugesenm@bennettjones.com</p> <p>John D. Van Gent<br/>Tel: (416) 777-6522<br/>Fax: (416) 863-1716<br/>Email: vangentj@bennettjones.com</p> <p>Lawyers for Kin Sett Capital</p> |
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| AND TO: | <p><b>CRAWLEY MEREDITH BRUSH LLP</b><br/>179 John St., Suite 800<br/>Toronto, ON M5T 1X4</p> <p>Alistair M. Crawley<br/>Tel: (416) 217-0806<br/>Fax: (416) 217-0220<br/>Email: acrawley@cmblaw.ca</p> <p>Bruce O'Toole<br/>Tel: (416) 217-0885<br/>Email: botoole@cmblaw.ca<br/>Lawyers for David Phillips</p> |
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| AND TO: | <p><b>ONTARIO SECURITIES COMMISSION</b><br/>20 Queen Street West, Suite 1900<br/>Toronto, ON M5H 3S8</p> <p>Yvonne B. Chisholm<br/>Tel: (416) 593-2363<br/>Fax: (416) 593-2319<br/>Email: ychisholm@osc.gov.on.ca</p> |
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| AND TO: | <p><b>THORNTON GROUT FINNIGAN LLP</b><br/>Suite 3200, 100 Wellington St. W.<br/>Toronto ON M5K 1 K7</p> <p>James H. Grout<br/>Tel: (416) 304-0557<br/>Fax: (416) 304-1313<br/>Email: jgrout@tgf.ca</p> <p>Danny M. Nunes<br/>Tel: 416.304.0592<br/>Fax: 416.304.1313<br/>Email: dnunes@tgf.ca</p> <p>Lawyers for the Ontario Securities Commission</p> |
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| AND TO: | <p><b>GOODMANS LLP</b><br/>Bay Adelaide Centre<br/>333 Bay Street, Suite 3400<br/>Toronto ON M5H 2S7</p> <p>Brian Empey<br/>Tel: (416) 597-4194<br/>Fax: (416) 979-1234<br/>Email: bempey@goodmans.ca</p> <p>Lawyers for Investment Industry Regulatory Organization Of Canada</p> |
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| AND TO: | <p><b>BLAKE, CASSELS &amp; GRAYDON LLP</b><br/>199 Bay Street<br/>Suite 4000, Commerce Court West<br/>Toronto ON M5L 1A9</p> <p>Ms. Pamela Laurie Jane Huff<br/>Tel: (416) 863-2958<br/>Fax: (416) 863-2653<br/>Email: pamela.huff@blakes.com</p> <p>Chris Burr<br/>Tel: (416) 863-3301<br/>Fax: (416) 863-2653<br/>Email: chris.burr@blakes.com</p> <p>Lawyers for the Monitor</p> |
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| AND TO: | <p><b>FRASER MILNER CASGRAIN LLP</b><br/>Suite 400<br/>77 King Street West<br/>Toronto-Dominion Centre<br/>Toronto ON M5K OA1</p> <p>R. Shayne Kukulowicz LL. B., B.A.<br/>Tel: (416) 863-4740<br/>Fax: (416) 863-4592<br/>Email: shayne.kukulowicz@fmc-law.com</p> <p>Jane Dietrich<br/>Tel: (416) 863-4467<br/>Fax: (416) 863-4592<br/>Email: jane.dietrich@fmc-law. com</p> <p>Lawyers for Proposed Representative Counsel for First Leaside Investors</p> |
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| AND TO: | <p><b>MCLAUCHLIN &amp; ASSOCIATES</b><br/>Suite 200, 155 University Avenue<br/>Toronto, ON M3K 2A3</p> <p>Megan Sanford<br/>Tel: 416 368-2555<br/>Fax: 416 368-2599<br/>Email: msanford@mclauchlin.ca</p> <p>Lawyers for Janick Electrick Limited</p> |
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| AND TO: | <p><b>MILLER THOMSON LLP</b><br/>40 King Street West<br/>Suite 5800<br/>Toronto, ON M5H 3S1</p> <p>Peter Foulds<br/>Tel: 416.596.2112<br/>Fax: 416.595.8695<br/>Email: pfoulds@millerthomson.com</p> <p>Lawyers for LaFarge Canada Inc.</p> |
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| AND TO: | <p><b>WILSON VUKELICH LLP</b><br/>Valleywood Corporate Centre<br/>60 Columbia Way<br/>Suite 710<br/>Markham ON L3R 0C9</p> <p>Dan Condon<br/>Tel: (905) 940-5505<br/>Fax: (905) 940-8785<br/>Email: dcondon@wvllp.ca</p> <p>Lawyers for Aquanorth Contracting Ltd.</p> |
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| AND TO: | <p><b>WAGNER SIDLOFSKY LLP</b><br/>100 Richmond Street West<br/>Suite 316<br/>Toronto, ON M5H 3K6</p> <p>Gregory Sidlofsky<br/>Tel: 416- 601-9279<br/>Fax: 416-364-6579<br/>Email: gmsidlofsky@wagnersidlofsky.com</p> <p>Lawyers for 792873 Ontario Limited (H&amp;S Equipment)</p> |
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| AND TO: | <p><b>FEIGE, NAWROCKI LLP</b><br/>3300-130 Adelaide Street West<br/>Toronto, ON M5H 3P5</p> <p>Julian Nawrocki<br/>Tel: 416-366-8833<br/>Fax: 416-366-3992<br/>Email: nawrocki@fnlawyers.com</p> <p>Lawyers for Municipal Mechanical Contractors Limited</p> |
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| AND TO: | <p><b>NORTON ROSE CANADA LLP</b><br/>Suite 3800, Royal Bank Plaza, South Tower<br/>200 Bay Street. P.O. Box 84<br/>Toronto, ON M5J 2Z4</p> <p>Michael Tamblyn<br/>Tel: 416.202.6705<br/>Fax: 416 216-3930<br/>Email: michael.tamblyn@nortonrose.com</p> <p>Alan B. Merskey<br/>Tel: 416.216-4805<br/>Fax: 416.216-1989<br/>Email: alan.merskey@nortonrose.com</p> <p>Lawyers for Kenaidan Contracting Limited</p> |
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| AND TO: | <p><b>PETRO MACCALLUM LTD.</b><br/>165 Cartwright Avenue<br/>Toronto, ON M6A 1V5</p> <p>Angela Caleca, Manager, Administration<br/>Email: acaleca@petomaccallum.com</p> |
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| AND TO: | <p><b>E. ALAN GARBE LAW OFFICE</b><br/>7507 Kennedy Road<br/>Markham, ON L3R 0L8<br/>Tel: 905-415-9100<br/>Fax: 905 479 3625<br/>Email: eagarbe@garbe-law.com</p> <p>Lawyers for Stuctform International Limited and Gilbert Steel Limited</p> |
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| AND TO: | <p><b>STIKEMAN ELLIOTT LLP</b><br/>Barristers &amp; Solicitors<br/>5300 Commerce Court West,<br/>199 Bay Street,<br/>Toronto, ON, Canada M5L 1B9</p> <p>Maria Konyukhova<br/>Tel : (416) 869-5230<br/>Fax: (416) 947-0866<br/>Email: mkonyukhova@stikeman.com</p> <p>Lawyers for Midland Loan Services Inc. and Computershare Trust Canada</p> |
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| AND TO: | <b>PEOPLES TRUST COMPANY CANADA</b><br>Citigroup Place<br>Suite 901, 123 Front Street West<br>Toronto, ON M5J 2M2<br><br>Julie Berks, Senior Manager, MBS & Mortgage Banking Administration<br>Tel: 416-368-3266<br>Fax: 416-368-3328<br>Email: julieb@peoplestrust.com |
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| AND TO: | <b>OWEN BIRD LAW CORPORATION</b><br>Three Bentall Centre<br>Suite 2900 – 595 Burrard Street,<br>P. O. Box 49130<br>Vancouver BC V7X 1J5<br><br>Alan Frydenlund<br>Tel: (604) 691-7511<br>Fax: (604) 632-4486<br>Email: afrydenlund@owenbird.com<br><br>Lawyers for Fisgard Capital Corporation |
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| AND TO: | <b>LANCASTER, BROOKS WELCH LLP</b><br>Suite 800 - 80 King St.<br>St. Catharines, ON L2R 6Z1<br><br>Malte von Anrep, Q.C.<br>Tel: 905-641-1551<br>Fax: 905-641-3340<br>Email: mvonanrep@lbwlawyers.com<br><br>Lawyers for First Ontario Credit Union |
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| AND TO: | <b>PENSON FINANCIAL SERVICES CANADA INC.</b><br>330 Bay Street, Suite 711<br>Toronto, ON M5H 2S8<br><br>John M. Skain, President & CEO<br>Tel: 416-943-9700<br>Fax: 416-943-9800<br>Email: jskain@penson.ca |
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| AND TO: | <b>CBSC CAPITAL INC.</b><br>100-1235 North Service Rd. W.<br>Oakville, ON L6M 2W2<br><br>Faseeh Ahmad<br>Loss Mitigation Group<br>Tel: 1-855-732-2818<br>Fax: 1-866-318-3447<br>Email: fahmad@leasedirect.com |
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| AND TO: | <b>HEENAN BLAIKIE</b><br>333 Bay Street, Suite 2900<br>Bay Adelaide Centre<br>Toronto, ON M5H 2T4<br><br>John Salmas LSUC 423366<br>Tel: 416.360-3570<br>Fax: 866-895-2093<br>E-mail: jsalmas@heenan.ca<br><br>Renée Brosseau LSUC 470746<br>Tel: 416.643-6992<br>Fax: 866.846-2913<br>E-mail: rbrosseau@heenan.ca<br><br>Lawyers for Canada Mortgage and Housing Corporation |
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| AND TO: | <b>DEPARTMENT OF JUSTICE</b><br>Department of Justice<br>130 King Street West<br>Suite 3400<br>Toronto ON M5X 1 K6<br><br>Diane Winters<br>Tel: 416-973-3172<br>Fax: 416 973-0810<br>Email: diane.winters@justice.gc.ca<br><br>Peter Zevenhuizen<br>CRA Collections Liaison<br>Tel: 416- 952-8563<br>E-mail: Peter.Zevenhuizen@justice.gc.ca |
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| AND TO: | <b>DIGITAL EVIDENCE INTERNATIONAL INC.</b><br>400 Queens Ave.,<br>London, ON N6B 1X9<br><br>Steve Rogers, President<br>Tel: 519.471.4120<br>E-mail: steve.rogers@dei.ca<br><br>Wayne Doney<br>E-mail: wayne.doney@dei.ca |
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| AND TO: | <b>INVESTMENT INDUSTRY REGULATORY<br/>ORGANIZATION OF CANADA</b><br>1600-121 King St W<br>Toronto ON M5H 3T9<br><br>Dianna Iannetta<br>Tel: 416 943 5781<br>E-mail: diannetta@iirroc.ca |
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| AND TO: | <b>John Wilson</b><br><br>489 Cam Fella Blvd.<br>Stouffville, ON L4A 7G9<br>Tel: 905-640-1157<br>E-mail: jwilsoncanada@gmail.com |
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| AND TO: | <b>CIT FINANCIAL</b><br>207 Queens Quay West<br>Suite 700<br>Toronto, ON M5J 1A7<br>Phone: 877-639-2687<br>Fax: 416-594-5995 |
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| AND TO: | <b>NATIONAL TRUST</b><br>1525 Buffalo Place<br>Winnipeg, MB R3T 1L9<br>Phone: (204) 954-9000<br>Toll Free Phone: (800) 665-1326<br>Toll Free Fax: 800 882-0560 |
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| AND TO: | <b>PITNEY BOWES</b><br>5500 Explorer Drive<br>Mississauga, ON L4W 5C7<br>Tel: 905-219-3000<br>Fax: 905-219-3193 |
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| AND TO: | <b>MCMILLAN LLP</b><br>Royal Centre, 1055 West Georgia Street<br>Suite 1500, P.O. Box 11117<br>Vancouver, BC V6E 4N7<br><br>Lawyers for Canadian Western Bank |
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| AND TO: | <b>FARRIS VAUGHAN WILLS AND MURPHY LLP</b><br>700 West George Street, 25 <sup>th</sup> Floor<br>Vancouver, BC V7Y 1G3<br>Tel: 604-684-9151<br>Fax: 604-661-9349<br><br>Lawyers for Kingstreet Real Estate Growth LP No. 2 |
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| AND TO: | <b>TOYOTA CREDIT CANADA INC.</b><br>80 Micro Court<br>Markham, Ontario L3R 9Z5 |
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| AND TO: | <b>HENRY AND GRACE HILDEBRAND</b><br>Guelph, ON |
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# INDEX

**ONTARIO  
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**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
R.S.C. 1985, c. C-36 AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
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FIRST LEASIDE FINANCE INC., FIRST LEASIDE SECURITIES INC.,  
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FUND MANAGEMENT INC. (collectively, the "Applicant")**

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| <b>Tab</b> | <b>Description</b>                                 |
|------------|----------------------------------------------------|
| 1          | Affidavit of Henry Wenekamp, sworn August 22, 2012 |
| A          | Exhibit "A" - Proposed alternative form of Order   |

| <b>Tab</b> | <b>Description</b>                                                                                                                                                       |
|------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| B          | Exhibit "B" - First Leaside Fund Declaration of Trust dated October 6, 2005                                                                                              |
| C          | Exhibit "C" - Amended Consolidated and Restated Declaration of Trust dated August 8, 2006                                                                                |
| D          | Exhibit "D" - Wimberly Fund Declaration of Trust dated February 1, 2010                                                                                                  |
| E          | Exhibit "E" - Corporate Search Report conducted in Texas in respect of FL Master Texas, Ltd.                                                                             |
| F          | Exhibit "F" - Corporation Profile of an Ontario Corporation Profile Report in respect of 2088543 Ontario Inc.                                                            |
| G          | Exhibit "G" - Corporate chart                                                                                                                                            |
| H          | Exhibit "H" - Corporate Search Report conducted in Texas in respect of Sherman                                                                                           |
| I          | Exhibit "I" - Declaration of Trust re First Leaside Mortgage Fund dated June 18, 2012                                                                                    |
| J          | Exhibit "J" - Unaudited Financial Statement of Master Texas Ltd. dated December 31, 2010                                                                                 |
| K          | Exhibit "K" - Copies of a UCC and Ontario PPSA searches conducted in respect of Master Texas and Master Sherman                                                          |
| L          | Exhibit "L" - Legal opinion rendered by Cassels Brock dated October 17, 2005                                                                                             |
| M          | Exhibit "M" - E-mail correspondence                                                                                                                                      |
| N          | Exhibit "N" - Certificates of Incumbency                                                                                                                                 |
| O          | Exhibit "O" - Excerpts from the Monitor's Report in its capacity as Consultant dated August 19, 2011 (p. 28) and Affidavit of the CRO sworn February 22, 2012 (at p. 22) |
| P          | Exhibit "P" - Excerpts from the six mortgages                                                                                                                            |
| Q          | Exhibit "Q" - Confidentiality Agreements                                                                                                                                 |

# TAB 1

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
R.S.C. 1985, c. C-36 AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF FIRST LEASIDE WEALTH MANAGEMENT INC.,  
FIRST LEASIDE FINANCE INC., FIRST LEASIDE SECURITIES INC.,  
FL SECURITIES INC., FIRST LEASIDE MANAGEMENT INC., FIRST  
LEASIDE ACCOUNTING AND TAX SERVICES INC., FIRST LEASIDE  
HOLDINGS INC., 2086056 ONTARIO INC., FIRST LEASIDE REALTY  
INC., FIRST LEASIDE CAPITAL INC., FIRST LEASIDE REALTY II  
INC., FIRST LEASIDE INVESTMENTS INC., 965010 ONTARIO INC.,  
1045517 ONTARIO INC., 1024919 ONTARIO INC., 1031628 ONTARIO  
INC., 1056971 ONTARIO INC., 1376095 ONTARIO INC., 1437290  
ONTARIO LTD., 1244428 ONTARIO LTD., PRESTONONE  
DEVELOPMENT (CANADA) INC., PRESTONTWO DEVELOPMENT  
(CANADA) INC., PRESTONTHREE DEVELOPMENT (CANADA) INC.,  
PRESTONFOUR DEVELOPMENT (CANADA) INC., 2088543 ONTARIO  
INC., 2088544 ONTARIO INC., 2088545 ONTARIO INC., 1331607  
ONTARIO INC., QUEENSTON MANOR GENERAL PARTNER INC.,  
1408927 ONTARIO LTD., 2107738 ONTARIO INC., 1418361 ONTARIO  
LTD., 2128054 ONTARIO INC., 2069212 ONTARIO INC., 1132413  
ONTARIO INC., 2067171 ONTARIO INC., 2085306 ONTARIO INC.,  
2059035 ONTARIO INC., 2086218 ONTARIO INC., 2085438 ONTARIO  
INC., FIRST LEASIDE VISIONS MANAGEMENT INC., 1049015  
ONTARIO INC., 1049016 ONTARIO INC., 2007804 ONTARIO INC.,  
2019418 ONTARIO INC., FL RESEARCH MANAGEMENT INC., 970877  
ONTARIO INC., 1031628 ONTARIO INC., 1045516 ONTARIO INC.,  
2004516 ONTARIO INC., 2192341 ONTARIO INC. and FIRST LEASIDE  
FUND MANAGEMENT INC. (collectively, the "Applicant")**

**AFFIDAVIT OF HENRY WEMEKAMP**

I, Henry Wemekamp, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. I am one of the trustees (the "Trustees") of the First Leaside Fund, and Wimberly Fund and I am familiar with First Leaside Properties Fund and First Leaside Mortgage Fund (collectively, the "Funds"). Except for the Mortgage Fund, the funds are the major unsecured creditors of F.L. Master Texas, Ltd. ("Master Texas") and F.L. Master Sherman Ltd. ("Master Sherman"), two limited partnerships created under the laws of the state of Texas. Master Texas and Master Sherman are two of the non-Applicant parties over which the Court has extended the benefit of the Initial Order and subsequent Orders in this matter. In addition, my wife and I have personally invested over \$2 million in various First Leaside entities since 1992.

2. As such, I have knowledge of the facts and matters to which I hereinafter depose either through my own knowledge or by informing myself with respect thereto in which case I have indicated the source of my information and belief.

3. I swear this Affidavit in response to the Motion brought by First Leaside (as defined in the Affidavit of Gregory MacLeod sworn August 20, 2012) for various relief returnable August 23, 2012. Specifically:

- (a) The Funds oppose granting First Leaside the right to simply cease managing the properties without the assurance that another party has been engaged to manage them. Our counsel has prepared an alternative form of Order, which I attach hereto, that we believe better protects the interests of the Funds<sup>1</sup>. In particular, we

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<sup>1</sup> Attached hereto as Exhibit "A" is a true copy of the proposed alternative form of Order.

believe that, as a result of the conclusions of the Monitor and First Leaside with respect to the lack of any economic interest in these properties:

- (i) management and control of the properties should be turned over to the Funds immediately;
  - (ii) the CCAA proceedings in respect of the US Entities should be terminated immediately; and
  - (iii) the equity interests of First Leaside in the US Entities (as defined in Mr. McLeod's Affidavit) should be transferred for nominal consideration to the Funds. By definition, the equity in an insolvent entity is zero, and because Master Texas and Master Sherman are included parties given the benefit of the Initial Order (as defined in Mr. McLeod's Affidavit) they must be, in the view of First Leaside, insolvent. In other words, there is no justifiable reason for First Leaside to retain those assets, which are worthless to it.
- (b) We oppose any further investigations into the foreclosure of the Sedona Property, which we see as a costly and time-consuming distraction; and
- (c) We oppose granting First Leaside the right to resign several of the Applicant numbered companies as general partners of Master Texas and Master Sherman.



## **INTRODUCTION**

### **The Funds**

4. The Funds are each investment trusts created between October 2005 and February 2010, as investment vehicles through which various arms-length, third party investors invested funds in respect of certain real property located in the State of Texas. The funds are single purpose entities and, as stated above, I am one of the Trustees of two of the Funds.

5. To provide further context for the role the trustee and the Funds play in this matter, I am attaching to this affidavit as Exhibits "B"<sup>2</sup>, "C"<sup>3</sup>, and "D"<sup>4</sup> some of the constating documents of the First Leaside and Wimberly Funds, namely, the various Declaration of Trusts (the "Declarations of Trust") and amendments thereto. The Declarations of Trusts grant the Trustees extensive powers of management over the Funds. For example, paragraph 9.1 of the First Leaside Declaration of Trust dated October 6, 2005 provides as follows:

9.1 – Powers of the Trustees. Subject to the terms and conditions of this Declaration of Trust the Trustees may exercise from time to time in respect of the Trust Assets and the investments and affairs of the Trust any and all rights, powers and privileges that could be exercised by a legal and beneficial owner thereof.

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<sup>2</sup> Attached hereto as Exhibit "B" is a true copy of the First Leaside Fund Declaration of Trust dated October 6, 2005;

<sup>3</sup> Attached hereto as Exhibit "C" is a true copy of the Amended Consolidated and Restated Declaration of Trust dated August 8, 2006;

<sup>4</sup> Attached hereto as Exhibit "D" is a true copy of the Wimberly Fund Declaration of Trust dated February 1, 2010;

### **Master Texas**

6. Master Texas is a limited partnership (notwithstanding the use of the term “Ltd.” in its name) created pursuant to the laws of the State of Texas<sup>5</sup> with its head office in Dallas, Texas. Its general partner is 2088543 Ontario Inc. (“208”)<sup>6</sup>, which is an Ontario-incorporated company. David Phillips is the principal of 208, which company is an included Applicant in this CCAA proceeding.

7. Master Texas holds a controlling interest in six separate limited partnerships which own properties in the State of Texas. The corporate chart at Exhibit P to the Affidavit of Greg MacLeod sworn August 20, 2012, which I reproduce as an exhibit to this affidavit for the convenience of the Court, shows the position of Master Texas in the larger group of certain but not all, of the First Leaside companies<sup>7</sup>.

### **Master Sherman**

8. Master Sherman is a limited partnership (notwithstanding the use of the term “Ltd.” in its name) created pursuant to the laws of the State of Texas<sup>8</sup> with its head office in Dallas, Texas. Its general partner is FL Master Sherman GP, Inc. (“Sherman GP”), which is a US entity. Sherman holds a controlling interest in three separate limited partnerships which own properties in the State of Texas, which is reflected in the corporate chart attached to this Affidavit.

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<sup>5</sup> Attached hereto as Exhibit “E” is a true copy of a Corporate Search Report conducted in Texas in respect of FL Master Texas, Ltd.;

<sup>6</sup> Attached hereto as Exhibit “F” is a true copy of a Corporation Profile of an Ontario Corporation Profile Report in respect of 2088543 Ontario Inc.;

<sup>7</sup> Attached hereto as Exhibit “G” is a true copy of the corporate chart;

<sup>8</sup> Attached hereto as Exhibit “H” is a true copy of a Corporate Search Report conducted in Texas in respect of Sherman;

9. Although I am not Trustee of the First Leaside Mortgage Fund, I also attach a copy of the Declaration of Trust<sup>9</sup> in respect of that Fund as well, which I anticipate may of assistance to the Court.

**Creditors of F.L. Master Texas Ltd. and Sherman**

10. The latest financial statements for Master Texas which are available to me are dated December 31, 2010 and, I understand, were prepared in mid-2011. These financial statements indicate that Master Texas is indebted to the First Leaside and Wimberly Funds pursuant to two or more promissory notes in the total amount (at that time) of \$52,665,341.00<sup>10</sup>.

11. According to information provided to the investors by the Monitor in August, 2011, Master Sherman was indebted to First Leaside Properties Fund in the amount of \$14.37 million as of June 30, 2011 pursuant to a debt instrument bearing interest at 9%, maturing between 2017 and 2019 with an additional ten-year extension at Master Sherman's option.

12. UCC and Ontario PPSA searches conducted on Master Texas and Master Sherman indicate that there are no registrations outstanding against either of those parties in either jurisdiction<sup>11</sup>. To the best of my knowledge there are no secured creditors of Master Texas or Master Sherman.

13. In fact, to the best of my knowledge, there are no other significant creditors of Master Texas or Master Sherman of any sort, secured or unsecured. In a Confidential Report to

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<sup>9</sup> Attached hereto as Exhibit "I" is a true copy of the Declaration of Trust re First Leaside Mortgage Fund dated June 18, 2010.

<sup>10</sup> Attached hereto as Exhibit "J" is a true copy of the Unaudited Financial Statement of Master Texas Ltd. dated December 31, 2010.

<sup>11</sup> Attached hereto as Exhibit "K" are true copies of a UCC and Ontario PPSA searches conducted in respect of Master Texas and Master Sherman.

Investors dated July 20, 2012 (notwithstanding the fact that it is marked "confidential", this document is available on the Monitor's website ), the Monitor concluded:

Accordingly, the funding provided to WALP by the FL Entities was comingled in the same account with the advances from the Funds and subsequently used to pay amounts recorded as being due to Master Texas, to fund Master Sherman and to pay distributions to WALP unit holders and the Funds' unit holders. Based on WALP's records and the financial statements of Master Texas and Master Sherman, **it appears that WALP has no direct creditor claim against Master Texas or Master Sherman.** [Emphasis added]

14. In other words, it appears clear that the largest stakeholders with respect to Master Texas and Master Sherman are the Funds, which are currently owed in excess of \$66,000,000.00 by Master Texas and Master Sherman.

#### **The Involvement of Cassels Brock & Blackwell LLP**

15. The law firm of Cassels Brock & Blackwell LLP ("Cassels Brock") has acted in the past as counsel to the Funds and the Trustees. The front page of the First Leaside Fund Declaration of Trust dated October 6, 2005 makes it clear that Cassels Brock acted as counsel to that Fund and, in fact, prepared the document itself. I have been advised by Murray Eades, a former independent trustee of the Funds who is also a lawyer, that Cassels Brock acted for the Funds and their respective trustees from the date the Funds were established until May 30, 2012, when new counsel, Torkin Manes LLP were retained to act for the Funds and in particular, the Trustees of the Funds.

16. I also attach hereto a copy of a legal opinion rendered by Cassels Brock in respect of whether the units of First Leaside Fund are qualified investments for trusts governed by

registered retirement savings plans, which I believe is further evidence that Cassels Brock acted for First Leaside Fund<sup>12</sup>.

17. I also attach other e-mail correspondence that I believe further illustrates that Cassels Brock has historically acted for First Leaside Fund, if not both Funds<sup>13</sup>.

### **The Trustee Issue**

18. With respect to the issues raised by the Monitor and other parties regarding the identity of the trustees of the Funds, and the basis on which the Trustees claim to hold their positions as Trustee, I attach Certificates of Incumbency<sup>14</sup> for First Leaside Fund, Wimberly Fund and First Leaside Mortgage Fund that certify the names of each of the Trustees of each of those Funds.

19. For some time now, the Trustees, myself in particular, have conducted ourselves as if we were the legitimate trustees of the Funds. We have conducted Trustee's meetings, made decisions on behalf of the Funds, communicated with unit holders in our capacity as Trustees, sworn Affidavits under oath in that capacity, retained counsel on behalf of the Funds and represented ourselves to third parties as the Trustees of the Funds. I have personally provided a \$5,000 retainer to Allan Welsh & Company, Certified General Accountants practising in Edmonton, Alberta, for the purpose of ensuring completion of all tax returns, and other filings in respect of the US Entities and other First Leaside Entities, which Mr. McLeod refused to pay. This has been done to avoid incurring significant penalties in respect of late tax and other filings and to ensure that the US Entities remain current in their obligations. In my mind, there should be no contestation on this point.

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<sup>12</sup> Attached hereto as Exhibit "L" is a true copy of the legal opinion rendered by Cassels Brock dated October 17, 2005

<sup>13</sup> Attached hereto as Exhibit "M" is a true copy of the e-mail correspondence.

<sup>14</sup> Attached hereto as Exhibit "N" are true copies of the Certificates of Incumbency.

20. To the extent there is some uncertainty as to our holding office as Trustees, I note that Cassels Brock and First Leaside hold all of the relevant books and records, including minutes of unit holders meetings and annual general meetings, and other corporate proceedings, that would enable one to thoroughly investigate this issue at this time. Counsel for the Funds has requested that documentation from Cassels Brock, but it has not been delivered. I see no reason why the identity of the Trustees is an issue, and, in particular, why it is being raised at this time. I am not aware of any person who has claimed to be a current trustee that has not been identified on the Certificate of Incumbency delivered to the CRO.

21. In the meantime, I consider it my fiduciary duty (as do the other Trustees) to manage the Funds in a prudent and responsible manner and will continue to do so.

**The Investigation of the Foreclosure in Respect of the Sedona Property**

22. The Funds oppose the CRO, the Monitor or First Leaside committing time and money to investigating the now-completed foreclosure of the Sedona property.

23. While the CRO does not purport to come to a conclusion on the merits of this issue, it is asking the Court to give its approval to an investigative process that it is clear, will cost time and money. A portion of the cost of those investigations may be borne by Master Texas and Master Sherman, which the Trustees of the funds find problematic or other creditors of the First Leaside, which I, in my capacity as a creditor of First Leaside, find objectionable.

24. Mr. MacLeod's Affidavit sworn August 20, 2012 uses the term "alleged creditor," which in itself suggests that Mortgages Fund may not be a creditor of the limited partnership that owned the Sedona property. In our view, the CRO is not objectively investigating the

enforcement of the Sedona mortgage, but is suggesting that there is a possibility of some wrongdoing or impropriety merely because of the involvement of Mr. Philips.

25. The Monitor and the CRO have been aware of the existence of the Mortgages Fund and the Sedona mortgage in question for at least a full year. The mortgage is specifically mentioned in the following documents:

(a) The Monitor's Report in its capacity as Consultant dated August 19, 2011 (at p. 28); and

(b) The Affidavit of the CRO sworn February 22, 2012 (at p. 22).<sup>15</sup>

26. Notwithstanding the fact that the CRO and the Monitor have had more than a year to investigate any alleged lack of consideration for the mortgage in question, no steps appear to have been taken at any point to raise this issue. That is, until Mortgage Fund completed (or had almost completed) the foreclosure. I observe as well that the CRO's concern is not with respect to the process of enforcing the mortgage; the concern is with respect to the very validity of the mortgage (i.e., whether any consideration was given for it). Clearly, all information necessary to make this determination has been available to the CRO and the Monitor for at least a year. An incredibly large amount of fees have been paid to the Monitor, the CRO and its counsel for exactly this type of investigation, yet they are advising this Court that these investigations are not yet complete. At this time in the proceedings, the CRO should concentrate its efforts on liquidating the remaining assets, not further time and money investigating the mortgage.

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<sup>15</sup> Attached hereto as Exhibit "O" is a true copy of the relevant excerpts from the above-mentioned documents.

27. The foreclosure is now complete. No one filed Court materials to object during the mortgage redemption period to the foreclosure. In order to reopen the foreclosure, First Leaside would need to engage Texas counsel to initiate a legal proceeding in Texas in order to have a Texas Court set aside the foreclosure and determine whether the mortgage is valid. First Leaside will need to demonstrate a valid reason why it did not object to the foreclosure within the timelines stipulated by Texas law. I am advised by counsel for the Funds and verily believe that, based on discussions with Texas counsel, any request for a Court Order reopening a completed foreclosure process in these circumstances would stand very little chance of success.

28. In the meantime, the Mortgage Fund continues to manage the Sedona property, and to expend considerable sums in doing so. It would be prejudicial for First Leaside, the Monitor or the CRO to permit monies to be expended in this way, and later, at their convenience, to commence legal proceedings to have the enforcement process set asides.

**Resignation of the General Partners of Master Texas and Master Sherman**

29. We oppose the request for authority to resign the general partners of Master Texas and Master Sherman. I am advised by counsel for the Funds and verily believe that the resignation of the general partners of either entity could have the effect of triggering a default pursuant to the third-party conventional mortgages held by US banks against each of the Texas properties.

30. I attach hereto excerpts from six of the Texas properties, as examples, in support of this proposition. To take the Wimberly Pointe Apartments mortgage as one example, I am advised by counsel for the Funds and verily believe that resigning the general partners of Master Texas and Master Sherman may constituted a violation of s. 8.1 (vii) of that mortgage<sup>16</sup>.

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<sup>16</sup> Attached hereto as Exhibit "P" is a true copy of the excerpts from the six mortgages described above.



**The Discontinuation of CCAA Proceedings**

31. The unit holders of the Trusts invested funds, and the Funds advanced those funds to Master Texas and Master Sherman, for the specific purpose of acquiring and rehabilitating the properties. It was never contemplated that the proceeds of assets sales or any net operating income would be utilized to fund restructuring costs of the First Leaside entities in Canada. I do not believe that the Funds, or the unit holders of the Funds, have derived any material benefit whatsoever from the CCAA process.

32. I believe it would be unfairly prejudicial to the interests of the Funds (which, as stated above, are the largest stakeholders in respect of F.L. Masters Texas) if any portion of the cost of the CCAA proceedings is allocated to Master Sherman, Master Texas, or any of the partnerships in Texas in which they hold an interest.

33. For this reason, the Trustees' position is that the sooner the US Entities can be removed from the CCAA process, and the equity in the US Entities transferred to them, and management of the US Properties turned over to the Funds, the better.

**Confidentiality Agreements**

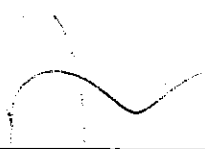
34. I attach hereto two Confidentiality Agreements signed by myself and Ken Rice<sup>17</sup>, one of the other Trustees, in respect to the disclosure of information regarding Master Texas and Master Sherman. In my view, once the transition of management responsibility as proposed herein is completed, these Confidentiality Agreements will no longer be required or applicable and, as part of this process the Court should authorize these confidentiality agreements to be terminated.

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<sup>17</sup> Attached hereto as Exhibit "Q" is a true copy of the Confidentiality Agreements.

35. I make this Affidavit in good faith and for no improper purpose.

**SWORN BEFORE ME** at the City of  
Toronto, in the Province of Ontario on  
August 22, 2012



Commissioner for Taking Affidavits  
(or as may be)

✓ Jeffrey S. Simpson

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**HENRY WEMEKAMP**

# TAB A

This is Exhibit "A" referred to in the Affidavit of Henry Wemekamp, sworn August 22, 2012

A handwritten signature in black ink, consisting of a large loop followed by a horizontal stroke and a small flourish.

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*Commissioner for Taking Affidavits (or as may be)*

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(Commercial List)**

**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT  
ACT, R.S.C. 1985, c. C-36, AS AMENDED**

|                |   |                     |
|----------------|---|---------------------|
| THE HONOURABLE | ) | THURSDAY, THE 23RD  |
|                | ) |                     |
| JUSTICE        | ) | DAY OF AUGUST, 2012 |

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF First Leaside Wealth Management Inc., First Leaside Finance Inc., First Leaside Securities Inc., FL Securities Inc., First Leaside Management Inc., First Leaside Accounting and Tax Services Inc., First Leaside Holdings Inc., 2086056 Ontario Inc., First Leaside Realty Inc., First Leaside Capital Inc., First Leaside Realty II Inc., First Leaside Investments Inc., 965010 Ontario Inc., 1045517 Ontario Inc., 1024919 Ontario Inc., 1031628 Ontario Inc., 1056971 Ontario Inc., 1376095 Ontario Inc., 1437290 Ontario Ltd., 1244428 Ontario Ltd., PrestonOne Development (Canada) Inc., PrestonTwo Development (Canada) Inc., PrestonThree Development (Canada) Inc., PrestonFour Development (Canada) Inc., 2088543 Ontario Inc., 2088544 Ontario Inc., 2088545 Ontario Inc., 1331607 Ontario Inc., Queenston Manor General Partner Inc., 1408927 Ontario Ltd., 2107738 Ontario Inc., 1418361 Ontario Ltd., 2128054 Ontario Inc., 2069212 Ontario Inc., 1132413 Ontario Inc., 2067171 Ontario Inc., 2085306 Ontario Inc., 2059035 Ontario Inc., 2086218 Ontario Inc., 2085438 Ontario Inc., First Leaside Visions Management Inc., 1049015 Ontario Inc., 1049016 Ontario Inc., 2007804 Ontario Inc., 2019418 Ontario Inc., FL Research Management Inc., 970877 Ontario Inc., 1031628 Ontario Inc., 1045516 Ontario Inc., 2004516 Ontario Inc., 2192341 Ontario Inc., and First Leaside Fund Management Inc. ("Applicants")**

**ORDER**

**THIS MOTION**, brought by the Applicants, for approval of the sale of the businesses carried on by First Leaside Accounting and Tax Services, and certain other relief as described in the amended notice of motion dated August 20, 2012, was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the amended notice of motion, the affidavit of Gregory MacLeod sworn August 20, 2012 ("**MacLeod Affidavit**"), and the Fourth Report of the Monitor dated August 21, 2012 ("**Fourth Report of the Monitor**"), and upon hearing the submissions of counsel for the Applicants, the Monitor and Representative Counsel,

1. **THIS COURT ORDERS** that the time for service and filing of the notice of motion and the motion record is hereby abridged and validated so that the motion is properly returnable today and hereby dispenses with further service thereof.

2. **THIS COURT AUTHORIZES AND DIRECTS** First Leaside (as defined in the initial order (the "**Initial Order**") of Justice D. M. Brown dated February 23, 2012) ("**First Leaside**"):

- (a) to transfer management, maintenance, administration, marketing, or realization of value from limited partnerships, corporations, trusts, or properties located or subsisting in the United States in which First Leaside has a direct or indirect equity or other interest (collectively, the "**US Entities**") including, without limiting the generality of the foregoing, properties held directly or indirectly by Wimberly Apartments Limited Partnership, 2088544 Ontario Inc., 2088545 Ontario Inc., 2088543 Ontario Inc., FL Master Sherman GP, Inc., FL Master Texas, Ltd., FL Master Sherman, Ltd., F.L. US Holdings GP, Inc. or the Spring Valley Mall property municipally known as 7800-7798 Spring Valley Road, Dallas, Texas (collectively, the "**US Entities Wind-Down**");
- (b) to immediately terminate the confidentially agreements dated August 8, 2012 attached as Exhibit "Q" to the Affidavit of Henry Wenekamp sworn August 22, 2012;
- (c) to immediately terminate any and all management agreements between First Leaside and any third parties with respect to the US Entities;
- (d) to immediately commence negotiations of acceptable terms on which the current CCAA proceedings in relation to the US Entities will be terminated;
- (e) to negotiate acceptable terms on which the interest or interests of First Leaside in the US Entities will be transferred to the Funds;

- (f) to provide an accounting of all revenues from the US Entities and all expenses paid with respect to the US Entities;
- (g) to immediately transfer to the Trustees of the Fund all amounts held in any First Leaside bank account with respect to the US Entities; and
- (h) to transfer to the Trustees of the First Leaside Mortgage Fund the bank account which holds approximately \$330,000 (the "**Mortgage Fund**"), such transfer to be completed by the transfer of the Mortgage Funds, as may be directed by the Trustees, or the changing of the signing authorities on such bank account.

3. **THIS COURT FURTHER ORDERS** that in the event the parties are not successful in concluding an agreement with respect to the matters described in paragraph 2, any party may seek advice and directions from the Court, together with any ancillary orders that the Court may deem just and appropriate with ten days of the date of this Order.

4. **THIS COURT FURTHER ORDERS** that David Phillips shall assist and cooperate with the Funds with respect to the matters set out in paragraph 2, and shall provide access to any documentation or information in his possession concerning said matters.

5. **THIS COURT ORDERS** that notwithstanding the terms of paragraph 2 herein, First Leaside is authorized and directed to take the following additional steps in furtherance of the US Entities Wind-Down:

- (a) To deliver books and records of US Entities
  - (i) in respect of US Entities which are corporations: to an officer, director, or employee thereof;
  - (ii) in respect of US Entities that are limited partnerships: to the general partner or an officer, director, or employee of the general partner;

- (b) relating to the Funds, to Torkin Manes LLP, Attention S. Fay Sulley, counsel to the Trustees of the Funds.

6. **THIS COURT ORDERS** that the portion of this application brought by 970877 Ontario Inc. is hereby discontinued, such corporation is deleted as an applicant, and the title of proceedings herein shall be amended to read as follows:

**Court File No. CV-12-9617-00CL**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(Commercial List)**

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF First Leaside Wealth Management Inc., First Leaside Finance Inc., First Leaside Securities Inc., FL Securities Inc., First Leaside Management Inc., First Leaside Accounting and Tax Services Inc., First Leaside Holdings Inc., 2086056 Ontario Inc., First Leaside Realty Inc., First Leaside Capital Inc., First Leaside Realty II Inc., First Leaside Investments Inc., 965010 Ontario Inc., 1045517 Ontario Inc., 1024919 Ontario Inc., 1031628 Ontario Inc., 1056971 Ontario Inc., 1376095 Ontario Inc., 1437290 Ontario Ltd., 1244428 Ontario Ltd., PrestonOne Development (Canada) Inc., PrestonTwo Development (Canada) Inc., PrestonThree Development (Canada) Inc., PrestonFour Development (Canada) Inc., 2088543 Ontario Inc., 2088544 Ontario Inc., 2088545 Ontario Inc., 1331607 Ontario Inc., Queenston Manor General Partner Inc., 1408927 Ontario Ltd., 2107738 Ontario Inc., 1418361 Ontario Ltd., 2128054 Ontario Inc., 2069212 Ontario Inc., 1132413 Ontario Inc., 2067171 Ontario Inc., , 2085306 Ontario Inc., 2059035 Ontario Inc., 2086218 Ontario Inc., 2085438 Ontario Inc., First Leaside Visions Management Inc., 1049015 Ontario Inc., 1049016 Ontario Inc., 2007804 Ontario Inc., 2019418 Ontario Inc., FL Research Management Inc., 1031628 Ontario Inc., 1045516 Ontario Inc., 2004516 Ontario Inc., 2192341 Ontario Inc., and First Leaside Fund Management Inc.**



7. **THIS COURT ORDERS** that the stay provided for in paragraph 24 of the Initial Order be and is hereby lifted to permit First Leaside to pursue proceedings against David C. Phillips and Margaret Davis, who are directors of certain of the Applicants.

8. **THIS COURT ORDERS** that, notwithstanding paragraph 4 of the Initial Order, G.S. MacLeod & Associates Inc. in its capacity as Chief Restructuring Officer pursuant to the Initial Order be and the same is hereby authorized and directed to execute on behalf of First Leaside Realty II Inc. an Asset Purchase Agreement dated August 3, 2012 among 480 Metcalfe Street (Ottawa) Limited Partnership, 100 Isabella Street (Ottawa) Limited Partnership, Redwood Retirement Residences (Ottawa) Limited Partnership, Amica Acquisitions Inc. and Kingsett Real Estate Growth LP No. 2 (the "Amica APA") and such other documents as may be necessary or desirable for the completion of the transaction contemplated in the Amica APA and for the conveyance of the Purchase Assets as defined in the Amica APA to the Purchaser (as defined therein).

9. **THIS COURT ORDERS** that First Leaside Finance Inc. be and is hereby authorized and directed to discharge the mortgage registered as Instrument No. OC1276878 concurrently with the closing of the transaction contemplated in the Amica APA.

10. **THIS COURT ORDERS AND DECLARES** that the transaction contemplated in the Amica APA is exempt from the application of the *Bulk Sales Act* (Ontario).

11. **THIS COURT ORDERS AND DECLARES** that First Leaside Accounting and Tax Services Inc. ("FLAT") is hereby authorized to complete the sale of its businesses substantially in the form of

- (i) a Term Sheet dated August 10, 2012 and attached as Exhibit "N" to the MacLeod Affidavit among Joanna L. Hampton Holdings Inc., McMillan Thorne & Co. Ltd., D. McCormack & Company Inc., Allan Welsh & Company, FLAT, the Toronto-Dominion Bank, and Jim Brander Professional Corporation and authorizing the completion of the transactions contemplated by such term sheet; and
- (ii) a Term Sheet dated August 10, 2012 and attached as Exhibit "O" to the MacLeod Affidavit among Jim Brander, Jim Brander Professional Corporation, Brander Professional Corporation, Smart Books Accounting Services Inc., FLAT, the Toronto-Dominion Bank and Joanna L. Hampton Holdings Inc., and authorizing the completion of the transactions contemplated by such term sheet.

12. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Monitor and its agents in carrying out the terms of this Order.

13. **THIS COURT ORDERS** that the conduct of the CRO as described in the MacLeod Affidavits, except as it relates to the US Entities, be and the same is hereby approved.

14. **THIS COURT ORDERS** that the conduct of Grant Thornton Limited, in its capacity as Monitor, as described in the Fourth Report of the Monitor, be and the same is hereby approved.

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**IN THE MATTER OF THE COMPANIES' CREDITORS' ARRANGEMENT ACT,  
R.S.C. 1985, c. C-36, AS AMENDED  
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
First Leaside Wealth Management Inc. et al**

Court File No: CV-12-9617-00CI

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(Commercial List)**

Proceeding commenced at Toronto

**ORDER**

**Cassels Brock & Blackwell LLP**  
2100 Scotia Plaza  
40 King Street West  
Toronto, Ontario M5H 3C2

John N. Birch LSUC #: 38968U  
Tel: 416.860.5225  
Fax: 416.640.3057  
jbirch@casselsbrock.com

David S. Ward LSUC#: 33541W  
Tel: 416.869.5960  
Fax: 416.360.3154  
dward@casselsbrock.com

Lawyers for the Applicant



**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(Commercial List)**

**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT  
ACT, R.S.C. 1985, c. C-36, AS AMENDED**

|                |   |                     |
|----------------|---|---------------------|
| THE HONOURABLE | ) | THURSDAY, THE 23RD  |
|                | ) |                     |
| JUSTICE        | ) | DAY OF AUGUST, 2012 |

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF First Leaside Wealth Management Inc., First Leaside Finance Inc., First Leaside Securities Inc., FL Securities Inc., First Leaside Management Inc., First Leaside Accounting and Tax Services Inc., First Leaside Holdings Inc., 2086056 Ontario Inc., First Leaside Realty Inc., First Leaside Capital Inc., First Leaside Realty II Inc., First Leaside Investments Inc., 965010 Ontario Inc., 1045517 Ontario Inc., 1024919 Ontario Inc., 1031628 Ontario Inc., 1056971 Ontario Inc., 1376095 Ontario Inc., 1437290 Ontario Ltd., 1244428 Ontario Ltd., PrestonOne Development (Canada) Inc., PrestonTwo Development (Canada) Inc., PrestonThree Development (Canada) Inc., PrestonFour Development (Canada) Inc., 2088543 Ontario Inc., 2088544 Ontario Inc., 2088545 Ontario Inc., 1331607 Ontario Inc., Queenston Manor General Partner Inc., 1408927 Ontario Ltd., 2107738 Ontario Inc., 1418361 Ontario Ltd., 2128054 Ontario Inc., 2069212 Ontario Inc., 1132413 Ontario Inc., 2067171 Ontario Inc., 2085306 Ontario Inc., 2059035 Ontario Inc., 2086218 Ontario Inc., 2085438 Ontario Inc., First Leaside Visions Management Inc., 1049015 Ontario Inc., 1049016 Ontario Inc., 2007804 Ontario Inc., 2019418 Ontario Inc., FL Research Management Inc., 970877 Ontario Inc., 1031628 Ontario Inc., 1045516 Ontario Inc., 2004516 Ontario Inc., 2192341 Ontario Inc., and First Leaside Fund Management Inc. ("Applicants")**

**ORDER**

**THIS MOTION**, brought by the Applicants, for approval of the sale of the businesses carried on by First Leaside Accounting and Tax Services, and certain other relief as described in the amended notice of motion dated August 20, 2012, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the amended notice of motion, the affidavit of Gregory MacLeod sworn August 20, 2012 ("**MacLeod Affidavit**"), and the Fourth Report of the Monitor dated August 21, 2012 ("**Fourth Report of the Monitor**"), and upon hearing the submissions of counsel for the Applicants, the Monitor and Representative Counsel,

1. **THIS COURT ORDERS** that the time for service and filing of the notice of motion and the motion record is hereby abridged and validated so that the motion is properly returnable today and hereby dispenses with further service thereof.

2. **THIS COURT ORDERS AUTHORIZES AND DIRECTS** First Leaside (as defined in the initial order (the "**Initial Order**") of Justice D. M. Brown dated February 23, 2012) ("**First Leaside**") ~~to take no further steps to manage, maintain, administer, market, or realize;~~

- (a) ~~to transfer management, maintenance, administration, marketing, or realization of value from limited partnerships, corporations, trusts, or properties located or subsisting in the United States in which First Leaside has a direct or indirect equity or other interest (collectively, the "**US Entities**") including, without limiting the generality of the foregoing, properties held directly or indirectly by Wimberly Apartments Limited Partnership, 2088544 Ontario Inc., 2088545 Ontario Inc., 2088543 Ontario Inc., FL Master Sherman GP, Inc., FL Master Texas, Ltd., FL Master Sherman, Ltd., or F.L. US Holdings GP, Inc., but excepting the Sherman Church property municipally known as 920 South Heritage Parkway, Sherman, Texas and or the Spring Valley Mall property municipally known as 7800-7798 Spring Valley Road, Dallas, Texas (collectively, the "**US Entities Wind-Down**");~~
- (b) to immediately terminate the confidentially agreements dated August 8, 2012 attached as Exhibit "Q" to the Affidavit of Henry Wenekamp sworn August 22, 2012;
- (c) to immediately terminate any and all management agreements between First Leaside and any third parties with respect to the US Entities;

- (d) to immediately commence negotiations of acceptable terms on which the current CCAA proceedings in relation to the US Entities will be terminated;
- (e) to negotiate acceptable terms on which the interest or interests of First Leaside in the US Entities will be transferred to the Funds;
- (f) to provide an accounting of all revenues from the US Entities and all expenses paid with respect to the US Entities;
- (g) to immediately transfer to the Trustees of the Fund all amounts held in any First Leaside bank account with respect to the US Entities; and
- (h) to transfer to the Trustees of the First Leaside Mortgage Fund the bank account which holds approximately \$330,000 (the "**Mortgage Fund**"), such transfer to be completed by the transfer of the Mortgage Funds, as may be directed by the Trustees, or the changing of the signing authorities on such bank account.

3. THIS COURT FURTHER ORDERS that in the event the parties are not successful in concluding an agreement with respect to the matters described in paragraph 2, any party may seek advice and directions from the Court, together with any ancillary orders that the Court may deem just and appropriate with ten days of the date of this Order.

4. THIS COURT FURTHER ORDERS that David Phillips shall assist and cooperate with the Funds with respect to the matters set out in paragraph 2, and shall provide access to any documentation or information in his possession concerning said matters.

5. 3.-THIS COURT ORDERS that notwithstanding the terms of paragraph 2 herein, First Leaside is authorized, ~~but not obligated,~~ and directed to take the following additional steps in furtherance of the US Entities Wind-Down:

- (a) ~~delivering~~ To deliver books and records of US Entities



- (i) in respect of US Entities which are corporations: to an officer, director, shareholder, or employee thereof;
- (ii) in respect of US Entities that are limited partnerships: to the general partner or an officer, director, shareholder, or employee of the general partner;

~~(b) where an Applicant is a general partner of one or more of the US Entities, to resign as general partner and/or facilitate the appointment of a new general partner; and~~

~~(c) immediately ceasing to prepare or file any financial statements, accounting records, regulatory report, or tax returns on behalf of the US Entities.~~

~~(b) 4. **THIS COURT ORDERS** that notwithstanding the terms of paragraph 2 herein, First Leaside shall have the right to investigate whether First Leaside Mortgage Fund ("**Mortgage Fund**") or other alleged creditors of US Entities (collectively, "**Alleged Creditors**") have given valid consideration for the relevant debt or security which they assert, and First Leaside may pursue such legal remedies as may be necessary and appropriate to seek a determination of the rights, if any, of Alleged Creditors relating to the Funds, to Torkin Manes LLP, Attention S. Fay Sulley, counsel to the Trustees of the Funds.~~

6. ~~5.~~ **THIS COURT ORDERS** that the portion of this application brought by 970877 Ontario Inc. is hereby discontinued, such corporation is deleted as an applicant, and the title of proceedings herein shall be amended to read as follows:

**Court File No. CV-12-9617-00CL**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(Commercial List)**

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF First Leaside Wealth Management Inc., First Leaside Finance Inc., First Leaside Securities Inc., FL Securities Inc., First Leaside Management Inc., First Leaside Accounting and Tax Services Inc., First Leaside Holdings Inc., 2086056 Ontario Inc., First Leaside Realty Inc., First Leaside Capital Inc., First Leaside Realty II Inc., First Leaside Investments Inc., 965010 Ontario Inc., 1045517 Ontario Inc., 1024919 Ontario Inc., 1031628 Ontario Inc., 1056971 Ontario Inc., 1376095 Ontario Inc., 1437290 Ontario Ltd., 1244428 Ontario Ltd., PrestonOne Development (Canada) Inc., PrestonTwo Development (Canada) Inc., PrestonThree Development (Canada) Inc., PrestonFour Development (Canada) Inc., 2088543 Ontario Inc., 2088544 Ontario Inc., 2088545 Ontario Inc., 1331607 Ontario Inc., Queenston Manor General Partner Inc., 1408927 Ontario Ltd., 2107738 Ontario Inc., 1418361 Ontario Ltd., 2128054 Ontario Inc., 2069212 Ontario Inc., 1132413 Ontario Inc., 2067171 Ontario Inc., , 2085306 Ontario Inc., 2059035 Ontario Inc., 2086218 Ontario Inc., 2085438 Ontario Inc., First Leaside Visions Management Inc., 1049015 Ontario Inc., 1049016 Ontario Inc., 2007804 Ontario Inc., 2019418 Ontario Inc., FL Research Management Inc., 1031628 Ontario Inc., 1045516 Ontario Inc., 2004516 Ontario Inc., 2192341 Ontario Inc., and First Leaside Fund Management Inc.**

7. ~~6.~~ **THIS COURT ORDERS** that the stay provided for in paragraph 24 of the Initial Order be and is hereby lifted to permit First Leaside to pursue proceedings against David C. Phillips and Margaret Davis, who are directors of certain of the Applicants.

8. ~~7.~~ **THIS COURT ORDERS** that, notwithstanding paragraph 4 of the Initial Order, G.S. MacLeod & Associates Inc. in its capacity as Chief Restructuring Officer pursuant to the Initial Order be and the same is hereby authorized and directed to execute on behalf of First Leaside Realty II Inc. an Asset Purchase Agreement dated August 3, 2012 among 480 Metcalfe Street (Ottawa) Limited Partnership, 100 Isabella Street (Ottawa) Limited Partnership, Redwood Retirement Residences (Ottawa) Limited Partnership, Amica Acquisitions Inc. and Kingsett Real Estate Growth LP No. 2 (the "Amica APA") and such other documents as may be necessary or desirable for the completion of the transaction contemplated in the Amica APA and for the conveyance of the Purchase Assets as defined in the Amica APA to the Purchaser (as defined therein).

9. ~~8.~~ **THIS COURT ORDERS** that First Leaside Finance Inc. be and is hereby authorized and directed to discharge the mortgage registered as Instrument No. OC1276878 concurrently with the closing of the transaction contemplated in the Amica APA.

10. ~~9.~~ **THIS COURT ORDERS AND DECLARES** that the transaction contemplated in the Amica APA is exempt from the application of the *Bulk Sales Act* (Ontario).

11. ~~40.~~ **THIS COURT ORDERS AND DECLARES** that First Leaside Accounting and Tax Services Inc. ("FLAT") is hereby authorized to complete the sale of its businesses substantially in the form of

- (i) a Term Sheet dated August 10, 2012 and attached as Exhibit "N" to the MacLeod Affidavit among Joanna L. Hampton Holdings Inc., McMillan Thorne & Co. Ltd., D. McCormack & Company Inc., Allan Welsh & Company, FLAT, the Toronto-Dominion Bank, and Jim Brander Professional Corporation and authorizing the completion of the transactions contemplated by such term sheet; and
- (ii) a Term Sheet dated August 10, 2012 and attached as Exhibit "O" to the MacLeod Affidavit among Jim Brander, Jim Brander Professional Corporation, Brander Professional Corporation, Smart Books Accounting Services Inc., FLAT, the Toronto-Dominion Bank and Joanna L. Hampton Holdings Inc., and authorizing the completion of the transactions contemplated by such term sheet.

12. ~~41.~~ **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Monitor and its agents in carrying out the terms of this Order.

13. ~~42.~~ **THIS COURT ORDERS** that the conduct of the CRO as described in the MacLeod Affidavit Affidavits, except as it relates to the US Entities, be and the same is hereby approved.

14. ~~13.~~ **THIS COURT ORDERS** that the conduct of Grant Thornton Limited, in its capacity as Monitor, as described in the Fourth Report of the Monitor, be and the same is hereby approved.

---

**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,  
R.S.C. 1985, c. C-36, AS AMENDED  
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
First Leaside Wealth Management Inc. et al**

Court File No: CV-12-9617-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(Commercial List)**

Proceeding commenced at Toronto

**ORDER**

**Cassels Brock & Blackwell LLP**  
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40 King Street West  
Toronto, Ontario M5H 3C2

John N. Birch LSUC #: 38968U  
Tel: 416.860.5225  
Fax: 416.640.3057  
jbirch@casselsbrock.com

David S. Ward LSUC#: 33541W  
Tel: 416.869.5960  
Fax: 416.360.3154  
dward@casselsbrock.com

Lawyers for the Applicant



Document comparison by Workshare Professional on August 22, 2012 4:23:36 PM

| Input:        |                                                    |
|---------------|----------------------------------------------------|
| Document 1 ID | interwovenSite://TORKINMANES-DMS/CLIENT/5064060/1  |
| Description   | #5064060v1<CLIENT> - CBB Order August 23 2012      |
| Document 2 ID | interwovenSite://TORKINMANES-DMS/CLIENT/5065043/1  |
| Description   | #5065043v1<CLIENT> - TM Draft Order August 23_2012 |
| Rendering set | torkin manes                                       |

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| <u>Insertion</u>          |  |
| <del>Deletion</del>       |  |
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| Style change              |  |
| Format change             |  |
| <del>Moved deletion</del> |  |
| Inserted cell             |  |
| Deleted cell              |  |
| Moved cell                |  |
| Split/Merged cell         |  |
| Padding cell              |  |

| Statistics:    |       |
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|                | Count |
| Insertions     | 36    |
| Deletions      | 25    |
| Moved from     | 0     |
| Moved to       | 0     |
| Style change   | 0     |
| Format changed | 0     |
| Total changes  | 61    |



# TAB A

This is Exhibit "A" referred to in the Affidavit of Henry  
Wemekamp, sworn August 22, 2012

A handwritten signature in black ink, consisting of a large loop followed by a horizontal stroke and a small downward tick.

---

*Commissioner for Taking Affidavits (or as may be)*

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(Commercial List)**

**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT  
ACT, R.S.C. 1985, c. C-36, AS AMENDED**

|                |   |                     |
|----------------|---|---------------------|
| THE HONOURABLE | ) | THURSDAY, THE 23RD  |
|                | ) |                     |
| JUSTICE        | ) | DAY OF AUGUST, 2012 |

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF First Leaside Wealth Management Inc., First Leaside Finance Inc., First Leaside Securities Inc., FL Securities Inc., First Leaside Management Inc., First Leaside Accounting and Tax Services Inc., First Leaside Holdings Inc., 2086056 Ontario Inc., First Leaside Realty Inc., First Leaside Capital Inc., First Leaside Realty II Inc., First Leaside Investments Inc., 965010 Ontario Inc., 1045517 Ontario Inc., 1024919 Ontario Inc., 1031628 Ontario Inc., 1056971 Ontario Inc., 1376095 Ontario Inc., 1437290 Ontario Ltd., 1244428 Ontario Ltd., PrestonOne Development (Canada) Inc., PrestonTwo Development (Canada) Inc., PrestonThree Development (Canada) Inc., PrestonFour Development (Canada) Inc., 2088543 Ontario Inc., 2088544 Ontario Inc., 2088545 Ontario Inc., 1331607 Ontario Inc., Queenston Manor General Partner Inc., 1408927 Ontario Ltd., 2107738 Ontario Inc., 1418361 Ontario Ltd., 2128054 Ontario Inc., 2069212 Ontario Inc., 1132413 Ontario Inc., 2067171 Ontario Inc., 2085306 Ontario Inc., 2059035 Ontario Inc., 2086218 Ontario Inc., 2085438 Ontario Inc., First Leaside Visions Management Inc., 1049015 Ontario Inc., 1049016 Ontario Inc., 2007804 Ontario Inc., 2019418 Ontario Inc., FL Research Management Inc., 970877 Ontario Inc., 1031628 Ontario Inc., 1045516 Ontario Inc., 2004516 Ontario Inc., 2192341 Ontario Inc., and First Leaside Fund Management Inc. ("Applicants")**

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**ON READING** the amended notice of motion, the affidavit of Gregory MacLeod sworn August 20, 2012 ("**MacLeod Affidavit**"), and the Fourth Report of the Monitor dated August 21, 2012 ("**Fourth Report of the Monitor**"), and upon hearing the submissions of counsel for the Applicants, the Monitor and Representative Counsel,

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- (b) to immediately terminate the confidentially agreements dated August 8, 2012 attached as Exhibit "Q" to the Affidavit of Henry Wenekamp sworn August 22, 2012;
- (c) to immediately terminate any and all management agreements between First Leaside and any third parties with respect to the US Entities;
- (d) to immediately commence negotiations of acceptable terms on which the current CCAA proceedings in relation to the US Entities will be terminated;
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- (f) to provide an accounting of all revenues from the US Entities and all expenses paid with respect to the US Entities;
- (g) to immediately transfer to the Trustees of the Fund all amounts held in any First Leaside bank account with respect to the US Entities; and
- (h) to transfer to the Trustees of the First Leaside Mortgage Fund the bank account which holds approximately \$330,000 (the "**Mortgage Fund**"), such transfer to be completed by the transfer of the Mortgage Funds, as may be directed by the Trustees, or the changing of the signing authorities on such bank account.

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- (a) To deliver books and records of US Entities
  - (i) in respect of US Entities which are corporations: to an officer, director, or employee thereof;
  - (ii) in respect of US Entities that are limited partnerships: to the general partner or an officer, director, or employee of the general partner;

- (b) relating to the Funds, to Torkin Manes LLP, Attention S. Fay Sulley, counsel to the Trustees of the Funds.

6. **THIS COURT ORDERS** that the portion of this application brought by 970877 Ontario Inc. is hereby discontinued, such corporation is deleted as an applicant, and the title of proceedings herein shall be amended to read as follows:

**Court File No. CV-12-9617-00CL**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(Commercial List)**

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**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF First Leaside Wealth Management Inc., First Leaside Finance Inc., First Leaside Securities Inc., FL Securities Inc., First Leaside Management Inc., First Leaside Accounting and Tax Services Inc., First Leaside Holdings Inc., 2086056 Ontario Inc., First Leaside Realty Inc., First Leaside Capital Inc., First Leaside Realty II Inc., First Leaside Investments Inc., 965010 Ontario Inc., 1045517 Ontario Inc., 1024919 Ontario Inc., 1031628 Ontario Inc., 1056971 Ontario Inc., 1376095 Ontario Inc., 1437290 Ontario Ltd., 1244428 Ontario Ltd., PrestonOne Development (Canada) Inc., PrestonTwo Development (Canada) Inc., PrestonThree Development (Canada) Inc., PrestonFour Development (Canada) Inc., 2088543 Ontario Inc., 2088544 Ontario Inc., 2088545 Ontario Inc., 1331607 Ontario Inc., Queenston Manor General Partner Inc., 1408927 Ontario Ltd., 2107738 Ontario Inc., 1418361 Ontario Ltd., 2128054 Ontario Inc., 2069212 Ontario Inc., 1132413 Ontario Inc., 2067171 Ontario Inc., , 2085306 Ontario Inc., 2059035 Ontario Inc., 2086218 Ontario Inc., 2085438 Ontario Inc., First Leaside Visions Management Inc., 1049015 Ontario Inc., 1049016 Ontario Inc., 2007804 Ontario Inc., 2019418 Ontario Inc., FL Research Management Inc., 1031628 Ontario Inc., 1045516 Ontario Inc., 2004516 Ontario Inc., 2192341 Ontario Inc., and First Leaside Fund Management Inc.**

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13. **THIS COURT ORDERS** that the conduct of the CRO as described in the MacLeod Affidavits, except as it relates to the US Entities, be and the same is hereby approved.

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**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,  
R.S.C. 1985, c. C-36, AS AMENDED  
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
First Leaside Wealth Management Inc. et al**

Court File No: CV-12-9617-00CI

|                                                                                                                                                                                                                                                                                                                                                                   |  |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|
| <b>ONTARIO<br/>SUPERIOR COURT OF JUSTICE<br/>(Commercial List)</b><br><br>Proceeding commenced at Toronto                                                                                                                                                                                                                                                         |  |
| <b>ORDER</b>                                                                                                                                                                                                                                                                                                                                                      |  |
| <b>Cassels Brock &amp; Blackwell LLP</b><br>2100 Scotia Plaza<br>40 King Street West<br>Toronto, Ontario M5H 3C2<br><br>John N. Birch LSUC #: 38968U<br>Tel: 416.860.5225<br>Fax: 416.640.3057<br>jbirch@casselsbrock.com<br><br>David S. Ward LSUC#: 33541W<br>Tel: 416.869.5960<br>Fax: 416.360.3154<br>dward@casselsbrock.com<br><br>Lawyers for the Applicant |  |



**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(Commercial List)**

**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT  
ACT, R.S.C. 1985, c. C-36, AS AMENDED**

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| THE HONOURABLE | ) | THURSDAY, THE 23RD  |
|                | ) |                     |
| JUSTICE        | ) | DAY OF AUGUST, 2012 |

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF First Leaside Wealth Management Inc., First Leaside Finance Inc., First Leaside Securities Inc., FL Securities Inc., First Leaside Management Inc., First Leaside Accounting and Tax Services Inc., First Leaside Holdings Inc., 2086056 Ontario Inc., First Leaside Realty Inc., First Leaside Capital Inc., First Leaside Realty II Inc., First Leaside Investments Inc., 965010 Ontario Inc., 1045517 Ontario Inc., 1024919 Ontario Inc., 1031628 Ontario Inc., 1056971 Ontario Inc., 1376095 Ontario Inc., 1437290 Ontario Ltd., 1244428 Ontario Ltd., PrestonOne Development (Canada) Inc., PrestonTwo Development (Canada) Inc., PrestonThree Development (Canada) Inc., PrestonFour Development (Canada) Inc., 2088543 Ontario Inc., 2088544 Ontario Inc., 2088545 Ontario Inc., 1331607 Ontario Inc., Queenston Manor General Partner Inc., 1408927 Ontario Ltd., 2107738 Ontario Inc., 1418361 Ontario Ltd., 2128054 Ontario Inc., 2069212 Ontario Inc., 1132413 Ontario Inc., 2067171 Ontario Inc., 2085306 Ontario Inc., 2059035 Ontario Inc., 2086218 Ontario Inc., 2085438 Ontario Inc., First Leaside Visions Management Inc., 1049015 Ontario Inc., 1049016 Ontario Inc., 2007804 Ontario Inc., 2019418 Ontario Inc., FL Research Management Inc., 970877 Ontario Inc., 1031628 Ontario Inc., 1045516 Ontario Inc., 2004516 Ontario Inc., 2192341 Ontario Inc., and First Leaside Fund Management Inc. ("Applicants")**

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2. **THIS COURT ORDERS** ~~**AUTHORIZES AND DIRECTS**~~ First Leaside (as defined in the initial order (the "**Initial Order**") of Justice D. M. Brown dated February 23, 2012) ("**First Leaside**") ~~to take no further steps to manage, maintain, administer, market, or realize;~~

- (a) ~~to transfer management, maintenance, administration, marketing, or realization of value from limited partnerships, corporations, trusts, or properties located or subsisting in the United States in which First Leaside has a direct or indirect equity or other interest (collectively, the "**US Entities**") including, without limiting the generality of the foregoing, properties held directly or indirectly by Wimberly Apartments Limited Partnership, 2088544 Ontario Inc., 2088545 Ontario Inc., 2088543 Ontario Inc., FL Master Sherman GP, Inc., FL Master Texas, Ltd., FL Master Sherman, Ltd., or F.L. US Holdings GP, Inc., but excepting the Sherman Church property municipally known as 920 South Heritage Parkway, Sherman, Texas and or the Spring Valley Mall property municipally known as 7800-7798 Spring Valley Road, Dallas, Texas (collectively, the "**US Entities Wind-Down**");~~
- (b) ~~to immediately terminate the confidentially agreements dated August 8, 2012 attached as Exhibit "Q" to the Affidavit of Henry Wenekamp sworn August 22, 2012;~~
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- (e) to negotiate acceptable terms on which the interest or interests of First Leaside in the US Entities will be transferred to the Funds;
- (f) to provide an accounting of all revenues from the US Entities and all expenses paid with respect to the US Entities;
- (g) to immediately transfer to the Trustees of the Fund all amounts held in any First Leaside bank account with respect to the US Entities; and
- (h) to transfer to the Trustees of the First Leaside Mortgage Fund the bank account which holds approximately \$330,000 (the "**Mortgage Fund**"), such transfer to be completed by the transfer of the Mortgage Funds, as may be directed by the Trustees, or the changing of the signing authorities on such bank account.

3. THIS COURT FURTHER ORDERS that in the event the parties are not successful in concluding an agreement with respect to the matters described in paragraph 2, any party may seek advice and directions from the Court, together with any ancillary orders that the Court may deem just and appropriate with ten days of the date of this Order.

4. THIS COURT FURTHER ORDERS that David Phillips shall assist and cooperate with the Funds with respect to the matters set out in paragraph 2, and shall provide access to any documentation or information in his possession concerning said matters.

5. ~~3.~~ THIS COURT ORDERS that notwithstanding the terms of paragraph 2 herein, First Leaside is authorized, ~~but not obligated,~~ and directed to take the following additional steps in furtherance of the US Entities Wind-Down:

- (a) ~~delivering~~ To deliver books and records of US Entities

- (i) in respect of US Entities which are corporations: to an officer, director, shareholder, or employee thereof;
  - (ii) in respect of US Entities that are limited partnerships: to the general partner or an officer, director, shareholder, or employee of the general partner;
- ~~(b) where an Applicant is a general partner of one or more of the US Entities, to resign as general partner and/or facilitate the appointment of a new general partner; and~~
- ~~(c) immediately ceasing to prepare or file any financial statements, accounting records, regulatory report, or tax returns on behalf of the US Entities.~~
- ~~(b) 4. **THIS COURT ORDERS** that notwithstanding the terms of paragraph 2 herein, First Leaside shall have the right to investigate whether First Leaside Mortgage Fund ("**Mortgage Fund**") or other alleged creditors of US Entities (collectively, "**Alleged Creditors**") have given valid consideration for the relevant debt or security which they assert, and First Leaside may pursue such legal remedies as may be necessary and appropriate to seek a determination of the rights, if any, of Alleged Creditors relating to the Funds, to Torkin Manes LLP, Attention S. Fay Sulley, counsel to the Trustees of the Funds.~~

6. ~~5.~~ **THIS COURT ORDERS** that the portion of this application brought by 970877 Ontario Inc. is hereby discontinued, such corporation is deleted as an applicant, and the title of proceedings herein shall be amended to read as follows:

**Court File No. CV-12-9617-00CL**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(Commercial List)**

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF First Leaside Wealth Management Inc., First Leaside Finance Inc., First Leaside Securities Inc., FL Securities Inc., First Leaside Management Inc., First Leaside Accounting and Tax Services Inc., First Leaside Holdings Inc., 2086056 Ontario Inc., First Leaside Realty Inc., First Leaside Capital Inc., First Leaside Realty II Inc., First Leaside Investments Inc., 965010 Ontario Inc., 1045517 Ontario Inc., 1024919 Ontario Inc., 1031628 Ontario Inc., 1056971 Ontario Inc., 1376095 Ontario Inc., 1437290 Ontario Ltd., 1244428 Ontario Ltd., PrestonOne Development (Canada) Inc., PrestonTwo Development (Canada) Inc., PrestonThree Development (Canada) Inc., PrestonFour Development (Canada) Inc., 2088543 Ontario Inc., 2088544 Ontario Inc., 2088545 Ontario Inc., 1331607 Ontario Inc., Queenston Manor General Partner Inc., 1408927 Ontario Ltd., 2107738 Ontario Inc., 1418361 Ontario Ltd., 2128054 Ontario Inc., 2069212 Ontario Inc., 1132413 Ontario Inc., 2067171 Ontario Inc., , 2085306 Ontario Inc., 2059035 Ontario Inc., 2086218 Ontario Inc., 2085438 Ontario Inc., First Leaside Visions Management Inc., 1049015 Ontario Inc., 1049016 Ontario Inc., 2007804 Ontario Inc., 2019418 Ontario Inc., FL Research Management Inc., 1031628 Ontario Inc., 1045516 Ontario Inc., 2004516 Ontario Inc., 2192341 Ontario Inc., and First Leaside Fund Management Inc.**



7. ~~6.~~ **THIS COURT ORDERS** that the stay provided for in paragraph 24 of the Initial Order be and is hereby lifted to permit First Leaside to pursue proceedings against David C. Phillips and Margaret Davis, who are directors of certain of the Applicants.

8. ~~7.~~ **THIS COURT ORDERS** that, notwithstanding paragraph 4 of the Initial Order, G.S. MacLeod & Associates Inc. in its capacity as Chief Restructuring Officer pursuant to the Initial Order be and the same is hereby authorized and directed to execute on behalf of First Leaside Realty II Inc. an Asset Purchase Agreement dated August 3, 2012 among 480 Metcalfe Street (Ottawa) Limited Partnership, 100 Isabella Street (Ottawa) Limited Partnership, Redwood Retirement Residences (Ottawa) Limited Partnership, Amica Acquisitions Inc. and Kingsett Real Estate Growth LP No. 2 (the "Amica APA") and such other documents as may be necessary or desirable for the completion of the transaction contemplated in the Amica APA and for the conveyance of the Purchase Assets as defined in the Amica APA to the Purchaser (as defined therein).

9. ~~8.~~ **THIS COURT ORDERS** that First Leaside Finance Inc. be and is hereby authorized and directed to discharge the mortgage registered as Instrument No. OC1276878 concurrently with the closing of the transaction contemplated in the Amica APA.

10. ~~9.~~ **THIS COURT ORDERS AND DECLARES** that the transaction contemplated in the Amica APA is exempt from the application of the *Bulk Sales Act* (Ontario).

11. ~~10.~~ **THIS COURT ORDERS AND DECLARES** that First Leaside Accounting and Tax Services Inc. ("FLAT") is hereby authorized to complete the sale of its businesses substantially in the form of

- (i) a Term Sheet dated August 10, 2012 and attached as Exhibit "N" to the MacLeod Affidavit among Joanna L. Hampton Holdings Inc., McMillan Thorne & Co. Ltd., D. McCormack & Company Inc., Allan Welsh & Company, FLAT, the Toronto-Dominion Bank, and Jim Brander Professional Corporation and authorizing the completion of the transactions contemplated by such term sheet; and
- (ii) a Term Sheet dated August 10, 2012 and attached as Exhibit "O" to the MacLeod Affidavit among Jim Brander, Jim Brander Professional Corporation, Brander Professional Corporation, Smart Books Accounting Services Inc., FLAT, the Toronto-Dominion Bank and Joanna L. Hampton Holdings Inc., and authorizing the completion of the transactions contemplated by such term sheet.

12. ~~11.~~ **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Monitor and its agents in carrying out the terms of this Order.

13. ~~12.~~ **THIS COURT ORDERS** that the conduct of the CRO as described in the MacLeod Affidavit Affidavits, except as it relates to the US Entities, be and the same is hereby approved.

14. ~~13.~~ **THIS COURT ORDERS** that the conduct of Grant Thornton Limited, in its capacity as Monitor, as described in the Fourth Report of the Monitor, be and the same is hereby approved.

---

**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,  
R.S.C. 1985, c. C-36, AS AMENDED  
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
First Leaside Wealth Management Inc. et al**

Court File No: CV-12-9617-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(Commercial List)**

Proceeding commenced at Toronto

**ORDER**

**Cassels Brock & Blackwell LLP**  
2100 Scotia Plaza  
40 King Street West  
Toronto, Ontario M5H 3C2

John N. Birch LSUC #: 38968U  
Tel: 416.860.5225  
Fax: 416.640.3057  
jbirch@casselsbrock.com

David S. Ward LSUC#: 33541W  
Tel: 416.869.5960  
Fax: 416.360.3154  
dward@casselsbrock.com

Lawyers for the Applicant



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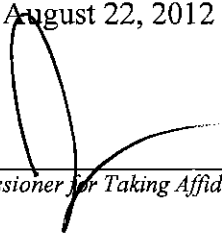
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| Style change   | 0     |
| Format changed | 0     |
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# TAB B

This is Exhibit **"B"** referred to in the Affidavit of Henry Wemekamp, sworn August 22, 2012



---

*Commissioner for Taking Affidavits (or as may be)*



**FIRST LEASIDE FUND**

---

**DECLARATION OF TRUST**

---

October 6, 2005

**CASSELS BROCK & BLACKWELL LLP**

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**FIRST LEASIDE FUND**

**THIS DECLARATION OF TRUST IS MADE AS OF THE 6TH OF OCTOBER, 2005**

**BY:**

Mary La Rocca, in her capacity as the initial trustee (the "Initial Trustee") of the trust constituted by this declaration of trust (the "Trust"), and each person who on or after the date hereof becomes a trustee of the Trust as herein provided (each person, while a trustee of the Trust as herein provided, hereinafter called a "Trustee"),

-and-

Mary La Rocca, in her capacity as initial unitholder of the Trust (the "Initial Unitholder") and all persons who after the date hereof become holders of Trust Units are herein provided (collectively at any time, the "Trust Unitholders"),

**WHEREAS** the Initial Trust Unitholder wishes to create a trust for the sole purpose of investing its funds in securities and investments permitted by the terms hereof;

**AND WHEREAS** for the purpose of settling the trust created hereunder, the Initial Unitholder paid an amount of \$10.00 in lawful money of the United States (the "Initial Contribution") and received in exchange therefor ten units of the Trust (the "Initial Trust Units");

**AND WHEREAS** the Trustee has agreed to hold the Initial Contribution and all amounts and assets subsequently received under this Declaration of Trust or in respect of the investment of these assets in accordance with the provisions hereinafter set forth;

**AND WHEREAS** the Initial Unitholder and the Trustee desire that the beneficiaries of the Trust, including the Initial Unitholder, shall be the holders of the Trust Units;

**AND WHEREAS** it is intended that the Trust Units (as hereinafter defined) be offered for sale to members of the public in each of the provinces and territories of Canada pursuant to the Prospectus (as hereinafter defined);

**AND WHEREAS** the Initial Unitholder and the Trustee desire that the Trust shall qualify as a "mutual fund trust" pursuant to subsection 132(6) of the Income Tax Act (Canada);

**NOW THEREFORE**, the undersigned, being the sole Trustee, hereby confirms and declares that he agrees with the Initial Unitholder to hold in trust, as Trustee, the Initial Contribution and any and all other property, real, personal or otherwise, tangible or intangible, which has been at the date hereof or is hereafter transferred, conveyed or paid to or otherwise received by him as Trustee or to which the Trust is otherwise entitled and all rents, income, profits and gains therefrom for the benefit of the Trust Unitholders hereunder in accordance with and subject to the expressed provisions of this Declaration of Trust, as follows:

## ARTICLE I INTERPRETATION

### 1.1 Definitions

In this Declaration of Trust including the recitals hereto, unless the context otherwise requires, the following terms shall have the following meanings:

- (a) **"Affiliate"** of a person means any person that would be deemed to be an affiliated entity of such person under the *Securities Act* (Ontario) as it exists on the date hereof (applied, with the necessary changes being made, in respect of persons that are not companies);
- (b) **"Annuitant"** means the annuitant or beneficiary of a Plan or any other plan of which a Trust Unitholder acts as trustee or carrier;
- (c) **"associate"** when used to indicate a relationship with a person or company, has the same meaning as in the *Securities Act* (Ontario);
- (d) **"Auditors"** means the firm of chartered accountants appointed as the auditors of the Trust from time to time in accordance with the provisions hereof who initially shall be KPMG LLP, Chartered Accountants;
- (e) **"Business Day"** means any day except Saturday, Sunday and any statutory holiday in Toronto, Ontario, Canada;
- (f) **"Closing"** means a closing of the issue of Trust Units to the public pursuant to the Offering; **"Date of Closing"** means the date on which a Closing occurs; and **"Time of Closing"** means the time on a Date of Closing at which a Closing occurs;
- (g) **"Counsel"** means a barrister or solicitor or firm of barristers and solicitors or other lawyers in an appropriate jurisdiction retained by the Trust;
- (h) **"Distributable Cash Flow"** has the meaning ascribed thereto in subsection 5.1(b);
- (i) **"Distribution Payment Date"** in respect of a Distribution Period means a date no later than 15 days following the end of the Distribution Period or, if such day is not a Business Day, the next following Business Day or such other date determined from time to time by the Trustees;
- (j) **"Distribution Period"** means initially the period from and including the initial Date of Closing to and including the last day of the calendar month in which the initial Closing occurs and thereafter means each month in each calendar year from and including the first day thereof and to and including the last day thereof;
- (k) **"Distribution Record Date"** means the last Business Day of each Distribution Period;
- (l) **"Fully Diluted Basis"** means, with respect to the number of outstanding Trust Units, at any time, the number of Trust Units that are outstanding at that time and would be outstanding if all outstanding options, rights attached to securities convertible into or exchangeable for Trust Units and other rights to acquire Trust Units were exercised at that time;
- (m) **"generally accepted accounting principles"** or **"GAAP"** means Canadian generally accepted accounting principles determined with reference to the Handbook of the Canadian Institute of Chartered Accountants, as amended from time to time;
- (n) **"Income of the Trust"** has the meaning ascribed thereto in subsection 5.2(a);



- (o) **"Initial Contribution"** means the amount of \$10.00 paid by the Initial Unitholder to the Trustee for the purpose of settling the Trust;
- (p) **"Initial Trustee"** means the person named as the first Trustee of the Trust above;
- (q) **"Master LP"** means F. L. Master Texas, Ltd., a limited partnership formed under the laws of the State of Texas;
- (r) **"Monthly Limit"** has the meaning given to that term in subsection 6.4(a);
- (s) **"Net Realized Capital Gains"** has the meaning ascribed thereto in subsection 5.2(b);
- (t) **"Non-Resident"** means a person who is a "non-resident" of Canada within the meaning of the *Tax Act*;
- (u) **"Offering"** means the initial offering of Trust Units to the public pursuant to exemptions from prospectus requirements of applicable securities laws;
- (v) **"Ordinary Resolution"** means, subject to section 12.12, a resolution proposed to be passed as an ordinary resolution at a meeting of Trust Unitholders (including an adjourned meeting) duly convened for that purpose and held in accordance with the provisions hereof at which a quorum is present, which resolution is passed by the affirmative votes of a majority of the votes cast by the Trust Unitholders at such meeting;
- (w) **"person"** means and includes individuals, corporations, limited partnerships, general partnerships, joint stock companies, limited liability companies, joint ventures, associations, companies, trusts, banks, trust companies, pension funds, business trusts or other organizations, whether or not legal entities, and governments, governmental agencies and political subdivisions thereof;
- (x) **"Plan"** means a trust governed by registered retirement savings plan, registered retirement income fund, registered education savings plan or deferred profit sharing plan, each as described in the *Tax Act*;
- (y) **"real property"** means property which in law is real property and includes, whether or not the same would in law be real property, leaseholds, mortgages, undivided joint interests in real property (whether by way of tenancy-in-common, joint tenancy, co-ownership, joint venture or otherwise), any interests in any of the foregoing and securities of persons the sole or principal purpose and activity of which is to invest in, hold and deal in real property;
- (z) **"Redemption Price"** has the meaning ascribed thereto in subsection 6.3(a);
- (aa) **"Registers"** has the meaning ascribed thereto in section 13.4;
- (bb) **"Residents"** means persons who are resident in Canada for the purpose of the *Tax Act*;
- (cc) **"Special Resolution"** has, subject to section 12.12, the meaning ascribed thereto in section 12.8;
- (dd) **"Subsidiary"** of a person means any person that would be deemed to be a subsidiary entity of such person under the *Securities Act* (Ontario) as it exists on the date hereof (applied, with the necessary changes being made, in respect of persons that are not companies);
- (ee) **"Tax Act"** means the *Income Tax Act*, R.S.C. 1985 (5th Supp.) c. 1 and the regulations thereunder;
- (ff) **"this Declaration of Trust", "this Declaration", "hereto", "herein", "hereof", "hereby", "hereunder"** and similar expressions refer to this instrument, as hereby

amended and restated, and not to any particular Article, section or portion hereof, and include any and every instrument supplemental or ancillary hereto;

- (gg) "Transfer Date" has the meaning given to that term in subsection 6.5;
- (hh) "Trust" means the First Leaside Fund, an open-ended, limited purpose trust constituted by this Declaration of Trust;
- (ii) "Trust Assets", at any time, means such of the following monies, properties and other assets as are at such time held by the Trust or by the Trustees on behalf of the Trust, including:
  - (i) the Initial Contribution;
  - (ii) all funds or property derived from the issuance or sale of Trust Units or other cash or property received by the Trust;
  - (iii) any securities, whether debt or equity, of any Wimberly Group Member or other securities or investments otherwise permitted by the terms of this Declaration of Trust to be held from time to time by or on behalf of the Trust; and
  - (iv) all proceeds, income, dividends, interest, profit, return of capital, gains and accretions and all substituted assets, rights and benefits of any kind or nature whatsoever arising directly or indirectly from or in connection with or accruing to such foregoing property or such proceeds of disposition;
- (jj) "Trust Liabilities" has the meaning ascribed thereto in subsection 2.7(a);
- (kk) "Trust Unit Certificate" means a certificate in the form approved by the Trustees evidencing one or more Trust Units, issued and certified in accordance with the provisions hereof;
- (ll) "Trust Unitholders" means at any time the holders at that time of one or more Trust Units, as shown on the Registers;
- (mm) "Trust Units" means all of the trust units of the Trust authorized and issued hereunder as such and for the time being outstanding and entitled to the benefits hereof;
- (nn) "Trustee", at any time, means an individual who is, in accordance with the provisions hereof, a trustee of the Trust at the time including, without limitation so long as he remains a trustee, the Initial Trustee and "Trustees" means, at any time, all of the individuals, each of whom is at that time a trustee;
- (oo) "Unitholder's Declaration" means a declaration regarding the residency of a Trust Unitholder, any Beneficial Trust Unitholder or other beneficial owner(s) or any other person in the form determined by the Trustees in accordance with section 13.5;
- (pp) "Wimberly Group" means, at any time, collectively, Wimberly LP, Master LP and their respective Subsidiaries and Affiliates, and "Wimberly Group Member" means any one of them; and
- (qq) "Wimberly LP" means Wimberly Apartments Limited Partnership, a limited partnership formed under the laws of the Province of Ontario

## 1.2 References to Acts Performed by the Trust

For greater certainty, where any reference is made in this Declaration of Trust to an act to be performed by the Trust, such reference shall be construed and applied for all purposes as if it referred

to an act to be performed by the Trustees on behalf of the Trust or by some other person duly authorized to do so by the Trustees or pursuant to the provisions hereof, and where any reference is made in this Declaration of Trust to actions, rights or obligations of the Trustees, such reference shall be construed and applied for all purposes to refer to actions, rights or obligations of the Trustees in their capacity as Trustees of the Trust, and not in their other capacities, unless the context otherwise requires.

**1.3 Tax Act**

Any reference herein to the Tax Act or to a particular provision thereof shall include a reference to the Tax Act or that provision as it may be renumbered or amended from time to time. Where there are proposals for amendments to the Tax Act which have not been enacted into law or proclaimed into force on or before the date on which such proposals are to become effective, the Trustees may take such proposals into consideration and apply the provisions hereof as if such proposals had been enacted into law and proclaimed into force.

**1.4 Number and Gender**

In this Declaration of Trust, unless herein otherwise expressly provided or unless the context otherwise requires, words importing the singular number include the plural, and vice versa and words importing a gender shall include the feminine, masculine and neuter genders.

**1.5 Headings for Reference Only**

The division of this Declaration of Trust into Articles and sections, the provision of a Table of Contents and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Declaration of Trust.

**1.6 Day Not a Business Day**

In the event that any day on which any amount is to be determined or any action is required to be taken hereunder is not a Business Day, then such amount shall be determined or such action shall be required to be taken at or before the requisite time on the next succeeding day that is a Business Day.

**1.7 Time of the Essence**

Time shall be of the essence in this Declaration of Trust.

**1.8 Governing Law**

This Declaration of Trust and the Trust Unit Certificates shall be construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and shall be treated in all respects as Ontario contracts. The parties hereto hereby irrevocably submit and attorn to the jurisdiction of the courts of the Province of Ontario.

**1.9 Currency**

Unless otherwise specified herein, all references to money amounts are to lawful currency of the United States of America.

**1.10 Certain Phrases, etc.**

In this Declaration of Trust, (i) the words "including" and "includes" mean "including (or includes) without limitation", and (ii) the phrase "the aggregate of, "the total of, "the sum of, or a phrase of similar meaning means "the aggregate (or total or sum), without duplication, of.

## **ARTICLE 2 DECLARATION OF TRUST**

### **2.1 Establishment of Trust**

The Trustees agree to hold the Trust Assets in trust for the use and benefit of the Trust Unitholders, their successors, permitted assigns and personal representatives, on and subject to the terms and conditions hereinafter declared and set forth, such trust to constitute the Trust hereunder.

### **2.2 Initial Contribution**

The Initial Trustee hereby acknowledges payment by the Initial Unitholder, concurrent with the execution of this Declaration of Trust, of the Initial Contribution to the Trust for the purpose of settling this Trust in consideration for which the Initial Unitholder was issued ten Trust Units.

### **2.3 Name of Trust**

- (a) The Trust shall be known and designated as the "FIRST LEASIDE FUND" or the French language version thereof and, whenever practicable, lawful and convenient, the property of the Trust shall be held and the affairs of the Trust shall be conducted and transacted under that name.
- (b) If the Trustees determine that the use of such name is not practicable, legal or convenient, the Trust may use such other designation or may adopt such other name as the Trustees deem appropriate, and the Trust may hold property and conduct and transact its affairs under such other designation or name.

### **2.4 Head Office**

The head office of the Trust shall be located at 430 Regional Road, #8 R. R. 1, Uxbridge, Ontario L9P 1R1, or such other place or places in Canada as the Trustees may from time to time designate.

### **2.5 Nature of the Trust**

The Trust is an unincorporated, open-ended limited purpose trust, established for the purposes specified in section 4.1. The Trust is not, shall not be deemed to be and shall not be treated as, a general partnership, limited partnership, syndicate, association, joint venture, company, corporation or joint stock company nor shall the Trustees or any individual Trustee or the Trust Unitholders or any of them or any person be, or be deemed to be, treated in any way whatsoever as liable or responsible hereunder as partners or joint venturers. The Trustees are not and shall not be, or be deemed to be, agents of the Trust Unitholders. The relationship of the Trust Unitholders to the Trustees shall be solely that of beneficiaries of the Trust and their rights shall be limited to those conferred upon them by this Declaration of Trust.

### **2.6 Rights of Trust Unitholders**

The rights of each Trust Unitholder to call for a distribution or division of assets, monies, funds, income and capital gains held, received or realized by the Trustees are limited to those contained herein and, except as provided herein, no Trust Unitholder shall be entitled to call for any partition or division of the Trust Assets or for a distribution of any particular asset forming part of the Trust Assets or of any particular monies or funds received by the Trustees. The legal ownership of the Trust Assets and the right to conduct the activities of the Trust are vested exclusively in the Trustees, and no Trust Unitholder has or is deemed to have any right of ownership in any of the Trust Assets, except as specifically provided herein. Except as specifically provided herein, no Trust Unitholder or Trust

Unitholders shall be entitled to interfere with or give any direction to the Trustees with respect to the affairs of the Trust or in connection with the exercise of any powers or authorities conferred upon the Trustees under this Declaration of Trust. The Trust Units shall be personal property and shall confer upon the holders thereof only the interest and rights specifically set forth in this Declaration of Trust.

**2.7 Liability of Trust Unitholders**

- (a) No Trust Unitholder or Annuitant in its capacity as such shall incur or be subject to any liability, direct or indirect, absolute or contingent, in contract or in tort or of any other kind to any person in connection with: (i) the Trust Assets or the ownership, use, operation, acquisition or disposition thereof or exercise or enjoyment of the rights, privileges, conditions or benefits attached thereto, associated therewith or derived therefrom; (ii) the obligations or the activities or affairs of the Trust; (iii) any actual or alleged act or omission of the Trustees or by any other person in respect of the activities or affairs of the Trust (whether or not authorized by or pursuant to this Declaration of Trust); (iv) any act or omission of the Trustees or any other person in the performance or exercise, or purported or attempted performance or exercise, of any obligation, power, discretion or authority conferred upon the Trustees or such other person in respect of the activities or affairs of the Trust (whether or not authorized by or pursuant to this Declaration of Trust); (v) any transaction entered into by the Trustees or by any other person in respect of the activities or affairs of the Trust (whether or not authorized by or pursuant to this Declaration of Trust); or (vi) except as provided in section 5.8, any taxes, levies, imposts or charges or fines, penalties or interest in respect thereof payable by the Trust or by the Trustees or by any other person (except the Trust Unitholder to the extent required by applicable tax laws) on behalf of or in connection with the activities or affairs of the Trust (collectively, "Trust Liabilities").
- (b) No Trust Unitholder or Annuitant in its capacity as such shall be liable to indemnify the Trustees or any other person with respect to any Trust Liabilities.
- (c) To the extent that, notwithstanding the provisions of this section 2.7, any Trust Unitholder or Annuitant, in its capacity as such, may be determined by a judgment of a court of competent jurisdiction to be subject to or liable in respect of any Trust Liabilities, such Trust Unitholder is entitled to be reimbursed out of the Trust Assets for any payment of Trust Liabilities made by such Trust Unitholder.

**ARTICLE 3  
ISSUE AND SALE OF TRUST UNITS**

**3.1 Nature of Trust Units**

- (a) The beneficial interests in the Trust shall be divided into interests of one class, described and designated as "Trust Units", which shall be entitled to the rights and subject to the limitations, restrictions and conditions set out herein. Each Trust Unit shall vest indefeasibly in the holder thereof and the interest of each Trust Unitholder shall be determined by the number of Trust Units registered in the name of the Trust Unitholders on the Registers.
- (b) Each Trust Unit represents an equal undivided beneficial interest in any distribution from the Trust whether of Distributable Cash Flow, Income of the Trust, Net Realized Capital Gains (other than Net Realized Capital Gains allocated and distributed to redeeming Trust Unitholders) or other amounts and in any net Trust Assets in the event of termination or winding-up of the Trust. All Trust Units outstanding from time to time shall be entitled to an equal share in any distributions by the Trust (other than

distributions made in respect of any distribution reinvestment plan adopted by the Trustees) and, in the event of termination or winding-up of the Trust, in the Trust Assets. All Trust Units shall rank among themselves equally and rateably without discrimination, preference or priority.

- (c) The issued and outstanding Trust Units may be subdivided or consolidated from time to time by the Trustees without notice to or approval of the Trust Unitholders.
- (d) Each Trust Unit shall entitle the holder of record thereof to one vote at all meetings of Trust Unitholders.

### **3.2 Authorized Number of Trust Units**

The number of Trust Units which are authorized and may be issued hereunder is unlimited.

### **3.3 Issue of Trust Units**

- (a) Trust Units may be issued by the Trust at the times, to the persons, for the consideration and on the terms and conditions that the Trustees determine. The Trustees may authorize the Trust to pay a reasonable commission to any person in consideration of such person purchasing or agreeing to purchase Trust Units from the Trust or from any other person or procuring or agreeing to procure purchasers for Trust Units.
- (b) The Trustees may create and issue instalment receipts, rights, warrants, receipts (including so-called "special warrants" and "subscription receipts" which may be exercisable for no additional consideration), securities convertible into or exchangeable or exercisable for Trust Units or other securities of the Trust (including Trust Units issuable upon the exchange of securities of other issuers) or options (including all types of incentive programs) to subscribe for Trust Units which instalment receipts, rights, warrants, receipts, convertible or exchangeable or exercisable securities or options may be exercisable at such subscription price or prices and at such time or times as the Trustees may determine. The instalment receipts, rights, warrants, receipts, convertible or exchangeable or exercisable securities or options so created may be issued for such consideration or for no consideration, all as the Trustees may determine. An instalment receipt, right, warrant, receipt, convertible or exchangeable or exercisable security or option shall not be a Trust Unit and the holder thereof shall not be a Trust Unitholder.
- (c) Trust Units are only to be issued as fully paid in money, property, including an obligation to pay consideration in instalments, or past services, and are not to be subject to future calls or assessments, except that Trust Units to be issued under an offering of Trust Units to the public or otherwise may be issued for a consideration payable in instalments and the Trust may take a security interest over such Trust Units for unpaid instalments.

### **3.4 Fractional Trust Units**

If as a result of any act of the Trustees hereunder any person becomes entitled to a fraction of a Trust Unit, such person shall not be entitled to receive a certificate therefor. Fractional Units shall not, except to the extent that they may represent in the aggregate one or more whole Trust Units, entitle the holder thereof to notice of or to attend or to vote at, meetings of Trust Unitholders. Subject to the foregoing, such fractional Trust Units shall have attached thereto the rights, restrictions, conditions and limitations attaching to whole Trust Units in the proportion that they bear to a whole Unit.

### **3.5 Consolidation of Trust Units**

Immediately after any pro rata distribution of additional Trust Units to all Trust Unitholders pursuant to section 5.7, the number of the outstanding Trust Units will be consolidated such that each Trust Unitholder will hold after the consolidation the same number of Trust Units as the Trust Unitholder held before the distribution of additional Trust Units. In this case, each Trust Unit Certificate representing a number of Trust Units prior to the distribution of additional Trust Units is deemed to represent the same number of Trust Units after the non-cash distribution of additional Trust Units and the consolidation.

Notwithstanding the foregoing, where tax is required to be withheld from a Trust Unitholder's share of the distribution, the consolidation will result in such Trust Unitholder holding that number of Trust Units equal to (i) the number of Trust Units held by such Trust Unitholder prior to the distribution plus the number of Trust Units received by such Trust Unitholder in connection with the distribution (net of the total of the number of whole and part Trust Units withheld on account of withholding taxes and the number of whole and part Trust Units withheld pursuant to section 5.8 on account of the Trustees' reasonable expenses with regard to the sale of such Trust Units withheld on account of withholding taxes) multiplied by (ii) the fraction obtained by dividing the aggregate number of Trust Units outstanding prior to the distribution by the aggregate number of Trust Units that would be outstanding following the distribution and before the consolidation if no withholding were required in respect of any part of the distribution payable to any Trust Unitholder. Such Trust Unitholder will be required to surrender the Trust Unit Certificates, if any, representing such Trust Unitholder's original Trust Units, in exchange for a Trust Unit Certificate representing such Trust Unitholder's post-consolidation Trust Units.

### **3.6 No Pre-Emptive Rights**

No person shall be entitled, as a matter of right, to subscribe for, purchase or acquire any Trust Unit.

### **3.7 Re-Purchase of Initial Trust Unit by the Trust**

Immediately after the Closing, the Trust will purchase the Initial Trust Units from the Initial Unitholder and the Initial Unitholder will sell the Initial Trust Units to the Trust, for a purchase price of \$10.00 and, upon the completion of that purchase and sale, the Initial Trust Units shall be cancelled and shall no longer be outstanding for any of the purposes of this Declaration of Trust.

## **ARTICLE 4 INVESTMENTS OF THE TRUST**

### **4.1 Purpose of the Trust**

The Trust is an unincorporated, open-ended, limited purpose trust and its operations and activities shall be restricted to:

- (a) acquiring, investing in, transferring, disposing of and otherwise dealing with securities of persons engaged in the ownership of primarily income-producing multiple-unit residential real property located in Canada and the United States, as well as activities ancillary or incidental thereto, and such other investments as the Trustees may determine;
- (b) acquiring, investing in, transferring, disposing of and otherwise dealing with securities of or lending to any Wimberly Group Member;

- (c) temporarily holding cash in interest bearing accounts short-term government debt or short-term investment grade corporate debt for the purposes of paying the expenses and liabilities of the Trust, paying amounts payable by the Trust in connection with the redemption of any Trust Units or other securities of the Trust and making distributions to Trust Unitholders;
- (d) issuing Trust Units and other securities of the Trust, including instalment receipts, securities convertible into or exchangeable or exercisable for Trust Units or other securities of the Trust or other rights, warrants, receipts or options convertible into or exchangeable or exercisable for Trust Units or other securities of the Trust, including for the purposes of:
  - (i) obtaining funds to conduct the activities described in paragraphs (a) and (b) above, including raising funds for acquisitions;
  - (ii) implementing Trust Unitholder rights plans, distribution reinvestment plans, distribution reinvestment and Trust Unit purchase plans, option plans, long term incentive plans or other compensation plans, if any, established by the Trust;
  - (iii) making non-cash distributions to holders of Trust Units as contemplated by this Declaration of Trust, including pursuant to distribution reinvestment plans, if any, established by the Trust; and
  - (iv) repaying any indebtedness or satisfying any obligation, including any indebtedness or obligation to any Wimberly Group Member;
- (e) issuing debt securities (including debt securities convertible into or exchangeable for Trust Units or other securities of the Trust) or otherwise borrowing and mortgaging, pledging, charging, granting a security interest in or otherwise encumbering any of the Trust Assets as security;
- (f) guaranteeing (as guarantor, surety or co-principal obligor) the payment of any indebtedness, liability or obligation of any Wimberly Group Member or the performance of any obligation of any Wimberly Group Member, and mortgaging, pledging, charging, granting a security interest in or otherwise encumbering all or any part of the Trust Assets;
- (g) disposing of any part of the Trust Assets, subject to the provisions of this Declaration of Trust;
- (h) issuing or redeeming rights and/or Trust Units pursuant to any Trust Unitholder rights plan adopted by the Trust;
- (i) repurchasing or redeeming securities issued by the Trust, including Trust Units, subject to the provisions of this Declaration of Trust and applicable law;
- (j) satisfying the obligations, liabilities or indebtedness of the Trust; and
- (k) undertaking all other usual and customary actions for the conduct of the activities of the Trust in the ordinary course as are approved by the Trustees from time to time, or as are contemplated by this Declaration of Trust,

provided that the Trust shall not undertake any activity, take any action or make or retain any investment which would result (or omit to take any action where such omission would result) in: (i) the Trust not being considered a "mutual fund trust" for purposes of the Tax Act; or (ii) the Trust Units being disqualified for investment by Plans.



## ARTICLE 5 DISTRIBUTIONS

### 5.1 Computation of Distributable Cash Flow

- (a) The "**Cash Flow of the Trust**" for, or in respect of, any Distribution Period, shall be determined pursuant to the following provisions:
  - (i) the following amounts shall be included in the calculation:
    - (A) all amounts which are received by the Trust for and in respect of the Distribution Period, including, without limitation, distributions, interest, dividends, proceeds from the disposition of securities, returns of capital and repayments of indebtedness; and
    - (B) all amounts received by the Trust in any prior Distribution Period to the extent not previously distributed;
  - (ii) the following amounts shall be deducted in the calculation:
    - (A) all costs and expenses of the Trust which, in the opinion of the Trustees, may reasonably be considered to have accrued and become owing in respect of, or which relate to, such Distribution Period or a prior Distribution Period if not accrued or deducted in determining the Cash Flow of the Trust in such prior period;
    - (B) all amounts which relate to the redemption of Trust Units and which have been paid or become payable in cash by the Trust in such Distribution Period;
    - (C) all amounts to be paid in satisfaction of debt service obligations of the Trust on account of both principal and interest; and
    - (D) any amount that the Trustees may reasonably consider to be necessary to provide for the payment of any costs that have been or are reasonably expected to be incurred by the Trust, including any tax liabilities of the Trust;
  - (iii) the net proceeds of the Offering or any other issuance of Trust Units or other securities, including debt securities, of the Trust and any associated expenses shall not be included in the calculations of Cash Flow of the Trust in respect of any Distribution Period.
- (b) The "**Distributable Cash Flow**" for, or in respect of, a Distribution Period shall be the Cash Flow of the Trust for such Distribution Period less any amount which the Trustees may reasonably consider to be necessary to provide for the payment of any costs which have been or will be incurred in the activities and operations of the Trust and to provide for the payments of any tax liability of the Trust (but excluding such amounts previously deducted in subsection 5.1(a)(ii)).

## 5.2

### Computation of Income and Net Realized Capital Gains

- (a) The "**Income of the Trust**" for any taxation year of the Trust shall be the net income for the year determined pursuant to the provisions of the Tax Act, other than subsection 104(6) thereof, having regard to the provisions thereof which relate to the calculation of taxable income of a trust, and taking into account such adjustments thereto as are determined by the Trustees in respect of dividends received from taxable Canadian corporations, amounts paid or payable by the Trust to Trust Unitholders and such other amounts as may be determined in the discretion of the Trustees; provided, however, that capital gains and capital losses shall be excluded from the computation of net income.
- (b) The "**Net Realized Capital Gains**" of the Trust for any taxation year of the Trust shall be determined as the amount, if any, by which the aggregate of the capital gains of the Trust calculated in accordance with the provisions of the Tax Act in the year exceeds the aggregate of (i) the aggregate of the capital losses of the Trust calculated in accordance with the provisions of the Tax Act in the year, (ii) the amount determined by the Trustees in respect of any net capital losses for prior taxation years which the Trust is permitted by the Tax Act to deduct in computing the taxable income of the Trust for the year, and (iii) any amount in respect of which the Trust is entitled to a capital gains refund under the Tax Act, as determined by the Trustees; provided that at the discretion of the Trustees, the Net Realized Capital Gains of the Trust for a year may be calculated without subtracting the full amount in respect of the net capital losses of the Trust carried forward from previous years.

## 5.3

### Distribution of Distributable Cash Flow

The Trust shall distribute on each Distribution Payment Date to Trust Unitholders of record as at the close of business on the applicable Distribution Record Date all of the Distributable Cash Flow of the Trust for the applicable Distribution Period. The proportionate share of each Trust Unit of the amount of such Distributable Cash Flow shall be determined by dividing such amount by the number of issued and outstanding Trust Units on such Distribution Record Date. Each Trust Unitholder's share of such Distributable Cash Flow shall be an amount equal to the proportionate share of each Trust Unit of such Distributable Cash Flow multiplied by the number of Trust Units owned of record by each such Trust Unitholder on such Distribution Record Date. Subject to section 5.7, any distribution which has been declared to be payable to Trust Unitholders in respect of a Distribution Period shall be paid in cash on the Distribution Payment Date in respect of such Distribution Period.

## 5.4

### Other Distributions

- (a) In addition to the distributions which are made payable to Trust Unitholders pursuant to section 5.3, the Trustees may declare to be payable and make distributions, from time to time, out of Income of the Trust, Net Realized Capital Gains, the capital of the Trust or otherwise, in any year, in such amount or amounts, and on such dates as the Trustees may determine to persons who are Trust Unitholders at the record date determined by the Trustees for such distribution. For greater certainty, the Trustees may designate and make payable any income or capital gains realized by the Trust (including any income realized by the Trust on the redemption of Trust Units pursuant to section 6.3) to redeeming Trust Unitholders in accordance with that section.
- (b) Having regard to the intent of the Trust to allocate, distribute and make payable to Trust Unitholders all of the Income of the Trust, Net Realized Capital Gains and any other applicable amounts so that the Trust will not have any liability for tax under Part I of the Tax Act in any taxation year, the following amounts shall, without any further actions on

the part of the Trustees, be due and payable on December 31 in each year to Trust Unitholders of record on December 31 in each such year:

- (i) an amount equal to the amount, if any, by which the Income of the Trust for such year exceeds the aggregate of the portions, if any, of each distribution paid or payable by the Trust pursuant to section 5.3 and subsection 5.4(a) which have been determined by the Trustees, pursuant to section 5.5, to have been payable by the Trust out of Income of the Trust for such year and the amount of income treated as having been paid in the year pursuant to section 6.5; and
  - (ii) an amount equal to the amount, if any, by which the Net Realized Capital Gains of the Trust for such year exceeds the aggregate of the portions, if any, of each distribution paid or payable by the Trust pursuant to section 5.3 and subsection 5.4(a) which have been determined by the Trustees, pursuant to section 5.5, to have been payable by the Trust out of the Net Realized Capital Gains for such year and the amount of any capital gain treated as having been paid in the year pursuant to section 6.5.
- (c) The proportionate share of each Trust Unit of the amount of any distribution made pursuant to either or both of subsections 5.4(a) and (b) shall be determined by dividing such amount by the number of issued and outstanding Trust Units on the applicable Distribution Record Date in respect of a distribution pursuant to subsection 5.4(a) and on December 31 in respect of a distribution pursuant to subsection 5.4(b). Each Trust Unitholder's share of the amount of any such distribution shall be an amount equal to the proportionate share of each Trust Unit of such amount multiplied by the number of Trust Units owned of record by each such Trust Unitholder on such applicable Distribution Record Date or December 31 in the year of such distribution, as the case may be. Subject to section 5.7, amounts which have been declared to be payable to Trust Unitholders pursuant to subsection 5.4(a) shall be paid in cash on the Distribution Payment Date which immediately follows the applicable Distributable Record Date in respect of a distribution pursuant to subsection 5.4(a) and amounts which are payable to Trust Unitholders on December 31, in respect of a distribution pursuant to subsection (b) shall be payable on December 31 and shall be paid forthwith, and in no event later than March 15 of the following year, subject to section 5.6.

## **5.5 Character of Distributions and Designations**

In accordance with and to the extent permitted by the Tax Act and analogous provisions of any applicable provincial legislation, the Trustees in each year shall make designations and elections in respect of the amounts payable to Trust Unitholders for such amounts that the Trustees consider to be reasonable in all of the circumstances, including, without limitation, designations relating to taxable dividends received or deemed to be received by the Trust in the year on shares of taxable Canadian corporations, net capital gains realized by the Trust in the year and foreign source income of, or deemed foreign source income of, and foreign income taxes paid by, or deemed to have been paid by, the Trust for the year, as well as elections under subsections 104(13.1) and/or (13.2) of the Tax Act that income be taxed to the Trust, rather than to the Trust Unitholders. Distributions payable to Trust Unitholders pursuant to this Article 5, and to the extent required pursuant to section 6.5, shall be deemed to be distributions of Income of the Trust, Net Realized Capital Gains, trust capital or other items in such amounts as the Trustees shall, in their absolute discretion, determine. For greater certainty, it is hereby declared that any distribution of Net Realized Capital Gains shall include the non-taxable portion of the capital gains of the Trust which are encompassed in such distribution.

**5.6 Enforceability of Right to Receive Distributions**

For greater certainty, it is hereby declared that, subject to subsection 2.7(d), each Trust Unitholder shall have the legal right to enforce payment of any amount payable to such Trust Unitholder as a result of any distribution which is declared or made payable to such Trust Unitholder pursuant to this Article as of the date on which such amount becomes payable.

**5.7 Method of Payment of Distributions**

- (a) Where the Trustees determine that the Trust does not have available cash in an amount sufficient to make payment of the full amount of any distribution which has been declared to be payable pursuant to this Article on the due date for such payment, the payment may, at the option of the Trustees, include the pro rata issuance of additional Trust Units, or fractions of Trust Units, if necessary, having a value equal to the difference between the amount of such distribution and the amount of cash which has been determined by the Trustee to be available for the payment of such distribution, subject to all necessary regulatory approvals (as defined in section 6.3).
- (b) The value of each Trust Unit which is issued pursuant to subsection 5.7(a) shall be the market price of the Trust Units (as defined in section 6.3) on the applicable Distribution Record Date in respect of a distribution pursuant to section 5.3, on the applicable Distribution Record Date in respect of a distribution under subsection 5.4(a) or on December 31 in respect of a distribution under subsection 5.4(b), provided that if the particular date is not a Business Day then the market price shall be determined on the last Business Day which precedes such particular date.

**5.8 Withholding Taxes**

The Trustees may deduct or withhold from distributions payable to any Trust Unitholder all amounts required by law to be withheld from such distributions, whether such distributions are in the form of cash, additional Trust Units or otherwise. In the event of a distribution in the form of additional Trust Units, the Trustees may sell Trust Units of such Trust Unitholder to pay such withholding taxes and to pay all of the Trustees' reasonable expenses with regard thereto and such Trust Unitholder shall be deemed to have granted to the Trustees, and the Trustees shall have, the power of attorney of such Trust Unitholder to do so. Any such sale shall be made on any stock exchange on which the Trust Units are then listed and upon such sale, the affected Trust Unitholder shall cease to be the holder of such Trust Units which are so sold.

**5.9 Tax Act Definitions**

Unless otherwise specified or the context otherwise requires, any term in this Article which is defined in the Tax Act shall have for the purposes of this Article the meaning that it has in the Tax Act.

**5.10 Distribution Reinvestment and Trust Unit Purchase Plan/Compensation Plans**

Subject to any required regulatory approvals (and any Trust Unitholder approval imposed by regulatory requirements), the Trustees may, acting in their sole discretion, establish one or more Trust Unitholder rights plans, distribution reinvestment plans, distribution reinvestment and Trust Unit purchase plans, Trust Unit option plans or other compensation plans for Trustees, management and employees of the Trust and Subsidiaries of the Trust at any time and from time to time.

#### **5.11 Payments of Cash**

Any payment of cash by the Trust to a Trust Unitholder pursuant to this Article 5 or any other provision of this Declaration of Trust will be conclusively deemed to have been made upon mailing of a cheque in a postage pre-paid envelope, addressed to the Trust Unitholder at the Trust Unitholder's address appearing in the Registers, unless such cheque is dishonoured upon presentment. Upon such payment, the Trust will be discharged from all liability to the Trust Unitholder in respect of such payment, provided, however, that if such cheque is lost or destroyed then, upon the presentation of evidence satisfactory to the Trustees of such loss or destruction, together with such indemnity as the Trustees may reasonably require, the Trust will issue a replacement cheque to the Trust Unitholder.

#### **5.12 Unclaimed Distributions**

In the event that the Trustees hold any distributable amount that is unclaimed or that cannot be paid for any reason, the Trustees will be under no obligation to invest or reinvest the same, but will only be obliged to hold the same in a current interest-bearing account pending payment with interest earned (and less applicable taxes) to the person or persons entitled thereto. The Trustees will, as and when required by law, and may at any time prior to such required time, pay all or part of such distributable amount so held to the appropriate government official or agency, whose receipt shall be a good and sufficient discharge and release of the Trustees.

### **ARTICLE 6 REDEMPTION**

#### **6.1 Right of Redemption by Trust Unitholders**

Each Trust Unitholder shall be entitled to require the Trust to redeem at any time or from time to time at the demand of the Trust Unitholder all or any part of the Trust Units registered in the name of the Trust Unitholder at the prices determined and payable in accordance with the conditions hereinafter provided. The Trustees shall be entitled in their discretion to determine and designate whether any payments made in respect of any redemption are on account of income or capital.

#### **6.2 Exercise of Redemption Right**

- (a) To exercise a Trust Unitholder's right to require redemption under this Article 6, a duly completed and properly executed notice requiring the Trust to redeem Trust Units, in a form approved by the Trustees, shall be sent to the Trust at the head office of the Trust. No form or manner of completion or execution shall be sufficient unless the same is in all respects satisfactory to the Trustees and is accompanied by any further evidence that the Trustees may reasonably require with respect to the identity, capacity or authority of the person giving such notice.
- (b) Upon receipt by the Trust of the notice to redeem Trust Units, the Unitholder shall thereafter cease to have any rights with respect to the Trust Units tendered for redemption (other than to receive the redemption payment therefor) including the right to receive any distributions thereon which are declared payable to the Trust Unitholders of record on a date which is subsequent to the day of receipt by the Trust of such notice. Trust Units shall be considered to be tendered for redemption on the date that the Trust has, to the satisfaction of the Trustees, received the notice and other required documents or evidence as aforesaid.

#### **6.3 Cash Redemption**

- (a) Upon receipt by the Trust of the notice to redeem Trust Units in accordance with Section 6.2, the holder of the Trust Units tendered for redemption shall be entitled to

receive a price per Trust Unit (hereinafter called the "Redemption Price") equal to the fair market value thereof as determined by the Trustees in their sole discretion acting reasonably.

- (b) Subject to Sections 6.4 and 6.5, the Redemption Price payable in respect of the Trust Units tendered for redemption during any month shall be paid by cheque, drawn on a Canadian chartered bank or a trust company in lawful money of the United States of America, payable at par to or to the order of the Trust Unitholder who exercised the right of redemption on or before the last day of the calendar month following the month in which the Trust Units were tendered for redemption. Payments made by the Trust of the Redemption Price are conclusively deemed to have been made upon the mailing of a cheque in a postage prepaid envelope addressed to the former Trust Unitholder and/or any party having a security interest unless such cheque is dishonoured upon presentment. Upon such payment, the Trust shall be discharged from all liability to the former Trust Unitholder in respect of Trust Units redeemed.

#### **6.4 No Cash Redemption in Certain Circumstances**

Section 6.3(b) shall not be applicable to Trust Units tendered for redemption by a Trust Unitholder, if the total amount payable by the Trust pursuant to Section 6.3 in respect of such Trust Units and all other Trust Units tendered for redemption prior thereto in the same calendar month exceeds \$50,000 ("Monthly Limit"); provided that the Trustees may, in their sole discretion, waive such limitation in respect of all Trust Units tendered for redemption in any calendar month. In the absence of such a waiver, Trust Units tendered for redemption in any calendar month in which the total amount payable by the Trust pursuant to Section 6.3(b) exceeds the Monthly Limit will be redeemed for cash pursuant to Section 6.3(b) and, subject to any applicable regulatory approvals, by a distribution in specie of securities held by the Trust under Section 6.5 on a pro rata basis.

#### **6.5 In Specie Redemption**

If, pursuant to Section 6.4, Section 6.3(b) is not applicable to Trust Units tendered for redemption by a Trust Unitholder, the Redemption Price per Trust Unit specified in Section 6.3 to which the Trust Unitholder would otherwise be entitled shall, subject to receipt of all necessary regulatory approvals, be paid and satisfied, at the option of the Trust, by way of the issuance and delivery by the Trust to each holder of Units tendered for redemption who is not entitled to receive cash in respect thereof on the Redemption Date of:

- (i) a promissory note of any series as may be established by the Trust from time to time with such terms as the Trustees may determine in a principal amount equal to the Redemption Price as determined by the Trustees; or
- (ii) securities and/or obligations held by the Trust or any other assets of the Trust having a fair market value equal to the applicable Redemption Price as determined by the Trustees.

The Redemption Price payable pursuant to this Section 6.5 in respect of Trust Units tendered for redemption during any month shall, subject to receipt of all necessary regulatory approvals, be paid by the transfer, to or to the order of the Trust Unitholder who exercised the right of redemption, on the last day (the "Transfer Date") of the calendar month following the month in which the Trust Units were tendered for redemption, of the number of securities and/or obligations determined as aforesaid. The Trust shall be entitled to all interest paid or accrued and unpaid on the obligations being transferred and distributions paid on the securities being transferred to and including the Transfer Date. Payments by the Trust of the Redemption Price are conclusively deemed to have been made upon the mailing of such securities and/or obligations by registered mail in a postage prepaid envelope addressed to the former

Trust Unitholder. Upon such payment, the Trust shall be discharged from all liability to the former Trust Unitholder in respect of the Trust Units so redeemed.

Where the Trust makes a distribution of securities and/or obligations on a redemption of Trust Units as a result of the operation of Section 6.4 or 6.5, the Trustees shall determine the fair market value of the redeemed Trust Units and of the securities and/or obligations issued to satisfy the Redemption Price. Where the Trust makes a distribution of securities and/or obligations on a redemption of Trust Units pursuant to this subsection, the Trustees may, in their sole discretion, designate to the redeeming Trust Unitholders any capital gain realized by the Trust as a result of the distribution of such securities to the Trust Unitholder.

#### **6.6 Cancellation of all Redeemed Trust Units**

All Trust Units which are redeemed under this Article 6 shall be cancelled and such Trust Units shall no longer be outstanding and shall not be reissued.

### **ARTICLE 7 TRUSTEES**

#### **7.1 Number of Trustees**

There shall be a minimum of one (1) and a maximum of ten (10) Trustees. The number of Trustees within such minimum and maximum numbers may be changed by Trust Unitholders or by the Trustees, provided that the Trustees may not, between meetings of Trust Unitholders, appoint an additional Trustee if, after such appointment, the total number of Trustees would be greater than one and one third times the number of Trustees in office immediately following the last annual meeting of Trust Unitholders. In the event of any such increase, the Trust Unitholders or Trustees, as the case may be, shall forthwith elect or appoint any such additional Trustee(s). Until otherwise so determined, the number of Trustees as of the initial Closing shall be three (3).

#### **7.2 Calling and Notice of Meetings**

Meetings of the Trustees shall be called and held at such time and at such place as the Trustees, the Chairman of the Trustees or any two Trustees may determine, and any one Trustee or officer of the Trust may give notice of meetings when directed or authorized by such persons. Notice of each meeting of the Trustees shall be given to each Trustee not less than 48 hours before the time when the meeting is to be held, provided that if a quorum of Trustees is present, the Trustees may without notice hold a meeting immediately following an annual meeting of Trust Unitholders. Notice of a meeting of the Trustees may be given verbally, in writing or by telephone, fax or other means of communication. A notice of a meeting of Trustees shall specify the nature of the business to be transacted at such meeting. A Trustee may in any manner or at any time waive notice of or otherwise consent to a meeting of Trustees. Attendance of a Trustee, in person or by telephone, at a meeting of Trustees shall constitute a waiver of notice of that meeting except where a Trustee attends for the express purpose of objecting to the transaction of any business on the grounds that the meeting has not been properly called. Notwithstanding the foregoing, the Trustees may by resolution from time to time fix a day or days in any month or months for regular meetings of the Trustees at a place and hour to be named, in which case, provided that a copy of such resolution is sent to each Trustee forthwith after being passed and forthwith after each Trustee's appointment, no other notice shall be required for any such regular meeting.

#### **7.3 Place of Meetings**

Meetings of the Trustees shall be held in Canada and may be held at any place in Canada. A Trustee who attends a meeting of Trustees, in person or by telephone, is deemed to have consented to

the location of the meeting except when the Trustee attends the meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully held.

#### **7.4 Meetings by Telephone**

A Trustee may participate in a meeting of the Trustees or of a committee of the Trustees by means of telephone or other communication facilities that permit all persons participating in the meeting to hear each other provided that any telephone call or video conference call to permit the participation of a Trustee who is not physically present shall originate in Canada. A Trustee participating in such a meeting in such manner shall be considered present at the place of meeting.

#### **7.5 Quorum**

The quorum for the transaction of business at any meeting of the Trustees shall consist of a majority of the number of Trustees then holding office, and, notwithstanding any vacancy among the number of Trustees, a quorum of Trustees may exercise all of the powers of the Trustees, provided that a majority of the Trustees comprising such quorum shall not be Non-Residents. A Trustee who is a Non-Resident may appoint any other Trustee to act as his proxy at any meeting of Trustees and any such proxy shall vote as a separate Trustee and constitute attendance at the meeting for all purposes.

#### **7.6 Chairman**

The Chairman of the Trustees shall be chosen by the Trustees from among themselves. The chairman of any meeting of the Trustees shall be the Trustee present at the meeting who holds the office of Chairman of the Trustees or if such person is not present, the Trustees present shall choose one of their number to be chairman. The Chairman shall not be a Non-Resident.

#### **7.7 Action by the Trustees**

At all meetings of the Trustees every question shall be decided by a majority of the votes cast on the question. In the case of equality of votes, the chairman of the meeting shall not be entitled to a second or casting vote. The powers of the Trustees may be exercised by resolution passed at a meeting at which a quorum is present or without a meeting by resolution in writing signed by all Trustees who would be entitled to vote on that resolution at a meeting of the Trustees. Resolutions in writing may be signed in counterparts each of which shall be deemed to be an original and all originals together shall be deemed to be one and the same instrument.

#### **7.8 Adjourned Meeting**

Any meeting of Trustees may be adjourned from time to time by the chairman of the meeting with the consent of the meeting to a fixed time and place. Further notice of the adjourned meeting need not be given. The adjourned meeting shall be duly constituted if a quorum is present and if it is held in accordance with the terms of the adjournment. If there is not a quorum present at the adjourned meeting, the original meeting shall be deemed to have terminated upon its adjournment.

#### **7.9 Remuneration and Expenses**

The Trustees, other than a Trustee who is a full-time officer or employee of the Trust or any Wimberly Group Member, shall be paid such reasonable remuneration for their services as the Trustees may from time to time in good faith determine. The Trustees shall also be entitled to be reimbursed for reasonable traveling and other expenses properly incurred by them in attending meetings of the Trustees or any committee thereof or in connection with their services as Trustees. Nothing herein contained shall preclude any Trustee from serving the Trust in any other capacity and receiving remuneration therefor.



**7.10 Officers**

The Trustees from time to time may appoint one or more officers of the Trust, including a Chairman, Vice-Chairman of the Trust and, without prejudice to rights under any employment contract, may remove any officer of the Trust. The powers and duties of each officer of the Trust shall be those determined from time to time by the Trustees and, in the absence of such determination, shall be those usually applicable to the office held.

**ARTICLE 8  
APPOINTMENT, RESIGNATION AND REMOVAL OF THE TRUSTEES**

**8.1 Qualification of Trustees**

The following persons are disqualified from being a Trustee of the Trust:

- (a) anyone who is less than 18 years of age;
- (b) anyone who is of unsound mind and has been so found in accordance with the laws of any province in Canada or elsewhere;
- (c) a person who is not an individual; and
- (d) a person who has the status of bankrupt.

**8.2 Appointment of Trustees**

The Initial Unitholder hereby confirms the appointment of Douglas Law, Murray Eades and Mary La Rocca as Trustees for a term expiring (subject to further appointment) at the close of the first annual meeting of Trust Unitholders except as otherwise provided in this Declaration of Trust, Trustees shall be appointed (including the reappointment of incumbent Trustees) at each annual meeting of Trust Unitholders, and may be appointed at a special meeting of Trust Unitholders, in each case to hold office, subject to section 8.5, for a term expiring at the close of the next annual meeting of Trust Unitholders following such an appointment. Any such appointment (other than by the Initial Trustee as contemplated by this section 8.2 or as contemplated by section 8.7) shall be made either by a resolution approved by a majority of the votes cast at a meeting of Trust Unitholders or shall be made by resolution in writing in the manner set out in section 12.12. Notwithstanding the foregoing:

- (a) if no Trustees are appointed at the annual meeting of Trust Unitholders held immediately before the term of office of the existing Trustees expires, such existing Trustees shall continue to hold the office of Trustees under this Declaration of Trust until successors have been appointed or they cease to hold office;
- (b) the Trustees may, prior to the first annual meeting of the Trust Unitholders and between annual meetings of the Trust Unitholders appoint one or more additional Trustees for a term to expire (subject to further appointment) at the close of the next annual meeting of Trust Unitholders, but the number of additional Trustees so appointed shall not at any time exceed one-third of the number of Trustees who held office at the date of this Declaration of Trust or at the expiration of the immediately preceding annual meeting of Trust Unitholders, as applicable; and
- (c) a majority of the Trustees holding office at any time shall not be Non-Residents;

**8.3 Consent to Act**

- (a) A person who is appointed a Trustee hereunder, other than the Trustees who are appointed pursuant to section 8.2, shall not become a Trustee until the person has, either

before or after such appointment, executed and delivered to the Trust a consent substantially as follows:

"To: First Leaside Fund (the "Trust")  
And to: The Trustees thereof

The undersigned hereby consents to act as a Trustee of the Trust and hereby agrees, upon the later of the date of this consent and the date of the undersigned's appointment as a Trustee of the Trust, to thereby become a party, as a Trustee, to the Declaration of Trust made as of the 6th day of October, 2005, as amended from time to time, constituting the Trust.

Dated: \_\_\_\_\_

\_\_\_\_\_  
[Signature]

\_\_\_\_\_  
[Print Name]

- (b) Upon the later of a person being appointed a Trustee hereunder and executing and delivering to the Trust a consent substantially as set forth in subsection 8.3(a), such person shall become a Trustee hereunder and shall be deemed to be a party (as a Trustee) to this Declaration of Trust, as amended from time to time.

**8.4 Failure to Appoint Minimum Number of Trustees**

If a meeting of Trust Unitholders fails to appoint the number of Trustees required by this Declaration of Trust, by reason of the disqualification or death of any nominee, the Trustees appointed at the meeting may, subject to section 7.5 and section 8.1, exercise all of the powers of the Trustees if the number of Trustees so appointed constitutes a quorum.

**8.5 Ceasing to Hold Office**

A Trustee ceases to hold office when:

- (a) he dies or resigns;  
(b) he is removed in accordance with section 8.6; or  
(c) he ceases to be duly qualified to act as a Trustee as provided under section 8.1.

A resignation of a Trustee becomes effective 30 days from the time a written resignation is sent to the Trust, or at the time specified in the resignation, whichever is later, provided that if, upon the resignation becoming effective, the number of remaining Trustees would be less than the number necessary to constitute a quorum for a meeting of Trustees, the resignation is not effective until the resigning Trustee's successor is duly appointed as a Trustee.

Upon a Trustee ceasing to hold office as such hereunder, such Trustee shall cease to be a party (as a Trustee) to this Declaration of Trust; provided, however, that such Trustee shall continue to be entitled to be paid any amounts owing by the Trust to the Trustee and to the benefits of the indemnity provided in section 9.10. Upon the resignation or removal of any Trustee, or upon a Trustee otherwise ceasing to be a Trustee, the Trustee shall cease to have the rights, privileges and powers of a Trustee

hereunder, shall execute and deliver such documents as the remaining Trustees shall reasonably require for the conveyance of any Trust property held in that Trustee's name, shall account to the remaining Trustees as they may reasonably require for all property which that Trustee holds as Trustee, shall resign from all representative or other positions held by such Trustee on behalf of the Trust, including as a director or officer of any person in which the Trust owns any securities (directly or indirectly) and shall thereupon be discharged as Trustee. Upon the incapacity or death of any Trustee, his legal representative shall execute and deliver on his behalf such documents as the remaining Trustees may reasonably require as provided in this section 8.5. In the event that a Trustee or his legal representatives, as applicable, are unable or unwilling to execute and deliver such required documents, each of the remaining Trustees is hereby appointed as the attorney of such Trustee for the purposes of executing and delivering such required documents. This power of attorney granted to each of the remaining Trustees is not intended to be a continuing power of attorney within the meaning of the Substitute Decisions Act, 1992 (Ontario), exercisable during a Trustee's incapacity to manage property, or any similar power of attorney under equivalent legislation in any of the provinces or territories of Canada (a "CPOA"). The execution of this power of attorney will not terminate any CPOA granted by the Trustee previously and will not be terminated by the execution by the Trustee in the future of a CPOA, and the Trustee hereby agrees not to take any action in future which results in the termination of this power of attorney.

If a Trustee ceases to hold office for any reason, and such cessation results in the board of Trustees having a majority of Trustees who are Non-Residents, the Trustees will, as soon as possible, fill the vacancy in accordance with section 8.7 in order that a majority of Trustees shall not be Non-Residents, and if necessary, one or more Trustees who are Non-Residents, to be determined by the Trustees, shall resign (temporarily or otherwise) so that a majority of Trustees shall not be Non-Residents.

#### **8.6 Removal of Trustees**

The Trust Unitholders may remove any Trustee or Trustees from office, by way of a special resolution at a meeting of Trust Unitholders called for that purpose. The Trustees may remove any Trustee from office for cause, by way of a special resolution approved by the other Trustees. A vacancy created by the removal of a Trustee may be filled at the meeting of Trust Unitholders at which the Trustee is removed or, if not so filled, may be filled as set forth in section 8.7.

#### **8.7 Filling Vacancies**

A quorum of Trustees may fill a vacancy among the Trustees, except a vacancy resulting from an increase in the number of Trustees or from a failure to appoint any minimum number of Trustees fixed by or pursuant to this Declaration of Trust. If there is not a quorum of Trustees, or if there has been a failure to elect the minimum number of Trustees required by or pursuant to this Declaration of Trust, the Trustees then in office shall forthwith call a special meeting of Trust Unitholders to fill the vacancy and, if they fail to call a meeting or if there are no Trustees then in office, the meeting may be called by any Trust Unitholder. A Trustee appointed to fill a vacancy holds office, subject to section 8.5, until the close of the next annual meeting of the Trust Unitholders. The rights of the Trustees to control and exclusively administer the Trust and to have the title to the Trust Assets registered in their names or in the name of any other successor and all other rights of the Trustees at law shall vest automatically in any person who may hereafter become a Trustee upon such person's due appointment and qualification without any further act and such person shall thereupon have all the rights, privileges, powers, authorities, obligations and immunities of a Trustee hereunder whether or not conveyancing documents have been executed and delivered pursuant to section 8.5 or otherwise.

**8.8 Validity of Acts**

Any act of a Trustee is valid notwithstanding any irregularity in the appointment of the Trustees or any one of them or a defect in the qualifications of the Trustees or any one of them.

**ARTICLE 9  
CONCERNING THE TRUSTEES**

**9.1 Powers of the Trustees**

Subject to the terms and conditions of this Declaration of Trust, the Trustees may exercise from time to time in respect of the Trust Assets and the investments and affairs of the Trust any and all rights, powers and privileges that could be exercised by a legal and beneficial owner thereof.

Subject to the specific limitations contained in this Declaration of Trust, the Trustees shall have, without further or other action or consent, and free from any power or control on the part of the Trust Unitholders, full, absolute and exclusive power, control and authority over the Trust Assets and over the affairs of the Trust to the same extent as if the Trustees were the sole and absolute beneficial owners of the Trust Assets in their own right, to do all such acts and things as in their sole judgment and discretion are necessary or incidental to, or desirable for, carrying out the trust created hereunder. In construing the provisions of this Declaration of Trust, the presumption shall be in favour of the powers and authority granted to the Trustees. The enumeration of any specific power or authority herein (including pursuant to section 9.2) shall not be construed as limiting the general powers or authority or any other specified power or authority conferred herein on the Trustees. To the maximum extent permitted by law, the Trustees shall, in carrying out investment activities, not be in any way restricted by the provisions of the laws of any jurisdiction limiting or purporting to limit investments which may be made by trustees. Without limiting the generality of the foregoing, but subject to section 4.1 and the other express limitations contained in this Declaration of Trust, the Trustees may make any investments without being required to adhere to all of or any particular portion of the investment criteria or diversification requirements set forth in the *Trustee Act* (Ontario), as amended from time to time, and to delegate management and authority to discretionary managers of investment funds as the Trustees, in their discretion, determine appropriate.

**9.2 Specific Powers and Authorities**

Subject only to the express limitations contained in this Declaration of Trust and in addition to any other powers and authorities conferred by this Declaration of Trust or which the Trustees may have by virtue of any present or future statute or rule of law, the Trustees, without any action or consent by the Trust Unitholders, shall have and may exercise at any time and from time to time the following powers and authorities, which may or may not be exercised by the Trustees in such manner and upon such terms and conditions as they may from time to time determine proper:

- (a) to supervise the activities and manage the investments and affairs of the Trust, and without limitation, to do all such other acts and things in their supervisory and management role as they believe to be consistent with the Governance Guidelines;
- (b) to maintain records and provide reports to Trust Unitholders;
- (c) to collect, sue for and receive all sums of money due to the Trust;
- (d) to open, operate and close bank accounts and other similar credit, deposit and banking arrangements and to negotiate and sign banking and financing contracts and agreements;
- (e) to determine conclusively the allocation to capital, income or other appropriate accounts of all receipts, expenses, disbursements and property of the Trust;

- (f) to make or cause to be made application for the listing or quotation on any stock exchange or market of any Trust Units or any other securities issued from time to time by the Trust, and to do all things which in the opinion of the Trustees may be necessary or desirable to effect or maintain such listing or listings or quotation;
- (g) to determine conclusively the value of any or all of the Trust Assets from time to time and, in determining such value, to consider such information and advice as the Trustees in their sole judgment, may deem material and reliable;
- (h) to sell, transfer, assign, exchange, convey, lease or otherwise dispose of any part of the Trust Assets in any manner;
- (i) to enter into any agreement or instrument (including any firm or best efforts underwriting agreement) to create, issue or provide for the issue of Trust Units, or other securities of the Trust, including instalment receipts, securities convertible into or exchangeable or exercisable for Trust Units or other securities of the Trust or other rights, warrants, receipts or options convertible into or exchangeable or exercisable for Trust Units or other securities of the Trust (including debt securities, debt securities convertible into or exchangeable or exercisable for Trust Units or other securities of the Trust), for such consideration as the Trustees, in their sole discretion, may deem appropriate and to do such things and prepare and sign such documents, including a prospectus, an offering memorandum or any similar document and any registration rights agreement, to qualify such Trust Units, or other securities of the Trust for sale in whatever jurisdictions they will be sold or offered for sale;
- (j) to effect payment of distributions to the Trust Unitholders as provided in Article 5;
- (k) to invest and reinvest funds of the Trust as provided in Article 4;
- (l) to ensure that, if the Trustees become aware by written notice that the beneficial owners of 49% of the Trust Units are, or may be, Non-Residents or that such situation is imminent, the limitations on ownership by Non-Residents as provided in section 13.5 are met;
- (m) to possess and exercise all the rights, powers and privileges pertaining to the ownership of the securities of any Wimberly Group Member owned by the Trust, to the same extent that an individual might, unless otherwise limited herein, and, without limiting the generality of the foregoing, to vote or give any consent, request or notice, or waive any notice, either in person or by proxy or power of attorney, with or without power of substitution, to one or more persons, which proxies and powers of attorney may be for meetings or actions generally or for any particular meeting or action and may include the exercise of discretionary power;
- (n) where reasonably required, to engage or employ on behalf of the Trust any persons as agents, representatives, employees or independent contractors (including, without limitation, investment advisors, registrars, underwriters, accountants, lawyers, appraisers, brokers or otherwise) in one or more capacities;
- (o) except as provided in this Declaration of Trust and as prohibited by law, to delegate any of the powers and duties of the Trustees to any one or more agents, representatives, officers, employees, independent contractors or other persons without liability to the Trustees;
- (p) to engage in, intervene in, prosecute, join, defend, compromise, abandon or adjust, by arbitration or otherwise, any actions, suits, disputes, claims, demands or other litigation or proceedings, regulatory or judicial, relating to the Trust, the Trust Assets or the Trust's

affairs, to enter into agreements therefor, whether or not any suit or proceeding is commenced or claim asserted and, in advance of any controversy, to enter into agreements regarding the arbitration, adjudication or settlement thereof;

- (q) to cause legal title to any of the Trust Assets to be held by and/or in the name of one or more Trustees or, except as prohibited by law, by and/or in the name of the Trust or any other custodian or person, on such terms, in such manner, with such powers in such person as the Trustees may determine and with or without disclosure that the Trust or the Trustee is interested therein; provided, however, that should legal title to any of the Trust Assets be held by and/or in the name of any person or persons other than a Trustee or the Trust, the Trustees shall require such person or persons to execute a trust agreement acknowledging that legal title to such assets is held in trust for the benefit of the Trust;
- (r) to negotiate, make, execute, acknowledge and deliver any and all deeds, instruments, contracts, waivers, releases or other documents necessary or useful for the accomplishment of any of the powers herein granted, for the purpose of the Trust or for its assets or affairs, including without limitation, to enter into contracts, obligations and other agreements for a term extending beyond the term of office of the Trustees and beyond the possible termination of the Trust or for a lesser term, and to perform all of the obligations of the Trust thereunder;
- (s) to perform the obligations of the Trust under agreements to which it is a party and to exercise any rights granted to it under such agreements;
- (t) to approve the adoption of a Trust Unitholders rights plan, if the Trustees determine in good faith that such action is appropriate, including to issue or redeem rights and Trust Units in connection with such plan;
- (u) to use their best efforts to ensure that (i) the Trust qualifies at all times as a "mutual fund trust" pursuant to subsection 132(6) of the Tax Act; and (ii) that the Trust Units will not be disqualified for investment by Plans;
- (v) in addition to the mandatory indemnification provided for in section 9.9 to the extent permitted by law to indemnify, or enter into agreements with respect to the indemnification of, any person with whom the Trust has dealings including, without limitation, the Trustees, the Depository, Transfer Agent or escrow agent, to such extent as the Trustees shall determine;
- (w) with the approval or confirmation of the Trust Unitholders to enact and from time to time amend or repeal by-laws not inconsistent with this Declaration of Trust containing provisions relating to the Trust, the Trust Assets and the conduct of the affairs of the Trust, but not in conflict with any provision of this Declaration of Trust;
- (x) to purchase securities issued by the Trust, including Trust Units for cancellation in accordance with the provisions of this Declaration of Trust and applicable law;
- (y) to issue any type of debt securities or convertible debt securities and to borrow money or incur any other form of indebtedness for the purpose of carrying out the purposes of the Trust or for other expenses incurred in connection with the Trust and for such purposes may draw, make, execute and issue promissory notes and other negotiable and non-negotiable instruments or securities and evidences of indebtedness, secure the payment of sums so borrowed or indebtedness incurred and mortgage, pledge, assign or grant a security interest in any money owing to the Trust or engage in any other means of financing the Trust;

- (z) to pay all taxes or assessments, of whatever kind or nature, whether within or outside Canada, imposed upon or against the Trustees in connection with the Trust Assets, undertaking or income of the Trust, or imposed upon or against the Trust Assets, undertaking or income of the Trust, or any part thereof and to settle or compromise disputed tax liabilities and for the foregoing purposes to make such returns, take such deductions, and make such designations, elections and determinations in respect of Income of the Trust or Net Realized Capital Gains distributed to Trust Unitholders in the year and any other matter as shall be permitted under the Tax Act (provided that to the extent necessary the Trustees will seek the advice of Counsel or the Auditors), and do all such other acts and things as may be deemed by the Trustees in their sole discretion to be necessary, desirable or convenient;
- (aa) to satisfy the obligations, liabilities and indebtedness of the Trust;
- (bb) to vote in favour of the Trust's nominees to serve as trustees or directors, as applicable, of any Wimberly Group Member;
- (cc) to guarantee (as guarantor, surety or co-principal obligor) the payment of any indebtedness, liability or obligation of any Wimberly Group Member and to mortgage, pledge, charge, grant a security interest in or otherwise encumber all or any part of the Trust Assets;
- (dd) to appoint one or more additional Trustees between annual meetings of Trust Unitholders to serve until close of the next annual meeting of Trust Unitholders, but not to appoint additional Trustees if at any time the additional trustees exceed one-third of the number of Trustees who held office at the expiration of the immediately preceding annual meeting of the Trust Unitholders; and
- (ee) to do all such other acts and things as are incidental to the foregoing, and to exercise all powers which are necessary or useful to carry on the purposes and activities of the Trust, as enumerated in section 4.1, to promote any of the purposes for which the Trust is formed, as enumerated in section 4.1, and to carry out the provisions of this Declaration of Trust.

### **9.3 Banking**

The banking activities of the Trust, or any part thereof, including, but without restricting the generality of the foregoing, the operation of the Trust's accounts; the making, signing, drawing, accepting, endorsing, negotiation, lodging, depositing or transferring of any cheques, promissory notes, drafts, acceptances, bills of exchange and orders for the payment of money; the giving of receipts for orders relating to any property of the Trust; the execution of any agreement relating to any property of the Trust; the execution of any agreement relating to any such banking activities and defining the rights and powers of the parties thereto; and the authorizing of any officer of such banker to do any act or thing on the Trust's behalf to facilitate such banking activities, shall be transacted with such bank, trust company, or other firm or corporation carrying on a banking business as the Trustees may designate, appoint or authorize from time to time and shall be transacted on the Trust's behalf by one or more officers of the Trust, Master LP or such other Wimberly Group Member(s) as the Trustees may designate, appoint or authorize from time to time.

### **9.4 Standard of Care and Duties**

The Trustees shall act honestly and in good faith with a view to the best interests of the Trust and the Trust Unitholders and in connection therewith shall exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. The Trustees shall not be liable in carrying out their duties under this Declaration of Trust except in cases where the

Trustees fail (a) to act honestly and in good faith with a view to the best interests of the Trust Unitholders and the Trust, or (b) to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. The duties and standard of care of the Trustees provided as aforesaid are intended to be similar to, and not to be any greater than, those imposed on a director of a corporation governed by the *Business Corporations Act* (Ontario). Unless otherwise required by law, the Trustees shall not be required to give bond, surety or security in any jurisdiction for the performance of any duties or obligations hereunder. The Trustees shall not be required to devote their entire time to the investments or business or affairs of the Trust.

#### **9.5 Fees and Expenses**

As part of the expenses of the Trust, the Trustees may pay or cause to be paid out of the Trust Assets, reasonable fees, costs and expenses incurred in connection with the administration and management of the Trust, including (without limitation) fees of auditors, accountants, lawyers, appraisers and other agents, consultants and professional advisors employed by or on behalf of the Trust and the cost of reporting or giving notices to Trust Unitholders. All costs, charges and expenses properly incurred by the Trustees on behalf of the Trust shall be payable out of the Trust Assets.

#### **9.6 Limitations on Liability of Trustees**

- (a) Subject to section 9.4, none of the Trustees nor the officers nor any employee or agent of the Trust shall be liable to any Trust Unitholder for any action taken in good faith in reliance on any documents that are, prima facie, properly executed; for any depreciation of, or loss to, the Trust incurred by reason of the sale of any security or other property; for the loss or disposition of monies or securities; or for any other action or failure to act including, without limitation, the failure to compel in any way any former Trustee to redress any breach of trust or any failure by any person to perform obligations or pay monies owed to the Trust, except for a breach of the standard of care, diligence and skill as set out in section 9.4. If the Trustees have retained an appropriate expert or advisor with respect to any matter connected with their duties under this Declaration of Trust, the Trustees may act or refuse to act based on the advice of such expert or advisor and, notwithstanding any provision of this Declaration of Trust, including, without limitation, the standard of care, diligence and skill set out in section 9.4 hereof, the Trustees shall not be liable for any action or refusal to act based on the advice of any such expert or advisor which it is reasonable to conclude is within the expertise of such expert or advisor to give.
- (b) Subject to section 9.4, none of the Trustees nor the officers nor any employee or agent of the Trust shall be subject to any liability whatsoever in tort, contract or otherwise, in connection with Trust Assets or the affairs of the Trust, including, without limitation, in respect of any loss or diminution in value of any Trust Assets, to the Trust or to the Trust Unitholders or Annuitants or to any other person for anything done or permitted or omitted to be done by the Trustees. The Trustees shall not be subject to any personal liability for any debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses against or with respect to the Trust arising out of anything done or permitted or omitted to be done in respect of the execution of the duties of the office of Trustees for or in respect to the affairs of the Trust. No property or assets of the Trustees, owned in their personal capacity or otherwise, will be subject to any levy, execution or other enforcement procedure with regard to any obligations under this Declaration of Trust or under any other related agreements. No recourse may be had or taken, directly or indirectly, against the Trustees in their personal capacity or against any incorporator shareholder, director, officer, employee or agent of the Trustees or any successor of the



Trustees. The Trust shall be solely liable therefor and resort shall be had solely to the Trust Assets for payment or performance thereof.

#### **9.7 Indemnification of Trustees**

Each Trustee, each former Trustee, each officer of the Trust and each former officer of the Trust shall be entitled to be and shall be indemnified and reimbursed out of the Trust Assets in respect of any and all taxes, penalties or interest in respect of unpaid taxes or other governmental charges imposed upon the Trustee or officer in consequence of his performance of his duties hereunder and in respect of any and all costs, charges and expenses, including amounts paid to settle an action or satisfy a judgment, reasonably incurred in respect of any civil, criminal or administrative action or proceeding to which the Trustee, former Trustee, officer or former officer is made a party by reason of being or having been a Trustee or officer of the Trust or, at the request of the Trust, a trustee, director, officer or manager of any Subsidiary thereof; provided that a Trustee, former Trustee, officer or former officer shall not be indemnified out of the Trust Assets in respect of unpaid taxes or other governmental charges or in respect of such costs, charges and expenses that arise out of or as a result or in the course of his or her failure to act honestly and in good faith with a view to the best interests of the Trust and the Trust Unitholders (or, in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, where such Trustee did not have reasonable grounds to believe that his or her conduct was lawful). A Trustee, former Trustee, officer or former officer shall not be entitled to satisfy any right of indemnity or reimbursement granted herein, or otherwise existing under law, except out of the Trust Assets, and no Trust Unitholder or other Trustee or officer shall be personally liable to any person with respect to any claim for such indemnity or reimbursement as aforesaid.

#### **9.8 Contractual Obligations of the Trust**

In respect of any obligations or liabilities being incurred by the Trust or the Trustees on behalf of the Trust, the Trustees and the Trust shall make all reasonable efforts to include in any written instrument which is, in the judgment of the Trustees, a material obligation as a specific term of such obligations or liabilities a contractual provision or be subject to an acknowledgement to the effect that the obligation being created is not personally binding upon and that resort shall not be had to, nor shall recourse or satisfaction be sought from, by way of lawsuit or otherwise, the private property of any of the Trustees, Trust Unitholders, Annuitants or officers, employees or agents of the Trust, but that only property of the Trust or a specific portion thereof shall be bound. The Trust, however, is not required, but shall use all reasonable efforts, to comply with this requirement in respect of obligations assumed by the Trust upon the acquisition of real property. The omission of such statement from any such document or instrument shall not render the Trustees or the Trust Unitholders or Annuitants liable to any person, nor shall the Trustees or the Trust Unitholders or Annuitants be liable for such omission. If, notwithstanding this provision, the Trustees or any Trust Unitholder or Annuitant shall be held liable to any person by reason of the omission of such statement from any such agreement, undertaking or obligation such Trustee or Trust Unitholder shall be entitled to indemnity and reimbursement out of the Trust's property to the full extent of such liability.

#### **9.9 Conflicts of Interest**

- (a) A Trustee or any officer of the Trust who is a party to, or is a director or officer of or has a material interest in any person who is a party to, a material contract or transaction or proposed material contract or transaction with the Trust shall disclose in writing to the Trust the nature and extent of such interest and shall not vote on any resolution to approve the contract, unless the contract is one relating primarily to remuneration as a Trustee or officer, one for indemnity or insurance or one with any Wimberly Group Member and, for greater certainty, a Trustee complying with this Section 9.9 shall not be

subject to any liability to the Trust or the Unitholders with respect to such material contract or proposed material contract as aforesaid.

- (b) Subject to Subsection 9.9(a), each Trustee, in his or her personal capacity or any other capacity, may buy, sell, lend upon and deal in securities of the Trust or any Wimberly Group Member and generally may contract and enter into any transactions with the Trust or any Wimberly Group Member without being liable to account for any profit made thereby and such contract or transaction shall be neither void nor voidable.

#### **9.10 Conditions Precedent**

The obligation of the Trustees to commence or continue any act, action, suit or proceeding or to represent the Trust in any action, suit or proceeding shall be conditional upon sufficient funds being available to the Trustees from the Trust Assets to commence or continue such act, action, suit or proceeding or to represent the Trust in any action, suit or proceeding and an indemnity reasonably satisfactory to the Trustees to protect and hold harmless the Trustees against the costs, charges and expenses and liabilities to be incurred therein and any loss and damage they may suffer by reason thereof. None of the provisions contained in this Declaration of Trust shall require the Trustees to expend or risk their own funds or otherwise incur financial liability in the performance of their duties or in the exercise of any of their rights or powers unless they are given an indemnity and funding satisfactory to the Trustees, acting reasonably.

#### **9.11 Reliance Upon Trustees and Officers**

Any person dealing with the Trust in respect of any matters pertaining to the Trust Assets and any right, title or interest in the Trust Assets or to the Trust or to securities of the Trust shall be entitled to rely on a certificate, statutory declaration or resolution executed or certified by the Trustees or any officer of the Trust appointed by the Trustees as to the capacity, power and authority of the Trustees or any other person to act for and on behalf and in the name of the Trust. No person dealing with the Trustees or officers of the Trust shall be bound to see the application of any funds or property passing into the hands or control of the Trustees or officers of the Trust. The receipt of the Trustees or officers of the Trust for monies or other consideration shall be binding upon the Trust.

#### **9.12 Execution of Instruments**

- (a) The Trustees shall have the power, from time to time, to appoint any Trustee or Trustees, any officer or officers of the Trust or any other person or persons on behalf of the Trust to sign agreements, instruments or other documents in writing and to do such acts and agree to such things, on behalf of the Trust, as may be necessary or desirable in connection therewith.
- (b) No purchaser, transfer agent or other person dealing with the Trustees or with any officer of the Trust or agent of the Trustees will be bound to make any enquiry concerning the validity of any transaction purporting to be made by the Trustees or by such officer or agent or make enquiry concerning, or be liable for, the applicable money or property paid, lent or delivered to or on the order of the Trustees or such officer, employee or agent. Any person dealing with the Trust in respect of any matters pertaining to the Trust Assets and any right, title, or interest therein, or to the Trust or the Trust Units will be entitled to rely on a certificate, statutory declaration or resolution executed or certified by the Trustees as to the capacity, power and authority of the Trustees, any consultant or agent or any other person to act for and on behalf and in the name of the Trust. No person dealing with the Trustees or any consultant or agent of the Trust will be bound to see to the application of any funds or property passing into the hands or control of such Trustees, consultant or agent of the Trust. The receipt of the Trustees or of authorized

consultants or agents of the Trust, for money or other consideration, will be binding upon the Trust.

## **ARTICLE 10 COMMITTEES OF TRUSTEES**

### **10.1 Delegation**

Except as prohibited by law, the Trustees may appoint from among their number one or more committees of Trustees and may delegate to any such committee any of the powers of the Trustees, provided that a majority of the Trustees appointed to any committee shall be Residents and provided further that, for greater certainty, any such committee shall not take any action or engage in any activity that the Trustees would be prohibited from taking or engaging in pursuant to the terms of this Declaration of Trust. The Trustees shall have the power to appoint, employ or contract with any person for any matter relating to the Trust or its assets or affairs.

### **10.2 Procedure**

Unless otherwise determined by the Trustees, a quorum for meetings of any committee shall be a majority of its members. Each committee shall have the power to appoint its chairman and to delineate the duties and responsibilities of such chairman. The rules for calling (including, for greater certainty, the giving of notice), location, holding, conducting, participating in, voting at and adjourning meetings of the committee shall be the same as those governing meetings of the Trustees. Each member of a committee shall serve at the pleasure of the Trustees and, in any event, only so long as he shall be a Trustee. The Trustees may fill vacancies in a committee by appointment from among their members. Provided that a quorum is maintained, the committee may continue to exercise its powers notwithstanding any vacancy among its members.

## **ARTICLE 11 AMENDMENT**

### **11.1 Amendment**

The provisions of this Declaration of Trust, except where specifically provided otherwise, may only be amended by the Trustees with the consent of the Trust Unitholders by Special Resolution; provided that the provisions of this Declaration of Trust may be amended by the Trustees at any time and from time to time without the consent, approval or ratification of the Trust Unitholders or any other person:

- (a) prior to the first Closing;
- (b) at any time for the purpose of ensuring continuing compliance with applicable laws (including the Tax Act), regulations, requirements or policies of any governmental authority having jurisdiction over the Trustees or the Trust or the distribution of Units (including ensuring that the Trust continues to qualify as a "mutual fund trust" within the meaning of the Tax Act and that the Trust Units are not disqualified for investment by Plans);
- (c) at any time for the purpose of making amendments which, in the opinion of counsel to the Trustees, provide additional protection or added benefits for the Trust Unitholders;
- (d) at any time for the purpose of removing any conflicts or inconsistencies in this Declaration of Trust or making minor changes or corrections, including the corrections or rectifications of any ambiguities, defective provisions, errors, mistakes or omissions

which are, in the opinion of the Trustees, necessary or desirable and not prejudicial to the Trust Unitholders; or

- (c) after the first Closing for the purpose of:
- (i) making amendments which, in the opinion of the Trustees, are necessary or desirable as a result of changes in generally accepted accounting principles (including accounting guidelines) or taxation or other laws or the administration or enforcement thereof;
  - (ii) enabling the Trust to issue Trust Units for which the purchase price is payable in instalments; or
  - (iii) any purpose (except one in respect of which a Unitholder vote is specifically otherwise required) if the Trustees are of the opinion that the amendment is not prejudicial to Trust Unitholders and it is necessary or desirable,

but, notwithstanding the foregoing, no such amendment: (i) shall be adopted which causes (A) the Trust to fail or cease to qualify as a "mutual fund trust" under the Tax Act, or (B) the Trust Units to be disqualified for investment by Plans; or (ii) shall (A) modify the right to one vote per Trust Unit or reduce the fractional undivided interest in the Trust Assets represented by any Trust Unit without the consent of the holder of such Trust Unit, or (B) reduce the percentage of votes required to be cast at a meeting of the Trust Unitholders for the purpose of section 11.1 without the consent of all Trust Unitholders.

#### **11.2 No Termination**

No amendment to or amendment and restatement of this Declaration of Trust, whether pursuant to this Article 11 or otherwise, shall be construed as a termination of the Trust and the settlement or establishment of a new trust.

#### **11.3 Notification of Amendment**

As soon as shall be practicable after the making of any amendment pursuant to this Article 11, the Trustees shall furnish written notification of the substance of such amendment to each Trust Unitholder.

### **ARTICLE 12 MEETINGS OF TRUST UNITHOLDERS**

#### **12.1 Annual and Special Meetings of Trust Unitholders**

- (a) Annual meetings of the Trust Unitholders shall be called, commencing in 2006, no later than June 30 on a date in each year (on or before the date which is 6 months after the fiscal year end of the Trust), at a time and at a place in Canada set by the Trustees. The business transacted at such meetings shall include the presentation of the audited financial statements of the Trust for the immediately preceding fiscal year, the appointment of the Trustees for the ensuing year in accordance with Article 8, the appointment of Auditors and the transaction of such other business as Trust Unitholders may be entitled to vote upon as hereinafter provided in this Article 12 or as the Trustees may determine. Special meetings of the Trust Unitholders may be called at any time by the Trustees.
- (b) Special Meetings shall be called by the Trustees upon a written request of Trust Unitholders holding in the aggregate not less than 10% of the Trust Units then

outstanding, such request specifying in reasonable detail the business proposed to be transacted at the meeting, unless:

- (i) a record date for a meeting of the Trust Unitholders has been fixed and notice thereof has been given;
  - (ii) the Trustees have called a meeting of the Trust Unitholders and have given notice thereof pursuant to section 12.2; or
- (c) in connection with the business as stated in the requisition:
- (i) it clearly appears to the Trustees, acting reasonably, that the matter covered by the requisition is submitted by the Trust Unitholders primarily for the purpose of enforcing a personal claim or redressing a personal grievance against the Trust, the Trustees, the officers of the Trust or its security holders, or primarily for the purpose of promoting general economic, political, racial, religious, social or similar causes;
  - (ii) it clearly appears to the Trustees, acting reasonably, that the matter covered by the requisition does not relate in a significant way to the business or affairs of the Trust;
  - (iii) the Trust, at the Trust Unitholder's request, included a matter covered by a requisition in an information circular relating to a meeting of Trust Unitholders held within two years preceding the receipt of such request, and the Trust Unitholder failed to present the matter, in person or by proxy, at the meeting;
  - (iv) substantially the same matter covered by the requisition was submitted to Trust Unitholders in an information circular (including a dissident's information circular) relating to a meeting of Trust Unitholders held within two years preceding the receipt of the Trust Unitholder's request and the matter covered by the requisition did not receive more than 3% of the total number of Trust Units voted; or
  - (v) the rights conferred by this section 12.1 are being abused to secure publicity.

Subject to the foregoing, if the Trustees do not within 21 days after receiving the requisition call a meeting, any Trust Unitholder who signed the requisition may call the meeting in accordance with the provisions of this Article 12.

- (d) The chairperson of any annual or special meeting shall be the Chairman of the Trustees or in his absence, any other Trustee specified by resolution of the Trustees or, in the absence of any Trustee, any person appointed as chairperson of the meeting by the Trust Unitholders present. The chairperson of the meeting shall appoint the Secretary of the Trust or, in the absence of the Secretary, an individual, who need not be a Trust Unitholder, to act as secretary of the meeting. If desired, one or more scrutineers, who need not be Trust Unitholders, may be appointed by the chairperson.
- (e) The Trustees, the officers of the Trust, the Auditors, Counsel and any other person approved by the Trustees or the chairperson of the meeting or by resolution passed by a majority of the votes cast by Trust Unitholders represented at the meeting may attend meetings of the Trust Unitholders.

- (f) To the extent that the rules and procedures for the conduct of a meeting of Trust Unitholders are not prescribed herein, the rules and procedures shall be such reasonable rules and procedures as are determined by the chairperson of the meeting and such rules and procedures shall be binding upon all parties participating in the meeting.

#### **12.2 Notice of Meetings**

Notice of all meetings of Trust Unitholders shall be given by unregistered mail, postage prepaid, addressed to each Trust Unitholder at his or her last address on the books of the Trust, mailed at least 21 days and not more than 60 days before the meeting. Such notice shall specify the time when, and the place where, such meeting is to be held and shall specify the nature of the business to be transacted at such meeting in sufficient detail to permit a Trust Unitholder to form a reasoned judgment thereon, together with the text of any Special Resolution, at the time of mailing of the notice, proposed to be passed. Any adjourned meeting, other than a meeting adjourned for lack of a quorum under subsection 12.8(b), may be held as adjourned without further notice. The accidental omission to give notice or the non-receipt of such notice by a Trust Unitholder shall not invalidate any resolution passed at any such meeting. Notwithstanding the foregoing, a meeting of Trust Unitholders may be held at any time without notice if all the Trust Unitholders are present or represented thereat or those not so present or represented have waived notice. Any Trust Unitholder (or a duly appointed proxy of a Trust Unitholder) may waive any notice required to be given under the provisions of this section, and such waiver, whether given before or after the meeting, shall cure any default in the giving of such notice. Attendance at a meeting of Trust Unitholders shall constitute a waiver of notice unless the Trust Unitholder or other person attends the meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not properly called.

#### **12.3 Quorum**

At any meeting of the Trust Unitholders, subject as hereinafter provided, a quorum shall consist of two or more individuals present in person either holding personally or representing as proxies not less in aggregate than 10% of the votes attached to all outstanding Trust Units. In the event of such quorum not being present at the appointed place on the date for which the meeting is called within 30 minutes after the time fixed for the holding of such meeting, the meeting, if called by request of Trust Unitholders, shall be terminated and, if otherwise called, shall stand adjourned to such day being not less than 7 days later and to such place and time as may be appointed by the chairperson of the meeting. If at such adjourned meeting a quorum as above defined is not present, the Trust Unitholders present either personally or by proxy shall form a quorum, and any business may be brought before or dealt with at such an adjourned meeting which might have been brought before or dealt with at the original meeting in accordance with the notice calling the same.

The chairperson of any meeting at which a quorum of Trust Unitholders is present may, with a consent of the majority of the Trust Unitholders present in person or by proxy, adjourn any such meeting and no notice of any such adjournment need be given.

#### **12.4 Voting Rights**

Only Trust Unitholders of record on the applicable record date for voting shall be entitled to vote. Each Trust Unit shall entitle the holder or holders of that Trust Unit to one vote on a poll vote at any meeting of Trust Unitholders. Every question submitted to a meeting, other than a Special Resolution, shall, unless a poll vote is demanded, be decided by a show of hands vote, on which every person present and entitled to vote shall be entitled to one vote and unless a poll is demanded, a declaration by the chairperson that a resolution has been carried or carried unanimously or by a particular majority, or lost or not carried by a particular majority, shall be conclusive evidence of the fact. If a poll is demanded concerning the election of a chairperson or an adjournment, it shall be taken immediately upon request

and, in any other case, it shall be taken at such time as chairperson of the meeting may direct. The poll shall be taken in such manner as the chairperson may direct. The demand for a poll shall not prevent the continuation of a meeting for the transaction of any business other than the question on which the poll has been demanded.

If Trust Units are held jointly by two or more persons, any one of them present in person or by proxy at the meeting may vote in the absence of the other or others; but if more than one of them is present in person or by proxy, they shall vote together with respect to the Trust Units held jointly, provided that only one of them can vote on a show of hands, and, if they do not agree on how to exercise any vote to which they are jointly entitled (including a vote on a show of hands), they shall, for the purposes of the voting, be deemed not to be present. The chairperson of the meeting shall be entitled to vote in respect of Trust Units held by the chairperson represented by the chairperson by proxy. In the case of an equality of votes, the chairperson shall not have a casting vote and the resolution shall be deemed to be defeated.

#### **12.5 Proxies**

Whenever the vote or consent of Trust Unitholders is required or permitted under this Declaration of Trust, such vote or consent may be given either directly by the Trust Unitholder or by a proxy. The instrument appointing a proxy must be in writing and either substantially in a form which may be approved by the Trustees acting reasonably or as may be satisfactory to the chairperson of the meeting at which it is sought to be exercised. The instrument of proxy must be executed by the Trust Unitholder giving the proxy or his agent duly authorized in writing and, if given on behalf of joint holders, must be executed by all of them and may be revoked by any of them, and, if given by a Trust Unitholder which is a body corporate, must be executed on its behalf by a person duly authorized in writing. Any person may be appointed a proxy, whether or not that person is a Trust Unitholder. The Trustees, on behalf of the Trust, may solicit instruments of proxy from the Trust Unitholders or any of them in respect of any matter requiring or permitting the Trust Unitholder's vote or consent. An instrument of proxy shall be deposited with the chairperson of the meeting before any vote is cast under its authority or at such earlier time or in such manner as the Trustees may prescribe from time to time.

An instrument of proxy executed in compliance with the foregoing shall be valid unless challenged at the time of or prior to its exercise and the person challenging the instrument shall have the burden of proving, to the satisfaction of chairperson of the meeting at which the instrument is proposed to be used, that the instrument of proxy is invalid. Any decision of the chairperson of the meeting in respect of the validity of an instrument of proxy shall be final and binding upon all persons. An instrument of proxy shall be valid only at the meeting with respect to which it was solicited or any adjournment thereof.

A vote cast in accordance with any proxy shall be valid notwithstanding the death, incapacity, insolvency or bankruptcy of the Trust Unitholder giving the proxy or the revocation of the proxy unless written notice of the death, incapacity, insolvency, bankruptcy of the Trust Unitholder or revocation of the proxy has been received by the chairperson of the meeting prior to the time the vote is cast.

#### **12.6 Personal Representatives**

Subject to the provisions of Article 13, if a Trust Unitholder is deceased, his personal representative, upon filing with the secretary of the meeting such proof of his appointment as the secretary considers sufficient, shall be entitled to exercise the same voting rights at any meeting of Trust Unitholders as the Trust Unitholder would have been entitled to exercise if the Trust Unitholder were living and for the purpose of the meeting shall be considered to be a Trust Unitholder. Subject to the

provisions of the will of a deceased Trust Unitholder, if there is more than one personal representative, the provisions of section 12.4 relating to joint holders shall apply.

#### **12.7 Resolutions Binding the Trustees**

Trust Unitholders shall be entitled to pass resolutions that will bind the Trust and the Trustees only with respect to the following matters:

- (a) the election or removal of a Trustee to the extent permitted by Article 8;
- (b) the appointment or removal of Auditors as provided in Article 17;
- (c) the appointment of an inspector as provided in section 12.11;
- (d) the approval of amendments of this Declaration of Trust as provided in Article 11;
- (e) the amalgamation, merger, arrangement or capital reorganization of the Trust;
- (f) the termination or dissolution of the Trust, as provided in section 14.2;
- (g) the sale, lease, exchange or other distribution or disposition of all or substantially all of the Trust Assets;
- (h) the ratification of any Trust Unitholder rights plan, distribution reinvestment plan, distribution reinvestment and Trust Unit purchase plan, Trust Unit option plan or other compensation plan contemplated by section 5.10 requiring Trust Unitholder approval under laws or regulations applicable to the Trust; and
- (i) any other matters that the Trustees may determine or as may be properly brought before a meeting of Trust Unitholders including any other matters required by securities law, stock exchange rules or other laws or regulations to be submitted to Trust Unitholders for their approval.

Except with respect to the above matters set out in this section 12.7, no action taken by the Trust Unitholders or any resolution of the Trust Unitholders at any meeting shall in any way bind the Trustees. Any action taken or resolution passed in respect of any matter at a meeting of Trust Unitholders shall be by Special Resolution, unless the contrary is otherwise expressly provided under any specific provision of this Declaration of Trust and except for the matters set out in subsections 12.7(a), 12.7(b), 12.7(h) and, if applicable, 12.7(i) above which matters may be dealt with by Ordinary Resolution.

#### **12.8 Meaning of "Special Resolution"**

- (a) The expression "Special Resolution" when used in this Declaration of Trust means, subject to this Article 12, a resolution proposed to be passed as a special resolution at a meeting of Trust Unitholders (including an adjourned meeting) duly convened for that purpose and held in accordance with the provisions of this Article at which two or more individuals present in person either holding personally or representing as proxies not less in aggregate than 10% of the number of Trust Units then outstanding and passed by the affirmative votes of the holders of more than 66 2/3% of the Trust Units represented at the meeting and voted on a poll upon such resolution.
- (b) Notwithstanding section 12.3, if at any meeting at which a Special Resolution is proposed to be passed the holders of 10% of the aggregate number of Trust Units outstanding are not present in person or by proxy within 30 minutes after the time appointed for the meeting, then the meeting, if convened by or on the requisition of Trust Unitholders, shall be dissolved; but in any other case it shall stand adjourned to such date, being not less than 21 nor more than 60 days later and to such place and time as may be appointed by



the chairperson of the meeting. Not less than 10 days prior notice shall be given of the time and place of such adjourned meeting in the manner provided in section 12.2. Such notice shall state that at the adjourned meeting the Trust Unitholders present in person or by proxy shall form a quorum but it shall not be necessary to set forth the purposes for which the meeting was originally called or any other particulars. At the adjourned meeting, the Trust Unitholders present in person or by proxy shall form a quorum and may transact the business for which the meeting was originally convened and a resolution proposed at such adjourned meeting and passed by the requisite vote as provided in subsection 12.8(a) shall be a Special Resolution within the meaning of this Declaration of Trust, notwithstanding that the holders of less than 10% of the aggregate number of Trust Units then outstanding are present in person or by proxy at such adjourned meeting.

- (c) Votes on Special Resolution shall always be given on a poll and no demand for a poll on a Special Resolution shall be necessary.

#### **12.9           Meaning of "Outstanding"**

Every Trust Unit issued, certified and delivered hereunder shall be deemed to be outstanding until it shall be cancelled or delivered to the Trustees or Transfer Agent for cancellation provided that:

- (a) when a new certificate has been issued in substitution for a Trust Unit Certificate which has been lost, stolen, mutilated or destroyed, only one of such Trust Unit Certificates shall be counted for the purposes of determining the number of Trust Units outstanding; and
- (b) for the purpose of any provision of this Declaration of Trust entitling holders of outstanding Trust Units to vote, sign consents, requisitions or other instruments or take any action under this Declaration of Trust, Trust Units owned directly or indirectly, legally or equitably, by the Trust shall be disregarded.

#### **12.10          Record Date for Voting**

For the purpose of determining the Trust Unitholders who are entitled to vote or act at any meeting or any adjournment thereof, the Trustees may fix a date not more than 60 days and not less than 21 days prior to the date of any meeting of Trust Unitholders as a record date for the determination of Trust Unitholders entitled to vote at such meeting or any adjournment thereof, and any Trust Unitholder who was a Trust Unitholder at the time so fixed shall be entitled to vote at such meeting or any adjournment thereof even though the Trust Unitholder has since that time disposed of his or her Trust Units, and no Trust Unitholder becoming such after that time shall be so entitled to vote at such meeting or any adjournment thereof. In the event that the Trustees do not fix a record date for any meeting of Trust Unitholders, the record date for such meeting shall be the date upon which notice of the meeting is given as provided under section 12.2.

#### **12.11          Appointment of Inspector**

The Trustees shall call a meeting of Trust Unitholders upon the written request of Trust Unitholders holding in the aggregate not less than 5% of the Trust Units then outstanding for the purpose of considering the appointment of an inspector to investigate the performance by the Trustees of their responsibilities and duties in respect of the Trust. An inspector may be appointed for such purpose, at the expense of the Trust, at such meeting by a resolution approved by a majority of the votes cast at the meeting. The inspector shall have powers not inconsistent with this Declaration of Trust as may be conferred upon him or her at the meeting when he or she is appointed, but in all events shall not have any powers to act in any capacity as the Trustees or in the place or in the stead of the Trustees in any manner under this Declaration of Trust.

**12.12 Resolutions in Writing**

Notwithstanding any other provision of this Declaration of Trust, a resolution in writing and executed by Trust Unitholders holding more than 50% of the outstanding votes required to vote in favour thereof at a meeting of Trust Unitholders to approve that resolution, if such resolution is an Ordinary Resolution, or a resolution circulated to all Trust Unitholders and executed by Trust Unitholders holding more than 66 2/3% of the outstanding votes required to vote in favour thereof at a meeting of Trust Unitholders to approve that resolution, if such resolution is a Special Resolution, shall be as valid and binding for all purposes of this Declaration of Trust as if such Trust Unitholders had exercised at that time all of the voting rights to which they were then entitled under section 12.7 or 12.8 in favour of such resolution at a meeting of Trust Unitholders duly called for the purpose.

**12.13 Binding Effect of Resolutions**

Every resolution passed in accordance with the provisions of this Declaration of Trust at a meeting of Trust Unitholders shall be binding upon all the Trust Unitholders, whether present at or absent from that meeting, and each and every Trust Unitholder shall be bound to give effect accordingly to every such resolution.

**12.14 No Breach**

Notwithstanding any other provision of this Declaration of Trust, Trust Unitholders shall have no power to effect any amendment to this Declaration of Trust which would require the Trustees to take any action or conduct the affairs of the Trust in a manner which would constitute a breach or default by the Trust or the Trustees under any agreement binding on, or obligation of, the Trust or the Trustees.

**ARTICLE 13  
CERTIFICATES, REGISTRATION AND TRANSFER OF TRUST UNITS**

**13.1 Nature of Trust Units**

The provisions of this Article 13 shall not in any way alter the nature of Trust Units or the relationships of a Trust Unitholder to the Trustees and of one Trust Unitholder to another but are intended only to facilitate the issuance of certificates evidencing the ownership of Trust Units, if desirable to issue them to Trust Unitholders and the recording of all transactions in respect of Trust Units and Trust Unit Certificates, whether by the Trust or other persons.

**13.2 Form of Trust Unit Certificates**

- (a) Trust Unit Certificates shall, subject to the provisions hereof, be in such form as is authorized from time to time by the Trustees.
- (b) If issued, Trust Unit Certificates are issuable only in fully registered form.
- (c) The definitive form of the Trust Unit Certificates shall:
  - (i) be in the English language;
  - (ii) be dated as of the date of issue thereof; and
  - (iii) contain such distinguishing letters and numbers as the Trustees shall prescribe.
- (d) In the event that the Trust Unit Certificate is translated into the French language and any provision of the Trust Unit Certificates in the French language shall be susceptible of an

interpretation different from the equivalent provision in the English language, the interpretation of such provision in the English language shall be determinative.

- (c) Each Trust Unit Certificate shall be signed on behalf of the Trustees. The signature of the Trustees or any officers on behalf of the Trustees required to appear on such certificate may be printed, lithographed or otherwise mechanically reproduced thereon and, in such event, certificates so signed are as valid as if they had been signed manually.
- (f) The Trust is not bound to issue more than one Trust Unit Certificate in respect of Units held jointly or in common by two or more persons and delivery of a Trust Unit Certificate to one of them shall be sufficient delivery to all.

### 13.3

#### Contents of Trust Unit Certificates

- (a) Until otherwise determined by the Trustees, each Trust Unit Certificate shall legibly set forth on the face thereof, *inter alia*, the following:
  - (i) the name of the Trust and the words "A trust created under the laws of the Province of Ontario by a Declaration of Trust dated as of October 6, 2005 or words of like effect;
  - (ii) the name of the person to whom the Trust Unit Certificate is issued as Trust Unitholder;
  - (iii) the number, class and, if any, series of Trust Units represented thereby and whether or not the Trust Units represented thereby are fully paid;
  - (iv) that the Trust Units represented thereby are transferable but that such transfers are subject to restrictions set out in this Declaration of Trust;
  - (v) the words "The Trust Units represented by this certificate are issued upon the terms and subject to the conditions of the Declaration of Trust, which Declaration of Trust is binding upon all holders of Trust Units and, by acceptance of this certificate, the holder assents to the terms and conditions of the Declaration of Trust. A copy of the Declaration of Trust pursuant to which this certificate and the Trust Units represented thereby are issued may be obtained by a Trust Unitholder on demand and without fee from the head office of the Trust" or words of like effect; and
  - (vi) the words "For information as to personal liability of a Trust Unitholder, see the reverse side of this certificate" or words of like effect.
- (b) Until otherwise determined by the Trustees, each such certificate shall legibly set forth on the reverse side thereof, *inter alia*, the following:
  - (i) "The Declaration of Trust provides that no Trust Unitholder shall be subject to any personal liability whatsoever, in tort, contract or otherwise, to any person in connection with the assets of the Trust or the obligations or the affairs of the Trust and all such persons shall look solely to the assets of the Trust for satisfaction of claims of any nature arising out of or in connection therewith and the assets of the Trust only shall be subject to levy or execution", or words of like effect; and

- (ii) appropriate forms of notice of exercise of the right of redemption and of powers of attorney for transferring Trust Units.

The Trust Unit Certificates may be engraved, printed or lithographed, or partly in one form and partly in another, as the Trustees may determine.

#### **13.4 Register of Trust Unitholders**

A register may be kept at the principal corporate office of the Trust which register shall contain the names and addresses of the Trust Unitholders, the respective numbers of Trust Units held by them, the certificate numbers of certificates representing such Trust Units and a record of all transfers and redemptions thereof. Branch transfer registers shall be maintained at such other offices of the Trust as the Trustees may from time to time designate. Only Trust Unitholders whose certificates are so recorded shall be entitled to receive distributions or to exercise or enjoy the rights of Trust Unitholders hereunder. The Trustees shall have the right to treat the person registered as a Trust Unitholder on the register of the Trust as the owner of such Trust Units for all purposes, including, without limitation, payment of any distribution, giving notice to Trust Unitholders and determining the right to attend and vote at meeting of Trust Unitholders.

#### **13.5 Limitation of Non-Resident Ownership**

- (a) At no time may Non-Residents be the beneficial owners of more than 49% of the Trust Units (on either a non-diluted or Fully Diluted Basis).
- (b) The Trustees shall have the power and authority to determine from time to time written guidelines with respect to the nature of a Unitholder's Declaration, the times at which any Unitholder's Declarations are to be requested and any other relevant matters relating to Unitholder's Declarations.

A Unitholder's Declaration shall be in the form and substance from time to time determined by the Trustees and, without limiting the generality of the foregoing, may be required to be in the form of a declaration in writing sworn under oath or affirmed in a manner and in a form acceptable to the Trustees. Without limiting the generality of the foregoing, any Unitholder's Declaration may be required to contain information with respect to:

- (i) whether the Unitholder is the beneficial owner of the applicable Units or whether any other person is the beneficial owner of those Units; and
  - (ii) whether the Unitholder or any other beneficial owner of the Units is a Non-Resident.
- (c) If the Trustees become aware that the limitations on ownership set forth in section 13.5(a) is, or may be, contravened or that such a situation is imminent, the Transfer Agent or registrar shall make a public announcement thereof and shall not accept a subscription for Trust Units from or issue or register a transfer of Trust Units to a person unless the person provides a Unitholder's Declaration satisfactory to the Trustees that the person is not a Non-Resident and does not and will not hold Trust Units on behalf of or for the benefit of any Non-Resident and will not be subject to the instructions or influence of any Non-Resident with respect to the voting of any Trust Units. If, notwithstanding the foregoing, the Trustees determine either that more than 49% of the Trust Units (on either a non-diluted or Fully Diluted Basis) are held or beneficially owned by Non-Residents the Trustees may send a notice to those Non-Residents holding Trust Units, as applicable,

chosen in inverse order to the order of acquisition or registration or in any manner as the Trustees may consider equitable and practicable, requiring them to sell their Trust Units or a portion thereof within a specified period of not less than 30 days. If the Trust Unitholders receiving such notice have not sold the specified number of Trust Units or provided the Trustees with Unitholders' Declarations or other satisfactory evidence within such period that they are not Non-Residents and that they do not and will not hold Trust Units on behalf of or for the benefit of any Non-Resident and that they are not and will not be subject to the instructions or influence of any Non-Resident with respect to the voting of any Trust Units, the Trustees may on behalf of such Trust Unitholders sell such Trust Units and, in the interim, shall suspend the voting and distribution rights attached to such Trust Units. Upon such sale, the affected holders shall cease to be holders of such Trust Units and their rights in respect of such Trust Units shall be limited to receiving the net proceeds of sale upon surrender of the certificates representing such Trust Units.

- (d) Subject to section 9.6, unless and until the Trustees shall have been required to do so under the terms hereof, the Trustees shall not be bound to do or take any proceeding or action with respect to this section 13.5 by virtue of the powers conferred on it hereby. The Trustees shall have the sole right and authority to make any determination required or contemplated under this section 13.5. The Trustees shall make all determinations necessary for the administration of the provisions of this section 13.5 and, without limiting the generality of the foregoing, if the Trustees consider that there are reasonable grounds for believing that a contravention of the limitations on ownership set forth in section 13.5(a) has occurred or will occur, the Trustees shall make a determination with respect to the matter. Any such determination shall be conclusive, final and binding except to the extent modified by any subsequent determination by the Trustees. In any situation where it is unclear whether Trust Units are held for the benefit of Non-Residents, the Trustees may exercise their discretion in determining whether such Trust Units are or are not so held, and any such exercise by them of their discretion shall be binding for the purposes of this section 13.5. Notwithstanding the foregoing, the Trustees may delegate, in whole or in part, their power to make a determination in this respect to any officer of the Trust.

#### **13.6 Transfer of Trust Units**

- (a) Subject to the provisions of this Article 13, the Trust Units shall be fully transferable without charge as between persons, but no transfer of Trust Units shall be effective as against the Trustees or shall be in any way binding upon the Trustees until the transfer has been approved by the Trustees and recorded on the Registers.
- (b) No transfer of a Trust Unit will be recognized unless such transfer is of a whole Trust Unit, unless otherwise determined by the Trustees.
- (c) Subject to the provisions of this Article 13, Trust Units shall be transferable on the Registers only by the Trust Unitholders of record thereof or their executors, administrators or other legal representatives or by their agents or attorneys duly authorized in writing, and only upon delivery to the Trust of the certificate therefor, properly endorsed or accompanied by a duly executed instrument of transfer or power of attorney and accompanied by all necessary transfer or other taxes imposed by law, together with such evidence of the genuineness of such endorsement, execution and authorization and other matters that may reasonably be required by the Trustees. Upon such delivery, the transfer shall be recorded on the Registers and a new certificate for the

Trust Units shall be issued to the transferee and a new certificate for the balance of Trust Units not transferred shall be issued to the transferor.

- (d) Any person becoming entitled to any Trust Units as a consequence of the death, bankruptcy or mental incompetence of any Trust Unitholder, or otherwise by operation of law, shall be recorded as the holder of such Trust Units and shall receive, in the case of Trust Units, a new Trust Unit Certificate therefor only upon production of evidence satisfactory to the Trustees and delivery of the existing certificate to the Trustees, but until such record is made the Trust Unitholder of record shall continue to be and be deemed to be the holder of such Trust Units for all purposes whether or not the Trustees shall have actual or other notice of such death or other event.
- (e) Trust Unit Certificates representing any number of Trust Units may be exchanged without charge for Trust Unit Certificates representing an equivalent number of Trust Units in the aggregate. Any exchange of Trust Unit Certificates may be made at the offices of the Trust where Registers are maintained for Trust Unit Certificates pursuant to the provisions of this Article 13. Any Trust Unit Certificates tendered for exchange shall be surrendered to the Trustees and then shall be cancelled.

### **13.7 Trust Units Held Jointly or in a Fiduciary Capacity**

Except as herein provided, the Trustees may treat two or more persons holding any Trust Units as joint owners of the entire interest therein unless their ownership is expressly otherwise recorded on the register of the Trust, but no entry shall be made in the register or on any certificate that any person is in any other manner entitled to any future, limited or contingent interest in any Trust Units; provided, however, that any person recorded as a Trust Unitholder may, subject to the provisions hereinafter contained, be described in the Register or on any certificate as a fiduciary of any kind and any customary words may be added to the description of the holder to identify the nature of such fiduciary relationship.

### **13.8 Performance of Trust**

The Trustees, the Trust and any officers of the Trust, shall not be bound to be responsible for or otherwise inquire into or ensure the performance of any trust, express, implied or constructive, or of any pledge or equity to which any of the Trust Units or any interest therein are or may be subject, or to ascertain or enquire whether any transfer of any such Trust Units or interests therein by any such Trust Unitholder or by his or her personal representatives is authorized by such trust, pledge, or equity, or to recognize any person as having any interest therein except for the person recorded as Trust Unitholder.

### **13.9 Lost Certificates**

In the event that any certificate for Trust Units is lost, stolen, destroyed or mutilated, the Trustees may authorize the issuance of a new certificate for the same number of Trust Units in lieu thereof. The Trustees may in their sole discretion, before the issuance of such new certificate, require the owner of the lost, stolen, destroyed or mutilated certificate, or the legal representative of the owner, to make an affidavit or statutory declaration setting forth such facts as to the loss, theft, destruction or mutilation as the Trustees may deem necessary, to surrender any mutilated certificate and shall require the applicant to supply to the Trust a "lost certificate bond" or a similar bond in such reasonable sum as the Trustees may direct indemnifying the Trust for so doing.

### **13.10 Death of a Trust Unitholder**

The death of a Trust Unitholder during the continuance of the Trust shall not terminate the Trust or any of the mutual or respective rights and obligations created by or arising under this Declaration of Trust nor give such Trust Unitholder's personal representatives a right to an accounting or take any action in court or otherwise against other Trust Unitholders or the Trustees or the Trust Assets,

but shall merely entitle the personal representatives of the deceased Trust Unitholder to demand and receive, pursuant to the provisions hereof, a new certificate for Trust Units in place of the certificate held by the deceased Trust Unitholder, if any, and upon the acceptance thereof such personal representatives shall succeed to all rights of the deceased Trust Unitholder under this Declaration of Trust.

**13.11 Offer for Trust Units**

(a) In this section 13.11:

- (i) **"Dissenting Offeree"** means, where an Offer is made for all the Trust Units, a holder of a Trust Unit who does not accept the Offer, and includes a subsequent holder of a Trust Unit that is the subject of the Offer;
- (ii) **"Offer"** means an offer to acquire, directly or indirectly, outstanding Trust Units (including securities then currently convertible, exchangeable or exercisable for Trust Units) where, as of the date of the offer to acquire, either the Trust Units that are the subject of the offer to acquire, together with the Offeror's Trust Units, constitute in the aggregate 20% or more of all outstanding Trust Units, or the offer to acquire is made by the Trust itself;
- (iii) **"offer to acquire"** includes an acceptance of an offer to sell;
- (iv) **"Offeror"** means a person, or two or more persons acting jointly or in concert, who makes an Offer, and includes the Trust itself if the Trust makes an Offer;
- (v) **"Offeror's Notice"** means the notice described in section 13.1 l(c); and
- (vi) **"Offeror's Units"** means Trust Units beneficially owned, or over which control or direction is exercised, on the date of an Offer by the Offeror or any Affiliate or associate of the Offeror.

(b) If an Offer is made for all outstanding Trust Units (other than Trust Units held by or on behalf of the Offeror or any Affiliate or associate of the Offeror or any person acting jointly or in concert with the Offeror, within the meaning of the *Securities Act* (Ontario)) and, by such Offer, the Offeror agrees to be bound by the provisions of this section 13.11, and:

- (i) within the time provided in the Offer for its acceptance or within 120 days after the date the Offer is made, whichever period is the longer, the Offer is accepted by the holders of at least 90% of the outstanding Trust Units other than the Offeror's Trust Units; and
- (ii) the Offeror has taken up and paid for the Trust Units of the Trust Unitholders who accepted the Offer;

then:

- (iii) the Offeror will be entitled to acquire, and the Dissenting Offerees will be required to sell to the Offeror, the Trust Units held by the Dissenting Offerees on the terms on which the Offeror acquired the Trust Units of the Trust Unitholders who accepted the Offer,

provided that the Offeror complies with section 13.1 l(c) and section 13.1 l(e).

- (c) Where an Offeror is entitled to acquire Trust Units held by a Dissenting Offeree pursuant to section 13.11(b), and the Offeror wishes to exercise such right, the Offeror must send by registered mail before the earlier of 60 days after the date of termination of the Offer and 180 days following the date of the Offer a notice (the "Offeror's Notice") to each Dissenting Offeree stating that:
  - (i) Trust Unitholders holding at least 90% of the outstanding Trust Units other than the Offeror's Trust Units, have accepted the Offer;
  - (ii) the Offeror has taken up and paid for the Trust Units of the Trust Unitholders who accepted the Offer;
  - (iii) a Dissenting Offeree must transfer his, her or its respective Trust Units to the Offeror on the terms on which the Offeror acquired the Trust Units of the Trust Unitholders who accepted the Offer within 21 days after the date of the sending of the Offeror's Notice; and
  - (iv) Dissenting Offerees must send the Unit Certificates representing their respective Trust Units to the Trust, duly endorsed for transfer, within 21 days after the date of the sending of the Offeror's Notice.
- (d) A Dissenting Offeree to whom an Offeror's Notice is sent pursuant to section 13.11(c), must, within 21 days after the sending of the Offeror's Notice, as applicable, send the Unit Certificate representing his, her or its Trust Units to the Trust, duly endorsed for transfer, if a Unit Certificate for such Trust Units has been provided.
- (e) Within 21 days after the Offeror sends an Offeror's Notice pursuant to section 13.11(c), the Offeror must pay or transfer to the Trustees, or to such other person as the Trustees may direct, the cash or other consideration that the Offeror would have had to pay to the Dissenting Offeree had they accepted the Offer in respect of the Units that they continue to hold.
- (f) The Trustees, or the person directed by the Trustees, must hold in trust for the Dissenting Offerees the cash or other consideration received under section 13.11(e), but such cash or other consideration shall not form any part of the Trust Assets. The Trustees, or such persons, shall deposit such cash in a separate account in a Canadian chartered bank, and shall place such other consideration in the custody of a Canadian chartered bank or similar institution, for safekeeping.
- (g) Within 30 days after the date of the sending of an Offeror's Notice pursuant to section 13.11(c), the Trustees, if the Offeror has complied with section 13.11(e), shall:
  - (i) do or cause to be done all acts and things and execute and cause to be executed all instruments as in the opinion of the Trustees may be necessary or desirable to cause the transfer of the Trust Units of the Dissenting Offerees to the Offeror;
  - (ii) send or cause to be sent to each Dissenting Offeree who has complied with section 13.11(d) the consideration to which such Dissenting Offeree is entitled under this section 13.11; and
  - (iii) send or cause to be sent to each Dissenting Offeree who has not complied with section 13.11(d) a notice stating that:
    - (iv) his Trust Units have been transferred to the Offeror;



- (v) the Trustees or some other person designated in such notice are holding in trust the consideration for such Trust Units; and
- (vi) the Trustees, or such other person, will send the consideration to such Dissenting Offeree as soon as practicable after receiving the certificate(s) representing such Dissenting Offeree's Trust Units or such other documents as the Trustees or such other person may require in lieu thereof;

and the Trustees are hereby appointed the agent and attorney of the Dissenting Offeree for the purposes of giving effect to the foregoing provisions.

- (h) Subject to applicable law, an Offeror cannot make an Offer for Trust Units unless, concurrent with the communication of the Offer to any Trust Unitholder, a copy of the Offer is provided to the Trust.

#### **13.12 Repurchase of Trust Units**

The Trust shall be entitled to purchase for cancellation at any time the whole or from time to time any part of the outstanding Trust Units, at a price per Trust Unit and on a basis to be determined by the Trustees in compliance with all applicable securities regulatory laws, regulations or policies or the policies of any applicable stock exchange.

### **ARTICLE 14 TERMINATION**

#### **14.1 Term of Trust**

Subject to the other provisions of this Declaration of Trust, the Trust shall continue for a term ending 21 years after the date of death of the last surviving issue of Her Majesty, Queen Elizabeth II, alive on October 6, 2005. For the purpose of terminating the Trust by such date, the Trustees shall commence to wind-up the affairs of the Trust on such date as may be determined by the Trustees, being not more than two years prior to the end of the term of the Trust.

#### **14.2 Termination with the Approval of Trust Unitholders**

The Trust Unitholders may vote by Special Resolution to terminate the Trust at any meeting of Trust Unitholders duly called by the Trustees for the purpose of considering termination of the Trust, following which the Trustees shall commence to wind up the affairs of the Trust. Such Special Resolution may contain such directions to the Trustees as the Trust Unitholders determine, including a direction to distribute some or all of the Trust Assets.

#### **14.3 Procedure Upon Termination**

Forthwith upon being required to commence to wind up the affairs of the Trust, the Trustees shall give notice thereof to the Trust Unitholders, which notice shall designate the time or times at which Trust Unitholders may surrender their Trust Units for cancellation and the date at which the Registers shall be closed.

#### **14.4 Powers of the Trustees Upon Termination**

After the date on which the Trustees are required to commence to wind up the affairs of the Trust, the Trustees shall undertake no activities except for the purpose of winding-up the affairs of the Trust as hereinafter provided and, for this purpose, the Trustees shall continue to be vested with and may exercise all or any of the powers conferred upon the Trustees under this Declaration of Trust.

**14.5 Sale of Investments**

After the date referred to in section 14.3, the Trustees shall proceed to wind up the affairs of the Trust as soon as may be reasonably practicable and for such purpose shall, subject to any direction to the contrary in respect of a termination authorized under section 14.2, sell and convert into money the Trust Assets in one transaction or in a series of transactions at public or private sales and do all other acts appropriate to liquidate the Trust Assets, and shall in all respects act in accordance with the directions, if any, of the Trust Unitholders (in respect of a termination authorized under section 14.2). If the Trustees are unable to sell all or any of the Trust Assets by the date set for termination, the Trustees may, subject to obtaining all necessary regulatory approvals, distribute the remaining securities or other assets directly to the Trust Unitholders in accordance with their *pro rata* interests.

**14.6 Distribution of Proceeds or Assets**

After paying, retiring or discharging or making provision for the payment, retirement or discharge of all known liabilities and obligations of the Trust and providing for indemnity against any other outstanding liabilities and obligations, the Trustees shall, subject to obtaining all necessary regulatory approvals, distribute the remaining part of the proceeds of the sale of Trust Assets together with any cash forming part of the Trust Assets among the Trust Unitholders in accordance with their *pro rata* interests and in accordance with section 3.1 hereof.

**14.7 Further Notice to Trust Unitholders**

In the event that less than all of the Trust Unitholders have surrendered their Trust Units for cancellation within six months after the time specified in the notice referred to in section 14.3, the Trustees shall give further notice to the remaining Trust Unitholders to surrender their Trust Units for cancellation and if, within one year after the further notice, all the Trust Units shall not have been surrendered for cancellation, such remaining Trust Units shall be deemed to be cancelled without prejudice to the rights of the holders of such Trust Units, if applicable, to receive their *pro rata* share of the remaining Trust Assets, and the Trustees may either take appropriate steps, or appoint an agent to take appropriate steps, to contact such Trust Unitholders (deducting all expenses thereby incurred from the amounts to which such Trust Unitholders are entitled as aforesaid) or, in the discretion of the Trustees, may pay such amounts into court.

**14.8 Responsibility of the Trustees after Sale and Conversion**

The Trustees shall be under no obligation to invest the proceeds of any sale of investments or other assets or cash forming part of the Trust Assets after the date referred to in section 14.3 and, after such sale, the sole obligation of the Trustees under this Declaration of Trust shall be to hold such proceeds or assets in trust for distribution under section 14.6.

**ARTICLE 15  
SUPPLEMENTAL INDENTURES**

**15.1 Provision for Supplemental Indentures for Certain Purposes**

The Trustees may, without approval of the Trust Unitholders and subject to the provisions hereof, and shall, when so directed in accordance with the provisions hereof, execute and deliver indentures or instruments supplemental hereto which thereafter shall form part hereof, for any one or more or all of the following purposes:

- (a) modifying or amending any provisions of this Declaration of Trust in the circumstances set forth in section 11.1 where the Trustees may do so without the consent, approval or ratification of the Trust Unitholders or any other person; and

- (b) modifying or amending any provisions of this Declaration of Trust where the modification or amendment has been approved by Ordinary Resolution or Special Resolution, as the case may be, or, if required, with the consent of the holders of all of the Trust Units.

and any such indenture or instrument supplemental to this Declaration of Trust shall be binding on all parties, including without limitation, all Trust Unitholders on the later of (i) the date of the execution thereof, and (ii) the effective date of any required approval by Trust Unitholders with respect to that indenture or instrument.

## **ARTICLE 16**

### **GENERAL**

#### **16.1 Notices**

- (a) Any notice or other document required to be given or sent to Trust Unitholders under this Declaration of Trust shall be given or sent through ordinary post addressed to each registered holder at his or her last address appearing on the Registers; provided that if there is a general discontinuance of postal service due to strike, lockout or otherwise, such notice may be given by publication twice in the Report on Business section of the National Edition of The Globe and Mail or similar section of any other newspaper having national circulation in Canada; provided further that if there is no newspaper having national circulation, then by publishing twice in the business section of a newspaper in each city where a Register is maintained. Any notice so given shall be deemed to have been given on the day following that on which the letter or circular was posted or, in the case of notice being given by publication, after publishing such notice twice in the designated newspaper or newspapers. In proving notice was posted, it shall be sufficient to prove that such letter or circular was properly addressed, stamped and posted.
- (b) Any written notice or written communication given to the Trustees shall be addressed to the Trustees at the head office of the Trust as designated pursuant to section 2.4, and shall be deemed to have been given on the date of delivery or, if mailed, five days from the date of mailing. If any such notice or communication shall have been mailed and if regular mail service shall be interrupted by strikes or other irregularities, such notice or communication shall be deemed to have been received 48 hours after 12:01 a.m. on the day following the resumption of normal mail service, provided that during the period that regular mail service shall be interrupted any notice or other communication shall be given by personal delivery or by cable, telegram, telex or other means of prepaid, transmitted or recorded communication.

#### **16.2 Failure to Give Notice**

The failure by the Trustees, by accident or omission or otherwise unintentionally, to give any Trust Unitholder any notice provided for herein shall not affect the validity, effect or taking effect of any action referred to in such notice, and the Trustees shall not be liable to any Trust Unitholder for any such failure.

#### **16.3 Joint Holders**

Service of a notice or document on any one of several joint holders of Trust Units shall be deemed effective service on the other joint holders.

**16.4 Service of Notice**

Any notice or document sent by post to or left at the address of a Trust Unitholder pursuant to this Article shall, notwithstanding the death or bankruptcy of such Trust Unitholder, and whether or not the Trustees have notice of such death or bankruptcy, be deemed to have been fully served and such service shall be deemed sufficient service on all persons having an interest in the Trust Units concerned.

**16.5 Information Available to Trust Unitholders**

Each Trust Unitholder shall have the right to obtain, on demand and without fee, from the head office of the Trust a copy of this Declaration of Trust and any amendments thereto relating to Trust Units and shall be entitled to inspect and, on payment of a reasonable fee therefor and after delivering to the Trustees a statutory declaration stating the name and address of the person requiring the Trustees to furnish the list of Trust Unitholders and, if the person is a body corporate, the address for service thereof, and that the list will not be used except in connection with:

- (a) an effort to influence the voting of the holders of Trust Units;
- (b) an offer to acquire Trust Units; or
- (c) any other matter relating to the Trust Units or the affairs of the Trust,

obtain a list of the Trust Unitholders for the aforesaid purposes.

**16.6 Fiscal Year and Taxation Year**

The fiscal year and taxation year of the Trust shall end on December 31 of each year.

**16.7 Financial Disclosure**

The Trust will send (or make available if sending is not required by law) to Trust Unitholders:

- (a) within the time prescribed by applicable securities laws, and, in any event, at least 21 days prior to the date of each annual meeting of Trust Unitholders, the annual financial statements of the Trust for the fiscal year ended immediately prior to such annual meeting, together with comparative financial statements for the preceding fiscal year, if any, and the report of the Auditors thereon referred to in section 17.4; and
- (b) within the time prescribed by applicable securities laws, unaudited quarterly financial statements of the Trust for such fiscal quarter (other than in respect of the fourth quarter of each fiscal year) together with comparative financial statements for the same fiscal quarter in the preceding fiscal year, if any.

Such financial statements shall be prepared in accordance with generally accepted accounting principles in Canada as recommended from time to time in the Handbook of the Canadian Institute of Chartered Accountants; provided that such statements and the obligations to deliver such statements may vary from such principles to the extent required to comply with applicable securities laws or securities regulatory requirements or to the extent permitted by applicable securities regulatory authorities.

**16.8 Trust Unitholder Meeting Information**

Prior to each meeting of Trust Unitholders, the Trustees will provide to each Trust Unitholder, together with the notice of the meeting:

- (a) a form of proxy which can be used by a Trust Unitholder to appoint a proxy, who need not be a Trust Unitholder, to attend and act at the meeting on behalf of the Trust Unitholder, in the manner and to the extent authorized by the proxy; and
- (b) all information required by applicable law.

#### **16.9 Taxation Information**

Within 90 days from the end of each calendar year, the Trust will provide to Trust Unitholders who received distributions from the Trust in the prior calendar year, such information regarding the Trust required by Canadian law to be submitted to Trust Unitholders for income tax purposes to enable Trust Unitholders to complete their tax returns in respect of the prior calendar year.

#### **16.10 Income Tax Matters**

In respect of the first taxation year of the Trust, the Trust shall elect pursuant to Subsection 132(6.1) of the Tax Act that the Trust be deemed to be a mutual fund trust for the entire year. The Trustees shall satisfy, perform and discharge all obligations and responsibilities of the Trustees under the Tax Act or any similar provincial legislation and neither the Trust nor the Trustees shall be accountable or liable to any Trust Unitholders by reason of any act or acts of the Trustees consistent with, or which the Trustees believe in good faith to be consistent with, any such obligations or responsibilities. The Trustees shall determine the tax deductions, allowances and credits to be claimed, and designations to be made by the Trust in any year, and the Trustees shall claim those deductions, allowances and credits and make those designations for the purposes of computing the income of the Trust and the amount of tax payable, if any, by the Trust pursuant to the provisions of the Tax Act. In calculating Income of the Trust for income tax purposes, the Trust will claim the maximum amount available to it as deductions under applicable laws, unless the Trustees determine otherwise.

#### **16.11 Protective Classification Election**

Within 70 days following the Date of Closing, the Trust shall file with the United States Internal Revenue Service a protective election on Form 8832, effective immediately prior to the Closing, to be classified as a corporation for United States federal income tax purposes.

#### **16.12 Trust Records**

The Trustees shall prepare and maintain, at the head office of the Trust or at any other place in Canada designated by the Trustees, records containing: (i) the Declaration of Trust; and (ii) minutes of meetings and resolutions of the Unitholders. The Trust shall also prepare and maintain adequate accounting records and records containing minutes of meetings and resolutions of the Trustees and each committee thereof. Such records shall be kept at the head office of the Trust or at such other place in Canada as the Trustees think fit and shall at all reasonable times be open to inspection by the Trustees.

#### **16.13 Consolidations**

Any one or more Trustees may prepare consolidated copies of the Declaration of Trust as it may from time to time be supplemented, amended or amended and restated and may certify the same to be a true consolidated copy of the Declaration of Trust, as supplemented, amended or amended and restated.

## **ARTICLE 17 AUDITORS**

### **17.1 Qualification of Auditors**

The Auditors shall be an independent recognized firm of chartered accountants which has an office in Canada.

### **17.2 Appointment of Auditors**

KPMG LLP, Chartered Accountants are appointed as the auditors of the Trust, to hold that office until the first annual meeting of the Trust Unitholders or until their resignation or removal in accordance with section 17.3. The Auditors of the Trust will be selected at each succeeding annual meeting of Trust Unitholders. The Auditors will receive such remuneration as may be approved by the Trustees.

### **17.3 Change of Auditors**

The Auditors may at any time be removed by the Trustees with the approval of a an Ordinary Resolution passed by Trust Unitholders at a meeting of Trust Unitholders duly called for the purpose and, upon the resignation or the removal of Auditors as aforesaid, new auditors may be appointed by an Ordinary Resolution passed by Trust Unitholders at a meeting duly called for the purpose or, in the absence of such meeting, by the Trustees.

### **17.4 Report of Auditors**

The Auditors shall audit the accounts of the Trust at least once in each year and a report of the Auditors with respect to the annual financial statements of the Trust shall be provided to each Trust Unitholder with the annual financial statements referred to in section 16.7.

## **ARTICLE 18 MISCELLANEOUS**

### **18.1 Counterparts**

This Declaration of Trust may be simultaneously executed in counterparts, each of which when executed shall be deemed to be an original, and such counterparts, together, shall constitute but one and the same instrument, which shall be sufficiently evidenced by any such original counterparts.

### **18.2 Severability**

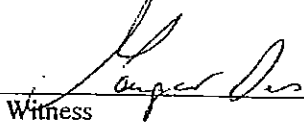
If any provision of this Declaration of Trust shall be held invalid or unenforceable in any jurisdiction, such invalidity or unenforceability shall attach only to such provision in such jurisdiction and shall not in any manner affect or render invalid or unenforceable such provision in any other jurisdiction or any other provision of this Declaration of Trust in any jurisdiction.

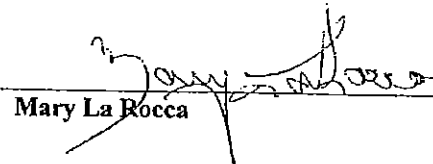
**18.3 Language**

Les parties aux présentes ont expressément convenu que la présente convention ainsi que tous les documents et avis qui s'y rattachent et/ou qui en découleront soient rédigés en anglais. The parties hereto have required that this Declaration of Trust and all documents and notices resulting herefrom be drawn up in English.

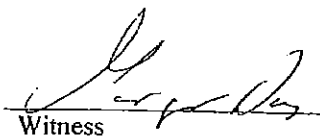
IN WITNESS WHEREOF the parties have caused these presents to be executed as of the 6th day of October, 2005.

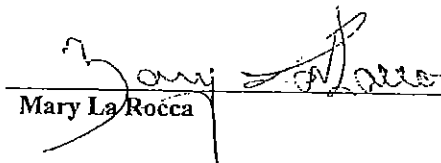
TRUSTEE

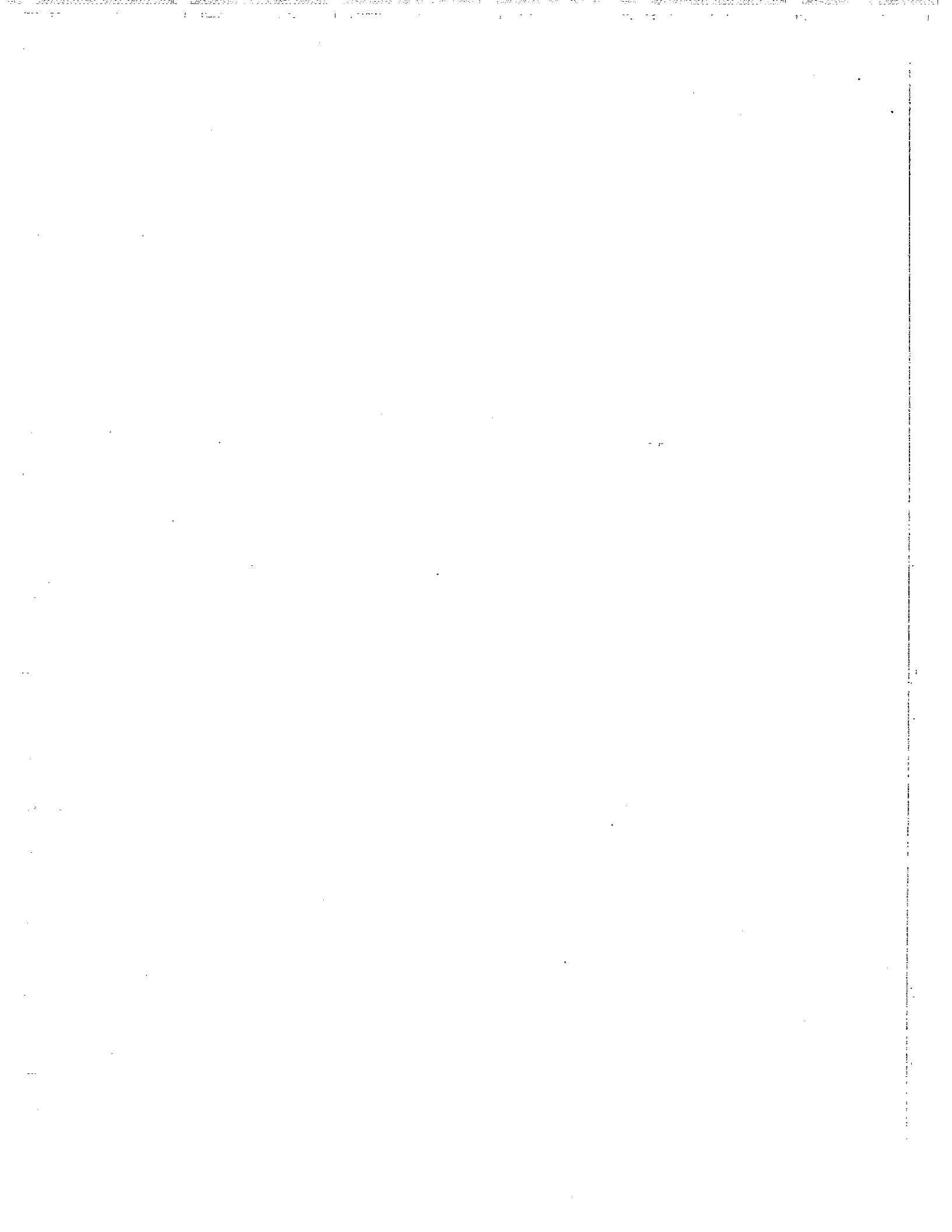
  
Witness

  
Mary La Rocca

INITIAL UNITHOLDER

  
Witness

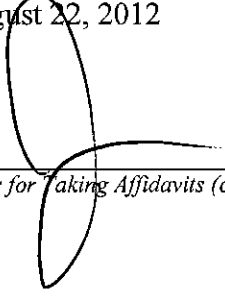
  
Mary La Rocca





# TAB C

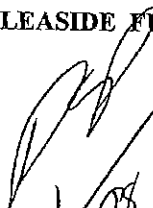
This is Exhibit "C" referred to in the Affidavit of Henry Wemekamp, sworn August 22, 2012



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*Commissioner for Taking Affidavits (or as may be)*

FIRST LEASIDE FUND

  
208/116/07

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AMENDED, CONSOLIDATED AND RESTATED DECLARATION OF TRUST

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August 8, 2006

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## **FIRST LEASIDE FUND**

**WHEREAS** the First Leaside Fund was established as a Mutual Fund Trust, pursuant to a Declaration of Trust dated October 6, 2005 (the "Trust" or the "Fund"),

**AND WHEREAS** the Trustees (as hereinafter defined) of the Fund deem it advisable to amend the Declaration of Trust to allow for the creation and issuance of new Series A, B and C Trust Units (as hereinafter defined) to replace the existing Trust Units of the Trust;

**AND WHEREAS** the Trustees have agreed, pursuant to the Declaration of Trust dated October 6, 2005, to hold in trust, as Trustee, any and all property, real, personal or otherwise, tangible or intangible, which has been at the date hereof or is hereafter transferred, conveyed or paid to or otherwise received by the Trust or to which the Trust is otherwise entitled and all rents, income, profits and gains therefrom for the benefit of the Trust Unitholders (as hereinafter defined) hereunder in accordance with and subject to the expressed provisions of these Declarations of Trust;

**NOW THEREFORE**, the undersigned, being the Trustees of the Fund, proposes to amend, consolidate and restate the Declarations of Trust as herein provided, to wit:

### **ARTICLE 1 INTERPRETATION**

#### **1.1 Definitions**

In this Declaration of Trust including the recitals hereto, unless the context otherwise requires, the following terms shall have the following meanings:

- (a) **"Affiliate"** of a person means any person that would be deemed to be an affiliated entity of such person under the *Securities Act* (Ontario) as it exists on the date hereof (applied, with the necessary changes being made, in respect of persons that are not companies);
- (b) **"Annuitant"** means the annuitant or beneficiary of a Plan or any other plan of which a Trust Unitholder acts as trustee or carrier;
- (c) **"associate"** when used to indicate a relationship with a person or company, has the same meaning as in the *Securities Act* (Ontario);
- (d) **"Auditors"** means the firm of chartered accountants appointed as the auditors of the Trust from time to time in accordance with the provisions hereof who initially shall be KPMG LLP, Chartered Accountants;
- (e) **"Business Day"** means any day except Saturday, Sunday and any statutory holiday in Toronto, Ontario, Canada;
- (f) **"Closing"** means a closing of the issue of Trust Units to the public pursuant to the Offering; **"Date of Closing"** means the date on which a Closing occurs; and **"Time of Closing"** means the time on a Date of Closing at which a Closing occurs;
- (g) **"Counsel"** means a barrister or solicitor or firm of barristers and solicitors or other lawyers in an appropriate jurisdiction retained by the Trust;

- (h) **"Distributable Cash Flow"** has the meaning ascribed thereto in subsection 5.1(b);
- (i) **"Distribution Payment Date"** in respect of a Distribution Period means a date no later than 15 days following the end of the Distribution Period or, if such day is not a Business Day, the next following Business Day or such other date determined from time to time by the Trustees;
- (j) **"Distribution Period"** means initially the period from and including the initial Date of Closing to and including the last day of the calendar month in which the initial Closing occurs and thereafter means each month in each calendar year from and including the first day thereof and to and including the last day thereof;
- (k) **"Distribution Record Date"** means the last Business Day of each Distribution Period;
- (l) **"Fully Diluted Basis"** means, with respect to the number of outstanding Trust Units, at any time, the number of Trust Units that are outstanding at that time and would be outstanding if all outstanding options, rights attached to securities convertible into or exchangeable for Trust Units and other rights to acquire Trust Units were exercised at that time;
- (m) **"generally accepted accounting principles"** or **"GAAP"** means Canadian generally accepted accounting principles determined with reference to the Handbook of the Canadian Institute of Chartered Accountants, as amended from time to time;
- (n) **"Income of the Trust"** has the meaning ascribed thereto in subsection 5.2(a);
- (o) **"Initial Contribution"** means the amount of \$10 paid by the Initial Unitholder to the Trustee for the purpose of settling the Trust;
- (p) **"Initial Trustee"** means the person named as the first Trustee of the Trust above;
- (q) **"Master LP"** means F. L. Master Texas, Ltd., a limited partnership formed under the laws of the State of Texas;
- (r) **"Monthly Limit"** has the meaning given to that term in subsection 6.4(a);
- (s) **"Net Realized Capital Gains"** has the meaning ascribed thereto in subsection 5.2(b);
- (t) **"Non-Resident"** means a person who is a "non-resident" of Canada within the meaning of the *Tax Act*;
- (u) **"Offering"** means the initial offering of Trust Units to the public pursuant to exemptions from prospectus requirements of applicable securities laws;
- (v) **"Ordinary Resolution"** means, subject to section 12.12, a resolution proposed to be passed as an ordinary resolution at a meeting of Trust Unitholders (including an adjourned meeting) duly convened for that purpose and held in accordance with the provisions hereof at which a quorum is present, which resolution is passed by the affirmative votes of a majority of the votes cast by the Trust Unitholders at such meeting;
- (w) **"person"** means and includes individuals, corporations, limited partnerships, general partnerships, joint stock companies, limited liability companies, joint ventures, associations, companies, trusts, banks, trust companies, pension funds, business trusts or other organizations, whether or not legal entities, and governments, governmental agencies and political subdivisions thereof;
- (x) **"Plan"** means a trust governed by registered retirement savings plan, registered retirement income fund, registered education savings plan or deferred profit sharing plan, each as described in the *Tax Act*;

- (y) "real property" means property which in law is real property and includes, whether or not the same would in law be real property, leaseholds, mortgages, undivided joint interests in real property (whether by way of tenancy-in-common, joint tenancy, co-ownership, joint venture or otherwise), any interests in any of the foregoing and securities of persons the sole or principal purpose and activity of which is to invest in, hold and deal in real property;
- (z) "Redemption Price" has the meaning ascribed thereto in subsection 6.3(a);
- (aa) "Registers" has the meaning ascribed thereto in section 13.4;
- (bb) "Residents" means persons who are resident in Canada for the purpose of the *Tax Act*;
- (cc) "Series A Units" means the Series of Units designated by the Trustee as Series A Units;
- (dd) "Series B Units" means the Series of Units designated by the Trustee as Series B Units;
- (ee) "Series C Units" means the Series of Units designated by the Trustee as Series C Units;
- (ff) "Series of Units" or "Series" means all Units of the Fund designated by the Trustee as a separate Series of Units;
- (gg) "Special Resolution" has, subject to section 12.12, the meaning ascribed thereto in section 12.8;
- (hh) "Subsidiary" of a person means any person that would be deemed to be a subsidiary entity of such person under the *Securities Act* (Ontario) as it exists on the date hereof (applied, with the necessary changes being made, in respect of persons that are not companies);
- (ii) "Tax Act" means the *Income Tax Act*, R.S.C. 1985 (5th Supp.) c. 1 and the regulations thereunder;
- (jj) "this Declaration of Trust", "this Declaration", "hereto", "herein", "hereof", "hereby", "hereunder" and similar expressions refer to this instrument, as hereby amended and restated, and not to any particular Article, section or portion hereof, and include any and every instrument supplemental or ancillary hereto;
- (kk) "Transfer Date" has the meaning given to that term in subsection 6.5;
- (ll) "Trust" means the First Leaside Fund, an open-ended, limited purpose trust constituted by this Declaration of Trust;
- (mm) "Trust Assets", at any time, means such of the following monies, properties and other assets as are at such time held by the Trust or by the Trustees on behalf of the Trust, including:
  - (i) the Initial Contribution;
  - (ii) all funds or property derived from the issuance or sale of Trust Units or other cash or property received by the Trust;
  - (iii) any securities, whether debt or equity, of any Wimberly Group Member or other securities or investments otherwise permitted by the terms of this Declaration of Trust to be held from time to time by or on behalf of the Trust; and
  - (iv) all proceeds, income, dividends, interest, profit, return of capital, gains and accretions and all substituted assets, rights and benefits of any kind or nature

whatsoever arising directly or indirectly from or in connection with or accruing to such foregoing property or such proceeds of disposition;

- (nn) **"Trust Liabilities"** has the meaning ascribed thereto in subsection 2.7(a);
- (oo) **"Trust Unit Certificate"** means a certificate in the form approved by the Trustees evidencing one or more Trust Units, issued and certified in accordance with the provisions hereof;
- (pp) **"Trust Unitholders"** means at any time the holders at that time of one or more Trust Units, as shown on the Registers;
- (qq) **"Trust Units"** means all of the trust units of the Trust authorized and issued hereunder as such and for the time being outstanding and entitled to the benefits hereof;
- (rr) **"Trustee"**, at any time, means an individual who is, in accordance with the provisions hereof, a trustee of the Trust at the time including, without limitation so long as he remains a trustee, the Initial Trustee and **"Trustees"** means, at any time, all of the individuals, each of whom is at that time a trustee;
- (ss) **"Unitholder's Declaration"** means a declaration regarding the residency of a Trust Unitholder, any Beneficial Trust Unitholder or other beneficial owner(s) or any other person in the form determined by the Trustees in accordance with section 13.5;
- (tt) **"Wimberly Group"** means, at any time, collectively, Wimberly LP, Master LP and their respective Subsidiaries and Affiliates, and **"Wimberly Group Member"** means any one of them; and
- (uu) **"Wimberly LP"** means Wimberly Apartments Limited Partnership, a limited partnership formed under the laws of the Province of Ontario.

## 1.2 **References to Acts Performed by the Trust**

For greater certainty, where any reference is made in this Declaration of Trust to an act to be performed by the Trust, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by the Trustees on behalf of the Trust or by some other person duly authorized to do so by the Trustees or pursuant to the provisions hereof, and where any reference is made in this Declaration of Trust to actions, rights or obligations of the Trustees, such reference shall be construed and applied for all purposes to refer to actions, rights or obligations of the Trustees in their capacity as Trustees of the Trust, and not in their other capacities, unless the context otherwise requires.

## 1.3 **Tax Act**

Any reference herein to the Tax Act or to a particular provision thereof shall include a reference to the Tax Act or that provision as it may be renumbered or amended from time to time. Where there are proposals for amendments to the Tax Act which have not been enacted into law or proclaimed into force on or before the date on which such proposals are to become effective, the Trustees may take such proposals into consideration and apply the provisions hereof as if such proposals had been enacted into law and proclaimed into force.

## 1.4 **Number and Gender**

In this Declaration of Trust, unless herein otherwise expressly provided or unless the context otherwise requires, words importing the singular number include the plural, and vice versa and words importing a gender shall include the feminine, masculine and neuter genders.

**1.5 Headings for Reference Only**

The division of this Declaration of Trust into Articles and sections, the provision of a Table of Contents and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Declaration of Trust.

**1.6 Day Not a Business Day**

In the event that any day on which any amount is to be determined or any action is required to be taken hereunder is not a Business Day, then such amount shall be determined or such action shall be required to be taken at or before the requisite time on the next succeeding day that is a Business Day.

**1.7 Time of the Essence**

Time shall be of the essence in this Declaration of Trust.

**1.8 Governing Law**

This Declaration of Trust and the Trust Unit Certificates shall be construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and shall be treated in all respects as Ontario contracts. The parties hereto hereby irrevocably submit and attorn to the jurisdiction of the courts of the Province of Ontario.

**1.9 Currency**

Unless otherwise specified herein, all references to money amounts are to lawful currency of the United States of America.

**1.10 Certain Phrases, etc.**

In this Declaration of Trust, (i) the words "including" and "includes" mean "including (or includes) without limitation", and (ii) the phrase "the aggregate of, "the total of, "the sum of, or a phrase of similar meaning means "the aggregate (or total or sum), without duplication, of.

**ARTICLE 2  
DECLARATION OF TRUST**

**2.1 Establishment of Trust**

The Trustees agree to hold the Trust Assets in trust for the use and benefit of the Trust Unitholders, their successors, permitted assigns and personal representatives, on and subject to the terms and conditions hereinafter declared and set forth, such trust to constitute the Trust hereunder.

**2.2 Name of Trust**

- (a) The Trust shall be known and designated as the "FIRST LEASIDE FUND" or the French language version thereof and, whenever practicable, lawful and convenient, the property of the Trust shall be held and the affairs of the Trust shall be conducted and transacted under that name.
- (b) If the Trustees determine that the use of such name is not practicable, legal or convenient, the Trust may use such other designation or may adopt such other name as the Trustees deem appropriate, and the Trust may hold property and conduct and transact its affairs under such other designation or name.

### **2.3 Head Office**

The head office of the Trust shall be located at 430 Durham Road #8, Uxbridge, Ontario L9P 1R1, or such other place or places in Canada as the Trustees may from time to time designate.

### **2.4 Nature of the Trust**

The Trust is an unincorporated, open-ended limited purpose trust, established for the purposes specified in section 4.1. The Trust is not, shall not be deemed to be and shall not be treated as, a general partnership, limited partnership, syndicate, association, joint venture, company, corporation or joint stock company nor shall the Trustees or any individual Trustee or the Trust Unitholders or any of them or any person be, or be deemed to be, treated in any way whatsoever as liable or responsible hereunder as partners or joint venturers. The Trustees are not and shall not be, or be deemed to be, agents of the Trust Unitholders. The relationship of the Trust Unitholders to the Trustees shall be solely that of beneficiaries of the Trust and their rights shall be limited to those conferred upon them by this Declaration of Trust.

### **2.5 Rights of Trust Unitholders**

The rights of each Trust Unitholder to call for a distribution or division of assets, monies, funds, income and capital gains held, received or realized by the Trustees are limited to those contained herein and, except as provided herein, no Trust Unitholder shall be entitled to call for any partition or division of the Trust Assets or for a distribution of any particular asset forming part of the Trust Assets or of any particular monies or funds received by the Trustees. The legal ownership of the Trust Assets and the right to conduct the activities of the Trust are vested exclusively in the Trustees, and no Trust Unitholder has or is deemed to have any right of ownership in any of the Trust Assets, except as specifically provided herein. Except as specifically provided herein, no Trust Unitholder or Trust Unitholders shall be entitled to interfere with or give any direction to the Trustees with respect to the affairs of the Trust or in connection with the exercise of any powers or authorities conferred upon the Trustees under this Declaration of Trust. The Trust Units shall be personal property and shall confer upon the holders thereof only the interest and rights specifically set forth in this Declaration of Trust.

### **2.6 Liability of Trust Unitholders**

- (a) No Trust Unitholder or Annuitant in its capacity as such shall incur or be subject to any liability, direct or indirect, absolute or contingent, in contract or in tort or of any other kind to any person in connection with: (i) the Trust Assets or the ownership, use, operation, acquisition or disposition thereof or exercise or enjoyment of the rights, privileges, conditions or benefits attached thereto, associated therewith or derived therefrom; (ii) the obligations or the activities or affairs of the Trust; (iii) any actual or alleged act or omission of the Trustees or by any other person in respect of the activities or affairs of the Trust (whether or not authorized by or pursuant to this Declaration of Trust); (iv) any act or omission of the Trustees or any other person in the performance or exercise, or purported or attempted performance or exercise, of any obligation, power, discretion or authority conferred upon the Trustees or such other person in respect of the activities or affairs of the Trust (whether or not authorized by or pursuant to this Declaration of Trust); (v) any transaction entered into by the Trustees or by any other person in respect of the activities or affairs of the Trust (whether or not authorized by or pursuant to this Declaration of Trust); or (vi) except as provided in section 5.8, any taxes, levies, imposts or charges or fines, penalties or interest in respect thereof payable by the Trust or by the Trustees or by any other person (except the Trust Unitholder to the extent required by applicable tax laws) on behalf of or in connection with the activities or affairs of the Trust (collectively, "Trust Liabilities")

- (b) No Trust Unitholder or Annuitant in its capacity as such shall be liable to indemnify the Trustees or any other person with respect to any Trust Liabilities.
- (c) To the extent that, notwithstanding the provisions of this section 2.7, any Trust Unitholder or Annuitant, in its capacity as such, may be determined by a judgment of a court of competent jurisdiction to be subject to or liable in respect of any Trust Liabilities, such Trust Unitholder is entitled to be reimbursed out of the Trust Assets for any payment of Trust Liabilities made by such Trust Unitholder.

### **ARTICLE 3 ISSUE AND SALE OF TRUST UNITS**

#### **3.1 Nature of Trust Units**

- (a) The beneficial interest of the Trust shall be divided into three (3) Series of units, being Series A, Series B, and Series C described and designated as "Trust Units", which shall be entitled to the rights and subject to the limitations, restrictions and conditions set out herein.
- (b) Each Trust Unit shall vest indefeasibly in the holder thereof and the interest of each Trust Unitholder shall be determined by the number of Trust Units registered in the name of the Trust Unitholders on the Registers.
- (c) Each Trust Unit represents an equal undivided beneficial interest in any distributions from the Trust of Distributable Cash Flow, Income of the Trust, Net Realized Capital Gains (other than Net Realized Capital Gains allocated and distributed to redeeming Trust Unitholders) or other amounts.
- (d) In the event of the liquidation, dissolution or winding up of the Trust or any other distribution of the assets of the Trust among its Trust Unitholder's for the purpose of winding up its affairs, each Trust Unitholder shall be entitled to any distribution of the net assets of the Trust in an amount equal to but not exceed the aggregate value of Trust Units held.
- (e) The issued and outstanding Trust Units may be subdivided or consolidated from time to time by the Trustees without notice to or approval of the Trust Unitholders.
- (f) Each Trust Unit shall entitle the holder of record thereof to one vote at all meetings of Trust Unitholders.

#### **3.2 Authorized Number of Trust Units**

The number of Trust Units for any Series which are authorized and may be issued hereunder is unlimited.

#### **3.3 Issue of Trust Units**

- (a) Trust Units of a particular Series may be issued by the Trust at the times, to the persons, for the consideration and on the terms and conditions that the Trustees determine. The Trustees may authorize the Trust to pay a reasonable commission to any person in consideration of such person purchasing or agreeing to purchase Trust Units from the Trust or from any other person or procuring or agreeing to procure purchasers for Trust Units.
- (b) The Trustees may create and issue instalment receipts, rights, warrants, receipts (including so-called "special warrants" and "subscription receipts" which may be exercisable for no additional consideration), securities convertible into or exchangeable

or exercisable for Trust Units of a particular Series or other securities of the Trust (including Trust Units issuable upon the exchange of securities of other issuers) or options (including all types of incentive programs) to subscribe for Trust Units which instalment receipts, rights, warrants, receipts, convertible or exchangeable or exercisable securities or options may be exercisable at such subscription price or prices and at such time or times as the Trustees may determine. The instalment receipts, rights, warrants, receipts, convertible or exchangeable or exercisable securities or options so created may be issued for such consideration or for no consideration, all as the Trustees may determine. An instalment receipt, right, warrant, receipt, convertible or exchangeable or exercisable security or option shall not be a Trust Unit and the holder thereof shall not be a Trust Unitholder.

- (c) Trust Units are only to be issued as fully paid in money, property, including an obligation to pay consideration in instalments, or past services, and are not to be subject to future calls or assessments, except that Trust Units to be issued under an offering of Trust Units to the public or otherwise may be issued for a consideration payable in instalments and the Trust may take a security interest over such Trust Units for unpaid instalments.

#### **3.4 Fractional Trust Units**

If as a result of any act of the Trustees hereunder any person becomes entitled to a fraction of a Trust Unit, such person shall not be entitled to receive a certificate therefor. Fractional Units shall not, except to the extent that they may represent in the aggregate one or more whole Trust Units, entitle the holder thereof to notice of or to attend or to vote at, meetings of Trust Unitholders. Subject to the foregoing, such fractional Trust Units shall have attached thereto the rights, restrictions, conditions and limitations attaching to whole Trust Units in the proportion that they bear to a whole Unit.

#### **3.5 Consolidation of Trust Units**

Immediately after any pro rata distribution of additional Trust Units to all Trust Unitholders pursuant to section 5.7, the number of the outstanding Trust Units will be consolidated such that each Trust Unitholder will hold after the consolidation the same number of Trust Units of a particular Series as the Trust Unitholder held before the distribution of additional Trust Units. In this case, each Trust Unit Certificate representing a number of Trust Units of a particular Series prior to the distribution of additional Trust Units is deemed to represent the same number of Trust Units after the non-cash distribution of additional Trust Units and the consolidation.

Notwithstanding the foregoing, where tax is required to be withheld from a Trust Unitholder's share of the distribution, the consolidation will result in such Trust Unitholder holding that number of Trust Units of a particular Series equal to (i) the number of Trust Units held by such Trust Unitholder prior to the distribution plus the number of Trust Units received by such Trust Unitholder in connection with the distribution (net of the total of the number of whole and part Trust Units withheld on account of withholding taxes and the number of whole and part Trust Units withheld pursuant to section 5.8 on account of the Trustees' reasonable expenses with regard to the sale of such Trust Units withheld on account of withholding taxes) multiplied by (ii) the fraction obtained by dividing the aggregate number of Trust Units outstanding prior to the distribution by the aggregate number of Trust Units of a particular Series that would be outstanding following the distribution and before the consolidation if no withholding were required in respect of any part of the distribution payable to any Trust Unitholder. Such Trust Unitholder will be required to surrender the Trust Unit Certificates, if any, representing such Trust Unitholder's original Trust Units, in exchange for a Trust Unit Certificate representing such Trust Unitholder's post-consolidation Trust Units of a particular Series.



**3.6 No Pre-Emptive Rights**

No person shall be entitled, as a matter of right, to subscribe for, purchase or acquire any Trust Unit.

**ARTICLE 4  
INVESTMENTS OF THE TRUST**

**4.1 Purpose of the Trust**

The Trust is an unincorporated, open-ended, limited purpose trust and its operations and activities shall be restricted to:

- (a) acquiring, investing in, transferring, disposing of and otherwise dealing with securities of persons engaged in the ownership of primarily income-producing multiple-unit residential real property located in Canada and the United States, as well as activities ancillary or incidental thereto, and such other investments as the Trustees may determine;
- (b) acquiring, investing in, transferring, disposing of and otherwise dealing with securities of or lending to any Wimberly Group Member;
- (c) temporarily holding cash in interest bearing accounts short-term government debt or short-term investment grade corporate debt for the purposes of paying the expenses and liabilities of the Trust, paying amounts payable by the Trust in connection with the redemption of any Trust Units or other securities of the Trust and making distributions to Trust Unitholders;
- (d) issuing Trust Units and other securities of the Trust, including instalment receipts, securities convertible into or exchangeable or exercisable for Trust Units or other securities of the Trust or other rights, warrants, receipts or options convertible into or exchangeable or exercisable for Trust Units or other securities of the Trust, including for the purposes of:
  - (i) obtaining funds to conduct the activities described in paragraphs (a) and (b) above, including raising funds for acquisitions;
  - (ii) implementing Trust Unitholder rights plans, distribution reinvestment plans, distribution reinvestment and Trust Unit purchase plans, option plans, long term incentive plans or other compensation plans, if any, established by the Trust;
  - (iii) making non-cash distributions to holders of Trust Units as contemplated by this Declaration of Trust, including pursuant to distribution reinvestment plans, if any, established by the Trust; and
  - (iv) repaying any indebtedness or satisfying any obligation, including any indebtedness or obligation to any Wimberly Group Member;
- (e) issuing debt securities (including debt securities convertible into or exchangeable for Trust Units or other securities of the Trust) or otherwise borrowing and mortgaging, pledging, charging, granting a security interest in or otherwise encumbering any of the Trust Assets as security;
- (f) guaranteeing (as guarantor, surety or co-principal obligor) the payment of any indebtedness, liability or obligation of any Wimberly Group Member or the performance of any obligation of any Wimberly Group Member, and mortgaging, pledging, charging,

- granting a security interest in or otherwise encumbering all or any part of the Trust Assets;
- (g) disposing of any part of the Trust Assets, subject to the provisions of this Declaration of Trust;
  - (h) issuing or redeeming rights and/or Trust Units pursuant to any Trust Unitholder rights plan adopted by the Trust;
  - (i) repurchasing or redeeming securities issued by the Trust, including Trust Units, subject to the provisions of this Declaration of Trust and applicable law;
  - (j) satisfying the obligations, liabilities or indebtedness of the Trust; and
  - (k) undertaking all other usual and customary actions for the conduct of the activities of the Trust in the ordinary course as are approved by the Trustees from time to time, or as are contemplated by this Declaration of Trust,

provided that the Trust shall not undertake any activity, take any action or make or retain any investment which would result (or omit to take any action where such omission would result) in: (i) the Trust not being considered a "mutual fund trust" for purposes of the Tax Act; or (ii) the Trust Units being disqualified for investment by Plans.

## **ARTICLE 5 DISTRIBUTIONS**

### **5.1 Computation of Distributable Cash Flow**

- (a) The "**Cash Flow of the Trust**" for, or in respect of, any Distribution Period, shall be determined pursuant to the following provisions:
  - (i) the following amounts shall be included in the calculation:
    - (A) all amounts derived from the investment of the proceeds of the sale of Trust Units received by the Trust for and in respect of the Distribution Period, including, without limitation, distributions, interest, dividends, proceeds from the disposition of securities, returns of capital and repayments of indebtedness; and
    - (B) all amounts derived from the investment of the proceeds of the sale of Trust Units received by the Trust in any prior Distribution Period to the extent not previously distributed;
  - (ii) the following amounts shall be deducted in the calculation:
    - (A) all costs and expenses of the Trust, in the opinion of the Trustees, may reasonably be considered to have accrued and become owing in respect of, or which relate to, such Distribution Period or a prior Distribution Period if not accrued or deducted in determining the Cash Flow of the Trust in such prior period;
    - (B) all amounts which relate to the redemption of Trust Units and which have been paid or become payable in cash by the Trust in such Distribution Period;

- (C) all amounts to be paid in satisfaction of debt service obligations of the Trust on account of both principal and interest; and
  - (D) any amount that the Trustees may reasonably consider to be necessary to provide for the payment of any costs that have been or are reasonably expected to be incurred by the Trust, including any tax liabilities of the Trust;
- (iii) the net proceeds of the Offering or any other issuance of Trust Units or other securities, including debt securities, of the Trust and any associated expenses shall not be included in the calculations of Cash Flow of the Trust in respect of any Distribution Period.
- (b) The "**Distributable Cash Flow**" for, or in respect of, a Distribution Period shall be the Cash Flow of the Trust for such Distribution Period less any amount which the Trustees may reasonably consider to be necessary to provide for the payment of any costs which have been or will be incurred in the activities and operations of the Trust and to provide for the payments of any tax liability of the Trust (but excluding such amounts previously deducted in subsection 5.1(a)(ii)).

## 5.2

### Computation of Income and Net Realized Capital Gains

- (a) The "**Income of the Trust**" for any taxation year of the Trust shall be the net income for the year determined pursuant to the provisions of the Tax Act, other than subsection 104(6) thereof, having regard to the provisions thereof which relate to the calculation of taxable income of a trust, and taking into account such adjustments thereto as are determined by the Trustees in respect of dividends received from taxable Canadian corporations, amounts paid or payable by the Trust to Trust Unitholders and such other amounts as may be determined in the discretion of the Trustees; provided, however, that capital gains and capital losses shall be excluded from the computation of net income.
- (b) The "**Net Realized Capital Gains of the Trust**" for any taxation year of the Trust shall be determined as the amount, if any, by which the aggregate of the capital gains of the Trust calculated in accordance with the provisions of the Tax Act in the year exceeds the aggregate of (i) the aggregate of the capital losses of the Trust calculated in accordance with the provisions of the Tax Act in the year, (ii) the amount determined by the Trustees in respect of any net capital losses for prior taxation years which the Trust is permitted by the Tax Act to deduct in computing the taxable income of the Trust for the year, and (iii) any amount in respect of which the Trust is entitled to a capital gains refund under the Tax Act, as determined by the Trustees; provided that at the discretion of the Trustees, the Net Realized Capital Gains of the Trust for a year may be calculated without subtracting the full amount in respect of the net capital losses of the Trust carried forward from previous years.

## 5.3

### Distribution of Distributable Cash Flow

- (a) The Trust shall distribute on each Distribution Payment Date to Trust Unitholders of record as at the close of business on the applicable Distribution Record Date all of the Distributable Cash Flow of the Trust for the applicable Distribution Period. The proportionate share of each Trust Unit of the amount of such Distributable Cash Flow shall be determined by dividing such amount by the number of issued and outstanding Trust Units of all Series on such Distribution Record Date. Each Trust Unitholder's share of such Distributable Cash Flow shall be an amount equal to the proportionate share of

each Trust Unit of such Distributable Cash Flow multiplied by the number of Trust Units owned of record by each such Trust Unitholder on such Distribution Record Date.

- (b) Subject to section 5.7, any distribution which has been declared to be payable to Trust Unitholders in respect of a Distribution Period shall be paid as follows
  - (i) Series A and Series B Trust Unitholder's shall be paid in cash on the Distribution Payment Date in respect of such Distribution Period.
  - (ii) The proceeds of the Series C Trust Units will be invested in additional C Series Units on behalf of the Series C Trust Unitholder until maturity.

#### 5.4

##### Other Distributions

- (a) In addition to the distributions which are made payable to Trust Unitholders pursuant to section 5.3, the Trustees may declare to be payable and make distributions, from time to time, equally and on a pro-rata basis, among the Trust Unitholder's of all Series of Trust Units, out of Income of the Trust, Net Realized Capital Gains, the capital of the Trust or otherwise, in any year, in such amount or amounts, and on such dates as the Trustees may determine to persons who are Trust Unitholders at the record date determined by the Trustees for such distribution. For greater certainty, the Trustees may designate and make payable any income or capital gains realized by the Trust (including any income realized by the Trust on the redemption of Trust Units pursuant to section 6.3) to redeeming Trust Unitholders in accordance with that section.
- (b) Having regard to the intent of the Trust to allocate, distribute and make payable to Trust Unitholders all of the Income of the Trust, Net Realized Capital Gains and any other applicable amounts so that the Trust will not have any liability for tax under Part I of the Tax Act in any taxation year, the following amounts shall, without any further actions on the part of the Trustees, be due and payable on December 31 in each year to Trust Unitholders of record on December 31 in each such year:
  - (i) an amount equal to the amount, if any, by which the Income of the Trust for such year exceeds the aggregate of the portions, if any, of each distribution paid or payable by the Trust pursuant to section 5.3 and subsection 5.4(a) which have been determined by the Trustees, pursuant to section 5.5, to have been payable by the Trust out of Income of the Trust for such year and the amount of income treated as having been paid in the year pursuant to section 6.5; and
  - (ii) an amount equal to the amount, if any, by which the Net Realized Capital Gains of the Trust for such year exceeds the aggregate of the portions, if any, of each distribution paid or payable by the Trust pursuant to section 5.3 and subsection 5.4(a) which have been determined by the Trustees, pursuant to section 5.5, to have been payable by the Trust out of the Net Realized Capital Gains for such year and the amount of any capital gain treated as having been paid in the year pursuant to section 6.5.
- (c) The proportionate share of each Trust Unit of the amount of any distribution made pursuant to either or both of subsections 5.4(a) and (b) shall be determined by dividing such amount by the number of issued, and outstanding Trust Units on the applicable Distribution Record Date in respect of a distribution pursuant to subsection 5.4(a) and on December 31 in respect of a distribution pursuant to subsection 5.4(b). Each Trust Unitholder's share of the amount of any such distribution shall be an amount equal to the proportionate share of each Trust Unit of such amount multiplied by the number of Trust

Units owned of record by each such Trust Unitholder on such applicable Distribution Record Date or December 31 in the year of such distribution, as the case may be. Subject to section 5.7, amounts which have been declared to be payable to Trust Unitholders pursuant to subsection 5.4(a) shall be paid in cash on the Distribution Payment Date which immediately follows the applicable Distributable Record Date in respect of a distribution pursuant to subsection 5.4(a) and amounts which are payable to Trust Unitholders on December 31, in respect of a distribution pursuant to subsection (b) shall be payable on December 31 and shall be paid forthwith, and in no event later than January 15 of the following year, subject to section 5

#### **5.5 Character of Distributions and Designations**

In accordance with and to the extent permitted by the Tax Act and analogous provisions of any applicable provincial legislation, the Trustees in each year shall make designations and elections in respect of the amounts payable to Trust Unitholders for such amounts that the Trustees consider to be reasonable in all of the circumstances, including, without limitation, designations relating to taxable dividends received or deemed to be received by the Trust in the year on shares of taxable Canadian corporations, net capital gains realized by the Trust in the year and foreign source income of, or deemed foreign source income of, and foreign income taxes paid by, or deemed to have been paid by, the Trust for the year, as well as elections under subsections 104(13.1) and/or (13.2) of the Tax Act that income be taxed to the Trust, rather than to the Trust Unitholders. Distributions payable to Trust Unitholders pursuant to this Article 5, and to the extent required pursuant to section 6.5, shall be deemed to be distributions of Income of the Trust, Net Realized Capital Gains, trust capital or other items in such amounts as the Trustees shall, in their absolute discretion, determine. For greater certainty, it is hereby declared that any distribution of Net Realized Capital Gains shall include the non-taxable portion of the capital gains of the Trust which are encompassed in such distribution.

#### **5.6 Enforceability of Right to Receive Distributions**

For greater certainty, it is hereby declared that, subject to subsection 2.7(d), each Trust Unitholder shall have the legal right to enforce payment of any amount payable to such Trust Unitholder as a result of any distribution which is declared or made payable to such Trust Unitholder pursuant to this Article as of the date on which such amount becomes payable.

#### **5.7 Method of Payment of Distributions**

- (a) Pursuant to this Article, in the event that the Trustees determine that the Trust does not have available cash in an amount sufficient to make payment of the full amount of any distribution which has been declared to be payable to unitholder's entitled to cash distributions on the due date for such payment, the payment may, at the option of the Trustees, include the pro rata issuance of additional Trust Units, or fractions of Trust Units, if necessary, having a value equal to the difference between the amount of such distribution and the amount of cash which has been determined by the Trustee to be available for the payment of such distribution, subject to all necessary regulatory approvals (as defined in section 6.3).
- (b) The value of each Trust Unit which is issued pursuant to subsection 5.7(a) shall be the market price of the Trust Units (as defined in section 6.3) on the applicable Distribution Record Date in respect of a distribution pursuant to section 5.3, on the applicable Distribution Record Date in respect of a distribution under subsection 5.4(a) or on December 31 in respect of a distribution under subsection 5.4(b), provided that if the particular date is not a Business Day then the market price shall be determined on the last Business Day which precedes such particular date.

#### **5.8 Withholding Taxes**

The Trustees may deduct or withhold from distributions payable to any Trust Unitholder all amounts required by law to be withheld from such distributions, whether such distributions are in the form of cash, additional Trust Units or otherwise. In the event of a distribution in the form of additional Trust Units, the Trustees may sell Trust Units of such Trust Unitholder to pay such withholding taxes and to pay all of the Trustees' reasonable expenses with regard thereto and such Trust Unitholder shall be deemed to have granted to the Trustees, and the Trustees shall have, the power of attorney of such Trust Unitholder to do so. Any such sale shall be made on any stock exchange on which the Trust Units are then listed and upon such sale, the affected Trust Unitholder shall cease to be the holder of such Trust Units which are so sold.

#### **5.9 Tax Act Definitions**

Unless otherwise specified or the context otherwise requires, any term in this Article which is defined in the Tax Act shall have for the purposes of this Article the meaning that it has in the Tax Act.

#### **5.10 Distribution Reinvestment and Trust Unit Purchase Plan/Compensation Plans**

Subject to any required regulatory approvals (and any Trust Unitholder approval imposed by regulatory requirements), the Trustees may, acting in their sole discretion, establish one or more Trust Unitholder rights plans, distribution reinvestment plans, distribution reinvestment and Trust Unit purchase plans, Trust Unit option plans or other compensation plans for Trustees, management and employees of the Trust and Subsidiaries of the Trust at any time and from time to time.

#### **5.11 Payments of Cash**

Any payment of cash by the Trust to a Trust Unitholder pursuant to this Article 5 or any other provision of this Declaration of Trust will be conclusively deemed to have been made upon mailing of a cheque in a postage pre-paid envelope, addressed to the Trust Unitholder at the Trust Unitholder's address appearing in the Registers, unless such cheque is dishonoured upon presentment. Upon such payment, the Trust will be discharged from all liability to the Trust Unitholder in respect of such payment, provided, however, that if such cheque is lost or destroyed then, upon the presentation of evidence satisfactory to the Trustees of such loss or destruction, together with such indemnity as the Trustees may reasonably require, the Trust will issue a replacement cheque to the Trust Unitholder.

#### **5.12 Unclaimed Distributions**

In the event that the Trustees hold any distributable amount that is unclaimed or that cannot be paid for any reason, the Trustees will be under no obligation to invest or reinvest the same, but will only be obliged to hold the same in a current non-interest-bearing account pending payment, less applicable taxes, to the person or persons entitled thereto. The Trustees will, as and when required by law, and may at any time prior to such required time, pay all or part of such distributable amount so held to the appropriate government official or agency, whose receipt shall be a good and sufficient discharge and release of the Trustees.

### **ARTICLE 6 REDEMPTION**

#### **6.1 Right of Redemption by Trust Unitholders**

Each Trust Unitholder shall be entitled to require the Trust to redeem at any time or from time to time at the demand of the Trust Unitholder all or any part of the Trust Units registered in the name

of the Trust Unitholder at the prices determined and payable in accordance with the conditions hereinafter provided. The Trustees shall be entitled in their discretion to determine and designate whether any payments made in respect of any redemption are on account of income or capital.

**6.2 Exercise of Redemption Right**

- (a) To exercise a Trust Unitholder's right to require redemption under this Article 6, a duly completed and properly executed notice requiring the Trust to redeem Trust Units, in a form approved by the Trustees, shall be sent to the Trust at the head office of the Trust. No form or manner of completion or execution shall be sufficient unless the same is in all respects satisfactory to the Trustees and is accompanied by any further evidence that the Trustees may reasonably require with respect to the identity, capacity or authority of the person giving such notice.
- (b) Upon receipt by the Trust of the notice to redeem Trust Units, the Unitholder shall thereafter cease to have any rights with respect to the Trust Units tendered for redemption (other than to receive the redemption payment therefor) including the right to receive any distributions thereon which are declared payable to the Trust Unitholders of record on a date which is subsequent to the day of receipt by the Trust of such notice. Trust Units shall be considered to be tendered for redemption on the date that the Trust has, to the satisfaction of the Trustees, received the notice and other required documents or evidence as aforesaid.

**6.3 Cash Redemption**

- (a) Upon receipt by the Trust of the notice to redeem Trust Units in accordance with Section 6.2, the holder of the Trust Units tendered for redemption shall be entitled to receive a price per Trust Unit (hereinafter called the "Redemption Price") equal to the fair market value thereof as determined by the Trustees in their sole discretion acting reasonably.
- (b) Subject to Sections 6.4 and 6.5, the Redemption Price payable in respect of the Trust Units tendered for redemption during any month shall be paid by cheque, drawn on a Canadian chartered bank or a trust company in lawful money of the United States of America, payable at par to or to the order of the Trust Unitholder who exercised the right of redemption on or before the last day of the calendar month following the month in which the Trust Units were tendered for redemption. Payments made by the Trust of the Redemption Price are conclusively deemed to have been made upon the mailing of a cheque in a postage prepaid envelope addressed to the former Trust Unitholder and/or any party having a security interest unless such cheque is dishonoured upon presentment. Upon such payment, the Trust shall be discharged from all liability to the former Trust Unitholder in respect of Trust Units redeemed.

**6.4 No Cash Redemption in Certain Circumstances**

Section 6.3(b) shall not be applicable to Trust Units tendered for redemption by a Trust Unitholder, if the total amount payable by the Trust pursuant to Section 6.3 in respect of such Trust Units and all other Trust Units tendered for redemption prior thereto in the same calendar month exceeds \$50,000 ("Monthly Limit"); provided that the Trustees may, in their sole discretion, waive such limitation in respect of all Trust Units tendered for redemption in any calendar month. In the absence of such a waiver, Trust Units tendered for redemption in any calendar month in which the total amount payable by the Trust pursuant to Section 6.3(b) exceeds the Monthly Limit will be redeemed for cash pursuant to Section 6.3(b) and, subject to any applicable regulatory approvals, by a distribution in specie of securities held by the Trust under Section 6.5 on a pro rata basis.

## **6.5 In Specie Redemption**

If, pursuant to Section 6.4, Section 6.3(b) is not applicable to Trust Units tendered for redemption by a Trust Unitholder, the Redemption Price per Trust Unit specified in Section 6.3 to which the Trust Unitholder would otherwise be entitled shall, subject to receipt of all necessary regulatory approvals, be paid and satisfied, at the option of the Trust, by way of the issuance and delivery by the Trust to each holder of Units tendered for redemption who is not entitled to receive cash in respect thereof on the Redemption Date of:

- (i) a promissory note of any series as may be established by the Trust from time to time with such terms as the Trustees may determine in a principal amount equal to the Redemption Price as determined by the Trustees; or
- (ii) securities and/or obligations held by the Trust or any other assets of the Trust having a fair market value equal to the applicable Redemption Price as determined by the Trustees.

The Redemption Price payable pursuant to this Section 6.5 in respect of Trust Units tendered for redemption during any month shall, subject to receipt of all necessary regulatory approvals, be paid by the transfer, to or to the order of the Trust Unitholder who exercised the right of redemption, on the last day (the "Transfer Date") of the calendar month following the month in which the Trust Units were tendered for redemption, of the number of securities and/or obligations determined as aforesaid. The Trust shall be entitled to all interest paid or accrued and unpaid on the obligations being transferred and distributions paid on the securities being transferred to and including the Transfer Date. Payments by the Trust of the Redemption Price are conclusively deemed to have been made upon the mailing of such securities and/or obligations by registered mail in a postage prepaid envelope addressed to the former Trust Unitholder. Upon such payment, the Trust shall be discharged from all liability to the former Trust Unitholder in respect of the Trust Units so redeemed.

Where the Trust makes a distribution of securities and/or obligations on redemption of Trust Units as a result of the operation of Section 6.4 or 6.5, the Trustees shall determine the fair market value of the redeemed Trust Units and of the securities and/or obligations issued to satisfy the Redemption Price. Where the Trust makes a distribution of securities and/or obligations on a redemption of Trust Units pursuant to this subsection, the Trustees may, in their sole discretion, designate to the redeeming Trust Unitholders any capital gain realized by the Trust as a result of the distribution of such securities to the Trust Unitholder.

## **6.6 Cancellation of all Redeemed Trust Units**

All Trust Units which are redeemed under this Article 6 shall be cancelled and such Trust Units shall no longer be outstanding and shall not be reissued.

# **ARTICLE 7 TRUSTEES**

## **7.1 Number of Trustees**

There shall be a minimum of one (1) and a maximum of ten (10) Trustees. The number of Trustees within such minimum and maximum numbers may be changed by Trust Unitholders or by the Trustees, provided that the Trustees may not, between meetings of Trust Unitholders, appoint an additional Trustee if, after such appointment, the total number of Trustees would be greater than one and one third times the number of Trustees in office immediately following the last annual meeting of Trust Unitholders. In the event of any such increase, the Trust Unitholders or Trustees, as the case may be,



shall forthwith elect or appoint any such additional Trustee(s). Until otherwise so determined, the number of Trustees as of the initial Closing shall be three (3).

#### **7.2 Calling and Notice of Meetings**

Meetings of the Trustees shall be called and held at such time and at such place as the Trustees, the Chairman of the Trustees or any two Trustees may determine, and any one Trustee or officer of the Trust may give notice of meetings when directed or authorized by such persons. Notice of each meeting of the Trustees shall be given to each Trustee not less than 48 hours before the time when the meeting is to be held, provided that if a quorum of Trustees is present, the Trustees may without notice hold a meeting immediately following an annual meeting of Trust Unitholders. Notice of a meeting of the Trustees may be given verbally, in writing or by telephone, fax or other means of communication. A notice of a meeting of Trustees shall specify the nature of the business to be transacted at such meeting. A Trustee may in any manner or at any time waive notice of or otherwise consent to a meeting of Trustees. Attendance of a Trustee, in person or by telephone, at a meeting of Trustees shall constitute a waiver of notice of that meeting except where a Trustee attends for the express purpose of objecting to the transaction of any business on the grounds that the meeting has not been properly called. Notwithstanding the foregoing, the Trustees may by resolution from time to time fix a day or days in any month or months for regular meetings of the Trustees at a place and hour to be named, in which case, provided that a copy of such resolution is sent to each Trustee forthwith after being passed and forthwith after each Trustee's appointment, no other notice shall be required for any such regular meeting.

#### **7.3 Place of Meetings**

Meetings of the Trustees shall be held in Canada and may be held at any place in Canada. A Trustee who attends a meeting of Trustees, in person or by telephone, is deemed to have consented to the location of the meeting except when the Trustee attends the meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully held.

#### **7.4 Meetings by Telephone**

A Trustee may participate in a meeting of the Trustees or of a committee of the Trustees by means of telephone or other communication facilities that permit all persons participating in the meeting to hear each other provided that any telephone call or video conference call to permit the participation of a Trustee who is not physically present shall originate in Canada. A Trustee participating in such a meeting in such manner shall be considered present at the place of meeting.

#### **7.5 Quorum**

The quorum for the transaction of business at any meeting of the Trustees shall consist of a majority of the number of Trustees then holding office, and, notwithstanding any vacancy among the number of Trustees, a quorum of Trustees may exercise all of the powers of the Trustees, provided that a majority of the Trustees comprising such quorum shall not be Non-Residents. A Trustee who is a Non-Resident may appoint any other Trustee to act as his proxy at any meeting of Trustees and any such proxy shall vote as a separate Trustee and constitute attendance at the meeting for all purposes.

#### **7.6 Chairman**

The Chairman of the Trustees shall be chosen by the Trustees from among themselves. The chairman of any meeting of the Trustees shall be the Trustee present at the meeting who holds the office of Chairman of the Trustees or if such person is not present, the Trustees present shall choose one of their number to be chairman. The Chairman shall not be a Non-Resident.

**7.7 Action by the Trustees**

At all meetings of the Trustees every question shall be decided by a majority of the votes cast on the question. In the case of equality of votes, the chairman of the meeting shall not be entitled to a second or casting vote. The powers of the Trustees may be exercised by resolution passed at a meeting at which a quorum is present or without a meeting by resolution in writing signed by all Trustees who would be entitled to vote on that resolution at a meeting of the Trustees. Resolutions in writing may be signed in counterparts each of which shall be deemed to be an original and all originals together shall be deemed to be one and the same instrument.

**7.8 Adjourned Meeting**

Any meeting of Trustees may be adjourned from time to time by the chairman of the meeting with the consent of the meeting to a fixed time and place. Further notice of the adjourned meeting need not be given. The adjourned meeting shall be duly constituted if a quorum is present and if it is held in accordance with the terms of the adjournment. If there is not a quorum present at the adjourned meeting, the original meeting shall be deemed to have terminated upon its adjournment.

**7.9 Remuneration and Expenses**

The Trustees, other than a Trustee who is a full-time officer or employee of the Trust or any Wimberly Group Member, shall be paid such reasonable remuneration for their services as the Trustees may from time to time in good faith determine. The Trustees shall also be entitled to be reimbursed for reasonable traveling and other expenses properly incurred by them in attending meetings of the Trustees or any committee thereof or in connection with their services as Trustees. Nothing herein contained shall preclude any Trustee from serving the Trust in any other capacity and receiving remuneration therefor.

**7.10 Officers**

The Trustees from time to time may appoint one or more officers of the Trust, including a Chairman, Vice-Chairman of the Trust and, without prejudice to rights under any employment contract, may remove any officer of the Trust. The powers and duties of each officer of the Trust shall be those determined from time to time by the Trustees and, in the absence of such determination, shall be those usually applicable to the office held.

**ARTICLE 8  
APPOINTMENT, RESIGNATION AND REMOVAL OF THE TRUSTEES**

**8.1 Qualification of Trustees**

The following persons are disqualified from being a Trustee of the Trust:

- (a) anyone who is less than 18 years of age;
- (b) anyone who is of unsound mind and has been so found in accordance with the laws of any province in Canada or elsewhere;
- (c) a person who is not an individual; and
- (d) a person who has the status of bankrupt.

**8.2 Appointment of Trustees**

The Initial Unitholder hereby confirms the appointment of Douglas Law, Murray Eades and Mary LaRocca as Trustees for a term expiring (subject to further appointment) at the close of the first

annual meeting of Trust Unitholders except as otherwise provided in this Declaration of Trust, Trustees shall be appointed (including the reappointment of incumbent Trustees) at each annual meeting of Trust Unitholders, and may be appointed at a special meeting of Trust Unitholders, in each case to hold office, subject to section 8.5, for a term expiring at the close of the next annual meeting of Trust Unitholders following such an appointment. Any such appointment (other than by the Initial Trustee as contemplated by this section 8.2 or as contemplated by section 8.7) shall be made either by a resolution approved by a majority of the votes cast at a meeting of Trust Unitholders or shall be made by resolution in writing in the manner set out in section 12.12. Notwithstanding the foregoing:

- (a) if no Trustees are appointed at the annual meeting of Trust Unitholders held immediately before the term of office of the existing Trustees expires, such existing Trustees shall continue to hold the office of Trustees under this Declaration of Trust until successors have been appointed or they cease to hold office;
- (b) the Trustees may, prior to the first annual meeting of the Trust Unitholders and between annual meetings of the Trust Unitholders appoint one or more additional Trustees for a term to expire (subject to further appointment) at the close of the next annual meeting of Trust Unitholders, but the number of additional Trustees so appointed shall not at any time exceed one-third of the number of Trustees who held office at the date of this Declaration of Trust or at the expiration of the immediately preceding annual meeting of Trust Unitholders, as applicable; and
- (c) a majority of the Trustees holding office at any time shall not be Non-Residents;

### 8.3

#### Consent to Act

- (a) A person who is appointed a Trustee hereunder, other than the Trustees who are appointed pursuant to section 8.2, shall not become a Trustee until the person has, either before or after such appointment, executed and delivered to the Trust a consent substantially as follows:

"To: First Leaside Fund (the "Trust")  
And to: The Trustees thereof

The undersigned hereby consents to act as a Trustee of the Trust and hereby agrees, upon the later of the date of this consent and the date of the undersigned's appointment as a Trustee of the Trust, to thereby become a party, as a Trustee, to the Declaration of Trust made as of the 6th day of October, 2005, as amended from time to time, constituting the Trust.

Dated: \_\_\_\_\_

\_\_\_\_\_  
[Signature]

\_\_\_\_\_  
[Print Name]

- (b) Upon the later of a person being appointed a Trustee hereunder and executing and delivering to the Trust a consent substantially as set forth in subsection 8.3(a), such person shall become a Trustee hereunder and shall be deemed to be a party (as a Trustee) to this Declaration of Trust, as amended from time to time.

#### **8.4 Failure to Appoint Minimum Number of Trustees**

If a meeting of Trust Unitholders fails to appoint the number of Trustees required by this Declaration of Trust, by reason of the disqualification or death of any nominee, the Trustees appointed at the meeting may, subject to section 7.5 and section 8.1, exercise all of the powers of the Trustees if the number of Trustees so appointed constitutes a quorum.

#### **8.5 Ceasing to Hold Office**

A Trustee ceases to hold office when:

- (a) he dies or resigns;
- (b) he is removed in accordance with section 8.6; or
- (c) he ceases to be duly qualified to act as a Trustee as provided under section 8.1.

A resignation of a Trustee becomes effective 30 days from the time a written resignation is sent to the Trust, or at the time specified in the resignation, whichever is later, provided that if, upon the resignation becoming effective, the number of remaining Trustees would be less than the number necessary to constitute a quorum for a meeting of Trustees, the resignation is not effective until the resigning Trustee's successor is duly appointed as a Trustee.

Upon a Trustee ceasing to hold office as such hereunder, such Trustee shall cease to be a party (as a Trustee) to this Declaration of Trust; provided, however, that such Trustee shall continue to be entitled to be paid any amounts owing by the Trust to the Trustee and to the benefits of the indemnity provided in section 9.10. Upon the resignation or removal of any Trustee, or upon a Trustee otherwise ceasing to be a Trustee, the Trustee shall cease to have the rights, privileges and powers of a Trustee hereunder, shall execute and deliver such documents as the remaining Trustees shall reasonably require for the conveyance of any Trust property held in that Trustee's name, shall account to the remaining Trustees as they may reasonably require for all property which that Trustee holds as Trustee, shall resign from all representative or other positions held by such Trustee on behalf of the Trust, including as a director or officer of any person in which the Trust owns any securities (directly or indirectly) and shall thereupon be discharged as Trustee. Upon the incapacity or death of any Trustee, his legal representative shall execute and deliver on his behalf such documents as the remaining Trustees may reasonably require as provided in this section 8.5. In the event that a Trustee or his legal representatives, as applicable, are unable or unwilling to execute and deliver such required documents, each of the remaining Trustees is hereby appointed as the attorney of such Trustee for the purposes of executing and delivering such required documents. This power of attorney granted to each of the remaining Trustees is not intended to be a continuing power of attorney within the meaning of the Substitute Decisions Act, 1992 (Ontario), exercisable during a Trustee's incapacity to manage property, or any similar power of attorney under equivalent legislation in any of the provinces or territories of Canada (a "CPOA"). The execution of this power of attorney will not terminate any CPOA granted by the Trustee previously and will not be terminated by the execution by the Trustee in the future of a CPOA, and the Trustee hereby agrees not to take any action in future which results in the termination of this power of attorney.

If a Trustee ceases to hold office for any reason, and such cessation results in the board of Trustees having a majority of Trustees who are Non-Residents, the Trustees will, as soon as possible, fill the vacancy in accordance with section 8.7 in order that a majority of Trustees shall not be Non-Residents, and if necessary, one or more Trustees who are Non-Residents, to be determined by the Trustees, shall resign (temporarily or otherwise) so that a majority of Trustees shall not be Non-Residents.

#### **8.6 Removal of Trustees**

The Trust Unitholders may remove any Trustee or Trustees from office, by resolution approved by a majority of the votes cast at a meeting of Trust Unitholders called for that purpose. The Trustees may remove any Trustee from office for cause, by resolution approved by a majority of at least two-thirds of the other Trustees. A vacancy created by the removal of a Trustee may be filled at the meeting of Trust Unitholders at which the Trustee is removed or, if not so filled, may be filled as set forth in section 8.7.

#### **8.7 Filling Vacancies**

A quorum of Trustees may fill a vacancy among the Trustees, except a vacancy resulting from an increase in the number of Trustees or from a failure to appoint any minimum number of Trustees fixed by or pursuant to this Declaration of Trust. If there is not a quorum of Trustees, or if there has been a failure to elect the minimum number of Trustees required by or pursuant to this Declaration of Trust, the Trustees then in office shall forthwith call a special meeting of Trust Unitholders to fill the vacancy and, if they fail to call a meeting or if there are no Trustees then in office, the meeting may be called by any Trust Unitholder. A Trustee appointed to fill a vacancy holds office, subject to section 8.5, until the close of the next annual meeting of the Trust Unitholders. The rights of the Trustees to control and exclusively administer the Trust and to have the title to the Trust Assets registered in their names or in the name of any other successor and all other rights of the Trustees at law shall vest automatically in any person who may hereafter become a Trustee upon such person's due appointment and qualification without any further act and such person shall thereupon have all the rights, privileges, powers, authorities, obligations and immunities of a Trustee hereunder whether or not conveyancing documents have been executed and delivered pursuant to section 8.5 or otherwise.

#### **8.8 Validity of Acts**

Any act of a Trustee is valid notwithstanding any irregularity in the appointment of the Trustees or any one of them or a defect in the qualifications of the Trustees or any one of them.

### **ARTICLE 9 CONCERNING THE TRUSTEES**

#### **9.1 Powers of the Trustees**

Subject to the terms and conditions of this Declaration of Trust, the Trustees may exercise from time to time in respect of the Trust Assets and the investments and affairs of the Trust any and all rights, powers and privileges that could be exercised by a legal and beneficial owner thereof.

Subject to the specific limitations contained in this Declaration of Trust, the Trustees shall have, without further or other action or consent, and free from any power or control on the part of the Trust Unitholders, full, absolute and exclusive power, control and authority over the Trust Assets and over the affairs of the Trust to the same extent as if the Trustees were the sole and absolute beneficial owners of the Trust Assets in their own right, to do all such acts and things as in their sole judgment and discretion are necessary or incidental to, or desirable for, carrying out the trust created hereunder. In construing the provisions of this Declaration of Trust, the presumption shall be in favour of the powers and authority granted to the Trustees. The enumeration of any specific power or authority herein (including pursuant to section 9.2) shall not be construed as limiting the general powers or authority or any other specified power or authority conferred herein on the Trustees. To the maximum extent permitted by law, the Trustees shall, in carrying out investment activities, not be in any way restricted by the provisions of the laws of any jurisdiction limiting or purporting to limit investments which may be made by trustees. Without limiting the generality of the foregoing, but subject to section 4.1 and the other

express limitations contained in this Declaration of Trust, the Trustees may make any investments without being required to adhere to all of or any particular portion of the investment criteria or diversification requirements set forth in the *Trustee Act* (Ontario), as amended from time to time, and to delegate management and authority to discretionary managers of investment funds as the Trustees, in their discretion, determine appropriate.

## **9.2 Specific Powers and Authorities**

Subject only to the express limitations contained in this Declaration of Trust and in addition to any other powers and authorities conferred by this Declaration of Trust or which the Trustees may have by virtue of any present or future statute or rule of law, the Trustees, without any action or consent by the Trust Unitholders, shall have and may exercise at any time and from time to time the following powers and authorities, which may or may not be exercised by the Trustees in such manner and upon such terms and conditions as they may from time to time determine proper:

- (a) to supervise the activities and manage the investments and affairs of the Trust, and without limitation, to do all such other acts and things in their supervisory and management role as they believe to be consistent with the Governance Guidelines;
- (b) to maintain records and provide reports to Trust Unitholders;
- (c) to collect, sue for and receive all sums of money due to the Trust;
- (d) to open, operate and close bank accounts and other similar credit, deposit and banking arrangements and to negotiate and sign banking and financing contracts and agreements;
- (e) to determine conclusively the allocation to capital, income or other appropriate accounts of all receipts, expenses, disbursements and property of the Trust;
- (f) to make or cause to be made application for the listing or quotation on any stock exchange or market of any Trust Units or any other securities issued from time to time by the Trust, and to do all things which in the opinion of the Trustees may be necessary or desirable to effect or maintain such listing or listings or quotation;
- (g) to determine conclusively the value of any or all of the Trust Assets from time to time and, in determining such value, to consider such information and advice as the Trustees in their sole judgment, may deem material and reliable;
- (h) to sell, transfer, assign, exchange, convey, lease, or otherwise dispose of any part of the Trust Assets in any manner;
- (i) to enter into any agreement or instrument (including any firm or best efforts underwriting agreement) to create, issue or provide for the issue of Trust Units, or other securities of the Trust, including instalment receipts, securities convertible into or exchangeable or exercisable for Trust Units or other securities of the Trust or other rights, warrants, receipts or options convertible into or exchangeable or exercisable for Trust Units or other securities of the Trust (including debt securities, debt securities convertible into or exchangeable or exercisable for Trust Units or other securities of the Trust), for such consideration as the Trustees, in their sole discretion, may deem appropriate and to do such things and prepare and sign such documents, including a prospectus, an offering memorandum or any similar document and any registration rights agreement, to qualify such Trust Units, or other securities of the Trust for sale in whatever jurisdictions they will be sold or offered for sale;
- (j) to effect payment of distributions to the Trust Unitholders as provided in Article 5;
- (k) to invest and reinvest funds of the Trust as provided in Article 4;

- (l) to ensure that, if the Trustees become aware by written notice that the beneficial owners of 49% of the Trust Units are, or may be, Non-Residents or that such situation is imminent, the limitations on ownership by Non-Residents as provided in section 13.5 are met;
- (m) to possess and exercise all the rights, powers and privileges pertaining to the ownership of the securities of any Wimberly Group Member owned by the Trust, to the same extent that an individual might, unless otherwise limited herein, and, without limiting the generality of the foregoing, to vote or give any consent, request or notice, or waive any notice, either in person or by proxy or power of attorney, with or without power of substitution, to one or more persons, which proxies and powers of attorney may be for meetings or actions generally or for any particular meeting or action and may include the exercise of discretionary power;
- (n) where reasonably required, to engage or employ on behalf of the Trust any persons as agents, representatives, employees or independent contractors (including, without limitation, investment advisors, registrars, underwriters, accountants, lawyers, appraisers, brokers or otherwise) in one or more capacities;
- (o) except as provided in this Declaration of Trust and as prohibited by law, to delegate any of the powers and duties of the Trustees to any one or more agents, representatives, officers, employees, independent contractors or other persons without liability to the Trustees;
- (p) to engage in, intervene in, prosecute, join, defend, compromise, abandon or adjust, by arbitration or otherwise, any actions, suits, disputes, claims, demands or other litigation or proceedings, regulatory or judicial, relating to the Trust, the Trust Assets or the Trust's affairs, to enter into agreements therefor, whether or not any suit or proceeding is commenced or claim asserted and, in advance of any controversy, to enter into agreements regarding the arbitration, adjudication or settlement thereof;
- (q) to cause legal title to any of the Trust Assets to be held by and/or in the name of one or more Trustees or, except as prohibited by law, by and/or in the name of the Trust or any other custodian or person, on such terms, in such manner, with such powers in such person as the Trustees may determine and with or without disclosure that the Trust or the Trustee is interested therein; provided, however, that should legal title to any of the Trust Assets be held by and/or in the name of any person or persons other than a Trustee or the Trust, the Trustees shall require such person or persons to execute a trust agreement acknowledging that legal title to such assets is held in trust for the benefit of the Trust;
- (r) to negotiate, make, execute, acknowledge and deliver any and all deeds, instruments, contracts, waivers, releases or other documents necessary or useful for the accomplishment of any of the powers herein granted, for the purpose of the Trust or for its assets or affairs, including without limitation, to enter into contracts, obligations and other agreements for a term extending beyond the term of office of the Trustees and beyond the possible termination of the Trust or for a lesser term, and to perform all of the obligations of the Trust thereunder;
- (s) to perform the obligations of the Trust under agreements to which it is a party and to exercise any rights granted to it under such agreements;
- (t) to approve the adoption of a Trust Unitholders rights plan, if the Trustees determine in good faith that such action is appropriate, including to issue or redeem rights and Trust Units in connection with such plan;

- (u) to use their best efforts to ensure that (i) the Trust qualifies at all times as a "mutual fund trust" pursuant to subsection 132(6) of the Tax Act; and (ii) that the Trust Units will not be disqualified for investment by Plans;
- (v) in addition to the mandatory indemnification provided for in section 9.9 to the extent permitted by law to indemnify, or enter into agreements with respect to the indemnification of, any person with whom the Trust has dealings including, without limitation, the Trustees, the Depository, Transfer Agent or escrow agent, to such extent as the Trustees shall determine;
- (w) with the approval or confirmation of the Trust Unitholders to enact and from time to time amend or repeal by-laws not inconsistent with this Declaration of Trust containing provisions relating to the Trust, the Trust Assets and the conduct of the affairs of the Trust, but not in conflict with any provision of this Declaration of Trust;
- (x) to purchase securities issued by the Trust, including Trust Units for cancellation in accordance with the provisions of this Declaration of Trust and applicable law;
- (y) to issue any type of debt securities or convertible debt securities and to borrow money or incur any other form of indebtedness for the purpose of carrying out the purposes of the Trust or for other expenses incurred in connection with the Trust and for such purposes may draw, make, execute and issue promissory notes and other negotiable and non-negotiable instruments or securities and evidences of indebtedness, secure the payment of sums so borrowed or indebtedness incurred and mortgage, pledge, assign or grant a security interest in any money owing to the Trust or engage in any other means of financing the Trust;
- (z) to pay all taxes or assessments, of whatever kind or nature, whether within or outside Canada, imposed upon or against the Trustees in connection with the Trust Assets, undertaking or income of the Trust, or imposed upon or against the Trust Assets, undertaking or income of the Trust, or any part thereof and to settle or compromise disputed tax liabilities and for the foregoing purposes to make such returns, take such deductions, and make such designations, elections and determinations in respect of Income of the Trust or Net Realized Capital Gains distributed to Trust Unitholders in the year and any other matter as shall be permitted under the Tax Act (provided that to the extent necessary the Trustees will seek the advice of Counsel or the Auditors), and do all such other acts and things as may be deemed by the Trustees in their sole discretion to be necessary, desirable or convenient;
- (aa) to satisfy the obligations, liabilities and indebtedness of the Trust;
- (bb) to vote in favour of the Trust's nominees to serve as trustees or directors, as applicable, of any Wimberly Group Member;
- (cc) to guarantee (as guarantor, surety or co-principal obligor) the payment of any indebtedness, liability or obligation of any Wimberly Group Member and to mortgage, pledge, charge, grant a security interest in or otherwise encumber all or any part of the Trust Assets;
- (dd) to appoint one or more additional Trustees between annual meetings of Trust Unitholders to serve until close of the next annual meeting of Trust Unitholders, but not to appoint additional Trustees if at any time the additional trustees exceed one-third of the number of Trustees who held office at the expiration of the immediately preceding annual meeting of the Trust Unitholders; and



- (ee) to do all such other acts and things as are incidental to the foregoing, and to exercise all powers which are necessary or useful to carry on the purposes and activities of the Trust, as enumerated in section 4.1, to promote any of the purposes for which the Trust is formed, as enumerated in section 4.1, and to carry out the provisions of this Declaration of Trust.

### **9.3 Banking**

The banking activities of the Trust, or any part thereof, including, but without restricting the generality of the foregoing, the operation of the Trust's accounts; the making, signing, drawing, accepting, endorsing, negotiation, lodging, depositing or transferring of any cheques, promissory notes, drafts, acceptances, bills of exchange and orders for the payment of money; the giving of receipts for orders relating to any property of the Trust; the execution of any agreement relating to any property of the Trust; the execution of any agreement relating to any such banking activities and defining the rights and powers of the parties thereto; and the authorizing of any officer of such banker to do any act or thing on the Trust's behalf to facilitate such banking activities, shall be transacted with such bank, trust company, or other firm or corporation carrying on a banking business as the Trustees may designate, appoint or authorize from time to time and shall be transacted on the Trust's behalf by one or more officers of the Trust, Master LP or such other Wimberly Group Member(s) as the Trustees may designate, appoint or authorize from time to time.

### **9.4 Standard of Care and Duties**

The Trustees shall act honestly and in good faith with a view to the best interests of the Trust and the Trust Unitholders and in connection therewith shall exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. The Trustees shall not be liable in carrying out their duties under this Declaration of Trust except in cases where the Trustees fail (a) to act honestly and in good faith with a view to the best interests of the Trust Unitholders and the Trust, or (b) to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. The duties and standard of care of the Trustees provided as aforesaid are intended to be similar to, and not to be any greater than, those imposed on a director of a corporation governed by the *Business Corporations Act* (Ontario). Unless otherwise required by law, the Trustees shall not be required to give bond, surety or security in any jurisdiction for the performance of any duties or obligations hereunder. The Trustees shall not be required to devote their entire time to the investments or business or affairs of the Trust.

### **9.5 Fees and Expenses**

As part of the expenses of the Trust, the Trustees may pay or cause to be paid out of the Trust Assets, reasonable fees, costs and expenses incurred in connection with the administration and management of the Trust, including (without limitation) fees of auditors, accountants, lawyers, appraisers and other agents, consultants and professional advisors employed by or on behalf of the Trust and the cost of reporting or giving notices to Trust Unitholders. All costs, charges and expenses properly incurred by the Trustees on behalf of the Trust may be payable out of the Trust Assets.

### **9.6 Limitations on Liability of Trustees**

- (a) Subject to section 9.4, none of the Trustees nor the officers nor any employee or agent of the Trust shall be liable to any Trust Unitholder for any action taken in good faith in reliance on any documents that are, prima facie, properly executed; for any depreciation of, or loss to, the Trust incurred by reason of the sale of any security or other property; for the loss or disposition of monies or securities; or for any other action or failure to act including, without limitation, the failure to compel in any way any former Trustee to redress any breach of trust or any failure by any person to perform obligations or pay

monies owed to the Trust, except for a breach of the standard of care, diligence and skill as set out in section 9.4. If the Trustees have retained an appropriate expert or advisor with respect to any matter connected with their duties under this Declaration of Trust, the Trustees may act or refuse to act based on the advice of such expert or advisor and, notwithstanding any provision of this Declaration of Trust, including, without limitation, the standard of care, diligence and skill set out in section 9.4 hereof, the Trustees shall not be liable for any action or refusal to act based on the advice of any such expert or advisor which it is reasonable to conclude is within the expertise of such expert or advisor to give.

- (b) Subject to section 9.4, none of the Trustees nor the officers nor any employee or agent of the Trust shall be subject to any liability whatsoever in tort, contract or otherwise, in connection with Trust Assets or the affairs of the Trust, including, without limitation, in respect of any loss or diminution in value of any Trust Assets, to the Trust or to the Trust Unitholders or Annuitants or to any other person for anything done or permitted or omitted to be done by the Trustees. The Trustees shall not be subject to any personal liability for any debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses against or with respect to the Trust arising out of anything done or permitted or omitted to be done in respect of the execution of the duties of the office of Trustees for or in respect to the affairs of the Trust. No property or assets of the Trustees, owned in their personal capacity or otherwise, will be subject to any levy, execution or other enforcement procedure with regard to any obligations under this Declaration of Trust or under any other related agreements. No recourse may be had or taken, directly or indirectly, against the Trustees in their personal capacity or against any incorporator shareholder, director, officer, employee or agent of the Trustees or any successor of the Trustees. The Trust shall be solely liable therefor and resort shall be had solely to the Trust Assets for payment or performance thereof.

#### **9.7 Indemnification of Trustees**

Each Trustee, each former Trustee, each officer of the Trust and each former officer of the Trust shall be entitled to be and shall be indemnified and reimbursed out of the Trust Assets in respect of any and all taxes, penalties or interest in respect of unpaid taxes or other governmental charges imposed upon the Trustee or officer in consequence of his performance of his duties hereunder and in respect of any and all costs, charges and expenses, including amounts paid to settle an action or satisfy a judgment, reasonably incurred in respect of any civil, criminal or administrative action or proceeding to which the Trustee, former Trustee, officer or former officer is made a party by reason of being or having been a Trustee or officer of the Trust or, at the request of the Trust, a trustee, director, officer or manager of any Subsidiary thereof; provided that a Trustee, former Trustee, officer or former officer shall not be indemnified out of the Trust Assets in respect of unpaid taxes or other governmental charges or in respect of such costs, charges and expenses that arise out of or as a result or in the course of his or her failure to act honestly and in good faith with a view to the best interests of the Trust and the Trust Unitholders (or, in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, where such Trustee did not have reasonable grounds to believe that his or her conduct was lawful). A Trustee, former Trustee, officer or former officer shall not be entitled to satisfy any right of indemnity or reimbursement granted herein, or otherwise existing under law, except out of the Trust Assets, and no Trust Unitholder or other Trustee or officer shall be personally liable to any person with respect to any claim for such indemnity or reimbursement as aforesaid.

#### **9.8 Contractual Obligations of the Trust**

In respect of any obligations or liabilities being incurred by the Trust or the Trustees on behalf of the Trust, the Trustees and the Trust shall make all reasonable efforts to include in any written

instrument which is, in the judgment of the Trustees, a material obligation as a specific term of such obligations or liabilities a contractual provision or be subject to an acknowledgement to the effect that the obligation being created is not personally binding upon and that resort shall not be had to, nor shall recourse or satisfaction be sought from, by way of lawsuit or otherwise, the private property of any of the Trustees, Trust Unitholders, Annuitants or officers, employees or agents of the Trust, but that only property of the Trust or a specific portion thereof shall be bound. The Trust, however, is not required, but shall use all reasonable efforts, to comply with this requirement in respect of obligations assumed by the Trust upon the acquisition of real property. The omission of such statement from any such document or instrument shall not render the Trustees or the Trust Unitholders or Annuitants liable to any person, nor shall be Trustees or the Trust Unitholders or Annuitants be liable for such omission. If, notwithstanding this provision, the Trustees or any Trust Unitholder or Annuitant shall be held liable to any person by reason of the omission of such statement from any such agreement, undertaking or obligation such Trustee or Trust Unitholder shall be entitled to indemnity and reimbursement out of the Trust's property to the full extent of such liability.

#### **9.9 Conflicts of Interest**

- (a) A Trustee or any officer of the Trust who is a party to, or is a director or officer of or has a material interest in any person who is a party to, a material contract or transaction or proposed material contract or transaction with the Trust shall disclose in writing to the Trust the nature and extent of such interest and shall not vote on any resolution to approve the contract, unless the contract is one relating primarily to remuneration as a Trustee or officer, one for indemnity or insurance or one with any Wimberly Group Member and, for greater certainty, a Trustee complying with this Section 9.9 shall not be subject to any liability to the Trust or the Unitholders with respect to such material contract or proposed material contract as aforesaid.
- (b) Subject to Subsection 9.9(a), each Trustee, in his or her personal capacity or any other capacity, may buy, sell, lend upon and deal in securities of the Trust or any Wimberly Group Member and generally may contract and enter into any transactions with the Trust or any Wimberly Group Member without being liable to account for any profit made thereby and such contract or transaction shall be neither void nor voidable.

#### **9.10 Conditions Precedent**

The obligation of the Trustees to commence or continue any act, action, suit or proceeding or to represent the Trust in any action, suit or proceeding shall be conditional upon sufficient funds being available to the Trustees from the Trust Assets to commence or continue such act, action, suit or proceeding or to represent the Trust in any action, suit or proceeding and an indemnity reasonably satisfactory to the Trustees to protect and hold harmless the Trustees against the costs, charges and expenses and liabilities to be incurred therein and any loss and damage they may suffer by reason thereof. None of the provisions contained in this Declaration of Trust shall require the Trustees to expend or risk their own funds or otherwise incur financial liability in the performance of their duties or in the exercise of any of their rights or powers unless they are given an indemnity and funding satisfactory to the Trustees, acting reasonably.

#### **9.11 Reliance Upon Trustees and Officers**

Any person dealing with the Trust in respect of any matters pertaining to the Trust Assets and any right, title or interest in the Trust Assets or to the Trust or to securities of the Trust shall be entitled to rely on a certificate, statutory declaration or resolution executed or certified by the Trustees or any officer of the Trust appointed by the Trustees as to the capacity, power and authority of the Trustees or any other person to act for and on behalf and in the name of the Trust. No person dealing with the

Trustees or officers of the Trust shall be bound to see the application of any funds or property passing into the hands or control of the Trustees or officers of the Trust. The receipt of the Trustees or officers of the Trust for monies or other consideration shall be binding upon the Trust.

**9.12 Execution of Instruments**

- (a) The Trustees shall have the power, from time to time, to appoint any Trustee or Trustees, any officer or officers of the Trust or any other person or persons on behalf of the Trust to sign agreements, instruments or other documents in writing and to do such acts and agree to such things, on behalf of the Trust, as may be necessary or desirable in connection therewith.
- (b) No purchaser, transfer agent or other person dealing with the Trustees or with any officer of the Trust or agent of the Trustees will be bound to make any enquiry concerning the validity of any transaction purporting to be made by the Trustees or by such officer or agent or make enquiry concerning, or be liable for, the applicable money or property paid, lent or delivered to or on the order of the Trustees or such officer, employee or agent. Any person dealing with the Trust in respect of any matters pertaining to the Trust Assets and any right, title, or interest therein, or to the Trust or the Trust Units will be entitled to rely on a certificate, statutory declaration or resolution executed or certified by the Trustees as to the capacity, power and authority of the Trustees, any consultant or agent or any other person to act for and on behalf and in the name of the Trust. No person dealing with the Trustees or any consultant or agent of the Trust will be bound to see to the application of any funds or property passing into the hands or control of such Trustees, consultant or agent of the Trust. The receipt of the Trustees or of authorized consultants or agents of the Trust, for money or other consideration, will be binding upon the Trust.

**ARTICLE 10  
COMMITTEES OF TRUSTEES**

**10.1 Delegation**

Except as prohibited by law, the Trustees may appoint from among their number one or more committees of Trustees and may delegate to any such committee any of the powers of the Trustees, provided that a majority of the Trustees appointed to any committee shall be Residents and provided further that, for greater certainty, any such committee shall not take any action or engage in any activity that the Trustees would be prohibited from taking or engaging in pursuant to the terms of this Declaration of Trust. The Trustees shall have the power to appoint, employ or contract with any person for any matter relating to the Trust or its assets or affairs.

**10.2 Procedure**

Unless otherwise determined by the Trustees, a quorum for meetings of any committee shall be a majority of its members. Each committee shall have the power to appoint its chairman and to delineate the duties and responsibilities of such chairman. The rules for calling (including, for greater certainty, the giving of notice), location, holding, conducting, participating in, voting at and adjourning meetings of the committee shall be the same as those governing meetings of the Trustees. Each member of a committee shall serve at the pleasure of the Trustees and, in any event, only so long as he shall be a Trustee. The Trustees may fill vacancies in a committee by appointment from among their members. Provided that a quorum is maintained, the committee may continue to exercise its powers notwithstanding any vacancy among its members.

## **ARTICLE 11 AMENDMENT**

### **11.1 Amendment**

The provisions of this Declaration of Trust, except where specifically provided otherwise, may only be amended by the Trustees with the consent of the Trust Unitholders by Special Resolution; provided that the provisions of this Declaration of Trust may be amended by the Trustees at any time and from time to time without the consent, approval or ratification of the Trust Unitholders or any other person:

- (a) prior to the first Closing;
- (b) at any time for the purpose of ensuring continuing compliance with applicable laws (including the Tax Act), regulations, requirements or policies of any governmental authority having jurisdiction over the Trustees or the Trust or the distribution of Units (including ensuring that the Trust continues to qualify as a "mutual fund trust" within the meaning of the Tax Act and that the Trust Units are not disqualified for investment by Plans);
- (c) at any time for the purpose of making amendments which, in the opinion of counsel to the Trustees, provide additional protection or added benefits for the Trust Unitholders;
- (d) at any time for the purpose of removing any conflicts or inconsistencies in this Declaration of Trust or making minor changes or corrections, including the corrections or rectifications of any ambiguities, defective provisions, errors, mistakes or omissions which are, in the opinion of the Trustees, necessary or desirable and not prejudicial to the Trust Unitholders; or
- (e) after the first Closing for the purpose of:
  - (i) making amendments which, in the opinion of the Trustees, are necessary or desirable as a result of changes in generally accepted accounting principles (including accounting guidelines) or taxation or other laws or the administration or enforcement thereof;
  - (ii) enabling the Trust to issue Trust Units for which the purchase price is payable in instalments; or
  - (iii) any purpose (except one in respect of which a Unitholder vote is specifically otherwise required) if the Trustees are of the opinion that the amendment is not prejudicial to Trust Unitholders and it is necessary or desirable,

but, notwithstanding the foregoing, no such amendment: (i) shall be adopted which causes (A) the Trust to fail or cease to qualify as a "mutual fund trust" under the Tax Act, or (B) the Trust Units to be disqualified for investment by Plans; or (ii) shall (A) modify the right to one vote per Trust Unit or reduce the fractional undivided interest in the Trust Assets represented by any Trust Unit without the consent of the holder of such Trust Unit, or (B) reduce the percentage of votes required to be cast at a meeting of the Trust Unitholders for the purpose of section 11.1 without the consent of all Trust Unitholders.

### **11.2 No Termination**

No amendment to or amendment and restatement of this Declaration of Trust, whether pursuant to this Article 11 or otherwise, shall be construed as a termination of the Trust and the settlement or establishment of a new trust.

### **11.3 Notification of Amendment**

As soon as shall be practicable after the making of any amendment pursuant to this Article 11, the Trustees shall furnish written notification of the substance of such amendment to each Trust Unitholder.

## **ARTICLE 12 MEETINGS OF TRUST UNITHOLDERS**

### **12.1 Annual and Special Meetings of Trust Unitholders**

- (a) Annual meetings of the Trust Unitholders shall be called, commencing in 2007, no later than [June 30] on a date in each year (on or before the date which is 6 months after the fiscal year end of the Trust), at a time and at a place in Canada set by the Trustees. The business transacted at such meetings shall include the presentation of the audited financial statements of the Trust for the immediately preceding fiscal year, the appointment of the Trustees ~~for the ensuing year in accordance with Article 8~~, the appointment of Auditors and the transaction of such other business as Trust Unitholders may be entitled to vote upon as hereinafter provided in this Article 12 or as the Trustees may determine. Special meetings of the Trust Unitholders may be called at any time by the Trustees.
- (b) Special Meetings shall be called by the Trustees upon a written request of Trust Unitholders holding in the aggregate not less than 10% of the Trust Units then outstanding, such request specifying in reasonable detail the business proposed to be transacted at the meeting, unless:
  - (i) a record date for a meeting of the Trust Unitholders has been fixed and notice thereof has been given;
  - (ii) the Trustees have called a meeting of the Trust Unitholders and have given notice thereof pursuant to section 12.2; or
- (c) in connection with the business as stated in the requisition:
  - (i) it clearly appears to the Trustees, acting reasonably, that the matter covered by the requisition is submitted by the Trust Unitholders primarily for the purpose of enforcing a personal claim or redressing a personal grievance against the Trust, the Trustees, the officers of the Trust or its security holders, or primarily for the purpose of promoting general economic, political, racial, religious, social or similar causes;
  - (ii) it clearly appears to the Trustees, acting reasonably, that the matter covered by the requisition does not relate in a significant way to the business or affairs of the Trust;
  - (iii) the Trust, at the Trust Unitholder's request, included a matter covered by a requisition in an information circular relating to a meeting of Trust Unitholders held within two years preceding the receipt of such request, and the Trust Unitholder failed to present the matter, in person or by proxy, at the meeting;
  - (iv) substantially the same matter covered by the requisition was submitted to Trust Unitholders in an information circular (including a dissident's information circular) relating to a meeting of Trust Unitholders held within two years

preceding the receipt of the Trust Unitholder's request and the matter covered by the requisition did not receive more than 3% of the total number of Trust Units voted; or

- (v) the rights conferred by this section 12.1 are being abused to secure publicity.

Subject to the foregoing, if the Trustees do not within 21 days after receiving the requisition call a meeting, any Trust Unitholder who signed the requisition may call the meeting in accordance with the provisions of this Article 12.

- (d) The chairperson of any annual or special meeting shall be the Chairman of the Trustees or in his absence, any other Trustee specified by resolution of the Trustees or, in the absence of any Trustee, any person appointed as chairperson of the meeting by the Trust Unitholders present. The chairperson of the meeting shall appoint the Secretary of the Trust or, in the absence of the Secretary, an individual, who need not be a Trust Unitholder, to act as secretary of the meeting. If desired, one or more scrutineers, who need not be Trust Unitholders, may be appointed by the chairperson.
- (e) The Trustees, the officers of the Trust, the Auditors, Counsel and any other person approved by the Trustees or the chairperson of the meeting or by resolution passed by a majority of the votes cast by Trust Unitholders represented at the meeting may attend meetings of the Trust Unitholders.
- (f) To the extent that the rules and procedures for the conduct of a meeting of Trust Unitholders are not prescribed herein, the rules and procedures shall be such reasonable rules and procedures as are determined by the chairperson of the meeting and such rules and procedures shall be binding upon all parties participating in the meeting.

## **12.2 Notice of Meetings**

Notice of all meetings of Trust Unitholders shall be given by unregistered mail, postage prepaid, addressed to each Trust Unitholder at his or her last address on the books of the Trust, mailed at least 21 days and not more than 60 days before the meeting. Such notice shall specify the time when, and the place where, such meeting is to be held and shall specify the nature of the business to be transacted at such meeting in sufficient detail to permit a Trust Unitholder to form a reasoned judgment thereon, together with the text of any Special Resolution, at the time of mailing of the notice, proposed to be passed. Any adjourned meeting, other than a meeting adjourned for lack of a quorum under subsection 12.8(b), may be held as adjourned without further notice. The accidental omission to give notice or the non-receipt of such notice by a Trust Unitholder shall not invalidate any resolution passed at any such meeting. Notwithstanding the foregoing, a meeting of Trust Unitholders may be held at any time without notice if all the Trust Unitholders are present or represented thereat or those not so present or represented have waived notice. Any Trust Unitholder (or a duly appointed proxy of a Trust Unitholder) may waive any notice required to be given under the provisions of this section, and such waiver, whether given before or after the meeting, shall cure any default in the giving of such notice. Attendance at a meeting of Trust Unitholders shall constitute a waiver of notice unless the Trust Unitholder or other person attends the meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not properly called.

## **12.3 Quorum**

At any meeting of the Trust Unitholders, subject as hereinafter provided, a quorum shall consist of two or more individuals present in person either holding personally or representing as proxies not less in aggregate than 10% of the votes attached to all outstanding Trust Units. In the event of such quorum not being present at the appointed place on the date for which the meeting is called within 30

minutes after the time fixed for the holding of such meeting, the meeting, if called by request of Trust Unitholders, shall be terminated and, if otherwise called, shall stand adjourned to such day being not less than 7 days later and to such place and time as may be appointed by the chairperson of the meeting. If at such adjourned meeting a quorum as above defined is not present, the Trust Unitholders present either personally or by proxy shall form a quorum, and any business may be brought before or dealt with at such an adjourned meeting which might have been brought before or dealt with at the original meeting in accordance with the notice calling the same.

The chairperson of any meeting at which a quorum of Trust Unitholders is present may, with a consent of the majority of the Trust Unitholders present in person or by proxy, adjourn any such meeting and no notice of any such adjournment need be given.

#### **12.4 Voting Rights**

Only Trust Unitholders of record on the applicable record date for voting shall be entitled to vote. Each Trust Unit shall entitle the holder or holders of that Trust Unit to one vote on a poll vote at any meeting of Trust Unitholders. Every question submitted to a meeting, other than a Special Resolution, shall, unless a poll vote is demanded, be decided by a show of hands vote, on which every person present and entitled to vote shall be entitled to one vote and unless a poll is demanded, a declaration by the chairperson that a resolution has been carried or carried unanimously or by a particular majority, or lost or not carried by a particular majority, shall be conclusive evidence of the fact. If a poll is demanded concerning the election of a chairperson or an adjournment, it shall be taken immediately upon request and, in any other case, it shall be taken at such time as chairperson of the meeting may direct. The poll shall be taken in such manner as the chairperson may direct. The demand for a poll shall not prevent the continuation of a meeting for the transaction of any business other than the question on which the poll has been demanded.

If Trust Units are held jointly by two or more persons, any one of them present in person or by proxy at the meeting may vote in the absence of the other or others; but if more than one of them is present in person or by proxy, they shall vote together with respect to the Trust Units held jointly, provided that only one of them can vote on a show of hands, and, if they do not agree on how to exercise any vote to which they are jointly entitled (including a vote on a show of hands), they shall, for the purposes of the voting, be deemed not to be present. The chairperson of the meeting shall be entitled to vote in respect of Trust Units held by the chairperson represented by the chairperson by proxy. In the case of an equality of votes, the chairperson shall not have a casting vote and the resolution shall be deemed to be defeated.

#### **12.5 Proxies**

Whenever the vote or consent of Trust Unitholders is required or permitted under this Declaration of Trust, such vote or consent may be given either directly by the Trust Unitholder or by a proxy. The instrument appointing a proxy must be in writing and either substantially in a form which may be approved by the Trustees acting reasonably or as may be satisfactory to the chairperson of the meeting at which it is sought to be exercised. The instrument of proxy must be executed by the Trust Unitholder giving the proxy or his agent duly authorized in writing and, if given on behalf of joint holders, must be executed by all of them and may be revoked by any of them, and, if given by a Trust Unitholder which is a body corporate, must be executed on its behalf by a person duly authorized in writing. Any person may be appointed a proxy, whether or not that person is a Trust Unitholder. The Trustees, on behalf of the Trust, may solicit instruments of proxy from the Trust Unitholders or any of them in respect of any matter requiring or permitting the Trust Unitholder's vote or consent. An instrument of proxy shall be deposited with the chairperson of the meeting before any vote is cast under its authority or at such earlier time or in such manner as the Trustees may prescribe from time to time.



An instrument of proxy executed in compliance with the foregoing shall be valid unless challenged at the time of or prior to its exercise and the person challenging the instrument shall have the burden of proving, to the satisfaction of chairperson of the meeting at which the instrument is proposed to be used, that the instrument of proxy is invalid. Any decision of the chairperson of the meeting in respect of the validity of an instrument of proxy shall be final and binding upon all persons. An instrument of proxy shall be valid only at the meeting with respect to which it was solicited or any adjournment thereof.

A vote cast in accordance with any proxy shall be valid notwithstanding the death, incapacity, insolvency or bankruptcy of the Trust Unitholder giving the proxy or the revocation of the proxy unless written notice of the death, incapacity, insolvency, bankruptcy of the Trust Unitholder or revocation of the proxy has been received by the chairperson of the meeting prior to the time the vote is cast.

#### **12.6 Personal Representatives**

Subject to the provisions of Article 13, if a Trust Unitholder is deceased, his personal representative, upon filing with the secretary of the meeting such proof of his appointment as the secretary considers sufficient, shall be entitled to exercise the same voting rights at any meeting of Trust Unitholders as the Trust Unitholder would have been entitled to exercise if the Trust Unitholder were living and for the purpose of the meeting shall be considered to be a Trust Unitholder. Subject to the provisions of the will of a deceased Trust Unitholder, if there is more than one personal representative, the provisions of section 12.4 relating to joint holders shall apply.

#### **12.7 Resolutions Binding the Trustees**

Trust Unitholders shall be entitled to pass resolutions that will bind the Trust and the Trustees only with respect to the following matters:

- (a) the election or removal of a Trustee to the extent permitted by Article 8;
- (b) the appointment or removal of Auditors as provided in Article 17;
- (c) the appointment of an inspector as provided in section 12.11;
- (d) the approval of amendments of this Declaration of Trust as provided in Article 11;
- (e) the amalgamation, merger, arrangement or capital reorganization of the Trust;
- (f) the termination or dissolution of the Trust, as provided in section 14.2;
- (g) the sale, lease, exchange or other distribution or disposition of all or substantially all of the Trust Assets;
- (h) the ratification of any Trust Unitholder rights plan, distribution reinvestment plan, distribution reinvestment and Trust Unit purchase plan, Trust Unit option plan or other compensation plan contemplated by section 5.10 requiring Trust Unitholder approval under laws or regulations applicable to the Trust; and
- (i) any other matters that the Trustees may determine or as may be properly brought before a meeting of Trust Unitholders including any other matters required by securities law, stock exchange rules or other laws or regulations to be submitted to Trust Unitholders for their approval.

Except with respect to the above matters set out in this section 12.7, no action taken by the Trust Unitholders or any resolution of the Trust Unitholders at any meeting shall in any way bind the Trustees. Any action taken or resolution passed in respect of any matter at a meeting of Trust Unitholders shall be by Special Resolution, unless the contrary is otherwise expressly provided under any specific

provision of this Declaration of Trust and except for the matters set out in subsections 12.7(a), 12.7(b), 12.7(h) and, if applicable, 12.7(l) above which matters may be dealt with by Ordinary Resolution.

#### **12.8           Meaning of "Special Resolution"**

- (a) The expression "**Special Resolution**" when used in this Declaration of Trust means, subject to this Article 12, a resolution proposed to be passed as a special resolution at a meeting of Trust Unitholders (including an adjourned meeting) duly convened for that purpose and held in accordance with the provisions of this Article at which two or more individuals present in person either holding personally or representing as proxies not less in aggregate than 10% of the number of Trust Units then outstanding and passed by the affirmative votes of the holders of more than 66 2/3% of the Trust Units represented at the meeting and voted on a poll upon such resolution.
- (b) Notwithstanding section 12.3, if at any meeting at which a Special Resolution is proposed to be passed the holders of 10% of the aggregate number of Trust Units outstanding are not present in person or by proxy within 30 minutes after the time appointed for the meeting, then the meeting, if convened by or on the requisition of Trust Unitholders, shall be dissolved; but in any other case it shall stand adjourned to such date, being not less than 21 nor more than 60 days later and to such place and time as may be appointed by the chairperson of the meeting. Not less than 10 days prior notice shall be given of the time and place of such adjourned meeting in the manner provided in section 12.2. Such notice shall state that at the adjourned meeting the Trust Unitholders present in person or by proxy shall form a quorum but it shall not be necessary to set forth the purposes for which the meeting was originally called or any other particulars. At the adjourned meeting, the Trust Unitholders present in person or by proxy shall form a quorum and may transact the business for which the meeting was originally convened and a resolution proposed at such adjourned meeting and passed by the requisite vote as provided in subsection 12.8(a) shall be a Special Resolution within the meaning of this Declaration of Trust, notwithstanding that the holders of less than 10% of the aggregate number of Trust Units then outstanding are present in person or by proxy at such adjourned meeting.
- (c) Votes on Special Resolution shall always be given on a poll and no demand for a poll on a Special Resolution shall be necessary.

#### **12.9           Meaning of "Outstanding"**

Every Trust Unit issued, certified and delivered hereunder shall be deemed to be outstanding until it shall be cancelled or delivered to the Trustees or Transfer Agent for cancellation provided that:

- (a) when a new certificate has been issued in substitution for a Trust Unit Certificate which has been lost, stolen, mutilated or destroyed, only one of such Trust Unit Certificates shall be counted for the purposes of determining the number of Trust Units outstanding; and
- (b) for the purpose of any provision of this Declaration of Trust entitling holders of outstanding Trust Units to vote, sign consents, requisitions or other instruments or take any action under this Declaration of Trust, Trust Units owned directly or indirectly, legally or equitably, by the Trust shall be disregarded.

#### **12.10          Record Date for Voting**

For the purpose of determining the Trust Unitholders who are entitled to vote or act at any meeting or any adjournment thereof, the Trustees may fix a date not more than 60 days and not less

than 21 days prior to the date of any meeting of Trust Unitholders as a record date for the determination of Trust Unitholders entitled to vote at such meeting or any adjournment thereof, and any Trust Unitholder who was a Trust Unitholder at the time so fixed shall be entitled to vote at such meeting or any adjournment thereof even though the Trust Unitholder has since that time disposed of his or her Trust Units, and no Trust Unitholder becoming such after that time shall be so entitled to vote at such meeting or any adjournment thereof. In the event that the Trustees do not fix a record date for any meeting of Trust Unitholders, the record date for such meeting shall be the date upon which notice of the meeting is given as provided under section 12.2.

**12.11 Appointment of Inspector**

The Trustees shall call a meeting of Trust Unitholders upon the written request of Trust Unitholders holding in the aggregate not less than 5% of the Trust Units then outstanding for the purpose of considering the appointment of an inspector to investigate the performance by the Trustees of their responsibilities and duties in respect of the Trust. An inspector may be appointed for such purpose, at the expense of the Trust, at such meeting by a resolution approved by a majority of the votes cast at the meeting. The inspector shall have powers not inconsistent with this Declaration of Trust as may be conferred upon him or her at the meeting when he or she is appointed, but in all events shall not have any powers to act in any capacity as the Trustees or in the place or in the stead of the Trustees in any manner under this Declaration of Trust.

**12.12 Resolutions in Writing**

Notwithstanding any other provision of this Declaration of Trust, a resolution in writing and executed by Trust Unitholders holding more than 50% of the outstanding votes required to vote in favour thereof at a meeting of Trust Unitholders to approve that resolution, if such resolution is an Ordinary Resolution, or a resolution circulated to all Trust Unitholders and executed by Trust Unitholders holding more than 66 2/3% of the outstanding votes required to vote in favour thereof at a meeting of Trust Unitholders to approve that resolution, if such resolution is a Special Resolution, shall be as valid and binding for all purposes of this Declaration of Trust as if such Trust Unitholders had exercised at that time all of the voting rights to which they were then entitled under section 12.7 or 12.8 in favour of such resolution at a meeting of Trust Unitholders duly called for the purpose.

**12.13 Binding Effect of Resolutions**

Every resolution passed in accordance with the provisions of this Declaration of Trust at a meeting of Trust Unitholders shall be binding upon all the Trust Unitholders, whether present at or absent from that meeting, and each and every Trust Unitholder shall be bound to give effect accordingly to every such resolution.

**12.14 No Breach**

Notwithstanding any other provision of this Declaration of Trust, Trust Unitholders shall have no power to effect any amendment to this Declaration of Trust which would require the Trustees to take any action or conduct the affairs of the Trust in a manner which would constitute a breach or default by the Trust or the Trustees under any agreement binding on, or obligation of, the Trust or the Trustees.

**ARTICLE 13  
CERTIFICATES, REGISTRATION AND TRANSFER OF TRUST UNITS**

**13.1 Nature of Trust Units**

The provisions of this Article 13 shall not in any way alter the nature of Trust Units or the relationships of a Trust Unitholder to the Trustees and of one Trust Unitholder to another but are intended

only to facilitate the issuance of certificates evidencing the ownership of Trust Units, if desirable to issue them to Trust Unitholders and the recording of all transactions in respect of Trust Units and Trust Unit Certificates, whether by the Trust or other persons.

**13.2 Form of Trust Unit Certificates**

- (a) Trust Unit Certificates shall, subject to the provisions hereof, be in such form as is authorized from time to time by the Trustees.
- (b) If issued, Trust Unit Certificates are issuable only in fully registered form.
- (c) The definitive form of the Trust Unit Certificates shall:
  - (i) be in the English language;
  - (ii) be dated as of the date of issue thereof; and
  - (iii) contain such distinguishing letters and numbers as the Trustees shall prescribe.
- (d) In the event that the Trust Unit Certificate is translated into the French language and any provision of the Trust Unit Certificates in the French language shall be susceptible of an interpretation different from the equivalent provision in the English language, the interpretation of such provision in the English language shall be determinative.
- (e) Each Trust Unit Certificate shall be signed on behalf of the Trustees. The signature of the Trustees or any officers on behalf of the Trustees required to appear on such certificate may be printed, lithographed or otherwise mechanically reproduced thereon and, in such event, certificates so signed are as valid as if they had been signed manually.
- (f) The Trust is not bound to issue more than one Trust Unit Certificate in respect of Units held jointly or in common by two or more persons and delivery of a Trust Unit Certificate to one of them shall be sufficient delivery to all.

**13.3 Contents of Trust Unit Certificates**

- (a) Until otherwise determined by the Trustees, each Trust Unit Certificate shall legibly set forth on the face thereof, *inter alia*, the following:
  - (i) the name of the Trust and the words "A trust created under the laws of the Province of Ontario by a Declaration of Trust dated as of October 6, 2005 or words of like effect;
  - (ii) the name of the person to whom the Trust Unit Certificate is issued as Trust Unitholder;
  - (iii) the number, class and, if any, series of Trust Units represented thereby and whether or not the Trust Units represented thereby are fully paid;
  - (iv) that the Trust Units represented thereby are transferable but that such transfers are subject to restrictions set out in this Declaration of Trust;
  - (v) the words "The Trust Units represented by this certificate are issued upon the terms and subject to the conditions of the Declaration of Trust, which Declaration of Trust is binding upon all holders of Trust Units and, by acceptance of this certificate, the holder assents to the terms and conditions of the Declaration of Trust. A copy of the Declaration of Trust pursuant to which this certificate and

the Trust Units represented thereby are issued may be obtained by a Trust Unitholder on demand and without fee from the head office of the Trust" or words of like effect; and

- (vi) the words "For information as to personal liability of a Trust Unitholder, see the reverse side of this certificate" or words of like effect.
- (b) Until otherwise determined by the Trustees, each such certificate shall legibly set forth on the reverse side thereof, *inter alia*, the following:
  - (i) "The Declaration of Trust provides that no Trust Unitholder shall be subject to any personal liability whatsoever, in tort, contract or otherwise, to any person in connection with the assets of the Trust or the obligations or the affairs of the Trust and all such persons shall look solely to the assets of the Trust for satisfaction of claims of any nature arising out of or in connection therewith and the assets of the Trust only shall be subject to levy or execution", or words of like effect; and
  - (ii) appropriate forms of notice of exercise of the right of redemption and of powers of attorney for transferring Trust Units.

The Trust Unit Certificates may be engraved, printed or lithographed, or partly in one form and partly in another, as the Trustees may determine.

#### **13.4 Register of Trust Unitholders**

A register may be kept at the principal corporate office of the Trust which register shall contain the names and addresses of the Trust Unitholders, the respective numbers of Trust Units held by them, the certificate numbers of certificates representing such Trust Units and a record of all transfers and redemptions thereof. Branch transfer registers shall be maintained at such other offices of the Trust as the Trustees may from time to time designate. Only Trust Unitholders whose certificates are so recorded shall be entitled to receive distributions or to exercise or enjoy the rights of Trust Unitholders hereunder. The Trustees shall have the right to treat the person registered as a Trust Unitholder on the register of the Trust as the owner of such Trust Units for all purposes, including, without limitation, payment of any distribution, giving notice to Trust Unitholders and determining the right to attend and vote at meeting of Trust Unitholders.

#### **13.5 Limitation of Non-Resident Ownership**

- (a) At no time may Non-Residents be the beneficial owners of more than 49% of the Trust Units (on either a non-diluted or Fully Diluted Basis).
- (b) The Trustees shall have the power and authority to determine from time to time written guidelines with respect to the nature of a Unitholder's Declaration, the times at which any Unitholder's Declarations are to be requested and any other relevant matters relating to Unitholder's Declarations.

A Unitholder's Declaration shall be in the form and substance from time to time determined by the Trustees and, without limiting the generality of the foregoing, may be required to be in the form of a declaration in writing sworn under oath or affirmed in a manner and in a form acceptable to the Trustees. Without limiting the generality of the foregoing, any Unitholder's Declaration may be required to contain information with respect to:

- (i) whether the Unitholder is the beneficial owner of the applicable Units or whether any other person is the beneficial owner of those Units; and
  - (ii) whether the Unitholder or any other beneficial owner of the Units is a Non-Resident.
- (c) If the Trustees become aware that the limitations on ownership set forth in section 13.5(a) is, or may be, contravened or that such a situation is imminent, the Transfer Agent or registrar shall make a public announcement thereof and shall not accept a subscription for Trust Units from or issue or register a transfer of Trust Units to a person unless the person provides a Unitholder's Declaration satisfactory to the Trustees that the person is not a Non-Resident and does not and will not hold Trust Units on behalf of or for the benefit of any Non-Resident and will not be subject to the instructions or influence of any Non-Resident with respect to the voting of any Trust Units. If, notwithstanding the foregoing, the Trustees determine either that more than 49% of the Trust Units (on either a non-diluted or Fully Diluted Basis) are held or beneficially owned by Non-Residents the Trustees may send a notice to those Non-Residents holding Trust Units, as applicable, chosen in inverse order to the order of acquisition or registration or in any manner as the Trustees may consider equitable and practicable, requiring them to sell their Trust Units or a portion thereof within a specified period of not less than 30 days. If the Trust Unitholders receiving such notice have not sold the specified number of Trust Units or provided the Trustees with Unitholders' Declarations or other satisfactory evidence within such period that they are not Non-Residents and that they do not and will not hold Trust Units on behalf of or for the benefit of any Non-Resident and that they are not and will not be subject to the instructions or influence of any Non-Resident with respect to the voting of any Trust Units, the Trustees may on behalf of such Trust Unitholders sell such Trust Units and, in the interim, shall suspend the voting and distribution rights attached to such Trust Units. Upon such sale, the affected holders shall cease to be holders of such Trust Units and their rights in respect of such Trust Units shall be limited to receiving the net proceeds of sale upon surrender of the certificates representing such Trust Units.
- (d) Subject to section 9.6, unless and until the Trustees shall have been required to do so under the terms hereof, the Trustees shall not be bound to do or take any proceeding or action with respect to this section 13.5 by virtue of the powers conferred on it hereby. The Trustees shall have the sole right and authority to make any determination required or contemplated under this section 13.5. The Trustees shall make all determinations necessary for the administration of the provisions of this section 13.5 and, without limiting the generality of the foregoing, if the Trustees consider that there are reasonable grounds for believing that a contravention of the limitations on ownership set forth in section 13.5(a) has occurred or will occur, the Trustees shall make a determination with respect to the matter. Any such determination shall be conclusive, final and binding except to the extent modified by any subsequent determination by the Trustees. In any situation where it is unclear whether Trust Units are held for the benefit of Non-Residents, the Trustees may exercise their discretion in determining whether such Trust Units are or are not so held, and any such exercise by them of their discretion shall be binding for the purposes of this section 13.5. Notwithstanding the foregoing, the Trustees may delegate, in whole or in part, their power to make a determination in this respect to any officer of the Trust.

### 13.6

#### Transfer of Trust Units

- (a) Subject to the provisions of this Article 13 and applicable securities laws, the Trust Units shall be fully transferable without charge as between persons, but no transfer of Trust Units shall be effective as against the Trustees or shall be in any way binding upon the Trustees until the transfer has been approved by the Trustees and recorded on the Registers.
- (b) No transfer of a Trust Unit will be recognized unless such transfer is of a whole Trust Unit, unless otherwise determined by the Trustees.
- (c) Subject to the provisions of this Article 13, Trust Units shall be transferable on the Registers only by the Trust Unitholders of record thereof or their executors, administrators or other legal representatives or by their agents or attorneys duly authorized in writing, and only upon delivery to the Trust of the certificate therefor, properly endorsed or accompanied by a duly executed instrument of transfer or power of attorney and accompanied by all necessary transfer or other taxes imposed by law, together with such evidence of the genuineness of such endorsement, execution and authorization and other matters that may reasonably be required by the Trustees. Upon such delivery, the transfer shall be recorded on the Registers and a new certificate for the Trust Units shall be issued to the transferee and a new certificate for the balance of Trust Units not transferred shall be issued to the transferor.
- (d) Any person becoming entitled to any Trust Units as a consequence of the death, bankruptcy or mental incompetence of any Trust Unitholder, or otherwise by operation of law, shall be recorded as the holder of such Trust Units and shall receive, in the case of Trust Units, a new Trust Unit Certificate therefor only upon production of evidence satisfactory to the Trustees and delivery of the existing certificate to the Trustees, but until such record is made the Trust Unitholder of record shall continue to be and be deemed to be the holder of such Trust Units for all purposes whether or not the Trustees shall have actual or other notice of such death or other event.
- (e) Trust Unit Certificates representing any number of Trust Units may be exchanged without charge for Trust Unit Certificates representing an equivalent number of Trust Units in the aggregate. Any exchange of Trust Unit Certificates may be made at the offices of the Trust where Registers are maintained for Trust Unit Certificates pursuant to the provisions of this Article 13. Any Trust Unit Certificates tendered for exchange shall be surrendered to the Trustees and then shall be cancelled.

### **13.7**

#### **Trust Units Held Jointly or in a Fiduciary Capacity**

Except as herein provided, the Trustees may treat two or more persons holding any Trust Units as joint owners of the entire interest therein unless their ownership is expressly otherwise recorded on the register of the Trust, but no entry shall be made in the register or on any certificate that any person is in any other manner entitled to any future, limited or contingent interest in any Trust Units; provided, however, that any person recorded as a Trust Unitholder may, subject to the provisions hereinafter contained, be described in the Register or on any certificate as a fiduciary of any kind and any customary words may be added to the description of the holder to identify the nature of such fiduciary relationship.

### **13.8**

#### **Performance of Trust**

The Trustees, the Trust and any officers of the Trust, shall not be bound to be responsible for or otherwise inquire into or ensure the performance of any trust, express, implied or constructive, or of any pledge or equity to which any of the Trust Units or any interest therein are or may be subject, or to ascertain or enquire whether any transfer of any such Trust Units or interests therein by any such Trust

Unitholder or by his or her personal representatives is authorized by such trust, pledge, or equity, or to recognize any person as having any interest therein except for the person recorded as Trust Unitholder.

### **13.9 Lost Certificates**

In the event that any certificate for Trust Units is lost, stolen, destroyed or mutilated, the Trustees may authorize the issuance of a new certificate for the same number of Trust Units in lieu thereof. The Trustees may in their sole discretion, before the issuance of such new certificate, require the owner of the lost, stolen, destroyed or mutilated certificate, or the legal representative of the owner, to make an affidavit or statutory declaration setting forth such facts as to the loss, theft, destruction or mutilation as the Trustees may deem necessary, to surrender any mutilated certificate and shall require the applicant to supply to the Trust a "lost certificate bond" or a similar bond in such reasonable sum as the Trustees may direct indemnifying the Trust for so doing.

### **13.10 Death of a Trust Unitholder**

The death of a Trust Unitholder during the continuance of the Trust shall not terminate the Trust or any of the mutual or respective rights and obligations created by or arising under this Declaration of Trust nor give such Trust Unitholder's personal representatives a right to an accounting or take any action in court or otherwise against other Trust Unitholders or the Trustees or the Trust Assets, but shall merely entitle the personal representatives of the deceased Trust Unitholder to demand and receive, pursuant to the provisions hereof, a new certificate for Trust Units in place of the certificate held by the deceased Trust Unitholder, if any, and upon the acceptance thereof such personal representatives shall succeed to all rights of the deceased Trust Unitholder under this Declaration of Trust.

### **13.11 Offer for Trust Units**

- (a) In this section 13.11:
  - (i) "Dissenting Offeree" means, where an Offer is made for all the Trust Units, a holder of a Trust Unit who does not accept the Offer, and includes a subsequent holder of a Trust Unit that is the subject of the Offer;
  - (ii) "Offer" means an offer to acquire, directly or indirectly, outstanding Trust Units (including securities then currently convertible, exchangeable or exercisable for Trust Units) where, as of the date of the offer to acquire, either the Trust Units that are the subject of the offer to acquire, together with the Offeror's Trust Units, constitute in the aggregate 20% or more of all outstanding Trust Units, or the offer to acquire is made by the Trust itself;
  - (iii) "offer to acquire" includes an acceptance of an offer to sell;
  - (iv) "Offeror" means a person, or two or more persons acting jointly or in concert, who makes an Offer, and includes the Trust itself if the Trust makes an Offer;
  - (v) "Offeror's Notice" means the notice described in section 13.1 l(c); and
  - (vi) "Offeror's Units" means Trust Units beneficially owned, or over which control or direction is exercised, on the date of an Offer by the Offeror or any Affiliate or associate of the Offeror.
- (b) If an Offer is made for all outstanding Trust Units (other than Trust Units held by or on behalf of the Offeror or any Affiliate or associate of the Offeror or any person acting



jointly or in concert with the Offeror, within the meaning of the *Securities Act* (Ontario)) and, by such Offer, the Offeror agrees to be bound by the provisions of this section 13.11, and:

- (i) within the time provided in the Offer for its acceptance or within 120 days after the date the Offer is made, whichever period is the longer, the Offer is accepted by the holders of at least 90% of the outstanding Trust Units other than the Offeror's Trust Units; and
- (ii) the Offeror has taken up and paid for the Trust Units of the Trust Unitholders who accepted the Offer;

then:

- (iii) the Offeror will be entitled to acquire, and the Dissenting Offerees will be required to sell to the Offeror, the Trust Units held by the Dissenting Offerees on the terms on which the Offeror acquired the Trust Units of the Trust Unitholders who accepted the Offer,

provided that the Offeror complies with section 13.1 l(c) and section 13.1 l(e).

- (c) Where an Offeror is entitled to acquire Trust Units held by a Dissenting Offeree pursuant to section 13.11(b), and the Offeror wishes to exercise such right, the Offeror must send by registered mail before the earlier of 60 days after the date of termination of the Offer and 180 days following the date of the Offer a notice (the "Offeror's Notice") to each Dissenting Offeree stating that:
  - (i) Trust Unitholders holding at least 90% of the outstanding Trust Units other than the Offeror's Trust Units, have accepted the Offer;
  - (ii) the Offeror has taken up and paid for the Trust Units of the Trust Unitholders who accepted the Offer;
  - (iii) a Dissenting Offeree must transfer his, her or its respective Trust Units to the Offeror on the terms on which the Offeror acquired the Trust Units of the Trust Unitholders who accepted the Offer within 21 days after the date of the sending of the Offeror's Notice; and
  - (iv) Dissenting Offerees must send the Unit Certificates representing their respective Trust Units to the Trust, duly endorsed for transfer, within 21 days after the date of the sending of the Offeror's Notice.
- (d) A Dissenting Offeree to whom an Offeror's Notice is sent pursuant to section 13.11(c), must, within 21 days after the sending of the Offeror's Notice, as applicable, send the Unit Certificate representing his, her or its Trust Units to the Trust, duly endorsed for transfer, if a Unit Certificate for such Trust Units has been provided.
- (e) Within 21 days after the Offeror sends an Offeror's Notice pursuant to section 13.1 l(c), the Offeror must pay or transfer to the Trustees, or to such other person as the Trustees may direct, the cash or other consideration that the Offeror would have had to pay to the Dissenting Offeree had they accepted the Offer in respect of the Units that they continue to hold.

- (f) The Trustees, or the person directed by the Trustees, must hold in trust for the Dissenting Offerees the cash or other consideration received under section 13.11(e), but such cash or other consideration shall not form any part of the Trust Assets. The Trustees, or such persons, shall deposit such cash in a separate account in a Canadian chartered bank, and shall place such other consideration in the custody of a Canadian chartered bank or similar institution, for safekeeping.
- (g) Within 30 days after the date of the sending of an Offeror's Notice pursuant to section 13.11(c), the Trustees, if the Offeror has complied with section 13.11(e), shall:
  - (i) do or cause to be done all acts and things and execute and cause to be executed all instruments as in the opinion of the Trustees may be necessary or desirable to cause the transfer of the Trust Units of the Dissenting Offerees to the Offeror;
  - (ii) send or cause to be sent to each Dissenting Offeree who has complied with section 13.11(d) the consideration to which such Dissenting Offeree is entitled under this section 13.11; and
  - (iii) send or cause to be sent to each Dissenting Offeree who has not complied with section 13.11(d) a notice stating that:
  - (iv) his Trust Units have been transferred to the Offeror;
  - (v) the Trustees or some other person designated in such notice are holding in trust the consideration for such Trust Units; and
  - (vi) the Trustees, or such other person, will send the consideration to such Dissenting Offeree as soon as practicable after receiving the certificate(s) representing such Dissenting Offeree's Trust Units or such other documents as the Trustees or such other person may require in lieu thereof;

and the Trustees are hereby appointed the agent and attorney of the Dissenting Offeree for the purposes of giving effect to the foregoing provisions.

- (h) Subject to applicable law, an Offeror cannot make an Offer for Trust Units unless, concurrent with the communication of the Offer to any Trust Unitholder, a copy of the Offer is provided to the Trust.

#### **13.12 Repurchase of Trust Units**

The Trust shall be entitled to purchase for cancellation at any time the whole or from time to time any part of the outstanding Trust Units, at a price per Trust Unit and on a basis to be determined by the Trustees in compliance with all applicable securities regulatory laws, regulations or policies or the policies of any applicable stock exchange.

### **ARTICLE 14 TERMINATION**

#### **14.1 Term of Trust**

Subject to the other provisions of this Declaration of Trust, the Trust shall continue for a term ending 21 years after the date of death of the last surviving issue of Her Majesty, Queen Elizabeth II, alive on October 6, 2005. For the purpose of terminating the Trust by such date, the Trustees shall

commence to wind-up the affairs of the Trust on such date as may be determined by the Trustees, being not more than two years prior to the end of the term of the Trust.

#### **14.2 Termination with the Approval of Trust Unitholders**

The Trust Unitholders may vote by Special Resolution to terminate the Trust at any meeting of Trust Unitholders duly called by the Trustees for the purpose of considering termination of the Trust, following which the Trustees shall commence to wind up the affairs of the Trust. Such Special Resolution may contain such directions to the Trustees as the Trust Unitholders determine, including a direction to distribute some or all of the Trust Assets.

#### **14.3 Procedure Upon Termination**

Forthwith upon being required to commence to wind up the affairs of the Trust, the Trustees shall give notice thereof to the Trust Unitholders, which notice shall designate the time or times at which Trust Unitholders may surrender their Trust Units for cancellation and the date at which the Registers shall be closed.

#### **14.4 Powers of the Trustees Upon Termination**

After the date on which the Trustees are required to commence to wind up the affairs of the Trust, the Trustees shall undertake no activities except for the purpose of winding-up the affairs of the Trust as hereinafter provided and, for this purpose, the Trustees shall continue to be vested with and may exercise all or any of the powers conferred upon the Trustees under this Declaration of Trust.

#### **14.5 Sale of Investments**

After the date referred to in section 14.3, the Trustees shall proceed to wind up the affairs of the Trust as soon as may be reasonably practicable and for such purpose shall, subject to any direction to the contrary in respect of a termination authorized under section 14.2, sell and convert into money the Trust Assets in one transaction or in a series of transactions at public or private sales and do all other acts appropriate to liquidate the Trust Assets, and shall in all respects act in accordance with the directions, if any, of the Trust Unitholders (in respect of a termination authorized under section 14.2). If the Trustees are unable to sell all or any of the Trust Assets by the date set for termination, the Trustees may, subject to obtaining all necessary regulatory approvals, distribute the remaining securities or other assets directly to the Trust Unitholders in accordance with their *pro rata* interests.

#### **14.6 Distribution of Proceeds or Assets**

After paying, retiring or discharging or making provision for the payment, retirement or discharge of all known liabilities and obligations of the Trust and providing for indemnity against any other outstanding liabilities and obligations, the Trustees shall, subject to obtaining all necessary regulatory approvals, distribute the remaining part of the proceeds of the sale of Trust Assets together with any cash forming part of the Trust Assets among the Trust Unitholders in accordance with their *pro rata* interests and in accordance with section 3.1 hereof.

#### **14.7 Further Notice to Trust Unitholders**

In the event that less than all of the Trust Unitholders have surrendered their Trust Units for cancellation within six months after the time specified in the notice referred to in section 14.3, the Trustees shall give further notice to the remaining Trust Unitholders to surrender their Trust Units for cancellation and if, within one year after the further notice, all the Trust Units shall not have been surrendered for cancellation, such remaining Trust Units shall be deemed to be cancelled without prejudice to the rights of the holders of such Trust Units, if applicable, to receive their *pro rata* share of

the remaining Trust Assets, and the Trustees may either take appropriate steps, or appoint an agent to take appropriate steps, to contact such Trust Unitholders (deducting all expenses thereby incurred from the amounts to which such Trust Unitholders are entitled as aforesaid) or, in the discretion of the Trustees, may pay such amounts into court.

**14.8 Responsibility of the Trustees after Sale and Conversion**

The Trustees shall be under no obligation to invest the proceeds of any sale of investments or other assets or cash forming part of the Trust Assets after the date referred to in section 14.3 and, after such sale, the sole obligation of the Trustees under this Declaration of Trust shall be to hold such proceeds or assets in trust for distribution under section 14.6.

**ARTICLE 15  
SUPPLEMENTAL INDENTURES**

**15.1 Provision for Supplemental Indentures for Certain Purposes**

The Trustees may, without approval of the Trust Unitholders and subject to the provisions hereof, and shall, when so directed in accordance with the provisions hereof, execute and deliver indentures or instruments supplemental hereto which thereafter shall form part hereof, for any one or more or all of the following purposes:

- (a) modifying or amending any provisions of this Declaration of Trust in the circumstances set forth in section 11.1 where the Trustees may do so without the consent, approval or ratification of the Trust Unitholders or any other person; and
- (b) modifying or amending any provisions of this Declaration of Trust where the modification or amendment has been approved by Ordinary Resolution or Special Resolution, as the case may be, or, if required, with the consent of the holders of all of the Trust Units,

and any such indenture or instrument supplemental to this Declaration of Trust shall be binding on all parties, including without limitation, all Trust Unitholders on the later of (i) the date of the execution thereof, and (ii) the effective date of any required approval by Trust Unitholders with respect to that indenture or instrument.

**ARTICLE 16  
GENERAL**

**16.1 Notices**

- (a) Any notice or other document required to be given or sent to Trust Unitholders under this Declaration of Trust shall be given or sent through ordinary post addressed to each registered holder at his or her last address appearing on the Registers; provided that if there is a general discontinuance of postal service due to strike, lockout or otherwise, such notice may be given by publication twice in the Report on Business section of the National Edition of The Globe and Mail or similar section of any other newspaper having national circulation in Canada; provided further that if there is no newspaper having national circulation, then by publishing twice in the business section of a newspaper in each city where a Register is maintained. Any notice so given shall be deemed to have been given on the day following that on which the letter or circular was posted or, in the case of notice being given by publication, after publishing such notice twice in the designated newspaper or newspapers. In proving notice was posted, it shall be sufficient to prove that such letter or circular was properly addressed, stamped and posted.

- (b) Any written notice or written communication given to the Trustees shall be addressed to the Trustees at the head office of the Trust as designated pursuant to section 2.4, and shall be deemed to have been given on the date of delivery or, if mailed, five days from the date of mailing. If any such notice or communication shall have been mailed and if regular mail service shall be interrupted by strikes or other irregularities, such notice or communication shall be deemed to have been received 48 hours after 12:01 a.m. on the day following the resumption of normal mail service, provided that during the period that regular mail service shall be interrupted any notice or other communication shall be given by personal delivery or by cable, telegram, telex or other means of prepaid, transmitted or recorded communication.

**16.2 Failure to Give Notice**

The failure by the Trustees, by accident or omission or otherwise unintentionally, to give any Trust Unitholder any notice provided for herein shall not affect the validity, effect or taking effect of any action referred to in such notice, and the Trustees shall not be liable to any Trust Unitholder for any such failure.

**16.3 Joint Holders**

Service of a notice or document on any one of several joint holders of Trust Units shall be deemed effective service on the other joint holders.

**16.4 Service of Notice**

Any notice or document sent by post to or left at the address of a Trust Unitholder pursuant to this Article shall, notwithstanding the death or bankruptcy of such Trust Unitholder, and whether or not the Trustees have notice of such death or bankruptcy, be deemed to have been fully served and such service shall be deemed sufficient service on all persons having an interest in the Trust Units concerned.

**16.5 Information Available to Trust Unitholders**

Each Trust Unitholder shall have the right to obtain, on demand and without fee, from the head office of the Trust a copy of this Declaration of Trust and any amendments thereto relating to Trust Units and shall be entitled to inspect and, on payment of a reasonable fee therefor and after delivering to the Trustees a statutory declaration stating the name and address of the person requiring the Trustees to furnish the list of Trust Unitholders and, if the person is a body corporate, the address for service thereof, and that the list will not be used except in connection with:

- (a) an effort to influence the voting of the holders of Trust Units;
- (b) an offer to acquire Trust Units; or
- (c) any other matter relating to the Trust Units or the affairs of the Trust,

obtain a list of the Trust Unitholders for the aforesaid purposes.

**16.6 Fiscal Year and Taxation Year**

The fiscal year and taxation year of the Trust shall end on December 31 of each year.

**16.7 Financial Disclosure**

The Trust will send (or make available if sending is not required by law) to Trust Unitholders:

- (a) within the time prescribed by applicable securities laws, and, in any event, at least 21 days prior to the date of each annual meeting of Trust Unitholders, the annual financial statements of the Trust for the fiscal year ended immediately prior to such annual meeting, together with comparative financial statements for the preceding fiscal year, if any, and the report of the Auditors thereon referred to in section 17.4; and
- (b) within the time prescribed by applicable securities laws, unaudited quarterly financial statements of the Trust for such fiscal quarter (other than in respect of the fourth quarter of each fiscal year) together with comparative financial statements for the same fiscal quarter in the preceding fiscal year, if any.

Such financial statements shall be prepared in accordance with generally accepted accounting principles in Canada as recommended from time to time in the Handbook of the Canadian Institute of Chartered Accountants; provided that such statements and the obligations to deliver such statements may vary from such principles to the extent required to comply with applicable securities laws or securities regulatory requirements or to the extent permitted by applicable securities regulatory authorities.

#### **16.8 Trust Unitholder Meeting Information**

Prior to each meeting of Trust Unitholders, the Trustees will provide to each Trust Unitholder, together with the notice of the meeting:

- (a) a form of proxy which can be used by a Trust Unitholder to appoint a proxy, who need not be a Trust Unitholder, to attend and act at the meeting on behalf of the Trust Unitholder, in the manner and to the extent authorized by the proxy; and
- (b) all information required by applicable law.

#### **16.9 Taxation Information**

Within 90 days from the end of each calendar year, the Trust will provide to Trust Unitholders who received distributions from the Trust in the prior calendar year, such information regarding the Trust required by Canadian law to be submitted to Trust Unitholders for income tax purposes to enable Trust Unitholders to complete their tax returns in respect of the prior calendar year.

#### **16.10 Income Tax Matters**

In respect of the first taxation year of the Trust, the Trust shall elect pursuant to Subsection 132(6.1) of the Tax Act that the Trust be deemed to be a mutual fund trust for the entire year. The Trustees shall satisfy, perform and discharge all obligations and responsibilities of the Trustees under the Tax Act or any similar provincial legislation and neither the Trust nor the Trustees shall be accountable or liable to any Trust Unitholders by reason of any act or acts of the Trustees consistent with, or which the Trustees believe in good faith to be consistent with, any such obligations or responsibilities. The Trustees shall determine the tax deductions, allowances and credits to be claimed, and designations to be made by the Trust in any year, and the Trustees shall claim those deductions, allowances and credits and make those designations for the purposes of computing the income of the Trust and the amount of tax payable, if any, by the Trust pursuant to the provisions of the Tax Act. In calculating income of the Trust for income tax purposes, the Trust will claim the maximum amount available to it as deductions under applicable laws, unless the Trustees determine otherwise.

#### **16.11 Protective Classification Election**

Within 70 days following the Date of Closing, the Trust shall file with the United States Internal Revenue Service a protective election on Form 8832, effective immediately prior to the Closing, to be classified as a corporation for United States federal income tax purposes.

**16.12 Trust Records**

The Trustees shall prepare and maintain, at the head office of the Trust or at any other place in Canada designated by the Trustees, records containing: (i) the Declaration of Trust; and (ii) minutes of meetings and resolutions of the Unitholders. The Trust shall also prepare and maintain adequate accounting records and records containing minutes of meetings and resolutions of the Trustees and each committee thereof. Such records shall be kept at the head office of the Trust or at such other place in Canada as the Trustees think fit and shall at all reasonable times be open to inspection by the Trustees.

**16.13 Consolidations**

Any one or more Trustees may prepare consolidated copies of the Declaration of Trust as it may from time to time be supplemented, amended or amended and restated and may certify the same to be a true consolidated copy of the Declaration of Trust, as supplemented, amended or amended and restated.

---

**ARTICLE 17  
AUDITORS**

**17.1 Qualification of Auditors**

The Auditors shall be an independent recognized firm of chartered accountants which has an office in Canada.

**17.2 Appointment of Auditors**

KPMG LLP, Chartered Accountants are appointed as the auditors of the Trust, to hold that office until the first annual meeting of the Trust Unitholders or until their resignation or removal in accordance with section 17.3. The Auditors of the Trust will be selected at each succeeding annual meeting of Trust Unitholders. The Auditors will receive such remuneration as may be approved by the Trustees.

**17.3 Change of Auditors**

The Auditors may at any time be removed by the Trustees with the approval of an Ordinary Resolution passed by Trust Unitholders at a meeting of Trust Unitholders duly called for the purpose and, upon the resignation or the removal of Auditors as aforesaid, new auditors may be appointed by an Ordinary Resolution passed by Trust Unitholders at a meeting duly called for the purpose or, in the absence of such meeting, by the Trustees.

**17.4 Report of Auditors**

The Auditors shall audit the accounts of the Trust at least once in each year and a report of the Auditors with respect to the annual financial statements of the Trust shall be provided to each Trust Unitholder with the annual financial statements referred to in section 16.7.

**ARTICLE 18  
MISCELLANEOUS**

**18.1 Counterparts**

This Declaration of Trust may be simultaneously executed in counterparts, each of which when executed shall be deemed to be an original, and such counterparts, together, shall constitute but one and the same instrument, which shall be sufficiently evidenced by any such original counterparts.

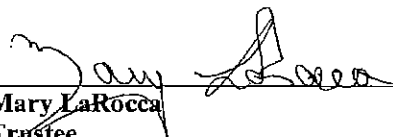
**18.2 Severability**

If any provision of this Declaration of Trust shall be held invalid or unenforceable in any jurisdiction, such invalidity or unenforceability shall attach only to such provision in such jurisdiction and shall not in any manner affect or render invalid or unenforceable such provision in any other jurisdiction or any other provision of this Declaration of Trust in any jurisdiction.

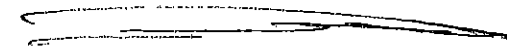
**18.3 Language**

Les parties aux présentes ont expressément convenu que la présente convention ainsi que tous les documents et avis qui s'y rattachent et/ou qui en découleront soient rédigés en anglais. The parties hereto have required that this Declaration of Trust and all documents and notices resulting herefrom be drawn up in English.

IN WITNESS WHEREOF the parties have caused these presents to be executed as of the 8 day of August, 2006.

  
\_\_\_\_\_  
Mary LaRocca  
Trustee

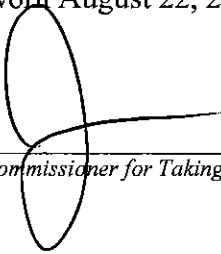
  
\_\_\_\_\_  
Douglas Law  
Trustee

  
\_\_\_\_\_  
Murray Eades  
Trustee



# TAB D

This is Exhibit **"D"** referred to in the Affidavit of Henry Wemekamp, sworn August 22, 2012



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*Commissioner for Taking Affidavits (or as may be)*

**WIMBERLY FUND**

---

**DECLARATION OF TRUST**

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**Dated as of February 1, 2010**

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**WIMBERLY FUND**

**THIS DECLARATION OF TRUST** is made as of the 1<sup>st</sup> day of February, 2010.

**BY:**

**MURRAY EADES, DOUGLAS LAW, and KEN RICE** being the trustees of the trust constituted by this declaration of trust, and each person who after the date hereof becomes a trustee of the Trust as herein provided (each person, while a trustee of the Trust as herein provided, hereinafter called a "**Trustee**", and all such persons, hereinafter called "**Trustees**"),

-and-

**DAVID C. PHILLIPS** in his capacity as initial unitholder of the Trust (the "**Initial Unitholder**") and all persons who after the date hereof become holders of units of the Trust as herein provided (collectively at any time, the "**Trust Unitholders**"),

**WHEREAS** the Initial Unitholder wishes to create a trust for the sole purpose of investing its funds in securities and investments permitted by the terms hereof;

**AND WHEREAS** for the purpose of settling the trust created hereunder, the Initial Unitholder paid an amount of \$10 in lawful money of the United States (the "**Initial Contribution**") and received in exchange therefor 10 Class A Series 8% units of Wimberly Fund (the "**Trust**");

**AND WHEREAS** the Trustees have agreed to hold the Initial Contribution and all amounts and assets subsequently received under this Declaration of Trust or in respect of the investment of the assets of the Trust in accordance with the provisions hereinafter set forth;

**AND WHEREAS** the Initial Unitholder and the Trustees desire that the beneficiaries of the Trust, including the Initial Unitholder, shall be the holders of the Trust Units;

**AND WHEREAS** it is intended that the Trust Units (as hereinafter defined) be offered for sale to members of the public in each of the provinces and territories of Canada pursuant to exemptions under applicable securities laws and/or prospectus offerings;

**AND WHEREAS** the Initial Unitholder and the Trustees desire that the Trust shall qualify as a "mutual fund trust" pursuant to subsection 132(6) of the Income Tax Act (Canada);

**AND WHEREAS** the parties hereto desire to set out the agreements, terms and conditions which shall govern their mutual and respective rights, powers and obligations with respect to the settlement and administration of the Trust;

**NOW THEREFORE**, the undersigned Trustees hereby confirm and declare that they agree with the Trust Unitholders to hold in trust, as Trustees, the Initial Contribution and any and all other property, real, personal or otherwise, tangible or intangible, which has been at the date hereof or is hereafter transferred, conveyed or paid to or otherwise received by them as Trustees or to which the Trust is otherwise entitled and all rents, income, profits and gains therefrom for the benefit of the Trust Unitholders hereunder in accordance with and subject to the expressed provisions of this Declaration of Trust, as follows:

## ARTICLE 1 INTERPRETATION

### 1.1 Definitions

In this Declaration of Trust including the recitals hereto, unless the context otherwise requires, the following terms shall have the following meanings:

**"Affiliate"** of a person means any person that would be deemed to be an affiliated entity of such person under the *Securities Act* (Ontario) as it exists on the date hereof (applied, with the necessary changes being made, in respect of persons that are not companies);

**"Annuitant"** means the annuitant or beneficiary of a Plan or any other plan of which a Trust Unitholder acts as trustee or carrier;

**"associate"** when used to indicate a relationship with a person or company, has the same meaning as in the *Securities Act* (Ontario);

**"Auditors"** means the firm of chartered accountants appointed as the auditors of the Trust from time to time in accordance with the provisions hereof who initially shall be KPMG LLP, Chartered Accountants;

**"Business Day"** means any day except Saturday, Sunday and any statutory holiday in Toronto, Ontario, Canada;

**"Cash Flow of a Series and Designation of a Class"** has the meaning ascribed thereto in section 5.1(a);

**"Class A Units"** means the Class of Units designated by the Trustees as Class A Units as provided in section 3.2, issuable in Series and Designations;

**"Class B Units"** means the Class of Units designated by the Trustees as Class B Units as provided in section 3.2, issuable in Series and Designations;

**"Class C Units"** means the Class of Units designated by the Trustees as Class C Units as provided in section 3.2, issuable in Series and Designations;

**"Class of Units"** or **"Class"** means all Units of the Trust designated by the Trustees as a separate Class of Units, issued in series and designations, after receipt of all necessary approvals, and prior to the creation of any other Classes shall mean Class A Units, Class B Units and Class C Units;

**"Closing"** means a closing of the issue of Trust Units to investors, whether pursuant to a public offering or a private placement;

**"Common Expenses"** means the costs and expenses attributable to all unitholders of the Trust as determined by the Trustees;

**"Counsel"** means a barrister or solicitor or firm of barristers and solicitors or other lawyers in an appropriate jurisdiction retained by the Trust;

**"Date of Closing"** means the date on which a Closing occurs;

**"Designation"** means the year of issuance of a Series of a Class of Units;

**"Distributable Cash Flow of a Series and Designation of a Class"** has the meaning ascribed thereto in section 5.1(b);

**"Distribution Payment Date"** in respect of a Distribution Period means a date no later than 15 days following the end of the Distribution Period or, if such day is not a Business Day, the next following Business Day or such other date determined from time to time by the Trustees;

**"Distribution Period"** means initially the period from and including the initial Date of Closing to and including the last day of the calendar month in which the initial Closing occurs and thereafter means each month in each calendar year from and including the first day thereof and to and including the last day thereof;

**"Distribution Record Date"** means the last Business Day of each Distribution Period;

**"Fully Diluted Basis"** means, with respect to the number of outstanding Trust Units, at any time, the number of Trust Units that are outstanding at that time and would be outstanding if all outstanding options, rights attached to securities convertible into or exchangeable for Trust Units and other rights to acquire Trust Units were exercised at that time;

**"generally accepted accounting principles"** or **"GAAP"** means Canadian generally accepted accounting principles determined with reference to the Handbook of the Canadian Institute of Chartered Accountants, as amended from time to time;

**"Income of the Trust"** has the meaning ascribed thereto in section 5.2(a);

**"Initial Contribution"** means the amount of \$10 paid by the Initial Unitholder to the Trustees for the purpose of settling the Trust;

**"Management Agreement"** means the agreement between the Trust and the Manager dated as of February 1, 2010 pursuant to which the Manager provides certain management, administrative and support services to the Trust;

**"Manager"** means First Leaside Management Inc. and all successors and permitted assigns thereof;

**"Master LP"** means F.L. Master Texas, Ltd., a limited partnership formed under the laws of the State of Texas;

**"Master LP Notes"** means the unsecured redeemable extendible promissory notes issued by Master LP to the Trust in classes, series and designations that correspond to the Classes, Series and Designations of Trust Units issued by the Trust;

**"Monthly Limit"** has the meaning given to that term in section 6.5;

**"Net Realized Capital Gains"** has the meaning ascribed thereto in section 5.2(b);

**"Non-Resident"** means a person who is a "non-resident" of Canada within the meaning of the Tax Act and for the purpose of section 13.5 and for any other provision dealing with the ownership of Units shall include a partnership which is not a "Canadian partnership" within the meaning of the Tax Act;

**"Ordinary Resolution"** means, subject to sections 12.12 and 12.15, a resolution proposed to be passed as an ordinary resolution at a meeting of Trust Unitholders (including an adjourned meeting) duly convened for that purpose and held in accordance with the provisions hereof at which a quorum is present, which resolution is passed by the affirmative votes of a majority of the votes cast by the Trust Unitholders at such meeting;

**"Participation Rights"** means the rights to cash payments based on the value of WALP (as defined below) units granted by WALP to the Trust in classes, series and designations that correspond to the classes, series and designations of the Master LP Notes issued by Master LP, pursuant to the participation agreement between WALP and the Trust dated as of February 1, 2010;

**"person"** means and includes individuals, corporations, limited partnerships, general partnerships, joint stock companies, limited liability companies, joint ventures, associations, companies, trusts, banks, trust companies, pension funds, business trusts or other organizations, whether or not legal entities, and governments, governmental agencies and political subdivisions thereof;

**"Plan"** means a trust governed by a registered retirement savings plan, registered retirement income fund, registered education savings plan, deferred profit sharing plan or registered disability savings plan and a tax-free savings account, each as described in the Tax Act;

**"real property"** means property which in law is real property and includes, whether or not the same would in law be real property, leaseholds, mortgages, undivided joint interests in real property (whether by way of tenancy-in-common, joint tenancy, co-ownership, joint venture or otherwise), any interests in any of the foregoing and securities of persons the sole or principal purpose and activity of which is to invest in, hold and deal in real property;

**"Redemption Date"** has the meaning given to that term in section 6.3;

**"Redemption Price"** has the meaning ascribed thereto in section 6.2(c);

**"Registers"** has the meaning ascribed thereto in section 13.4;

**"Reinvestment Units"** means the Class C Units that are issued to the holders of Class C Units in lieu of regular cash distributions, as provided in section 3.2;

**"Residents"** means persons who are resident in Canada for the purpose of the Tax Act;

**"Series"** means the distribution rate, expressed as a percentage, for the Trust Units issued by the Trust at a Closing, as determined by the Trustees for each issuance of Trust Units from time to time;

**"Series and Designation of a Class Fees"** means all fees, if any, payable in respect of a Series and Designation of a Class of Units and all other costs, expenses and other amounts attributable to a particular Series and Designation of a Class of Units, all as determined by the Trustees;

**"Series and Designation of a Class of Units"** means all Units of the Trust designated by the Trustees as a separate Series and Designation of a Class of Units;

**"Series and Designation of a Class Net Asset Value"** means the net asset value of a given Series and Designation of a Class of Units of the Trust determined in accordance with Article 3;

**"Series and Designation of a Class Unit Value"** means the net asset value per Unit of a given Series and Designation of a Class of Units of the Trust determined in accordance with Article 3;

**"Special Resolution"** has, subject to sections 12.12 and 12.15, the meaning ascribed thereto in section 12.8;

**"Subsidiary"** of a person means any person that would be deemed to be a subsidiary entity of such person under the *Securities Act* (Ontario) as it exists on the date hereof (applied, with the necessary changes being made, in respect of persons that are not companies);

**"Tax Act"** means the *Income Tax Act*, R.S.C. 1985 (5th Supp.) c. 1 and the regulations thereunder;

**"this Declaration of Trust", "this Declaration", "hereto", "herein", "hereof" "hereby", "hereunder"** and similar expressions refer to this instrument, and not to any particular Article, section or portion hereof, and include any and every instrument supplemental or ancillary hereto;

**"Time of Closing"** means the time on a Date of Closing at which a Closing occurs;

**"Trust"** means the Wimberly Fund, an open-ended, limited purpose trust constituted by this Declaration of Trust;

**"Trust Assets"**, at any time, means such of the following monies, properties and other assets as are at such time held by the Trust or by the Trustees on behalf of the Trust, including:

- (i) the Initial Contribution;
- (ii) all funds or property derived from the issuance or sale of Trust Units or other cash or property received by the Trust;
- (iii) any securities, whether debt or equity, of any WALP Group Member or other securities or investments otherwise permitted by the terms of this Declaration of Trust to be held from time to time by or on behalf of the Trust; and
- (iv) all proceeds, income, dividends, interest, profit, return of capital, gains and accretions and all substituted assets, rights and benefits of any kind or nature whatsoever arising directly or indirectly from or in connection with or accruing to such foregoing property or such proceeds of disposition,

which may be held in separate pools designated by Class, Series and Designation;

**"Trust Liabilities"** has the meaning ascribed thereto in section 2.7(a);

**"Trust Unit Certificate"** means a certificate in the form approved by the Trustees evidencing one or more Trust Units designated by Class, Series and Designation, issued and certified in accordance with the provisions hereof;

**"Trust Unitholders"** means at any time the holders at that time of one or more Trust Units, as shown on the Registers;

**"Trust Units"** or **"Units"** means all of the trust units of the Trust authorized and issued hereunder as such and for the time being outstanding and entitled to the benefits hereof;

**"Trustee"**, at any time, means an individual who is, in accordance with the provisions hereof, a trustee of the Trust at the time, and **"Trustees"** means, at any time, all of the individuals, each of whom is at that time a trustee;

**"Unitholder's Declaration"** means a declaration regarding the residency of a Trust Unitholder or other beneficial owner(s) or any other person in the form determined by the Trustees in accordance with section 13.5;

**"Valuation Date"** means the last day of each calendar month or such other date or dates as the Trustees shall from time to time determine;

**"Valuation Time"** means 4:00 p.m. on each Valuation Date or such other time as the Trustees shall from time to time determine.

**"WALP"** means Wimberly Apartments Limited Partnership, a limited partnership formed under the laws of the Province of Ontario;

**"WALP Group"** means, at any time, collectively, WALP, Master LP (as defined below), and their respective Subsidiaries and Affiliates, and **"WALP Group Member"** means any one of them;

## **1.2 References to Acts Performed by the Trust**

For greater certainty, where any reference is made in this Declaration of Trust to an act to be or not to be performed by the Trust, such reference shall be construed and applied for all purposes as if it referred to an act to be or not to be performed by the Trustees on behalf of the Trust or by some other

person duly authorized to do so by the Trustees or pursuant to the provisions hereof, and where any reference is made in this Declaration of Trust to actions, rights or obligations of the Trustees, such reference shall be construed and applied for all purposes to refer to actions, rights or obligations of the Trustees in their capacity as Trustees of the Trust, and not in their other capacities, unless the context otherwise requires.

### **1.3 References**

Except as otherwise specifically provided herein, reference in this Declaration of Trust to any contract, agreement or any other instrument will be deemed to include references to the same as varied, amended, supplemented, restated or replaced from time to time. Except as otherwise specifically provided herein, any reference in this Declaration of Trust to a statute or regulation, rule, policy or instrument thereunder will be deemed to be a reference to such statute or regulation, rule, policy or instrument as amended, reenacted or replaced from time to time, and reference to specific parts, paragraphs or sections thereof will include all amendments, reenactments or replacements. Where there are proposals for amendments to the Tax Act which have not been enacted into law or proclaimed into force on or before the date on which such proposals are to become effective, the Trustees may take such proposals into consideration and apply the provisions thereof as if such proposals had been enacted into law and proclaimed into force.

### **1.4 Number and Gender**

In this Declaration of Trust, unless herein otherwise expressly provided or unless the context otherwise requires, words importing the singular number include the plural, and vice versa and words importing a gender shall include the feminine, masculine and neuter genders.

### **1.5 Headings for Reference Only**

The division of this Declaration of Trust into Articles and sections, the provision of a Table of Contents and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Declaration of Trust.

### **1.6 Day Not a Business Day**

In the event that any day on which any amount is to be determined or any action is required to be taken hereunder is not a Business Day, then such amount shall be determined or such action shall be required to be taken at or before the requisite time on the next succeeding day that is a Business Day.

### **1.7 Time of the Essence**

Time shall be of the essence in this Declaration of Trust.

### **1.8 Governing Law**

This Declaration of Trust and the Trust Unit Certificates shall be construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein and shall be treated in all respects as Ontario contracts. The parties hereto hereby irrevocably submit and attorn to the jurisdiction of the courts of the Province of Ontario.

### **1.9 Currency**

Unless otherwise specified herein, all references to currency are to lawful money of Canada.

**1.10 Certain Phrases, etc.**

In this Declaration of Trust, (i) the words "including" and "includes" mean "including (or includes) without limitation", and (ii) the phrase "the aggregate of, "the total of, "the sum of, or a phrase of similar meaning means "the aggregate (or total or sum), without duplication, of.

**ARTICLE 2  
DECLARATION OF TRUST**

**2.1 Establishment of Trust**

The Trustees hereby declare themselves and agree to act as trustees hereunder and agree to hold the Trust Assets in trust for the use and benefit of the Trust Unitholders, their successors, permitted assigns and personal representatives, on and subject to the terms and conditions hereinafter declared and set forth, such trust to constitute the Trust hereunder.

**2.2 Initial Contribution**

The Trustees hereby acknowledge payment by the Initial Unitholder, concurrent with the execution of this Declaration of Trust, of the Initial Contribution to the Trust for the purpose of settling this Trust in consideration for which the Initial Unitholder was issued 10 Class A Series 8% Designation 2010 Trust Units.

**2.3 Name of Trust**

- (a) The Trust shall be known and designated as the "**WIMBERLY FUND**" or the French language version thereof and, whenever practicable, lawful and convenient, the property of the Trust shall be held and the affairs of the Trust shall be conducted and transacted under that name.
- (b) If the Trustees determine that the use of such name is not practicable, legal or convenient, the Trust may use such other designation or may adopt such other name as the Trustees deem appropriate, and the Trust may hold property and conduct and transact its affairs under such other designation or name.
- (c) The Trustees may approve and use a version of any name or designation used by the Trust in any foreign language.

**2.4 Head Office**

The head office of the Trust shall be located at 430 Regional Road #8, Uxbridge, Ontario L9P 1R1, or such other place or places in Canada as the Trustees may from time to time designate.

**2.5 Nature of the Trust**

The Trust is an unincorporated, open-ended limited purpose trust, established for the purposes specified in section 4.1. The Trust is not, shall not be deemed to be and shall not be treated as, a general partnership, limited partnership, syndicate, association, joint venture, company, corporation or joint stock company nor shall the Trustees or any individual Trustee or the Trust Unitholders or any of them or any person be, or be deemed to be, treated in any way whatsoever as liable or responsible hereunder as partners or joint venturers. The Trustees are not and shall not be, or be deemed to be, agents of the Trust Unitholders. The relationship of the Trust Unitholders to the Trustees shall be solely that of beneficiaries of the Trust and their rights shall be limited to those expressly conferred upon them by this Declaration of Trust.

## 2.6

### **Rights of Trust Unitholders**

The rights of each Trust Unitholder (including the right, if any, to call for or receive a distribution or division of assets, monies, funds, income, dividends and/or capital gains held, received or realized by the Trustees) are limited to those contained herein and, except as provided herein, no Trust Unitholder shall be entitled to call for any partition or division of the Trust Assets or for a distribution of any particular asset forming part of the Trust Assets or of any particular monies or funds received by the Trust or the Trustees. The legal ownership of the Trust Assets and the right to conduct the activities of the Trust are vested exclusively in the Trustees, and no Trust Unitholder has or is deemed to have any right of ownership in any of the Trust Assets, except as specifically provided herein. Except as specifically provided herein, no Trust Unitholder or Trust Unitholders shall be entitled to interfere with or give any direction to the Trustees with respect to the affairs of the Trust or in connection with the exercise of any powers or authorities conferred upon the Trustees under this Declaration of Trust. The Trust Units shall be personal property and shall confer upon the holders thereof only the interest and rights specifically set forth in this Declaration of Trust.

## 2.7

### **Liability of Trust Unitholders**

- (a) No Trust Unitholder or Annuitant, in its capacity as such, shall incur or be subject to any liability, direct or indirect, absolute or contingent, in contract or in tort or of any other kind to any person in connection with: (i) the Trust Assets or the ownership, use, operation, acquisition or disposition thereof or exercise or enjoyment of the rights, privileges, conditions or benefits attached thereto, associated therewith or derived therefrom; (ii) the obligations or the activities or affairs of the Trust; (iii) any actual or alleged act or omission of the Trustees or by any other person in respect of the activities or affairs of the Trust (whether or not authorized by or pursuant to this Declaration of Trust); (iv) any act or omission of the Trustees or any other person in the performance or exercise, or purported or attempted performance or exercise, of any obligation, power, discretion or authority conferred upon the Trustees or such other person in respect of the activities or affairs of the Trust (whether or not authorized by or pursuant to this Declaration of Trust); (v) any transaction entered into by the Trustees or by any other person in respect of the activities or affairs of the Trust (whether or not authorized by or pursuant to this Declaration of Trust); or (vi) except as provided in section 5.8, any taxes, levies, imposts or charges or fines, penalties or interest in respect thereof payable by the Trust or by the Trustees or by any other person (except the Trust Unitholder to the extent required by applicable tax laws) on behalf of or in connection with the activities or affairs of the Trust (collectively, "**Trust Liabilities**")
- (b) No Trust Unitholder or Annuitant, in its capacity as such, shall be liable to indemnify the Trustees or any other person with respect to any Trust Liabilities.
- (c) To the extent that, notwithstanding the provisions of this section 2.7, any Trust Unitholder or Annuitant, in its capacity as such, may be determined by a judgment of a court of competent jurisdiction to be subject to or liable in respect of any Trust Liabilities, such Trust Unitholder or Annuitant is entitled to be reimbursed out of the Trust Assets for any payment of Trust Liabilities made by such Trust Unitholder or Annuitant.



**ARTICLE 3**  
**DESCRIPTION AND ISSUE OF UNITS**

**3.1 Nature and Authorized Number of Units**

The beneficial interests in the Trust shall be divided into Units or fractions thereof issued in one or more Classes as determined by the Trustees after receipt of all necessary approvals from time to time. As of the date hereof, the Trust has three Classes of Units consisting of an unlimited number of Class A Units, an unlimited number of Class B Units and an unlimited number of Class C Units. Each Class of Units shall be issuable in Series and Designations, provided that the Reinvestment Units shall be issued with the identical Series and Designations category as the Class C Units that they relate to. Each Trust Unit shall vest indefeasibly in the holder thereof and the interest of each Trust Unitholder shall be determined by the number of Trust Units of the particular Series and Designation of a Class, registered in the name of the Trust Unitholders on the Registers. Subject to the provisions of section 12.15, all of the Units of the Trust shall be voting and shall vote equally with each other at all meetings of Trust Unitholders. Subject to the exercise of the power of the Trustees to make distributions under section 9.2, unitholders of the Trust holding Units of a particular Series and Designation of a Class are entitled to participate in distributions on a *pro rata* basis with unitholders holding Units of the same Series and Designation of a Class. All Trust Units of a particular Series and Designation of a Class rank among themselves equally and rateably without discrimination, preference or priority. Issued and outstanding Trust Units may be subdivided or consolidated from time to time by the Trustees without the approval of or notification to Unitholders.

**3.2 Classes of Units**

The Classes of Units as of the date hereof are designated as follows:

(1) Class A Units: Class A Units of the Trust are issuable in Series (as determined by the Trustees) and Designations and are denominated in US dollars. All payments made by the Trust to holders of Class A Units shall be made in US dollars including any payments relating to the Participation Rights. A Class A Unit shall correspond to a Master LP Note denominated in US dollars issued by Master LP to the Trust effective the same date the Class A Unit is issued. Class A Units shall be designated as: "Class A, Series [distribution rate], Designation [year of issue]". By way of example, a Class A Unit issued as at the first Closing after the date hereof shall be designated as: "Class A, Series 8%, Designation 2010" and the corresponding Master LP Note shall have the same designation.

(2) Class B Units: Class B Units of the Trust are issuable in Series (as determined by the Trustees) and Designations and are denominated in Canadian dollars. All payments made by the Trust to holders of Class B Units shall be made in Canadian dollars other than payments relating to the Participation Rights (which shall be made in US dollars). A Class B Unit shall correspond to a Master LP Note denominated in Canadian dollars issued by Master LP to the Trust effective the same date the Class B Unit is issued. Class B Units shall be designated as: "Class B, Series [distribution rate], Designation [year of issue]". By way of example, a Class B Unit issued as at the first Closing after the date hereof shall be designated as: "Class B, Series 8%, Designation 2010" and the corresponding Master LP Note shall have the same designation.

(3) Class C Units: Class C Units of the Trust are issuable in Series (as determined by the Trustees) and Designations and are denominated in Canadian dollars. All payments made by the Trust to holders of Class C Units shall be made in Canadian dollars other than payments relating to the Participation Rights (which shall be made in US dollars), provided that regular cash distributions shall not be paid to the holders of Class C Units but shall be paid by the issuance of additional Class C Units (defined herein as Reinvestment Units). A Class C Unit (other than a Reinvestment Unit) shall correspond

to a Master LP Note denominated in Canadian dollars issued by Master LP to the Trust effective the same date the Class C Unit is issued. Such Master LP Notes shall provide that any interest shall automatically be accrued and added to the principal amount of the Master LP Note. All Reinvestment Units shall correspond to the same Master LP Note as the Class C Units that they relate to. Class C Units (other than Reinvestment Units) shall be designated as: "Class C, Series [distribution rate], Designation [year of issue]". Reinvestment Units shall have the identical Series and Designation as the Class C Units that they relate to. By way of example, a Class C Unit issued as at the first Closing after the date hereof shall be designated as: "Class C, Series 8%, Designation 2010", and the corresponding Master LP Note and Reinvestment Units shall have the same designation.

### **3.3 Issue of Units**

- (a) Trust Units of a particular Series and Designation of a Class Designation may be issued by the Trust at the times, to the persons, for the consideration and on the terms and conditions that the Trustees determine. The Trustees may authorize the Trust to pay a reasonable commission to any person in consideration of such person purchasing or agreeing to purchase Trust Units from the Trust or from any other person or procuring or agreeing to procure purchasers for Trust Units.
- (b) The Trustees may create and issue instalment receipts, rights, warrants, receipts (including so-called "special warrants" and "subscription receipts" which may be exercisable for no additional consideration), securities convertible into or exchangeable or exercisable for Trust Units of a particular Series and Designation of a Class or other securities of the Trust (including Trust Units issuable upon the exchange of securities of other issuers) or options (including all types of incentive programs) to subscribe for Trust Units which instalment receipts, rights, warrants, receipts, convertible or exchangeable or exercisable securities or options may be exercisable at such subscription price or prices and at such time or times as the Trustees may determine. The instalment receipts, rights, warrants, receipts, convertible or exchangeable or exercisable securities or options so created may be issued for such consideration or for no consideration, all as the Trustees may determine. An instalment receipt, right, warrant, receipt, convertible or exchangeable or exercisable security or option shall not be a Trust Unit and the holder thereof shall not be a Trust Unitholder.
- (c) Trust Units are only to be issued as fully paid in money, property, including an obligation to pay consideration in instalments, or past services, and are not to be subject to future calls or assessments, except that Trust Units to be issued under an offering of Trust Units to the public or otherwise may be issued for a consideration payable in instalments and the Trust may take a security interest over such Trust Units for unpaid instalments.
- (d) The Trustees may authorize the Trust to pay a reasonable commission to any person in consideration of such person purchasing or agreeing to purchase, whether absolutely or conditionally, Trust Units, or rights, warrants, convertible securities or options to acquire Trust Units, from the Trust or from any other person or procuring or agreeing to procure purchasers, whether absolute or conditional, for Units, or rights, warrants, convertible securities or options to acquire Trust Units.

### **3.4 Fractional Units**

The Trustees may allot and issue Units or fractions of any Units at such time or times and in such manner and to such Persons as the Trustees may determine. Units and fractions of Units shall not be issued otherwise than as fully paid and a Unit or fraction of a Unit is not fully paid until all consideration therefor, whether in cash or in kind, has been received by or on behalf of the Trust.

If as a result of any act of the Trustees hereunder any person becomes entitled to a fraction of a Trust Unit, such person shall not be entitled to receive a certificate therefor. Fractional Units shall not, except to the extent that they may represent in the aggregate one or more whole Trust Units, entitle the holder thereof to notice of or to attend or to vote at, meetings of Trust Unitholders. Subject to the foregoing, such fractional Trust Units shall have attached thereto the rights, restrictions, conditions and limitations attaching to whole Trust Units in the proportion that they bear to a whole Unit.

### **3.5 Re-Purchase of Initial Trust Units by the Trust**

Immediately after the initial Closing, the Trust will purchase the initial Trust Units from the Initial Unitholder and the Initial Unitholder will sell the initial Trust Units to the Trust, for a purchase price of \$10.00 and, upon the completion of that purchase and sale, the initial Trust Units shall be cancelled and shall no longer be outstanding for any of the purposes of this Declaration of Trust.

### **3.6 No Pre-Emptive Rights**

No Trust Unitholder is entitled, as a matter of right, to any preference, conversion, exchange or pre-emptive right to subscribe for or purchase any other Trust Units over any other Trust Unitholder in the same Series and Designation of a Class of Units or otherwise, unless expressly agreed to in writing by the Trustees.

### **3.7 Subdivision or Consolidation**

Unless the Trustees determine otherwise, and subject to the paragraph immediately below in this section 3.7, immediately after any pro rata distribution of additional Trust Units to all Trust Unitholders pursuant to section 5.7, the number of the outstanding Trust Units will be consolidated such that each Trust Unitholder will hold after the consolidation the same number of Trust Units of the particular Series and Designation of a Class as the Trust Unitholder held before the distribution of additional Trust Units. In this case, each Trust Unit Certificate representing a number of Trust Units of a particular Series and Designation of a Class prior to the distribution of additional Trust Units is deemed to represent the same number of Trust Units after the non-cash distribution of additional Trust Units and the consolidation.

Notwithstanding the foregoing, where tax is required to be withheld from a Trust Unitholder's share of the distribution, the consolidation will result in such Trust Unitholder holding that number of Trust Units of a particular Series and Designation of a Class equal to (i) the number of Trust Units held by such Trust Unitholder prior to the distribution plus the number of Trust Units received by such Trust Unitholder in connection with the distribution (net of the total of the number of whole and part Trust Units withheld on account of withholding taxes and the number of whole and part Trust Units withheld pursuant to section 5.8 on account of the Trustees' reasonable expenses with regard to the sale of such Trust Units withheld on account of withholding taxes) multiplied by (ii) the fraction obtained by dividing the aggregate number of Trust Units outstanding prior to the distribution by the aggregate number of Trust Units of a particular Series and Designation of a Class that would be outstanding following the distribution and before the consolidation if no withholding were required in respect of any part of the distribution payable to any Trust Unitholder. Such Trust Unitholder will be required to surrender the Trust Unit Certificates, if any, representing such Trust Unitholder's original Trust Units, in exchange for a Trust Unit Certificate representing such Trust Unitholder's post-consolidation Trust Units of a particular Series and Designation of a Class.

### **3.8 Subscription for Units**

Subscriptions shall be in such form as determined by the Trustees from time to time and, in each case, shall be accompanied by payment as described from time to time in the subscription agreement provided by the Trust or if not so described as the Trustees may from time to time determine.

### **3.9 Minimum Purchases**

An investor's initial subscription for Units shall be in such gross dollar amount as the Trustees may from time to time determine. The Trustees may determine the gross dollar amount required in respect of the initial subscription of any investor who subscribes for Units pursuant to a plan, whereby the investor agrees to make regular purchases of Units of the Trust, or pursuant to a Plan. The Trustees may charge a fee, in such amount as the Trustees may from time to time determine, for the termination by a Unitholder of its participation in such a plan. The Trustees may also determine the gross dollar amount required in respect of a subscription by a Trust Unitholder for additional Units of the same Series and Designation of a Class of the Trust.

### **3.10 Right to Reject Subscription**

The Trustees shall at their sole option be entitled to reject subscriptions for purchases of Units at any time. The Trustees shall at all times ensure that any decision to reject a subscription is made and communicated to the investor within two (2) Business Days of receipt of the subscription application and to refund to the investor immediately any moneys received without interest.

### **3.11 Subsequent Purchases**

Subsequent purchases of Units shall be made in such manner as shall be determined from time to time by the Trustees.

### **3.12 Transfer Agent and Registrar**

The Trustees shall maintain, or cause to be maintained by a transfer agent and registrar or by one or more branch transfer agents and registrants, a register for the registration of each Class of Units and each Designation and Series of a Class of Units and shall provide, or cause to be provided, for the transfer and the registration of transfers of Units in one or more places in Canada. The Trustees or the transfer agent and registrar and/or branch transfer agents and registrars shall keep all necessary books and registers of the Trust required by this Declaration of Trust or by applicable legislation instruments or rules of securities regulatory authorities in jurisdictions where the Units are qualified for distribution. The books and registers referred to in this section 3.12 shall be kept in a bound or loose-leaf book or may be entered or recorded by any system of mechanical or electronic data processing or any other information storage device and shall at all reasonable times be open for inspection at the principal office of the Trust or of the transfer agent and registrar, free of charge by the Unitholders of the Trust or their duly authorized representative.

### **3.13 Registered Unitholders**

The Trustees, any transfer agent and registrar, or branch transfer agent and registrar, as the case may be, shall for all purposes be entitled to treat the unitholder in whose name any Units are registered as the absolute owner thereof, any notice to the contrary notwithstanding. The Trustees, any transfer agent and registrar, or branch transfer agent and registrar, as the case may be, shall not be charged with notice of or be bound to see to the execution of any trust in respect of any unit, whether express, implied or constructive, and may deal with any unit on the direction of its registered unitholder whether named as trustee or otherwise.

**ARTICLE 4**  
**INVESTMENTS OF THE TRUST**

**4.1 Purpose of the Trust**

The Trust is an unincorporated, open-ended, limited purpose trust and its operations and activities shall be restricted to:

- (a) acquiring, investing in, holding, transferring, disposing of and otherwise dealing with the Master LP Notes and the Participation Rights granted in conjunction therewith;
- (b) acquiring, investing in, holding, transferring, disposing of and otherwise dealing with securities of or lending to any WALP Group Member;
- (c) temporarily holding cash in interest bearing accounts, short-term government debt or short-term investment grade corporate debt for the purposes of paying the expenses and liabilities of the Trust, paying amounts payable by the Trust in connection with the redemption of any Trust Units or other securities of the Trust and making distributions to Trust Unitholders;
- (d) issuing Trust Units and other securities of the Trust, including instalment receipts, securities convertible into or exchangeable or exercisable for Trust Units or other securities of the Trust or other rights, warrants, receipts or options convertible into or exchangeable or exercisable for Trust Units or other securities of the Trust, including for the purposes of:
  - (i) obtaining funds to conduct the activities described in paragraphs (a) and (b) above, including raising funds for acquisitions;
  - (ii) implementing Trust Unitholder rights plans, distribution reinvestment plans, distribution reinvestment and Trust Unit purchase plans, option plans, long term incentive plans or other compensation plans, if any, established by the Trust;
  - (iii) making non-cash distributions to holders of Trust Units as contemplated by this Declaration of Trust, including pursuant to distribution reinvestment plans, if any, established by the Trust; and
  - (iv) repaying any indebtedness or satisfying any obligation, including any indebtedness or obligation to any WALP Group Member;
- (e) issuing debt securities (including debt securities convertible into or exchangeable for Trust Units or other securities of the Trust) or otherwise borrowing and mortgaging, pledging, charging, granting a security interest in or otherwise encumbering any of the Trust Assets as security;
- (f) guaranteeing (as guarantor, surety or co-principal obligor) the payment of any indebtedness, liability or obligation of any WALP Group Member or the performance of any obligation of any WALP Group Member, and mortgaging, pledging, charging, granting a security interest in or otherwise encumbering all or any part of the Trust Assets;
- (g) disposing of any part of the Trust Assets, subject to the provisions of this Declaration of Trust and applicable laws;
- (h) issuing or redeeming rights and/or Trust Units pursuant to any Trust Unitholder rights plan adopted by the Trust;

- (i) repurchasing or redeeming securities issued by the Trust, including Trust Units, subject to the provisions of this Declaration of Trust and applicable law;
- (j) satisfying the obligations, liabilities or indebtedness of the Trust; and
- (k) undertaking all other usual and customary actions for the conduct of the activities of the Trust in the ordinary course as are approved by the Trustees from time to time, or as are contemplated by this Declaration of Trust,

provided that the Trust shall not undertake any activity, take any action or make or retain any investment which would result (or omit to take any action where such omission would result) in: (i) the Trust not being considered a "mutual fund trust" for purposes of the Tax Act; or (ii) the Trust Units being disqualified for investment by Plans.

## ARTICLE 5 DISTRIBUTIONS

### 5.1 Computation of Distributable Cash Flow

- (a) The "Cash Flow of a Series and Designation of a Class" for, or in respect of, any Distribution Period, shall be determined pursuant to the following provisions:
  - (i) the following amounts shall be included in the calculation:
    - (A) all cash amounts derived from the investment of the proceeds of the sale of a Series and Designation of a Class of Units received by the Trust for and in respect of the Distribution Period, including, without limitation, the amounts received as a holder of Master LP Notes or Participation Rights that correspond, as applicable, to the Series and Designation of a Class of Units, and all other income, distributions, interest, dividends, proceeds from the disposition of securities, returns of capital and repayments of indebtedness; and
    - (B) all amounts derived from the investment of the proceeds of the sale of a Series and Designation of a Class of Units received by the Trust in any prior Distribution Period to the extent not previously distributed;
  - (ii) the following amounts shall be deducted in the calculation:
    - (A) all costs and expenses attributable to the Series and Designation of a Class of Units and any of a Series and Designation of a Class of Units' proportionate share of the Common Expenses which, in the opinion of the Trustees, may reasonably be considered to have accrued and become owing in respect of, or which relate to, such Distribution Period or a prior Distribution Period if not accrued or deducted in determining the cash flow of such Series and Designation of a Class of Units in such prior period;
    - (B) all amounts which relate to the redemption or repurchase of Trust Units of the Series and Designation of a Class of Units and which have been paid or become payable in cash by the Trust in such Distribution Period;
    - (C) a Series and Designation of a Class of Units' proportionate share of all amounts to be paid in satisfaction of debt service obligations of the Trust on account of both principal and interest; and

- (D) any amount that the Trustees may reasonably consider to be necessary to provide for the payment of any costs that have been or are reasonably expected to be incurred by the Trust, including any tax liabilities of the Trust; and
- (iii) the net proceeds of any issuance of a Series and Designation of a Class of Units or other securities, including debt securities, of the Trust and any associated expenses shall not be included in the calculations of Cash Flow of a Series and Designation of a Class, in respect of any Distribution Period.
- (b) The **"Distributable Cash Flow of a Series and Designation of a Class"** for, or in respect of, a Distribution Period shall be the Cash Flow of a Series and Designation of a Class for such Distribution Period less any amount which the Trustees may reasonably consider to be necessary to provide for: (i) the payment of any costs which have been or will be incurred in the activities and operations of the Series and Designation of a Class of Units, (ii) the payments of any tax liability of the Trust (but excluding such amounts previously deducted in section 5.1(a)(ii)), and (iii) such reserves or amounts as are, in the opinion of the Trustees, necessary or desirable.

## 5.2 **Computation of Income and Net Realized Capital Gains**

- (a) The **"Income of the Trust"** for any taxation year of the Trust shall be the net income for the year determined pursuant to the provisions of the Tax Act, other than paragraph 82(1)(b) and subsection 104(6) thereof, having regard to the provisions thereof which relate to the calculation of "taxable income" of the Trust, and taking into account such adjustments thereto as are determined by the Trustees in respect of dividends received from taxable Canadian corporations, amounts paid or payable by the Trust to Trust Unitholders and such other amounts as may be determined in the discretion of the Trustees; provided, however, that capital gains and capital losses shall be excluded from the computation of net income.
- (b) The **"Net Realized Capital Gains of the Trust"** for any taxation year of the Trust shall be determined as the amount, if any, by which the aggregate of the capital gains of the Trust calculated in accordance with the provisions of the Tax Act in the year exceeds the aggregate of (i) the aggregate of the capital losses of the Trust calculated in accordance with the provisions of the Tax Act in the year, (ii) the amount determined by the Trustees in respect of any net capital losses for prior taxation years which the Trust is permitted by the Tax Act to deduct in computing the taxable income of the Trust for the year, and (iii) any amount in respect of which the Trust is entitled to a capital gains refund under the Tax Act, as determined by the Trustees; provided that at the discretion of the Trustees, the Net Realized Capital Gains of the Trust for a year may be calculated without subtracting the full amount in respect of the net capital losses of the Trust carried forward from previous years.

## 5.3 **Distribution of Distributable Cash Flow**

- (a) The Trust shall distribute on each Distribution Payment Date to Trust Unitholders of a Series and Designation of a Class of Units of record as at the close of business on the applicable Distribution Record Date all of the Distributable Cash Flow of a Series and Designation of a Class of Units for the applicable Distribution Period. The proportionate share of each Trust Unit of the amount of the Distributable Cash Flow of a Series and Designation of a Class shall be determined by dividing such amount by the number of issued and outstanding Trust Units of such Series and Designation of a Class of Units on such Distribution Record Date. Each Trust Unitholder's share of such Series and

Designation of a Class of Units' Distributable Cash Flow shall be an amount equal to the proportionate share of each Trust Unit of such Series and Designation of a Class of Units of such Distributable Cash Flow of a Series and Designation of a Class multiplied by the number of Trust Units of such Series and Designation of a Class of Units owned of record by each such Trust Unitholder on such Distribution Record Date.

- (b) Subject to section 5.7, any distribution which has been declared or authorized to be payable to Trust Unitholders in respect of a Distribution Period shall be paid as follows:
  - (i) holders of Class A Units and Class B Units as of each Distribution Date shall be paid in cash on the Distribution Payment Date in respect of such Distribution Period; and
  - (ii) holders of Class C Units shall not be paid in cash on the Distribution Payment Date in respect of such Distribution Period; any amounts payable to holders of Class C Units shall be paid in accordance with section 5.7.

#### 5.4

##### Other Distributions

- (a) In addition to the distributions which are made payable to Trust Unitholders pursuant to section 5.3, the Trustees may allocate, declare or authorize to be payable and/or make distributions, from time to time, out of Income of the Trust, Net Realized Capital Gains, the capital of the Trust or otherwise, in any year, in such amount or amounts, and on such dates as the Trustees may determine to persons who are Trust Unitholders at the record date determined by the Trustees for such distribution. For greater certainty, the Trustees may designate and make payable any income or capital gains realized by the Trust (including any income realized by the Trust on the redemption of Trust Units pursuant to section 6.4) to redeeming Trust Unitholders in accordance with that section. All Trust Unitholders of a Series and Designation of a Class of Units will share equally and on a *pro rata* basis, based on the Series and Designation of a Class of Units' proportionate share of such distribution.
- (b) Having regard to the intent of the Trust to allocate, distribute and make payable to Trust Unitholders all of the Income of the Trust, Net Realized Capital Gains and any other applicable amounts so that the Trust will not have any liability for tax under Part I of the Tax Act in any taxation year, the following amounts shall, without any further actions on the part of the Trustees, be due and payable on December 31 in each year to Trust Unitholders of record on December 31 in each such year:
  - (i) a Series and Designation of a Class of Units' proportionate share of an amount equal to the amount, if any, by which the Income of the Trust for such year exceeds the aggregate of the portions, if any, of each distribution paid or payable by the Trust pursuant to section 5.3 and section 5.4(a) which have been determined by the Trustees, pursuant to section 5.5, to have been payable by the Trust out of Income of the Trust for such year and the amount of income treated as having been paid in the year pursuant to section 5.5; and
  - (ii) a Series and Designation of a Class of Units' proportionate share of an amount equal to the amount, if any, by which the Net Realized Capital Gains of the Trust for such year exceeds the aggregate of the portions, if any, of each distribution paid or payable by the Trust pursuant to section 5.3 and section 5.4(a) which have been determined by the Trustees, pursuant to section 5.5, to have been payable by the Trust out of the Net Realized Capital Gains for such year and the amount of any capital gain treated as having been paid in the year pursuant to section 5.5.



- (c) The proportionate share of each Trust Unit of the amount of any distribution made pursuant to either or both of sections 5.4(a) and (b) shall be determined by dividing such amount by the number of issued and outstanding Trust Units of a particular Series and Designation of a Class of Units' proportionate share of on the applicable Distribution Record Date in respect of a distribution pursuant to section 5.4(a) and on December 31 in respect of a distribution pursuant to section 5.4(b). Each Trust Unitholder's share of such Series and Designation of a Class of Units' proportionate share of any such distribution shall be an amount equal to the proportionate share of each Trust Unit of such Series and Designation of a Class of Units of such amount multiplied by the number of Trust Units of such Series and Designation of a Class of Units owned of record by each such Trust Unitholder on such applicable Distribution Record Date or December 31 in the year of such distribution, as the case may be. Subject to section 5.7, amounts which have been declared or authorized to be payable to Trust Unitholders pursuant to section 5.4(a) shall be paid in cash on the Distribution Payment Date which immediately follows the applicable Distributable Record Date in respect of a distribution pursuant to section 5.4(a) and amounts which are payable to Trust Unitholders on December 31, in respect of a distribution pursuant to section (b) shall be payable on December 31 and shall be paid forthwith, and in no event later than January 30 of the following year, subject to section 5.7.

#### **5.5 Character of Distributions and Designations**

In accordance with and to the extent permitted by the Tax Act and analogous provisions of any applicable provincial legislation, the Trustees in each year shall make designations and elections in respect of the amounts payable to Trust Unitholders, based on the proportionate shares attributable to any Series and Designation of a Class of Units, for such amounts that the Trustees consider to be reasonable in all of the circumstances, including, without limitation, designations relating to taxable dividends received or deemed to be received by the Trust in the year on shares of taxable Canadian corporations, net capital gains realized by the Trust in the year and foreign source income of, or deemed foreign source income of, and foreign income taxes paid by, or deemed to have been paid by, the Trust for the year, as well as elections under subsections 104(13.1) and/or 104(13.2) of the Tax Act that income be taxed to the Trust, rather than to the Trust Unitholders. Distributions payable to Trust Unitholders pursuant to this Article 5, and to the extent required pursuant to section 6.3, shall be deemed to be distributions of Income of the Trust, Net Realized Capital Gains, trust capital or other items in such amounts as the Trustees shall, in their absolute discretion, determine. For greater certainty, it is hereby declared that any distribution of Net Realized Capital Gains shall include the non-taxable portion of the capital gains of the Trust which are encompassed in such distribution.

#### **5.6 Enforceability of Right to Receive Distributions**

For greater certainty, it is hereby declared that each Trust Unitholder shall have the legal right to enforce payment of any amount payable to such Trust Unitholder as a result of any distribution which is declared or authorized or made payable to such Trust Unitholder pursuant to this Article as of the date on which such amount becomes payable.

#### **5.7 Method of Payment of Distributions**

- (a) Pursuant to this Article, in the event that the Trustees determine that the Trust does not have available cash in an amount sufficient to make payment of the full amount of any distribution which has been declared or authorized to be payable to Trust Unitholders entitled to cash distributions on the due date for such payment, the payment may, at the option of the Trustees, and in the case of holders of Class C Units where income is realized for purposes of the Tax Act but cash is not received by the Trust in a particular

year, the payment shall, include the *pro rata* issuance of additional Trust Units, or fractions of Trust Units, if necessary, having a value equal to the difference between the amount of such distribution and the amount of cash which has been determined by the Trustees to be available for the payment of such distribution, subject to all necessary regulatory approvals. Effective on each applicable Distribution Record Date, the Trustees shall credit each holder of Class C Units with the Reinvestment Units so acquired in lieu of making a cash distribution. Such additional Trust Units will be issued pursuant to applicable exemptions under applicable securities laws, discretionary exemptions granted by applicable regulatory authorities or a prospectus or similar filing. Trust Unit Certificates evidencing Reinvestment Units may be issued effective on December 31 of each year at the option of the Trustees or at the request of a holder of Class C Units. For greater certainty, in the event that additional Trust Units are issued to the holders of Class A Units or Class B Units pursuant to this section 5.7, such additional Trust Units shall be issued and treated in the same manner as the Reinvestment Units that are issued to the holders of Class C Units, *mutatis mutandis*.

- (b) The value of each Trust Unit which is issued pursuant to section 5.7(a) shall be equal to the Redemption Price of the Trust Units (as defined in section 6.2(c)) on the applicable Distribution Record Date in respect of a distribution pursuant to section 5.3, on the applicable Distribution Record Date in respect of a distribution under section 5.4(a) or on December 31 in respect of a distribution under section 5.4(b), provided that if the particular date is not a Business Day then the Redemption Price shall be determined on the last Business Day which precedes such particular date.

#### **5.8 Withholding Taxes**

The Trustees may deduct or withhold from distributions payable to any Trust Unitholder all amounts required by law to be withheld from such distributions, whether such distributions are in the form of cash, additional Trust Units or otherwise. In the event of a distribution in the form of additional Trust Units, the Trustees may sell Trust Units of such Trust Unitholder to pay such withholding taxes and to pay all of the Trustees' reasonable expenses with regard thereto and such Trust Unitholder shall be deemed to have granted to the Trustees, and the Trustees shall have, the power of attorney of such Trust Unitholder to do so. Any such sale shall be made pursuant to an exemption from applicable securities laws, and upon such sale, the affected Trust Unitholder shall cease to be the holder of such Trust Units which are so sold.

#### **5.9 Tax Act Definitions**

Unless otherwise specified or the context otherwise requires, any term in this Article which is defined in the Tax Act shall have for the purposes of this Article the meaning that it has in the Tax Act.

#### **5.10 Special Distribution Provisions**

- (a) In the event that a Trust Unitholder has held his Unit for less than the entire Distribution Period for which a distribution is payable, the Trust Unitholder shall only be entitled to a proportionate share of the distributions based on the proportion that the number of days between the date of first issue of his Units and the last day of the Distribution Period bears to the aggregate total number of days in such Distribution Period.
- (b) The Trustees shall have the right but not the obligation to distribute and allocate Common Expenses, Income of the Trust, Net Realized Capital Gains of the Trust and any other applicable amounts among Trust Unitholders in such a manner so as to ensure where possible that they are treated equitably taking into account differences that may arise as a

result of the acquisition of Trust Units at different times in a fiscal year or in different fiscal calendar years.

#### **5.11 Payments of Cash**

Any payment of cash by the Trust to a Trust Unitholder pursuant to this Article 5 or any other provision of this Declaration of Trust will be conclusively deemed to have been made upon mailing of a cheque in a postage pre-paid envelope, addressed to the Trust Unitholder at the Trust Unitholder's address appearing in the Registers, unless such cheque is dishonoured upon presentment. Upon such payment, the Trust will be discharged from all liability to the Trust Unitholder in respect of such payment, provided, however, that if such cheque is lost or destroyed then, upon the presentation of evidence satisfactory to the Trustees of such loss or destruction, together with such indemnity as the Trustees may reasonably require, the Trust will issue a replacement cheque to the Trust Unitholder. Notwithstanding the foregoing, the Trust may, in lieu of forwarding or causing to be forwarded a cheque to a Unitholder pursuant to this Article 5, enter into an agreement with a Unitholder or with the person for whom such Unitholder is acting as nominee providing for the payment to such Unitholder of the amounts to which such Unitholder is entitled, from time to time, hereunder by electronic funds transfer or by any other method at a place or places other than the place or places specified herein as the place or places for such payment. Any payment made hereunder or in connection with this Declaration of Trust that is made pursuant to any such agreement will, notwithstanding any other provision of this Declaration of Trust, be valid and binding on the Trust and the relevant Unitholder.

#### **5.12 Unclaimed Distributions**

In the event that the Trustees hold any distributable amount that is unclaimed or that cannot be paid for any reason, the Trustees will be under no obligation to invest or reinvest the same, but will only be obliged to hold the same in a current non-interest-bearing account pending payment, less applicable taxes, to the person or persons entitled thereto. The Trustees will, as and when required by law, and may at any time prior to such required time, pay all or part of such distributable amount so held to the appropriate government official or agency, whose receipt shall be a good and sufficient discharge and release of the Trustees.

### **ARTICLE 6 REDEMPTION OF TRUST UNITS**

#### **6.1 Right of Redemption by Trust Unitholders**

Each Trust Unitholder shall be entitled to require the Trust to redeem on a monthly basis at the demand of the Trust Unitholder all or any part of the Trust Units registered in the name of the Trust Unitholder at the prices determined and payable in accordance with the conditions hereinafter provided. The Trustees shall be entitled in their discretion to determine and designate whether any payments made in respect of any redemption are on account of income or capital, and whether any such redemption shall be effected by an in specie redemption or by a cash redemption.

#### **6.2 Exercise of Redemption Right**

- (a) To exercise a Trust Unitholder's right to require redemption under this Article 6, a duly completed and properly executed written notice requiring the Trust to redeem Trust Units in a form approved by the Trustees, together with Trust Unit certificates representing the Trust Units to be redeemed, shall be sent to the Trust at the head office of the Trust within the first 15 days of a calendar month. No form or manner of completion or execution shall be sufficient unless the same is in all respects satisfactory to the Trustees and is accompanied by any further evidence that the Trustees may reasonably require with respect to the identity, capacity or authority of the person giving such notice.

- (b) Upon receipt by the Trust of the notice to redeem Trust Units, the Trust Unitholder shall thereafter cease to have any rights with respect to the Trust Units tendered for redemption (other than to receive the redemption payment therefor) including the right to receive any distributions thereon which are declared or authorized payable to the Trust Unitholders of record on a date which is subsequent to the day of receipt by the Trust of such notice. Trust Units shall be considered to be tendered for redemption on the date that the Trust has, to the satisfaction of the Trustees, received the notice, the Trust Unit certificates and the other required documents or evidence as aforesaid.
- (c) Upon receipt by the Trust of the notice to redeem Trust Units, the holder of the Trust Units tendered for redemption shall be entitled to receive a price per Trust Unit (hereinafter called the "**Redemption Price**") equal to the fair market value thereof as at the last Valuation Date as determined by the Trustees in their sole discretion acting reasonably.

### 6.3 In Specie Redemption

If the Trustees determine to pay the Redemption Price by an in specie distribution of Trust Assets, or if pursuant to section 6.5, section 6.4 is not applicable to Trust Units tendered for redemption by a Trust Unitholder, the Redemption Price per Trust Unit specified in section 6.2(c) shall, subject to receipt of all necessary regulatory approvals, be paid and satisfied by way of the issuance and delivery by the Trust, to each holder of Units tendered for redemption in respect thereof on the Redemption Date, of:

- (i) the Master LP Note or Master LP Notes that correspond to the Trust Units tendered for redemption; or
- (ii) securities and/or obligations held by the Trust or any other assets of the Trust having a fair market value equal to the applicable Redemption Price as determined by the Trustees.

The Redemption Price payable pursuant to this section 6.3 in respect of Trust Units tendered for redemption during any month shall, subject to receipt of all necessary regulatory approvals, be paid by the transfer, to or to the order of the Trust Unitholder who exercised the right of redemption, on the last day of the calendar month following the month in which the Trust Units were tendered for redemption (the "**Redemption Date**"), of the number of securities and/or obligations determined as aforesaid. Commencing on the date the Trustees accept a notice of redemption from a Unitholder, the Trust shall be entitled to all interest paid or accrued and unpaid on the obligations being transferred and distributions paid on the securities being transferred to and including the Redemption Date. Payments by the Trust of the Redemption Price are conclusively deemed to have been made upon the mailing of such securities and/or obligations by registered mail in a postage prepaid envelope addressed to the former Trust Unitholder. Upon such payment, the Trust shall be discharged from all liability to the former Trust Unitholder in respect of the Trust Units so redeemed.

Where the Trust makes a distribution of Master LP Notes, securities and/or obligations on redemption of Trust Units pursuant to this section 6.3, the Trustees shall determine the fair market value of the redeemed Trust Units and of the Master LP Notes, securities and/or obligations issued to satisfy the Redemption Price. Where the Trust makes a distribution of Master LP Notes, securities and/or obligations on a redemption of Trust Units pursuant to this section, the Trustees may, in their sole discretion, designate to the redeeming Trust Unitholders any income earned or capital gain realized by the Trust as a result of the distribution of such securities to the Trust Unitholder.

#### **6.4 Cash Redemption**

Subject to sections 6.3 and 6.5, if the Trustees determine to pay the Redemption Price by a cash payment, the Redemption Price payable in respect of the Trust Units tendered for redemption during any month shall be paid by cheque, drawn on a Canadian chartered bank or a trust company (i) in the case of Class A Units, in lawful money of the United States of America, and (ii) in the case of Class B Units and Class C Units, in lawful money of Canada, and in all cases payable at par to or to the order of the Trust Unitholder who exercised the right of redemption on the Redemption Date. Payments made by the Trust of the Redemption Price are conclusively deemed to have been made upon the mailing of a cheque in a postage prepaid envelope addressed to the former Trust Unitholder and/or any party having a security interest unless such cheque is dishonoured upon presentment. Upon such payment, the Trust shall be discharged from all liability to the former Trust Unitholder in respect of Trust Units redeemed.

#### **6.5 No Cash Redemption in Certain Circumstances**

Section 6.4 shall not be applicable to Trust Units tendered for redemption by a Trust Unitholder, if the total amount payable by the Trust pursuant to section 6.4 in respect of such Trust Units and all other Trust Units tendered for redemption prior thereto in the same calendar month exceeds \$50,000 ("Monthly Limit"); provided that the Trustees may, in their sole discretion, waive such limitation in respect of all Trust Units tendered for redemption in any calendar month. In the absence of such a waiver, Trust Units tendered for redemption in any calendar month in which the total amount payable by the Trust pursuant to section 6.4 exceeds the Monthly Limit will be redeemed, subject to any applicable regulatory approvals, by a distribution in specie of securities held by the Trust under section 6.3 on a *pro rata* basis.

#### **6.6 Cancellation of all Redeemed Trust Units**

All Trust Units which are redeemed under this Article 6 shall be cancelled and such Trust Units shall no longer be outstanding and shall not be reissued.

#### **6.7 Expiration of Participation Rights on Redemption**

Notwithstanding any other provision of this Article 6, upon any redemption of Trust Units any Participation Rights issued to the Trust by WALP or similar rights issued by any other F.L. WALP Group Member in conjunction with the issuance of the corresponding Master LP Notes shall terminate and be of no further force or effect.

### **ARTICLE 7 TRUSTEES**

#### **7.1 Number of Trustees**

There shall be a minimum of three (3) and a maximum of ten (10) Trustees. The number of Trustees within such minimum and maximum numbers may be changed by Trust Unitholders or by the Trustees. In the event of any increase in the number of Trustees, the Trust Unitholders or Trustees, as the case may be, shall forthwith elect or appoint any such additional Trustee(s). Until otherwise so determined, the number of Trustees as of the date of this Declaration of Trust shall be three (3). A majority of the Trustees at all times must be Residents.

#### **7.2 Calling and Notice of Meetings**

Meetings of the Trustees shall be called and held at such time and at such place as the Trustees, the Chairman of the Trustees or any two Trustees may determine, and any one Trustee or officer of the Trust may give notice of meetings when directed or authorized by such persons. Notice of each

meeting of the Trustees shall be given to each Trustee not less than 48 hours before the time when the meeting is to be held, provided that if a quorum of Trustees is present, the Trustees may without notice hold a meeting immediately following a meeting of Trust Unitholders. Notice of a meeting of the Trustees may be given verbally, in writing or by telephone, fax or other means of communication. A notice of a meeting of Trustees shall specify the nature of the business to be transacted at such meeting. A Trustee may in any manner or at any time waive notice of or otherwise consent to a meeting of Trustees. Attendance of a Trustee, in person or by telephone, at a meeting of Trustees shall constitute a waiver of notice of that meeting except where a Trustee attends for the express purpose of objecting to the transaction of any business on the grounds that the meeting has not been properly called. Notwithstanding the foregoing, the Trustees may by resolution from time to time fix a day or days in any month or months for regular meetings of the Trustees at a place and hour to be named, in which case, provided that a copy of such resolution is sent to each Trustee forthwith after being passed and forthwith after each Trustee's appointment, no other notice shall be required for any such regular meeting, and the Trustees may by resolution from time to time establish an approval process for the declaration or authorization of distributions or such other approval procedures that they may determine to be appropriate in the circumstances.

### **7.3 Place of Meetings**

Meetings of the Trustees shall be held in Canada and may be held at a location as directed by the Trustees. A Trustee who attends a meeting of Trustees, in person or by telephone, is deemed to have consented to the location of the meeting except when the Trustee attends the meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully held.

### **7.4 Meetings by Telephone**

With the consent of the chairman of the meeting or a majority of the Trustees participating in the meeting, any Trustee may participate in a meeting of the Trustees or of a committee of the Trustees by means of telephone or other communication facilities that permit all persons participating in the meeting to hear each other provided that any telephone call or video conference call to permit the participation of a Trustee who is not physically present shall originate in Canada. A Trustee participating in such a meeting in such manner shall be considered present at the place of meeting.

### **7.5 Quorum**

The quorum for the transaction of business at any meeting of the Trustees shall consist of a majority of the number of Trustees then holding office, and, notwithstanding any vacancy among the number of Trustees, a quorum of Trustees may exercise all of the powers of the Trustees, provided that a majority of the Trustees comprising such quorum shall not be Non-Residents. A Trustee who is a Non-Resident may appoint any other Trustee to act as his proxy at any meeting of Trustees and any such proxy shall vote as a separate Trustee and constitute attendance at the meeting for all purposes.

### **7.6 Chairman**

The Chairman of the Trustees shall be chosen by the Trustees from among themselves. The chairman of any meeting of the Trustees shall be the Trustee present at the meeting who holds the office of Chairman of the Trustees or if such person is not present, the Trustees present shall choose one of their number to be chairman. The Chairman shall not be a Non-Resident.

### **7.7 Action by the Trustees**

At all meetings of the Trustees every question shall be decided by a majority of the votes cast on the question. In the case of equality of votes, the chairman of the meeting shall be entitled to a

second or casting vote. The powers of the Trustees may be exercised by resolution passed at a meeting at which a quorum is present or without a meeting by resolution in writing signed by all Trustees who would be entitled to vote on that resolution at a meeting of the Trustees. Resolutions in writing may be signed by fax and in counterparts each of which shall be deemed to be an original and all originals together shall be deemed to be one and the same instrument.

#### **7.8 Adjourned Meeting**

Any meeting of Trustees may be adjourned from time to time by the chairman of the meeting with the consent of the meeting to a fixed time and place. Further notice of the adjourned meeting need not be given. The adjourned meeting shall be duly constituted if a quorum is present and if it is held in accordance with the terms of the adjournment. If there is not a quorum present at the adjourned meeting, the original meeting shall be deemed to have terminated upon its adjournment.

#### **7.9 Remuneration and Expenses**

The Trustees, other than a Trustee who is a full-time officer or employee of the Trust or any WALP Member, shall be paid such reasonable remuneration for their services as the Trustees may from time to time in good faith determine. The Trustees shall also be entitled to be reimbursed for reasonable traveling and other expenses properly incurred by them in attending meetings of the Trustees or any committee thereof or in connection with their services as Trustees. Nothing herein contained shall preclude any Trustee from serving the Trust in any other capacity and receiving remuneration therefor.

#### **7.10 Officers**

The Trustees from time to time may appoint one or more officers of the Trust, including a Chairman and Vice-Chairman of the Trust and, without prejudice to rights under any employment contract, may remove any officer of the Trust. The powers and duties of each officer of the Trust shall be those determined from time to time by the Trustees and, in the absence of such determination, shall be those usually applicable to the office held. A majority of the officers of the Trust must be Residents.

### **ARTICLE 8 APPOINTMENT, RESIGNATION AND REMOVAL OF THE TRUSTEES**

#### **8.1 Qualification of Trustees**

The following persons are disqualified from being a Trustee of the Trust:

- (a) anyone who is less than 18 years of age;
- (b) anyone who is of unsound mind and has been so found by a court of competent jurisdiction in Canada or elsewhere;
- (c) a person who is not an individual;
- (d) a person who has the status of bankrupt; and
- (f) a person who is related to David C. Phillips.

#### **8.2 Appointment of Trustees**

The appointment of **Murray Eades, Ken Rice, and Douglas Law** as Trustees for a term expiring (subject to further appointment) at the close of the next meeting of Trust Unitholders or as otherwise determined by the Trustees is hereby confirmed. Except as otherwise provided in this Declaration of Trust, Trustees shall be appointed (including the reappointment of incumbent Trustees) by the Trustees, or by the Trust Unitholders at a meeting of Trust Unitholders, in each case to hold office,

subject to section 8.5, for a term expiring at the close of the next meeting of Trust Unitholders following such an appointment or as otherwise determined by the Trustees. Any such appointment (other than as contemplated by section 8.7) shall be made by a resolution of the Trustees, a resolution approved by a majority of the votes cast at a meeting of Trust Unitholders or by resolution in writing in the manner set out in section 12.12. Notwithstanding the foregoing:

- (a) if no Trustees are appointed before the term of office of the existing Trustees expires, such existing Trustees shall continue to hold the office of Trustees under this Declaration of Trust until successors have been appointed or they cease to hold office;
- (b) the Trustees may appoint one or more additional Trustees for a term to expire (subject to further appointment) at the close of the next meeting of Trust Unitholders or as otherwise determined by the Trustees; and
- (c) a majority of the Trustees holding office at any time shall be Residents.

### 8.3

#### Consent to Act

- (a) A person who is appointed a Trustee hereunder, other than the Trustees who are appointed pursuant to section 8.2, shall not become a Trustee until the person has, either before or after such appointment, executed and delivered to the Trust a consent substantially as follows:

"To: Wimberly Fund (the "Trust")  
And to: The Trustees thereof

The undersigned hereby consents to act as a Trustee of the Trust and hereby agrees, upon the later of the date of this consent and the date of the undersigned's appointment as a Trustee of the Trust, to thereby become a party, as a Trustee, to the Declaration of Trust made as of the 1st day of February, 2010, as amended from time to time, constituting the Trust and to be bound by the obligations and liabilities of a Trustee thereunder.

Dated: \_\_\_\_\_

\_\_\_\_\_  
[Signature]

\_\_\_\_\_  
[Print Name]

- (b) Upon the later of a person being appointed a Trustee hereunder and executing and delivering to the Trust a consent substantially as set forth in section 8.3(a), such person shall become a Trustee hereunder and shall be deemed to be a party (as a Trustee) to this Declaration of Trust, as amended from time to time. The rights of the Trustees to control and exclusively administer the Trust and to have the title to the Trust Assets drawn up in their names or in the name of any other successor and all other rights of the Trustees, at law will vest automatically in any person who may hereafter become a Trustee upon such person's due appointment and qualification without any further act and such person will immediately thereupon have all the rights, privileges, powers, authorities, obligations and immunities of a Trustee hereunder.



#### 8.4 Failure to Appoint Minimum Number of Trustees

If the Trustees or the Trust Unitholders fail to appoint the number of Trustees required by this Declaration of Trust, by reason of the disqualification or death of any nominee, the Trustees may, subject to section 7.5 and section 8.1, exercise all of the powers of the Trustees if the number of Trustees so appointed constitutes a quorum and the majority of the Trustees remaining are Residents.

#### 8.5 Ceasing to Hold Office

A Trustee ceases to hold office when:

- (a) he dies or resigns;
- (b) he is removed in accordance with section 8.6; or
- (c) he ceases to be duly qualified to act as a Trustee as provided under section 8.1.

A resignation of a Trustee becomes effective 30 days from the time a written resignation is sent to the Trust, or at the time specified in the resignation, whichever is later, provided that if, upon the resignation becoming effective, the number of remaining Trustees would be less than the number necessary to constitute a quorum for a meeting of Trustees, the resignation is not effective until the resigning Trustee's successor is duly appointed as a Trustee.

Upon a Trustee ceasing to hold office as such hereunder, such Trustee shall cease to be a party (as a Trustee) to this Declaration of Trust; provided, however, that such Trustee shall continue to be entitled to be paid any amounts owing by the Trust to the Trustee and to the benefits of the indemnity provided in section 9.10. Upon the resignation or removal of any Trustee, or upon a Trustee otherwise ceasing to be a Trustee, the Trustee shall cease to have the rights, privileges and powers of a Trustee hereunder, shall execute and deliver such documents as the remaining Trustees shall reasonably require for the conveyance of any Trust property held in that Trustee's name, shall account to the remaining Trustees as they may reasonably require for all property which that Trustee holds as Trustee, shall resign from all representative or other positions held by such Trustee on behalf of the Trust, including as a director or officer of any person in which the Trust owns any securities (directly or indirectly) and shall thereupon be discharged as Trustee. Upon the incapacity or death of any Trustee, his legal representative shall execute and deliver on his behalf such documents as the remaining Trustees may reasonably require as provided in this section 8.5. In the event that a Trustee or his legal representatives, as applicable, are unable or unwilling to execute and deliver such required documents, each of the remaining Trustees is hereby appointed as the attorney of such Trustee for the purposes of executing and delivering such required documents. This power of attorney granted to each of the remaining Trustees is not intended to be a continuing power of attorney within the meaning of the *Substitute Decisions Act, 1992* (Ontario), exercisable during a Trustee's incapacity to manage property, or any similar power of attorney under equivalent legislation in any of the provinces or territories of Canada (a "CPOA"). The execution of this power of attorney will not terminate any CPOA granted by the Trustee previously and will not be terminated by the execution by the Trustee in the future of a CPOA, and the Trustee hereby agrees not to take any action in future which results in the termination of this power of attorney.

If a Trustee ceases to hold office for any reason, and such cessation results in the board of Trustees having a majority of Trustees who are Non-Residents, the Trustees will, as soon as possible, fill the vacancy in accordance with section 8.7 in order that a majority of Trustees shall not be Non-Residents, and if necessary, one or more Trustees who are Non-Residents, to be determined by the Trustees, shall resign (temporarily or otherwise) so that a majority of Trustees shall not be Non-Residents.

#### **8.6 Removal of Trustees**

The Trust Unitholders may remove any Trustee or Trustees from office, by resolution approved by a majority of the votes cast at a meeting of Trust Unitholders called for that purpose. The Trustees may remove any Trustee from office for cause, by resolution approved by a majority of at least two-thirds of the other Trustees. A vacancy created by the removal of a Trustee may be filled at the meeting of Trust Unitholders at which the Trustee is removed or, if not so filled, may be filled as set forth in section 8.7.

#### **8.7 Filling Vacancies**

A quorum of Trustees may fill a vacancy among the Trustees, except a vacancy resulting from a failure to appoint any minimum number of Trustees fixed by or pursuant to this Declaration of Trust. If there is not a quorum of Trustees, or if there has been a failure to elect the minimum number of Trustees required by or pursuant to this Declaration of Trust, the Trustees then in office shall forthwith call a special meeting of Trust Unitholders to fill the vacancy and, if they fail to call a meeting or if there are no Trustees then in office, the meeting may be called by any Trust Unitholder. A Trustee appointed to fill a vacancy holds office, subject to section 8.5, until the close of the next meeting of the Trust Unitholders or as otherwise determined by the Trustees. The rights of the Trustees to control and exclusively administer the Trust and to have the title to the Trust Assets registered in their names or in the name of any other successor and all other rights of the Trustees at law shall vest automatically in any person who may hereafter become a Trustee upon such person's due appointment and qualification without any further act and such person shall thereupon have all the rights, privileges, powers, authorities, obligations and immunities of a Trustee hereunder whether or not conveyancing documents have been executed and delivered pursuant to section 8.5 or otherwise.

#### **8.8 Validity of Acts**

Any act of a Trustee is valid notwithstanding any irregularity in the appointment of the Trustees or any one of them or a defect in the qualifications of the Trustees or any one of them.

### **ARTICLE 9 CONCERNING THE TRUSTEES**

#### **9.1 Powers of the Trustees**

Subject to the terms and conditions of this Declaration of Trust, the Trustees may exercise from time to time in respect of the Trust Assets and the investments and affairs of the Trust any and all rights, powers and privileges that could be exercised by a legal and beneficial owner thereof.

Subject to the specific limitations contained in this Declaration of Trust, the Trustees shall have, without further or other action or consent, and free from any power or control on the part of the Trust Unitholders, full, absolute and exclusive power, control and authority over the Trust Assets and over the affairs of the Trust to the same extent as if the Trustees were the sole and absolute beneficial owners of the Trust Assets in their own right, to do all such acts and things as in their sole judgment and discretion are necessary or incidental to, or desirable for, carrying out the trust created hereunder. In construing the provisions of this Declaration of Trust, the presumption shall be in favour of the powers and authority granted to the Trustees. The enumeration of any specific power or authority herein (including pursuant to section 9.2) shall not be construed as limiting the general powers or authority or any other specified power or authority conferred herein on the Trustees. To the maximum extent permitted by law, the Trustees shall, in carrying out investment activities, not be in any way restricted by the provisions of the laws of any jurisdiction limiting or purporting to limit investments which may be made by trustees. Without limiting the generality of the foregoing, but subject to section 4.1 and the other

express limitations contained in this Declaration of Trust, the Trustees may make any investments without being required to adhere to all of or any particular portion of the investment criteria or diversification requirements set forth in the *Trustee Act* (Ontario), as amended from time to time, and to delegate management and authority to discretionary managers as the Trustees, in their discretion, determine appropriate.

## **9.2 Specific Powers and Authorities**

Subject only to the express limitations contained in this Declaration of Trust and in addition to any other powers and authorities conferred by this Declaration of Trust or which the Trustees may have by virtue of any present or future statute or rule of law, the Trustees, without any action or consent by the Trust Unitholders, shall have and may exercise at any time and from time to time the following powers and authorities, which may or may not be exercised by the Trustees in such manner and upon such terms and conditions as they may from time to time determine proper:

- (a) to supervise the activities and manage the investments and affairs of the Trust;
- (b) to maintain records and provide reports to Trust Unitholders;
- (c) to collect, sue for and receive all sums of money due to the Trust;
- (d) to open, operate and close bank accounts and other similar credit, deposit and banking arrangements and to negotiate and sign banking and financing contracts and agreements;
- (e) to determine conclusively the allocation to capital, income or other appropriate accounts of all receipts, expenses, disbursements and property of the Trust;
- (f) to make or cause to be made application for the listing or quotation on any stock exchange or market of any Trust Units or any other securities issued from time to time by the Trust, and to do all things which in the opinion of the Trustees may be necessary or desirable to effect or maintain such listing or listings or quotation;
- (g) to determine conclusively the value of any or all of the Trust Assets from time to time and, in determining such value, to consider such information and advice as the Trustees in their sole judgment, may deem material and reliable;
- (h) to sell, transfer, assign, exchange, convey, lease or otherwise dispose of any part of the Trust Assets in any manner;
- (i) subject to section 9.2(w) in the case of the creation of any new Class of Units, to enter into any agreement or instrument (including any firm or best efforts underwriting agreement) to create, issue or provide for the issue of Trust Units, or other securities of the Trust, including instalment receipts, securities convertible into or exchangeable or exercisable for Trust Units or other securities of the Trust or other rights, warrants, receipts or options convertible into or exchangeable or exercisable for Trust Units or other securities of the Trust (including debt securities, debt securities convertible into or exchangeable or exercisable for Trust Units or other securities of the Trust), for such consideration as the Trustees, in their sole discretion, may deem appropriate and to do such things and prepare and sign such documents, including a prospectus, an offering memorandum or any similar document and any registration rights agreement, to qualify such Trust Units, or other securities of the Trust for sale in whatever jurisdictions they will be sold or offered for sale;
- (j) to effect payment of distributions to the Trust Unitholders as provided in Article 5;

- (k) subject to section 12.7(j), to lend, invest and reinvest funds of the Trust as provided in Article 4, provided that any reinvestment of prepayment proceeds does not impair the ability of the Trust to meet its distribution obligations to the Trust Unitholders;
- (l) to ensure that, if the Trustees become aware by written notice that the beneficial owners of 49% of the Trust Units are, or may be, Non-Residents or that such situation is imminent, the limitations on ownership by Non-Residents as provided in section 13.5 are met;
- (m) to possess and exercise all the rights, powers and privileges pertaining to the ownership of the securities of any WALP Group Member owned by the Trust, to the same extent that an individual might, unless otherwise limited herein, and, without limiting the generality of the foregoing, to vote or give any consent, request or notice, or waive any notice, either in person or by proxy or power of attorney, with or without power of substitution, to one or more persons, which proxies and powers of attorney may be for meetings or actions generally or for any particular meeting or action and may include the exercise of discretionary power;
- (n) where reasonably required, to engage or employ on behalf of the Trust any persons as agents, representatives, employees, independent contractors or managers (including, without limitation, investment advisors, transfer agents, registrars, paying agents, underwriters, accountants, lawyers, appraisers, brokers or otherwise) in one or more capacities;
- (o) except as prohibited by law, to delegate, including to the Manager pursuant to section 9.13, any of the powers and duties of the Trustees to any one or more agents, representatives, officers, employees, independent contractors or other persons without liability to the Trustees so long as such delegation is not inconsistent with any of the provisions of this Declaration of Trust;
- (p) to engage in, intervene in, prosecute, join, defend, compromise, abandon or adjust, by arbitration or otherwise, any actions, suits, disputes, claims, demands or other litigation or proceedings, regulatory or judicial, relating to the Trust, the Trust Assets or the Trust's affairs, to enter into agreements therefor, whether or not any suit or proceeding is commenced or claim asserted and, in advance of any controversy, to enter into agreements regarding the arbitration, adjudication or settlement thereof;
- (q) to cause legal title to any of the Trust Assets to be held by and/or in the name of one or more Trustees or, except as prohibited by law, by and/or in the name of the Trust or any other custodian or person, on such terms, in such manner, with such powers in such person as the Trustees may determine and with or without disclosure that the Trust or the Trustee is interested therein; provided, however, that should legal title to any of the Trust Assets be held by and/or in the name of any person or persons other than a Trustee or the Trust, the Trustees shall require such person or persons to execute a trust agreement acknowledging that legal title to such assets is held in trust for the benefit of the Trust;
- (r) to negotiate, make, execute, acknowledge and deliver any and all deeds, instruments, contracts, waivers, releases or other documents necessary or useful for the accomplishment of any of the powers herein granted, for the purpose of the Trust or for its assets or affairs, including without limitation, to enter into contracts, obligations and other agreements for a term extending beyond the term of office of the Trustees and beyond the possible termination of the Trust or for a lesser term, and to perform all of the obligations of the Trust thereunder;

- (s) to perform the obligations of the Trust under agreements to which it is a party and to exercise any rights granted to it under such agreements;
- (t) to approve the adoption of a Trust Unitholders rights plan, if the Trustees determine in good faith that such action is appropriate, including to issue or redeem rights and Trust Units in connection with such plan;
- (u) to use their best efforts to ensure that (i) the Trust qualifies at all times as a "mutual fund trust" pursuant to subsection 132(6) of the Tax Act; and (ii) that the Trust Units will not be disqualified for investment by Plans;
- (v) in addition to the mandatory indemnification provided for in sections 9.7 and 9.8, to the extent permitted by law to indemnify, or enter into agreements with respect to the indemnification of, any person with whom the Trust has dealings including, without limitation, the Trustees, to such extent as the Trustees shall determine;
- (w) with the approval (or confirmation, in the case of (ii)) of the Trust Unitholders, to (i) create any new Class of Units from time to time; and (ii) enact and from time to time amend or repeal by-laws not inconsistent with this Declaration of Trust containing provisions relating to the Trust, the Trust Assets and the conduct of the affairs of the Trust, but not in conflict with any provision of this Declaration of Trust;
- (x) to set the distribution rate (designated by Series) for each issuance of Trust Units from time to time;
- (y) to purchase securities issued by the Trust, including Trust Units for cancellation in accordance with the provisions of this Declaration of Trust and applicable law;
- (z) to issue any type of debt securities or convertible debt securities and to borrow money or incur any other form of indebtedness for the purpose of carrying out the purposes of the Trust or for other expenses incurred in connection with the Trust and for such purposes may draw, make, execute and issue promissory notes and other negotiable and non-negotiable instruments or securities and evidences of indebtedness, secure the payment of sums so borrowed or indebtedness incurred and mortgage, pledge, assign or grant a security interest in any money owing to the Trust or engage in any other means of financing the Trust;
- (aa) to pay all taxes or assessments, of whatever kind or nature, whether within or outside Canada, imposed upon or against the Trustees in connection with the Trust Assets, undertaking or income of the Trust, or imposed upon or against the Trust Assets, undertaking or income of the Trust, or any part thereof and to settle or compromise disputed tax liabilities and for the foregoing purposes to make such returns, take such deductions, and make such designations, elections and determinations in respect of Income of the Trust or Net Realized Capital Gains distributed to Trust Unitholders in the year and any other matter as shall be permitted under the Tax Act (provided that to the extent necessary the Trustees will seek the advice of Counsel or the Auditors), and do all such other acts and things as may be deemed by the Trustees in their sole discretion to be necessary, desirable or convenient;
- (bb) to satisfy the obligations, liabilities and indebtedness of the Trust;
- (cc) to vote in favour of the Trust's nominees to serve as trustees or directors, as applicable, of any WALP Group Member;
- (dd) to guarantee (as guarantor, surety or co-principal obligor) the payment of any indebtedness, liability or obligation of any WALP Group Member and to mortgage,

pledge, charge, grant a security interest in or otherwise encumber all or any part of the Trust Assets;

- (ee) to appoint one or more additional Trustees to serve until the close of the next meeting of Trust Unitholders or as otherwise determined by the Trustees;
- (ff) to arrange for insurance contracts and policies insuring the Trust, the Trustees, the Trust Assets, the business of any Affiliate of the Trust, any or all of the Trustees or the Unitholders, consultants or agents of the Trust or any person with whom the Trust has dealings in such amounts as the Trustees deem appropriate and which may cover any and all claims and liabilities of every nature arising by reason of holding or having held Trust Units or of holding, being or having held any such office or position, including any and all claims and liabilities of any nature asserted by any person arising by reason of any action alleged to have been taken or omitted by the Trust or by the Trustees or Unitholders, including any action taken or omitted that may be determined to constitute negligence; and
- (gg) to do all such other acts and things as are incidental to the foregoing, and to exercise all powers which are necessary or useful to carry on the purposes and activities of the Trust, as enumerated in section 4.1, to promote any of the purposes for which the Trust is formed, as enumerated in section 4.1, and to carry out the provisions of this Declaration of Trust whether or not specifically mentioned.

The Trustees shall, except as may be prohibited by law, have the right to delegate authority for the above-referenced matters to an administrator or the Manager where the Trustees determine in their sole discretion that such delegation is desirable to effect the administration of the duties of the Trustees under the Declaration of Trust and/or the management of the day-to-day affairs of the Trust. The Trustees may also delegate to officers of the Trust certain powers for management of the day-to-day affairs of the Trust provided such delegation is not inconsistent with this Declaration of Trust.

### **9.3 Banking**

The banking activities of the Trust, or any part thereof, including, but without restricting the generality of the foregoing, the operation of the Trust's accounts; the making, signing, drawing, accepting, endorsing, negotiation, lodging, depositing or transferring of any cheques, promissory notes, drafts, acceptances, bills of exchange and orders for the payment of money; the giving of receipts for orders relating to any property of the Trust; the execution of any agreement relating to any property of the Trust; the execution of any agreement relating to any such banking activities and defining the rights and powers of the parties thereto; and the authorizing of any officer of such banker to do any act or thing on the Trust's behalf to facilitate such banking activities, shall be transacted with such bank, trust company, or other firm or corporation carrying on a banking business as the Trustees may designate, appoint or authorize from time to time and shall be transacted on the Trust's behalf by one or more officers of the Trust or such other WALP Group Member(s) as the Trustees may designate, appoint or authorize from time to time.

### **9.4 Standard of Care and Duties**

The Trustees shall act honestly and in good faith with a view to the best interests of the Trust and the Trust Unitholders and in connection therewith shall exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. The Trustees shall not be liable in carrying out their duties under this Declaration of Trust except in cases where the Trustees fail (a) to act honestly and in good faith with a view to the best interests of the Trust Unitholders and the Trust, or (b) to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. The duties and standard of care of the Trustees provided as

aforesaid are intended to be similar to, and not to be any greater than, those imposed on a director of a corporation governed by the *Business Corporations Act* (Ontario). Unless otherwise required by law, the Trustees shall not be required to give bond, surety or security in any jurisdiction for the performance of any duties or obligations hereunder. The Trustees shall not be required to devote their entire time to the investments or business or affairs of the Trust.

#### **9.5 Fees and Expenses**

As part of the expenses of the Trust, the Trustees may pay or cause to be paid out of the Trust Assets, reasonable fees, costs and expenses incurred in connection with the administration and management of the Trust, including (without limitation) fees of auditors, accountants, lawyers, appraisers and other agents, consultants and professional advisors employed by or on behalf of the Trust and the cost of reporting or giving notices to Trust Unitholders. All costs, charges and expenses properly incurred by the Trustees on behalf of the Trust may be payable out of the Trust Assets.

#### **9.6 Limitations on Liability of Trustees**

- (a) Subject to section 9.4, none of the Trustees, the officers or any employee or agent of the Trust shall be liable in tort, contract or otherwise to the Trust, to any Trust Unitholder or former Trust Unitholders (in each case whether registered or beneficial) or any other person: (i) for any action taken in good faith in reliance on any documents that are, prima facie, properly executed; (ii) for any depreciation of, or loss to, the Trust incurred by reason of the sale of any security or other property; (iii) for the loss or disposition of monies or securities; (iv) for any action or failure to act of any other person to whom the Trustees have delegated any of their duties under this Declaration of Trust (including, without limitation, the Manager); or (v) for any other action or failure to act including, without limitation, the failure to compel in any way any former Trustee to redress any breach of trust or any failure by any person (including, without limitation, the Manager) to perform obligations under or delegated to it under this Declaration of Trust, or to pay monies owed to the Trust, except for a breach of the standard of care, diligence and skill as set out in section 9.4. If the Trustees have retained an appropriate expert or advisor with respect to any matter connected with their duties under this Declaration of Trust, the Trustees may act or refuse to act based on the advice of such expert or advisor and, notwithstanding any provision of this Declaration of Trust, including, without limitation, the standard of care, diligence and skill set out in section 9.4 hereof, the Trustees shall not be liable for any action or refusal to act based on the advice of any such expert or advisor which it is reasonable to conclude is within the expertise of such expert or advisor to give.
- (b) Subject to section 9.4, none of the Trustees, the officers or any employee or agent of the Trust shall be subject to any liability whatsoever in tort, contract or otherwise, in connection with Trust Assets or the affairs of the Trust, including, without limitation, in respect of any loss or diminution in value of any Trust Assets, to the Trust or to the Trust Unitholders or Annuitants or to any other person for anything done or permitted or omitted to be done by the Trustees. The Trustees shall not be subject to any personal liability for any debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses against or with respect to the Trust arising out of anything done or permitted or omitted to be done in respect of the execution of the duties of the office of Trustees for or in respect to the affairs of the Trust. No property or assets of the Trustees, owned in their personal capacity or otherwise, will be subject to any levy, execution or other enforcement procedure with regard to any obligations under this Declaration of Trust or under any other related agreements. No recourse may be had or taken, directly or

indirectly, against the Trustees in their personal capacity or against any incorporator shareholder, director, officer, employee or agent of the Trustees or any successor of the Trustees. The Trust shall be solely liable therefor and resort shall be had solely to the Trust Assets for payment or performance thereof.

#### **9.7 Indemnification of Trustees**

Each Trustee, each former Trustee, each officer of the Trust and each former officer of the Trust shall be entitled to be and shall be indemnified, held harmless and reimbursed out of the Trust Assets in respect of any and all taxes, penalties or interest in respect of unpaid taxes or other governmental charges imposed upon the Trustee or officer in consequence of his performance of his duties hereunder and in respect of any and all costs, charges and expenses, including amounts paid to settle an action or satisfy a judgment, reasonably incurred in respect of any civil, criminal or administrative action or proceeding to which the Trustee, former Trustee, officer or former officer is made a party by reason of being or having been a Trustee or officer of the Trust; provided that a Trustee, former Trustee, officer or former officer shall not be indemnified out of the Trust Assets in respect of unpaid taxes or other governmental charges or in respect of such costs, charges and expenses that arise out of or as a result of in the course of his or her failure to act honestly and in good faith with a view to the best interests of the Trust and the Trust Unitholders (or, in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, where such Trustee did not have reasonable grounds to believe that his or her conduct was lawful). A Trustee, former Trustee, officer or former officer shall not be entitled to satisfy any right of indemnity or reimbursement granted herein, or otherwise existing under law, except out of the Trust Assets, and no Trust Unitholder or other Trustee or officer shall be personally liable to any person with respect to any claim for such indemnity or reimbursement as aforesaid.

#### **9.8 Contractual Obligations of the Trust**

In respect of any obligations or liabilities being incurred by the Trust or the Trustees on behalf of the Trust, the Trustees and the Trust shall make all reasonable efforts to include in any written instrument which is, in the judgment of the Trustees, a material obligation as a specific term of such obligations or liabilities a contractual provision or be subject to an acknowledgement to the effect that the obligation being created is not personally binding upon and that resort shall not be had to, nor shall recourse or satisfaction be sought from, by way of lawsuit or otherwise, the private property of any of the Trustees, Trust Unitholders, Annuitants or officers, employees or agents of the Trust, but that only property of the Trust or a specific portion thereof shall be bound. The omission of such statement from any such document or instrument shall not render the Trustees or the Trust Unitholders or Annuitants liable to any person, nor shall the Trustees or the Trust Unitholders or the Annuitants be liable for such omission. If, notwithstanding this provision, the Trustees or any Trust Unitholder or Annuitant shall be held liable to any person by reason of the omission of such statement from any such agreement, undertaking or obligation such Trustee or Trust Unitholder or Annuitant shall be entitled to indemnity and reimbursement out of the Trust's property to the full extent of such liability.

#### **9.9 Conflicts of Interest**

- (a) A Trustee or any officer of the Trust who is a party to, or is a director or officer of or has a material interest in any person who is a party to, a material contract or transaction or proposed material contract or transaction with the Trust shall disclose in writing to the Trust the nature and extent of such interest and shall not vote on any resolution to approve the contract.
- (b) The disclosure required in section 9.9(a) must be made:



- (i) at the meeting of Trustees at which the proposed material contract or transaction is first considered;
  - (ii) if the Trustee or officer was not then materially interested in the proposed material contract or transaction, at the first such meeting after he or she becomes so materially interested;
  - (iii) if the Trustee or officer becomes materially interested after a material contract or transaction is entered into, at the first meeting of Trustees after he or she becomes so materially interested; or
  - (iv) if a person who is materially interested in a material contract or transaction with the Trust becomes a Trustee or officer, at the first such meeting of Trustees after he or she assumes that capacity.
- (c) Notwithstanding section 9.9(b), where this section 9.9 applies to any person in respect of a material contract or transaction or proposed material contract or transaction that, in the ordinary course of business of the Trust, would not require approval by the Trustees or Trust Unitholders, such person must disclose in writing to the Trustees, or request to have entered in the minutes of meetings of the Trustees, the nature and extent of his or her interest forthwith after that person becomes aware of the material contract or transaction or proposed material contract or transaction.
- (d) A Trustee or officer referred to in this section must not vote on any resolution to approve the material contract or transaction, unless the material contract or transaction is one relating primarily to his or her remuneration as a Trustee or officer or one for indemnity or insurance.
- (e) For the purposes hereof, a general notice to the Trustees by a Trustee or an officer of the Trust disclosing that he or she is a director or officer or an individual acting in a similar capacity of, or has a material interest in, any person and is to be regarded as interested in any material contract made or any material transaction entered into with that person is a sufficient disclosure of interest in relation to any contract so made or transaction entered into.
- (f) Where any Trustee or officer of the Trust fails to disclose his or her interest in a material contract or transaction in accordance with the provisions hereof, the Trustees or any Trust Unitholder, in addition to exercising any other rights or remedies in connection with such failure exercisable at law or in equity, may apply to a court for an order setting aside the material contract or transaction and directing that such Trustee or officer account to the Trust for any profit or gain realized.
- (g) Notwithstanding section 9.9(f) hereof, a Trustee or officer of the Trust, acting honestly and in good faith, is not accountable to the Trust or to the Trust Unitholders for any profit or gain realized from such material contract or transaction, and such material contract or transaction will not be void or voidable and may not be set aside, if:
- (i) the material contract or transaction was reasonable and fair to the Trust at the time it was approved;
  - (ii) the material contract or transaction is confirmed or approved at a meeting of Trustees duly called for that purpose; and
  - (iii) the nature and extent of the Trustee's or officer's interest in such contract or transaction is disclosed in reasonable detail in the notice calling the meeting of the Trustees.

- (h) Subject to section 9.9(a), each Trustee, in his or her personal capacity or any other capacity, may buy, lend upon and deal in securities of the Trust and generally may contract and enter into any financial transactions with the Trust without being liable to account for any profit made thereby.
- (i) Any Trustee may act as the trustee and/or administrator of any compensation plan (including any equity related compensation plan) for directors, officers, employees or other persons related to the Trust or any other Affiliate of the Trust, and it will not be a conflict of interest under this Declaration of Trust for the Trustee to so act.
- (j) Subject to section 9.9(a), each Trustee, in his or her personal capacity or any other capacity, may buy, sell, lend upon and deal in securities of the Trust or any WALP Group Member and generally may contract and enter into any transactions with the Trust or any WALP Group Member without being liable to account for any profit made thereby and such contract or transaction shall be neither void nor voidable.
- (k) For greater certainty, a Trustee complying with this section 9.9 will not be subject to any liability to the Trust or the Trust Unitholders with respect to any such material contract or transaction as aforesaid.
- (l) The provisions of this section 9.9 shall apply to the Manager and any Affiliate thereof which is a party to a material contract or transaction or proposed material contract or transaction with the Trust, *mutatis mutandis*.

#### **9.10 Conditions Precedent**

The obligation of the Trustees to commence or continue any act, action, suit or proceeding or to represent the Trust in any action, suit or proceeding shall be conditional upon sufficient funds being available to the Trustees from the Trust Assets to commence or continue such act, action, suit or proceeding or to represent the Trust in any action, suit or proceeding and an indemnity reasonably satisfactory to the Trustees to protect and hold harmless the Trustees against the costs, charges and expenses and liabilities to be incurred therein and any loss and damage they may suffer by reason thereof. None of the provisions contained in this Declaration of Trust shall require the Trustees to expend or risk their own funds or otherwise incur financial liability in the performance of their duties or in the exercise of any of their rights or powers unless they are given an indemnity and funding satisfactory to the Trustees, acting reasonably.

#### **9.11 Reliance Upon Trustees and Officers**

Any person dealing with the Trust in respect of any matters pertaining to the Trust Assets and any right, title or interest in the Trust Assets or to the Trust or to securities of the Trust shall be entitled to rely on a certificate, statutory declaration or resolution executed or certified by the Trustees or the Manager or any officer of the Trust appointed by the Trustees as to the capacity, power and authority of the Trustees or any other person to act for and on behalf and in the name of the Trust. No person dealing with the Trustees, the Manager or officers of the Trust shall be bound to see the application of any funds or property passing into the hands or control of the Trustees, the Manager or officers of the Trust. The receipt of the Trustees or officers of the Trust for monies or other consideration shall be binding upon the Trust.

#### **9.12 Execution of Instruments and Apparent Authority**

- (a) The Trustees shall have the power, from time to time, to appoint any Trustee or Trustees, any officer or officers of the Trust or any other person or persons on behalf of the Trust to sign agreements, instruments or other documents in writing and to do such acts and agree

to such things, on behalf of the Trust, as may be necessary or desirable in connection therewith.

- (b) No purchaser, transfer agent or other person dealing with the Trustees or with any officer of the Trust or agent of the Trustees will be bound to make any enquiry concerning the validity of any transaction purporting to be made by the Trustees or by such officer or agent or make enquiry concerning, or be liable for, the applicable money or property paid, lent or delivered to or on the order of the Trustees or such officer, employee or agent. Any person dealing with the Trust in respect of any matters pertaining to the Trust Assets and any right, title, or interest therein, or to the Trust or the Trust Units will be entitled to rely on a certificate, statutory declaration or resolution executed or certified by the Trustees as to the capacity, power and authority of the Trustees, any consultant or agent or any other person to act for and on behalf and in the name of the Trust. No person dealing with the Trustees or any consultant or agent of the Trust will be bound to see to the application of any funds or property passing into the hands or control of such Trustees, consultant or agent of the Trust. The receipt of the Trustees or of authorized consultants or agents of the Trust, for money or other consideration, will be binding upon the Trust.

#### **9.13 Delegation of Powers to the Manager**

Except as expressly prohibited by law, the Trustees may grant or delegate to the Manager such authority and such powers as the Trustees may in their discretion deem necessary or desirable to effect the actual administration of the duties of the Trustees under this Declaration of Trust, without regard to whether such authority is normally granted or delegated by trustees. The Trustees may grant broad discretion to the Manager to administer and manage the day-to-day operations of the Trust, to act as agent for the Trust, to execute documents on behalf of the Trust and to make executive decisions which conform to general policies and general principles set forth herein or previously established by the Trustees. The Manager shall have the powers and duties expressly provided for herein and in any administration or management agreement including, without limitation, the power to retain and instruct such appropriate experts or advisors to perform those duties and obligations herein which it is not qualified to perform (and the Manager shall notify the Trustees of the name of the person or persons retained or instructed and the terms and conditions thereof). The Trustees may enter into the Management Agreement and any other contract with the Manager relating to the Manager's authority, term of appointment, compensation and any other matters deemed desirable by the Trustees. The Trustees shall have no liability or responsibility for any actions of the Manager hereunder or under the Management Agreement and the Trustees, in relying upon the Manager, shall be deemed to have complied with their obligations under section 9.4 hereof.

### **ARTICLE 10 COMMITTEES OF TRUSTEES**

#### **10.1 Delegation**

Except as prohibited by law, the Trustees may appoint from among their number one or more committees of Trustees and may delegate to any such committee any of the powers of the Trustees, provided that a majority of the Trustees appointed to any committee shall be Residents and provided further that, for greater certainty, any such committee shall not take any action or engage in any activity that the Trustees would be prohibited from taking or engaging in pursuant to the terms of this Declaration of Trust. The Trustees shall have the power to appoint, employ or contract with any person for any matter relating to the Trust or its assets or affairs.

## 10.2 Procedure

Unless otherwise determined by the Trustees, a quorum for meetings of any committee shall be a majority of its members. Each committee shall have the power to appoint its chairman and to delineate the duties and responsibilities of such chairman. The rules for calling (including, for greater certainty, the giving of notice), location, holding, conducting, participating in, voting at and adjourning meetings of the committee shall be the same as those governing meetings of the Trustees. Each member of a committee shall serve at the pleasure of the Trustees and, in any event, only so long as he shall be a Trustee. The Trustees may fill vacancies in a committee by appointment from among their members. Provided that a quorum is maintained, the committee may continue to exercise its powers notwithstanding any vacancy among its members.

## ARTICLE 11 AMENDMENT

### 11.1 Amendment

The provisions of this Declaration of Trust, except where specifically provided otherwise, may only be amended by the Trustees with the consent of the Trust Unitholders by Special Resolution; provided that the provisions of this Declaration of Trust may be amended by the Trustees at any time and from time to time without the consent, approval or ratification of the Trust Unitholders or any other person:

- (a) at any time for the purpose of ensuring continuing compliance with applicable laws (including the Tax Act), regulations, requirements or policies of any governmental authority having jurisdiction over the Trustees or the Trust or the distribution of Units (including ensuring that the Trust continues to qualify as a "mutual fund trust" within the meaning of the Tax Act and that the Trust Units are not disqualified for investment by Plans);
- (b) at any time for the purpose of making amendments which, in the opinion of counsel to the Trustees, provide additional protection or added benefits for the Trust Unitholders;
- (c) at any time for the purpose of removing any conflicts or inconsistencies in this Declaration of Trust or making minor changes or corrections, including the corrections or rectifications of any ambiguities, defective provisions, errors, mistakes or omissions which are, in the opinion of the Trustees, necessary or desirable and not prejudicial to the Trust Unitholders; or
- (d) for the purpose of:
  - (i) making amendments which, in the opinion of the Trustees, are necessary or desirable as a result of changes in generally accepted accounting principles (including accounting guidelines) or taxation or other laws or the administration or enforcement thereof;
  - (ii) enabling the Trust to issue Trust Units for which the purchase price is payable in instalments; or
  - (iii) any purpose (except one in respect of which a Unitholder vote is specifically otherwise required) if the Trustees are of the opinion that the amendment is not prejudicial to Trust Unitholders and it is necessary or desirable,

but, notwithstanding the foregoing, no such amendment: (i) shall be adopted which causes (A) the Trust to fail or cease to qualify as a "mutual fund trust" under the Tax Act, or (B) the Trust Units to be disqualified for investment by Plans; or (ii) shall (A) modify the right to one vote per Trust Unit or reduce

the fractional undivided interest in the Trust Assets represented by any Trust Unit without the consent of the holder of such Trust Unit, or (B) reduce the percentage of votes required to be cast at a meeting of the Trust Unitholders for the purpose of section 11.1 without the consent of Trust Unitholders by Special Resolution.

#### **11.2 No Termination**

No amendment to or amendment and restatement of this Declaration of Trust, whether pursuant to this Article 11 or otherwise, shall be construed as a termination of the Trust and the settlement or establishment of a new trust.

#### **11.3 Notification of Amendment**

As soon as shall be practicable after the making of any amendment pursuant to this Article 11, the Trustees shall furnish written notification of the substance of such amendment to each Trust Unitholder.

### **ARTICLE 12 MEETINGS OF TRUST UNITHOLDERS**

#### **12.1 Meetings of Trust Unitholders**

- (a) A meeting of the Trust Unitholders may be called at any time by the Trustees and shall be called by the Trustees upon a written requisition of Trust Unitholders holding in the aggregate not less than 10% of the Trust Units then outstanding, which requisition must specify in reasonable detail the business proposed to be transacted at the meeting. The Trust will not hold annual meetings of Trust Unitholders.
- (b) Subject to section 12.1(c), if the Trustees do not within 21 days after receiving the requisition referred to in section 12.1(a) call a meeting, any Trust Unitholder who signed the requisition may call the meeting in accordance with the provisions of this Article 12.
- (c) The Trustees, in their sole discretion, may deny a requisition for a meeting under the following circumstances:
  - (i) it clearly appears to the Trustees, acting reasonably, that the matter covered by the requisition is submitted by the Trust Unitholders primarily for the purpose of enforcing a personal claim or redressing a personal grievance against the Trust, the Trustees, the officers of the Trust or its security holders, or primarily for the purpose of promoting general economic, political, racial, religious, social or similar causes;
  - (ii) it clearly appears to the Trustees, acting reasonably, that the matter covered by the requisition does not relate in a significant way to the business or affairs of the Trust;
  - (iii) the Trust, at the Trust Unitholder's request, included a matter covered by a requisition in an information circular relating to a meeting of Trust Unitholders held within two years preceding the receipt of such request, and the Trust Unitholder failed to present the matter, in person or by proxy, at the meeting;
  - (iv) substantially the same matter covered by the requisition was submitted to Trust Unitholders in an information circular (including a dissident's information circular) relating to a meeting of Trust Unitholders held within two years preceding the receipt of the Trust Unitholder's request and the matter covered by

the requisition did not receive more than 40% of the total number of Trust Units voted; or

- (v) the rights conferred by this section 12.1 are being abused to secure publicity.
- (d) The chairperson of any meeting shall be the Chairman of the Trustees or in his absence, any other Trustee specified by resolution of the Trustees or, in the absence of any Trustee, any person appointed as chairperson of the meeting by the Trust Unitholders present. The chairperson of the meeting shall appoint the Secretary of the Trust or, in the absence of the Secretary, an individual, who need not be a Trust Unitholder, to act as secretary of the meeting. If desired, one or more scrutineers, who need not be Trust Unitholders, may be appointed by the chairperson.
- (e) The Trustees, the officers of the Trust, the Auditors, Counsel and any other person approved by the Trustees or the chairperson of the meeting or by resolution passed by a majority of the votes cast by Trust Unitholders represented at the meeting may attend meetings of the Trust Unitholders.
- (f) To the extent that the rules and procedures for the conduct of a meeting of Trust Unitholders are not prescribed herein, the rules and procedures shall be such reasonable rules and procedures as are determined by the chairperson of the meeting and such rules and procedures shall be binding upon all parties participating in the meeting.

#### **12.2 Notice of Meetings**

Notice of all meetings of Trust Unitholders shall be given by unregistered mail, postage prepaid, addressed to each Trust Unitholder at his or her last address on the books of the Trust, mailed at least 30 days and not more than 60 days before the meeting. Such notice shall specify the time when, and the place where, such meeting is to be held and shall specify the nature of the business to be transacted at such meeting in sufficient detail to permit a Trust Unitholder to form a reasoned judgment thereon, together with the text of any Special Resolution, at the time of mailing of the notice, proposed to be passed. Any adjourned meeting, other than a meeting adjourned for lack of a quorum under section 12.8(b), may be held as adjourned without further notice. The accidental omission to give notice or the non-receipt of such notice by a Trust Unitholder shall not invalidate any resolution passed at any such meeting. Notwithstanding the foregoing, a meeting of Trust Unitholders may be held at any time without notice if all the Trust Unitholders are present or represented thereat or those not so present or represented have waived notice. Any Trust Unitholder (or a duly appointed proxy of a Trust Unitholder) may waive any notice required to be given under the provisions of this section, and such waiver, whether given before or after the meeting, shall cure any default in the giving of such notice. Attendance at a meeting of Trust Unitholders shall constitute a waiver of notice unless the Trust Unitholder or other person attends the meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not properly called.

#### **12.3 Quorum**

At any meeting of the Trust Unitholders, subject as hereinafter provided, a quorum shall consist of two or more individuals present in person either holding personally or representing as proxies not less in aggregate than 10% of the votes attached to all outstanding Trust Units. In the event of such quorum not being present at the appointed place on the date for which the meeting is called within 30 minutes after the time fixed for the holding of such meeting, the meeting, if called by request of Trust Unitholders, shall be terminated and, if otherwise called, shall stand adjourned to such day being not less than 7 days later and to such place and time as may be appointed by the chairperson of the meeting. If at such adjourned meeting a quorum as above defined is not present, the Trust Unitholders present either personally or by proxy shall form a quorum, and any business may be brought before or dealt with at such

an adjourned meeting which might have been brought before or dealt with at the original meeting in accordance with the notice calling the same.

The chairperson of any meeting at which a quorum of Trust Unitholders is present may, with the consent of the majority of the Trust Unitholders present in person or by proxy, adjourn any such meeting and no notice of any such adjournment need be given.

#### **12.4 Voting Rights**

Only Trust Unitholders of record on the applicable record date for voting shall be entitled to vote. Each Trust Unit shall entitle the holder or holders of that Trust Unit to one vote on a poll vote at any meeting of Trust Unitholders. Every question submitted to a meeting, other than a Special Resolution, shall, unless a poll vote is demanded, be decided by a show of hands vote, on which every person present and entitled to vote shall be entitled to one vote and unless a poll is demanded, a declaration by the chairperson that a resolution has been carried or carried unanimously or by a particular majority, or lost or not carried by a particular majority, shall be conclusive evidence of the fact. If a poll is demanded concerning the election of a chairperson or an adjournment, it shall be taken immediately upon request and, in any other case, it shall be taken at such time as chairperson of the meeting may direct. The poll shall be taken in such manner as the chairperson may direct. The demand for a poll shall not prevent the continuation of a meeting for the transaction of any business other than the question on which the poll has been demanded.

If Trust Units are held jointly by two or more persons, any one of them present in person or by proxy at the meeting may vote in the absence of the other or others; but if more than one of them is present in person or by proxy, they shall vote together with respect to the Trust Units held jointly, provided that only one of them can vote on a show of hands, and, if they do not agree on how to exercise any vote to which they are jointly entitled (including a vote on a show of hands), they shall, for the purposes of the voting, be deemed not to be present. The chairperson of the meeting shall be entitled to vote in respect of Trust Units held by the chairperson represented by the chairperson by proxy. In the case of an equality of votes, the chairperson shall not have a casting vote and the resolution shall be deemed to be defeated.

#### **12.5 Proxies**

Whenever the vote or consent of Trust Unitholders is required or permitted under this Declaration of Trust, such vote or consent may be given either directly by the Trust Unitholder or by a proxy. The instrument appointing a proxy must be in writing and either substantially in a form which may be approved by the Trustees acting reasonably or as may be satisfactory to the chairperson of the meeting at which it is sought to be exercised. The instrument of proxy must be executed by the Trust Unitholder giving the proxy or his agent duly authorized in writing and, if given on behalf of joint holders, must be executed by all of them and may be revoked by any of them, and, if given by a Trust Unitholder which is a body corporate, must be executed on its behalf by a person duly authorized in writing. Any person may be appointed a proxy, whether or not that person is a Trust Unitholder. The Trustees, on behalf of the Trust, may solicit instruments of proxy from the Trust Unitholders or any of them in respect of any matter requiring or permitting the Trust Unitholder's vote or consent. An instrument of proxy shall be deposited with the chairperson of the meeting before any vote is cast under its authority or at such earlier time or in such manner as the Trustees may prescribe from time to time.

An instrument of proxy executed in compliance with the foregoing shall be valid unless challenged at the time of or prior to its exercise and the person challenging the instrument shall have the burden of proving, to the satisfaction of chairperson of the meeting at which the instrument is proposed to be used, that the instrument of proxy is invalid. Any decision of the chairperson of the meeting in respect

of the validity of an instrument of proxy shall be final and binding upon all persons. An instrument of proxy shall be valid only at the meeting with respect to which it was solicited or any adjournment thereof.

A vote cast in accordance with any proxy shall be valid notwithstanding the death, incapacity, insolvency or bankruptcy of the Trust Unitholder giving the proxy or the revocation of the proxy unless written notice of the death, incapacity, insolvency, bankruptcy of the Trust Unitholder or revocation of the proxy has been received by the chairperson of the meeting prior to the time the vote is cast.

#### **12.6 Personal Representatives**

Subject to the provisions of Article 13, if a Trust Unitholder is deceased, his personal representative, upon filing with the secretary of the meeting such proof of his appointment as the secretary considers sufficient, shall be entitled to exercise the same voting rights at any meeting of Trust Unitholders as the Trust Unitholder would have been entitled to exercise if the Trust Unitholder were living and for the purpose of the meeting shall be considered to be a Trust Unitholder. Subject to the provisions of the will of a deceased Trust Unitholder, if there is more than one personal representative, the provisions of section 12.4 relating to joint holders shall apply.

#### **12.7 Resolutions Binding the Trustees**

Trust Unitholders shall be entitled to pass resolutions that will bind the Trust and the Trustees only with respect to the following matters:

- (a) the election or removal of a Trustee to the extent permitted by Article 8;
- (b) the appointment or removal of Auditors as provided in Article 17;
- (c) the approval of amendments of this Declaration of Trust as provided in Article 11;
- (d) the amalgamation, merger, arrangement or capital reorganization of the Trust;
- (e) the termination or dissolution of the Trust, as provided in section 14.2;
- (f) the sale, lease, exchange or other distribution or disposition of all or substantially all of the Trust Assets;
- (g) the ratification of any Trust Unitholder rights plan, distribution reinvestment plan, distribution reinvestment and Trust Unit purchase plan, Trust Unit option plan or other compensation plan contemplated by section 5.10 requiring Trust Unitholder approval under laws or regulations applicable to the Trust;
- (h) the creation of new Classes of Units as provided in section 9.2(w);
- (i) the acquisition of Trust Assets that are proposed to be acquired with the prepayment proceeds of Master LP Notes where such proceeds are greater than 20% of the principal amount of the Master LP Notes being prepaid in any trailing 12 month period, provided that only the approval of the Trust Unitholders holding the corresponding Trust Units shall be required to be obtained by the Trustees; and
- (j) any other matters that the Trustees may determine or as may be properly brought before a meeting of Trust Unitholders including any other matters required by securities law, stock exchange rules or other laws or regulations to be submitted to Trust Unitholders for their approval.

Except with respect to the above matters set out in this section 12.7, no action taken by the Trust Unitholders or any resolution of the Trust Unitholders at any meeting shall in any way bind the



Trustees. Any action taken or resolution passed in respect of any matter at a meeting of Trust Unitholders shall be by Special Resolution, unless the contrary is otherwise expressly provided under any specific provision of this Declaration of Trust and except for the matters set out in sections 12.7(a), 12.7(b), 12.7(h) and, if applicable, 12.7(k) above which matters may be dealt with by Ordinary Resolution.

**12.8           Meaning of "Special Resolution"**

- (a) The expression "**Special Resolution**" when used in this Declaration of Trust means, subject to this Article 12, a resolution proposed to be passed as a special resolution at a meeting of Trust Unitholders (including an adjourned meeting) duly convened for that purpose and held in accordance with the provisions of this Article at which two or more individuals present in person either holding personally or representing as proxies not less in aggregate than 10% of the number of Trust Units then outstanding and passed by the affirmative votes of the holders of more than 66 2/3% of the Trust Units represented at the meeting and voted on a poll upon such resolution.
- (b) Notwithstanding section 12.3, if at any meeting at which a Special Resolution is proposed to be passed the holders of 10% of the aggregate number of Trust Units outstanding are not present in person or by proxy within 30 minutes after the time appointed for the meeting, then the meeting, if convened by or on the requisition of Trust Unitholders, shall be dissolved; but in any other case it shall stand adjourned to such date, being not less than 21 nor more than 60 days later and to such place and time as may be appointed by the chairperson of the meeting. Not less than 10 days prior notice shall be given of the time and place of such adjourned meeting in the manner provided in section 12.2. Such notice shall state that at the adjourned meeting the Trust Unitholders present in person or by proxy shall form a quorum but it shall not be necessary to set forth the purposes for which the meeting was originally called or any other particulars. At the adjourned meeting, the Trust Unitholders present in person or by proxy shall form a quorum and may transact the business for which the meeting was originally convened and a resolution proposed at such adjourned meeting and passed by the requisite vote as provided in section 12.8(a) shall be a Special Resolution within the meaning of this Declaration of Trust, notwithstanding that the holders of less than 10% of the aggregate number of Trust Units then outstanding are present in person or by proxy at such adjourned meeting.
- (c) Votes on Special Resolution shall always be given on a poll and no demand for a poll on a Special Resolution shall be necessary.

**12.9           Meaning of "Outstanding"**

Every Trust Unit issued, certified and delivered hereunder shall be deemed to be outstanding until it shall be cancelled or delivered to the Trustees or Transfer Agent for cancellation provided that:

- (a) when a new certificate has been issued in substitution for a Trust Unit Certificate which has been lost, stolen, mutilated or destroyed, only one of such Trust Unit Certificates shall be counted for the purposes of determining the number of Trust Units outstanding; and
- (b) for the purpose of any provision of this Declaration of Trust entitling holders of outstanding Trust Units to vote, sign consents, requisitions or other instruments or take any action under this Declaration of Trust, Trust Units owned directly or indirectly, legally or equitably, by the Trust shall be disregarded.

**12.10 Record Date for Voting**

For the purpose of determining the Trust Unitholders who are entitled to vote or act at any meeting or any adjournment thereof, the Trustees may fix a date not more than 60 days and not less than 30 days prior to the date of any meeting of Trust Unitholders as a record date for the determination of Trust Unitholders entitled to vote at such meeting or any adjournment thereof, and any Trust Unitholder who was a Trust Unitholder at the time so fixed shall be entitled to vote at such meeting or any adjournment thereof even though the Trust Unitholder has since that time disposed of his or her Trust Units, and no Trust Unitholder becoming such after that time shall be so entitled to vote at such meeting or any adjournment thereof. In the event that the Trustees do not fix a record date for any meeting of Trust Unitholders, the record date for such meeting shall be the date upon which notice of the meeting is given as provided under section 12.2.

**12.12 Resolutions in Writing**

Notwithstanding any other provision of this Declaration of Trust, a resolution in writing circulated to all Trust Unitholders and executed by Trust Unitholders holding more than 50% of the outstanding votes required to vote in favour thereof at a meeting of Trust Unitholders to approve that resolution, if such resolution is an Ordinary Resolution, or a resolution in writing circulated to all Trust Unitholders and executed by Trust Unitholders holding more than 66 2/3% of the outstanding votes required to vote in favour thereof at a meeting of Trust Unitholders to approve that resolution, if such resolution is a Special Resolution, shall be as valid and binding for all purposes of this Declaration of Trust as if such Trust Unitholders had exercised at that time all of the voting rights to which they were then entitled under section 12.7 or 12.8 in favour of such resolution at a meeting of Trust Unitholders duly called for the purpose.

**12.13 Binding Effect of Resolutions**

Every resolution passed in accordance with the provisions of this Declaration of Trust at a meeting of Trust Unitholders shall be binding upon all the Trust Unitholders, whether present at or absent from that meeting, and each and every Trust Unitholder shall be bound to give effect accordingly to every such resolution.

**12.14 No Breach**

Notwithstanding any other provision of this Declaration of Trust, Trust Unitholders shall have no power to effect any amendment to this Declaration of Trust which would require the Trustees to take any action or conduct the affairs of the Trust in a manner which would constitute a breach or default by the Trust or the Trustees under any agreement binding on, or obligation of, the Trust or the Trustees.

#### **12.15           Vote by Class, Series and Designation**

If, based on the opinion of Counsel to the Trust, a Class or Series or Designation of Units is affected by any matter requiring the approval of Trust Unitholders in a manner which is different from units of another Class or Series or Designation of Units, the holders of Units of such Class or Series or Designation shall be entitled to vote separately as a Class or Series or Designation in respect of such matter and, notwithstanding anything to the contrary herein contained, such matter shall not become effective until it has been approved by the holders of Units of each Class or Series or Designation entitled to vote thereon. If a Class or Series or Designation of Units is affected by any matter requiring approval and the other Class or Series or Designation of Units is not affected by such matter, the holders of Units of the Class or Series or Designation so affected shall only be entitled to vote in respect of such matter and such other Class or Series or Designation shall not be entitled to vote in respect thereof. The provisions of Article 12 shall apply, *mutatis mutandis* to any meeting of the Trust Unitholders of a single Class or Series or Designation of Units.

### **ARTICLE 13 CERTIFICATES, REGISTRATION AND TRANSFER OF TRUST UNITS**

#### **13.1           Nature of Trust Units**

The provisions of this Article 13 shall not in any way alter the nature of Trust Units or the relationships of a Trust Unitholder to the Trustees and of one Trust Unitholder to another but are intended only to facilitate the issuance of certificates evidencing the ownership of Trust Units, if desirable to issue them to Trust Unitholders and the recording of all transactions in respect of Trust Units and Trust Unit Certificates, whether by the Trust or other persons.

#### **13.2           Form of Trust Unit Certificates**

- (a) Trust Unit Certificates shall, subject to the provisions hereof, be in such form as is authorized from time to time by the Trustees.
- (b) If issued, Trust Unit Certificates are issuable only in fully registered form.
- (c) The definitive form of the Trust Unit Certificates shall:
  - (i) be in the English language;
  - (ii) be dated as of the date of issue thereof; and
  - (iii) contain such distinguishing letters and numbers as the Trustees shall prescribe.
- (d) In the event that the Trust Unit Certificate is translated into the French language and any provision of the Trust Unit Certificates in the French language shall be susceptible of an interpretation different from the equivalent provision in the English language, the interpretation of such provision in the English language shall be determinative.
- (e) Each Trust Unit Certificate shall be signed on behalf of the Trustees. The signature of the Trustees or any officers on behalf of the Trustees required to appear on such certificate may be printed, lithographed or otherwise mechanically reproduced thereon and, in such event, certificates so signed are as valid as if they had been signed manually.
- (f) The Trust is not bound to issue more than one Trust Unit Certificate in respect of Units held jointly or in common by two or more persons and delivery of a Trust Unit Certificate to one of them shall be sufficient delivery to all.

### 13.3

#### Contents of Trust Unit Certificates

- (a) Until otherwise determined by the Trustees, each Trust Unit Certificate shall legibly set forth on the face thereof, *inter alia*, the following:
- (i) the name of the Trust and the words "A trust created under the laws of the Province of Ontario by a Declaration of Trust dated as of February 1, 2010, as may be amended from time to time", or words of like effect;
  - (ii) the name of the person to whom the Trust Unit Certificate is issued as Trust Unitholder;
  - (iii) the number, Class, Series and Designation of Trust Units represented thereby and whether or not the Trust Units represented thereby are fully paid;
  - (iv) that the Trust Units represented thereby are transferable but that such transfers are subject to restrictions set out in this Declaration of Trust;
  - (v) the words "The Trust Units represented by this certificate are issued upon the terms and subject to the conditions of the Declaration of Trust, which Declaration of Trust is binding upon all holders of Trust Units and, by acceptance of this certificate, the holder assents to the terms and conditions of the Declaration of Trust. A copy of the Declaration of Trust pursuant to which this certificate and the Trust Units represented thereby are issued may be obtained by a Trust Unitholder on demand and without fee from the head office of the Trust", or words of like effect; and
  - (vi) the words "For information as to personal liability of a Trust Unitholder, see the reverse side of this certificate", or words of like effect.
- (b) Until otherwise determined by the Trustees, each such certificate shall legibly set forth on the reverse side thereof, *inter alia*, the following:
- (i) "The Declaration of Trust provides that no Trust Unitholder shall be subject to any personal liability whatsoever, in tort, contract or otherwise, to any person in connection with the assets of the Trust or the obligations or the affairs of the Trust and all such persons shall look solely to the assets of the Trust for satisfaction of claims of any nature arising out of or in connection therewith and the assets of the Trust only shall be subject to levy or execution", or words of like effect; and
  - (ii) appropriate forms of notice of exercise of the right of redemption and of powers of attorney for transferring Trust Units.

The Trust Unit Certificates may be engraved, printed or lithographed, or partly in one form and partly in another, as the Trustees may determine.

### 13.4

#### Register of Trust Unitholders

A register may be kept at the principal corporate office of the Trust which register shall contain the names and addresses of the Trust Unitholders, the respective numbers and Classes, Series and Designations of Trust Units held by them, the certificate numbers of certificates representing such Trust Units and a record of all transfers and redemptions thereof. Branch transfer registers shall be maintained at such other offices of the Trust as the Trustees may from time to time designate. Only Trust Unitholders whose Trust Units and/or Trust Unit Certificates are so recorded shall be entitled to receive distributions or to exercise or enjoy the rights of Trust Unitholders hereunder. The Trustees shall have the right to treat the person registered as a Trust Unitholder on the register of the Trust as the owner of such Trust Units

for all purposes, including, without limitation, payment of any distribution, giving notice to Trust Unitholders and determining the right to attend and vote at meeting of Trust Unitholders. All issuances of Reinvestment Units shall be recorded in the register of Trust Units, whether or not Trust Unit Certificates are issued in respect thereof.

### **13.5 Limitation of Non-Resident Ownership**

- (a) At no time may Non-Residents be the beneficial owners of more than 49% of the Trust Units (on either a non-diluted or Fully Diluted Basis).
- (b) The Trustees shall have the power and authority to determine from time to time written guidelines with respect to the form and content of a Unitholder's Declaration, the times at which any Unitholder's Declarations are to be requested and any other relevant matters relating to Unitholder's Declarations.

A Unitholder's Declaration shall be in the form and substance from time to time determined by the Trustees and, without limiting the generality of the foregoing, may be required to be in the form of a declaration in writing sworn under oath or affirmed in a manner and in a form acceptable to the Trustees. Without limiting the generality of the foregoing, any Unitholder's Declaration may be required to contain information with respect to:

- (i) whether the Unitholder is the beneficial owner of the applicable Units or whether any other person is the beneficial owner of those Units; and
  - (ii) whether the Unitholder or any other beneficial owner of the Units is a Non-Resident.
- (c) If the Trustees become aware that the limitations on ownership set forth in section 13.5(a) is, or may be, contravened or that such a situation is imminent, the transfer agent or registrar shall make a public announcement thereof and shall not accept a subscription for Trust Units from or issue or register a transfer of Trust Units to a person unless the person provides a Unitholder's Declaration satisfactory to the Trustees that the person is not a Non-Resident and does not and will not hold Trust Units on behalf of or for the benefit of any Non-Resident and will not be subject to the instructions or influence of any Non-Resident with respect to the voting of any Trust Units. If, notwithstanding the foregoing, the Trustees determine either that more than 49% of the Trust Units (on either a non-diluted or Fully Diluted Basis) are held or beneficially owned by Non-Residents the Trustees may send a notice to those Non-Residents holding Trust Units, as applicable, chosen in inverse order to the order of acquisition or registration or in any manner as the Trustees may consider equitable and practicable, requiring them to sell their Trust Units or a portion thereof within a specified period of not less than 30 days. If the Trust Unitholders receiving such notice have not sold the specified number of Trust Units or provided the Trustees with Unitholders' Declarations or other satisfactory evidence within such period that they are not Non-Residents and that they do not and will not hold Trust Units on behalf of or for the benefit of any Non-Resident and that they are not and will not be subject to the instructions or influence of any Non-Resident with respect to the voting of any Trust Units, the Trustees may on behalf of such Trust Unitholders sell such Trust Units and, in the interim, shall suspend the voting and distribution rights attached to such Trust Units. Upon such sale, the affected holders shall cease to be holders of such Trust Units and their rights in respect of such Trust Units shall be limited to receiving the net proceeds of sale upon surrender of the certificates representing such Trust Units.

- (d) Subject to section 9.6, unless and until the Trustees shall have been required to do so under the terms hereof, the Trustees shall not be bound to do or take any proceeding or action with respect to this section 13.5 by virtue of the powers conferred on them hereby. The Trustees shall have the sole right and authority to make any determination required or contemplated under this section 13.5. The Trustees shall make all determinations necessary for the administration of the provisions of this section 13.5 and, without limiting the generality of the foregoing, if the Trustees consider that there are reasonable grounds for believing that a contravention of the limitations on ownership set forth in section 13.5(a) has occurred or will occur, the Trustees shall make a determination with respect to the matter. Any such determination shall be conclusive, final and binding except to the extent modified by any subsequent determination by the Trustees. In any situation where it is unclear whether Trust Units are held for the benefit of Non-Residents, the Trustees may exercise their discretion in determining whether such Trust Units are or are not so held, and any such exercise by them of their discretion shall be binding for the purposes of this section 13.5. Notwithstanding the foregoing, the Trustees may delegate, in whole or in part, their power to make a determination in this respect to any officer of the Trust.

**13.6 Transfer of Trust Units**

- (a) Subject to the provisions of this Article 13 and applicable securities laws, the Trust Units shall be fully transferable without charge as between persons, but no transfer of Trust Units shall be effective as against the Trustees or shall be in any way binding upon the Trustees until the transfer has been approved by the Trustees and recorded on the Registers.
- (b) No transfer of a Trust Unit will be recognized unless such transfer is of a whole Trust Unit, unless otherwise determined by the Trustees.
- (c) Subject to the provisions of this Article 13, Trust Units shall be transferable on the Registers only by the Trust Unitholders of record thereof or their executors, administrators or other legal representatives or by their agents or attorneys duly authorized in writing, and only upon delivery to the Trust of the certificate therefor, properly endorsed or accompanied by a duly executed instrument of transfer or power of attorney and accompanied by all necessary transfer or other taxes imposed by law, together with such evidence of the genuineness of such endorsement, execution and authorization and other matters that may reasonably be required by the Trustees. Upon such delivery, the transfer shall be recorded on the Registers and a new certificate for the Trust Units shall be issued to the transferee and a new certificate for the balance of Trust Units not transferred shall be issued to the transferor.
- (d) Any person becoming entitled to any Trust Units as a consequence of the death, bankruptcy or mental incompetence of any Trust Unitholder, or otherwise by operation of law, shall be recorded as the holder of such Trust Units and shall receive, in the case of Trust Units, a new Trust Unit Certificate therefor only upon production of evidence satisfactory to the Trustees and delivery of the existing certificate to the Trustees, but until such record is made the Trust Unitholder of record shall continue to be and be deemed to be the holder of such Trust Units for all purposes whether or not the Trustees shall have actual or other notice of such death or other event.
- (e) Trust Unit Certificates representing any number of Trust Units may be exchanged without charge for Trust Unit Certificates representing an equivalent number of Trust Units in the aggregate. Any exchange of Trust Unit Certificates may be made at the offices of the Trust where Registers are maintained for Trust Unit Certificates pursuant to

the provisions of this Article 13. Any Trust Unit Certificates tendered for exchange shall be surrendered to the Trustees and then shall be cancelled.

**13.7 Trust Units Held Jointly or in a Fiduciary Capacity**

Except as herein provided, the Trustees may treat two or more persons holding any Trust Units as joint owners of the entire interest therein unless their ownership is expressly otherwise recorded on the register of the Trust, but no entry shall be made in the register or on any certificate that any person is in any other manner entitled to any future, limited or contingent interest in any Trust Units; provided, however, that any person recorded as a Trust Unitholder may, subject to the provisions hereinafter contained, be described in the Register or on any certificate as a fiduciary of any kind and any customary words may be added to the description of the holder to identify the nature of such fiduciary relationship.

**13.8 Performance of Trust**

The Trustees, the Trust and any officers of the Trust, shall not be bound to be responsible for or otherwise inquire into or ensure the performance of any trust, express, implied or constructive, or of any pledge or equity to which any of the Trust Units or any interest therein are or may be subject, or to ascertain or enquire whether any transfer of any such Trust Units or interests therein by any such Trust Unitholder or by his or her personal representatives is authorized by such trust, pledge, or equity, or to recognize any person as having any interest therein except for the person recorded as Trust Unitholder.

**13.9 Lost Certificates**

In the event that any certificate for Trust Units is lost, stolen, destroyed or mutilated, the Trustees may authorize the issuance of a new certificate for the same number of Trust Units in lieu thereof. The Trustees may in their sole discretion, before the issuance of such new certificate, require the owner of the lost, stolen, destroyed or mutilated certificate, or the legal representative of the owner, to make an affidavit or statutory declaration setting forth such facts as to the loss, theft, destruction or mutilation as the Trustees may deem necessary, to surrender any mutilated certificate and shall require the applicant to supply to the Trust a "lost certificate bond" or a similar bond in such reasonable sum as the Trustees may direct indemnifying the Trust for so doing.

**13.10 Death of a Trust Unitholder**

The death of a Trust Unitholder during the continuance of the Trust shall not terminate the Trust or any of the mutual or respective rights and obligations created by or arising under this Declaration of Trust nor give such Trust Unitholder's personal representatives a right to an accounting or take any action in court or otherwise against other Trust Unitholders or the Trustees or the Trust Assets, but shall merely entitle the personal representatives of the deceased Trust Unitholder to demand and receive, pursuant to the provisions hereof, a new certificate for Trust Units in place of the certificate held by the deceased Trust Unitholder, if any, and upon the acceptance thereof such personal representatives shall succeed to all rights of the deceased Trust Unitholder under this Declaration of Trust.

**13.11 Offer for Trust Units**

(a) In this section 13.11:

- (i) "Dissenting Offeree" means, where an Offer is made for all the Trust Units, a holder of a Trust Unit who does not accept the Offer, and includes a subsequent holder of a Trust Unit that is the subject of the Offer;
- (ii) "Offer" means an offer to acquire, directly or indirectly, outstanding Trust Units (including securities then currently convertible, exchangeable or exercisable for Trust Units) where, as of the date of the offer to acquire, either the Trust Units

that are the subject of the offer to acquire, together with the Offeror's Trust Units, constitute in the aggregate 20% or more of all outstanding Trust Units, or the offer to acquire is made by the Trust itself;

- (iii) "offer to acquire" includes an acceptance of an offer to sell;
- (iv) "Offeror" means a person, or two or more persons acting jointly or in concert, who makes an Offer, and includes the Trust itself if the Trust makes an Offer;
- (v) "Offeror's Notice" means the notice described in section 13.11(c); and
- (vi) "Offeror's Units" means Trust Units beneficially owned, or over which control or direction is exercised, on the date of an Offer by the Offeror or any Affiliate or associate of the Offeror.

- (b) If an Offer is made for all outstanding Trust Units (other than Trust Units held by or on behalf of the Offeror or any Affiliate or associate of the Offeror or any person acting jointly or in concert with the Offeror, within the meaning of the *Securities Act* (Ontario)) and, by such Offer, the Offeror agrees to be bound by the provisions of this section 13.11, and:

- (i) within the time provided in the Offer for its acceptance or within 120 days after the date the Offer is made, whichever period is the longer, the Offer is accepted by the holders of at least 90% of the outstanding Trust Units other than the Offeror's Trust Units; and
- (ii) the Offeror has taken up and paid for the Trust Units of the Trust Unitholders who accepted the Offer;

then:

- (iii) the Offeror will be entitled to acquire, and the Dissenting Offerees will be required to sell to the Offeror, the Trust Units held by the Dissenting Offerees on the terms on which the Offeror acquired the Trust Units of the Trust Unitholders who accepted the Offer,

provided that the Offeror complies with section 13.11(c) and section 13.11(e).

- (c) Where an Offeror is entitled to acquire Trust Units held by a Dissenting Offeree pursuant to section 13.11(b), and the Offeror wishes to exercise such right, the Offeror must send by registered mail before the earlier of 60 days after the date of termination of the Offer and 180 days following the date of the Offer a notice (the "Offeror's Notice") to each Dissenting Offeree stating that:

- (i) Trust Unitholders holding at least 90% of the outstanding Trust Units other than the Offeror's Trust Units, have accepted the Offer;
- (ii) the Offeror has taken up and paid for the Trust Units of the Trust Unitholders who accepted the Offer;
- (iii) a Dissenting Offeree must transfer his, her or its respective Trust Units to the Offeror on the terms on which the Offeror acquired the Trust Units of the Trust Unitholders who accepted the Offer within 21 days after the date of the sending of the Offeror's Notice; and
- (iv) Dissenting Offerees must send the Unit Certificates representing their respective Trust Units to the Trust, duly endorsed for transfer, within 21 days after the date of the sending of the Offeror's Notice.



- (d) A Dissenting Offeree to whom an Offeror's Notice is sent pursuant to section 13.11(c), must, within 21 days after the sending of the Offeror's Notice, as applicable, send the Unit Certificate representing his, her or its Trust Units to the Trust, duly endorsed for transfer, if a Unit Certificate for such Trust Units has been provided.
- (e) Within 21 days after the Offeror sends an Offeror's Notice pursuant to section 13.11(c), the Offeror must pay or transfer to the Trustees, or to such other person as the Trustees may direct, the cash or other consideration that the Offeror would have had to pay to the Dissenting Offeree had they accepted the Offer in respect of the Units that they continue to hold.
- (f) The Trustees, or the person directed by the Trustees, must hold in trust for the Dissenting Offerees the cash or other consideration received under section 13.11(e), but such cash or other consideration shall not form any part of the Trust Assets. The Trustees, or such persons, shall deposit such cash in a separate account in a Canadian chartered bank, and shall place such other consideration in the custody of a Canadian chartered bank or similar institution, for safekeeping.
- (g) Within 30 days after the date of the sending of an Offeror's Notice pursuant to section 13.11(c), the Trustees, if the Offeror has complied with section 13.11(e), shall:
  - (i) do or cause to be done all acts and things and execute and cause to be executed all instruments as in the opinion of the Trustees may be necessary or desirable to cause the transfer of the Trust Units of the Dissenting Offerees to the Offeror;
  - (ii) send or cause to be sent to each Dissenting Offeree who has complied with section 13.11(d) the consideration to which such Dissenting Offeree is entitled under this section 13.11; and
  - (iii) send or cause to be sent to each Dissenting Offeree who has not complied with section 13.11(d) a notice stating that:
    - (iv) his Trust Units have been transferred to the Offeror;
    - (v) the Trustees or some other person designated in such notice are holding in trust the consideration for such Trust Units; and
    - (vi) the Trustees, or such other person, will send the consideration to such Dissenting Offeree as soon as practicable after receiving the certificate(s) representing such Dissenting Offeree's Trust Units or such other documents as the Trustees or such other person may require in lieu thereof;

and the Trustees are hereby appointed the agent and attorney of the Dissenting Offeree for the purposes of giving effect to the foregoing provisions.

- (h) Subject to applicable law, an Offeror cannot make an Offer for Trust Units unless, concurrent with the communication of the Offer to any Trust Unitholder, a copy of the Offer is provided to the Trust.

**13.12 Repurchase of Trust Units**

The Trust shall be entitled to purchase for cancellation at any time the whole or from time to time any part of the outstanding Trust Units, at a price per Trust Unit and on a basis to be determined by the Trustees in compliance with all applicable securities regulatory laws, regulations or policies or the policies of any applicable stock exchange.

**ARTICLE 14  
TERMINATION**

**14.1 Term of Trust**

Subject to the other provisions of this Declaration of Trust, the Trust shall continue for a term ending on January 31, 2040. For the purpose of terminating the Trust by such date, the Trustees shall commence to wind-up the affairs of the Trust on such date as may be determined by the Trustees, being not more than two years prior to the end of the term of the Trust.

**14.2 Termination with the Approval of Trust Unitholders**

The Trust Unitholders may vote by Special Resolution to terminate the Trust at any meeting of Trust Unitholders duly called by the Trustees for the purpose of considering termination of the Trust, following which the Trustees shall commence to wind up the affairs of the Trust. Such Special Resolution may contain such directions to the Trustees as the Trust Unitholders determine, including a direction to distribute some or all of the Trust Assets.

**14.3 Procedure Upon Termination**

Forthwith upon being required to commence to wind up the affairs of the Trust, the Trustees shall give notice thereof to the Trust Unitholders, which notice shall designate the time or times at which Trust Unitholders may surrender their Trust Units for cancellation and the date at which the Registers shall be closed.

**14.4 Powers of the Trustees Upon Termination**

After the date on which the Trustees are required to commence to wind up the affairs of the Trust, the Trustees shall undertake no activities except for the purpose of winding-up the affairs of the Trust as hereinafter provided and, for this purpose, the Trustees shall continue to be vested with and may exercise all or any of the powers conferred upon the Trustees under this Declaration of Trust.

**14.5 Sale of Investments**

After the date referred to in section 14.3, the Trustees shall proceed to wind up the affairs of the Trust as soon as may be reasonably practicable and for such purpose shall, subject to any direction to the contrary in respect of a termination authorized under section 14.2, sell and convert into money the Trust Assets in one transaction or in a series of transactions at public or private sales and do all other acts appropriate to liquidate the Trust Assets, and shall in all respects act in accordance with the directions, if any, of the Trust Unitholders (in respect of a termination authorized under section 14.2). If the Trustees are unable to sell all or any of the Trust Assets by the date set for termination, the Trustees may, subject to obtaining all necessary regulatory approvals, distribute the remaining securities or other assets directly to the Trust Unitholders of each Series and Designation of a Class on a *pro rata* basis with Trust Unitholders holding Units of the same Series and Designation of a Class. If Master LP Notes are to be distributed to the Trust Unitholders and the Trustees determine that it is advisable to have a note indenture govern the rights and obligations of Master LP and the holders of the Master LP Notes, the Trustees shall

be authorized to negotiate and settle a note indenture on behalf of the Trust Unitholders, and the Trustees shall have the power of attorney of the Trust Unitholders to do so.

#### **14.6 Distribution of Proceeds or Assets**

After paying, retiring or discharging or making provision for the payment, retirement or discharge of all known liabilities and obligations of the Trust and providing for indemnity against any other outstanding liabilities and obligations, the Trustees shall, subject to obtaining all necessary regulatory approvals, distribute the remaining part of the proceeds of the sale of Trust Assets together with any cash forming part of the Trust Assets among the Trust Unitholders of each Series and Designation of a Class on a *pro rata* basis with Trust Unitholders holding Units of the same Series and Designation of a Class, in accordance with section 3.1 hereof.

#### **14.7 Further Notice to Trust Unitholders**

In the event that less than all of the Trust Unitholders have surrendered their Trust Units for cancellation within six months after the time specified in the notice referred to in section 14.3, the Trustees shall give further notice to the remaining Trust Unitholders to surrender their Trust Units for cancellation and if, within one year after the further notice, all the Trust Units shall not have been surrendered for cancellation, such remaining Trust Units shall be deemed to be cancelled without prejudice to the rights of the holders of such Trust Units, if applicable, to receive their *pro rata* share of the remaining Trust Assets, and the Trustees may either take appropriate steps, or appoint an agent to take appropriate steps, to contact such Trust Unitholders (deducting all expenses thereby incurred from the amounts to which such Trust Unitholders are entitled as aforesaid) or, in the discretion of the Trustees, may pay such amounts into court.

#### **14.8 Responsibility of the Trustees after Sale and Conversion**

The Trustees shall be under no obligation to invest the proceeds of any sale of investments or other assets or cash forming part of the Trust Assets after the date referred to in section 14.3 and, after such sale, the sole obligation of the Trustees under this Declaration of Trust shall be to hold such proceeds or assets in trust for distribution under section 14.6.

### **ARTICLE 15 SUPPLEMENTAL INDENTURES**

#### **15.1 Provision for Supplemental Indentures for Certain Purposes**

The Trustees may, without approval of the Trust Unitholders and subject to the provisions hereof, and shall, when so directed in accordance with the provisions hereof, execute and deliver indentures or instruments supplemental hereto which thereafter shall form part hereof, for any one or more or all of the following purposes:

- (a) modifying or amending any provisions of this Declaration of Trust in the circumstances set forth in section 11.1 where the Trustees may do so without the consent, approval or ratification of the Trust Unitholders or any other person; and
- (b) modifying or amending any provisions of this Declaration of Trust where the modification or amendment has been approved by Ordinary Resolution or Special Resolution, as the case may be, or, if required, with the consent of the holders of all of the Trust Units,

and any such indenture or instrument supplemental to this Declaration of Trust shall be binding on all parties, including without limitation, all Trust Unitholders on the later of (i) the date of the execution

thereof, and (ii) the effective date of any required approval by Trust Unitholders with respect to that indenture or instrument.

## **ARTICLE 16**

### **GENERAL**

#### **16.1 Notices**

- (a) Any notice or other document required to be given or sent to Trust Unitholders under this Declaration of Trust shall be given or sent through ordinary post addressed to each registered holder at his or her last address appearing on the Registers; provided that if there is a general discontinuance of postal service due to strike, lockout or otherwise, such notice may be given by publication twice in the Report on Business section of the National Edition of The Globe and Mail or similar section of any other newspaper having national circulation in Canada; provided further that if there is no newspaper having national circulation, then by publishing twice in the business section of a newspaper in each city where a Register is maintained. Any notice so given shall be deemed to have been given on the day following that on which the letter or circular was posted or, in the case of notice being given by publication, after publishing such notice twice in the designated newspaper or newspapers. In proving notice was posted, it shall be sufficient to prove that such letter or circular was properly addressed, stamped and posted.
- (b) Any written notice or written communication given to the Trustees shall be addressed to the Trustees at the head office of the Trust as designated pursuant to section 2.4, and shall be deemed to have been given on the date of delivery or, if mailed, five days from the date of mailing. If any such notice or communication shall have been mailed and if regular mail service shall be interrupted by strikes or other irregularities, such notice or communication shall be deemed to have been received 48 hours after 12:01 a.m. on the day following the resumption of normal mail service, provided that during the period that regular mail service shall be interrupted any notice or other communication shall be given by personal delivery or by cable, telegram, telex or other means of prepaid, transmitted or recorded communication.

#### **16.2 Failure to Give Notice**

The failure by the Trustees, by accident or omission or otherwise unintentionally, to give any Trust Unitholder any notice provided for herein shall not affect the validity, effect or taking effect of any action referred to in such notice, and the Trustees shall not be liable to any Trust Unitholder for any such failure.

#### **16.3 Joint Holders**

Service of a notice or document on any one of several joint holders of Trust Units shall be deemed effective service on the other joint holders.

#### **16.4 Service of Notice**

Any notice or document sent by post to or left at the address of a Trust Unitholder pursuant to this Article shall, notwithstanding the death or bankruptcy of such Trust Unitholder, and whether or not the Trustees have notice of such death or bankruptcy, be deemed to have been fully served and such service shall be deemed sufficient service on all persons having an interest in the Trust Units concerned.

#### **16.5 Agent For Service**

Each Trust Unitholder appoints the Manager as his/her agent for service in the Province of Ontario in respect of all matters concerning and/or relating to the Trust Units and authorizes and directs the Manager to record his/her address in the securities register as *c/o First Leaside Management Inc., 430 Regional Road #8, RR 1 Uxbridge, Ontario L9P 1R1*; provided that the Trust Unitholder understands that the Manager may be required by law or otherwise to disclose to regulatory authorities the identity of the Trust Unitholder and agrees that such information may be provided by the Manager if, as and when required.

#### **16.6 Information Available to Trust Unitholders**

Each Trust Unitholder shall have the right to obtain, on demand and without fee, from the head office of the Trust a copy of this Declaration of Trust and any amendments thereto relating to Trust Units and shall be entitled to inspect and, on payment of a reasonable fee therefor and after delivering to the Trustees a statutory declaration stating the name and address of the person requiring the Trustees to furnish the list of Trust Unitholders and, if the person is a body corporate, the address for service thereof, and that the list will not be used except in connection with:

- (a) an effort to influence the voting of the holders of Trust Units;
- (b) an offer to acquire Trust Units; or
- (c) any other matter relating to the Trust Units or the affairs of the Trust,

obtain a list of the Trust Unitholders for the aforesaid purposes.

#### **16.7 Fiscal Year and Taxation Year**

The fiscal year and taxation year of the Trust shall end on December 31 of each year.

#### **16.8 Financial Disclosure**

The Trust will send (or make available if sending is not required by law) to Trust Unitholders:

- (d) within the time prescribed by applicable securities laws, the annual financial statements of the Trust prepared as at the end of each fiscal year of the Trust, together with comparative financial statements for the preceding fiscal year, if any, and the report of the Auditors thereon referred to in section 17.4; and
- (e) within the time prescribed by applicable securities laws, unaudited quarterly financial statements of the Trust for such fiscal quarter (other than in respect of the fourth quarter of each fiscal year) together with comparative financial statements for the same fiscal quarter in the preceding fiscal year, if any.

Such financial statements shall be prepared in accordance with generally accepted accounting principles in Canada as recommended from time to time in the Handbook of the Canadian Institute of Chartered Accountants; provided that such statements and the obligations to deliver such statements may vary from such principles to the extent required to comply with applicable securities laws or securities regulatory requirements or to the extent permitted by applicable securities regulatory authorities.

#### **16.9 Trust Unitholder Meeting Information**

Prior to each meeting of Trust Unitholders, the Trustees will provide to each Trust Unitholder, together with the notice of the meeting:

- (a) a form of proxy which can be used by a Trust Unitholder to appoint a proxy, who need not be a Trust Unitholder, to attend and act at the meeting on behalf of the Trust Unitholder, in the manner and to the extent authorized by the proxy; and
- (b) all information required by applicable law.

#### **16.10 Taxation Information**

Within 90 days from the end of each calendar year, the Trust will provide to Trust Unitholders who received distributions from the Trust in the prior calendar year, such information regarding the Trust required by Canadian law to be submitted to Trust Unitholders for income tax purposes to enable Trust Unitholders to complete their tax returns in respect of the prior calendar year.

#### **16.11 Income Tax Matters**

In respect of the first taxation year of the Trust, the Trust shall elect pursuant to Subsection 132(6.1) of the Tax Act that the Trust be deemed to be a mutual fund trust for the entire year. The Trustees shall satisfy, perform and discharge all obligations and responsibilities of the Trustees under the Tax Act or any similar provincial legislation and neither the Trust nor the Trustees shall be accountable or liable to any Trust Unitholders by reason of any act or acts of the Trustees consistent with, or which the Trustees believe in good faith to be consistent with, any such obligations or responsibilities. The Trustees shall determine the tax deductions, allowances and credits to be claimed, and designations to be made by the Trust in any year, and the Trustees shall claim those deductions, allowances and credits and make those designations for the purposes of computing the income of the Trust and the amount of tax payable, if any, by the Trust pursuant to the provisions of the Tax Act. In calculating Income of the Trust for income tax purposes, the Trust will claim the maximum amount available to it as deductions under applicable laws, unless the Trustees determine otherwise.

#### **16.12 Protective Classification Election**

Within 70 days following each Date of Closing, the Trust shall file with the United States Internal Revenue Service a protective election on Form 8832, effective immediately prior to the Closing, to be classified as a corporation for United States federal income tax purposes.

#### **16.13 Trust Records**

The Trustees shall prepare and maintain, at the head office of the Trust or at any other place in Canada designated by the Trustees, records containing: (i) the Declaration of Trust; and (ii) minutes of meetings and resolutions of the Unitholders. The Trust shall also prepare and maintain adequate accounting records and records containing minutes of meetings and resolutions of the Trustees and each committee thereof. Such records shall be kept at the head office of the Trust or at such other place in Canada as the Trustees think fit and shall at all reasonable times be open to inspection by the Trustees.

#### **16.14 Consolidations**

Any one or more Trustees may prepare consolidated copies of the Declaration of Trust as it may from time to time be supplemented, amended or amended and restated and may certify the same to be a true consolidated copy of the Declaration of Trust, as supplemented, amended or amended and restated.

## **ARTICLE 17 AUDITORS**

### **17.1 Qualification of Auditors**

The Auditors shall be an independent recognized firm of chartered accountants which has an office in Canada.

### **17.2 Appointment of Auditors**

KPMG LLP, Chartered Accountants are appointed as the auditors of the Trust, to hold that office until their resignation or removal in accordance with section 17.3. The Auditors will receive such remuneration as may be approved by the Trustees.

### **17.3 Change of Auditors**

The Auditors may at any time be removed by the Trustees with the approval of an Ordinary Resolution passed by Trust Unitholders at a meeting of Trust Unitholders duly called for the purpose and, upon the resignation or the removal of Auditors as aforesaid, new auditors may be appointed by an Ordinary Resolution passed by Trust Unitholders at a meeting duly called for the purpose or, in the absence of such meeting, by the Trustees.

### **17.4 Report of Auditors**

The Auditors shall audit the accounts of the Trust at least once in each year and a report of the Auditors with respect to the annual financial statements of the Trust shall be provided to each Trust Unitholder with the annual financial statements referred to in section 16.8.

## **ARTICLE 18 MISCELLANEOUS**

### **18.1 Counterparts**

This Declaration of Trust may be simultaneously executed in counterparts, each of which when executed shall be deemed to be an original, and such counterparts, together, shall constitute but one and the same instrument, which shall be sufficiently evidenced by any such original counterparts.

### **18.2 Severability**

If any provision of this Declaration of Trust shall be held invalid or unenforceable in any jurisdiction, such invalidity or unenforceability shall attach only to such provision in such jurisdiction and shall not in any manner affect or render invalid or unenforceable such provision in any other jurisdiction or any other provision of this Declaration of Trust in any jurisdiction.

### **18.3 Accounting Principles**

All accounting terms not specifically defined in this Declaration of Trust will be interpreted in accordance with GAAP. Where the character or amount of any asset or liability or item of revenue or expense or amount of equity is required to be determined, or any consolidation or other accounting computation is required to be made, for the purpose of this Declaration of Trust, such determination or calculation will, to the extent applicable and except as otherwise specified herein or as otherwise determined by the Trustees, be made in accordance with GAAP.

**18.4 Language**

The parties hereto have required that this Declaration of Trust and all documents and notices resulting herefrom be drawn up in English. *Les parties aux présentes ont expressément convenu que la présente convention ainsi que tous les documents et avis qui s'y rattachent et/ou qui en découleront soient rédigés en anglais.*

IN WITNESS WHEREOF the parties have caused these presents to be executed as of the 1<sup>st</sup> day of February, 2010.

TRUSTEE

\_\_\_\_\_  
Witness

\_\_\_\_\_  
DOUGLAS LAW

TRUSTEE

\_\_\_\_\_  
Witness

\_\_\_\_\_  
MURRAY EADES

TRUSTEE

\_\_\_\_\_  
Witness

\_\_\_\_\_  
KEN RICE

TRUSTEE

\_\_\_\_\_  
INITIAL UNITHOLDER

\_\_\_\_\_  
Witness

\_\_\_\_\_  
DAVID C. PHILLIPS



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TRUSTEE

Witness

  
DOUGLAS LAW

TRUSTEE

Witness

MURRAY EADES

TRUSTEE

Witness

KEN RICE

TRUSTEE

INITIAL UNITHOLDER

Witness

  
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The parties hereto have required that this Declaration of Trust and all documents and notices resulting herefrom be drawn up in English. *Les parties aux présentes ont expressément convenu que la présente convention ainsi que tous les documents et avis qui s'y rattachent et/ou qui en découleront soient rédigés en anglais.*

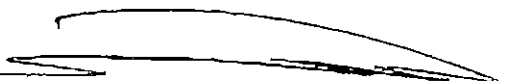
IN WITNESS WHEREOF the parties have caused these presents to be executed as of the 1<sup>st</sup> day of February, 2010.

TRUSTEE

Witness

DOUGLAS LAW

TRUSTEE

  
Witness  
MURRAY EADES

TRUSTEE

Witness

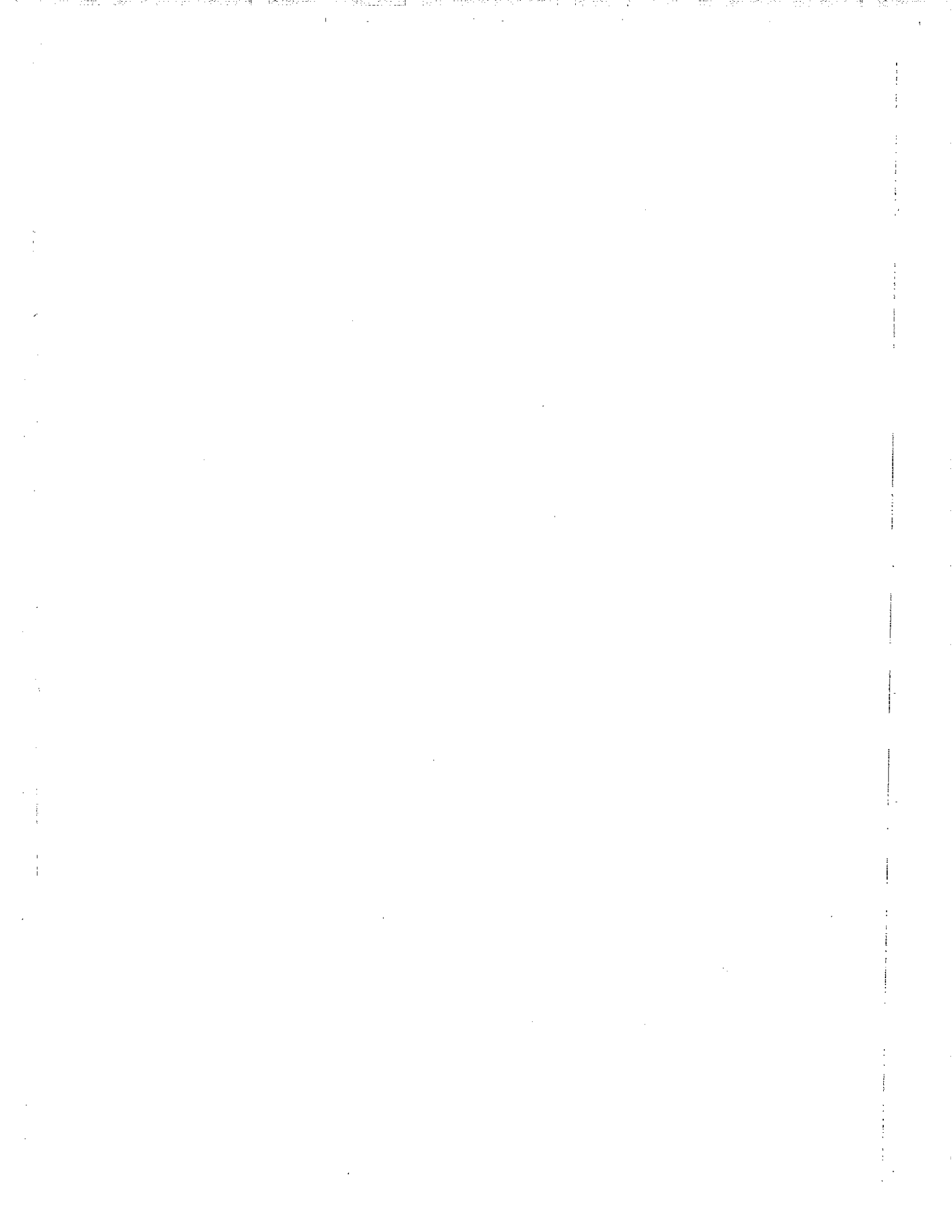
KEN RICE

TRUSTEE

INITIAL UNITHOLDER

Witness

DAVID C. PHILLIPS



**18.4 Language**

The parties hereto have required that this Declaration of Trust and all documents and notices resulting herefrom be drawn up in English. *Les parties aux présentes ont expressément convenu que la présente convention ainsi que tous les documents et avis qui s'y rattachent et/ou qui en découleront soient rédigés en anglais.*

**IN WITNESS WHEREOF** the parties have caused these presents to be executed as of the 1<sup>st</sup> day of February, 2010.

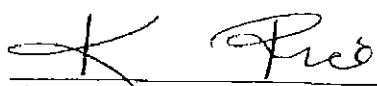
TRUSTEE

\_\_\_\_\_  
Witness\_\_\_\_\_  
DOUGLAS LAW

TRUSTEE

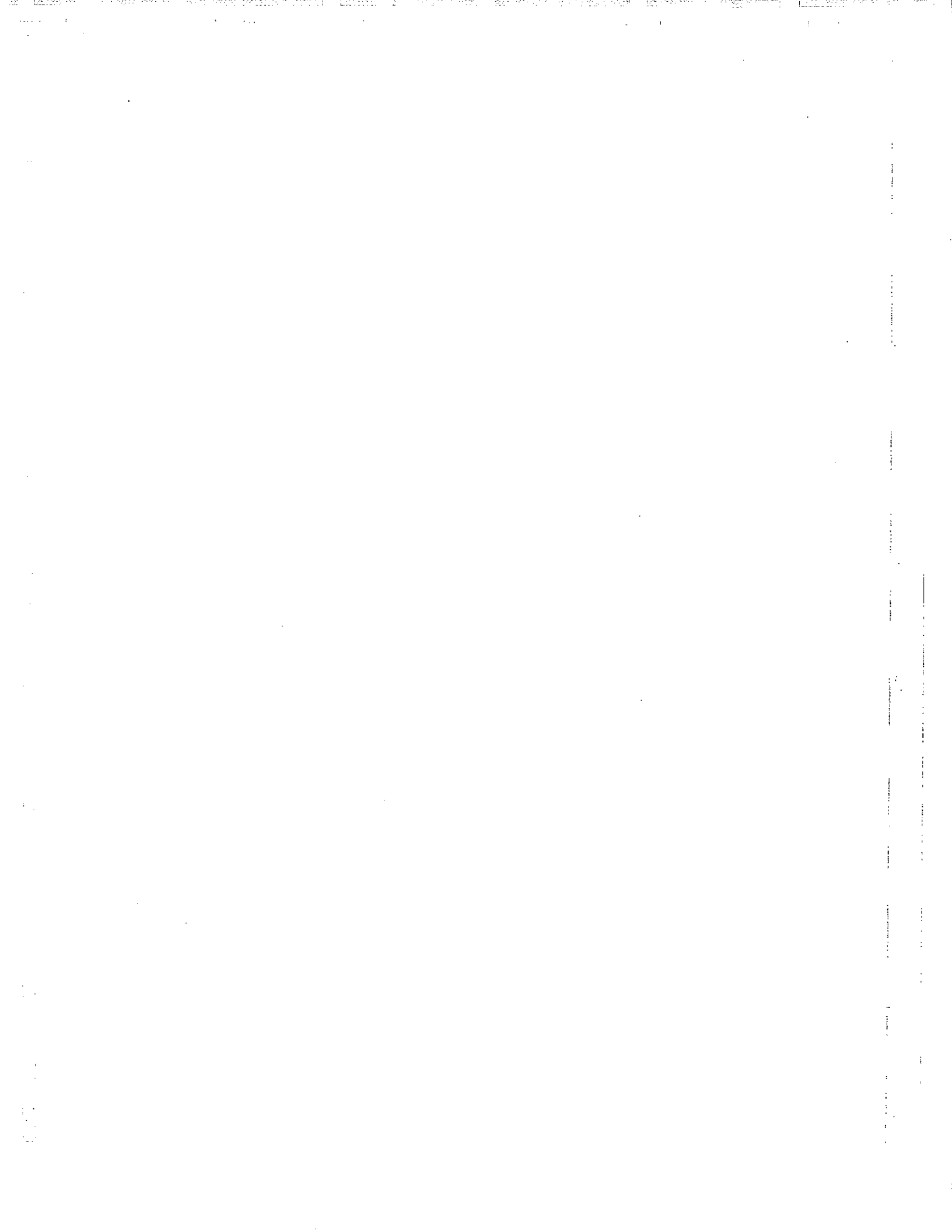
\_\_\_\_\_  
Witness\_\_\_\_\_  
MURRAY EADES

TRUSTEE

\_\_\_\_\_  
Witness  
\_\_\_\_\_  
KEN RICE

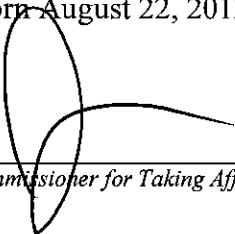
TRUSTEE

\_\_\_\_\_  
INITIAL UNITHOLDER\_\_\_\_\_  
Witness\_\_\_\_\_  
DAVID C. PHILLIPS



# TAB E

This is Exhibit "E" referred to in the Affidavit of Henry Wemekamp, sworn August 22, 2012



---

*Commissioner for Taking Affidavits (or as may be)*



**CT Corporation  
Business Entity Search Report (CT Database)**

The following represents a list of the information you requested upon a search of business entity records conducted using the content and search logic available on the website of the relevant state authority, and/or records maintained in the relevant states and licensed from that state or from an independent third party and made available through our offices. Variations of the Name and Address of the search key may appear on this report as a result of the search findings and your individual request for that information. CT Corporation cannot independently verify the accuracy or timeliness of the public information maintained by the responsible government agency or the other sources of this data. CT, therefore, makes no guarantees, representations, or warranties as to the accuracy or completeness of the information contained in this report. For the fees charged, the user understands that CT Corporation cannot and does not accept any liability to the user or third party for errors or omissions. CT Corporation's terms and conditions also apply to this report.

The report reflects records effective at the time of the last update of the relevant information source.

Information source: Business Entity Database for the State of Texas

Currency date: Jun. 21, 2012

Search results performed on the following Search Key:

Search Name/ID: FL Master Texas

Entity Name: F.L. MASTER TEXAS, LTD.  
Entity ID: 0800556617  
Filing Date: 10/12/2005  
Taxpayer ID: 32035316184

Registration Type: LIMITED PARTNERSHIP  
Type of Entity: DOMESTIC LP

Good Standing: NO  
Status of Entity: IN EXISTENCE  
Term: PERPETUAL

Address Type: BUSINESS ADDRESS  
Address: 7798 SPRING VALLEY ROAD  
City/State/Zip: DALLAS/TX/75254

Registered Agent: GALIPEAU SHARON  
Address: 7798 Spring Valley Road  
City/State/Zip: Dallas/TX/75254

**Officers or Incorporators:**

Officer Name: 2088543 ONTARIO INC.  
Title: GENERAL PARTNER  
Address: 7798 Spring Valley Road  
City/State/Zip: Dallas/TX/75254

**Filing Data:**

Filing Type: 1001  
Filing Date: 10/12/2005  
Filing Number: 105757720002  
Description: Certificate of Limited Partnership

Filing Type: 1002  
Filing Date: 12/23/2005  
Filing Number: 112473430002  
Description: Amended Certificate of Limited Partnership

Filing Type: 1016  
Filing Date: 12/13/2011  
Filing Number: 400055380001  
Description: Report Notice

Filing Type: 1018  
Filing Date: 01/19/2012  
Filing Number: 404753380001

Date: Jun. 25, 2012

Page: 2

Description: Notice of Forfeited Rights for non-filing  
of Periodic Report

Filing Type: 1017

Filing Date: 01/30/2012

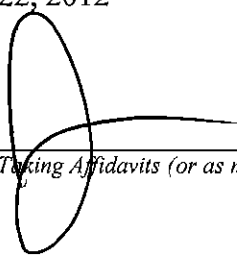
Filing Number: 406390750002

Description: Periodic Report

[End of Report]

# TAB F

This is Exhibit "F" referred to in the Affidavit of Henry Wemekamp, sworn August 22, 2012



---

*Commissioner for Taking Affidavits (or as may be)*

Request ID: 014376805  
Transaction ID: 48052156  
Category ID: UN/E

Province of Ontario  
Ministry of Government Services

Date Report Produced: 2012/06/26  
Time Report Produced: 09:08:07  
Page: 1

## CORPORATION PROFILE REPORT

|                                       |                                        |                              |
|---------------------------------------|----------------------------------------|------------------------------|
| Ontario Corp Number                   | Corporation Name                       | Incorporation Date           |
| 2088543                               | 2088543 ONTARIO INC.                   | 2005/12/09                   |
|                                       |                                        | Jurisdiction                 |
|                                       |                                        | ONTARIO                      |
| Corporation Type                      | Corporation Status                     | Former Jurisdiction          |
| ONTARIO BUSINESS CORP.                | ACTIVE                                 | NOT APPLICABLE               |
| Registered Office Address             | Date Amalgamated                       | Amalgamation Ind.            |
| 430 DURHAM ROAD 8                     | NOT APPLICABLE                         | NOT APPLICABLE               |
| UXBRIDGE<br>ONTARIO<br>CANADA L9P 1P1 | New Amal. Number                       | Notice Date                  |
|                                       | NOT APPLICABLE                         | NOT APPLICABLE               |
| Mailing Address                       |                                        | Letter Date                  |
| PO BOX 621                            |                                        | NOT APPLICABLE               |
| UXBRIDGE<br>ONTARIO<br>CANADA L9P 1N1 | Revival Date                           | Continuation Date            |
|                                       | NOT APPLICABLE                         | NOT APPLICABLE               |
|                                       | Transferred Out Date                   | Cancel/Inactive Date         |
|                                       | NOT APPLICABLE                         | NOT APPLICABLE               |
|                                       | EP Licence Eff.Date                    | EP Licence Term.Date         |
|                                       | NOT APPLICABLE                         | NOT APPLICABLE               |
|                                       | Number of Directors<br>Minimum Maximum | Date Commenced<br>in Ontario |
|                                       | 00001 00010                            | NOT APPLICABLE               |
| Activity Classification               |                                        | Date Ceased<br>in Ontario    |
| NOT AVAILABLE                         |                                        | NOT APPLICABLE               |

Request ID: 014376805  
Transaction ID: 48052156  
Category ID: UN/E

Province of Ontario  
Ministry of Government Services

Date Report Produced: 2012/06/26  
Time Report Produced: 09:08:07  
Page: 2

## CORPORATION PROFILE REPORT

Ontario Corp Number

2088543

Corporation Name

2088543 ONTARIO INC.

Corporate Name History

2088543 ONTARIO INC.

Effective Date

2005/12/09

Current Business Name(s) Exist:

NO

Expired Business Name(s) Exist:

NO

Administrator:  
Name (Individual / Corporation)

DAVID  
C.  
PHILIPS

Address

430 REGIONAL ROAD 8  
R.R. 1

UXBRIDGE  
ONTARIO  
CANADA L9P 1R1

Date Began

2005/12/09

First Director

NOT APPLICABLE

Designation

DIRECTOR

Officer Type

Resident Canadian

Y

Request ID: 014376805  
Transaction ID: 48052156  
Category ID: UN/E

Province of Ontario  
Ministry of Government Services

Date Report Produced: 2012/06/26  
Time Report Produced: 09:08:07  
Page: 3

## CORPORATION PROFILE REPORT

Ontario Corp Number

2088543

Corporation Name

2088543 ONTARIO INC.

Administrator:  
Name (Individual / Corporation)

DAVID  
C.  
PHILIPS

Address

430 REGIONAL ROAD 8  
R.R. 1

UXBRIDGE  
ONTARIO  
CANADA L9P 1R1

Date Began

2005/12/09

First Director

NOT APPLICABLE

Designation

OFFICER

Officer Type

PRESIDENT

Resident Canadian

Y

Administrator:  
Name (Individual / Corporation)

DAVID  
C.  
PHILIPS

Address

430 REGIONAL ROAD 8  
R.R. 1

UXBRIDGE  
ONTARIO  
CANADA L9P 1R1

Date Began

2005/12/09

First Director

NOT APPLICABLE

Designation

OFFICER

Officer Type

SECRETARY

Resident Canadian

Y

Request ID: 014376805  
Transaction ID: 48052156  
Category ID: UN/E

Province of Ontario  
Ministry of Government Services

Date Report Produced: 2012/06/26  
Time Report Produced: 09:08:07  
Page: 4

## CORPORATION PROFILE REPORT

Ontario Corp Number

2088543

Corporation Name

2088543 ONTARIO INC.

Administrator:  
Name (Individual / Corporation)

JOHN  
RUSSELL  
WILSON

Address

489 CAM FELLA BLVD.

STOUFFVILLE  
ONTARIO  
CANADA L4A 7G9

Date Began

2006/05/17

First Director

NOT APPLICABLE

Designation

DIRECTOR

Officer Type

Resident Canadian

Y



Request ID: 014376805  
Transaction ID: 48052156  
Category ID: UN/E

Province of Ontario  
Ministry of Government Services

Date Report Produced: 2012/06/26  
Time Report Produced: 09:08:07  
Page: 5

## CORPORATION PROFILE REPORT

Ontario Corp Number

Corporation Name

2088543

2088543 ONTARIO INC.

Last Document Recorded

Act/Code Description

Form

Date

CIA ANNUAL RETURN 2008

1C

2009/08/28

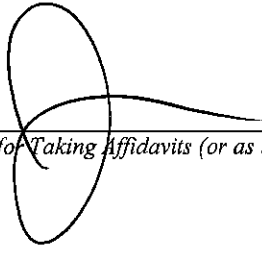
THIS REPORT SETS OUT THE MOST RECENT INFORMATION FILED BY THE CORPORATION ON OR AFTER JUNE 27, 1992, AND RECORDED IN THE ONTARIO BUSINESS INFORMATION SYSTEM AS AT THE DATE AND TIME OF PRINTING. ALL PERSONS WHO ARE RECORDED AS CURRENT DIRECTORS OR OFFICERS ARE INCLUDED IN THE LIST OF ADMINISTRATORS.

ADDITIONAL HISTORICAL INFORMATION MAY EXIST ON MICROFICHE

The issuance of this report in electronic form is authorized by the Ministry of Government Services.

# TAB G

This is Exhibit "G" referred to in the Affidavit of Henry  
Wemekamp, sworn August 22, 2012



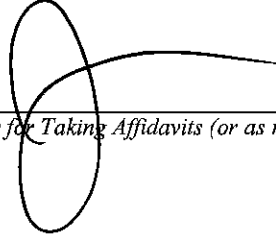
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*Commissioner for Taking Affidavits (or as may be)*



# TAB H

This is Exhibit "**H**" referred to in the Affidavit of Henry Wemekamp, sworn August 22, 2012

A handwritten signature in black ink, consisting of a large, stylized loop followed by a horizontal stroke extending to the right.

---

*Commissioner for Taking Affidavits (or as may be)*

Contact Us 800.833.6778

[Your Representative](#)Welcome, CT CORP - UCC DIVISION 08/21/2012 2:49 PM  
[Form Preview](#) | [Preferences](#) | [Help](#) | [Logout](#)[Create UCC Filing](#)[Order Documents](#)[Search Public Records](#)[Generate Reports](#) | [Create Historical Filing](#) | [Create UCC-3 Filing](#) | [More..](#)

## Business Entity Details

Estimated Fees (\$ 14.00) | [Message Center \(0\)](#)iLien - Business Name Search - Texas\*  
Order Number 34486117[Back](#) | [New Search](#) | [Order Document](#)

08/21/2012

Page 1

CT Lien Solutions  
iLien - Business Entity Report

The following represents a listing of the documentation you requested through a careful search of effective filings recorded in the Office of the Secretary of State of Texas\*, licensed from the State or an independent third party and maintained in computerized form and available through our offices.

This report reflects records effective 08/16/2012

Because we cannot independently verify the accuracy of the public information maintained by the responsible government agency or other sources of this data, we make no guaranties, representations or warranties as to the accuracy or completeness of this report. In addition, we cannot verify whether any personally identifiable information is included (such as social security numbers or similar personal information), and to the extent such personally identifiable information is included in any information or record, you agree that you will not use such information in violation of any applicable law. We cannot and do not accept any liability for errors or omissions, nor do we accept any liability with respect to your use of any information or record that may include personally identifiable information.

State of Texas\* iLien - Business Name Search results performed on the following Search Key:  
**FL MASTER SHERMAN, LTD.**

Entity Name: FL MASTER SHERMAN, LTD.  
Entity ID: 0800747423  
Filing Date: 12/15/2006  
Taxpayer ID: 32035079550

Registration Type: LIMITED PARTNERSHIP  
Type of Entity: DOMESTIC LP

Good Standing: NO  
Status of Entity: IN EXISTENCE  
Term: PERPETUAL

Address Type: BUSINESS ADDRESS  
Address: 7798 Spring Valley Road  
City/State/Zip: Dallas/TX/75254

Registered Agent: GALIPEAU SHARON  
Address: 7798 Spring Valley Road  
City/State/Zip: Dallas/TX/75254

## Officers or Incorporators:

Officer Name: FL MASTER SHERMAN GP, INC.  
Title: GENERAL PARTNER  
Address: 7798 Spring Valley Road  
City/State/Zip: Dallas/TX/75254

## Filing Data:

Filing Type: 1001  
Filing Date: 12/15/2006  
Filing Number: 154438110002  
Description: Certificate of Formation

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# CT Lien Solutions

a Wolters Kluwer Business

## Search Results

Shalan Jankowski  
TORKIN MANES LLP  
151 Yonge Street  
Suite 1500  
Toronto ON M5C 2W7

Date: 08/21/2012  
Order #: 34484374  
Customer #: 505885  
Reference 1: FL Master Sherman,  
Ltd.  
Reference 2: --

---

Target Name: FL Master Sherman, Ltd.

---

Jurisdiction: Secretary of State, Texas

---

Search Type: UCC  
Results: No Records Found

Searched Through: 08/19/2012  
Searched: 5 Years

Search Type: Federal Tax Lien  
Results: No Records Found

Searched Through: 08/19/2012  
Searched: 10 Years

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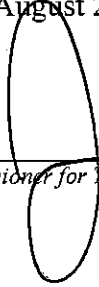
This report contains information compiled from sources which CT Lien Solutions considers reliable, but does not control. Information provided is non-certified unless otherwise indicated. CT Lien Solutions in no way undertakes or assumes any part of the customer's business, legal or similar risks, and does not guarantee the accuracy, completion or timeliness of the information provided, and shall not be liable for any losses or injuries whatever resulting from any contingency beyond its control, or from negligence, regardless of the cause. The categorization of filings is provided for the convenience of the customer and is not to be construed as a legal opinion concerning the status of the filings.

CHAD HEWITT  
Columbus Team 6  
4400 Easton Commons Way  
Suite 125  
Columbus OH 43219  
6142803564  
chad.hewitt@wolterskluwer.com



# TAB I

This is Exhibit "I" referred to in the Affidavit of Henry  
Wemekamp, sworn August 22, 2012



---

*Commissioner for Taking Affidavits (or as may be)*

**FIRST LEASIDE MORTGAGE FUND**

---

**DECLARATION OF TRUST**

---

**Dated as of June 18, 2010**



|                                                                             |           |
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## FIRST LEASIDE MORTGAGE FUND

**THIS DECLARATION OF TRUST** is made as of the 18<sup>th</sup> day of June, 2010.

**BY:**

**DAVID C. PHILLIPS**, being the trustee of the trust constituted by this declaration of trust, and each person who after the date hereof becomes a trustee of the Trust as herein provided (each person, while a trustee of the Trust as herein provided, hereinafter called a "**Trustee**", and all such persons, hereinafter called "**Trustees**"),

-and-

**DAVID C. PHILLIPS**, in his capacity as initial unitholder of the Trust (the "**Initial Unitholder**") and all persons who after the date hereof become holders of Trust Units are herein provided (collectively at any time, the "**Trust Unitholders**"),

**WHEREAS** the Initial Trust Unitholder wishes to create a trust for the sole purpose of investing its funds in investments permitted by the terms hereof;

**AND WHEREAS** for the purpose of settling the Trust created hereunder, the Initial Unitholder paid an amount of \$10.00 in lawful money of the Canada (the "**Initial Contribution**") and received in exchange therefor ten units of the Trust (the "**Initial Trust Units**");

**AND WHEREAS** the Trustee has agreed to hold the Initial Contribution and all amounts and assets subsequently received under this Declaration of Trust or in respect of the investment of these assets in accordance with the provisions hereinafter set forth;

**AND WHEREAS** the Initial Unitholder and the Trustee desire that the beneficiaries of the Trust, including the Initial Unitholder, shall be the holders of the Trust Units;

**AND WHEREAS** it is intended that the Trust Units (as hereinafter defined) be offered for sale to members of the public in each of the provinces and territories of Canada pursuant to the Offering Memorandum (as hereinafter defined);

**AND WHEREAS** the Initial Unitholder and the Trustee desire that the Trust shall qualify as a "mutual fund trust" pursuant to subsection 132(6) of the Income Tax Act (Canada);

**NOW THEREFORE**, the undersigned, being the sole Trustee, hereby confirms and declares that he agrees with the Initial Unitholder to hold in trust, as Trustee, the Initial Contribution and any and all other property, real, personal or otherwise, tangible or intangible, which has been at the date hereof or is hereafter transferred, conveyed or paid to or otherwise received by him as Trustee or to which the Trust is otherwise entitled and all rents, income, profits and gains therefrom for the benefit of the Trust Unitholders hereunder in accordance with and subject to the expressed provisions of this Declaration of Trust, as follows:

## ARTICLE 1 INTERPRETATION

### 1.1 Definitions

In this Declaration of Trust including the recitals hereto, unless the context otherwise requires, the following terms shall have the following meanings:

**"Affiliate"** of a person means any person that would be deemed to be an affiliated entity of such person under the *Securities Act* (Ontario) as it exists on the date hereof (applied, with the necessary changes being made, in respect of persons that are not companies);

**"Annuitant"** means the annuitant or beneficiary of a Plan or any other plan of which a Trust Unitholder acts as trustee or carrier;

**"Associate"** when used to indicate a relationship with a person or company, has the same meaning as in the *Securities Act* (Ontario);

**"Business Day"** means any day except Saturday, Sunday and any statutory holiday in Toronto, Ontario, Canada;

**"Cash Flow of a Class"** has the meaning ascribed thereto in Section 5.1(a);

**"Class Expenses"** means all fees, if any, payable in respect of a Class of Units and all other costs, expenses and other amounts attributable to a particular Class of Units, all as determined by the Trustees;

**"Class Net Asset Value"** means the net asset value of a given Class of Units of the Trust determined in accordance with Article 3;

**"Class Unit Value"** means the net asset value per Unit of a given Class of Units of the Trust determined in accordance with Article 3;

**"Class A Units"** means the Class of Units designated by the Trustees as Class A Units as provided in Section 3.2;

**"Class of Units"** or **"Class"** means all Units of the Trust designated by the Trustees as a separate Class of Units, after receipt of all necessary approvals, and prior to the designation of any other Classes shall mean Class A Units;

**"Closing"** means a closing of the issue of Trust Units to investors, whether pursuant to a public offering or a private placement;

**"Common Expenses"** means the costs and expenses attributable to all unitholders of the Trust as determined by the Trustees;

**"Counsel"** means a barrister or solicitor or firm of barristers and solicitors or other lawyers in an appropriate jurisdiction retained by the Trust;

**"Date of Closing"** means the date on which a Closing occurs;

**"Distributable Cash Flow of a Class"** has the meaning ascribed thereto in Section 5.1(b);

**"Distribution Payment Date"** in respect of a Distribution Period means a date no later than 15 days following the end of the Distribution Period or, if such day is not a Business Day, the next following Business Day or such other date determined from time to time by the Trustees;

**"Distribution Period"** means initially the period from and including the initial Date of Closing to and including the last day of the calendar month in which the initial Closing occurs and thereafter

means each month in each calendar year from and including the first day thereof up to and including the last day thereof;

**"Distribution Record Date"** means the last Business Day of each Distribution Period;

**"F.L. Group"** means, at any time, collectively, the Members, Subsidiaries and Affiliates of the First Leasehold Group of Companies, and **"F.L. Group Member"** means any one of them;

**"Fully Diluted Basis"** means, with respect to the number of outstanding Trust Units, at any time, the number of Trust Units that are outstanding at that time and would be outstanding if all outstanding options, rights attached to securities convertible into or exchangeable for Trust Units and other rights to acquire Trust Units were exercised at that time;

**"generally accepted accounting principles"** or **"GAAP"** means Canadian generally accepted accounting principles determined with reference to the Handbook of the Canadian Institute of Chartered Accountants, as amended from time to time;

**"Income of the Trust"** has the meaning ascribed thereto in Section 5.2(a);

**"Initial Contribution"** means the amount of \$10 paid by the Initial Unitholder to the Initial Trustee for the purpose of settling the Trust;

**"Initial Trustee"** means David C. Phillips, in his capacity as the first Trustee of the Trust;

**"Monthly Limit"** has the meaning given to that term in Section 6.5;

**"Mortgage"** or **"Mortgages"** means a mortgage, a mortgage of a mortgage or a mortgage of a leasehold interest (or other like instrument, including an assignment of or an acknowledgement of an interest in a mortgage), hypothecation, deed of trust, charge or other security interest of or in real property used to secure obligations to repay money by a charge upon the underlying Real Property;

**"Net Realized Capital Gains"** has the meaning ascribed thereto in Section 5.2(b);

**"Non-Resident"** means a person who is a "non-resident" of Canada within the meaning of the Tax Act and for the purpose of Section 13.5 and for any other provision dealing with the ownership of Units shall include a partnership which is not a "Canadian partnership" within the meaning of the Tax Act;

**"Ordinary Resolution"** means, subject to sections 12.12 and 12.15, a resolution proposed to be passed as an ordinary resolution at a meeting of Trust Unitholders (including an adjourned meeting) duly convened for that purpose and held in accordance with the provisions hereof at which a quorum is present, which resolution is passed by the affirmative votes of a majority of the votes cast by the Trust Unitholders at such meeting;

**"Person"** means and includes individuals, corporations, limited partnerships, general partnerships, joint stock companies, limited liability companies, joint ventures, associations, companies, trusts, banks, trust companies, pension funds, business trusts or other organizations, whether or not legal entities, and governments, governmental agencies and political subdivisions thereof;

**"Plan"** means a trust governed by a registered retirement savings plan, registered retirement income fund, registered education savings plan, deferred profit sharing plan or registered disability savings plan and, commencing in 2009, a tax-free savings account, each as described in the Tax Act;

**"real property"** means property which in law is real property and includes, whether or not the same would in law be real property, leaseholds, mortgages, undivided joint interests in real property (whether by way of tenancy-in-common, joint tenancy, co-ownership, joint venture or

otherwise), any interests in any of the foregoing and securities of persons the sole or principal purpose and activity of which is to invest in, hold and deal in real property;

**"Redemption Date"** has the meaning given to that term in Section 6.3;

**"Redemption Price"** has the meaning ascribed thereto in Section 6.2(c);

**"Registers"** has the meaning ascribed thereto in Section 13.4;

**"Residents"** means persons who are resident in Canada for the purpose of the Tax Act;

**"Special Resolution"** has, subject to Sections 12.12 and 12.15, the meaning ascribed thereto in Section 12.8;

**"Subsidiary"** of a person means any person that would be deemed to be a subsidiary entity of such person under the *Securities Act* (Ontario) as it exists on the date hereof (applied, with the necessary changes being made, in respect of persons that are not companies);

**"Tax Act"** means the *Income Tax Act*, R.S.C. 1985 (5th Supp.) c. 1 and the regulations thereunder;

**"this Declaration of Trust", "this Declaration", "hereto", "herein", "hereof" "hereby", "hereunder"** and similar expressions refer to this instrument, as hereby amended and restated, and not to any particular Article, section or portion hereof, and include any and every instrument supplemental or ancillary hereto;

**"Time of Closing"** means the time on a Date of Closing at which a Closing occurs;

**"Trust"** means the First Leaside Mortgage Fund, an open-ended, limited purpose trust constituted by this Declaration of Trust;

**"Trust Assets"**, at any time, means such of the following monies, properties and other assets as are at such time held by the Trust or by the Trustees on behalf of the Trust, including:

- (i) the Initial Contribution;
- (ii) all funds or property derived from the issuance or sale of Trust Units or other cash or property received by the Trust;
- (iii) any mortgages or similar debt securities of any F.L Group Member or other securities or investments otherwise permitted by the terms of this Declaration of Trust to be held from time to time by or on behalf of the Trust; and
- (iv) all proceeds, income, dividends, interest, profit, return of capital, gains and accretions and all substituted assets, rights and benefits of any kind or nature whatsoever arising directly or indirectly from or in connection with or accruing to such foregoing property or such proceeds of disposition,

which may be held in separate pools designated by Class;

**"Trust Liabilities"** has the meaning ascribed thereto in Section 2.7(a);

**"Trust Unit Certificate"** means a certificate in the form approved by the Trustees evidencing one or more Trust Units designated by Class, issued and certified in accordance with the provisions hereof;

**"Trust Unitholders"** means at any time the holders at that time of one or more Trust Units, as shown on the Registers;

**"Trust Units" or "Units"** means all of the trust units of the Trust authorized and issued hereunder as such and for the time being outstanding and entitled to the benefits hereof;

**"Trustee"**, at any time, means an individual who is, in accordance with the provisions hereof, a trustee of the Trust at the time including, without limitation so long as he remains a trustee, the Initial Trustee and **"Trustees"** means, at any time, all of the individuals, each of whom is at that time a trustee;

**"Unitholder's Declaration"** means a declaration regarding the residency of a Trust Unitholder or other beneficial owner(s) or any other person in the form determined by the Trustees in accordance with Section 13.5;

**"Valuation Date"** means the last day of each calendar month or such other date or dates as the Trustees shall from time to time determine;

**"Valuation Time"** means 4:00 p.m. on each Valuation Date or such other time as the Trustees shall from time to time determine.

## **1.2 References to Acts Performed by the Trust**

For greater certainty, where any reference is made in this Declaration of Trust to an act to be or not to be performed by the Trust, such reference shall be construed and applied for all purposes as if it referred to an act to be or not to be performed by the Trustees on behalf of the Trust or by some other person duly authorized to do so by the Trustees or pursuant to the provisions hereof, and where any reference is made in this Declaration of Trust to actions, rights or obligations of the Trustees, such reference shall be construed and applied for all purposes to refer to actions, rights or obligations of the Trustees in their capacity as Trustees of the Trust, and not in their other capacities, unless the context otherwise requires.

## **1.3 References**

Except as otherwise specifically provided herein, reference in this Declaration of Trust to any contract, agreement or any other instrument will be deemed to include references to the same as varied, amended, supplemented, restated or replaced from time to time. Except as otherwise specifically provided herein, any reference in this Declaration of Trust to a statute or regulation, rule, policy or instrument thereunder will be deemed to be a reference to such statute or regulation, rule, policy or instrument as amended, re-enacted or replaced from time to time, and reference to specific parts, paragraphs or sections thereof will include all amendments, re-enactments or replacements. Where there are proposals for amendments to the Tax Act which have not been enacted into law or proclaimed into force on or before the date on which such proposals are to become effective, the Trustees may take such proposals into consideration and apply the provisions thereof as if such proposals had been enacted into law and proclaimed into force.

## **1.4 Number and Gender**

In this Declaration of Trust, unless herein otherwise expressly provided or unless the context otherwise requires, words importing the singular number include the plural, and vice versa and words importing a gender shall include the feminine, masculine and neuter genders.

## **1.5 Headings for Reference Only**

The division of this Declaration of Trust into Articles and sections, the provision of a Table of Contents and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Declaration of Trust.

## **1.6 Day Not a Business Day**

In the event that any day on which any amount is to be determined or any action is required to be taken hereunder is not a Business Day, then such amount shall be determined or such

action shall be required to be taken at or before the requisite time on the next succeeding day that is a Business Day.

**1.7 Time of the Essence**

Time shall be of the essence in this Declaration of Trust.

**1.8 Governing Law**

This Declaration of Trust and the Trust Unit Certificates shall be construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein and shall be treated in all respects as Ontario contracts. The parties hereto hereby irrevocably submit and attorn to the jurisdiction of the courts of the Province of Ontario.

**1.9 Currency**

Unless otherwise specified herein, all references to currency are to lawful money of Canada.

**1.10 Certain Phrases, etc.**

In this Declaration of Trust, (i) the words "including" and "includes" mean "including (or includes) without limitation", and (ii) the phrase "the aggregate of, "the total of, "the sum of, or a phrase of similar meaning means "the aggregate (or total or sum), without duplication, of".

**ARTICLE 2  
DECLARATION OF TRUST**

**2.1 Establishment of Trust**

The Trustees hereby declare themselves and agree to act as trustees hereunder and agree to hold the Trust Assets in trust for the use and benefit of the Trust Unitholders, their successors, permitted assigns and personal representatives, on and subject to the terms and conditions hereinafter declared and set forth, such trust to constitute the Trust hereunder.

**2.2 Initial Contribution**

The Trustees hereby acknowledge payment by the Initial Unitholder, concurrent with the execution of the Original Declaration, of the Initial Contribution to the Trust for the purpose of settling this Trust in consideration for which the Initial Unitholder was issued 10 Class A Trust Units.

**2.3 Name of Trust**

- (a) The Trust shall be known and designated as the "**FIRST LEASIDE MORTGAGE FUND**" or the French language version thereof and, whenever practicable, lawful and convenient, the property of the Trust shall be held and the affairs of the Trust shall be conducted and transacted under that name.
- (b) If the Trustees determine that the use of such name is not practicable, legal or convenient, the Trust may use such other designation or may adopt such other name as the Trustees deem appropriate, and the Trust may hold property and conduct and transact its affairs under such other designation or name.
- (c) The Trustees may approve and use a version of any name or designation used by the Trust in any foreign language.

#### **2.4 Head Office**

The head office of the Trust shall be located at 430 Regional Road #8, R.R. 1, Uxbridge, Ontario, L9P 1R1, or such other place or places in Canada as the Trustees may from time to time designate.

#### **2.5 Nature of the Trust**

The Trust is an unincorporated, open-ended limited purpose trust, established for the purposes specified in Section 4.1. The Trust is not, and shall not be deemed to be and shall not be treated as, a general partnership, limited partnership, syndicate, association, joint venture, company, corporation or joint stock company nor shall the Trustees or any individual Trustee or the Trust Unitholders or any of them or any person be, or be deemed to be, treated in any way whatsoever as liable or responsible hereunder as partners or joint venturers. The Trustees are not and shall not be, or be deemed to be, agents of the Trust Unitholders. The relationship of the Trust Unitholders to the Trustees shall be solely that of beneficiaries of the Trust and their rights shall be limited to those expressly conferred upon them by this Declaration of Trust.

#### **2.6 Rights of Trust Unitholders**

The rights of each Trust Unitholder (including the right, if any, to call for or receive a distribution or division of assets, monies, funds, income, dividends and/or capital gains held, received or realized by the Trustees) are limited to those contained herein and, except as provided herein, no Trust Unitholder shall be entitled to call for any partition or division of the Trust Assets or for a distribution of any particular asset forming part of the Trust Assets or of any particular monies or funds received by the Trust or the Trustees. The legal ownership of the Trust Assets and the right to conduct the activities of the Trust are vested exclusively in the Trustees, and no Trust Unitholder has or is deemed to have any right of ownership in any of the Trust Assets, except as specifically provided herein. Except as specifically provided herein, no Trust Unitholder or Trust Unitholders shall be entitled to interfere with or give any direction to the Trustees with respect to the affairs of the Trust or in connection with the exercise of any powers or authorities conferred upon the Trustees under this Declaration of Trust. The Trust Units shall be personal property and shall confer upon the holders thereof only the interest and rights specifically set forth in this Declaration of Trust.

#### **2.7 Liability of Trust Unitholders**

- (a) No Trust Unitholder or Annuitant, in its capacity as such, shall incur or be subject to any liability, direct or indirect, absolute or contingent, in contract or in tort or of any other kind to any person in connection with: (i) the Trust Assets or the ownership, use, operation, acquisition or disposition thereof or exercise or enjoyment of the rights, privileges, conditions or benefits attached thereto, associated therewith or derived therefrom; (ii) the obligations or the activities or affairs of the Trust; (iii) any actual or alleged act or omission of the Trustees or by any other person in respect of the activities or affairs of the Trust (whether or not authorized by or pursuant to this Declaration of Trust); (iv) any act or omission of the Trustees or any other person in the performance or exercise, or purported or attempted performance or exercise, of any obligation, power, discretion or authority conferred upon the Trustees or such other person in respect of the activities or affairs of the Trust (whether or not authorized by or pursuant to this Declaration of Trust); (v) any transaction entered into by the Trustees or by any other person in respect of the activities or affairs of the Trust (whether or not authorized by or pursuant to this Declaration of Trust); or (vi) except as provided in Section 5.8, any taxes, levies, imposts or charges or fines, penalties or interest in respect thereof payable by the Trust or by the Trustees or by any other person (except the Trust Unitholder to the extent

required by applicable tax laws) on behalf of or in connection with the activities or affairs of the Trust (collectively, "**Trust Liabilities**").

- (b) No Trust Unitholder or Annuitant, in its capacity as such, shall be liable to indemnify the Trustees or any other person with respect to any Trust Liabilities.
- (c) To the extent that, notwithstanding the provisions of this Section 2.7, any Trust Unitholder or Annuitant, in its capacity as such, may be determined by a judgment of a court of competent jurisdiction to be subject to or liable in respect of any Trust Liabilities, such Trust Unitholder or Annuitant is entitled to be reimbursed out of the Trust Assets for any payment of Trust Liabilities made by such Trust Unitholder or Annuitant.

### **ARTICLE 3 DESCRIPTION AND ISSUE OF UNITS**

#### **3.1 Nature and Authorized Number of Units**

The beneficial interests in the Trust shall be divided into Units or fractions thereof issued in one or more Classes as determined by the Trustees after receipt of all necessary approvals from time to time. As of the date hereof, the Trust consists of an unlimited number of Class A Units. Each Trust Unit shall vest indefeasibly in the holder thereof and the interest of each Trust Unitholder shall be determined by the number of Trust Units of the particular Class registered in the name of the Trust Unitholder on the Registers. Subject to the provisions of Section 12.15, all of the Units of the Trust shall be voting and shall vote equally with each other at all meetings of Trust Unitholders. Subject to the exercise of the power of the Trustees to make distributions under Section 9.2, unitholders of the Trust holding Units of a particular Class are entitled to participate in distributions on a *pro rata* basis with unitholders holding Units of the same Class. All Trust Units of a particular Class rank among themselves equally and rateably without discrimination, preference or priority. Issued and outstanding Trust Units may be subdivided or consolidated from time to time by the Trustees without the approval of or notification to Unitholders.

#### **3.2 Issue of Units**

- (a) Trust Units of a particular Class may be issued by the Trust at the times, to the persons, for the consideration and on the terms and conditions that the Trustees determine. The Trustees may authorize the Trust to pay a reasonable commission to any person in consideration of such person purchasing or agreeing to purchase Trust Units from the Trust or from any other person or procuring or agreeing to procure purchasers for Trust Units.
- (b) The Trustees may create and issue instalment receipts, rights, warrants, receipts (including so-called "special warrants" and "subscription receipts" which may be exercisable for no additional consideration), securities convertible into or exchangeable or exercisable for Trust Units of a particular Class or other securities of the Trust (including Trust Units issuable upon the exchange of securities of other issuers) or options (including all types of incentive programs) to subscribe for Trust Units which instalment receipts, rights, warrants, receipts, convertible or exchangeable or exercisable securities or options may be exercisable at such subscription price or prices and at such time or times as the Trustees may determine. The instalment receipts, rights, warrants, receipts, convertible or exchangeable or exercisable securities or options so created may be issued for such consideration or for no consideration, all as the Trustees may determine. An instalment receipt, right, warrant, receipt, convertible or exchangeable or exercisable security or option shall not be a Trust Unit and the holder thereof shall not be a Trust Unitholder.



- (c) Trust Units are only to be issued as fully paid in money, property, including an obligation to pay consideration in instalments, or past services, and are not to be subject to future calls or assessments, except that Trust Units to be issued under an offering of Trust Units to the public or otherwise may be issued for a consideration payable in instalments and the Trust may take a security interest over such Trust Units for unpaid instalments.
- (d) The Trustees may authorize the Trust to pay a reasonable commission to any person in consideration of such person purchasing or agreeing to purchase, whether absolutely or conditionally, Trust Units, or rights, warrants, convertible securities or options to acquire Trust Units, from the Trust or from any other person or procuring or agreeing to procure purchasers, whether absolute or conditional, for Units, or rights, warrants, convertible securities or options to acquire Trust Units.

### **3.3 Fractional Units**

The Trustees may allot and issue Units or fractions of any Units at such time or times and in such manner and to such persons as the Trustees may determine. Units and fractions of Units shall not be issued otherwise than as fully paid and a Unit or fraction of a Unit is not fully paid until all consideration therefor, whether in cash or in kind, has been received by or on behalf of the Trust.

If as a result of any act of the Trustees hereunder any person becomes entitled to a fraction of a Trust Unit, such person shall not be entitled to receive a certificate therefor. Fractional Units shall not, except to the extent that they may represent in the aggregate one or more whole Trust Units, entitle the holder thereof to notice of or to attend or to vote at, meetings of Trust Unitholders. Subject to the foregoing, such fractional Trust Units shall have attached thereto the rights, restrictions, conditions and limitations attaching to whole Trust Units in the proportion that they bear to a whole Unit.

### **3.4 Re-Purchase of Initial Trust Units by the Trust**

Immediately after the Initial Closing, the Trust will purchase the initial Trust Units from the Initial Unitholder and the Initial Unitholder will sell the initial Trust Units to the Trust, for a purchase price of \$10.00 and, upon the completion of that purchase and sale, the initial Trust Units shall be cancelled and shall no longer be outstanding for any of the purposes of this Declaration of Trust.

### **3.5 No Pre-Emptive Rights**

No Trust Unitholder is entitled, as a matter of right, to any preference, conversion, exchange or pre-emptive right to subscribe for or purchase any other Trust Units over any other Trust Unitholder in the same Class of the Trust or otherwise, unless expressly agreed to in writing by the Trustees.

### **3.6 Subdivision or Consolidation**

Unless the Trustees determine otherwise, and subject to the paragraph immediately below in this Section 3.6, immediately after any pro rata distribution of additional Trust Units to all Trust Unitholders pursuant to Section 5.7, the number of the outstanding Trust Units will be consolidated such that each Trust Unitholder will hold after the consolidation the same number of Trust Units of the particular Class as the Trust Unitholder held before the distribution of additional Trust Units. In this case, each Trust Unit Certificate representing a number of Trust Units of a particular Class prior to the distribution of additional Trust Units is deemed to represent the same number of Trust Units after the non-cash distribution of additional Trust Units and the consolidation.

Notwithstanding the foregoing, where tax is required to be withheld from a Trust Unitholder's share of the distribution, the consolidation will result in such Trust Unitholder holding that

number of Trust Units of a particular Class (i) the number of Trust Units held by such Trust Unitholder prior to the distribution plus the number of Trust Units received by such Trust Unitholder in connection with the distribution (net of the total of the number of whole and part Trust Units withheld on account of withholding taxes and the number of whole and part Trust Units withheld pursuant to Section 5.8 on account of the Trustees' reasonable expenses with regard to the sale of such Trust Units withheld on account of withholding taxes) multiplied by (ii) the fraction obtained by dividing the aggregate number of Trust Units outstanding prior to the distribution by the aggregate number of Trust Units of a particular Class that would be outstanding following the distribution and before the consolidation if no withholding were required in respect of any part of the distribution payable to any Trust Unitholder. Such Trust Unitholder will be required to surrender the Trust Unit Certificates, if any, representing such Trust Unitholder's original Trust Units, in exchange for a Trust Unit Certificate representing such Trust Unitholder's post-consolidation Trust Units of a particular Class.

### **3.7 Subscription for Units**

Subscriptions shall be in such form as determined by the Trustees from time to time and, in each case, shall be accompanied by payment as described from time to time in the subscription agreement provided by the Trust, or if not so described, as the Trustees may from time to time determine.

### **3.8 Minimum Purchases**

An investor's initial subscription for Units shall be in such gross dollar amount as the Trustees may from time to time determine. The Trustees may determine the gross dollar amount required in respect of the initial subscription of any investor who subscribes for Units pursuant to a Plan, whereby the investor agrees to make regular purchases of Units of the Trust, or pursuant to a Plan. The Trustees may charge a fee, in such amount as the Trustees may from time to time determine, for the termination by a Unitholder of its participation in such a Plan. The Trustees may also determine the gross dollar amount required in respect of a subscription by a Trust Unitholder for additional Units of the same Class of the Trust.

### **3.9 Right to Reject Subscription**

The Trustees shall at their sole option be entitled to reject subscriptions for purchases of Units at any time. The Trustees shall at all times ensure that any decision to reject a subscription is made and communicated to the investor within two (2) Business Days of receipt of the subscription application and to refund to the investor immediately any monies received without interest.

### **3.10 Subsequent Purchases**

Subsequent purchases of Units shall be made in such manner as shall be determined from time to time by the Trustees.

### **3.11 Transfer Agent and Registrar**

The Trustees shall maintain, or cause to be maintained by a transfer agent and registrar or by one or more branch transfer agents and registrants, a register for the registration of each Class of Units and shall provide, or cause to be provided, for the transfer and the registration of transfers of Units in one or more places in Canada. The Trustees or the transfer agent and registrar and/or branch transfer agents and registrars shall keep all necessary books and registers of the Trust required by this Declaration of Trust or by applicable legislation instruments or rules of securities regulatory authorities in jurisdictions where the Units are qualified for distribution. The books and registers referred to in this Section 3.11 shall be kept in a bound or loose-leaf book or may be entered or recorded by any system of mechanical or electronic data processing or any other information storage device and shall at all reasonable times be

open for inspection at the principal office of the Trust or of the transfer agent and registrar, free of charge by the Unitholders of the Trust or their duly authorized representative.

### **3.12 Registered Unitholders**

The Trustees, any transfer agent and registrar, or branch transfer agent and registrar, as the case may be, shall for all purposes be entitled to treat the Unitholder in whose name any Units are registered as the absolute owner thereof, any notice to the contrary notwithstanding. The Trustees, any transfer agent and registrar, or branch transfer agent and registrar, as the case may be, shall not be charged with notice of or be bound to see to the execution of any trust in respect of any unit, whether express, implied or constructive, and may deal with any unit on the direction of its registered Unitholder whether named as trustee or otherwise.

## **ARTICLE 4 INVESTMENTS OF THE TRUST**

### **4.1 Investment Objective of the Trust**

The investment objective of the Trust is to invest in Mortgages secured by Real Property in North America. Assets of the Trust may be held in investments which comply with the investment policies set out in Section 3.2. The Trustees shall ensure that investment of the assets of the Trust is made in such a way as to comply with the investment objectives set forth herein. The Trustee shall from time to time sell any or all of such investments and reinvest the proceeds thereof or exchange any or all of such investment for other investments. The Trustee and the Trust shall not, in carrying out investment activities be in any way restricted by the provisions of the laws of any jurisdiction limiting or purporting to limit investments which may be made by trustees but shall be limited by the investment restrictions contained herein and the appropriate regulatory authorities to which the Trust is subject.

### **4.2 Investment Policies**

The following are the investment policies to be applied by the Trustees in investing the assets of the Trust:

- (a) the Trust may only invest in Mortgages which are first charges on the security of the Real Property;
- (b) the Trust may invest in Mortgages of F.L. Group Members or Affiliates so long as the investment is made on commercially reasonable terms;
- (c) the Trust may co-invest with a third party or third parties in a Mortgage;
- (d) the Sub Trust may invest in any Mortgage where the term of the Mortgage exceeds five years;
- (e) the Trust may hold Real Property acquired as a result of foreclosure where such foreclosure was necessary to protect the Mortgage investment as a result of a default by the mortgagor;
- (f) the Trust may temporarily acquire, invest in, transfer, dispose of and otherwise deal with securities of or lending to any F.L. Group Member;
- (g) the Trust may temporarily hold cash in interest bearing accounts short-term government debt or short-term investment grade corporate debt for the purposes of paying the expenses and liabilities of the Trust, paying amounts payable by the Trust in connection

with the redemption of any Trust Units or other securities of the Trust and making distributions to Trust Unitholders;

- (h) the Trust may not invest in any asset which will in any way change its status as a "Unit Trust" for purposes of the Tax Act.

## **ARTICLE 5 DISTRIBUTIONS**

### **5.1 Computation of Distributable Cash Flow**

- (a) The "**Cash Flow of a Class**" for, or in respect of, any Distribution Period, shall be determined pursuant to the following provisions:
  - (i) the following amounts shall be included in the calculation:
    - (A) all cash amounts derived from the investment of the proceeds of the sale of a Class of Units received by the Trust for and in respect of the Distribution Period, including, without limitation, all income, distributions, interest, dividends, proceeds from the disposition of securities, returns of capital and repayments of indebtedness; and
    - (B) all amounts derived from the investment of the proceeds of the sale of a Class of Units received by the Trust in any prior Distribution Period to the extent not previously distributed;
  - (ii) the following amounts shall be deducted in the calculation:
    - (A) all costs and expenses attributable to the Class of Units proportionate share of the Common Expenses which, in the opinion of the Trustees, may reasonably be considered to have accrued and become owing in respect of, or which relate to, such Distribution Period or a prior Distribution Period if not accrued or deducted in determining the cash flow of such Class of Units in such prior period;
    - (B) all amounts which relate to the redemption or repurchase of Trust Units of the Class of Units and which have been paid or become payable in cash by the Trust in such Distribution Period;
    - (C) a Class of Units' proportionate share of all amounts to be paid in satisfaction of debt service obligations of the Trust on account of both principal and interest; and
    - (D) any amount that the Trustees may reasonably consider to be necessary to provide for the payment of any costs that have been or are reasonably expected to be incurred by the Trust, including any tax liabilities of the Trust; and
  - (iii) the net proceeds of any issuance of a Class of Units or other securities, including debt securities, of the Trust and any associated expenses shall not be included in the calculations of Cash Flow of a Class in respect of any Distribution Period.
- (b) The "**Distributable Cash Flow of a Class**" for, or in respect of, a Distribution Period shall be the Cash Flow of a Class for such Distribution Period less any amount which the Trustees may reasonably consider to be necessary to provide for: (i) the payment of any costs which have been or will be incurred in the activities and operations of the Class of Units, (ii) the payments of any tax liability of the Trust (but excluding such amounts

previously deducted in Section 5.1(a)(ii)), and (iii) such reserves or amounts as are, in the opinion of the Trustees, necessary or desirable.

## 5.2

### **Computation of Income and Net Realized Capital Gains**

- (a) The "**Income of the Trust**" for any taxation year of the Trust shall be the net income for the year determined pursuant to the provisions of the Tax Act, other than paragraph 82(1)(b) and Subsection 104(6) thereof, having regard to the provisions thereof which relate to the calculation of "taxable income" of the Trust, and taking into account such adjustments thereto as are determined by the Trustees in respect of dividends received from taxable Canadian corporations, amounts paid or payable by the Trust to Trust Unitholders and such other amounts as may be determined in the discretion of the Trustees; provided, however, that capital gains and capital losses shall be excluded from the computation of net income.
- (b) The "**Net Realized Capital Gains of the Trust**" for any taxation year of the Trust shall be determined as the amount, if any, by which the aggregate of the capital gains of the Trust calculated in accordance with the provisions of the Tax Act in the year exceeds the aggregate of (i) the aggregate of the capital losses of the Trust calculated in accordance with the provisions of the Tax Act in the year, (ii) the amount determined by the Trustees in respect of any net capital losses for prior taxation years which the Trust is permitted by the Tax Act to deduct in computing the taxable income of the Trust for the year, and (iii) any amount in respect of which the Trust is entitled to a capital gains refund under the Tax Act, as determined by the Trustees; provided that at the discretion of the Trustees, the Net Realized Capital Gains of the Trust for a year may be calculated without subtracting the full amount in respect of the net capital losses of the Trust carried forward from previous years.

## 5.3

### **Distribution of Distributable Cash Flow**

- (a) The Trust shall distribute on each Distribution Payment Date to Trust Unitholders of a Class of Units of record as at the close of business on the applicable Distribution Record Date all of the Distributable Cash Flow of a Class for the applicable Distribution Period. The proportionate share of each Trust Unit of the amount of the Distributable Cash Flow of a Class shall be determined by dividing such amount by the number of issued and outstanding Trust Units of such Class of Units on such Distribution Record Date. Each Trust Unitholder's share of such Class of Units' Distributable Cash Flow shall be an amount equal to the proportionate share of each Trust Unit of such Class of Units of such Distributable Cash Flow of a Class multiplied by the number of Trust Units of such Class of Units owned of record by each such Trust Unitholder on such Distribution Record Date.
  - (i) Subject to Section 5.7, any distribution which has been declared or authorized to be payable to Trust Unitholders in respect of a Distribution Period shall be paid in cash.

## 5.4

### **Other Distributions**

- (a) In addition to the distributions which are made payable to Trust Unitholders pursuant to Section 5.3, the Trustees may allocate, declare or authorize to be payable and/or make distributions, from time to time, out of Income of the Trust, Net Realized Capital Gains, the Capital of the Trust or otherwise, in any year, in such amount or amounts, and on such dates as the Trustees may determine to persons who are Trust Unitholders at the record date determined by the Trustees for such distribution. For greater certainty, the Trustees may designate and make payable any income or capital gains realized by the

Trust (including any income realized by the Trust on the redemption of Trust Units pursuant to section 6.4) to redeeming Trust Unitholders in accordance with that section. All Trust Unitholders of a Class of Units will share equally and on a *pro rata* basis, based on the Class of Units' proportionate share of such distribution.

- (b) Having regard to the intent of the Trust to allocate, distribute and make payable to Trust Unitholders all of the Income of the Trust, Net Realized Capital Gains and any other applicable amounts so that the Trust will not have any liability for tax under Part I of the Tax Act in any taxation year, the following amounts shall, without any further actions on the part of the Trustees, be due and payable on December 31 in each year to Trust Unitholders of record on December 31 in each such year:
  - (i) a Class of Units' proportionate share of an amount equal to the amount, if any, by which the Income of the Trust for such year exceeds the aggregate of the portions, if any, of each distribution paid or payable by the Trust pursuant to Section 5.3 and Section 5.4(a) which have been determined by the Trustees, pursuant to Section 5.5, to have been payable by the Trust out of Income of the Trust for such year and the amount of income treated as having been paid in the year pursuant to Section 5.5; and
  - (ii) a Class of Units' proportionate share of an amount equal to the amount, if any, by which the Net Realized Capital Gains of the Trust for such year exceeds the aggregate of the portions, if any, of each distribution paid or payable by the Trust pursuant to Section 5.3 and Section 5.4(a) which have been determined by the Trustees, pursuant to Section 5.5, to have been payable by the Trust out of the Net Realized Capital Gains for such year and the amount of any capital gain treated as having been paid in the year pursuant to Section 5.5.
- (c) The proportionate share of each Trust Unit of the amount of any distribution made pursuant to either or both of Sections 5.4(a) and (b) shall be determined by dividing such amount by the number of issued and outstanding Trust Units of a particular Class on the applicable Distribution Record Date in respect of a distribution pursuant to Section 5.4(a) and on December 31 in respect of a distribution pursuant to Section 5.4(b). Each Trust Unitholder's share of such Class of Units' proportionate share of any such distribution shall be an amount equal to the proportionate share of each Trust Unit of such Class of Units of such amount multiplied by the number of Trust Units of such Class of Units owned of record by each such Trust Unitholder on such applicable Distribution Record Date or December 31 in the year of such distribution, as the case may be. Subject to Section 5.7, amounts which have been declared or authorized to be payable to Trust Unitholders pursuant to Section 5.4(a) shall be paid in cash on the Distribution Payment Date which immediately follows the applicable Distributable Record Date in respect of a distribution pursuant to Section 5.4(a) and amounts which are payable to Trust Unitholders on December 31, in respect of a distribution pursuant to Section (b) shall be payable on December 31 and shall be paid forthwith, and in no event later than January 30 of the following year, subject to Section 5.7.

## **5.5 Character of Distributions and Designations**

In accordance with and to the extent permitted by the Tax Act and analogous provisions of any applicable provincial legislation, the Trustees in each year shall make designations and elections in respect of the amounts payable to Trust Unitholders, based on the proportionate shares attributable to any Class of Units, for such amounts that the Trustees consider to be reasonable in all of the circumstances, including, without limitation, designations relating to taxable dividends received or deemed to be received by the Trust in the year on shares of taxable Canadian corporations, net capital gains realized by the Trust

in the year and foreign source income of, or deemed foreign source income of, and foreign income taxes paid by, or deemed to have been paid by, the Trust for the year, as well as elections under Subsections 104(13.1) and/or 104(13.2) of the Tax Act that income be taxed to the Trust, rather than to the Trust Unitholders. Distributions payable to Trust Unitholders pursuant to this Article 5, and to the extent required pursuant to Section 6.3, shall be deemed to be distributions of Income of the Trust, Net Realized Capital Gains, Trust Capital or other items in such amounts as the Trustees shall, in their absolute discretion, determine. For greater certainty, it is hereby declared that any distribution of Net Realized Capital Gains shall include the non-taxable portion of the capital gains of the Trust which are encompassed in such distribution.

#### **5.6 Enforceability of Right to Receive Distributions**

For greater certainty, it is hereby declared that each Trust Unitholder shall have the legal right to enforce payment of any amount payable to such Trust Unitholder as a result of any distribution which is declared or authorized or made payable to such Trust Unitholder pursuant to this Article as of the date on which such amount becomes payable.

#### **5.7 Method of Payment of Distributions**

- (a) Pursuant to this Article, in the event that the Trustees determine that the Trust does not have available cash in an amount sufficient to make payment of the full amount of any distribution which has been declared or authorized to be payable to Trust Unitholders entitled to cash distributions on the due date for such payment, the payment may, at the option of the Trustees, include the *pro rata* issuance of additional Trust Units, or fractions of Trust Units, if necessary, having a value equal to the difference between the amount of such distribution and the amount of cash which has been determined by the Trustees to be available for the payment of such distribution, subject to all necessary regulatory approvals.
- (b) The value of each Trust Unit which is issued pursuant to Section 5.7(a) shall be equal to the Redemption Price of the Trust Units (as defined in Section 6.2(c)) on the applicable Distribution Record Date in respect of a distribution pursuant to Section 5.3, on the applicable Distribution Record Date in respect of a distribution under Section 5.4(a) or on December 31 in respect of a distribution under Section 5.4(b), provided that if the particular date is not a Business Day then the Redemption Price shall be determined on the last Business Day which precedes such particular date.

#### **5.8 Withholding Taxes**

The Trustees may deduct or withhold from distributions payable to any Trust Unitholder all amounts required by law to be withheld from such distributions, whether such distributions are in the form of cash, additional Trust Units or otherwise. In the event of a distribution in the form of additional Trust Units, the Trustees may sell Trust Units of such Trust Unitholder to pay such withholding taxes and to pay all of the Trustees' reasonable expenses with regard thereto and such Trust Unitholder shall be deemed to have granted to the Trustees, and the Trustees shall have, the power of attorney of such Trust Unitholder to do so. Any such sale shall be made pursuant to an exemption from applicable securities laws, and upon such sale, the affected Trust Unitholder shall cease to be the holder of such Trust Units which are so sold.

#### **5.9 Tax Act Definitions**

Unless otherwise specified or the context otherwise requires, any term in this Article which is defined in the Tax Act shall have for the purposes of this Article the meaning that it has in the Tax Act.

#### **5.10 Special Distribution Provisions**

- (c) In the event that a Trust Unitholder has held his Unit for less than the entire Distribution Period for which a distribution is payable, the Trust Unitholder shall only be entitled to a proportionate share of the distributions based on the proportion that the number of days between the date of first issue of his Units and the last day of the Distribution Period bears to the aggregate total number of days in such Distribution Period.
- (d) The Trustees shall have the right but not the obligation to distribute and allocate Common Expenses, Income of the Trust, Net Realized Capital Gains of the Trust and any other applicable amounts among Trust Unitholders in such a manner so as to ensure where possible that they are treated equitably taking into account differences that may arise as a result of the acquisition of Trust Units at different times in a fiscal year or in different fiscal calendar years.

#### **5.11 Payments of Cash**

Any payment of cash by the Trust to a Trust Unitholder pursuant to this Article 5 or any other provision of this Declaration of Trust will be conclusively deemed to have been made upon mailing of a cheque in a postage pre-paid envelope, addressed to the Trust Unitholder at the Trust Unitholder's address appearing in the Registers, unless such cheque is dishonoured upon presentment. Upon such payment, the Trust will be discharged from all liability to the Trust Unitholder in respect of such payment, provided, however, that if such cheque is lost or destroyed then, upon the presentation of evidence satisfactory to the Trustees of such loss or destruction, together with such indemnity as the Trustees may reasonably require, the Trust will issue a replacement cheque to the Trust Unitholder. Notwithstanding the foregoing, the Trust may, in lieu of forwarding or causing to be forwarded a cheque to a Unitholder pursuant to this Article 5, enter into an agreement with a Unitholder or with the person for whom such Unitholder is acting as nominee providing for the payment to such Unitholder of the amounts to which such Unitholder is entitled, from time to time, hereunder by electronic funds transfer or by any other method at a place or places other than the place or places specified herein as the place or places for such payment. Any payment made hereunder or in connection with this Declaration of Trust that is made pursuant to any such agreement will, notwithstanding any other provision of this Declaration of Trust, be valid and binding on the Trust and the relevant Unitholder.

#### **5.12 Unclaimed Distributions**

In the event that the Trustees hold any distributable amount that is unclaimed or that cannot be paid for any reason, the Trustees will be under no obligation to invest or reinvest the same, but will only be obliged to hold the same in a current non-interest-bearing account pending payment, less applicable taxes, to the person or persons entitled thereto. The Trustees will, as and when required by law, and may at any time prior to such required time, pay all or part of such distributable amount so held to the appropriate government official or agency, whose receipt shall be a good and sufficient discharge and release of the Trustees.

### **ARTICLE 6 REDEMPTION OF TRUST UNITS**

#### **6.1 Right of Redemption by Trust Unitholders**

Each Trust Unitholder shall be entitled to require the Trust to redeem at any time or from time to time at the demand of the Trust Unitholder all or any part of the Trust Units registered in the name of the Trust Unitholder at the prices determined and payable in accordance with the conditions hereinafter provided. The Trustees shall be entitled in their discretion to determine and designate whether any payments made in respect of any redemption are on account of income or capital.



## 6.2 Exercise of Redemption Right

- (a) To exercise a Trust Unitholder's right to require redemption under this Article 6, a duly completed and properly executed notice requiring the Trust to redeem Trust Units, in a form approved by the Trustees, shall be sent to the Trust at the head office of the Trust. No form or manner of completion or execution shall be sufficient unless the same is in all respects satisfactory to the Trustees and is accompanied by any further evidence that the Trustees may reasonably require with respect to the identity, capacity or authority of the person giving such notice.
- (b) Subject to Sections 6.4 and 6.5, upon receipt by the Trust of the notice to redeem Trust Units, the Unitholder shall thereafter cease to have any rights with respect to the Trust Units tendered for redemption (other than to receive the redemption payment therefor) including the right to receive any distributions thereon which are declared payable to the Trust Unitholders of record on a date which is subsequent to the day of receipt by the Trust of such notice. Trust Units shall be considered to be tendered for redemption on the date that the Trust has, to the satisfaction of the Trustees, received the notice and other required documents or evidence as aforesaid.

## 6.3 Cash Redemption

- (a) Upon receipt by the Trust of the notice to redeem Trust Units in accordance with Section 6.2, the holder of the Trust Units tendered for redemption shall be entitled to receive a price per Trust Unit (hereinafter called the "**Redemption Price**") equal to the fair market value thereof as determined by the Trustees in their sole discretion acting reasonably.
- (b) Subject to Sections 6.4 and 6.5, the Redemption Price payable in respect of the Trust Units tendered for redemption during any month shall be paid by cheque, drawn on a Canadian chartered bank or a trust company in lawful money of Canada, payable at par to or to the order of the Trust Unitholder who exercised the right of redemption on or before the last day of the calendar month following the month in which the Trust Units were tendered for redemption. Payments made by the Trust of the Redemption Price are conclusively deemed to have been made upon the mailing of a cheque in a postage prepaid envelope addressed to the former Trust Unitholder and/or any party having a security interest unless such cheque is dishonoured upon presentment. Upon such payment, the Trust shall be discharged from all liability to the former Trust Unitholder in respect of Trust Units redeemed.

## 6.4 Monthly Limit on Redemptions

Section 6.3(b) shall not be applicable to Trust Units tendered for redemption by a Trust Unitholder, if the total amount payable by the Trust pursuant to Section 6.3 in respect of such Trust Units and all other Trust Units tendered for redemption prior thereto in the same calendar month exceeds \$50,000 ("**Monthly Limit**"); provided that the Trustees may, in their sole discretion, waive such limitation in respect of all Trust Units tendered for redemption in any calendar month. In the absence of such a waiver, Trust Units tendered for redemption in any calendar month in which the total amount payable by the Trust pursuant to Section 6.3(b) exceeds the Monthly Limit will be redeemed on a *pro rata* basis and those Trust Units not redeemed shall be redeemed during the next and succeeding calendar month or months. Section 6.2 (b) shall not apply to any Trust Units tendered for redemption and not redeemed pursuant to this Section 6.4, and any such Trust Units shall continue to have all the rights attaching to the Trust Units and will be entitled to any distributions thereon which are declared payable to the Trust Unitholders of record.

## **6.5 Suspension of Redemptions**

For a period of not more than 180 days, the Trustees may suspend the calculation of the redemption of Units, or postpone the day of payment or right of redemption, for or during any period during which the Trustee determines that conditions exist which render impractical the sale of the assets of the Trust or impair the ability of the Trustees to determine the value of the assets held by the Trust. Any such suspension shall take effect at such time as the Trustees specify and thereafter there shall be no redemption of Units until the Trustees declare the suspension at an end. Where a notice of redemption is received by the Trustees during the suspension period, the Unitholder may withdraw the notice of redemption. If the notice of redemption is not withdrawn, the Units shall be redeemed on the termination of the Suspension. Section 6.2 (b) shall not apply to any Trust Units tendered for redemption and not redeemed pursuant to this Section 6.5, and any such Trust Units shall continue to have all the rights attaching to the Trust Units and will be entitled to any distributions thereon which are declared payable to the Trust Unitholders of record.

## **ARTICLE 7 TRUSTEES**

### **7.1 Number of Trustees**

There shall be a minimum of three (3) and a maximum of ten (10) Trustees. The number of Trustees within such minimum and maximum numbers may be changed by Trust Unitholders or by the Trustees. In the event of any increase in the number of Trustees, the Trust Unitholders or Trustees, as the case may be, shall forthwith elect or appoint any such additional Trustee(s). Until otherwise so determined, the number of Trustees as of the date of this Declaration of Trust shall be three (3). A majority of the Trustees at all times must be Residents.

### **7.2 Calling and Notice of Meetings**

Meetings of the Trustees shall be called and held at such time and at such place as the Trustees, the Chairman of the Trustees or any two Trustees may determine, and any one Trustee or officer of the Trust may give notice of meetings when directed or authorized by such persons. Notice of each meeting of the Trustees shall be given to each Trustee not less than 48 hours before the time when the meeting is to be held, provided that if a quorum of Trustees is present, the Trustees may without notice hold a meeting immediately following a meeting of Trust Unitholders. Notice of a meeting of the Trustees may be given verbally, in writing or by telephone, fax or other means of communication. A notice of a meeting of Trustees shall specify the nature of the business to be transacted at such meeting. A Trustee may in any manner or at any time waive notice of or otherwise consent to a meeting of Trustees. Attendance of a Trustee, in person or by telephone, at a meeting of Trustees shall constitute a waiver of notice of that meeting except where a Trustee attends for the express purpose of objecting to the transaction of any business on the grounds that the meeting has not been properly called. Notwithstanding the foregoing, the Trustees may by resolution from time to time fix a day or days in any month or months for regular meetings of the Trustees at a place and hour to be named, in which case, provided that a copy of such resolution is sent to each Trustee forthwith after being passed and forthwith after each Trustee's appointment, no other notice shall be required for any such regular meeting, and the Trustees may by resolution from time to time establish an approval process for the declaration or authorization of distributions or such other approval procedures that they may determine to be appropriate in the circumstances.

### **7.3 Place of Meetings**

Meetings of the Trustees shall be held in Canada and may be held at a location as directed by the Trustees. A Trustee who attends a meeting of Trustees, in person or by telephone, is deemed to have consented to the location of the meeting except when the Trustee attends the meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully held.

### **7.4 Meetings by Telephone**

With the consent of the chairman of the meeting or a majority of the Trustees participating in the meeting, any Trustee may participate in a meeting of the Trustees or of a committee of the Trustees by means of telephone or other communication facilities that permit all persons participating in the meeting to hear each other provided that any telephone call or video conference call to permit the participation of a Trustee who is not physically present shall originate in Canada. A Trustee participating in such a meeting in such manner shall be considered present at the place of meeting.

### **7.5 Quorum**

The quorum for the transaction of business at any meeting of the Trustees shall consist of a majority of the number of Trustees then holding office, and, notwithstanding any vacancy among the number of Trustees, a quorum of Trustees may exercise all of the powers of the Trustees, provided that a majority of the Trustees comprising such quorum shall not be Non-Residents. A Trustee who is a Non-Resident may appoint any other Trustee to act as his proxy at any meeting of Trustees and any such proxy shall vote as a separate Trustee and constitute attendance at the meeting for all purposes.

### **7.6 Chairman**

The Chairman of the Trustees shall be chosen by the Trustees from among themselves. The chairman of any meeting of the Trustees shall be the Trustee present at the meeting who holds the office of Chairman of the Trustees or if such person is not present, the Trustees present shall choose one of their number to be chairman. The Chairman shall not be a Non-Resident.

### **7.7 Action by the Trustees**

At all meetings of the Trustees every question shall be decided by a majority of the votes cast on the question. In the case of equality of votes, the Chairman of the meeting shall be entitled to a second or casting vote. The powers of the Trustees may be exercised by resolution passed at a meeting at which a quorum is present or without a meeting by resolution in writing signed by all Trustees who would be entitled to vote on that resolution at a meeting of the Trustees. Resolutions in writing may be signed by fax and in counterparts each of which shall be deemed to be an original and all originals together shall be deemed to be one and the same instrument.

### **7.8 Adjourned Meeting**

Any meeting of Trustees may be adjourned from time to time by the Chairman of the meeting with the consent of the meeting to a fixed time and place. Further notice of the adjourned meeting need not be given. The adjourned meeting shall be duly constituted if a quorum is present and if it is held in accordance with the terms of the adjournment. If there is not a quorum present at the adjourned meeting, the original meeting shall be deemed to have terminated upon its adjournment.

### **7.9 Remuneration and Expenses**

The Trustees, other than a Trustee who is a full-time officer or employee of the Trust or any F.L. Group Member, shall be paid such reasonable remuneration for their services as the Trustees

may from time to time in good faith determine. The Trustees shall also be entitled to be reimbursed for reasonable traveling and other expenses properly incurred by them in attending meetings of the Trustees or any committee thereof or in connection with their services as Trustees. Nothing herein contained shall preclude any Trustee from serving the Trust in any other capacity and receiving remuneration therefor.

#### **7.10 Officers**

The Trustees from time to time may appoint one or more officers of the Trust, including a Chairman and Vice-Chairman of the Trust and, without prejudice to rights under any employment contract, may remove any officer of the Trust. The powers and duties of each officer of the Trust shall be those determined from time to time by the Trustees and, in the absence of such determination, shall be those usually applicable to the office held. A majority of the officers of the Trust must be Residents.

### **ARTICLE 8 APPOINTMENT, RESIGNATION AND REMOVAL OF THE TRUSTEES**

#### **8.1 Qualification of Trustees**

The following persons are disqualified from being a Trustee of the Trust:

- (a) anyone who is less than 18 years of age;
- (b) anyone who is of unsound mind and has been so found by a court of competent jurisdiction in Canada or elsewhere;
- (c) a person who is not an individual; and
- (d) a person who has the status of bankrupt.

#### **8.2 Appointment of Trustees**

The appointment of David C. Philips, Joanna Hampton, and John Wilson as Trustees for a term expiring (subject to further appointment) at the close of the next meeting of Trust Unitholders or as otherwise determined by the Trustees is hereby confirmed. Except as otherwise provided in this Declaration of Trust, Trustees shall be appointed (including the reappointment of incumbent Trustees) by the Trustees, or by the Trust Unitholders at a meeting of Trust Unitholders, in each case to hold office, subject to Section 8.5, for a term expiring at the close of the next meeting of Trust Unitholders following such an appointment or as otherwise determined by the Trustees. Any such appointment (other than as contemplated by Section 8.7) shall be made by a resolution of the Trustees, a resolution approved by a majority of the votes cast at a meeting of Trust Unitholders or by resolution in writing in the manner set out in Section 12.12. Notwithstanding the foregoing:

- (a) if no Trustees are appointed before the term of office of the existing Trustees expires, such existing Trustees shall continue to hold the office of Trustees under this Declaration of Trust until successors have been appointed or they cease to hold office;
- (b) the Trustees may appoint one or more additional Trustees for a term to expire (subject to further appointment) at the close of the next meeting of Trust Unitholders or as otherwise determined by the Trustees; and
- (c) a majority of the Trustees holding office at any time shall be Residents.

#### **8.3 Consent to Act**

- (a) A person who is appointed a Trustee hereunder, other than the Trustees who are appointed pursuant to Section 8.2, shall not become a Trustee until the person has, either

before or after such appointment, executed and delivered to the Trust a consent substantially as follows:

"To: First Leaside Mortgage Fund (the "Trust")  
And to: The Trustees thereof

The undersigned hereby consents to act as a Trustee of the Trust and hereby agrees, upon the later of the date of this consent and the date of the undersigned's appointment as a Trustee of the Trust, to thereby become a party, as a Trustee, to the Declaration of Trust made as of the 18<sup>th</sup> day of June, 2010, as amended from time to time, constituting the Trust and to be bound by the obligations and liabilities of a Trustee thereunder.

Dated: \_\_\_\_\_

\_\_\_\_\_  
[Signature]

\_\_\_\_\_  
[Print Name]

- (b) Upon the later of a person being appointed a Trustee hereunder and executing and delivering to the Trust a consent substantially as set forth in Section 8.3(a), such person shall become a Trustee hereunder and shall be deemed to be a party (as a Trustee) to this Declaration of Trust, as amended from time to time. The rights of the Trustees to control and exclusively administer the Trust and to have the title to the Trust Assets drawn up in their names or in the name of any other successor and all other rights of the Trustees, at law will vest automatically in any person who may hereafter become a Trustee upon such person's due appointment and qualification without any further act and such person will immediately thereupon have all the rights, privileges, powers, authorities, obligations and immunities of a Trustee hereunder.

#### **8.4 Failure to Appoint Minimum Number of Trustees**

If the Trustees or the Trust Unitholders fail to appoint the number of Trustees required by this Declaration of Trust, by reason of the disqualification or death of any nominee, the Trustees may, subject to Section 7.5 and Section 8.1, exercise all of the powers of the Trustees if the number of Trustees so appointed constitutes a quorum and the majority of the Trustees remaining are Residents.

#### **8.5 Ceasing to Hold Office**

A Trustee ceases to hold office when:

- (a) he dies or resigns;
- (b) he is removed in accordance with Section 8.6; or
- (c) he ceases to be duly qualified to act as a Trustee as provided under Section 8.1.

A resignation of a Trustee becomes effective 30 days from the time a written resignation is sent to the Trust, or at the time specified in the resignation, whichever is later, provided that if, upon the resignation becoming effective, the number of remaining Trustees would be less than the number necessary to constitute a quorum for a meeting of Trustees, the resignation is not effective until the resigning Trustee's successor is duly appointed as a Trustee.

Upon a Trustee ceasing to hold office as such hereunder, such Trustee shall cease to be a party (as a Trustee) to this Declaration of Trust; provided, however, that such Trustee shall continue to be entitled to be paid any amounts owing by the Trust to the Trustee and to the benefits of the indemnity provided in Section 9.10. Upon the resignation or removal of any Trustee, or upon a Trustee otherwise ceasing to be a Trustee, the Trustee shall cease to have the rights, privileges and powers of a Trustee hereunder, shall execute and deliver such documents as the remaining Trustees shall reasonably require for the conveyance of any Trust property held in that Trustee's name, shall account to the remaining Trustees as they may reasonably require for all property which that Trustee holds as Trustee, shall resign from all representative or other positions held by such Trustee on behalf of the Trust, including as a director or officer of any person in which the Trust owns any securities (directly or indirectly) and shall thereupon be discharged as Trustee. Upon the incapacity or death of any Trustee, his legal representative shall execute and deliver on his behalf such documents as the remaining Trustees may reasonably require as provided in this Section 8.5. In the event that a Trustee or his legal representatives, as applicable, are unable or unwilling to execute and deliver such required documents, each of the remaining Trustees is hereby appointed as the attorney of such Trustee for the purposes of executing and delivering such required documents. This power of attorney granted to each of the remaining Trustees is not intended to be a continuing power of attorney within the meaning of the *Substitute Decisions Act, 1992* (Ontario), exercisable during a Trustee's incapacity to manage property, or any similar power of attorney under equivalent legislation in any of the provinces or territories of Canada (a "CPOA"). The execution of this power of attorney will not terminate any CPOA granted by the Trustee previously and will not be terminated by the execution by the Trustee in the future of a CPOA, and the Trustee hereby agrees not to take any action in future which results in the termination of this power of attorney.

If a Trustee ceases to hold office for any reason, and such cessation results in the board of Trustees having a majority of Trustees who are Non-Residents, the Trustees will, as soon as possible, fill the vacancy in accordance with Section 8.7 in order that a majority of Trustees shall not be Non-Residents, and if necessary, one or more Trustees who are Non-Residents, to be determined by the Trustees, shall resign (temporarily or otherwise) so that a majority of Trustees shall not be Non-Residents.

#### **8.6 Removal of Trustees**

The Trust Unitholders may remove any Trustee or Trustees from office, by resolution approved by a majority of the votes cast at a meeting of Trust Unitholders called for that purpose. The Trustees may remove any Trustee from office for cause, by resolution approved by a majority of at least two-thirds of the other Trustees. A vacancy created by the removal of a Trustee may be filled at the meeting of Trust Unitholders at which the Trustee is removed or, if not so filled, may be filled as set forth in section 8.7.

#### **8.7 Filling Vacancies**

A quorum of Trustees may fill a vacancy among the Trustees, except a vacancy resulting from a failure to appoint any minimum number of Trustees fixed by or pursuant to this Declaration of Trust. If there is not a quorum of Trustees, or if there has been a failure to elect the minimum number of Trustees required by or pursuant to this Declaration of Trust, the Trustees then in office shall forthwith call a special meeting of Trust Unitholders to fill the vacancy and, if they fail to call a meeting or if there are no Trustees then in office, the meeting may be called by any Trust Unitholder. A Trustee appointed to fill a vacancy holds office, subject to Section 8.5, until the close of the next meeting of the Trust Unitholders or as otherwise determined by the Trustees. The rights of the Trustees to control and exclusively administer the Trust and to have the title to the Trust Assets registered in their names or in the name of any other successor and all other rights of the Trustees at law shall vest automatically in any person who may hereafter become a Trustee upon such person's due appointment and qualification without any further act and such person shall thereupon have all the rights, privileges, powers, authorities,

obligations and immunities of a Trustee hereunder whether or not conveyancing documents have been executed and delivered pursuant to section 8.5 or otherwise.

#### **8.8 Validity of Acts**

Any act of a Trustee is valid notwithstanding any irregularity in the appointment of the Trustees or any one of them or a defect in the qualifications of the Trustees or any one of them.

### **ARTICLE 9 CONCERNING THE TRUSTEES**

#### **9.1 Powers of the Trustees**

Subject to the terms and conditions of this Declaration of Trust, the Trustees may exercise from time to time in respect of the Trust Assets and the investments and affairs of the Trust any and all rights, powers and privileges that could be exercised by a legal and beneficial owner thereof.

Subject to the specific limitations contained in this Declaration of Trust, the Trustees shall have, without further or other action or consent, and free from any power or control on the part of the Trust Unitholders, full, absolute and exclusive power, control and authority over the Trust Assets and over the affairs of the Trust to the same extent as if the Trustees were the sole and absolute beneficial owners of the Trust Assets in their own right, to do all such acts and things as in their sole judgment and discretion are necessary or incidental to, or desirable for, carrying out the Trust created hereunder. In construing the provisions of this Declaration of Trust, the presumption shall be in favour of the powers and authority granted to the Trustees. The enumeration of any specific power or authority herein (including pursuant to section 9.2) shall not be construed as limiting the general powers or authority or any other specified power or authority conferred herein on the Trustees. To the maximum extent permitted by law, the Trustees shall, in carrying out investment activities, not be in any way restricted by the provisions of the laws of any jurisdiction limiting or purporting to limit investments which may be made by trustees. Without limiting the generality of the foregoing, but subject to Section 4.1 and the other express limitations contained in this Declaration of Trust, the Trustees may make any investments without being required to adhere to all of or any particular portion of the investment criteria or diversification requirements set forth in the *Trustee Act* (Ontario), as amended from time to time, and to delegate management and authority to discretionary managers as the Trustees, in their discretion, determine appropriate.

#### **9.2 Specific Powers and Authorities**

Subject only to the express limitations contained in this Declaration of Trust and in addition to any other powers and authorities conferred by this Declaration of Trust or which the Trustees may have by virtue of any present or future statute or rule of law, the Trustees, without any action or consent by the Trust Unitholders, shall have and may exercise at any time and from time to time the following powers and authorities, which may or may not be exercised by the Trustees in such manner and upon such terms and conditions as they may from time to time determine proper:

- (a) to supervise the activities and manage the investments and affairs of the Trust;
- (b) to maintain records and provide reports to Trust Unitholders;
- (c) to collect, sue for and receive all sums of money due to the Trust;
- (d) to open, operate and close bank accounts and other similar credit, deposit and banking arrangements and to negotiate and sign banking and financing contracts and agreements;

- (e) to determine conclusively the allocation to capital, income or other appropriate accounts of all receipts, expenses, disbursements and property of the Trust;
- (f) to make or cause to be made application for the listing or quotation on any stock exchange or market of any Trust Units or any other securities issued from time to time by the Trust, and to do all things which in the opinion of the Trustees may be necessary or desirable to effect or maintain such listing or listings or quotation;
- (g) to determine conclusively the value of any or all of the Trust Assets from time to time and, in determining such value, to consider such information and advice as the Trustees in their sole judgment, may deem material and reliable;
- (h) to sell, transfer, assign, exchange, convey, lease or otherwise dispose of any part of the Trust Assets in any manner;
- (i) subject to Section 9.2(w), to enter into any agreement or instrument (including any firm or best efforts underwriting agreement) to create, issue or provide for the issue of Trust Units, or other securities of the Trust, including instalment receipts, securities convertible into or exchangeable or exercisable for Trust Units or other securities of the Trust or other rights, warrants, receipts or options convertible into or exchangeable or exercisable for Trust Units or other securities of the Trust (including debt securities, debt securities convertible into or exchangeable or exercisable for Trust Units or other securities of the Trust), for such consideration as the Trustees, in their sole discretion, may deem appropriate and to do such things and prepare and sign such documents, including a prospectus, an offering memorandum or any similar document and any registration rights agreement, to qualify such Trust Units, or other securities of the Trust for sale in whatever jurisdictions they will be sold or offered for sale;
- (j) to effect payment of distributions to the Trust Unitholders as provided in Article 5;
- (k) subject to Section 12.7(j), to lend, invest and reinvest funds of the Trust as provided in Article 4;
- (l) to ensure that, if the Trustees become aware by written notice that the beneficial owners of 49% of the Trust Units are, or may be, Non-Residents or that such situation is imminent, the limitations on ownership by Non-Residents as provided in Section 13.5 are met;
- (m) to possess and exercise all the rights, powers and privileges pertaining to the ownership of the securities of any F.L. Group Member owned by the Trust, to the same extent that an individual might, unless otherwise limited herein, and, without limiting the generality of the foregoing, to vote or give any consent, request or notice, or waive any notice, either in person or by proxy or power of attorney, with or without power of substitution, to one or more persons, which proxies and powers of attorney may be for meetings or actions generally or for any particular meeting or action and may include the exercise of discretionary power;
- (n) where reasonably required, to engage or employ on behalf of the Trust any persons as agents, representatives, employees, independent contractors or managers (including, without limitation, investment advisors, transfer agents, registrars, paying agents, underwriters, accountants, lawyers, appraisers, brokers or otherwise) in one or more capacities;
- (o) except as prohibited by law, to delegate any of the powers and duties of the Trustees to any one or more agents, representatives, officers, employees, independent contractors or



other persons without liability to the Trustees so long as such delegation is not inconsistent with any of the provisions of this Declaration of Trust;

- (p) to engage in, intervene in, prosecute, join, defend, compromise, abandon or adjust, by arbitration or otherwise, any actions, suits, disputes, claims, demands or other litigation or proceedings, regulatory or judicial, relating to the Trust, the Trust Assets or the Trust's affairs, to enter into agreements therefor, whether or not any suit or proceeding is commenced or claim asserted and, in advance of any controversy, to enter into agreements regarding the arbitration, adjudication or settlement thereof;
- (q) to cause legal title to any of the Trust Assets to be held by and/or in the name of one or more Trustees or, except as prohibited by law, by and/or in the name of the Trust or any other custodian or person, on such terms, in such manner, with such powers in such person as the Trustees may determine and with or without disclosure that the Trust or the Trustee is interested therein; provided, however, that should legal title to any of the Trust Assets be held by and/or in the name of any person or persons other than a Trustee or the Trust, the Trustees shall require such person or persons to execute a trust agreement acknowledging that legal title to such assets is held in trust for the benefit of the Trust;
- (r) to negotiate, make, execute, acknowledge and deliver any and all deeds, instruments, contracts, waivers, releases or other documents necessary or useful for the accomplishment of any of the powers herein granted, for the purpose of the Trust or for its assets or affairs, including without limitation, to enter into contracts, obligations and other agreements for a term extending beyond the term of office of the Trustees and beyond the possible termination of the Trust or for a lesser term, and to perform all of the obligations of the Trust thereunder;
- (s) to perform the obligations of the Trust under agreements to which it is a party and to exercise any rights granted to it under such agreements;
- (t) to approve the adoption of a Trust Unitholders rights plan, if the Trustees determine in good faith that such action is appropriate, including to issue or redeem rights and Trust Units in connection with such plan;
- (u) to use their best efforts to ensure that (i) the Trust qualifies at all times as a "mutual fund trust" pursuant to Subsection 132(6) of the Tax Act; and (ii) that the Trust Units will not be disqualified for investment by Plans;
- (v) in addition to the mandatory indemnification provided for in Sections 9.7 and 9.8, to the extent permitted by law to indemnify, or enter into agreements with respect to the indemnification of, any person with whom the Trust has dealings including, without limitation, the Trustees, to such extent as the Trustees shall determine;
- (w) with the approval (or confirmation, in the case of (ii)) of the Trust Unitholders to (i) designate any new Class of Units, from time to time; and (ii) enact and from time to time amend or repeal by-laws not inconsistent with this Declaration of Trust containing provisions relating to the Trust, the Trust Assets and the conduct of the affairs of the Trust, but not in conflict with any provision of this Declaration of Trust;
- (x) to purchase securities issued by the Trust, including Trust Units for cancellation in accordance with the provisions of this Declaration of Trust and applicable law;
- (y) to issue any type of debt securities or convertible debt securities and to borrow money or incur any other form of indebtedness for the purpose of carrying out the purposes of the Trust or for other expenses incurred in connection with the Trust and for such purposes may draw, make, execute and issue promissory notes and other negotiable and non-

negotiable instruments or securities and evidences of indebtedness, secure the payment of sums so borrowed or indebtedness incurred and mortgage, pledge, assign or grant a security interest in any money owing to the Trust or engage in any other means of financing the Trust;

- (z) to pay all taxes or assessments, of whatever kind or nature, whether within or outside Canada, imposed upon or against the Trustees in connection with the Trust Assets, undertaking or income of the Trust, or imposed upon or against the Trust Assets, undertaking or income of the Trust, or any part thereof and to settle or compromise disputed tax liabilities and for the foregoing purposes to make such returns, take such deductions, and make such designations, elections and determinations in respect of Income of the Trust or Net Realized Capital Gains distributed to Trust Unitholders in the year and any other matter as shall be permitted under the Tax Act (provided that to the extent necessary the Trustees will seek the advice of Counsel or the Public Accountants), and do all such other acts and things as may be deemed by the Trustees in their sole discretion to be necessary, desirable or convenient;
- (aa) to satisfy the obligations, liabilities and indebtedness of the Trust;
- (bb) to vote in favour of the Trust's nominees to serve as trustees or directors, as applicable, of any F.L. Group Member;
- (cc) to guarantee (as guarantor, surety or co-principal obligor) the payment of any indebtedness, liability or obligation of any F.L. Group Member and to mortgage, pledge, charge, grant a security interest in or otherwise encumber all or any part of the Trust Assets;
- (dd) to appoint one or more additional Trustees to serve until the close of the next meeting of Trust Unitholders or as otherwise determined by the Trustees;
- (ee) to arrange for insurance contracts and policies insuring the Trust, the Trustees, the Trust Assets, the business of any Affiliate of the Trust, any or all of the Trustees or the Unitholders, consultants or agents of the Trust or any person with whom the Trust has dealings in such amounts as the Trustees deem appropriate and which may cover any and all claims and liabilities of every nature arising by reason of holding or having held Trust Units or of holding, being or having held any such office or position, including any and all claims and liabilities of any nature asserted by any person arising by reason of any action alleged to have been taken or omitted by the Trust or by the Trustees or Unitholders, including any action taken or omitted that may be determined to constitute negligence; and
- (ff) to do all such other acts and things as are incidental to the foregoing, and to exercise all powers which are necessary or useful to carry on the purposes and activities of the Trust, as enumerated in Section 4.1, to promote any of the purposes for which the Trust is formed, as enumerated in Section 4.1, and to carry out the provisions of this Declaration of Trust whether or not specifically mentioned.

The Trustees shall, except as may be prohibited by law, have the right to delegate authority for the above-referenced matters to an administrator where the Trustees determine in their sole discretion that such delegation is desirable to effect the administration of the duties of the Trustees under the Declaration of Trust and/or the management of the day-to-day affairs of the Trust. The Trustees may also delegate to officers of the Trust certain powers for management of the day-to-day affairs of the Trust provided such delegation is not inconsistent with this Declaration of Trust.

### **9.3 Banking**

The banking activities of the Trust, or any part thereof, including, but without restricting the generality of the foregoing, the operation of the Trust's accounts; the making, signing, drawing, accepting, endorsing, negotiation, lodging, depositing or transferring of any cheques, promissory notes, drafts, acceptances, bills of exchange and orders for the payment of money; the giving of receipts for orders relating to any property of the Trust; the execution of any agreement relating to any property of the Trust; the execution of any agreement relating to any such banking activities and defining the rights and powers of the parties thereto; and the authorizing of any officer of such banker to do any act or thing on the Trust's behalf to facilitate such banking activities, shall be transacted with such bank, trust company, or other firm or corporation carrying on a banking business as the Trustees may designate, appoint or authorize from time to time and shall be transacted on the Trust's behalf by one or more officers of the Trust or such other F.L. Group Member(s) as the Trustees may designate, appoint or authorize from time to time.

### **9.4 Standard of Care and Duties**

The Trustees shall act honestly and in good faith with a view to the best interests of the Trust and the Trust Unitholders and in connection therewith shall exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. The Trustees shall not be liable in carrying out their duties under this Declaration of Trust except in cases where the Trustees fail (a) to act honestly and in good faith with a view to the best interests of the Trust Unitholders and the Trust, or (b) to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. The duties and standard of care of the Trustees provided as aforesaid are intended to be similar to, and not to be any greater than, those imposed on a director of a corporation governed by the *Business Corporations Act* (Ontario). Unless otherwise required by law, the Trustees shall not be required to give bond, surety or security in any jurisdiction for the performance of any duties or obligations hereunder. The Trustees shall not be required to devote their entire time to the investments or business or affairs of the Trust.

### **9.5 Fees and Expenses**

As part of the expenses of the Trust, the Trustees may pay or cause to be paid out of the Trust Assets, reasonable fees, costs and expenses incurred in connection with the administration and management of the Trust, including (without limitation) fees of auditors, accountants, lawyers, appraisers and other agents, consultants and professional advisors employed by or on behalf of the Trust and the cost of reporting or giving notices to Trust Unitholders. All costs, charges and expenses properly incurred by the Trustees on behalf of the Trust may be payable out of the Trust Assets.

### **9.6 Limitations on Liability of Trustees**

- (a) Subject to Section 9.4, none of the Trustees, the officers or any employee or agent of the Trust shall be liable in tort, contract or otherwise to the Trust, to any Trust Unitholder or former Trust Unitholders (in each case whether registered or beneficial) or any other person: (i) for any action taken in good faith in reliance on any documents that are, prima facie, properly executed; (ii) for any depreciation of, or loss to, the Trust incurred by reason of the sale of any security or other property; (iii) for the loss or disposition of monies or securities; (iv) for any action or failure to act of any other person to whom the Trustees have delegated any of their duties under this Declaration of Trust; or (v) for any other action or failure to act including, without limitation, the failure to compel in any way any former Trustee to redress any breach of trust or any failure by any person to perform obligations under or delegated to it under this Declaration of Trust, or to pay monies owed to the Trust, except for a breach of the standard of care, diligence and skill

as set out in Section 9.4. If the Trustees have retained an appropriate expert or advisor with respect to any matter connected with their duties under this Declaration of Trust, the Trustees may act or refuse to act based on the advice of such expert or advisor and, notwithstanding any provision of this Declaration of Trust, including, without limitation, the standard of care, diligence and skill set out in Section 9.4 hereof, the Trustees shall not be liable for any action or refusal to act based on the advice of any such expert or advisor which it is reasonable to conclude is within the expertise of such expert or advisor to give.

- (b) Subject to Section 9.4, none of the Trustees, the officers or any employee or agent of the Trust shall be subject to any liability whatsoever in tort, contract or otherwise, in connection with Trust Assets or the affairs of the Trust, including, without limitation, in respect of any loss or diminution in value of any Trust Assets, to the Trust or to the Trust Unitholders or Annuitants or to any other person for anything done or permitted or omitted to be done by the Trustees. The Trustees shall not be subject to any personal liability for any debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses against or with respect to the Trust arising out of anything done or permitted or omitted to be done in respect of the execution of the duties of the office of Trustees for or in respect to the affairs of the Trust. No property or assets of the Trustees, owned in their personal capacity or otherwise, will be subject to any levy, execution or other enforcement procedure with regard to any obligations under this Declaration of Trust or under any other related agreements. No recourse may be had or taken, directly or indirectly, against the Trustees in their personal capacity or against any incorporator shareholder, director, officer, employee or agent of the Trustees or any successor of the Trustees. The Trust shall be solely liable therefor and resort shall be had solely to the Trust Assets for payment or performance thereof.

#### **9.7 Indemnification of Trustees**

Each Trustee, each former Trustee, each officer of the Trust and each former officer of the Trust shall be entitled to be and shall be indemnified, held harmless and reimbursed out of the Trust Assets in respect of any and all taxes, penalties or interest in respect of unpaid taxes or other governmental charges imposed upon the Trustee or officer in consequence of his performance of his duties hereunder and in respect of any and all costs, charges and expenses, including amounts paid to settle an action or satisfy a judgment, reasonably incurred in respect of any civil, criminal or administrative action or proceeding to which the Trustee, former Trustee, officer or former officer is made a party by reason of being or having been a Trustee or officer of the Trust; provided that a Trustee, former Trustee, officer or former officer shall not be indemnified out of the Trust Assets in respect of unpaid taxes or other governmental charges or in respect of such costs, charges and expenses that arise out of or as a result or in the course of his or her failure to act honestly and in good faith with a view to the best interests of the Trust and the Trust Unitholders (or, in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, where such Trustee did not have reasonable grounds to believe that his or her conduct was lawful). A Trustee, former Trustee, officer or former officer shall not be entitled to satisfy any right of indemnity or reimbursement granted herein, or otherwise existing under law, except out of the Trust Assets, and no Trust Unitholder or other Trustee or officer shall be personally liable to any person with respect to any claim for such indemnity or reimbursement as aforesaid.

#### **9.8 Contractual Obligations of the Trust**

In respect of any obligations or liabilities being incurred by the Trust or the Trustees on behalf of the Trust, the Trustees and the Trust shall make all reasonable efforts to include in any written instrument which is, in the judgment of the Trustees, a material obligation as a specific term of such

obligations or liabilities a contractual provision or be subject to an acknowledgement to the effect that the obligation being created is not personally binding upon and that resort shall not be had to, nor shall recourse or satisfaction be sought from, by way of lawsuit or otherwise, the private property of any of the Trustees, Trust Unitholders, Annuitants or officers, employees or agents of the Trust, but that only property of the Trust or a specific portion thereof shall be bound. The omission of such statement from any such document or instrument shall not render the Trustees or the Trust Unitholders or Annuitants liable to any person, nor shall the Trustees or the Trust Unitholders or the Annuitants be liable for such omission. If, notwithstanding this provision, the Trustees or any Trust Unitholder or Annuitant shall be held liable to any person by reason of the omission of such statement from any such agreement, undertaking or obligation such Trustee or Trust Unitholder or Annuitant shall be entitled to indemnity and reimbursement out of the Trust's property to the full extent of such liability.

#### **9.9 Conflicts of Interest**

- (a) A Trustee or any officer of the Trust who is a party to, or is a director or officer of or has a material interest in any person who is a party to, a material contract or transaction or proposed material contract or transaction with the Trust shall disclose in writing to the Trust the nature and extent of such interest and shall not vote on any resolution to approve the contract.
- (b) The disclosure required in Section 9.9(a) must be made:
  - (i) at the meeting of Trustees at which the proposed material contract or transaction is first considered;
  - (ii) if the Trustee or officer was not then materially interested in the proposed material contract or transaction, at the first such meeting after he or she becomes so materially interested;
  - (iii) if the Trustee or officer becomes materially interested after a material contract or transaction is entered into, at the first meeting of Trustees after he or she becomes so materially interested; or
  - (iv) if a person who is materially interested in a material contract or transaction with the Trust becomes a Trustee or officer, at the first such meeting of Trustees after he or she assumes that capacity.
- (c) Notwithstanding Section 9.9(b), where this Section 9.9 applies to any person in respect of a material contract or transaction or proposed material contract or transaction that, in the ordinary course of business of the Trust, would not require approval by the Trustees or Trust Unitholders, such person must disclose in writing to the Trustees, or request to have entered in the minutes of meetings of the Trustees, the nature and extent of his or her interest forthwith after that person becomes aware of the material contract or transaction or proposed material contract or transaction.
- (d) A Trustee or officer referred to in this section must not vote on any resolution to approve the material contract or transaction, unless the material contract or transaction is one relating primarily to his or her remuneration as a Trustee or officer, one for indemnity or insurance, or one with any Affiliate of the Trust or one with any F.L. Group Member.
- (e) For the purposes hereof, a general notice to the Trustees by a Trustee or an officer of the Trust disclosing that he or she is a director or officer or an individual acting in a similar capacity of, or has a material interest in, any person and is to be regarded as interested in any material contract made or any material transaction entered into with that person is a sufficient disclosure of interest in relation to any contract so made or transaction entered into.

- (f) Where any Trustee or officer of the Trust fails to disclose his or her interest in a material contract or transaction in accordance with the provisions hereof, the Trustees or any Trust Unitholder, in addition to exercising any other rights or remedies in connection with such failure exercisable at law or in equity, may apply to a court for an order setting aside the material contract or transaction and directing that such Trustee or officer account to the Trust for any profit or gain realized.
- (g) Notwithstanding Section 9.9(f) hereof, a Trustee or officer of the Trust, acting honestly and in good faith, is not accountable to the Trust or to the Trust Unitholders for any profit or gain realized from such material contract or transaction, and such material contract or transaction will not be void or voidable and may not be set aside, if:
  - (i) the material contract or transaction was reasonable and fair to the Trust at the time it was approved;
  - (ii) the material contract or transaction is confirmed or approved at a meeting of Trustees duly called for that purpose; and
  - (iii) the nature and extent of the Trustee's or officer's interest in such contract or transaction is disclosed in reasonable detail in the notice calling the meeting of the Trustees.
- (h) Subject to Section 9.9(a), each Trustee, in his or her personal capacity or any other capacity, may buy, lend upon and deal in securities of the Trust and generally may contract and enter into any financial transactions with the Trust without being liable to account for any profit made thereby.
- (i) Any Trustee may act as the trustee and/or administrator of any compensation plan (including any equity related compensation plan) for directors, officers, employees or other persons related to the Trust or any other Affiliate of the Trust, and it will not be a conflict of interest under this Declaration of Trust for the Trustee to so act.
- (j) Subject to Section 9.9(a), each Trustee, in his or her personal capacity or any other capacity, may buy, sell, lend upon and deal in securities of the Trust or any F.L. Group Member and generally may contract and enter into any transactions with the Trust or any F.L. Group Member without being liable to account for any profit made thereby and such contract or transaction shall be neither void nor voidable.
- (k) For greater certainty, a Trustee complying with this Section 9.9 will not be subject to any liability to the Trust or the Trust Unitholders with respect to any such material contract or transaction as aforesaid.
- (l) The provisions of this Section 9.9 shall apply to any Affiliate thereof which is a party to a material contract or transaction or proposed material contract or transaction with the Trust, *mutatis mutandis*.

#### **9.10 Conditions Precedent**

The obligation of the Trustees to commence or continue any act, action, suit or proceeding or to represent the Trust in any action, suit or proceeding shall be conditional upon sufficient funds being available to the Trustees from the Trust Assets to commence or continue such act, action, suit or proceeding or to represent the Trust in any action, suit or proceeding and an indemnity reasonably satisfactory to the Trustees to protect and hold harmless the Trustees against the costs, charges and expenses and liabilities to be incurred therein and any loss and damage they may suffer by reason thereof. None of the provisions contained in this Declaration of Trust shall require the Trustees to expend or risk their own funds or otherwise incur financial liability in the performance of their duties or in the exercise

of any of their rights or powers unless they are given an indemnity and funding satisfactory to the Trustees, acting reasonably.

#### **9.11 Reliance Upon Trustees and Officers**

Any person dealing with the Trust in respect of any matters pertaining to the Trust Assets and any right, title or interest in the Trust Assets or to the Trust or to securities of the Trust shall be entitled to rely on a certificate, statutory declaration or resolution executed or certified by the Trustees or any officer of the Trust appointed by the Trustees as to the capacity, power and authority of the Trustees or any other person to act for and on behalf and in the name of the Trust. No person dealing with the Trustees or officers of the Trust shall be bound to see the application of any funds or property passing into the hands or control of the Trustees or officers of the Trust. The receipt of the Trustees or officers of the Trust for monies or other consideration shall be binding upon the Trust.

#### **9.12 Execution of Instruments and Apparent Authority**

- (a) The Trustees shall have the power, from time to time, to appoint any Trustee or Trustees, any officer or officers of the Trust or any other person or persons on behalf of the Trust to sign agreements, instruments or other documents in writing and to do such acts and agree to such things, on behalf of the Trust, as may be necessary or desirable in connection therewith.
- (b) No purchaser, transfer agent or other person dealing with the Trustees or with any officer of the Trust or agent of the Trustees will be bound to make any enquiry concerning the validity of any transaction purporting to be made by the Trustees or by such officer or agent or make enquiry concerning, or be liable for, the applicable money or property paid, lent or delivered to or on the order of the Trustees or such officer, employee or agent. Any person dealing with the Trust in respect of any matters pertaining to the Trust Assets and any right, title, or interest therein, or to the Trust or the Trust Units will be entitled to rely on a certificate, statutory declaration or resolution executed or certified by the Trustees as to the capacity, power and authority of the Trustees, any consultant or agent or any other person to act for and on behalf and in the name of the Trust. No person dealing with the Trustees or any consultant or agent of the Trust will be bound to see to the application of any funds or property passing into the hands or control of such Trustees, consultant or agent of the Trust. The receipt of the Trustees or of authorized consultants or agents of the Trust, for money or other consideration, will be binding upon the Trust.

### **ARTICLE 10 COMMITTEES OF TRUSTEES**

#### **10.1 Delegation**

Except as prohibited by law, the Trustees may appoint from among their number one or more committees of Trustees and may delegate to any such committee any of the powers of the Trustees, provided that a majority of the Trustees appointed to any committee shall be Residents and provided further that, for greater certainty, any such committee shall not take any action or engage in any activity that the Trustees would be prohibited from taking or engaging in pursuant to the terms of this Declaration of Trust. The Trustees shall have the power to appoint, employ or contract with any person for any matter relating to the Trust or its assets or affairs.

## **10.2 Procedure**

Unless otherwise determined by the Trustees, a quorum for meetings of any committee shall be a majority of its members. Each committee shall have the power to appoint its chairman and to delineate the duties and responsibilities of such chairman. The rules for calling (including, for greater certainty, the giving of notice), location, holding, conducting, participating in, voting at and adjourning meetings of the committee shall be the same as those governing meetings of the Trustees. Each member of a committee shall serve at the pleasure of the Trustees and, in any event, only so long as he shall be a Trustee. The Trustees may fill vacancies in a committee by appointment from among their members. Provided that a quorum is maintained, the committee may continue to exercise its powers notwithstanding any vacancy among its members.

## **ARTICLE 11 AMENDMENT**

### **11.1 Amendment**

The provisions of this Declaration of Trust, except where specifically provided otherwise, may only be amended by the Trustees with the consent of the Trust Unitholders by Special Resolution; provided that the provisions of this Declaration of Trust may be amended by the Trustees at any time and from time to time without the consent, approval or ratification of the Trust Unitholders or any other person:

- (a) at any time for the purpose of ensuring continuing compliance with applicable laws (including the Tax Act), regulations, requirements or policies of any governmental authority having jurisdiction over the Trustees or the Trust or the distribution of Units (including ensuring that the Trust continues to qualify as a "mutual fund trust" within the meaning of the Tax Act and that the Trust Units are not disqualified for investment by Plans);
- (b) at any time for the purpose of making amendments which, in the opinion of counsel to the Trustees, provide additional protection or added benefits for the Trust Unitholders;
- (c) at any time for the purpose of removing any conflicts or inconsistencies in this Declaration of Trust or making minor changes or corrections, including the corrections or rectifications of any ambiguities, defective provisions, errors, mistakes or omissions which are, in the opinion of the Trustees, necessary or desirable and not prejudicial to the Trust Unitholders; or
- (d) for the purpose of:
  - (i) making amendments which, in the opinion of the Trustees, are necessary or desirable as a result of changes in generally accepted accounting principles (including accounting guidelines) or taxation or other laws or the administration or enforcement thereof;
  - (ii) enabling the Trust to issue Trust Units for which the purchase price is payable in instalments; or
  - (iii) any purpose (except one in respect of which a Unitholder vote is specifically otherwise required) if the Trustees are of the opinion that the amendment is not prejudicial to Trust Unitholders and it is necessary or desirable,

but, notwithstanding the foregoing, no such amendment: (i) shall be adopted which causes (A) the Trust to fail or cease to qualify as a "mutual fund trust" under the Tax Act, or (B) the Trust Units to be disqualified for investment by Plans; or (ii) shall (A) modify the right to one vote per Trust Unit or reduce



the fractional undivided interest in the Trust Assets represented by any Trust Unit without the consent of the holder of such Trust Unit, or (B) reduce the percentage of votes required to be cast at a meeting of the Trust Unitholders for the purpose of Section 11.1 without the consent of Trust Unitholders by Special Resolution.

#### **11.2 No Termination**

No amendment to or amendment and restatement of this Declaration of Trust, whether pursuant to this Article 11 or otherwise, shall be construed as a termination of the Trust and the settlement or establishment of a new trust.

#### **11.3 Notification of Amendment**

As soon as shall be practicable after the making of any amendment pursuant to this Article 11, the Trustees shall furnish written notification of the substance of such amendment to each Trust Unitholder.

### **ARTICLE 12 MEETINGS OF TRUST UNITHOLDERS**

#### **12.1 Meetings of Trust Unitholders**

- (a) A meeting of the Trust Unitholders may be called at any time by the Trustees and shall be called by the Trustees upon a written requisition of Trust Unitholders holding in the aggregate not less than 10% of the Trust Units then outstanding, which requisition must specify in reasonable detail the business proposed to be transacted at the meeting. The Trust will not hold annual meetings of Trust Unitholders.
- (b) Subject to Section 12.1(c), if the Trustees do not within 21 days after receiving the requisition referred to in Section 12.1(a) call a meeting, any Trust Unitholder who signed the requisition may call the meeting in accordance with the provisions of this Article 12.
- (c) The Trustees, in their sole discretion, may deny a requisition for a meeting under the following circumstances:
  - (i) it clearly appears to the Trustees, acting reasonably, that the matter covered by the requisition is submitted by the Trust Unitholders primarily for the purpose of enforcing a personal claim or redressing a personal grievance against the Trust, the Trustees, the officers of the Trust or its security holders, or primarily for the purpose of promoting general economic, political, racial, religious, social or similar causes;
  - (ii) it clearly appears to the Trustees, acting reasonably, that the matter covered by the requisition does not relate in a significant way to the business or affairs of the Trust;
  - (iii) the Trust, at the Trust Unitholder's request, included a matter covered by a requisition in an information circular relating to a meeting of Trust Unitholders held within two (2) years preceding the receipt of such request, and the Trust Unitholder failed to present the matter, in person or by proxy, at the meeting;
  - (iv) substantially the same matter covered by the requisition was submitted to Trust Unitholders in an information circular (including a dissident's information circular) relating to a meeting of Trust Unitholders held within two (2) years preceding the receipt of the Trust Unitholder's request and the matter covered by

the requisition did not receive more than 40% of the total number of Trust Units voted; or

- (v) the rights conferred by this Section 12.1 are being abused to secure publicity.
- (d) The chairperson of any meeting shall be the Chairman of the Trustees or in his absence, any other Trustee specified by resolution of the Trustees or, in the absence of any Trustee, any person appointed as chairperson of the meeting by the Trust Unitholders present. The chairperson of the meeting shall appoint the Secretary of the Trust or, in the absence of the Secretary, an individual, who need not be a Trust Unitholder, to act as secretary of the meeting. If desired, one or more scrutineers, who need not be Trust Unitholders, may be appointed by the chairperson.
- (e) The Trustees, the officers of the Trust, the Public Accountants, Counsel and any other person approved by the Trustees or the chairperson of the meeting or by resolution passed by a majority of the votes cast by Trust Unitholders represented at the meeting may attend meetings of the Trust Unitholders.
- (f) To the extent that the rules and procedures for the conduct of a meeting of Trust Unitholders are not prescribed herein, the rules and procedures shall be such reasonable rules and procedures as are determined by the chairperson of the meeting and such rules and procedures shall be binding upon all parties participating in the meeting.

## **12.2 Notice of Meetings**

Notice of all meetings of Trust Unitholders shall be given by unregistered mail, postage prepaid, addressed to each Trust Unitholder at his or her last address on the books of the Trust, mailed at least 30 days and not more than 60 days before the meeting. Such notice shall specify the time when, and the place where, such meeting is to be held and shall specify the nature of the business to be transacted at such meeting in sufficient detail to permit a Trust Unitholder to form a reasoned judgment thereon, together with the text of any Special Resolution, at the time of mailing of the notice, proposed to be passed. Any adjourned meeting, other than a meeting adjourned for lack of a quorum under Section 12.8(b), may be held as adjourned without further notice. The accidental omission to give notice or the non-receipt of such notice by a Trust Unitholder shall not invalidate any resolution passed at any such meeting. Notwithstanding the foregoing, a meeting of Trust Unitholders may be held at any time without notice if all the Trust Unitholders are present or represented thereat or those not so present or represented have waived notice. Any Trust Unitholder (or a duly appointed proxy of a Trust Unitholder) may waive any notice required to be given under the provisions of this section, and such waiver, whether given before or after the meeting, shall cure any default in the giving of such notice. Attendance at a meeting of Trust Unitholders shall constitute a waiver of notice unless the Trust Unitholder or other person attends the meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not properly called.

## **12.3 Quorum**

At any meeting of the Trust Unitholders, subject as hereinafter provided, a quorum shall consist of two (2) or more individuals present in person either holding personally or representing as proxies not less in aggregate than 10% of the votes attached to all outstanding Trust Units. In the event of such quorum not being present at the appointed place on the date for which the meeting is called within 30 minutes after the time fixed for the holding of such meeting, the meeting, if called by request of Trust Unitholders, shall be terminated and, if otherwise called, shall stand adjourned to such day being not less than 7 days later and to such place and time as may be appointed by the chairperson of the meeting. If at such adjourned meeting a quorum as above defined is not present, the Trust Unitholders present either personally or by proxy shall form a quorum, and any business may be brought before or dealt with at such

an adjourned meeting which might have been brought before or dealt with at the original meeting in accordance with the notice calling the same.

The chairperson of any meeting at which a quorum of Trust Unitholders is present may, with a consent of the majority of the Trust Unitholders present in person or by proxy, adjourn any such meeting and no notice of any such adjournment need be given.

#### **12.4 Voting Rights**

Only Trust Unitholders of record on the applicable record date for voting shall be entitled to vote. Each Trust Unit shall entitle the holder or holders of that Trust Unit to one vote on a poll vote at any meeting of Trust Unitholders. Every question submitted to a meeting, other than a Special Resolution, shall, unless a poll vote is demanded, be decided by a show of hands vote, on which every person present and entitled to vote shall be entitled to one vote and unless a poll is demanded, a declaration by the chairperson that a resolution has been carried or carried unanimously or by a particular majority, or lost or not carried by a particular majority, shall be conclusive evidence of the fact. If a poll is demanded concerning the election of a chairperson or an adjournment, it shall be taken immediately upon request and, in any other case, it shall be taken at such time as chairperson of the meeting may direct. The poll shall be taken in such manner as the chairperson may direct. The demand for a poll shall not prevent the continuation of a meeting for the transaction of any business other than the question on which the poll has been demanded.

If Trust Units are held jointly by two (2) or more persons, any one (1) of them present in person or by proxy at the meeting may vote in the absence of the other or others; but if more than one of them is present in person or by proxy, they shall vote together with respect to the Trust Units held jointly, provided that only one of them can vote on a show of hands, and, if they do not agree on how to exercise any vote to which they are jointly entitled (including a vote on a show of hands), they shall, for the purposes of the voting, be deemed not to be present. The chairperson of the meeting shall be entitled to vote in respect of Trust Units held by the chairperson represented by the chairperson by proxy. In the case of an equality of votes, the chairperson shall not have a casting vote and the resolution shall be deemed to be defeated.

#### **12.5 Proxies**

Whenever the vote or consent of Trust Unitholders is required or permitted under this Declaration of Trust, such vote or consent may be given either directly by the Trust Unitholder or by a proxy. The instrument appointing a proxy must be in writing and either substantially in a form which may be approved by the Trustees acting reasonably or as may be satisfactory to the chairperson of the meeting at which it is sought to be exercised. The instrument of proxy must be executed by the Trust Unitholder giving the proxy or his agent duly authorized in writing and, if given on behalf of joint holders, must be executed by all of them and may be revoked by any of them, and, if given by a Trust Unitholder which is a body corporate, must be executed on its behalf by a person duly authorized in writing. Any person may be appointed a proxy, whether or not that person is a Trust Unitholder. The Trustees, on behalf of the Trust, may solicit instruments of proxy from the Trust Unitholders or any of them in respect of any matter requiring or permitting the Trust Unitholder's vote or consent. An instrument of proxy shall be deposited with the chairperson of the meeting before any vote is cast under its authority or at such earlier time or in such manner as the Trustees may prescribe from time to time.

An instrument of proxy executed in compliance with the foregoing shall be valid unless challenged at the time of or prior to its exercise and the person challenging the instrument shall have the burden of proving, to the satisfaction of chairperson of the meeting at which the instrument is proposed to be used, that the instrument of proxy is invalid. Any decision of the chairperson of the meeting in respect

of the validity of an instrument of proxy shall be final and binding upon all persons. An instrument of proxy shall be valid only at the meeting with respect to which it was solicited or any adjournment thereof.

A vote cast in accordance with any proxy shall be valid notwithstanding the death, incapacity, insolvency or bankruptcy of the Trust Unitholder giving the proxy or the revocation of the proxy unless written notice of the death, incapacity, insolvency, bankruptcy of the Trust Unitholder or revocation of the proxy has been received by the chairperson of the meeting prior to the time the vote is cast.

## **12.6 Personal Representatives**

Subject to the provisions of Article 13, if a Trust Unitholder is deceased, his personal representative, upon filing with the secretary of the meeting such proof of his appointment as the secretary considers sufficient, shall be entitled to exercise the same voting rights at any meeting of Trust Unitholders as the Trust Unitholder would have been entitled to exercise if the Trust Unitholder were living and for the purpose of the meeting shall be considered to be a Trust Unitholder. Subject to the provisions of the will of a deceased Trust Unitholder, if there is more than one personal representative, the provisions of Section 12.4 relating to joint holders shall apply.

## **12.7 Resolutions Binding the Trustees**

Trust Unitholders shall be entitled to pass resolutions that will bind the Trust and the Trustees only with respect to the following matters:

- (a) the election or removal of a Trustee to the extent permitted by Article 8;
- (b) the appointment or removal of Public Accountants as provided in Article 17;
- (c) the appointment of an inspector as provided in Section 12.11;
- (d) the approval of amendments of this Declaration of Trust as provided in Article 11;
- (e) the amalgamation, merger, arrangement or capital reorganization of the Trust;
- (f) the termination or dissolution of the Trust, as provided in Section 14.2;
- (g) the sale, lease, exchange or other distribution or disposition of all or substantially all of the Trust Assets;
- (h) the ratification of any Trust Unitholder rights plan, distribution reinvestment plan, distribution reinvestment and Trust Unit purchase plan, Trust Unit option plan or other compensation plan contemplated by Section 5.10 requiring Trust Unitholder approval under laws or regulations applicable to the Trust;
- (i) the creation of new Classes of Units as provided in Section 9.2(w);
- (j) any other matters that the Trustees may determine or as may be properly brought before a meeting of Trust Unitholders including any other matters required by securities law, stock exchange rules or other laws or regulations to be submitted to Trust Unitholders for their approval.

Except with respect to the above matters set out in this Section 12.7, no action taken by the Trust Unitholders or any resolution of the Trust Unitholders at any meeting shall in any way bind the Trustees. Any action taken or resolution passed in respect of any matter at a meeting of Trust Unitholders shall be by Special Resolution, unless the contrary is otherwise expressly provided under any specific provision of this Declaration of Trust and except for the matters set out in Sections 12.7(a), 12.7(b), 12.7(h) and, if applicable, 12.7(j) above which matters may be dealt with by Ordinary Resolution.

## **12.8 Meaning of "Special Resolution"**

- (a) The expression "**Special Resolution**" when used in this Declaration of Trust means, subject to this Article 12, a resolution proposed to be passed as a special resolution at a meeting of Trust Unitholders (including an adjourned meeting) duly convened for that purpose and held in accordance with the provisions of this Article at which two (2) or more individuals present in person either holding personally or representing as proxies not less in aggregate than 10% of the number of Trust Units then outstanding and passed by the affirmative votes of the holders of more than 66 2/3% of the Trust Units represented at the meeting and voted on a poll upon such resolution.
- (b) Notwithstanding Section 12.3, if at any meeting at which a Special Resolution is proposed to be passed the holders of 10% of the aggregate number of Trust Units outstanding are not present in person or by proxy within 30 minutes after the time appointed for the meeting, then the meeting, if convened by or on the requisition of Trust Unitholders, shall be dissolved; but in any other case it shall stand adjourned to such date, being not less than 21 nor more than 60 days later and to such place and time as may be appointed by the chairperson of the meeting. Not less than 10 days prior notice shall be given of the time and place of such adjourned meeting in the manner provided in Section 12.2. Such notice shall state that at the adjourned meeting the Trust Unitholders present in person or by proxy shall form a quorum but it shall not be necessary to set forth the purposes for which the meeting was originally called or any other particulars. At the adjourned meeting, the Trust Unitholders present in person or by proxy shall form a quorum and may transact the business for which the meeting was originally convened and a resolution proposed at such adjourned meeting and passed by the requisite vote as provided in Section 12.8(a) shall be a Special Resolution within the meaning of this Declaration of Trust, notwithstanding that the holders of less than 10% of the aggregate number of Trust Units then outstanding are present in person or by proxy at such adjourned meeting.
- (c) Votes on Special Resolution shall always be given on a poll and no demand for a poll on a Special Resolution shall be necessary.

## **12.9 Meaning of "Outstanding"**

Every Trust Unit issued, certified and delivered hereunder shall be deemed to be outstanding until it shall be cancelled or delivered to the Trustees or Transfer Agent for cancellation provided that:

- (a) when a new certificate has been issued in substitution for a Trust Unit Certificate which has been lost, stolen, mutilated or destroyed, only one of such Trust Unit Certificates shall be counted for the purposes of determining the number of Trust Units outstanding; and
- (b) for the purpose of any provision of this Declaration of Trust entitling holders of outstanding Trust Units to vote, sign consents, requisitions or other instruments or take any action under this Declaration of Trust, Trust Units owned directly or indirectly, legally or equitably, by the Trust shall be disregarded.

## **12.10 Record Date for Voting**

For the purpose of determining the Trust Unitholders who are entitled to vote or act at any meeting or any adjournment thereof, the Trustees may fix a date not more than 60 days and not less than 30 days prior to the date of any meeting of Trust Unitholders as a record date for the determination of Trust Unitholders entitled to vote at such meeting or any adjournment thereof, and any Trust

Unitholder who was a Trust Unitholder at the time so fixed shall be entitled to vote at such meeting or any adjournment thereof even though the Trust Unitholder has since that time disposed of his or her Trust Units, and no Trust Unitholder becoming such after that time shall be so entitled to vote at such meeting or any adjournment thereof. In the event that the Trustees do not fix a record date for any meeting of Trust Unitholders, the record date for such meeting shall be the date upon which notice of the meeting is given as provided under Section 12.2.

#### **12.11 Appointment of Inspector**

The Trustees shall call a meeting of Trust Unitholders upon the written request of Trust Unitholders holding in the aggregate not less than 25% of the Trust Units then outstanding for the purpose of considering the appointment of an inspector to investigate the performance by the Trustees of their responsibilities and duties in respect of the Trust. The requisition must provide a reasonable explanation regarding the necessity of such action and must specifically outline the scope of the inspector's duties and powers. The inspector may be appointed for such purpose, at the expense of the Trust, by a resolution approved by a majority of the votes cast at the meeting. The inspector shall have only those powers considered necessary to perform the investigation, as specifically set out in the resolution to be voted on. The inspector shall not be granted any powers which are inconsistent with this Declaration of Trust. The appointment of an inspector will in no way hinder or diminish the powers vested in the Trustees in this Declaration of Trust and the inspector shall not, under any circumstances, have any powers to act in any capacity as the Trustees or in the place or in the stead of the Trustees in any manner under this Declaration of Trust.

#### **12.12 Resolutions in Writing**

Notwithstanding any other provision of this Declaration of Trust, a resolution in writing circulated to all Trust Unitholders and executed by Trust Unitholders holding more than 50% of the outstanding votes required to vote in favour thereof at a meeting of Trust Unitholders to approve that resolution, if such resolution is an Ordinary Resolution, or a resolution in writing circulated to all Trust Unitholders and executed by Trust Unitholders holding more than 66 2/3% of the outstanding votes required to vote in favour thereof at a meeting of Trust Unitholders to approve that resolution, if such resolution is a Special Resolution, shall be as valid and binding for all purposes of this Declaration of Trust as if such Trust Unitholders had exercised at that time all of the voting rights to which they were then entitled under Section 12.7 or 12.8 in favour of such resolution at a meeting of Trust Unitholders duly called for the purpose.

#### **12.13 Binding Effect of Resolutions**

Every resolution passed in accordance with the provisions of this Declaration of Trust at a meeting of Trust Unitholders shall be binding upon all the Trust Unitholders, whether present at or absent from that meeting, and each and every Trust Unitholder shall be bound to give effect accordingly to every such resolution.

#### **12.14 No Breach**

Notwithstanding any other provision of this Declaration of Trust, Trust Unitholders shall have no power to effect any amendment to this Declaration of Trust which would require the Trustees to take any action or conduct the affairs of the Trust in a manner which would constitute a breach or default by the Trust or the Trustees under any agreement binding on, or obligation of, the Trust or the Trustees.

#### **12.15          Vote by Class**

If, based on the opinion of Counsel to the Trust, a Class of Units is affected by any matter requiring the approval of Trust Unitholders in a manner which is different from units of another Class of Units, the holders of Units of such Class shall be entitled to vote separately as a Class in respect of such matter and, notwithstanding anything to the contrary herein contained, such matter shall not become effective until it has been approved by the holders of Units of each Class entitled to vote thereon. If a Class of Units is affected by any matter requiring approval and the other Class of Units is not affected by such matter, the holders of Units of the Class so affected shall only be entitled to vote in respect of such matter and such other Class of Units shall not be entitled to vote in respect thereof. The provisions of Article 12 shall apply, *mutatis mutandis* to any meeting of the Trust Unitholders of a single Class of Units.

### **ARTICLE 13 CERTIFICATES, REGISTRATION AND TRANSFER OF TRUST UNITS**

#### **13.1          Nature of Trust Units**

The provisions of this Article 13 shall not in any way alter the nature of Trust Units or the relationships of a Trust Unitholder to the Trustees and of one Trust Unitholder to another but are intended only to facilitate the issuance of certificates evidencing the ownership of Trust Units, if desirable to issue them to Trust Unitholders and the recording of all transactions in respect of Trust Units and Trust Unit Certificates, whether by the Trust or other persons.

#### **13.2          Form of Trust Unit Certificates**

- (a) Trust Unit Certificates shall, subject to the provisions hereof, be in such form as is authorized from time to time by the Trustees.
- (b) If issued, Trust Unit Certificates are issuable only in fully registered form.
- (c) The definitive form of the Trust Unit Certificates shall:
  - (i) be in the English language;
  - (ii) be dated as of the date of issue thereof; and
  - (iii) contain such distinguishing letters and numbers as the Trustees shall prescribe.
- (d) In the event that the Trust Unit Certificate is translated into the French language and any provision of the Trust Unit Certificates in the French language shall be susceptible of an interpretation different from the equivalent provision in the English language, the interpretation of such provision in the English language shall be determinative.
- (e) Each Trust Unit Certificate shall be signed on behalf of the Trustees. The signature of the Trustees or any officers on behalf of the Trustees required to appear on such certificate may be printed, lithographed or otherwise mechanically reproduced thereon and, in such event, certificates so signed are as valid as if they had been signed manually.
- (f) The Trust is not bound to issue more than one Trust Unit Certificate in respect of Units held jointly or in common by two (2) or more persons and delivery of a Trust Unit Certificate to one (1) of them shall be sufficient delivery to all.

#### **13.3          Contents of Trust Unit Certificates**

- (a) Until otherwise determined by the Trustees, each Trust Unit Certificate shall legibly set forth on the face thereof, *inter alia*, the following:

- (i) the name of the Trust and the words "A trust created under the laws of the Province of Ontario by a Declaration of Trust dated as of June 18<sup>th</sup>, 2010 as may be further amended from time to time", or words of like effect;
  - (ii) the name of the person to whom the Trust Unit Certificate is issued as Trust Unitholder;
  - (iii) the number and Class of Trust Units represented thereby and whether or not the Trust Units represented thereby are fully paid;
  - (iv) that the Trust Units represented thereby are transferable but that such transfers are subject to restrictions set out in this Declaration of Trust;
  - (v) the words "The Trust Units represented by this certificate are issued upon the terms and subject to the conditions of the Declaration of Trust, which Declaration of Trust is binding upon all holders of Trust Units and, by acceptance of this certificate, the holder assents to the terms and conditions of the Declaration of Trust. A copy of the Declaration of Trust pursuant to which this certificate and the Trust Units represented thereby are issued may be obtained by a Trust Unitholder on demand and without fee from the head office of the Trust", or words of like effect; and
  - (vi) the words "For information as to personal liability of a Trust Unitholder, see the reverse side of this certificate", or words of like effect.
- (b) Until otherwise determined by the Trustees, each such certificate shall legibly set forth on the reverse side thereof, *inter alia*, the following:
- (i) "The Declaration of Trust provides that no Trust Unitholder shall be subject to any personal liability whatsoever, in tort, contract or otherwise, to any person in connection with the assets of the Trust or the obligations or the affairs of the Trust and all such persons shall look solely to the assets of the Trust for satisfaction of claims of any nature arising out of or in connection therewith and the assets of the Trust only shall be subject to levy or execution", or words of like effect; and
  - (ii) appropriate forms of notice of exercise of the right of redemption and of powers of attorney for transferring Trust Units.

The Trust Unit Certificates may be engraved, printed or lithographed, or partly in one form and partly in another, as the Trustees may determine.

#### **13.4 Register of Trust Unitholders**

A register may be kept at the principal corporate office of the Trust which register shall contain the names and addresses of the Trust Unitholders, the respective numbers and Classes of Trust Units held by them, the certificate numbers of certificates representing such Trust Units and a record of all transfers and redemptions thereof. Branch transfer registers shall be maintained at such other offices of the Trust as the Trustees may from time to time designate. Only Trust Unitholders whose Trust Units and/or Trust Unit Certificates are so recorded shall be entitled to receive distributions or to exercise or enjoy the rights of Trust Unitholders hereunder. The Trustees shall have the right to treat the person registered as a Trust Unitholder on the register of the Trust as the owner of such Trust Units for all purposes, including, without limitation, payment of any distribution, giving notice to Trust Unitholders and determining the right to attend and vote at meetings of Trust Unitholders. All issuances of Reinvestment Units shall be recorded in the register of Trust Units, whether or not Trust Unit Certificates are issued in respect thereof.



### 13.5

#### Limitation of Non-Resident Ownership

- (a) At no time may Non-Residents be the beneficial owners of more than 49% of the Trust Units (on either a Non-Diluted or Fully Diluted Basis).
- (b) The Trustees shall have the power and authority to determine from time to time written guidelines with respect to the form and content of a Unitholder's Declaration, the times at which any Unitholder's Declarations are to be requested and any other relevant matters relating to Unitholder's Declarations.

A Unitholder's Declaration shall be in the form and substance from time to time determined by the Trustees and, without limiting the generality of the foregoing, may be required to be in the form of a declaration in writing sworn under oath or affirmed in a manner and in a form acceptable to the Trustees. Without limiting the generality of the foregoing, any Unitholder's Declaration may be required to contain information with respect to:

- (i) whether the Unitholder is the beneficial owner of the applicable Units or whether any other person is the beneficial owner of those Units; and
  - (ii) whether the Unitholder or any other beneficial owner of the Units is a Non-Resident.
- (c) If the Trustees become aware that the limitations on ownership set forth in Section 13.5(a) is, or may be, contravened or that such a situation is imminent, the transfer agent or registrar shall make a public announcement thereof and shall not accept a subscription for Trust Units from or issue or register a transfer of Trust Units to a person unless the person provides a Unitholder's Declaration satisfactory to the Trustees that the person is not a Non-Resident and does not and will not hold Trust Units on behalf of or for the benefit of any Non-Resident and will not be subject to the instructions or influence of any Non-Resident with respect to the voting of any Trust Units. If, notwithstanding the foregoing, the Trustees determine either that more than 49% of the Trust Units (on either a Non-Diluted or Fully Diluted Basis) are held or beneficially owned by Non-Residents the Trustees may send a notice to those Non-Residents holding Trust Units, as applicable, chosen in inverse order to the order of acquisition or registration or in any manner as the Trustees may consider equitable and practicable, requiring them to sell their Trust Units or a portion thereof within a specified period of not less than 30 days. If the Trust Unitholders receiving such notice have not sold the specified number of Trust Units or provided the Trustees with Unitholders' Declarations or other satisfactory evidence within such period that they are not Non-Residents and that they do not and will not hold Trust Units on behalf of or for the benefit of any Non-Resident and that they are not and will not be subject to the instructions or influence of any Non-Resident with respect to the voting of any Trust Units, the Trustees may on behalf of such Trust Unitholders sell such Trust Units and, in the interim, shall suspend the voting and distribution rights attached to such Trust Units. Upon such sale, the affected holders shall cease to be holders of such Trust Units and their rights in respect of such Trust Units shall be limited to receiving the net proceeds of sale upon surrender of the certificates representing such Trust Units.
- (d) Subject to Section 9.6, unless and until the Trustees shall have been required to do so under the terms hereof, the Trustees shall not be bound to do or take any proceeding or action with respect to this Section 13.5 by virtue of the powers conferred on them hereby. The Trustees shall have the sole right and authority to make any determination required or contemplated under this Section 13.5. The Trustees shall make all determinations

necessary for the administration of the provisions of this Section 13.5 and, without limiting the generality of the foregoing, if the Trustees consider that there are reasonable grounds for believing that a contravention of the limitations on ownership set forth in Section 13.5(a) has occurred or will occur, the Trustees shall make a determination with respect to the matter. Any such determination shall be conclusive, final and binding except to the extent modified by any subsequent determination by the Trustees. In any situation where it is unclear whether Trust Units are held for the benefit of Non-Residents, the Trustees may exercise their discretion in determining whether such Trust Units are or are not so held, and any such exercise by them of their discretion shall be binding for the purposes of this Section 13.5. Notwithstanding the foregoing, the Trustees may delegate, in whole or in part, their power to make a determination in this respect to any officer of the Trust.

### 13.6

#### Transfer of Trust Units

- (a) Subject to the provisions of this Article 13 and applicable securities laws, the Trust Units shall be fully transferable without charge as between persons, but no transfer of Trust Units shall be effective as against the Trustees or shall be in any way binding upon the Trustees until the transfer has been approved by the Trustees and recorded on the Registers.
- (b) No transfer of a Trust Unit will be recognized unless such transfer is of a whole Trust Unit, unless otherwise determined by the Trustees.
- (c) Subject to the provisions of this Article 13, Trust Units shall be transferable on the Registers only by the Trust Unitholders of record thereof or their executors, administrators or other legal representatives or by their agents or attorneys duly authorized in writing, and only upon delivery to the Trust of the certificate therefor, properly endorsed or accompanied by a duly executed instrument of transfer or power of attorney and accompanied by all necessary transfer or other taxes imposed by law, together with such evidence of the genuineness of such endorsement, execution and authorization and other matters that may reasonably be required by the Trustees. Upon such delivery, the transfer shall be recorded on the Registers and a new certificate for the Trust Units shall be issued to the transferee and a new certificate for the balance of Trust Units not transferred shall be issued to the transferor.
- (d) Any person becoming entitled to any Trust Units as a consequence of the death, bankruptcy or mental incompetence of any Trust Unitholder, or otherwise by operation of law, shall be recorded as the holder of such Trust Units and shall receive, in the case of Trust Units, a new Trust Unit Certificate therefor only upon production of evidence satisfactory to the Trustees and delivery of the existing certificate to the Trustees, but until such record is made the Trust Unitholder of record shall continue to be and be deemed to be the holder of such Trust Units for all purposes whether or not the Trustees shall have actual or other notice of such death or other event.
- (e) Trust Unit Certificates representing any number of Trust Units may be exchanged without charge for Trust Unit Certificates representing an equivalent number of Trust Units in the aggregate. Any exchange of Trust Unit Certificates may be made at the offices of the Trust where Registers are maintained for Trust Unit Certificates pursuant to the provisions of this Article 13. Any Trust Unit Certificates tendered for exchange shall be surrendered to the Trustees and then shall be cancelled.

### **13.7 Trust Units Held Jointly or in a Fiduciary Capacity**

Except as herein provided, the Trustees may treat two (2) or more persons holding any Trust Units as joint owners of the entire interest therein unless their ownership is expressly otherwise recorded on the Register of the Trust, but no entry shall be made in the Register or on any certificate that any person is in any other manner entitled to any future, limited or contingent interest in any Trust Units; provided, however, that any person recorded as a Trust Unitholder may, subject to the provisions hereinafter contained, be described in the Register or on any certificate as a fiduciary of any kind and any customary words may be added to the description of the holder to identify the nature of such fiduciary relationship.

### **13.8 Performance of Trust**

The Trustees, the Trust and any officers of the Trust, shall not be bound to be responsible for or otherwise inquire into or ensure the performance of any trust, express, implied or constructive, or of any pledge or equity to which any of the Trust Units or any interest therein are or may be subject, or to ascertain or enquire whether any transfer of any such Trust Units or interests therein by any such Trust Unitholder or by his or her personal representatives is authorized by such trust, pledge, or equity, or to recognize any person as having any interest therein except for the person recorded as Trust Unitholder.

### **13.9 Lost Certificates**

In the event that any certificate for Trust Units is lost, stolen, destroyed or mutilated, the Trustees may authorize the issuance of a new certificate for the same number of Trust Units in lieu thereof. The Trustees may in their sole discretion, before the issuance of such new certificate, require the owner of the lost, stolen, destroyed or mutilated certificate, or the legal representative of the owner, to make an affidavit or statutory declaration setting forth such facts as to the loss, theft, destruction or mutilation as the Trustees may deem necessary, to surrender any mutilated certificate and shall require the applicant to supply to the Trust a "Lost Certificate Bond" or a similar bond in such reasonable sum as the Trustees may direct indemnifying the Trust for so doing.

### **13.10 Death of a Trust Unitholder**

The death of a Trust Unitholder during the continuance of the Trust shall not terminate the Trust or any of the mutual or respective rights and obligations created by or arising under this Declaration of Trust nor give such Trust Unitholder's personal representatives a right to an accounting or take any action in court or otherwise against other Trust Unitholders or the Trustees or the Trust Assets, but shall merely entitle the personal representatives of the deceased Trust Unitholder to demand and receive, pursuant to the provisions hereof, a new certificate for Trust Units in place of the certificate held by the deceased Trust Unitholder, if any, and upon the acceptance thereof such personal representatives shall succeed to all rights of the deceased Trust Unitholder under this Declaration of Trust.

### **13.11 Offer for Trust Units**

(a) In this Section 13.11:

- (i) "Dissenting Offeree" means, where an Offer is made for all the Trust Units, a holder of a Trust Unit who does not accept the Offer, and includes a subsequent holder of a Trust Unit that is the subject of the Offer;
- (ii) "Offer" means an offer to acquire, directly or indirectly, outstanding Trust Units (including securities then currently convertible, exchangeable or exercisable for Trust Units) where, as of the date of the offer to acquire, either the Trust Units that are the subject of the offer to acquire, together with the Offeror's Trust Units,

constitute in the aggregate 20% or more of all outstanding Trust Units, or the offer to acquire is made by the Trust itself;

- (iii) **"Offer to Acquire"** includes an acceptance of an offer to sell;
- (iv) **"Offeror"** means a person, or two (2) or more persons acting jointly or in concert, who makes an Offer, and includes the Trust itself if the Trust makes an Offer;
- (v) **"Offeror's Notice"** means the notice described in Section 13.1 l(c); and
- (vi) **"Offeror's Units"** means Trust Units beneficially owned, or over which control or direction is exercised, on the date of an Offer by the Offeror or any Affiliate or associate of the Offeror.

- (b) If an Offer is made for all outstanding Trust Units (other than Trust Units held by or on behalf of the Offeror or any Affiliate or associate of the Offeror or any person acting jointly or in concert with the Offeror, within the meaning of the *Securities Act* (Ontario)) and, by such Offer, the Offeror agrees to be bound by the provisions of this Section 13.11, and:

- (i) within the time provided in the Offer for its acceptance or within 120 days after the date the Offer is made, whichever period is the longer, the Offer is accepted by the holders of at least 90% of the outstanding Trust Units other than the Offeror's Trust Units; and
- (ii) the Offeror has taken up and paid for the Trust Units of the Trust Unitholders who accepted the Offer;

then:

- (iii) the Offeror will be entitled to acquire, and the Dissenting Offerees will be required to sell to the Offeror, the Trust Units held by the Dissenting Offerees on the terms on which the Offeror acquired the Trust Units of the Trust Unitholders who accepted the Offer,

provided that the Offeror complies with Section 13.1 l(c) and Section 13.1 l(e).

- (c) Where an Offeror is entitled to acquire Trust Units held by a Dissenting Offeree pursuant to Section 13.11(b), and the Offeror wishes to exercise such right, the Offeror must send by registered mail before the earlier of 60 days after the date of termination of the Offer and 180 days following the date of the Offer a notice (the **"Offeror's Notice"**) to each Dissenting Offeree stating that:

- (i) Trust Unitholders holding at least 90% of the outstanding Trust Units other than the Offeror's Trust Units, have accepted the Offer;
- (ii) the Offeror has taken up and paid for the Trust Units of the Trust Unitholders who accepted the Offer;
- (iii) a Dissenting Offeree must transfer his, her or its respective Trust Units to the Offeror on the terms on which the Offeror acquired the Trust Units of the Trust Unitholders who accepted the Offer within 21 days after the date of the sending of the Offeror's Notice; and
- (iv) Dissenting Offerees must send the Unit Certificates representing their respective Trust Units to the Trust, duly endorsed for transfer, within 21 days after the date of the sending of the Offeror's Notice.

- (d) A Dissenting Offeree to whom an Offeror's Notice is sent pursuant to Section 13.11(c), must, within 21 days after the sending of the Offeror's Notice, as applicable, send the Unit Certificate representing his, her or its Trust Units to the Trust, duly endorsed for transfer, if a Unit Certificate for such Trust Units has been provided.
- (e) Within 21 days after the Offeror sends an Offeror's Notice pursuant to Section 13.11(c), the Offeror must pay or transfer to the Trustees, or to such other person as the Trustees may direct, the cash or other consideration that the Offeror would have had to pay to the Dissenting Offeree had they accepted the Offer in respect of the Units that they continue to hold.
- (f) The Trustees, or the person directed by the Trustees, must hold in trust for the Dissenting Offerees the cash or other consideration received under Section 13.11(e), but such cash or other consideration shall not form any part of the Trust Assets. The Trustees, or such persons, shall deposit such cash in a separate account in a Canadian chartered bank, and shall place such other consideration in the custody of a Canadian chartered bank or similar institution, for safekeeping.
- (g) Within 30 days after the date of the sending of an Offeror's Notice pursuant to Section 13.11(c), the Trustees, if the Offeror has complied with Section 13.11(e), shall:
  - (i) do or cause to be done all acts and things and execute and cause to be executed all instruments as in the opinion of the Trustees may be necessary or desirable to cause the transfer of the Trust Units of the Dissenting Offerees to the Offeror;
  - (ii) send or cause to be sent to each Dissenting Offeree who has complied with section 13.11(d) the consideration to which such Dissenting Offeree is entitled under this section 13.11; and
  - (iii) send or cause to be sent to each Dissenting Offeree who has not complied with section 13.11(d) a notice stating that:
    - (iv) his Trust Units have been transferred to the Offeror;
    - (v) the Trustees or some other person designated in such notice are holding in trust the consideration for such Trust Units; and
    - (vi) the Trustees, or such other person, will send the consideration to such Dissenting Offeree as soon as practicable after receiving the certificate(s) representing such Dissenting Offeree's Trust Units or such other documents as the Trustees or such other person may require in lieu thereof;

and the Trustees are hereby appointed the agent and attorney of the Dissenting Offeree for the purposes of giving effect to the foregoing provisions.
- (h) Subject to applicable law, an Offeror cannot make an Offer for Trust Units unless, concurrent with the communication of the Offer to any Trust Unitholder, a copy of the Offer is provided to the Trust.

### **13.12 Repurchase of Trust Units**

The Trust shall be entitled to purchase for cancellation at any time the whole or from time to time any part of the outstanding Trust Units, at a price per Trust Unit and on a basis to be determined by the Trustees in compliance with all applicable securities regulatory laws, regulations or policies or the policies of any applicable stock exchange.

## **ARTICLE 14 TERMINATION**

### **14.1 Term of Trust**

Subject to the other provisions of this Declaration of Trust, the Trust shall continue for a term ending on June 18, 2040. For the purpose of terminating the Trust by such date, the Trustees shall commence to wind-up the affairs of the Trust on such date as may be determined by the Trustees, being not more than two (2) years prior to the end of the term of the Trust.

### **14.2 Termination with the Approval of Trust Unitholders**

The Trust Unitholders may vote by Special Resolution to terminate the Trust at any meeting of Trust Unitholders duly called by the Trustees for the purpose of considering termination of the Trust, following which the Trustees shall commence to wind up the affairs of the Trust. Such Special Resolution may contain such directions to the Trustees as the Trust Unitholders determine, including a direction to distribute some or all of the Trust Assets.

### **14.3 Procedure Upon Termination**

Forthwith upon being required to commence to wind up the affairs of the Trust, the Trustees shall give notice thereof to the Trust Unitholders, which notice shall designate the time or times at which Trust Unitholders may surrender their Trust Units for cancellation and the date at which the Registers shall be closed.

### **14.4 Powers of the Trustees Upon Termination**

After the date on which the Trustees are required to commence to wind up the affairs of the Trust, the Trustees shall undertake no activities except for the purpose of winding-up the affairs of the Trust as hereinafter provided and, for this purpose, the Trustees shall continue to be vested with and may exercise all or any of the powers conferred upon the Trustees under this Declaration of Trust.

### **14.5 Sale of Investments**

After the date referred to in Section 14.3, the Trustees shall proceed to wind up the affairs of the Trust as soon as may be reasonably practicable and for such purpose shall, subject to any direction to the contrary in respect of a termination authorized under Section 14.2, sell and convert into money the Trust Assets in one transaction or in a series of transactions at public or private sales and do all other acts appropriate to liquidate the Trust Assets, and shall in all respects act in accordance with the directions, if any, of the Trust Unitholders (in respect of a termination authorized under Section 14.2). If the Trustees are unable to sell all or any of the Trust Assets by the date set for termination, the Trustees may, subject to obtaining all necessary regulatory approvals, distribute the remaining securities or other assets directly to the Trust Unitholders of each Class on a *pro rata* basis with Trust Unitholders holding Units of the same Class.

### **14.6 Distribution of Proceeds or Assets**

After paying, retiring or discharging or making provision for the payment, retirement or discharge of all known liabilities and obligations of the Trust and providing for indemnity against any other outstanding liabilities and obligations, the Trustees shall, subject to obtaining all necessary regulatory approvals, distribute the remaining part of the proceeds of the sale of Trust Assets together with any cash forming part of the Trust Assets among the Trust Unitholders of each Class on a *pro rata* basis with Trust Unitholders holding Units of the same Class, in accordance with Section 3.1 hereof.

#### **14.7 Further Notice to Trust Unitholders**

In the event that less than all of the Trust Unitholders have surrendered their Trust Units for cancellation within six (6) months after the time specified in the notice referred to in Section 14.3, the Trustees shall give further notice to the remaining Trust Unitholders to surrender their Trust Units for cancellation and if, within one (1) year after the further notice, all the Trust Units shall not have been surrendered for cancellation, such remaining Trust Units shall be deemed to be cancelled without prejudice to the rights of the holders of such Trust Units, if applicable, to receive their *pro rata* share of the remaining Trust Assets, and the Trustees may either take appropriate steps, or appoint an agent to take appropriate steps, to contact such Trust Unitholders (deducting all expenses thereby incurred from the amounts to which such Trust Unitholders are entitled as aforesaid) or, in the discretion of the Trustees, may pay such amounts into court.

#### **14.8 Responsibility of the Trustees after Sale and Conversion**

The Trustees shall be under no obligation to invest the proceeds of any sale of investments or other assets or cash forming part of the Trust Assets after the date referred to in Section 14.3 and, after such sale, the sole obligation of the Trustees under this Declaration of Trust shall be to hold such proceeds or assets in trust for distribution under Section 14.6.

### **ARTICLE 15 SUPPLEMENTAL INDENTURES**

#### **15.1 Provision for Supplemental Indentures for Certain Purposes**

The Trustees may, without approval of the Trust Unitholders and subject to the provisions hereof, and shall, when so directed in accordance with the provisions hereof, execute and deliver indentures or instruments supplemental hereto which thereafter shall form part hereof, for any one (1) or more or all of the following purposes:

- (a) modifying or amending any provisions of this Declaration of Trust in the circumstances set forth in Section 11.1 where the Trustees may do so without the consent, approval or ratification of the Trust Unitholders or any other person; and
- (b) modifying or amending any provisions of this Declaration of Trust where the modification or amendment has been approved by Ordinary Resolution or Special Resolution, as the case may be, or, if required, with the consent of the holders of all of the Trust Units,

and any such indenture or instrument supplemental to this Declaration of Trust shall be binding on all parties, including without limitation, all Trust Unitholders on the later of (i) the date of the execution thereof, and (ii) the effective date of any required approval by Trust Unitholders with respect to that indenture or instrument.

## **ARTICLE 16 GENERAL**

### **16.1 Notices**

- (a) Any notice or other document required to be given or sent to Trust Unitholders under this Declaration of Trust shall be given or sent through ordinary post addressed to each registered holder at his or her last address appearing on the Registers; provided that if there is a general discontinuance of postal service due to strike, lockout or otherwise, such notice may be given by publication twice in the Report on Business section of the National Edition of The Globe and Mail or similar section of any other newspaper having national circulation in Canada; provided further that if there is no newspaper having national circulation, then by publishing twice in the business section of a newspaper in each city where a Register is maintained. Any notice so given shall be deemed to have been given on the day following that on which the letter or circular was posted or, in the case of notice being given by publication, after publishing such notice twice in the designated newspaper or newspapers. In proving notice was posted, it shall be sufficient to prove that such letter or circular was properly addressed, stamped and posted.
- (b) Any written notice or written communication given to the Trustees shall be addressed to the Trustees at the head office of the Trust as designated pursuant to Section 2.4, and shall be deemed to have been given on the date of delivery or, if mailed, five (5) days from the date of mailing. If any such notice or communication shall have been mailed and if regular mail service shall be interrupted by strikes or other irregularities, such notice or communication shall be deemed to have been received 48 hours after 12:01 a.m. on the day following the resumption of normal mail service, provided that during the period that regular mail service shall be interrupted any notice or other communication shall be given by personal delivery or by cable, telegram, telex or other means of prepaid, transmitted or recorded communication.

### **16.2 Failure to Give Notice**

The failure by the Trustees, by accident or omission or otherwise unintentionally, to give any Trust Unitholder any notice provided for herein shall not affect the validity, effect or taking effect of any action referred to in such notice, and the Trustees shall not be liable to any Trust Unitholder for any such failure.

### **16.3 Joint Holders**

Service of a notice or document on any one of several joint holders of Trust Units shall be deemed effective service on the other joint holders.

### **16.4 Service of Notice**

Any notice or document sent by post to or left at the address of a Trust Unitholder pursuant to this Article shall, notwithstanding the death or bankruptcy of such Trust Unitholder, and whether or not the Trustees have notice of such death or bankruptcy, be deemed to have been fully served and such service shall be deemed sufficient service on all persons having an interest in the Trust Units concerned.

### **16.5 Agent For Service**

Each Trust Unitholder appoints the Trustees as his/her agent for service in the Province of Ontario in respect of all matters concerning and/or relating to the Trust Units and authorizes and directs the Trustees to record his/her address in the securities register as *c/o The Trustees: First Leaside*



*Mortgage Fund, 430 Regional Road #8, RR 1 Uxbridge, Ontario, L9P 1R1*; provided that the Purchaser understands that the General Partner may be required by law or otherwise to disclose to regulatory authorities the identity of the Purchaser and agrees that such information may be provided by the General Partner if, as and when required.

#### **16.6 Information Available to Trust Unitholders**

Each Trust Unitholder shall have the right to obtain, on demand and without fee, from the head office of the Trust a copy of this Declaration of Trust and any amendments thereto relating to Trust Units and shall be entitled to inspect and, on payment of a reasonable fee therefor and after delivering to the Trustees a statutory declaration stating the name and address of the person requiring the Trustees to furnish the list of Trust Unitholders and, if the person is a body corporate, the address for service thereof, and that the list will not be used except in connection with:

- (a) an effort to influence the voting of the holders of Trust Units;
- (b) an offer to acquire Trust Units; or
- (c) any other matter relating to the Trust Units or the affairs of the Trust,

obtain a list of the Trust Unitholders for the aforesaid purposes.

#### **16.7 Fiscal Year and Taxation Year**

The fiscal year and taxation year of the Trust shall end on December 31 of each year.

#### **16.8 Financial Disclosure**

The Trust will send (or make available if sending is not required by law) to Trust Unitholders:

- (a) within the time prescribed by applicable securities laws, the annual financial statements of the Trust prepared as at the end of each fiscal year of the Trust, together with comparative financial statements for the preceding fiscal year, if any, and the report of the Public Accountants thereon referred to in Section 17.4; and
- (b) within the time prescribed by applicable securities laws, unaudited quarterly financial statements of the Trust for such fiscal quarter (other than in respect of the fourth quarter of each fiscal year) together with comparative financial statements for the same fiscal quarter in the preceding fiscal year, if any.

Such financial statements shall be prepared in accordance with generally accepted accounting principles in Canada as recommended from time to time in the Handbook of the Canadian Institute of Chartered Accountants; provided that such statements and the obligations to deliver such statements may vary from such principles to the extent required to comply with applicable securities laws or securities regulatory requirements or to the extent permitted by applicable securities regulatory authorities.

#### **16.9 Trust Unitholder Meeting Information**

Prior to each meeting of Trust Unitholders, the Trustees will provide to each Trust Unitholder, together with the notice of the meeting:

- (a) a form of proxy which can be used by a Trust Unitholder to appoint a proxy, who need not be a Trust Unitholder, to attend and act at the meeting on behalf of the Trust Unitholder, in the manner and to the extent authorized by the proxy; and

- (b) all information required by applicable law.

**16.10 Taxation Information**

Within 90 days from the end of each calendar year, the Trust will provide to Trust Unitholders who received distributions from the Trust in the prior calendar year, such information regarding the Trust required by Canadian law to be submitted to Trust Unitholders for income tax purposes to enable Trust Unitholders to complete their tax returns in respect of the prior calendar year.

**16.11 Income Tax Matters**

In respect of the first taxation year of the Trust, the Trust shall elect pursuant to Subsection 132(6.1) of the Tax Act that the Trust be deemed to be a mutual fund trust for the entire year. The Trustees shall satisfy, perform and discharge all obligations and responsibilities of the Trustees under the Tax Act or any similar provincial legislation and neither the Trust nor the Trustees shall be accountable or liable to any Trust Unitholders by reason of any act or acts of the Trustees consistent with, or which the Trustees believe in good faith to be consistent with, any such obligations or responsibilities. The Trustees shall determine the tax deductions, allowances and credits to be claimed, and designations to be made by the Trust in any year, and the Trustees shall claim those deductions, allowances and credits and make those designations for the purposes of computing the income of the Trust and the amount of tax payable, if any, by the Trust pursuant to the provisions of the Tax Act. In calculating Income of the Trust for income tax purposes, the Trust will claim the maximum amount available to it as deductions under applicable laws, unless the Trustees determine otherwise.

**16.12 Protective Classification Election**

Within 70 days following each Date of Closing, the Trust shall file with the United States Internal Revenue Service a protective election on Form 8832, effective immediately prior to the Closing, to be classified as a partnership for United States federal income tax purposes.

**16.13 Trust Records**

The Trustees shall prepare and maintain, at the head office of the Trust or at any other place in Canada designated by the Trustees, records containing: (i) the Declaration of Trust; and (ii) minutes of meetings and resolutions of the Unitholders. The Trust shall also prepare and maintain adequate accounting records and records containing minutes of meetings and resolutions of the Trustees and each committee thereof. Such records shall be kept at the head office of the Trust or at such other place in Canada as the Trustees think fit and shall at all reasonable times be open to inspection by the Trustees.

**16.14 Consolidations**

Any one (1) or more Trustees may prepare consolidated copies of the Declaration of Trust as it may from time to time be supplemented, amended or amended and restated and may certify the same to be a true consolidated copy of the Declaration of Trust, as supplemented, amended or amended and restated.

**ARTICLE 17  
PUBLIC ACCOUNTANTS**

**17.1 Qualification of Public Accountants**

The Public Accountants shall be an independent recognized firm of accountants which has an office in Canada.

**17.2 Appointment of Public Accountants**

Sloan Partner LLP Services are appointed as the Public Accountants of the Trust, to hold that office until their resignation or removal in accordance with Section 17.3. The Public Accountants will receive such remuneration as may be approved by the Trustees.

**3.13 Change of Public Accountants**

The Public Accountants may at any time be removed by the Trustees with the approval of an Ordinary Resolution passed by Trust Unitholders at a meeting of Trust Unitholders duly called for the purpose and, upon the resignation or the removal of the Public Accountants as aforesaid, new public accountants may be appointed by an Ordinary Resolution passed by Trust Unitholders at a meeting duly called for the purpose or, in the absence of such meeting, by the Trustees.

**17.4 Review of Public Accountants**

The Public Accountants shall review the accounts of the Trust at least once in each year and a report of the Public Accountants with respect to the annual financial statements of the Trust shall be provided to each Trust Unitholder with the annual financial statements referred to in Section 16.8.

**ARTICLE 18  
MISCELLANEOUS**

**18.1 Counterparts**

This Declaration of Trust may be simultaneously executed in counterparts, each of which when executed shall be deemed to be an original, and such counterparts, together, shall constitute but one and the same instrument, which shall be sufficiently evidenced by any such original counterparts.

**18.2 Severability**

If any provision of this Declaration of Trust shall be held invalid or unenforceable in any jurisdiction, such invalidity or unenforceability shall attach only to such provision in such jurisdiction and shall not in any manner affect or render invalid or unenforceable such provision in any other jurisdiction or any other provision of this Declaration of Trust in any jurisdiction.

**18.3 Accounting Principles**

All accounting terms not specifically defined in this Declaration of Trust will be interpreted in accordance with GAAP. Where the character or amount of any asset or liability or item of revenue or expense or amount of equity is required to be determined, or any consolidation or other accounting computation is required to be made, for the purpose of this Declaration of Trust, such determination or calculation will, to the extent applicable and except as otherwise specified herein or as otherwise determined by the Trustees, be made in accordance with GAAP.

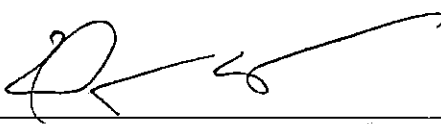
**18.4 Language**

The parties hereto have required that this Declaration of Trust and all documents and notices resulting herefrom be drawn up in English. *Les parties aux présentes ont expressément convenu que la présente convention ainsi que tous les documents et avis qui s'y rattachent et/ou qui en découleront soient rédigés en anglais.*

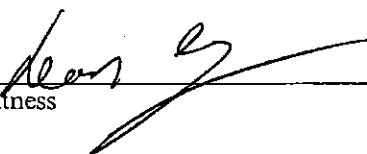
IN WITNESS WHEREOF this Trust Agreement had been executed as of the 18<sup>th</sup> day of June, 2010.

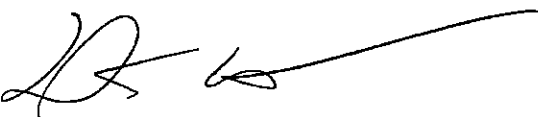
TRUSTEE

  
\_\_\_\_\_  
Witness

  
\_\_\_\_\_  
David C. Phillips

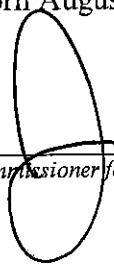
INITIAL UNITHOLDER

  
\_\_\_\_\_  
Witness

  
\_\_\_\_\_  
David C. Phillips

TAB J

This is Exhibit "J" referred to in the Affidavit of Henry  
Wemekamp, sworn August 22, 2012



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*Commissioner for Taking Affidavits (or as may be)*

**F.L. Master Texas Ltd.**  
**(A Texas Limited Partnership)**

**Financial Statements**  
**(unaudited)**

**December 31, 2010**

**F.L. Master Texas Ltd.**

Balance Sheet  
(Expressed in U.S. dollars)

December 31, 2010, with comparative figures for 2009  
(unaudited)

|                          | 2010              | 2009              |
|--------------------------|-------------------|-------------------|
| <b>Assets</b>            |                   |                   |
| Cash                     | 38,835            | 561,642           |
| Accounts receivable      | 100               | 100               |
| Due from related parties | 30,430,969        | 20,933,678        |
|                          | <u>30,469,904</u> | <u>21,495,420</u> |

**Liabilities and Shareholders' Equity**

|                                          |                   |                   |
|------------------------------------------|-------------------|-------------------|
| Liabilities:                             | 10,596            | 11,291            |
| Accounts payable and accrued liabilities | 13,055,795        | 12,586,402        |
| Deficiency in investments                | 52,665,341        | 33,196,694        |
| Promissory notes payable                 |                   |                   |
|                                          | (35,261,828)      | (24,298,967)      |
| Partners' Equity (deficiency)            | <u>30,469,904</u> | <u>21,495,420</u> |
|                                          | (0.78)            | (0.78)            |



**F.L. Master Texas Ltd.**Statement of Operations  
(Expressed in U.S. dollars)For the year ended December 31, 2010, with comparative figures for 2009  
(unaudited)

|                                         | 2010                  | 2009               |
|-----------------------------------------|-----------------------|--------------------|
| <b>Revenue</b>                          |                       |                    |
| Revenue:                                |                       |                    |
| Interest and other                      | 719                   | 177                |
|                                         | <u>719</u>            | <u>177</u>         |
| <b>Expenses</b>                         |                       |                    |
| Operating Expenses:                     |                       |                    |
| Advisory fees                           | 844,950               | 489,642            |
| Administration                          | 3,917,449             | 2,567,139          |
|                                         | <u>4,762,399</u>      | <u>3,056,781</u>   |
| Unrealized foreign exchange (gain) loss | 597,970               | 1,305,239          |
| Loss on investments                     | 5,603,212             | 4,184,375          |
|                                         | <u>6,201,182</u>      | <u>5,489,613</u>   |
| <b>Net Income (Loss)</b>                | <b>(10,962,861) ✓</b> | <b>(8,546,217)</b> |

**F.L. Master Texas Ltd.****Statement of Partners' Equity**  
(Expressed in U.S. dollars)For the year ended December 31, 2010, with comparative figures for 2009  
(unaudited)

|                                      |                    |                     | 2010                | 2009                |
|--------------------------------------|--------------------|---------------------|---------------------|---------------------|
|                                      | General<br>Partner | Limited<br>Partners |                     |                     |
| Partners' equity, beginning of year  | (2,884)            | (24,296,083)        | (24,298,967)        | (20,297,689)        |
| Net income (loss)                    | (1,096)            | (10,961,765)        | (10,962,861)        | (8,546,217)         |
| Contributions                        | -                  | -                   | -                   | 4,544,939           |
| Distributions                        | -                  | -                   | -                   | -                   |
| <b>Partners' equity, end of year</b> | <b>(3,980)</b>     | <b>(35,257,848)</b> | <b>(35,261,828)</b> | <b>(24,298,967)</b> |
|                                      |                    |                     | 0.78                | 0.78                |

**F.L. Master Texas Ltd.**Statement of Cash Flows  
(Expressed in U.S. dollars)For the year ended December 31, 2010, with comparative figures for 2009  
(unaudited)

|                                          | 2010         | 2009        |
|------------------------------------------|--------------|-------------|
| Cash provided by (used in):              |              |             |
| Operating activities:                    |              |             |
| Net income (loss)                        | (10,962,861) | (8,546,217) |
| Add back:                                |              |             |
| Loss on investment                       | -            | -           |
| Change in other non-cash operating items | (9,941)      | 12,775      |
|                                          | (10,972,802) | (8,533,442) |
| Financing activities:                    |              |             |
| Contributions                            | -            | 4,544,939   |
| Distributions                            | -            | -           |
| Due to/from related parties              | (9,482,029)  | (7,919,993) |
| Promissory notes issued                  | 9,725,651    | 12,201,517  |
| Issue costs                              | -            | -           |
|                                          | 243,622      | 8,826,463   |
| Investing activities:                    |              |             |
| Additional investments                   | 469,393      | 98,119      |
|                                          | 469,393      | 98,119      |
| Increase (decrease) in cash              | (10,259,788) | 391,140     |
| Cash, beginning of year                  | 561,642      | 170,502     |
| Cash, end of year                        | (9,698,146)  | 561,642     |



**F.L. Master Texas Ltd.****AR1**

Accounts Receivable  
(Expressed in U.S. dollars)

For the year ended December 31, 2010, with comparative figures for 2009  
(unaudited)

|      |                         | 2010          | 2009          | \$ Change | % Change  |
|------|-------------------------|---------------|---------------|-----------|-----------|
| 1100 | Accounts Receivable     | -             | -             | -         | 0%        |
| 1115 | Interest Receivable     | -             | -             | -         | 0%        |
| 1120 | Subscription Receivable | 100.00        | 100.00        | -         | 0%        |
| 1200 | Prepaid & Deposits      | -             | -             | -         | 0%        |
|      |                         | <u>100.00</u> | <u>100.00</u> | <u>-</u>  | <u>0%</u> |

RP1

**F.L. Master Texas Ltd.**

Related Parties  
(Expressed in U.S. dollars)

For the year ended December 31, 2010, with comparative figures for 2009  
(unaudited)

|      |                                           | 2010                 | 2009                 | \$ Change           | % Change   |
|------|-------------------------------------------|----------------------|----------------------|---------------------|------------|
|      |                                           |                      |                      |                     | 0%         |
| 1543 | Due to/from F.L. Sadona Creek, Ltd.       | -                    | -                    | -                   | 59%        |
| 1612 | Due to/from WALP                          | 27,895,803.75        | 17,542,491.33        | 10,353,312.42       | 33%        |
| 1627 | Due to/from FLW Shores Master Ltd         | 997,117.95           | 748,977.71           | 250,140.24          | 34%        |
| 1627 | Due to/from FLW Pond Master Ltd           | 826,184.07           | 618,776.31           | 207,407.76          | 0%         |
| 1629 | Due to/from FLW Bluffs Ltd                | -                    | -                    | -                   | 0%         |
| 1630 | Due to/from FLW Pointe Ltd                | -                    | -                    | -                   | 0%         |
| 1631 | Due to/from FLW Crossing Ltd              | -                    | -                    | -                   | 0%         |
| 1632 | Due to/from FLW Shores Ltd                | -                    | -                    | -                   | 0%         |
| 1633 | Due to/from FLW Pond Ltd                  | -                    | -                    | -                   | 148%       |
| 1634 | Due to/from FLW Preston Ltd               | 705,849.51           | 284,644.45           | 421,005.06          |            |
| 1637 | Due to/from FL Master Sherman             | 15,645.88            | -                    | -                   | -100%      |
| 1618 | Due to/from First Leaside Fund            | (9,631.13)           | 1,740,588.16         | (1,740,588.16)      |            |
| 1664 | Due to/from Wimberly Fund                 | -                    | -                    | -                   |            |
|      |                                           | <u>30,430,970.03</u> | <u>20,933,677.86</u> | <u>9,491,277.32</u> | <u>45%</u> |
|      |                                           |                      |                      |                     | 0%         |
|      | Due to/from Preston HOA                   | -                    | -                    | -                   | 0%         |
|      | Due to/from Shareholders                  | (398.07)             | (398.07)             | -                   | 0%         |
| 1500 | Due to/from F.L. Securities Inc.          | -                    | -                    | -                   | 0%         |
| 1541 | Due to/from FL Spring Valley LP           | -                    | -                    | -                   | 13%        |
| 1546 | Due to/from First Leaside Finance Inc     | (1,077.88)           | (951.50)             | (126.38)            | 0%         |
| 1559 | Due to/from First Leaside Operations LP   | -                    | -                    | -                   | 0%         |
| 1566 | Due to/from First Leaside Securities Inc. | -                    | -                    | -                   | 0%         |
| 1574 | Due to/from F.L. Master Texas Ltd.        | -                    | -                    | -                   | 100%       |
| 1617 | Due to/from First Leaside Fund            | (9,121.58)           | -                    | (9,121.58)          |            |
| 1618 |                                           | <u>(10,597.53)</u>   | <u>(1,349.57)</u>    | <u>(9,247.96)</u>   | <u>13%</u> |

See attached printout for respective RPs.

**F.L. Master Texas Ltd.****IV1**Investment  
(Expressed in U.S. dollars)For the year ended December 31, 2010, with comparative figures for 2009  
(unaudited)

|                                          | 2010                   | 2009                   | \$ Change           | % Change    |
|------------------------------------------|------------------------|------------------------|---------------------|-------------|
| 1700 Investment - Short Term             |                        |                        |                     | 0%          |
| 1827 Investment in FLW Shores Master Ltd | (2,365,030.58)         | (2,350,405.07)         | (14,625.51)         | 1%          |
| 1828 Investment in FLW Pond Master Ltd   | (1,844,130.97)         | (1,652,024.45)         | (192,106.52)        | 12%         |
| 1829 Investment in FLW Bluffs Ltd        | (1,733,321.59)         | (1,872,052.79)         | 138,731.20          | -7%         |
| 1830 Investment in FLW Points Ltd        | (3,088,948.97)         | (3,113,333.35)         | 24,384.38           | -1%         |
| 1831 Investment in FLW Crossing Ltd      | (2,432,120.78)         | (2,528,608.42)         | 94,487.64           | -4%         |
| Investment in FLW Preston Ltd            | (1,592,242.18)         | (1,071,976.07)         | (520,264.11)        |             |
|                                          | <u>(13,055,795.07)</u> | <u>(12,588,402.15)</u> | <u>(469,392.92)</u> | <u>100%</u> |

**INVESTMENT ANALYSIS:**

|      |                                           |                       |                                |                     |
|------|-------------------------------------------|-----------------------|--------------------------------|---------------------|
| 1827 | Investment in FLW Shores Master Ltd       |                       | FLW Shores Loss                | 1,852,128.74        |
|      |                                           |                       | x Shores Master share - 99.99% | 99.99%              |
|      |                                           |                       | x Master Texas share - 99.99%  | 94.85%              |
|      |                                           |                       |                                | <u>1,752,684.55</u> |
|      | Opening Balance                           | (2,350,405.07)        |                                |                     |
|      | transfers from Master Texas to FLW Shores | 1,998,379.28          |                                |                     |
|      | share of loss                             | (1,752,684.55)        |                                |                     |
|      | Distro                                    | (260,140.24)          |                                |                     |
|      |                                           | <u>(2,365,030.58)</u> |                                |                     |
|      |                                           | 0.00                  |                                |                     |
| 1828 | Investment in FLW Pond Master Ltd         |                       | FLW Ponds Loss                 | 2,355,539.30        |
|      |                                           |                       | x Ponds Master share - 99.99%  | 99.99%              |
|      |                                           |                       | x Master Texas share - 99.99%  | 87.99%              |
|      |                                           |                       |                                | <u>2,072,431.77</u> |
|      | Opening Balance                           | (1,652,024.45)        |                                |                     |
|      | transfers to property                     | 2,087,733.01          |                                |                     |
|      | share of loss                             | (2,072,431.77)        |                                |                     |
|      | Distro                                    | (207,407.78)          |                                |                     |
|      |                                           | <u>(1,844,130.97)</u> |                                |                     |
|      |                                           | 0.00                  |                                |                     |
| 1829 | Investment in FLW Bluffs Ltd              |                       | FLW Bluffs Loss                | 272,191.02          |
|      |                                           |                       | x Master Texas share - 99.99%  | 99.99%              |
|      |                                           |                       | Share of Loss                  | <u>272,183.80</u>   |
|      | Opening Balance                           | (1,872,052.79)        |                                |                     |
|      | transfers to property                     | 410,695.00            |                                |                     |
|      | share of loss                             | (272,163.80)          |                                |                     |
|      |                                           | <u>(1,733,321.59)</u> |                                |                     |
|      |                                           | (0.00)                |                                |                     |
| 1830 | Investment in FLW Points Ltd              |                       | FLW Points Loss                | 421,293.75          |
|      |                                           |                       | x Master Texas share - 99.99%  | 99.99%              |
|      |                                           |                       | Share of Loss                  | <u>421,251.82</u>   |
|      | Opening Balance                           | (3,113,333.35)        |                                |                     |
|      | transfers to property                     | 445,838.00            |                                |                     |
|      | share of loss                             | (421,251.82)          |                                |                     |
|      |                                           | <u>(3,088,948.97)</u> |                                |                     |
|      |                                           | (0.00)                |                                |                     |

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001

1831 Investment in FLW Crossing Ltd

|                       |                       |
|-----------------------|-----------------------|
| Opening Balance       | (2,526,608.42)        |
| transfers to property | 658,724.00            |
| share of loss         | (584,236.36)          |
|                       | <u>(2,432,120.78)</u> |
|                       | 0.00                  |

|                               |                   |
|-------------------------------|-------------------|
| FLW Crossing Loss             | 584,236.79        |
| x Master Texas share - 99.99% | <u>99.99%</u>     |
| Share of Loss                 | <u>584,236.36</u> |

Investment in FLW Preston Ltd

|                       |                       |
|-----------------------|-----------------------|
| Opening Balance       | (1,071,978.07)        |
| transfers to property |                       |
| share of loss         | (520,264.11)          |
|                       | <u>(1,592,242.18)</u> |
|                       | 0.00                  |

|                               |                   |
|-------------------------------|-------------------|
| FLW Preston Loss              | 520,316.14        |
| x Master Texas share - 99.99% | <u>99.99%</u>     |
| Share of Loss                 | <u>520,264.11</u> |



**F.L. Master Texas Ltd.****AP1**

Accounts Payable and Accrued Liabilities  
(Expressed in U.S. dollars)

For the year ended December 31, 2010, with comparative figures for 2009  
(unaudited)

|                                | 2010 | 2009       | \$ Change | % Change |
|--------------------------------|------|------------|-----------|----------|
| 2000 Accounts Payable - Trade  | -    | -          | -         | 0%       |
| 2001 Accounts Payable - Client | -    | -          | -         | 0%       |
| 2002 Accounts Payable Clearing | -    | (9,941.43) | 9,941.43  | -100%    |
| 2005 Accrued Liabilities       | -    | -          | -         | 0%       |
| 2015 Income Tax Payable        | -    | (9,941.43) | 9,941.43  | -100%    |

**F.L. Master Texas Ltd.****AP4**

Promissory Notes  
(Expressed in U.S. dollars)

For the year ended December 31, 2010, with comparative figures for 2009  
(unaudited)

|      |                              | 2010                   | 2009                   | \$ Change             | % Change    |
|------|------------------------------|------------------------|------------------------|-----------------------|-------------|
| 2300 | Promissory notes <i>FU</i>   | (42,922,345.11)        | (33,196,694.22)        | (9,725,650.89)        | 29%         |
| 2303 | Promissory notes - WALP Fund | (9,742,995.66)         |                        |                       |             |
|      |                              | <u>(52,665,340.77)</u> | <u>(33,196,694.22)</u> | <u>(9,725,650.89)</u> | <u>100%</u> |
|      | Fund Note receivable         | 42,922,345.11          |                        |                       |             |
|      |                              |                        |                        |                       |             |
|      | WALP Fund Note receivable    | 9,742,995.66           |                        |                       |             |
|      | Diff                         |                        |                        |                       |             |

**F.L. Master Texas Ltd.****OE1**

Equity  
(Expressed in U.S. dollars)

For the year ended December 31, 2010, with comparative figures for 2009  
(unaudited)

|      |                             | 2010                 | 2009                 | \$ Change            | % Change   |
|------|-----------------------------|----------------------|----------------------|----------------------|------------|
| 3000 | Contributions - Accumulated | -                    | -                    | -                    | 0%         |
| 3010 | Contributions - Current     | (7,864,676.60)       | (7,864,676.60)       | -                    | 0%         |
| 3100 | Distributions - Accumulated | -                    | -                    | -                    | 0%         |
| 3200 | Distributions - Current     | -                    | -                    | -                    | 0%         |
| 3300 | Distributions - DRIP        | -                    | -                    | -                    | 0%         |
| 3645 | General Partners Equity     | -                    | -                    | -                    | 0%         |
| 3700 | Limited Partners Equity     | 12,578,612.90        | 12,578,612.90        | -                    | 0%         |
| 3900 | Retained Earnings           | 19,685,031.48        | 11,036,814.17        | 8,548,217.31         | 77%        |
|      | Net Income                  | 10,962,661.03        | 8,546,217.31         | 2,416,643.72         | 28%        |
|      |                             | <u>35,261,828.81</u> | <u>24,298,967.78</u> | <u>10,962,661.03</u> | <u>45%</u> |

**Current Contributions Analysis:**

Opening Balance (7,864,676.60)

Closing Balance

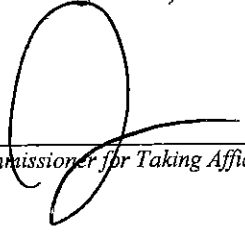
(7,864,676.60)

**F.L. Master Texas Ltd.**Revenue and Expense  
(Expressed in U.S. dollars)For the year ended December 31, 2010, with comparative figures for 2009  
(unaudited)

|                                    | 2010      | 2009      | \$ Change  | % Change |
|------------------------------------|-----------|-----------|------------|----------|
| Administration                     | 29,484.12 | -         | 29,484.12  | 100%     |
| 6000 staff salaries                | 3,688.32  | -         | 3,688.32   | 100%     |
| 6010 staff health                  | 8,685.00  | -         | 8,685.00   | 100%     |
| 6080 staff rent allowance          | 8,850.80  | -         | 8,850.80   | 100%     |
| 6005 Office and Administration     | -         | -         | -          | 0%       |
| 6010 Office Equipment Leased       | 387.87    | 19.00     | 348.87     | 1836%    |
| 6015 Office Supplies               | -         | -         | -          | 0%       |
| 6020 Postage                       | 18.88     | -         | 18.88      | 100%     |
| 6025 Courier                       | 706.51    | -         | 706.51     | 100%     |
| 6030 Cellular                      | -         | -         | -          | 0%       |
| 6035 Telephone                     | 3,487.92  | -         | 3,487.92   | 100%     |
| 6045 IT Management                 | 2,713.54  | 2,696.18  | 17.36      | 1%       |
| 6050 Bank Charges                  | -         | -         | -          | 0%       |
| 6060 Publications/Newspapers       | -         | -         | -          | 0%       |
| 6065 Computer Supplies             | -         | -         | -          | 0%       |
| 6070 Computer Software             | -         | -         | -          | 0%       |
| 6075 Subscriptions                 | 29,474.78 | 39,259.40 | (9,784.62) | -25%     |
| 6080 Travel                        | 33,950.00 | 20,000.00 | 13,950.00  | 70%      |
| 6130 Accounting and Audit Fees     | 17,857.71 | 17,751.49 | 106.22     | 1%       |
| 6180 Legal                         | -         | -         | -          | 0%       |
| 6185 Management Fees               | -         | -         | -          | 0%       |
| 6335 Meets & Entertainment         | 637.30    | 10,495.40 | (9,858.18) | -94%     |
| 6340 Meetings & Conferences        | -         | -         | -          | 0%       |
| 6345 Association & Membership Fees | 39,634.18 | 44,770.89 | (5,136.79) | -11%     |
| 7400 Business Tax/License Fee      | -         | -         | -          | 0%       |
| 7615 Finance Charges               | -         | -         | -          | 0%       |
| 7820 Loan Fee Amortization         | -         | -         | -          | 0%       |

# TAB K

This is Exhibit "K" referred to in the Affidavit of Henry Wemekamp, sworn August 22, 2012



---

*Commissioner for Taking Affidavits (or as may be)*



a Wolters Kluwer Business

## Search Results

Shalan Jankowski  
TORKIN MANES LLP  
161 Yonge Street  
Suite 1500  
Toronto ON M5C 2W7

Date: 06/25/2012  
Order #: 33761706  
Customer #: 505885  
Reference 1: FL Master Texas  
Reference 2: -

---

Target Name: FL Master Texas, Ltd.

---

Jurisdiction: Secretary of State, Texas

---

Search Type: UCC  
Results: No Records Found

Searched Through: 06/21/2012  
Searched: Full Statutory

Search Type: Federal Tax Lien  
Results: No Records Found

Searched Through: 06/21/2012  
Searched: Full Statutory

---

This report contains information compiled from sources which CT Lien Solutions considers reliable, but does not control. Information provided is non-certified unless otherwise indicated. CT Lien Solutions in no way undertakes or assumes any part of the customer's business, legal or similar risks, and does not guarantee the accuracy, completion or timeliness of the information provided, and shall not be liable for any losses or injuries whatever resulting from any contingency beyond its control, or from negligence, regardless of the cause. The categorization of filings is provided for the convenience of the customer and is not to be construed as a legal opinion concerning the status of the filings.

STEPHEN GROVE  
Columbus Team 6  
4400 Easton Commons Way  
Suite 125  
Columbus OH 43219  
stephen.grove@wolterskluwer.com

CT Lien Solutions  
UCC Search Report

The following represents a listing of the documentation you requested through a careful search of effective UCC filings recorded in the Office of the Secretary of State of TX, Secretary of State, licensed from the State of an independent third party and maintained in a computerized form and available through our offices. Variations of the Name and Address of the search key may appear on this report as a result of the search findings and your individual request for the information.

This report reflects record effective from Jun. 21, 2012

Because we cannot independently verify the accuracy of the public information maintained by the responsible government agency or other sources of this data, we make no guaranties, representations, or warranties as to the accuracy or completeness of this report. We cannot and do not accept any liability for errors or omissions.

State of TX, Secretary of State UCC Debtor Name Search results performed on the following

Search Key :

Name = FL%Mast%

Requested Party not on file.

[End of Report]







PERSONAL PROPERTY SECURITY  
REGISTRATION SYSTEM (ONTARIO)  
ENQUIRY RESULTS

|                       |                                 |
|-----------------------|---------------------------------|
| Prepared for :        | TORKIN MANES LLP (S. JANKOWSKI) |
| Reference :           | 037-0881                        |
| Docket :              | 22222.0002                      |
| Search ID :           | 450515                          |
| Date Processed :      | 6/26/2012 8:42:14 AM            |
| Report Type :         | PPSA Electronic Response        |
| Search Conducted on : | F.L. MASTER TEXAS, LTD.         |
| Search Type :         | Business Debtor                 |

DISCLAIMER :

This report has been generated using data provided by the Personal Property Registration Branch, Ministry of Government Services, Government of Ontario. No liability is undertaken regarding its correctness, completeness, or the interpretation and use that are made of it.

MINISTRY OF CONSUMER AND BUSINESS SERVICES  
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
ENQUIRY RESPONSE

THIS IS TO CERTIFY THAT A SEARCH HAS BEEN MADE IN THE RECORDS OF THE  
CENTRAL OFFICE OF THE PERSONAL PROPERTY SECURITY SYSTEM IN RESPECT  
OF THE FOLLOWING:

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: F.L. MASTER TEXAS, LTD.

FILE CURRENCY: June 25, 2012

ENQUIRY CONTAINS 0 PAGES, 0 FAMILY[IES].

NO REGISTRATIONS ARE REPORTED IN THIS ENQUIRY RESPONSE.

THE ABOVE REPORT HAS BEEN CREATED BASED ON THE DATA PROVIDED BY  
THE PERSONAL PROPERTY REGISTRATION BRANCH, MINISTRY OF CONSUMER  
AND BUSINESS SERVICES, GOVERNMENT OF ONTARIO. NO LIABILITY IS  
UNDERTAKEN REGARDING ITS CORRECTNESS, COMPLETENESS, OR THE  
INTERPRETATION AND USE THAT ARE MADE OF IT.





PERSONAL PROPERTY SECURITY  
REGISTRATION SYSTEM (ONTARIO)  
ENQUIRY RESULTS

|                       |                                 |
|-----------------------|---------------------------------|
| Prepared for :        | TORKIN MANES LLP (S. JANKOWSKI) |
| Reference :           | 037-0881                        |
| Docket :              | 31797.0001                      |
| Search ID :           | 457199                          |
| Date Processed :      | 8/22/2012 4:08:58 PM            |
| Report Type :         | PPSA Electronic Response        |
| Search Conducted on : | FL MASTER SHERMAN LTD.          |
| Search Type :         | Business Debtor                 |

DISCLAIMER :  
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Property Registration Branch, Ministry of Government Services,  
Government of Ontario. No liability is undertaken regarding its correctness,  
completeness, or the interpretation and use that are made of it.

MINISTRY OF CONSUMER AND BUSINESS SERVICES  
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
ENQUIRY RESPONSE

THIS IS TO CERTIFY THAT A SEARCH HAS BEEN MADE IN THE RECORDS OF THE  
CENTRAL OFFICE OF THE PERSONAL PROPERTY SECURITY SYSTEM IN RESPECT  
OF THE FOLLOWING:

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: FL MASTER SHERMAN LTD.

FILE CURRENCY: August 21, 2012

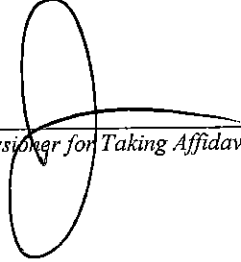
ENQUIRY CONTAINS 0 PAGES, 0 FAMILY[IES].

NO REGISTRATIONS ARE REPORTED IN THIS ENQUIRY RESPONSE.

THE ABOVE REPORT HAS BEEN CREATED BASED ON THE DATA PROVIDED BY  
THE PERSONAL PROPERTY REGISTRATION BRANCH, MINISTRY OF CONSUMER  
AND BUSINESS SERVICES, GOVERNMENT OF ONTARIO. NO LIABILITY IS  
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INTERPRETATION AND USE THAT ARE MADE OF IT.

# TAB L

This is Exhibit "L" referred to in the Affidavit of Henry Wemekamp, sworn August 22, 2012



---

*Commissioner for Taking Affidavits (or as may be)*





## CASSELS BROCK

October 17, 2005

Penson Financial Services Canada Inc.  
360, St-Jacques St. West, 12th Floor  
Montreal, Quebec  
H2Y 1P5

pdunne@casselsbrock.com  
tel 416.869.5342  
fax 416.350.6937  
file # 33695-4

Dear Sirs:

**Re: Units in the Capital of First Leaside Fund  
Qualified Investment Status for RRSPs**

We are writing this letter in response to your request to have confirmation that the units (the "Units") of First Leaside Fund (the "Trust") are qualified investments for trusts governed by registered retirement savings plan.

In the opinion of Cassels Brock & Blackwell LLP, based and relying upon the terms of the Declaration of Trust for the Trust dated October 6, 2005 and a certificate of Mary La Rocca, the initial trustee of the Trust, annexed hereto as Schedule A, upon closing of the issuance of an aggregate of 954,398 Units on the date hereof, the Trust will qualify as a "mutual fund trust" within the meaning of the *Income Tax Act* (Canada) and Units will be qualified investments for trusts governed by registered retirement savings plans.

Yours truly,

Cassels Brock & Blackwell LLP

CERTIFICATE  
OF  
THE TRUSTEE  
OF  
FIRST LEASIDE FUND

To: Cassels Brock & Blackwell LLP ("Counsel")

Reference is made to the Declaration of Trust (the "Declaration") made as of October 6, 2005 for the First Leaside Fund (the "Trust"), an investment trust established under the laws of the Province of Ontario. All capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Declaration.

I, Mary La Rocca, the Initial Trustee (the "Trustee") of the Trust, in my capacity as a Trustee and not in my personal capacity, hereby certify as follows to the best of my knowledge, information and belief:

1. As a Trustee of the Trust, I am fully familiar with the assets, liabilities and activities of the Trust.
2. Each of the three existing Trustees of the Trust are residents of Canada for purposes of the *Income Tax Act* (Canada) (the "Tax Act").
3. The undertaking of the Trust will be restricted to the investing of its funds in property as described under the heading "Investments of the Trust" in the Declaration.
4. The Trust is not being established, and will not be maintained, primarily for the benefit of persons who are non-residents of Canada for purposes of the Tax Act.
5. The Trustees will monitor the affairs of the Trust and take reasonable steps to ensure that at all times the Trust will qualify as a mutual fund trust under the Tax Act.
6. Pursuant to the Declaration, the Trust intends to make an election pursuant to subsection 132(6.1) of the Tax Act so that it will qualify as a "mutual fund trust" under the Tax Act from the commencement of its first taxation year.
7. Upon the closing of the issuance of units of the Trust on the date hereof, the Trust will have not less than 150 beneficiaries each holding not less than 500 units of the Trust with an aggregate fair market value of at least \$500.00.

The undersigned acknowledges that Counsel is relying on this certificate for purposes of providing an opinion in respect of the issuance of units of the Trust as of the date hereof to certain trusts governed by registered retirement savings plans for purposes of the Tax Act. Unless previously advised to the contrary in writing by the undersigned, Counsel may continue

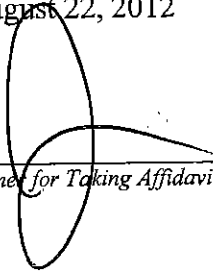
to rely on this certificate for purposes of tax opinions they may render in connection with future issuances of units by the Trust.

Dated at Toronto, Ontario this 17<sup>th</sup> day of October, 2005.

  
Name: Mary La Rocca

TAB M

This is Exhibit "M" referred to in the Affidavit of Henry  
Wemekamp, sworn August 22, 2012



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*Commissioner for Taking Affidavits (or as may be)*

---

To: fullspinaker@hotmail.com; doug.law@sheridanc.on.ca; kenrice@rogers.com;  
bob\_gauld@sympatico.ca; robin.pullen@sympatico.ca  
CC: nadamson1@aol.com; asinclair@casselsbrock.com  
Subject: Fw: FLP Fund (batch of Dec.17/09)  
From: lefrain@firstleaside.com  
Date: Thu, 7 Jan 2010 14:40:29 -0500

Hi Trustees,

We are cleaning up the properties fund minute book.

Below are consents to act as a trustee for each of you please sign the one with your name attached and return to my attention. There is also a resolution requiring your signatures.

Please call if you have any questions.

Regards,

**Leon Efrain**

Corporate Counsel

**The First Leaside Group of Companies**

Tel : (905) 852-1430 ext. 120

Tel : (888) 370-9856

Fax: (905) 852-0273

Email: lefrain@firstleaside.com

Website: [www.firstleaside.com](http://www.firstleaside.com)

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— Forwarded by Leon Efrain/FLWM/FLG on 01/07/2010 02:35 PM —

From: "Sinclair, Alison" <asinclair@casselsbrock.com>

To: "Leon Efrain" <lefrain@firstleaside.com>

Cc: "Christine Chang" <christine.chang@firstleaside.com>, "Joanna Hampton" <jhampton@firstleaside.com>, "Meghann Aimers" <maimers@firstleaside.com>, "Dunne, Peter" <pdunne@casselsbrock.com>, "Yanan Chu" <yanan.chu@firstleaside.com>, "Swain, David" <dswain@casselsbrock.com>

Date: 01/06/2010 10:05 AM

Subject: RE: FLP Fund (batch of Dec.17/09)

---

Leon,

Attached please find the following for your review and comment:

1. consents to act of the Trustees of First Leaside Properties Fund (the "Fund"), each dated as of the date the Trustee was appointed. These consents should be executed and returned to me for insertion in the minute book;
  2. resolution of the Trustees of the Fund confirming all issuances and transfers of units up to and including December 31, 2009. Christine and I are working on updating the schedules to be attached to the resolution. As soon as the schedules are finalized I will forward to you a complete copy of the attached resolution with the schedules attached;
  3. authorization of First Leaside Management Inc., as Manager of the Fund to transfers of units; and
  4. authorization of First Leaside Management Inc., as Manager of the Fund to issuances of units.
- My understanding is that we will be provided with a completed authorization along with the copies of the

unit certificates for all issuances and transfers commencing January 1, 2010. All previous issuances and transfers will be confirmed in the resolution.

Please give me a call if you have any questions or concerns.

Regards,  
Alison

---

**From:** Leon Efraim [<mailto:lefraim@firstleaside.com>]  
**Sent:** Tuesday, January 05, 2010 4:59 PM  
**To:** Swain, David  
**Cc:** Sinclair, Alison; Christine Chang; Joanna Hampton; Meghann Aimers; Dunne, Peter; Yanan Chu  
**Subject:** RE: FLP Fund (batch of Dec.17/09)

Once I see the doc I'll amend it so that it is workable on a per transaction basis and we will forward with the transaction info. Regards,

**Leon Efraim**

Corporate Counsel

**The First Leaside Group of Companies**

Tel : (905) 852-1430 ext. 120

Tel : (888) 370-9856

Fax: (905) 852-0273

Email: [lefraim@firstleaside.com](mailto:lefraim@firstleaside.com)

Website: [www.firstleaside.com](http://www.firstleaside.com)

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**From:** "Swain, David" <[DSwain@casselsbrock.com](mailto:DSwain@casselsbrock.com)>  
**To:** "Leon Efraim" <[lefraim@firstleaside.com](mailto:lefraim@firstleaside.com)>  
**Cc:** "Sinclair, Alison" <[asinclair@casselsbrock.com](mailto:asinclair@casselsbrock.com)>, "Christine Chang" <[christine.chang@firstleaside.com](mailto:christine.chang@firstleaside.com)>, "Joanna Hampton" <[jhampton@firstleaside.com](mailto:jhampton@firstleaside.com)>, "Meghann Aimers" <[maimers@firstleaside.com](mailto:maimers@firstleaside.com)>, "Dunne, Peter" <[pdunne@casselsbrock.com](mailto:pdunne@casselsbrock.com)>, "Yanan Chu" <[yanan.chu@firstleaside.com](mailto:yanan.chu@firstleaside.com)>  
**Date:** 01/05/2010 03:28 PM  
**Subject:** RE: FLP Fund (batch of Dec 17/09)

Best if we do it for each transfer, it can get messy if we have to go back in time too far.

Dave

---

**From:** Leon Efraim [<mailto:lefraim@firstleaside.com>]  
**Sent:** Tuesday, January 05, 2010 3:14 PM  
**To:** Swain, David  
**Cc:** Sinclair, Alison; Christine Chang; Joanna Hampton; Meghann Aimers; Dunne, Peter; Yanan Chu  
**Subject:** RE: FLP Fund (batch of Dec.17/09)

As always David, a pleasure to hear from you and hopefully you had a nice holiday.

It all sounds good.

One question re: the documentation approving issuances and transfers. Do you guys feel it would be best to manage this annually or should we use the document Alison is preparing, with some modifications, and complete it for each transfer. Regards,

**Leon Efraim**

Corporate Counsel

**The First Leaside Group of Companies**

Tel : (905) 852-1430 ext. 120

Tel : (888) 370-9856

Fax: (905) 852-0273

Email: lefraim@firstleaside.com

Website: [www.firstleaside.com](http://www.firstleaside.com)

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From: "Swain, David" <DSwain@casselsbrock.com>

To: "Leon Efraim" <lefraim@firstleaside.com>, "Christine Chang" <christine.chang@firstleaside.com>, "Dunne, Peter" <pdunne@casselsbrock.com>

Cc: "Sinclair, Alison" <asinclair@casselsbrock.com>, "Joanna Hampton" <jhampton@firstleaside.com>, "Meghann Aimers" <maimers@firstleaside.com>, "Yanan Chu" <yanan.chu@firstleaside.com>

Date: 01/05/2010 01:55 PM

Subject: RE: FLP Fund (batch of Dec.17/09)

---

Hi Leon,

I think the easiest thing to do is to respond to your email in points:

1. We confirm that there is a rectifying resolution that will need to be signed by the trustees. Alison is preparing this and will forward it on to you and Christine.
2. Based on the declaration of trust and the management agreement, the new issuances of units and transfers between unitholders can (and have been) delegated to the Manager. We do however need a record of the basis for the issuances and transfers for the minute book, so some documentation from the Manager approving the issuances and the transfers on behalf of the Trustees is required. We had originally planned to do all of this at once and just have the Trustees sign off on all the changes directly but instead Alison will put together (i) a rectifying resolution for the Trustees; and (ii) separate documentation (not resolutions) for the Manager to sign confirming the new issuances and transfers so we have an adequate record in the minute book and can ensure the unitholder list is correct and accurate. Alison will prepare this documentation and forward it on to you and Christine.
3. We completely agree that there is no need for unitholder approvals on these items. Alison actually sent an email right after her email on the 29th clarifying that unitholder approval would not be required, but I don't think that particular email was forwarded to you.

I hope everyone had an enjoyable holiday break!



Dave

---

**From:** Leon Efraim [<mailto:lefraim@firstleaside.com>]  
**Sent:** Sunday, January 03, 2010 9:22 AM  
**To:** Christine Chang; Dunne, Peter  
**Cc:** Sinclair, Alison; Swain, David; Joanna Hampton; Meghann Aimers; Yanan Chu  
**Subject:** RE: FLP Fund (batch of Dec.17/09)

Hi All,

I don't recall being asked about this issue. I note I was not copied on the email of Dec. 29, in future Alison, all issues involving corporate matters such as trustee resolutions and corrections to the minute book are to come to me directly.

I understand that there was a mistake made by trading which requires a rectifying resolution by the trustees, that should be it.

As far as resolutions regarding all subsequent transactions I don't believe they are necessary. Properties Fund is not like FLWM, it is a reporting issuer and its manager is authorized to take all necessary actions on behalf of the trustees. This was all contemplated and incorporated in the Declaration of Trust and other material contracts. All the subsequent transactions have been secondary transactions which do not require trustee approval.

Additionally, I see no reason at all for the unitholder approval mentioned in your email of the 29th. We have discussed unitholder approvals for the Properties Fund with our CBB legal team regarding another matter. We are not inclined to seek such approval unless absolutely necessary. The correction of a trading error in our opinion is not such a case.

David and Alison, we can speak about this on Monday. Regards,

**Leon Efraim**  
Corporate Counsel  
**The First Leaside Group of Companies**  
Tel : (905) 852-1430 ext. 120  
Tel : (888) 370-9856  
Fax: (905) 852-0273  
Email: [lefraim@firstleaside.com](mailto:lefraim@firstleaside.com)  
Website: [www.firstleaside.com](http://www.firstleaside.com)

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**From:** Christine Chang/FLSec/FLG  
**To:** "Sinclair, Alison" <[asinclair@casselsbrock.com](mailto:asinclair@casselsbrock.com)>  
**Cc:** "Swain, David" <[dswain@casselsbrock.com](mailto:dswain@casselsbrock.com)>, "Meghann Aimers" <[maimers@firstleaside.com](mailto:maimers@firstleaside.com)>, "Yanan Chu" <[yanan.chu@firstleaside.com](mailto:yanan.chu@firstleaside.com)>, Joanna Hampton/FLWM/FLG@FLDomino, Leon Efraim/FLWM/FLG@FLDomino  
**Date:** 12/29/2009 08:04 PM  
**Subject:** RE: FLP Fund (batch of Dec.17/09)

---

Welcome back Alison!

As you can sympathize, year-end is quite busy for all of us and I couldn't get a coherent answer out of Leon and Joanna re: a fixed date this entire past month.

Leon is now away until next week and Joanna leaves this Friday returning the following week.

In my opinion, Dec.31st would be a much better marker as a cut-off date than Dec.1st.

We had hoped to have a final batch at the end of this month to sell out ALL of the remaining units in inventory but as time is now tight and we're also awaiting on some of our purchasers' account transfers to arrive (takes a few weeks), this might not happen until early January... but it could still be possible...

How feasible would it be to fix the date for early January 2010???

Christine Chang  
Client Services Manager  
First Leaside Securities Inc.  
Tel : (905) 852-2500  
Toll Free: 1-866-681-9247  
Fax: (905) 852-4637  
Website: [www.firstleaside.com](http://www.firstleaside.com)

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From: "Sinclair, Alison" <[asinclair@casselsbrock.com](mailto:asinclair@casselsbrock.com)>  
To: "Christine Chang" <[christine.chang@firstleaside.com](mailto:christine.chang@firstleaside.com)>, "Swain, David" <[dsuain@casselsbrock.com](mailto:dsuain@casselsbrock.com)>  
Cc: "Yanan Chu" <[yanan.chu@firstleaside.com](mailto:yanan.chu@firstleaside.com)>, "Megham Aimers" <[maimers@firstleaside.com](mailto:maimers@firstleaside.com)>  
Date: 12/29/2009 09:34 AM  
Subject: RE: FLP Fund (batch of Dec.17/09)

---

Christine,

As previously noted, we need to fix a date when the rectifying resolutions updating the the minute book are passed and then from that date all future transactions must be authorized by the trustees of the fund by written resolutions (similar to the First Leaside Wealth Management Inc. issuances and transfers).

What date should we be using? I had previously suggested December 1, 2009 and you were going to check if that worked for your purposes. Would you prefer that we dated everything as of December 31, 2009? If so, then I'll prepare the documents based on that date. Please keep in mind that the resolutions will require the execution of all of the unitholders "as at" the date that the document is signed.

Please let me know if you will be preparing the necessary resolutions for the transactions or if you want us to draft for you.

Thanks.

Alison

**Alison Sinclair**

Law Clerk

Cassels Brock & Blackwell LLP  
2100 Scotia Plaza  
40 King Street West  
Toronto Canada M5H 3C2

tel 416 860 5224 begin\_of\_the\_skype\_highlighting 416 860 5224 end\_of\_the\_skype\_highlighting  
fax 416 642 7138  
asinclair@casselsbrock.com

[www.casselsbrock.com](http://www.casselsbrock.com)

Please consider the environment before printing this email.

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**From:** Christine Chang [<mailto:christine.chang@firstleaside.com>]  
**Sent:** Friday, December 18, 2009 2:50 PM  
**To:** Sinclair, Alison; Swain, David  
**Cc:** Yanan Chu; Meghann Aimers  
**Subject:** FLP Fund (batch of Dec.17/09)

Hi Dave & Alison,

Please find copies of certs transacted in our last batch attached here.  
I have also attached my spreadsheet of the inventory tracking for you.

Christine Chang  
Client Services Manager  
First Leaside Securities Inc.  
Tel : (905) 852-2500  
Toll Free: 1-866-681-9247  
Fax: (905) 852-4637

Website: [www.firstleaside.com](http://www.firstleaside.com)

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\*\*\*\*\*

\*\*\*\*[attachment "Manager - Issuance

**FW: Request to call meeting of F.L. Fund unit holders**

**Dunne, Peter** (pdunne@CasselsBrock.com)

April-17-12 1:23:22 PM

fullspinaker@hotmail.com (fullspinaker@hotmail.com)

Murray, I think you can stand down on this until Greg meets with him on Friday. Let me know if Henry persists so I can give you a hand.

Peter



**Peter Dunne**

Direct: 416 889 5342 • Fax: 416 350 6937 • [pdunne@casselsbrock.com](mailto:pdunne@casselsbrock.com)

2100 Scotia Plaza, 40 King Street West, Toronto, Ontario, Canada M5H 3C2

[www.casselsbrock.com](http://www.casselsbrock.com)

**From:** Greg Macleod [mailto:GMacleod@firstleaside.com]

**Sent:** Tuesday, April 17, 2012 12:39 PM

**To:** Henry Wemekamp

**Cc:** Murray Eades; Jonathan Krieger; Dunne, Peter; Shayne Kukulowicz

**Subject:** RE: Request to call meeting of F.L. Fund unit holders

Henry

Lets add this to our agenda on Friday at GT. You raise the right questions. Indeed, we are all trying to develop an alternative to a forced sale along the lines you discuss. Lets plan to talk at length Friday.

Regards,

Greg MacLeod

4/17/12

Hotmail Print Message

First Leaside Group of Companies  
905-852-1430 ext. 126  
1-888-370-9856 ext. 126  
Fax: 905-852-0273

gmacleod@firstleaside.com  
<http://www.firstleaside.com>

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From: Henry Wemekamp <HenryW@The-Wire.com>  
To: Murray Eades <fullspinaker@hotmail.com>  
Cc: Greg Macleod <GMacleod@firstleaside.com>, Peter Dunne <pdunne@casselsbrock.com>, Shayne Kukulowicz <Shayne.Kukulowicz@fmc-law.com>, Jonathan Krieger <Jonathan.Krieger@ca.gt.com>  
Date: 04/17/2012 12:10 PM  
Subject: RE: Request to call meeting of F.L. Fund unit holders

Murray:

I tried to call you this morning, but the number I have (905-795-4040) has been disconnected. Can you give me a phone number where I can reach you?

As we are running out of time, we will go ahead with an informal information meeting on Monday evening, and call a formal meeting of Unit Holders at a later date. To date, about 25% of Fund Unit holders have responded, requesting a meeting.

The meeting will be at the Sheraton Parkway Toronto North Hotel & Suites, 600 HWY-7 East, Richmond Hill, ON L4B 1B2 (Grand Richmond ABC room) on Monday, April 23rd, 7:00pm. We expect up to 200 attendees.

In order to bring the Trustees perspective to the Unit Holders, would it be possible for you, or another member of the Board of Trustees to attend the meeting on Monday, to join a panel discussion, address the attending Unit Holders, and answer questions?

I have a number of concerns and questions which need to be addressed by the Trustees:

1) The Funds (First Leaside Fund, Wimberly Fund, and First Leaside Properties Fund) all invested in US entities (Master Texas LP and Master Sherman LP, which are specifically excluded from the CCAA process. The Funds are creditors of these US entities, which are not in receivership.

Other than being administered by First Leaside, the Funds are not debtors of First Leaside entities covered by CCAA, or it's creditors. Why then, are the Funds lumped into the CCAA process?

2) Would it be legally possible under CCAA for a new entity (new Limited Partnership) to negotiate with the CRO for the purchase of the Texas holdings of WALP Canada, and concurrently negotiate a debt dilution agreement with the Funds? Would this not be a more cost-effective way to liquidate First Leaside Texas properties, than selling them individually at fire sale prices?

3) Does Peter Dunne have a conflict of interest in acting both for First Leaside & the CRO, and also for the Trust Funds? Should the Funds have their own independent legal representation? If so, how do we go about this?

I am copying this email to Greg MacLeod and Peter Dunne so they can



comment. Also to Jonathan Krieger (Grant Thornton) and Shayne Kukulowicz at FMC.

I have a meeting scheduled with Greg MacLeod and Jonathan Krieger at the Grant Thornton offices on Friday morning - perhaps we can briefly discuss this then, as well.

Sincerely,

Henry Wemekamp

Email: HenryW@The-Wire.com

Tel.: 416-531-5085 (home)

416-878-9238 (cell)

At 04:22 PM 2012-04-16, you wrote:

Henry: When I know the numbers situation, I will be able to do what I can as a trustee under the Trust Declaration & the Court Order. I understand that the Chief Restructuring Officer has a copy of your e-mail, so I expect that he will be concerned that the proper protocol, including notice periods are observed in any meeting called by the Trustees. I will be guided by Peter Dunne who is counsel for the fund. Any group of unit holders can get together as they please, but must not violate Ontario securities legislation.

Regards: L. MURRAY EADES

## Today's email

**Dunne, Peter** (pdunne@CasselsBrock.com)

April-17-12 12:18:55 PM

fullspinaker@hotmail.com (fullspinaker@hotmail.com)

Murray, I got copied on the email from Henry Wemekamp today. I would like to speak with Greg and Leon and get back to you today to assist in responding to this. I called you just now and got voicemail. Please feel free to call me to discuss.

Back to you soon.

Regards,

Peter



---

**Peter Dunne**

Direct: 416 869 5342 • Fax: 416 350 6937 • [pdunne@casselsbrock.com](mailto:pdunne@casselsbrock.com)

2100 Scotia Plaza, 40 King Street West, Toronto, Ontario, Canada M5H 3C2

[www.casselsbrock.com](http://www.casselsbrock.com)

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4/17/12

Hotmail Print Message

**RE: First Leaside Fund**

**Dunne, Peter** (pdunne@CasselsBrock.com)

April-17-12 3:08:42 PM

murray eades (fullspinaker@hotmail.com)

Well said, Murray.

Peter



**Peter Dunne**

Direct: 416 869 5342 • Fax: 416 350 6937 • pdunne@casselsbrock.com

2100 Scotia Plaza, 40 King Street West, Toronto, Ontario, Canada M5H 3C2

[www.casselsbrock.com](http://www.casselsbrock.com)

**From:** murray eades [mailto:fullspinaker@hotmail.com]

**Sent:** Tuesday, April 17, 2012 3:08 PM

**To:** henryw@the-wire.com

**Cc:** gmadeod@firstleaside.com; Dunne, Peter; jonathan.krieger@ca.gt.com;  
shayne.kukulowicz@fmc-law.com

**Subject:** First Leaside Fund

Henry: First of all let me ensure you that my office telephone line has not been disconnected. When I am not in the office the phone is forwarded to my mobile device.

Since I lost my mobile device over the weekend I had to cancel that line for obvious reasons; and that is the reason for the announcement of disconnection.

I think that your meeting with Greg and Jonathan on Friday is positive and might be critical in navigating the route to the solution everyone is looking for. After that meeting the Monday session, if proceeded with, could be far more organized and effective.

Regards: L. MURRAY EADES

---

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---



RE:  
 Dunne, Peter  
 to:  
 Leon Efraim  
 08/30/2007 04:36 PM  
 Hide Details  
 From: "Dunne, Peter" <pdunne@CasselsBrock.com>  
 To: "Leon Efraim" <lefraim@firstleaside.com>

History: This message has been forwarded.

Leon, I've been interrupted for most of today, but I think I'll have it done before I leave. For now, let's say you'll have my comments first thing in the morning.

Have you and Dave sorted out how the Warrants are to work? I don't think we have the luxury of rewriting the original Reorg, so we have to start with Warrants coming to the Fund holders who got there via the Reorg. So the trick is to get the benefit of the Warrants over to the other two categories of Fund holders: (A) the initial investor group who predated the Reorg (i.e., the original group that enabled us to constitute the Fund as a mutual fund for tax purposes); and (B) everyone who has purchased Fund units since the Reorg.

I think the best plan we've managed to come up with in all these months is to have WALP enter into a new funding agreement with the Fund wherein it agrees to compensate the Fund with Warrants on some basis that will work out on a basis that gives every Fund holder an interest in Warrants equivalent to the Warrant entitlement of the Reorg guys. Then you ask the Reorg guys to swap their Warrants for units of the Fund, leaving all the WALP Warrants in the portfolio of the Fund, giving all Fund investors the same pro rata interest in all of the Warrants issued by WALP.

It needs some additional analysis, but I think that's the best route we've come up with so far.

Peter

-----Original Message-----

**From:** Leon Efraim [mailto:lefraim@firstleaside.com]  
**Sent:** Thursday, August 30, 2007 3:27 PM  
**To:** Dunne, Peter

**Subject:**

Hi Peter,

Any chance we'll be getting your comments on the Warrant Indenture this afternoon

Regards,

**Leon Efraim**  
 Corporate Counsel  
**The First Leaside Group of Companies**  
 Tel : (905) 852-1430 ext. 120  
 Tel : (888) 370-9856  
 Fax: (905) 852-0273  
 Email: lefraim@firstleaside.com  
 Website: [www.firstleaside.com](http://www.firstleaside.com)

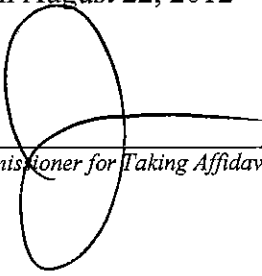
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\*\*\*\*\*  
 This message, including any attachments, is privileged and may contain confidential information intended only for the person(s) named above. Any other distribution, copying or disclosure is strictly prohibited. Communication by email is not a secure medium and, as part of the transmission process, this message may be copied to servers operated by third parties while in transit. Unless you advise us to the contrary, by accepting communications that may contain your personal information from us via email, you are deemed to provide your consent to our transmission of the contents of this message in this manner. If you are not the intended recipient or have received this message in error, please notify us immediately by reply email and permanently delete the original transmission from us, including any attachments, without making a copy.  
 \*\*\*\*\*

TAB N



This is Exhibit "N" referred to in the Affidavit of Henry  
Wemekamp, sworn August 22, 2012



---

*Commissioner for Taking Affidavits (or as may be)*

**CERTIFICATE OF INCUMBENCY**  
**OF**  
**FIRST LEASIDE MORTGAGE FUND**

The undersigned, being the duly appointed Chair of the trustees of the First Leaside Mortgage Fund (the "Trust") established as a trust, and governed, by the Declaration of Trust dated as of June 18, 2010, hereby certifies for and on behalf of the Trust and not in his personal capacity that the following persons are all of the duly appointed trustees of the Trust:

| <u>NAME</u>         |
|---------------------|
| 1. Gerard Jansen    |
| 2. Steve Dietrich   |
| 3. Simon Parry      |
| 4. David Phillips   |
| 5. Greg Wolfe       |
| 6. Paul Robbins     |
| 7. John Wilson      |
| 8. Reinhold Dresler |

**DATED** this 22nd day of August, 2012.

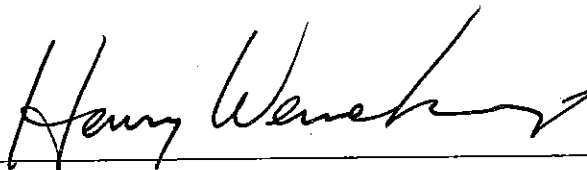
  
Steve Dietrich

**CERTIFICATE OF INCUMBENCY**  
**OF**  
**WIMBERLY FUND**

The undersigned, being the duly appointed Chair of the trustees of the Wimberly Fund (the "Trust"), established as a trust, and governed, by the Declaration of Trust dated as of February 1, 2010, hereby certifies for and on behalf of the Trust and not in his personal capacity that the following persons are all of the duly appointed trustees of the Trust:

| <u>NAME</u>       |
|-------------------|
| 1. Henry Wemekamp |
| 2. Ken Rice       |
| 3. Simon Parry    |
| 4. Gerald Jansen  |

**DATED** this 22nd day of August, 2012.

  
Henry Wemekamp

**CERTIFICATE OF INCUMBENCY**  
**OF**  
**FIRST LEASIDE FUND**

The undersigned, being the duly appointed Chair of the trustees of the First Leaside Fund (the "Trust") governed by the Amended, Consolidated and Restated Declaration of Trust dated August 8, 2006, hereby certifies for and on behalf of the Trust and not in his personal capacity that the following persons are all of the duly appointed trustees of the Trust:

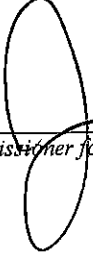
| <u>NAME</u>       |
|-------------------|
| 1. Henry Wemekamp |
| 2. Ken Rice       |
| 3. Simon Parry    |
| 4. Gerald Jansen  |

**DATED** this 22nd day of August, 2012.

  
Henry Wemekamp

TAB 0

This is Exhibit "O" referred to in the Affidavit of Henry  
Wemekamp, sworn August 22, 2012



---

*Commissioner for Taking Affidavits (or as may be)*

## First Lease Group of Companies – cont'd

### First Lease Global Limited Partnership ("Global")

- Global was opened in 2011 and is in the advanced negotiation stages of acquiring a 396 unit apartment complex in Orlando, Florida called Heather Glen;
- Management expects to close the deal in October 2011;
- Equity is raised, paying distributions by way of a return of capital at 7%.

### First Lease Venture Limited Partnership ("Venture")

- Venture was opened in 2011 and is in the advanced negotiating stages of acquiring 3 retirement home complexes in Ottawa called The Palisades, The Palisades Condo Club and The Redwoods;
- Venture currently owns a 50% interest in Birkhall Retirement; the remaining 50% owner is Prime Time Living LP;
- Management anticipates the properties to close on August 26, 2011;
- Equity is raised, paying distributions by way of return of capital at 5%.

### First Lease Visions I & II Limited Partnership ("Visions I & II")

- Visions I & Visions II acquired seven start-up technology companies operating in Ontario;
- The LP was set up to take advantage of OCIF grants (up to 30% of the investment);
- The LP presently does not pay a distribution. Management does not anticipate paying a distribution until 2013 – 2015.

### First Lease Mortgage Fund ("Mortgage Fund")

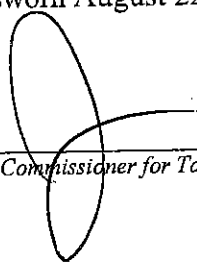
- Mortgage Fund owns the following assets:
  - A \$5.3M syndicated mortgage on the Sedona and Sherman church properties in the WALP portfolio;
- Debt was raised paying interest at 6%.

- Cherry Park Retirement Residence: This property is a 64-unit 61,288 sq. ft. retirement residence that is located in Okanagan, British Columbia. The residence is situated on 0.68 acres of land;
  - Orchard Valley Retirement Residence: This property is a 66-unit, 66,597 sq. ft. retirement residence located in Okanagan, British Columbia. The residence is situated on 0.64 acres of land; and
  - Shores Retirement Residence: This property is a 66-unit 66,580 sq ft retirement home in Kamloops, British Columbia. The residence is situated on 1.4 acres of land, and has land that has not yet been developed.
- ii. Ventures raises equity and paid a 7% distribution.
- iii. Attached hereto and marked as **Exhibit "T"** are the unaudited financial statements for Ventures as of July 31, 2011.
- m. First Leaside Visions I and First Leaside Visions II LP ("Visions I & II")
- i. Visions I & II owns seven start-up technology companies in Ontario. Visions I & II was established to take advantage of Ontario Commercialization Investment Fund grants, which constitute up to 30% of the investment. Visions I & II do not pay any distributions. Attached hereto and marked, collectively, as **Exhibit "U"** are the unaudited financial statements for Visions I & II as at December 31, 2011.
- n. First Leaside Mortgage Fund ("Mortgage Fund")
- i. Mortgage Fund holds a \$5.3 million syndicated mortgage on ~~Sedona~~ and the Sherman church property in the WALP portfolio. Attached hereto and marked as **Exhibit "V"** are the unaudited financial statements for Mortgage Fund as at June 30, 2011.
- o. First Leaside Beverages LP ("Beverages")
- i. Beverages owns a majority interest in a brewery and cidery and the land and building upon which the cidery is situated. Since Beverages holds a minority portfolio interest in the brewery and cidery, Beverages is not applying for CCAA protection.
- ii. Beverages is owned 10.9% by FLWM Holdings, 8.3% by Progressive, and 34.9% by FLWM. The remaining 45.9% of Beverages is held by third party investors.



TAB P

This is Exhibit "P" referred to in the Affidavit of Henry  
Wemekamp, sworn August 22, 2012



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*Commissioner for Taking Affidavits (or as may be)*

**B-5-XII**

**MORTGAGE DOCUMENTS**  
**WIMBERLY POINTE APARTMENTS**

## ARTICLE VIII.

### TRANSFER OR ENCUMBRANCE OF THE PROPERTY

Section 8.1. No Transfer/Encumbrance. Without the prior written consent of Lender, Borrower agrees that it shall not Transfer, or agree to Transfer, all or any portion of the Property or any interest therein. For purposes of the preceding sentence, the following shall be prohibited:

- (i) an installment sale agreement wherein Borrower agrees to sell the Property or any part thereof for a price to be paid in installments;
- (ii) an agreement by Borrower leasing all or a substantial portion of the Property for other than actual occupancy by a space tenant thereunder;
- (iii) a sale, assignment or other transfer of, or the grant of a security interest in, Borrower's right, title and interest in and to any Leases or any Rents;
- (iv) subjecting the Property to a condominium regime or transferring the Property to a cooperative corporation or similar association;
- (v) any merger or consolidation involving Borrower;
- (vi) any voluntary or involuntary sale, conveyance, transfer, pledge or encumbrance of a majority of the beneficial interests in Borrower or any general partner or managing member (or if no managing member, any member) of Borrower, whether occurring in one or a series of transactions; and
- (vii) any Transfer by **DAVID C. PHILLIPS, WIMBERLY GP INC. AND WIMBERLY APARTMENTS LIMITED PARTNERSHIP** ("Original Principals", whether one or more) of any of its interest in Borrower or the general partner or member of Borrower, if applicable.

Section 8.2. Permitted Transfers. Notwithstanding the foregoing, the following shall not be deemed to be Transfers hereunder: (i) transfer by devise or descent or by operation of law upon the death of a member, general partner or stockholder of Borrower or any member or general partner thereof, if (A) written notice of any transfer pursuant to this clause (i) is given to Lender together with such documents relating to the transfer as Lender may reasonably require, (B) control over the management and operation of the Property is retained by the Original Principals at all times prior to the death or legal incapacity of all the Original Principals and is thereafter assumed by Persons who are acceptable in all respects to Lender in its sole discretion, (C) no such transfer by any of the Original Principals will release the respective estate from any liability as a guarantor, and (D) no such transfer, death or other event has any adverse effect either on the Single Purpose Entity status of Borrower or on the status of Borrower as a continuing legal entity liable for the payment of the Debt and the performance of all other obligations secured hereby; (ii) an inter vivos or testamentary transfer of all or any portion of the ownership interest in Borrower to one or more family members of Original Principals or a trust in which all of the beneficial interest is held by one or more family members of Original

(f) After an Event of Default, Lender may sell the Collateral without giving any warranties as to the Collateral. Lender may specifically disclaim any warranties of title, possession, quiet enjoyment or the like. This procedure will not be considered to adversely affect the commercial reasonableness of any sale of the Collateral.

(g) If Lender sells any of the Collateral upon credit, Borrower will be credited only with payments actually made by the purchaser, received by Lender and applied to the indebtedness of the purchaser. In the event the purchaser of the Collateral fails to fully pay for the Collateral, Lender may resell the Collateral and Borrower will be credited with the proceeds of such sale.

## ARTICLE XI

### DEFAULTS

Section 11.1. Events of Default. The Debt shall become immediately due at the option of Lender upon any one or more of the following events (each, an "Event of Default"):

(a) if all or any portion of the principal amount of the Note shall not be paid on the Maturity Date or if any monthly payment of interest or principal is not paid as required pursuant to the Note within five (5) days after the date the same is due, provided, however, that not more than three (3) occasions during the Term of this Deed of Trust (cumulative with any occasions described in the proviso to Section 11.1(b) below), any such failure to pay a monthly payment of interest or principal shall not constitute an Event of Default until after (i) Lender has not received such payment prior to the expiration of such five (5) day grace period, (ii) Lender has delivered written notice to Borrower that such payment was not received and (iii) such payment is not paid as required pursuant to the Note within three (3) days after such notice to Borrower;

(b) if any other amount payable pursuant to the Note, this Deed of Trust, or any other Loan Document except as set forth in (a) above is not paid within five (5) days after the date when due and payable in accordance with the provisions thereof, provided, however, that not more than three (3) occasions during the Term of this Deed of Trust (cumulative with any occasions described in the proviso to Section 11.1(a) above), any such failure to pay shall not constitute an Event of Default until after (i) Lender has not received such payment prior to the expiration of such five (5) day grace period, (ii) Lender has delivered written notice to Borrower that such payment was not received and (iii) such payment is not paid within three (3) days after such notice to Borrower;

(c) if an Event of Default occurs under the terms of any of the Loan Documents;

(d) if Borrower fails to maintain insurance in accordance with Article II hereof;

(e) if Borrower fails to comply with Article VIII or Article XII hereof;

(f) if any representation, warranty or covenant of Borrower or any Indemnitor made herein or in any other Loan Document or in any certificate, report, financial statement or other instrument or agreement furnished to Lender shall prove false or misleading in any material respect;

(g) if a receiver, liquidator or trustee is appointed for Borrower, any general partner or member of Borrower or any indemnitor of any of Borrower's obligations under the Loan; or if Borrower or any general partner or member of Borrower or any Indemnitor becomes insolvent, makes an assignment for the benefit of creditors or admits in writing its inability to pay its debts generally as they become due; or if any petition for bankruptcy, reorganization, liquidation or arrangement pursuant to federal bankruptcy law, or any similar federal or state law, shall be filed by or against, consented to, or acquiesced in by, Borrower or any general partner or member of Borrower or any indemnitor of any of Borrower's obligations under the Loan; provided, however, if such appointment, adjudication, petition or proceeding was involuntary and not consented to by Borrower or such general partner or member of Borrower or Indemnitor, then upon the same not being discharged, stayed or dismissed within thirty (30) days thereof;

(h) if Borrower shall be in default beyond any notice or grace period, if any, under any other deed of trust or security agreement covering any part of the Property without regard to its priority relative to this Deed of Trust; provided, however, this provision shall not be deemed a waiver of the provisions hereof prohibiting further encumbrances affecting the Property or any other provision of this Deed of Trust;

(i) if the Property becomes subject (i) to any Lien other than a Lien for real estate taxes and assessments not yet due and payable, or (ii) to any mechanic's, materialman's or other Lien, and such Lien shall not be discharged (by payment, bonding, or otherwise) within thirty (30) days unless contested in accordance with the terms hereof;

(j) if Borrower discontinues the operation of the Property for reasons other than repair or restoration arising from a casualty or Taking, or if Borrower is enjoined by any court or other Governmental Authority from continuing the operation of its business, including, without limitation, entering into Leases or performing its obligations thereunder, which injunction is not released or stayed, for forty-five (45) days;

(k) if Borrower or any general partner or member of Borrower shall institute or cause to be instituted any proceeding for the termination or dissolution of Borrower or any such general partner or member;

(l) if the Property, is subjected to waste or to removal, demolition or material alteration so that the value of the Property is materially diminished thereby; and Lender determines that it is not adequately protected from any loss, damage or risk associated therewith;

(m) if any judgment, writ, warrant of attachment or execution or similar process is issued or levied against the Property and is not released, vacated or fully bonded within thirty (30) days after its issue or levy; or

**B-5-IX**

**MORTGAGE DOCUMENTS**  
**WIMBERLY CROSSING APARTMENTS**

## ARTICLE VIII.

### TRANSFER OR ENCUMBRANCE OF THE PROPERTY

Section 8.1. No Transfer/Encumbrance. Without the prior written consent of Lender, Borrower agrees that it shall not Transfer, or agree to Transfer, all or any portion of the Property or any interest therein. For purposes of the preceding sentence, the following shall be prohibited:

- (i) an installment sale agreement wherein Borrower agrees to sell the Property or any part thereof for a price to be paid in installments;
- (ii) an agreement by Borrower leasing all or a substantial portion of the Property for other than actual occupancy by a space tenant thereunder;
- (iii) a sale, assignment or other transfer of, or the grant of a security interest in, Borrower's right, title and interest in and to any Leases or any Rents;
- (iv) subjecting the Property to a condominium regime or transferring the Property to a cooperative corporation or similar association;
- (v) any merger or consolidation involving Borrower;
- (vi) any voluntary or involuntary sale, conveyance, transfer, pledge or encumbrance of a majority of the beneficial interests in Borrower or any general partner or managing member (or if no managing member, any member) of Borrower, whether occurring in one or a series of transactions; and
- (vii) any Transfer by **DAVID C. PHILLIPS, FL WIMBERLY CROSSING GP, INC. AND WIMBERLY APARTMENTS LIMITED PARTNERSHIP** ("Original Principals", whether one or more) of any of its interest in Borrower or the general partner or member of Borrower, if applicable.

Section 8.2. Permitted Transfers. Notwithstanding the foregoing, the following shall not be deemed to be Transfers hereunder: (i) transfer by devise or descent or by operation of law upon the death of a member, general partner or stockholder of Borrower or any member or general partner thereof, if (A) written notice of any transfer pursuant to this clause (i) is given to Lender together with such documents relating to the transfer as Lender may reasonably require, (B) control over the management and operation of the Property is retained by the Original Principals at all times prior to the death or legal incapacity of all the Original Principals and is thereafter assumed by Persons who are acceptable in all respects to Lender in its sole discretion, (C) no such transfer by any of the Original Principals will release the respective estate from any liability as a guarantor, and (D) no such transfer, death or other event has any adverse effect either on the Single Purpose Entity status of Borrower or on the status of Borrower as a continuing legal entity liable for the payment of the Debt and the performance of all other obligations secured hereby; (ii) an inter vivos or testamentary transfer of all or any portion of the ownership interest in Borrower to one or more family members of Original Principals or a trust in which all of the beneficial interest is held by one or more family members of Original



(f) After an Event of Default, Lender may sell the Collateral without giving any warranties as to the Collateral. Lender may specifically disclaim any warranties of title, possession, quiet enjoyment or the like. This procedure will not be considered to adversely affect the commercial reasonableness of any sale of the Collateral.

(g) If Lender sells any of the Collateral upon credit, Borrower will be credited only with payments actually made by the purchaser, received by Lender and applied to the indebtedness of the purchaser. In the event the purchaser of the Collateral fails to fully pay for the Collateral, Lender may resell the Collateral and Borrower will be credited with the proceeds of such sale.

## ARTICLE XI.

### DEFAULTS

Section 11.1. Events of Default. The Debt shall become immediately due at the option of Lender upon any one or more of the following events (each, an "Event of Default"):

(a) if all or any portion of the principal amount of the Note shall not be paid on the Maturity Date or if any monthly payment of interest or principal is not paid as required pursuant to the Note within five (5) days after the date the same is due, provided, however, that not more than three (3) occasions during the Term of this Deed of Trust (cumulative with any occasions described in the proviso to Section 11.1(b) below), any such failure to pay a monthly payment of interest or principal shall not constitute an Event of Default until after (i) Lender has not received such payment prior to the expiration of such five (5) day grace period, (ii) Lender has delivered written notice to Borrower that such payment was not received and (iii) such payment is not paid as required pursuant to the Note within three (3) days after such notice to Borrower;

(b) if any other amount payable pursuant to the Note, this Deed of Trust, or any other Loan Document except as set forth in (a) above is not paid within five (5) days after the date when due and payable in accordance with the provisions thereof, provided, however, that not more than three (3) occasions during the Term of this Deed of Trust (cumulative with any occasions described in the proviso to Section 11.1(a) above), any such failure to pay shall not constitute an Event of Default until after (i) Lender has not received such payment prior to the expiration of such five (5) day grace period, (ii) Lender has delivered written notice to Borrower that such payment was not received and (iii) such payment is not paid within three (3) days after such notice to Borrower;

(c) if an Event of Default occurs under the terms of any of the Loan Documents;

(d) if Borrower fails to maintain insurance in accordance with Article II hereof;

(e) if Borrower fails to comply with Article VIII or Article XII hereof;

(f) if any representation, warranty or covenant of Borrower or any Indemnitor made herein or in any other Loan Document or in any certificate, report, financial statement or other instrument or agreement furnished to Lender shall prove false or misleading in any material respect;

(g) if a receiver, liquidator or trustee is appointed for Borrower, any general partner or member of Borrower or any indemnitor of any of Borrower's obligations under the Loan; or if Borrower or any general partner or member of Borrower or any Indemnitor becomes insolvent, makes an assignment for the benefit of creditors or admits in writing its inability to pay its debts generally as they become due; or if any petition for bankruptcy, reorganization, liquidation or arrangement pursuant to federal bankruptcy law, or any similar federal or state law, shall be filed by or against, consented to, or acquiesced in by, Borrower or any general partner or member of Borrower or any indemnitor of any of Borrower's obligations under the Loan; provided, however, if such appointment, adjudication, petition or proceeding was involuntary and not consented to by Borrower or such general partner or member of Borrower or Indemnitor, then upon the same not being discharged, stayed or dismissed within thirty (30) days thereof;

(h) if Borrower shall be in default beyond any notice or grace period, if any, under any other deed of trust or security agreement covering any part of the Property without regard to its priority relative to this Deed of Trust; provided, however, this provision shall not be deemed a waiver of the provisions hereof prohibiting further encumbrances affecting the Property or any other provision of this Deed of Trust;

(i) if the Property becomes subject (i) to any Lien other than a Lien for real estate taxes and assessments not yet due and payable, or (ii) to any mechanic's, materialman's or other Lien, and such Lien shall not be discharged (by payment, bonding, or otherwise) within thirty (30) days unless contested in accordance with the terms hereof;

(j) if Borrower discontinues the operation of the Property for reasons other than repair or restoration arising from a casualty or Taking, or if Borrower is enjoined by any court or other Governmental Authority from continuing the operation of its business, including, without limitation, entering into Leases or performing its obligations thereunder, which injunction is not released or stayed, for forty-five (45) days;

(k) if Borrower or any general partner or member of Borrower shall institute or cause to be instituted any proceeding for the termination or dissolution of Borrower or any such general partner or member;

(l) if the Property, is subjected to waste or to removal, demolition or material alteration so that the value of the Property is materially diminished thereby; and Lender determines that it is not adequately protected from any loss, damage or risk associated therewith;

(m) if any judgment, writ, warrant of attachment or execution or similar process is issued or levied against the Property and is not released, vacated or fully bonded within thirty (30) days after its issue or levy; or

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**MORTGAGE DOCUMENTS**

**PRESTON RACQUET CLUB**

usury, then Lender shall have the option by written notice of not less than ninety (90) days to declare the Debt immediately due and payable.

(b) Borrower will not claim or demand or be entitled to any credit or credits against the Debt for any part of the Taxes or Other Charges assessed against the Property, or any part thereof, and no deduction shall otherwise be made or claimed from the assessed value of the Property, or any part thereof, for real estate tax purposes by reason of this Security Instrument or the Debt. If such claim, credit or deduction shall be required by law, Lender shall have the option, by written notice of not less than ninety (90) days, to declare the Debt immediately due and payable.

(c) If at any time the United States of America, any State thereof or any subdivision of any such State shall require revenue or other stamps to be affixed to the Note, this Security Instrument, or any of the other Loan Documents or impose any other tax or charge on the same, Borrower will pay for the same, with interest and penalties thereon, if any.

7.4 ESTOPPEL CERTIFICATES. After request by Lender, Borrower, within ten (10) days, shall furnish Lender or any proposed assignee an estoppel certificate in form and content as may be requested by Lender with respect to the status of the Loan and/or the Loan Documents.

7.5 REPLACEMENT DOCUMENTS. Upon receipt of an affidavit of an officer of Lender as to the loss, theft, destruction or mutilation of the Note or any other Loan Document which is not of public record, and, in the case of any such mutilation, upon surrender and cancellation of such Note or other Loan Document, Borrower will issue, in lieu thereof, a replacement Note or other Loan Document, dated the date of such lost, stolen, destroyed or mutilated Note or other Loan Document in the same principal amount thereof and otherwise of like tenor.

## 8 - DUE ON SALE/ENCUMBRANCE

8.1 LENDER RELIANCE. Borrower acknowledges that Lender has examined and relied on the experience of Borrower and its general partners, managing members, principals and (if Borrower is a trust) beneficial owners in owning and operating properties such as the Property in agreeing to make the Loan, and will continue to rely on Borrower's ownership of the Property as a means of maintaining the value of the Property as security for payment and performance of the Obligations. Borrower acknowledges that Lender has a valid interest in maintaining the value of the Property so as to ensure that, should Borrower default in the payment or the performance of the Obligations, Lender can recover the Debt by a sale of the Property.

8.2 NO SALE/ENCUMBRANCE. (a) Borrower agrees that the sale, conveyance, mortgage, grant, bargain, encumbrance, pledge, assignment, or other transfer of the Property, or any part thereof, without the prior written consent of Lender, shall constitute an event allowing Lender to declare the entire unpaid Debt to be immediately due and payable without notice of intention to accelerate, notice of acceleration, demand or any other notice.

(b) Notwithstanding anything to the contrary contained herein, Borrower's equity holders may obtain mezzanine financing ("Mezzanine Financing") from a lending institution acceptable to Lender ("Qualified Mezzanine Lender") in an amount not to exceed the Maximum Mezzanine Financing Amount (hereinafter defined) which is secured by a pledge of equity interests in Borrower, subject to Lender's review and approval of the terms of the Mezzanine Financing and the terms of a subordination and intercreditor agreement between Lender and Qualified Mezzanine Lender. The Qualified Mezzanine Lender shall be permitted to acquire equity interests in Borrower upon a default under the Mezzanine Financing without payment of an assumption fee. As used herein, the term "Maximum Financing Amount" shall mean the amount which will result in a combined debt service

coverage ratio on the Loan and the Mezzanine Financing of 1.15:1.00 and a combined loan to value percentage of 85%, each as determined by Lender. If the Mezzanine Financing bears interest at a floating rate, Lender may determine the debt service coverage ratio on the basis of a market-based constant reasonably determined by Lender. Except as set forth above, no transfer of the pledged interests in Borrower or transfer of Qualified Mezzanine Lender's interest in the Mezzanine Financing shall be permitted without the prior written consent of Lender and Lender's receipt of confirmation from any Rating Agencies assigning a rating to the securities issued in connection with the Loan that such transfer or exercise of remedies shall not result in a qualification, downgrade or withdrawal of any rating assigned by the Rating Agencies to such securities.

**8.3 SALE/ENCUMBRANCE DEFINED.** (a) A sale, conveyance, mortgage, grant, bargain, encumbrance, pledge, assignment, or transfer within the meaning of this Article 8 shall be deemed to include, but not be limited to, (a) an installment sales agreement wherein Borrower agrees to sell the Property or any part thereof for a price to be paid in installments; (b) an agreement by Borrower leasing all or a substantial part of the Property for other than actual occupancy by a space tenant thereunder or a sale, assignment or other transfer of, or the grant of a security interest in, Borrower's right, title and interest in and to any Leases or any Rents; (c) if Borrower, any Guarantor, any Indemnitor, or any general partner or managing member of Borrower, Guarantor or Indemnitor is a corporation, the voluntary or involuntary sale, conveyance, transfer or pledge of such corporation's stock (or the stock of any corporation directly or indirectly controlling such corporation by operation of law or otherwise) or the creation or issuance of new stock by which an aggregate of more than 49% of such corporation's stock shall become vested in another party; (d) if Borrower, any Guarantor or Indemnitor or any general partner or managing member of Borrower, any Guarantor or Indemnitor is a limited or general partnership or joint venture, the change, removal or resignation of a general partner or managing partner, or the transfer or pledge of the partnership interest of any general partner or managing partner of such partnership or any profits or proceeds relating to such partnership interest or the transfer or pledge of more than 49% in the aggregate of any limited partnership interests in such partnership or any profits or proceeds related to such interests whether in one transfer or pledge or a series of transfers or pledges; (e) if Borrower, any Guarantor or Indemnitor or any general partner or managing member of Borrower, any Guarantor or Indemnitor is a limited liability company, the change, removal or resignation of the managing member of such company, or the transfer or pledge of the membership interest of the managing member of such company or any profits or proceeds relating to such membership interest or the transfer or pledge of more than 49% in the aggregate of any membership interests in such company or any profits or proceeds related to such interests whether in one transfer or pledge or a series of transfers or pledges; and (f) without limitation to the foregoing, any voluntary or involuntary sale, transfer, conveyance or pledge by any person or entity which directly or indirectly controls Borrower (by operation of law or otherwise) (a "Principal") of its direct or indirect controlling interest in Borrower. Notwithstanding the foregoing, the following transfers shall not be deemed to be a sale, conveyance, mortgage, grant, bargain, encumbrance, pledge, assignment or transfer within the meaning of this Article 8: (A) transfer by devise or descent or by operation of law upon the death of a partner, member or stockholder of Borrower or any general partner thereof, (B) a sale, transfer or hypothecation of a partnership, shareholder or membership interest in Borrower, whichever the case may be, by the current partner(s), shareholder(s) or member(s), as applicable, to an immediate family member (i.e., parents, spouses, siblings, children or grandchildren) of such partner, shareholder or member (or a trust for the benefit of any such persons), and (C) the sale of obsolete Personal Property in the ordinary course of business so long as same is replaced with Personal Property of like quality as the original quality of the replaced Personal Property.

(b) Notwithstanding anything to the contrary contained in this Article 8, and in addition to the transfers permitted hereunder, following the sale of the Loan in a securitization, Lender's consent to a one-time sale or transfer of the Property to a newly formed Special Purpose Entity directly or indirectly controlled by David C. Phillips ("Transferee") shall not be withheld provided the following conditions are satisfied:

1. Borrower shall pay any and all out-of-pocket costs incurred in connection with the transfer of the Property (including, without limitation, Lender's counsel fees and disbursements and all recording

fees, title insurance premiums and mortgage and intangible taxes and the fees and expenses of the Rating Agencies pursuant to clause (4) below);

2. Transferee shall assume all of the obligations of Borrower under the Loan Documents in a manner satisfactory to Lender in all respects, including, without limitation, by entering into an assumption agreement in form and substance satisfactory to Lender;

3. Transferee must be able to satisfy all the covenants set forth in Sections 4.2 and 5.9 hereof, no Event of Default or event which, with the giving of notice, passage of time or both, shall constitute an Event of Default, shall otherwise occur as a result of such transfer, and Transferee shall deliver (A) all organization documentation reasonably requested by Lender, which shall be reasonably satisfactory to Lender, and (B) all certificates, agreements and covenants and opinions of counsel reasonably required by Lender;

4. If required by Lender, the Rating Agencies selected by Lender shall confirm in a manner acceptable to Lender that such transfer shall not result in the downgrade, qualification or withdrawal of any ratings then assigned by such Rating Agencies to any class of Securities; and

5. Borrower shall deliver, at its sole cost and expense, an endorsement to the existing title policy insuring the Security Instrument, as modified by the assumption agreement, as a valid first lien on the Property and naming the Transferee as owner of the Property, which endorsement shall insure that, as of the date of the recording of the assumption agreement, the Property shall not be subject to any additional exceptions or liens other than those contained in the title policy issued on the date hereof.

6. Guarantor and Indemnitor will execute any such ratification required by Lender to effectuate such transfer.

8.4 LENDER'S RIGHTS. Except as provided for in Section 8.3(b) above, Lender reserves the right to condition the consent required hereunder upon a modification of the terms hereof (provided such modification does not modify or amend any material economic terms of the Note or the other Loan Documents) and on assumption of the Note, this Security Instrument and the other Loan Documents as so modified by the proposed transferee, payment of a transfer fee (except with respect to the transfer provided for under Section 8.3(b) above) of not less than one percent (1%) of the principal balance of the Note and all of Lender's expenses incurred in connection with such transfer, the approval by Lender of the proposed transferee, the proposed transferee's continued compliance with the representations, warranties and covenants set forth in Sections 4.2 and 5.9 hereof, or such other conditions as Lender shall determine in its sole discretion to be in the interest of Lender. Lender shall not be required to demonstrate any actual impairment of its security or any increased risk of default hereunder in order to declare the Debt immediately due and payable upon Borrower's sale, conveyance, mortgage, grant, bargain, encumbrance, pledge, assignment, or transfer of the Property without Lender's consent. This provision shall apply to every sale, conveyance, mortgage, grant, bargain, encumbrance, pledge, assignment, or transfer of the Property regardless of whether voluntary or not, or whether or not Lender has consented to any previous sale, conveyance, mortgage, grant, bargain, encumbrance, pledge, assignment, or transfer of the Property.

## 9 - DEFAULT

9.1 EVENTS OF DEFAULT. The occurrence of any one or more of the following events shall constitute an "Event of Default": (a) if any portion of the Debt is not paid on the date the same is due or if the entire Debt is not paid on or before the Maturity Date; (b) if any of the Taxes or Other Charges is not paid prior to the date the same becomes delinquent except to the extent sums

sufficient to pay such Taxes and Other Charges have been deposited with Lender in accordance with the terms of this Security Instrument; (c) if the Policies are not kept in full force and effect, or if the Policies are not delivered to Lender upon request or Borrower has not delivered evidence of the renewal of the Policies fifteen (15) days prior to their expiration as provided in Section 3.2(e); (d) if Borrower violates or does not comply with any of the provisions of Sections 3.6 or 4.2 or Articles 8 or 11, or Borrower sells, conveys, mortgages, grants, bargains, encumbrances, pledges, assigns, or otherwise transfers the Property, or any part thereof, without the prior written consent of Lender, or permits same; (e) if any representation or warranty of Borrower, Indemnitor or any person guaranteeing payment or performance of the Obligations or any portion thereof (a "Guarantor"), or any general partner, principal or beneficial owner of any of the foregoing, made herein or in the Environmental Indemnity (defined below) or any guaranty, or in any certificate, report, financial statement or other instrument or document furnished to Lender shall have been false or misleading in any material respect when made, provided that in the event of an unintentional breach of a representation or warranty which exists due to circumstances or conditions which are capable of being cured within thirty (30) days, Borrower shall have thirty (30) days from the date of Lender's delivery of notice of the breach in which to cure the breach; (f) if (i) Borrower or any general partner or managing member of Borrower shall commence any case, proceeding or other action (A) under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency or relief of debtors, seeking to have an order for relief entered with respect to it, or seeking to adjudicate it a bankrupt or insolvent, or seeking reorganization, adjustment, liquidation, dissolution or other relief with respect to it or its debts, or (B) seeking appointment of a receiver, trustee, custodian or other similar official for it or for all or any substantial part of its assets, or Borrower or any general partner or managing member of Borrower shall make a general assignment for the benefit of its creditors; or (ii) there shall be commenced against Borrower or any general partner or managing member of Borrower any case, proceeding or other action of a nature referred to in clause (i) above which (A) results in the entry of an order for relief or any such adjudication or appointment or (B) remains undismissed or undischarged for a period of sixty (60) days; or (iii) there shall be commenced against Borrower or any general partner or managing member of Borrower any case, proceeding or other action seeking issuance of a warrant of attachment, execution, distraint or similar process against all or any substantial part of its assets which results in the entry of any order for any such relief which shall not have been vacated, discharged, or stayed or bonded pending appeal within sixty (60) days from the entry thereof; or (iv) Borrower or any general partner or managing member of Borrower shall take any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in clause (i), (ii), or (iii) above; or (v) Borrower or any general partner or managing member of Borrower shall generally not, or shall be unable to, or shall admit in writing its inability to, pay its debts as they become due; (g) if Borrower shall be in default beyond any applicable notice or cure period under any other mortgage, deed of trust, deed to secure debt or other security agreement covering any part of the Property whether it be superior or junior in lien to this Security Instrument; (h) subject to Section 19.17 below, if the Property becomes subject to any mechanic's, materialman's or other lien other than a lien for local real estate taxes and assessments not then delinquent and the lien shall remain undischarged of record (by payment, bonding or otherwise) for a period of thirty (30) days after Borrower has first received notice thereof; (i) if any federal tax lien is filed against the Property and same is not discharged of record within thirty (30) days after Borrower has first received notice thereof; (j) if within ten (10) days of Lender's demand therefor Borrower fails to provide Lender with the written certification and evidence referred to in Section 5.9 hereof or Borrower fails to comply with its obligations under Section 16.1; (k) if Borrower or any other Indemnitor shall fail to perform any of its obligations under that certain environmental indemnity agreement of even date herewith (the "Environmental Indemnity") after the expiration of applicable notice and grace periods, if any; (l) if any default beyond any applicable notice or cure period occurs under any guaranty or indemnity executed in connection herewith and such default continues after the expiration of applicable grace periods, if any; (m) if for more than ten (10) days after notice from Lender, Borrower shall continue to be in default under any other term, covenant or condition of the Note, this Security Instrument or the other Loan Documents in the case of any default which can be cured by the

payment of a sum of money or for thirty (30) days after notice from Lender in the case of any other default, provided that if such default cannot reasonably be cured within such thirty (30) day period and Borrower shall have commenced to cure such default within such thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for so long as it shall require Borrower in the exercise of due diligence to cure such default, it being agreed that no such extension shall be for a period in excess of sixty (60) days; or (n) if Borrower shall fail to comply with its obligations under Article 21 hereof. Notwithstanding anything to the contrary contained herein, with respect only to Borrower's first two failures in any calendar year to make Monthly Payments within the time required under the Note, no Event of Default shall be deemed to have occurred unless Borrower fails to make payment on or before the date that is five (5) days after Lender delivers notice of the Borrower's breach to Borrower.

## 10 - RIGHTS AND REMEDIES

10.1 REMEDIES. Upon the occurrence of any Event of Default, Borrower agrees that Trustee or Lender may take such action, without notice or demand, as Lender deems advisable to protect and enforce Trustee's or Lender's rights against Borrower and in and to the Property, including, but not limited to, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Lender may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Trustee or Lender: (a) declare the entire unpaid Debt to be immediately due and payable; (b) with or without entry, institute proceedings, judicial or otherwise, for the complete or partial foreclosure of this Security Instrument under any applicable provision of law in which case the Property or any interest therein may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner, any partial foreclosure to be subject to the continuing lien and security interest of this Security Instrument for the balance of the Debt not then due, unimpaired and without loss of priority; (c) sell for cash or upon credit the Property or any part thereof and all estate, claim, demand, right, title and interest of Borrower therein and rights of redemption thereof, pursuant to power of sale, judicial decree or otherwise, at one or more sales, as an entirety or in one or more parcels; (d) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein, in the Note or in the other Loan Documents; (e) recover judgment on the Note either before, during or after any proceedings for the enforcement of this Security Instrument or the other Loan Documents; (f) apply for the appointment of a receiver, trustee, liquidator or conservator of the Property, without notice and without regard for the adequacy of the security for the Debt and without regard for the solvency of Borrower, any Guarantor, Indemnitor or of any person, firm or other entity liable for the payment of the Debt; (g) enter into or upon the Property, either personally or by its agents, nominees or attorneys and dispossess Borrower and its agents and servants therefrom, without liability for trespass, damages or otherwise and exclude Borrower and its agents or servants wholly therefrom, and take possession of all books, records and accounts relating thereto and Borrower agrees to surrender possession of the Property and of such books, records and accounts to Lender upon demand, and thereupon Lender may exercise all rights and powers of Borrower with respect to the Property including, without limitation, (1) the right to use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Property and conduct the business thereat; (2) the right to make or complete any construction, alterations, additions, renewals, replacements and improvements to or on the Property as Lender deems advisable; (3) the right to make, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect and receive all Rents of the Property and every part thereof; (h) require Borrower to pay monthly in advance to Lender, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Property as may be occupied by Borrower; (i) require Borrower to vacate and surrender possession of the Property to Lender or to such receiver and, in default thereof, Borrower may be evicted by summary proceedings or otherwise; (j) apply the receipts from the Property, any Deposits and interest thereon and/or any unearned Insurance Premiums paid to Lender upon the surrender of any Policies maintained pursuant to Article 3



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**MORTGAGE DOCUMENTS**

**BLUFFS APARTMENTS**

## ARTICLE VII.

### MAINTENANCE AND REPAIR

Section 7.1. Maintenance and Repair of the Property; Alterations; Replacement of Equipment. Borrower hereby covenants and agrees that:

(a) Borrower shall (i) maintain the Property and the sidewalks and curbs adjoining the Property in good repair and shall keep the same in good, safe and insurable condition and in compliance with all existing and future applicable Legal Requirements, (ii) promptly make all repairs and replacements to the Property, interior and exterior, structural and nonstructural, ordinary and extraordinary, unforeseen and foreseen, and maintain the Property in a manner appropriate for similar buildings for their present uses, (iii) not commit or suffer to be committed any waste of the Property or do or suffer to be done anything which will increase the risk of fire or other hazard to the Property or otherwise impair the value thereof and (iv) not abandon the Property. Borrower shall keep the sidewalks, vaults, gutters and curbs comprising, in front of or adjacent to, the Property, clean and free from dirt, snow, ice, rubbish and obstructions. All repairs and replacements made by Borrower shall (i) be made with first-class materials, in a good and workmanlike manner, (ii) be equal or better in quality and class to the original work, (iii) comply with all applicable Legal Requirements and Insurance Requirements and (iv) be at Borrower's sole expense.

(b) Borrower shall not demolish, remove, construct, or, except as expressly provided in Article III hereof, restore or alter the Property or any portion thereof, nor consent to or permit any of the foregoing, without Lender's prior written consent in each instance, which consent may be given or withheld in Lender's discretion. Notwithstanding the foregoing, Lender's consent shall not be required with respect to nonstructural, interior alterations involving less than Two Hundred Thousand Dollars (\$200,000) to complete, as evidenced by an Officer's Certificate delivered to Lender prior to the commencement of such alteration.

(c) Notwithstanding the provisions of this Deed of Trust to the contrary, Borrower shall have the right, at any time and from time to time, to remove and dispose of Equipment which may have become obsolete or unfit for use or which is no longer useful in the management, operation or maintenance of the Property. Borrower shall promptly replace any such Equipment so disposed of or removed with other Equipment of at least equal quality, value, serviceability and use, free of superior title, liens and claims. However, if by reason of technological or other developments in the operation and maintenance of buildings of the general character of any Improvement, replacement of the Equipment so removed or disposed of is not necessary or desirable for the proper management, operation or maintenance of the Property, Borrower shall not be required to replace the same.

## ARTICLE VIII.

### TRANSFER OR ENCUMBRANCE OF THE PROPERTY

Section 8.1. No Transfer/Encumbrance. Without the prior written consent of Lender, Borrower agrees that it shall not Transfer, or agree to Transfer, all or any portion of the

Property or any interest therein. For purposes of the preceding sentence, the following shall be prohibited:

- (i) an installment sale agreement wherein Borrower agrees to sell the Property or any part thereof for a price to be paid in installments;
- (ii) an agreement by Borrower leasing all or a substantial portion of the Property for other than actual occupancy by a space tenant thereunder;
- (iii) a sale, assignment or other transfer of, or the grant of a security interest in, Borrower's right, title and interest in and to any Leases or any Rents;
- (iv) subjecting the Property to a condominium regime or transferring the Property to a cooperative corporation or similar association;
- (v) any merger or consolidation involving Borrower;
- (vi) any voluntary or involuntary sale, conveyance, transfer, pledge or encumbrance of a majority of the beneficial interests in Borrower or any general partner or managing member (or if no managing member, any member) of Borrower, whether occurring in one or a series of transactions; and
- (vii) any Transfer by **DAVID C. PHILLIPS, LAKEWOOD BLUFFS GP, INC. AND THE BLUFFS OF LAKEWOOD LIMITED PARTNERSHIP** ("**Original Principals**", whether one or more) of any of its interest in Borrower or the general partner or member of Borrower, if applicable.

Section 8.2. Permitted Transfers. Notwithstanding the foregoing, the following shall not be deemed to be Transfers hereunder: (i) transfer by devise or descent or by operation of law upon the death of a member, general partner or stockholder of Borrower or any member or general partner thereof, if (A) written notice of any transfer pursuant to this clause (i) is given to Lender together with such documents relating to the transfer as Lender may reasonably require, (B) control over the management and operation of the Property is retained by the Original Principals at all times prior to the death or legal incapacity of all the Original Principals and is thereafter assumed by Persons who are acceptable in all respects to Lender in its sole discretion, (C) no such transfer by any of the Original Principals will release the respective estate from any liability as a guarantor, and (D) no such transfer, death or other event has any adverse effect either on the Single Purpose Entity status of Borrower or on the status of Borrower as a continuing legal entity liable for the payment of the Debt and the performance of all other obligations secured hereby; (ii) an inter vivos or testamentary transfer of all or any portion of the ownership interest in Borrower to one or more family members of Original Principals or a trust in which all of the beneficial interest is held by one or more family members of Original Principals or a partnership, limited liability company, corporation or other legal entity in which a majority of the capital and profits interests are held by one or more family members of Original Principals, provided that any inter vivos transfer of all or any portion of the Property or any inter vivos transfer or issuance of capital stock (or other ownership interests) in Borrower is made in connection with Original Principals' bona fide, good faith estate planning and that the Person(s) with Control of Borrower or the management of the Property are (A) the same Person(s) who had

(d) Borrower and Lender acknowledge that for the purposes of Article 9 of the UCC, the law of the State of Texas shall be the law of the jurisdiction of the bank in which the Reserve Account is located.

(e) Lender may comply with any applicable Legal Requirements in connection with the disposition of the Collateral, and Lender's compliance therewith will not be considered to adversely affect the commercial reasonableness of any sale of the Collateral.

(f) After an Event of Default, Lender may sell the Collateral without giving any warranties as to the Collateral. Lender may specifically disclaim any warranties of title, possession, quiet enjoyment or the like. This procedure will not be considered to adversely affect the commercial reasonableness of any sale of the Collateral.

(g) If Lender sells any of the Collateral upon credit, Borrower will be credited only with payments actually made by the purchaser, received by Lender and applied to the indebtedness of the purchaser. In the event the purchaser of the Collateral fails to fully pay for the Collateral, Lender may resell the Collateral and Borrower will be credited with the proceeds of such sale.

## ARTICLE XI.

### DEFAULTS

Section 11.1. Events of Default. The Debt shall become immediately due at the option of Lender upon any one or more of the following events (each, an "Event of Default"):

(a) if all or any portion of the principal amount of the Note shall not be paid on the Maturity Date or if any monthly payment of interest or principal is not paid as required pursuant to the Note within five (5) days after the date the same is due, provided, however, that not more than three (3) occasions during the Term of this Deed of Trust (cumulative with any occasions described in the proviso to Section 11.1(b) below), any such failure to pay a monthly payment of interest or principal shall not constitute an Event of Default until after (i) Lender has not received such payment prior to the expiration of such five (5) day grace period, (ii) Lender has delivered written notice to Borrower that such payment was not received and (iii) such payment is not paid as required pursuant to the Note within three (3) days after such notice to Borrower;

(b) if any other amount payable pursuant to the Note, this Deed of Trust, or any other Loan Document except as set forth in (a) above is not paid within five (5) days after the date when due and payable in accordance with the provisions thereof, provided, however, that not more than three (3) occasions during the Term of this Deed of Trust (cumulative with any occasions described in the proviso to Section 11.1(a) above), any such failure to pay shall not constitute an Event of Default until after (i) Lender has not received such payment prior to the expiration of such five (5) day grace period, (ii) Lender has delivered written notice to Borrower that such payment was not received and (iii) such payment is not paid within three (3) days after such notice to Borrower;

(c) if an Event of Default occurs under the terms of any of the Loan Documents;

(d) if Borrower fails to maintain insurance in accordance with Article II hereof;

(e) if Borrower fails to comply with Article VIII or Article XII hereof;

(f) if any representation, warranty or covenant of Borrower or any Indemnitor made herein or in any other Loan Document or in any certificate, report, financial statement or other instrument or agreement furnished to Lender shall prove false or misleading in any material respect;

(g) if a receiver, liquidator or trustee is appointed for Borrower, any general partner or member of Borrower or any indemnitor of any of Borrower's obligations under the Loan; or if Borrower or any general partner or member of Borrower or any Indemnitor becomes insolvent, makes an assignment for the benefit of creditors or admits in writing its inability to pay its debts generally as they become due; or if any petition for bankruptcy, reorganization, liquidation or arrangement pursuant to federal bankruptcy law, or any similar federal or state law, shall be filed by or against, consented to, or acquiesced in by, Borrower or any general partner or member of Borrower or any indemnitor of any of Borrower's obligations under the Loan; provided, however, if such appointment, adjudication, petition or proceeding was involuntary and not consented to by Borrower or such general partner or member of Borrower or Indemnitor, then upon the same not being discharged, stayed or dismissed within thirty (30) days thereof;

(h) if Borrower shall be in default beyond any notice or grace period, if any, under any other deed of trust or security agreement covering any part of the Property without regard to its priority relative to this Deed of Trust; provided, however, this provision shall not be deemed a waiver of the provisions hereof prohibiting further encumbrances affecting the Property or any other provision of this Deed of Trust;

(i) if the Property becomes subject (i) to any Lien other than a Lien for real estate taxes and assessments not yet due and payable, or (ii) to any mechanic's, materialman's or other Lien, and such Lien shall not be discharged (by payment, bonding, or otherwise) within thirty (30) days unless contested in accordance with the terms hereof;

(j) if Borrower discontinues the operation of the Property for reasons other than repair or restoration arising from a casualty or Taking, or if Borrower is enjoined by any court or other Governmental Authority from continuing the operation of its business, including, without limitation, entering into Leases or performing its obligations thereunder, which injunction is not released or stayed, for forty-five (45) days;

(k) if Borrower or any general partner or member of Borrower shall institute or cause to be instituted any proceeding for the termination or dissolution of Borrower or any such general partner or member;

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**MORTGAGE DOCUMENTS**  
**OLD MILL POND APARTMENTS**

## ARTICLE VIII.

### TRANSFER OR ENCUMBRANCE OF THE PROPERTY

Section 8.1. No Transfer/Encumbrance. Without the prior written consent of Lender, Borrower agrees that it shall not Transfer, or agree to Transfer, all or any portion of the Property or any interest therein. For purposes of the preceding sentence, the following shall be prohibited:

- (i) an installment sale agreement wherein Borrower agrees to sell the Property or any part thereof for a price to be paid in installments;
- (ii) an agreement by Borrower leasing all or a substantial portion of the Property for other than actual occupancy by a space tenant thereunder;
- (iii) a sale, assignment or other transfer of, or the grant of a security interest in, Borrower's right, title and interest in and to any Leases or any Rents;
- (iv) subjecting the Property to a condominium regime or transferring the Property to a cooperative corporation or similar association;
- (v) any merger or consolidation involving Borrower;
- (vi) any voluntary or involuntary sale, conveyance, transfer, pledge or encumbrance of a majority of the beneficial interests in Borrower or any general partner or managing member (or if no managing member, any member) of Borrower, whether occurring in one or a series of transactions; and
- (vii) any Transfer by **DAVID C. PHILLIPS, OLD MILL POND GENERAL PARTNER, INC. AND OLD MILL POND APARTMENTS LIMITED PARTNERSHIP** ("Original Principals", whether one or more) of any of its interest in Borrower or the general partner or member of Borrower, if applicable.

Section 8.2. Permitted Transfers. Notwithstanding the foregoing, the following shall not be deemed to be Transfers hereunder: (i) transfer by devise or descent or by operation of law upon the death of a member, general partner or stockholder of Borrower or any member or general partner thereof, if (A) written notice of any transfer pursuant to this clause (i) is given to Lender together with such documents relating to the transfer as Lender may reasonably require, (B) control over the management and operation of the Property is retained by the Original Principals at all times prior to the death or legal incapacity of all the Original Principals and is thereafter assumed by Persons who are acceptable in all respects to Lender in its sole discretion, (C) no such transfer by any of the Original Principals will release the respective estate from any liability as a guarantor, and (D) no such transfer, death or other event has any adverse effect either on the Single Purpose Entity status of Borrower or on the status of Borrower as a continuing legal entity liable for the payment of the Debt and the performance of all other obligations secured hereby; (ii) an inter vivos or testamentary transfer of all or any portion of the ownership interest in Borrower to one or more family members of Original Principals or a trust in which all of the beneficial interest is held by one or more family members of Original

(f) After an Event of Default, Lender may sell the Collateral without giving any warranties as to the Collateral. Lender may specifically disclaim any warranties of title, possession, quiet enjoyment or the like. This procedure will not be considered to adversely affect the commercial reasonableness of any sale of the Collateral.

(g) If Lender sells any of the Collateral upon credit, Borrower will be credited only with payments actually made by the purchaser, received by Lender and applied to the indebtedness of the purchaser. In the event the purchaser of the Collateral fails to fully pay for the Collateral, Lender may resell the Collateral and Borrower will be credited with the proceeds of such sale.

## ARTICLE XI

### DEFAULTS

Section 11.1. Events of Default. The Debt shall become immediately due at the option of Lender upon any one or more of the following events (each, an "Event of Default"):

(a) if all or any portion of the principal amount of the Note shall not be paid on the Maturity Date or if any monthly payment of interest or principal is not paid as required pursuant to the Note within five (5) days after the date the same is due, provided, however, that not more than three (3) occasions during the Term of this Deed of Trust (cumulative with any occasions described in the proviso to Section 11.1(b) below), any such failure to pay a monthly payment of interest or principal shall not constitute an Event of Default until after (i) Lender has not received such payment prior to the expiration of such five (5) day grace period, (ii) Lender has delivered written notice to Borrower that such payment was not received and (iii) such payment is not paid as required pursuant to the Note within three (3) days after such notice to Borrower;

(b) if any other amount payable pursuant to the Note, this Deed of Trust, or any other Loan Document except as set forth in (a) above is not paid within five (5) days after the date when due and payable in accordance with the provisions thereof, provided, however, that not more than three (3) occasions during the Term of this Deed of Trust (cumulative with any occasions described in the proviso to Section 11.1(a) above), any such failure to pay shall not constitute an Event of Default until after (i) Lender has not received such payment prior to the expiration of such five (5) day grace period, (ii) Lender has delivered written notice to Borrower that such payment was not received and (iii) such payment is not paid within three (3) days after such notice to Borrower;

(c) if an Event of Default occurs under the terms of any of the Loan Documents;

(d) if Borrower fails to maintain insurance in accordance with Article II hereof;

(e) if Borrower fails to comply with Article VIII or Article XII hereof;



(f) if any representation, warranty or covenant of Borrower or any Indemnitor made herein or in any other Loan Document or in any certificate, report, financial statement or other instrument or agreement furnished to Lender shall prove false or misleading in any material respect;

(g) if a receiver, liquidator or trustee is appointed for Borrower, any general partner or member of Borrower or any indemnitor of any of Borrower's obligations under the Loan; or if Borrower or any general partner or member of Borrower or any Indemnitor becomes insolvent, makes an assignment for the benefit of creditors or admits in writing its inability to pay its debts generally as they become due; or if any petition for bankruptcy, reorganization, liquidation or arrangement pursuant to federal bankruptcy law, or any similar federal or state law, shall be filed by or against, consented to, or acquiesced in by, Borrower or any general partner or member of Borrower or any indemnitor of any of Borrower's obligations under the Loan; provided, however, if such appointment, adjudication, petition or proceeding was involuntary and not consented to by Borrower or such general partner or member of Borrower or Indemnitor, then upon the same not being discharged, stayed or dismissed within thirty (30) days thereof;

(h) if Borrower shall be in default beyond any notice or grace period, if any, under any other deed of trust or security agreement covering any part of the Property without regard to its priority relative to this Deed of Trust; provided, however, this provision shall not be deemed a waiver of the provisions hereof prohibiting further encumbrances affecting the Property or any other provision of this Deed of Trust;

(i) if the Property becomes subject (i) to any Lien other than a Lien for real estate taxes and assessments not yet due and payable, or (ii) to any mechanic's, materialman's or other Lien, and such Lien shall not be discharged (by payment, bonding, or otherwise) within thirty (30) days unless contested in accordance with the terms hereof;

(j) if Borrower discontinues the operation of the Property for reasons other than repair or restoration arising from a casualty or Taking, or if Borrower is enjoined by any court or other Governmental Authority from continuing the operation of its business, including, without limitation, entering into Leases or performing its obligations thereunder, which injunction is not released or stayed, for forty-five (45) days;

(k) if Borrower or any general partner or member of Borrower shall institute or cause to be instituted any proceeding for the termination or dissolution of Borrower or any such general partner or member;

(l) if the Property, is subjected to waste or to removal, demolition or material alteration so that the value of the Property is materially diminished thereby; and Lender determines that it is not adequately protected from any loss, damage or risk associated therewith;

(m) if any judgment, writ, warrant of attachment or execution or similar process is issued or levied against the Property and is not released, vacated or fully bonded within thirty (30) days after its issue or levy; or

B-5-VIII

**MORTGAGE DOCUMENTS**

**SHORES APARTMENTS**

## ARTICLE VIII.

### TRANSFER OR ENCUMBRANCE OF THE PROPERTY

Section 8.1. No Transfer/Encumbrance. Without the prior written consent of Lender, Borrower agrees that it shall not Transfer, or agree to Transfer, all or any portion of the Property or any interest therein. For purposes of the preceding sentence, the following shall be prohibited:

- (i) an installment sale agreement wherein Borrower agrees to sell the Property or any part thereof for a price to be paid in installments;
- (ii) an agreement by Borrower leasing all or a substantial portion of the Property for other than actual occupancy by a space tenant thereunder;
- (iii) a sale, assignment or other transfer of, or the grant of a security interest in, Borrower's right, title and interest in and to any Leases or any Rents;
- (iv) subjecting the Property to a condominium regime or transferring the Property to a cooperative corporation or similar association;
- (v) any merger or consolidation involving Borrower;
- (vi) any voluntary or involuntary sale, conveyance, transfer, pledge or encumbrance of a majority of the beneficial interests in Borrower or any general partner or managing member (or if no managing member, any member) of Borrower, whether occurring in one or a series of transactions; and
- (vii) any Transfer by **DAVID C. PHILLIPS, SHORES GENERAL PARTNER, INC. AND THE SHORES LIMITED PARTNERSHIP** ("Original Principals", whether one or more) of any of its interest in Borrower or the general partner or member of Borrower, if applicable.

Section 8.2. Permitted Transfers. Notwithstanding the foregoing, the following shall not be deemed to be Transfers hereunder: (i) transfer by devise or descent or by operation of law upon the death of a member, general partner or stockholder of Borrower or any member or general partner thereof, if (A) written notice of any transfer pursuant to this clause (i) is given to Lender together with such documents relating to the transfer as Lender may reasonably require, (B) control over the management and operation of the Property is retained by the Original Principals at all times prior to the death or legal incapacity of all the Original Principals and is thereafter assumed by Persons who are acceptable in all respects to Lender in its sole discretion, (C) no such transfer by any of the Original Principals will release the respective estate from any liability as a guarantor, and (D) no such transfer, death or other event has any adverse effect either on the Single Purpose Entity status of Borrower or on the status of Borrower as a continuing legal entity liable for the payment of the Debt and the performance of all other obligations secured hereby; (ii) an inter vivos or testamentary transfer of all or any portion of the ownership interest in Borrower to one or more family members of Original Principals or a trust in which all of the beneficial interest is held by one or more family members of Original

(f) After an Event of Default, Lender may sell the Collateral without giving any warranties as to the Collateral. Lender may specifically disclaim any warranties of title, possession, quiet enjoyment or the like. This procedure will not be considered to adversely affect the commercial reasonableness of any sale of the Collateral.

(g) If Lender sells any of the Collateral upon credit, Borrower will be credited only with payments actually made by the purchaser, received by Lender and applied to the indebtedness of the purchaser. In the event the purchaser of the Collateral fails to fully pay for the Collateral, Lender may resell the Collateral and Borrower will be credited with the proceeds of such sale.

## ARTICLE XI.

### DEFAULTS

Section 11.1. Events of Default. The Debt shall become immediately due at the option of Lender upon any one or more of the following events (each, an "Event of Default"):

(a) if all or any portion of the principal amount of the Note shall not be paid on the Maturity Date or if any monthly payment of interest or principal is not paid as required pursuant to the Note within five (5) days after the date the same is due, provided, however, that not more than three (3) occasions during the Term of this Deed of Trust (cumulative with any occasions described in the proviso to Section 11.1(b) below), any such failure to pay a monthly payment of interest or principal shall not constitute an Event of Default until after (i) Lender has not received such payment prior to the expiration of such five (5) day grace period, (ii) Lender has delivered written notice to Borrower that such payment was not received and (iii) such payment is not paid as required pursuant to the Note within three (3) days after such notice to Borrower;

(b) if any other amount payable pursuant to the Note, this Deed of Trust, or any other Loan Document except as set forth in (a) above is not paid within five (5) days after the date when due and payable in accordance with the provisions thereof, provided, however, that not more than three (3) occasions during the Term of this Deed of Trust (cumulative with any occasions described in the proviso to Section 11.1(a) above), any such failure to pay shall not constitute an Event of Default until after (i) Lender has not received such payment prior to the expiration of such five (5) day grace period, (ii) Lender has delivered written notice to Borrower that such payment was not received and (iii) such payment is not paid within three (3) days after such notice to Borrower;

(c) if an Event of Default occurs under the terms of any of the Loan Documents;

(d) if Borrower fails to maintain insurance in accordance with Article II hereof;

(e) if Borrower fails to comply with Article VIII or Article XII hereof;

(f) if any representation, warranty or covenant of Borrower or any Indemnitor made herein or in any other Loan Document or in any certificate, report, financial statement or other instrument or agreement furnished to Lender shall prove false or misleading in any material respect;

(g) if a receiver, liquidator or trustee is appointed for Borrower, any general partner or member of Borrower or any indemnitor of any of Borrower's obligations under the Loan; or if Borrower or any general partner or member of Borrower or any Indemnitor becomes insolvent, makes an assignment for the benefit of creditors or admits in writing its inability to pay its debts generally as they become due; or if any petition for bankruptcy, reorganization, liquidation or arrangement pursuant to federal bankruptcy law, or any similar federal or state law, shall be filed by or against, consented to, or acquiesced in by, Borrower or any general partner or member of Borrower or any indemnitor of any of Borrower's obligations under the Loan; provided, however, if such appointment, adjudication, petition or proceeding was involuntary and not consented to by Borrower or such general partner or member of Borrower or Indemnitor, then upon the same not being discharged, stayed or dismissed within thirty (30) days thereof;

(h) if Borrower shall be in default beyond any notice or grace period, if any, under any other deed of trust or security agreement covering any part of the Property without regard to its priority relative to this Deed of Trust; provided, however, this provision shall not be deemed a waiver of the provisions hereof prohibiting further encumbrances affecting the Property or any other provision of this Deed of Trust;

(i) if the Property becomes subject (i) to any Lien other than a Lien for real estate taxes and assessments not yet due and payable, or (ii) to any mechanic's, materialman's or other Lien, and such Lien shall not be discharged (by payment, bonding, or otherwise) within thirty (30) days unless contested in accordance with the terms hereof;

(j) if Borrower discontinues the operation of the Property for reasons other than repair or restoration arising from a casualty or Taking, or if Borrower is enjoined by any court or other Governmental Authority from continuing the operation of its business, including, without limitation, entering into Leases or performing its obligations thereunder, which injunction is not released or stayed, for forty-five (45) days;

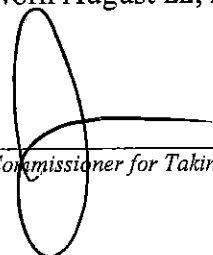
(k) if Borrower or any general partner or member of Borrower shall institute or cause to be instituted any proceeding for the termination or dissolution of Borrower or any such general partner or member;

(l) if the Property, is subjected to waste or to removal, demolition or material alteration so that the value of the Property is materially diminished thereby; and Lender determines that it is not adequately protected from any loss, damage or risk associated therewith;

(m) if any judgment, writ, warrant of attachment or execution or similar process is issued or levied against the Property and is not released, vacated or fully bonded within thirty (30) days after its issue or levy; or

TAB Q

This is Exhibit "Q" referred to in the Affidavit of Henry Wemekamp, sworn August 22, 2012



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*Commissioner for Taking Affidavits (or as may be)*

## **CONFIDENTIALITY AGREEMENT**

August 8, 2012

Henry Wemekamp  
Simon Parry  
Ken Rice

c/o Torkin Manes Cohen Arbus LLP  
Barristers & Solicitors  
151 Yonge Street, Suite 1500  
Toronto ON M5C 2W7

**Re: Disclosure of Confidential Information regarding First Leaside Master Texas, Ltd.  
("Master Texas") and Wimberly Apartments Limited Partnership ("WALP")**

Dear Sirs:

Henry Wemekamp, Simon Parry, and Ken Rice, Trustees of Wimberly Fund (the "Recipients" or "you") have been in receipt of and/or will be receiving from First Leaside Wealth Management Inc. and/or certain of its various direct and indirect subsidiary and investee companies and limited partnerships certain of which are subject to proceedings under the *Companies' Creditors Arrangement Act* ("CCAA") in the Ontario Superior Court of Justice (Commercial List) in Court File No. CV-12-9617-00CL (the "Company" or "FL Group"), certain information that FL Group requires be maintained as confidential.

FL Group is willing to continue to make such information available to you for the purpose of understanding and analyzing the financial relationships among the various entities that have invested funds in Master Texas, either directly or through WALP, including Wimberly Fund, and understanding the value and ownership structure of the properties and entities held by Master Texas, (the "Permitted Purpose"), all subject to the terms and conditions set out in this Agreement.

### **Definitions.**

In this Agreement, the term "FL Group's Representatives" means FL Group's agents, directors, officers, employees, representatives, consultants, legal counsel, and advisers and the agents, directors, officers, employees, representatives, consultants, legal counsel and advisers of its Related Parties. The term "your Representatives" means your agents, directors, officers, employees, representatives, consultants, legal counsel, and advisers.

The term "Confidential Information" means:

(a) all information, in whatever form communicated or maintained, whether through documentary disclosure, oral or written discussions, or otherwise, that FL Group or any of its Related Parties discloses to, or that is gathered by inspection by, you or any of your Representatives, whether provided before or after the date of this Agreement, including, without limitation, information that contains or otherwise reflects information concerning Master Texas, WALP or their Related Parties or any properties or entities held by them, or their respective businesses, affairs, financial conditions, assets, liabilities, operations, prospects or activities, and



specifically includes, without limitation, financial information, budgets, forecasts, engineering reports, environmental reports, operational reports, evaluations, appraisals, legal opinions, agreements, security documents, names of securityholders, names of joint venture partners and contractual parties, and any information provided to FL Group by third parties under circumstances in which FL Group intends to maintain the confidentiality of such information, including any information that may be obtained from or provided directly or indirectly by Leaders Property Management or any of its Representatives or Related Parties, whether through documentary disclosure, oral or written discussions, or otherwise; and

(b) all plans, proposals, reports, analyses, notes, studies, forecasts, compilations or other information, in any form, that are based on, contain or reflect any Confidential Information regardless of the identity of the person preparing the same ("Notes").

The term "**Confidential Information**" does not include any information that:

(a) is at the time of disclosure to you or thereafter becomes generally available to the public, other than as a result of a disclosure by you or any of your Representatives in breach of this Agreement;

(b) is or was received by you on a non-confidential basis from a source other than us if such source is not prohibited from disclosing the information to you by a contractual, fiduciary or other legal obligation to FL Group or its Related Parties; or

(c) was known by you prior to disclosure under this Agreement if you were not subject to any contractual, fiduciary or other legal confidentiality obligation in respect of such information and such prior knowledge can be proven by written records in your possession prior to such disclosure.

The term "**Related Party**" means (i) any person, directly or indirectly, through one or more intermediaries, controlled by or under common control with such party, (ii) any body corporate of which such party beneficially owns, directly or indirectly, voting securities or partnership units, (iii) any partner in or of such party, including the holder of limited partnership units; (iv) any trust in which such party has a beneficial interest or as to which the party serves as trustee or in a similar capacity.

#### **Provision of Confidential Information.**

The information to be provided shall be limited to information relating to Master Texas and WALP that is solely related to the Permitted Purpose, and requests for information not related to such Permitted Purpose shall not be accepted. Subject to the provisions of this Agreement, FL Group shall make such Confidential Information available to you as FL Group, in its sole discretion, considers advisable in the circumstances. Any request by you for information shall be made only to **Jonathan Krieger and Daniel Sobel of Grant Thornton Limited, Monitor of the FL Group appointed pursuant to the CCAA (the "Monitor")**, who shall coordinate such requests with the FL Group and Leaders Property Management. Subject to the provisions of this Agreement, you shall, and shall cause your Representatives to, comply with all of FL Group's procedures relating to the provision of information as FL Group may adopt from time to time.

**Non-Disclosure of Confidential Information.**

You agree that the Confidential Information is confidential, commercially sensitive, and proprietary. You shall treat confidentially and not disclose, and shall cause your Representatives to treat confidentially and not disclose, except as permitted herein, any Confidential Information. You may disclose any of the Confidential Information only to those of your Representatives who have been identified in writing to the FL Group/Monitor, and who need to know such Confidential Information for the Permitted Purpose. You shall inform your Representatives of the confidential nature of such Confidential Information and cause each of your Representatives to treat such Confidential Information confidentially in accordance with this Agreement and not disclose such Confidential Information except as permitted herein. You may also disclose the Confidential Information to mortgagees and guarantors of any mortgages or other obligations relating to Master Texas and to holders of units in the Wimberly Fund (the "Unit Holders") provided that each such Unit Holder who receives any of the Confidential Information first undertakes in writing to be bound by the provisions of this Confidentiality Agreement. You shall be responsible for any breach of this Agreement by any of your Representatives or by any Unit Holder.

**Use of Confidential Information.**

You shall not use, and shall cause your Representatives not to use, the Confidential Information for any purpose other than the Permitted Purpose. You shall not use the Confidential Information in any way that is, directly or indirectly, detrimental to FL Group or any of its Related Parties.

**Personal Information.**

You agree that neither FL Group or any of its Representatives shall disclose to you information about identifiable individuals forming part of the Confidential Information.

**Compelled Disclosure.**

If you or any of your Representatives receives a request or is legally required to disclose all or any part of the Confidential Information, you shall (a) immediately notify FL Group of the request or requirement, (b) consult with FL Group on the advisability of taking legally available steps to resist or narrow the request or lawfully avoid the requirement, and (c) if requested by FL Group, take all necessary steps to seek a protective order or other appropriate remedy. If a protective order or other remedy is not available, or if FL Group waives compliance with the provisions of this section, (x) you or your Representatives, as the case may be, may disclose to the person requiring disclosure only that portion of the Confidential Information which you are advised by written opinion of counsel is legally required to be disclosed, and (y) you shall not be liable for such disclosure unless such disclosure was caused by or resulted from a previous disclosure by you or any of your Representatives not permitted by this Agreement.

**No Representations or Warranties by FL Group.**

Neither FL Group nor any of its Representatives make any representation or warranty, express or implied, as to the accuracy, sufficiency or completeness of the Confidential Information. Neither FL Group nor any of its Representatives shall have any liability whatsoever, under contract, tort,

trust or otherwise, to you or any other person resulting from use of the Confidential Information by you or any of your Representatives or for omissions from the Confidential Information.

**No Property Rights.**

The Confidential Information shall at all times remain the property of FL Group or the property of one or more of its Related Parties, as the case may be.

**Legal Remedy.**

FL Group would not have an adequate remedy at law and would be irreparably harmed in the event that any of the provisions of this Agreement were not performed by you or your Representatives in accordance with their specific terms or were otherwise breached by you or your Representatives. Accordingly, FL Group shall be entitled to injunctive relief to prevent breaches of this Agreement and to specific performance of the terms and conditions of this Agreement in addition to any other remedy to which FL Group may be entitled at law or in equity.

**Miscellaneous.**

No failure or delay by us in exercising any right, power or remedy under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise of any right, power or remedy under this Agreement.

Your obligations under this Agreement shall survive for a period of one year from the date hereof.

If any provision of this Agreement as applied to any party in any circumstance is adjudged by a court to be invalid or unenforceable, this will in no way affect any other provision of this Agreement, the application of such provision in any other circumstance, or the validity or enforceability of this Agreement.

This Agreement constitutes the entire agreement between us pertaining to the subject matter hereof.

Notices required or permitted to be given under this Agreement shall be in writing and shall be effectively given if delivered personally or sent by facsimile (i) if to FL Group, to: **attention Greg MacLeod, First Leaside Group of Companies, c/o Cassels Brock and Blackwell LLP, 2100 Scotia Plaza, 40 King Street West, Toronto, ON M5H 3C2, email: greg@gsmacleod.com**, with a copy to **Grant Thornton Limited, in its capacity as Monitor appointed pursuant to the CCAA, attention Jonathan Krieger, 9th Floor, Royal Bank Plaza South Tower, 200 Bay Street, Box 55, Toronto, ON M5J 2P9, email: jonathan.krieger@ca.gt.com**; and (ii) if to you, to: **Ken Rice, Henry Wemekamp and Simon Parry, c/o S. Fay Sulley and Michael Hanley, Torkin Manes LLP, 151 Yonge Street, Suite 1500, Toronto, Ontario. M5C 2W7, facsimile: 416-863-0305, email: fsulley@torkinmanes.com; mhanley@torkinmanes.com; HenryW@The-Wire.com; kenrice@rogers.com; and simon@httravel.ca.**

The division of this Agreement into sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

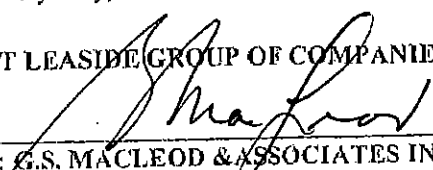
This Agreement shall be governed by and construed in accordance with the laws of Ontario and the federal laws of Canada applicable therein. You irrevocably attorn to the non-exclusive jurisdiction of the courts of Ontario.

This Agreement shall enure to the benefit of, and be binding on, each of us and our respective successors and permitted assigns. Neither of us may assign our respective rights or obligations under this Agreement without the prior written consent of the other party.

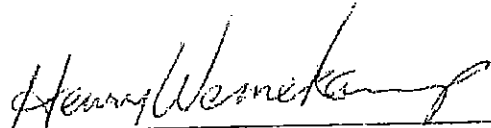
This Agreement may be signed in counterparts and each of such counterparts shall constitute an original document and such counterparts, taken together, shall constitute one and the same instrument.

Yours very truly,

**FIRST LEASIDE GROUP OF COMPANIES**

Per:  c/s  
Name: G.S. MACLEOD & ASSOCIATES INC.,  
by its President, Gregory MacLeod  
Title: CHIEF RESTRUCTURING OFFICER

Accepted and Agreed as of the date first above written.

By:   
Name: HENRY WEMEKAMP

By: \_\_\_\_\_  
Name: SIMON PARRY

By: \_\_\_\_\_  
Name: KEN RICE

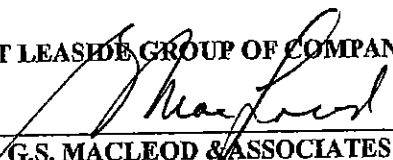
This Agreement shall be governed by and construed in accordance with the laws of Ontario and the federal laws of Canada applicable therein. You irrevocably attorn to the non-exclusive jurisdiction of the courts of Ontario.

This Agreement shall enure to the benefit of, and be binding on, each of us and our respective successors and permitted assigns. Neither of us may assign our respective rights or obligations under this Agreement without the prior written consent of the other party.

This Agreement may be signed in counterparts and each of such counterparts shall constitute an original document and such counterparts, taken together, shall constitute one and the same instrument.

Yours very truly,

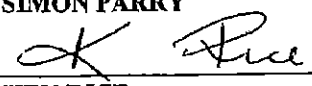
**FIRST LEASIDE GROUP OF COMPANIES**

Per:  c/s  
Name: **G.S. MACLEOD & ASSOCIATES INC.,**  
by its President, Gregory MacLeod  
Title: **CHIEF RESTRUCTURING OFFICER**

**Accepted and Agreed as of the date first above written.**

By: \_\_\_\_\_  
Name: **HENRY WEMEKAMP**

By: \_\_\_\_\_  
Name: **SIMON PARRY**

By:  \_\_\_\_\_  
Name: **KEN RICE**

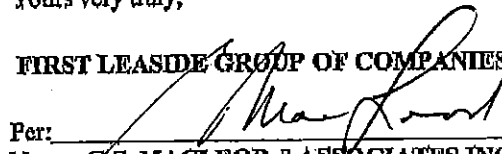
This Agreement shall be governed by and construed in accordance with the laws of Ontario and the federal laws of Canada applicable therein. You irrevocably attorn to the non-exclusive jurisdiction of the courts of Ontario.

This Agreement shall enure to the benefit of, and be binding on, each of us and our respective successors and permitted assigns. Neither of us may assign our respective rights or obligations under this Agreement without the prior written consent of the other party.

This Agreement may be signed in counterparts and each of such counterparts shall constitute an original document and such counterparts, taken together, shall constitute one and the same instrument.

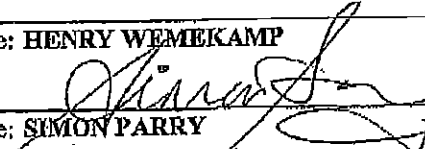
Yours very truly,

**FIRST LEASIDE GROUP OF COMPANIES**

Per:  c/s  
Name: **G.S. MACLEOD & ASSOCIATES INC.,**  
by its President, Gregory MacLeod  
Title: **CHIEF RESTRUCTURING OFFICER**

Accepted and Agreed as of the date first above written.

By: \_\_\_\_\_  
Name: **HENRY WEMEKAMP**

By:  \_\_\_\_\_  
Name: **SIMON PARRY**

By: \_\_\_\_\_  
Name: **KEN RICE**

## CONFIDENTIALITY AGREEMENT

August 8, 2012

Ken Rice

[ADDRESS]

**Re: Disclosure of Confidential Information regarding First Leaside Master Sherman Ltd. ("Master Sherman") and Wimberly Apartments Limited Partnership ("WALP")**

Dear Sirs:

Ken Rice, one of the Trustees of First Leaside Properties Fund (the "**Recipient**" or "**you**") have been in receipt of and/or will be receiving from First Leaside Wealth Management Inc. and/or certain of its various direct and indirect subsidiary and investee companies and limited partnerships certain of which are subject to proceedings under the *Companies' Creditors Arrangement Act* ("**CCAA**") in the Ontario Superior Court of Justice (Commercial List) in Court File No. CV-12-9617-00CL (the "**Company**" or "**FL Group**"), certain information that FL Group requires be maintained as confidential.

FL Group is willing to continue to make such information available to you for the purpose of understanding and analyzing the financial relationships among the various entities that have invested funds in Master Sherman, either directly or through WALP, including First Leaside Fund, and understanding the value and ownership structure of the properties and entities held by Master Sherman, (the "**Permitted Purpose**"), all subject to the terms and conditions set out in this Agreement.

### **Definitions.**

In this Agreement, the term "**FL Group's Representatives**" means FL Group's agents, directors, officers, employees, representatives, consultants, legal counsel, and advisers and the agents, directors, officers, employees, representatives, consultants, legal counsel and advisers of its Related Parties. The term "**your Representatives**" means your agents, directors, officers, employees, representatives, consultants, legal counsel, and advisers.

The term "**Confidential Information**" means:

(a) all information, in whatever form communicated or maintained, whether through documentary disclosure, oral or written discussions, or otherwise, that FL Group or any of its Related Parties discloses to, or that is gathered by inspection by, you or any of your Representatives, whether provided before or after the date of this Agreement, including, without limitation, information that contains or otherwise reflects information concerning Master Texas, WALP or their Related Parties or any properties or entities held by them, or their respective businesses, affairs, financial conditions, assets, liabilities, operations, prospects or activities, and specifically includes, without limitation, financial information, budgets, forecasts, engineering reports, environmental reports, operational reports, evaluations, appraisals, legal opinions, agreements, security documents, names of securityholders, names of joint venture partners and contractual parties, and any information provided to FL Group by third parties under circumstances in which FL Group intends to maintain the confidentiality of such information,

including any information that may be obtained from or provided directly or indirectly by Leaders Property Management or any of its Representatives or Related Parties, whether through documentary disclosure, oral or written discussions, or otherwise; and

(b) all plans, proposals, reports, analyses, notes, studies, forecasts, compilations or other information, in any form, that are based on, contain or reflect any Confidential Information regardless of the identity of the person preparing the same ("Notes").

The term "**Confidential Information**" does not include any information that:

(a) is at the time of disclosure to you or thereafter becomes generally available to the public, other than as a result of a disclosure by you or any of your Representatives in breach of this Agreement;

(b) is or was received by you on a non-confidential basis from a source other than us if such source is not prohibited from disclosing the information to you by a contractual, fiduciary or other legal obligation to FL Group or its Related Parties; or

(c) was known by you prior to disclosure under this Agreement if you were not subject to any contractual, fiduciary or other legal confidentiality obligation in respect of such information and such prior knowledge can be proven by written records in your possession prior to such disclosure.

The term "**Related Party**" means (i) any person, directly or indirectly, through one or more intermediaries, controlled by or under common control with such party, (ii) any body corporate of which such party beneficially owns, directly or indirectly, voting securities or partnership units, (iii) any partner in or of such party, including the holder of limited partnership units; (iv) any trust in which such party has a beneficial interest or as to which the party serves as trustee or in a similar capacity.

#### **Provision of Confidential Information.**

The information to be provided shall be limited to information relating to Master Sherman and WALP that is solely related to the Permitted Purpose, and requests for information not related to such Permitted Purpose shall not be accepted. Subject to the provisions of this Agreement, FL Group shall make such Confidential Information available to you as FL Group, in its sole discretion, considers advisable in the circumstances. Any request by you for information shall be made only to **Jonathan Krieger and Daniel Sobel of Grant Thornton Limited, Monitor of the FL Group appointed pursuant to the CCAA (the "Monitor")**, who shall coordinate such requests with the FL Group and Leaders Property Management. Subject to the provisions of this Agreement, you shall, and shall cause your Representatives to, comply with all of FL Group's procedures relating to the provision of information as FL Group may adopt from time to time.

#### **Non-Disclosure of Confidential Information.**

You agree that the Confidential Information is confidential, commercially sensitive, and proprietary. You shall treat confidentially and not disclose, and shall cause your Representatives to treat confidentially and not disclose, except as permitted herein, any Confidential Information. You may disclose any of the Confidential Information only to those of your Representatives who



have been identified in writing to the FL Group/Monitor, and who need to know such Confidential Information for the Permitted Purpose. You shall inform your Representatives of the confidential nature of such Confidential Information and cause each of your Representatives to treat such Confidential Information confidentially in accordance with this Agreement and not disclose such Confidential Information except as permitted herein. You may also disclose the Confidential Information to mortgagees and guarantors of any mortgages or other obligations relating to Master Sherman and holders of units in the First Leaside Fund (the "Unit Holders") provided that each such Unit Holder who receives any of the Confidential Information first undertakes in writing to be bound by the provisions of this Confidentiality Agreement. You shall be responsible for any breach of this Agreement by any of your Representatives or by any Unit Holder.

**Use of Confidential Information.**

You shall not use, and shall cause your Representatives not to use, the Confidential Information for any purpose other than the Permitted Purpose. You shall not use the Confidential Information in any way that is, directly or indirectly, detrimental to FL Group or any of its Related Parties.

**Personal Information.**

You agree that neither FL Group or any of its Representatives shall disclose to you information about identifiable individuals forming part of the Confidential Information.

**Compelled Disclosure.**

If you or any of your Representatives receives a request or is legally required to disclose all or any part of the Confidential Information, you shall (a) immediately notify FL Group of the request or requirement, (b) consult with FL Group on the advisability of taking legally available steps to resist or narrow the request or lawfully avoid the requirement, and (c) if requested by FL Group, take all necessary steps to seek a protective order or other appropriate remedy. If a protective order or other remedy is not available, or if FL Group waives compliance with the provisions of this section, (x) you or your Representatives, as the case may be, may disclose to the person requiring disclosure only that portion of the Confidential Information which you are advised by written opinion of counsel is legally required to be disclosed, and (y) you shall not be liable for such disclosure unless such disclosure was caused by or resulted from a previous disclosure by you or any of your Representatives not permitted by this Agreement.

**No Representations or Warranties by FL Group.**

Neither FL Group nor any of its Representatives make any representation or warranty, express or implied, as to the accuracy, sufficiency or completeness of the Confidential Information. Neither FL Group nor any of its Representatives shall have any liability whatsoever, under contract, tort, trust or otherwise, to you or any other person resulting from use of the Confidential Information by you or any of your Representatives or for omissions from the Confidential Information.

**No Property Rights.**

The Confidential Information shall at all times remain the property of FL Group or the property of one or more of its Related Parties, as the case may be.

**Legal Remedy.**

FL Group would not have an adequate remedy at law and would be irreparably harmed in the event that any of the provisions of this Agreement were not performed by you or your Representatives in accordance with their specific terms or were otherwise breached by you or your Representatives. Accordingly, FL Group shall be entitled to injunctive relief to prevent breaches of this Agreement and to specific performance of the terms and conditions of this Agreement in addition to any other remedy to which FL Group may be entitled at law or in equity.

**Miscellaneous.**

No failure or delay by us in exercising any right, power or remedy under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise of any right, power or remedy under this Agreement.

Your obligations under this Agreement shall survive for a period of one year from the date hereof.

If any provision of this Agreement as applied to any party in any circumstance is adjudged by a court to be invalid or unenforceable, this will in no way affect any other provision of this Agreement, the application of such provision in any other circumstance, or the validity or enforceability of this Agreement.

This Agreement constitutes the entire agreement between us pertaining to the subject matter hereof.

Notices required or permitted to be given under this Agreement shall be in writing and shall be effectively given if delivered personally or sent by facsimile (i) if to FL Group, to: **attention Greg MacLeod, First Leaside Group of Companies, c/o Cassels Brock and Blackwell LLP, 2100 Scotia Plaza, 40 King Street West, Toronto, ON M5H 3C2, email: greg@gsmacleod.com**, with a copy to Grant Thornton Limited, in its capacity as Monitor appointed pursuant to the CCAA, attention Jonathan Krieger, 9th Floor, Royal Bank Plaza South Tower, 200 Bay Street, Box 55, Toronto, ON M5J 2P9, email: **jonathan.krieger@ca.gt.com**; and (ii) if to you, to: Ken Rice, c/o S. Fay Sulley or Michael Hanley, Torkin Manes LLP, 151 Yonge Street, Toronto, Ontario M5C 2W7, email: **fsulley@torkinmanes.com; mhanley@torkinmanes.com and kenrice.@rogers.com**.

The division of this Agreement into sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

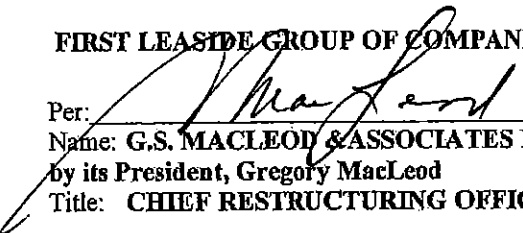
This Agreement shall be governed by and construed in accordance with the laws of Ontario and the federal laws of Canada applicable therein. You irrevocably attorn to the non-exclusive jurisdiction of the courts of Ontario.

This Agreement shall enure to the benefit of, and be binding on, each of us and our respective successors and permitted assigns. Neither of us may assign our respective rights or obligations under this Agreement without the prior written consent of the other party.

This Agreement may be signed in counterparts and each of such counterparts shall constitute an original document and such counterparts, taken together, shall constitute one and the same instrument.

Yours very truly,

**FIRST LEASIDE GROUP OF COMPANIES**

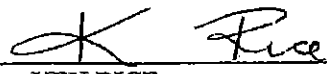
Per:  c/s

Name: **G.S. MACLEOD & ASSOCIATES INC.,**

by its President, Gregory MacLeod

Title: **CHIEF RESTRUCTURING OFFICER**

Accepted and Agreed as of the date first above written.

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

Name: **KEN RICE**

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED  
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF FIRST LEASIDE WEALTH MANAGEMENT INC., ET  
AL.

Court File No. CV-12-9617-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

**RESPONDING MOTION RECORD  
OF FIRST LEASIDE FUND AND WIMBERLY FUND**  
(Returnable August 23, 2012)

**TORKIN MANES LLP**

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

S. Fay Sulley (24257D)

fsulley@torkinmanes.com

Tel: 416-777-5419

Jeffrey J. Simpson (39663M)

jsimpson@torkinmanes.com

Tel: 416-777-5413

Tel: 416-863-1188

Fax: 416-863-0305

Lawyers for the Trustees of First Leaside Fund and  
Wimberly Fund