

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 GREGORY MACLEOD
(sworn August 20, 2012)

I, **GREGORY MACLEOD**, of the City of Burlington, in the Province of
Ontario, **MAKE OATH AND SAY:**

1. I am the President of G.S. MacLeod & Associates Inc., the Court-
appointed restructuring officer ("**CRO**") of First Leaside Wealth Management Inc.
("**FLWM**"), and the other applicants (collectively, the "**Applicants**") as well as the limited

partnerships affiliated with the Applicants that are listed in **Exhibit "A"** hereto (the **"Included LPs"**). (Hereafter, the Applicants and the Included LPs shall be referred to collectively as **"First Leaside"** or the **"Company"**). As such, I have knowledge of the facts deposed to in this affidavit. To the extent that this affidavit describes events or facts of which I do not have personal knowledge, I have identified the source of the information and, in all cases, believe it to be true.

2. Capitalized terms not otherwise defined in this affidavit are defined as in my affidavit sworn February 22, 2012 (the **"Initial Affidavit"**). A copy of my Initial Affidavit without exhibits is attached hereto and marked as **Exhibit "B"**.

Background

3. By order of the Honourable Mr. Justice Brown made February 23, 2012 (the **"Initial Order"**), the Applicants applied for and were granted protection from their creditors under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (**"CCAA"**). The stay of proceedings and other relief in the Initial Order was extended to include the Included LPs. A copy of the Initial Order is attached to this affidavit as **Exhibit "C"**. A copy of Justice Brown's reasons for decision dated February 26, 2012 is attached hereto and marked as **Exhibit "D"**.

4. Pursuant to the Initial Order, Grant Thornton Limited was appointed as monitor (**"Monitor"**) of First Leaside, and Fraser Milner Casgrain LLP was appointed as representative counsel (**"Representative Counsel"**) to represent the interests of the nearly 1,200 investors (the **"Investors"**) of First Leaside Securities Inc. (**"FLSI"**) in these proceedings.

5. A Stay Period, as defined in paragraph 19 of the Initial Order, was granted on February 23, 2012, and was most recently extended by an order of this Court on June 28, 2012. Attached hereto and marked as **Exhibit “E”** is a copy of the June 28, 2012 order (the “**June 28 Order**”). The Stay Period currently expires on October 26, 2012.

6. This affidavit is sworn in support of the motion for, *inter alia*, the approval of certain sales of property by First Leaside and for directions concerning the U.S. properties in which First Leaside has an interest.

Restructuring Efforts to Date

7. Since the extension of the Stay Period on June 28, 2012, First Leaside has continued to work with the Monitor, Representative Counsel, mortgagees, Investors, and other stakeholders to develop and implement a plan to effect the orderly wind-down of the Company’s operations and portfolio of assets over a period of time and in a manner that will maximize recoveries to creditors and Investors.

8. First Leaside also has been participating in a communications program that includes conference calls with the Monitor and Representative Counsel. First Leaside has also held meetings with, and provided information to, an investor steering committee organized by Representative Counsel (the “**Steering Committee**”). In accordance with a communications protocol which was approved by the court on June 28, 2012 (the “**Communications Protocol**”), First Leaside has been providing regular updates to Representative Counsel (and, in most cases, to the Steering Committee, as well) concerning the sale of First Leaside’s various properties and the status of other matters in the CCAA administration.

9. On some matters, First Leaside has provided confidential information to a Transaction Sub-Committee, which is a subset of the Steering Committee. For example, I have participated in phone calls and meetings with the Transaction Sub-Committee during which I have reported about the current status of real property sales, including offers received and likely counter-offers to be made by First Leaside.

Remaining First Leaside Canadian Real Property Assets

10. At the time of the June 28, 2012 motion (the last time that this matter was before the court), First Leaside had listed for sale seven Canadian properties. These properties that were listed are as follows:

- (a) 36 Bramtree Court, Brampton, Ontario ("**Bramtree**"), a 70,000 square foot industrial building which is owned by First Leaside Growth Limited Partnership ("**Growth LP**") which limited partnership is, in turn, owned by First Leaside Expansion Limited Partnership ("**FLEX**");
- (b) 164 Cemetery Road, Uxbridge, Ontario ("**Cemetery Road**"), a 23 acre parcel of land (of which only 4 acres are developable) owned by Uxbridge Development Limited Partnership which limited partnership is owned by First Leaside Progressive Limited Partnership ("**Progressive LP**");
- (c) 62 Mill Street, Uxbridge, Ontario ("**Mill Street**"), a 3.74 acre plot of land containing a small heritage home, which is owned by Mill Street Limited Partnership which, in turn, is owned by First Leaside Investors Limited Partnership ("**Investors LP**");

- (d) 65 Fort Street, Tilbury, Ontario ("**Harmony Townhomes**"), a 50-unit townhome complex which is owned by Harmony Town Homes Limited Partnership ("**Harmony LP**") which, in turn, is owned by Investors LP;
- (e) 4 Victoria Street, Uxbridge, Ontario ("**Victoria Street**"), the site of a partially-constructed 58,182 square foot head office for First Leaside, which is ultimately owned by FLEX and in respect of which construction was suspended in November 2011;
- (f) 168 Brock Street, Uxbridge, Ontario ("**Brock Street**"), two properties owned by First Leaside Entities Limited Partnership (in turn owned by FLEX) which are adjacent to Victoria Street and comprise a paved parking lot and a small commercial building; and
- (g) 123 Erie Street, Wheatley, Ontario ("**Erie Street**"), a development site owned by First Leaside United Limited Partnership ("**Unity LP**"), which is in turn owned by FLEX.

11. The Company obtained appraisals from CBRE Limited, a well-known real estate brokerage and advisory firm, for certain of the properties. The Company has also sought opinions of value from Colliers International Canada ("**Colliers**"). These valuations were obtained in order to select an appropriate listing price for each property and to provide a standard against which offers to purchase can be assessed.

12. All of these properties which have been listed for sale have been marketed through open and public sales process using the brokerage arm of Colliers.

13. Attached hereto and marked as **Exhibit "F"** is a chart listing the properties for sale, the First Leaside entity that owns each of the respective properties, and the listing price for each property.

14. So far, First Leaside has not received any offers for Brock Street, Victoria Street, or Erie Street. This lack of offers may not be unusual given that some of the properties are development land (or, in the case of Victoria Street, a partially constructed building).

15. In respect of Cemetery Road, First Leaside received one offer on June 8, 2012 that was substantially below appraised value and negotiations did not result in an agreement. The property remains listed for sale.

16. In respect of Mill Street, First Leaside received an offer dated May 16, 2012 at a purchase price which exceeded the appraised value. The offer was conditional upon the purchaser conducting and being satisfied with due diligence. First Leaside accepted the offer. At the end of the conditional period, the purchaser informed First Leaside that it was not prepared to waive the due diligence condition and insisted that the price of the property be reduced by \$250,000. This price reduction would have brought the sale price below the appraised value of the property. Accordingly, First Leaside did not agree to the price reduction and the agreement of purchase and sale lapsed. Mill Street remains on the market and no further offers have been received.

Sale of Bramtree

17. Bramtree has been the subject of multiple offers. At the time that First Leaside became the subject of CCAA proceedings, it had entered into a binding agreement (the

“First Bramtree Agreement”) to sell Bramtree for an amount in excess of the appraised value. However, the First Bramtree Agreement was conditional upon due diligence and the purchaser demanded a \$850,000 price reduction in exchange for waiving the due diligence condition. First Leaside refused to provide such price reduction on the basis that it was unwarranted, and thus the sale was not completed.

18. After the First Bramtree Agreement was terminated, First Leaside approached a First Leaside investor who had expressed interest in purchasing Bramtree. However, after a brief inspection of the property and limited preliminary due diligence, the purchaser decided not to proceed with an offer.

19. First Leaside listed the property for sale via Colliers in May 2012. After several weeks on the market, Colliers presented nine offers for consideration by First Leaside. After due consideration, First Leaside entered into a binding agreement on June 20, 2012 (the **“Second Bramtree Agreement”**) to sell Bramtree at a price above the appraised value. The Second Bramtree Agreement was conditional upon due diligence and the purchaser demanded a \$450,000 price reduction in exchange for waiving conditions. First Leaside again refused to agree to the reduction on the basis that it was unwarranted and the Second Bramtree Agreement was terminated effective July 17, 2012.

20. First Leaside contacted the next best offer from among the nine offers received in June. The offer price was the best available and above appraisal value. The offer is conditional on financing and, after being satisfied as to the purchaser's prospects of obtaining the requisite financing, First Leaside decided to enter into an agreement of

purchase and sale dated July 23, 2012 (the “**Outset APS**”) from Outset Media Corporation (“**Outset**”). First Leaside has accepted the Outset APS and is prepared to complete a sale on those terms, subject to court approval.

21. A redacted copy of the Outset APS is attached hereto as **Exhibit “G”**. The unredacted Outset APS—which displays the purchase price—shall be made available to the court at the hearing of this motion.

22. First Leaside has two opinions of value for Bramtree, one from C.B. Richard Ellis Limited dated December 1, 2010 and the other from Colliers dated May 2012. The price provided for in the Outset APS is in excess of the amount provided for in both opinions of value.

23. The Outset APS remains conditional until August 23, 2012 and Outset may therefore terminate the offer up to that date. I understand that, if the transaction is completed, Outset intends to occupy the premises itself, making this an important strategic acquisition for Outset. Despite the fact that the Outset APS is still conditional, First Leaside is seeking court approval at this stage in order to avoid incurring the cost of a separate stand-alone motion later in August or in early September. Although the previous two offerors failed to waive their due diligence conditions, their interest in the property was development or investment related. As Outset intends to own and occupy the property, I do not believe that Outset is faced with the same considerations as the previous offerors when undertaking their due diligence.

Harmony Townhomes

24. One offer was received for the Harmony Townhomes from Skyline Real Estate Acquisitions (II) Inc. ("**Skyline**"), which is a major owner of multi-residential townhome developments in southwestern Ontario.

25. Skyline and First Leaside made a series of counter-offers before ultimately reaching agreement on price and other terms. On July 24, 2012, F.L. Securities Inc. (which is an Applicant in these proceedings and which is the general partner of Harmony LP) entered into an Agreement of Purchase and Sale (the "**Harmony APS**"). A copy of the Harmony APS, in redacted form, is attached as **Exhibit "H"**. An unredacted version will be available for inspection by the court at the return of this motion.

26. I believe that the price being offered by Skyline is fair. Such price is consistent with the upper end of the range of appraisals that First Leaside obtained in May 2012 from CBRE and Colliers. Notwithstanding that Skyline is the sole offeror, I believe that the property was fully exposed to the market and that potential bidders received notice. The property was listed for sale by Colliers on the Multiple-Listing Service and Colliers prepared professional marketing materials for interested parties. There were a limited number of property visits by interested parties. Harmony Townhomes is situated in a very challenging market and the property is particularly well-suited for the Skyline portfolio.

27. As is the case with the Outset APS, the Harmony APS remains conditional on due diligence. The conditional period expires at 6 p.m. on August 28, 2012. To avoid

the necessity of having to bring a separate motion to approve this sale shortly after August 28, First Leaside is seeking sale approval now as well as a vesting order effective on the closing of the transaction and the filing of a CRO's certificate with the Court.

28. In the event that the transactions contemplated by the Outset APS or the Harmony APS are not completed, First Leaside will continue the marketing of the development.

Sale of the Assets of Certain Excluded LPs and Interest in Prime Time Living Limited Partnership

29. At the time that First Leaside sought CCAA protection and the Initial Order was granted, a number of Canadian limited partnerships with properties in Ottawa, Ontario and the Okanagan area of British Columbia (respectively, the "**Ottawa Excluded LPs**" and the "**Okanagan Excluded LPs**") were excluded from the scope of proceedings.

30. The Ottawa Excluded LPs are as follows:

- (a) First Leaside Retirement Residences (Ottawa) Limited Partnership;
- (b) The Redwood Retirement Residences Limited Partnership;
- (c) 100 Isabella St. (Ottawa) Limited Partnership; and
- (d) 480 Metcalfe St. (Ottawa) Limited Partnership ("**480 Metcalfe**").

31. The Okanagan Excluded LPs are as follows:

- (a) First Leaside Retirement Residences (Okanagan) Limited Partnership;
- (b) Cherry Park Retirement Residences Limited Partnership

- (c) Orchard Valley Retirement Residences Limited Partnership; and
- (d) The Shores Retirement Residences Limited Partnership.

32. The Okanagan Excluded LPs and the Ottawa Excluded LPs (collectively, the “**Excluded LPs**”) are ultimately owned by First Leaside Venture Limited Partnership (“**Venture LP**”) which is subject to these CCAA proceedings. As of the time of the Initial Order, I understand that Venture LP had hoped to refinance the Excluded LPs. For example, on February 15, 2012, just a week prior to the CCAA application, Venture LP entered into a non-binding term sheet with Bridge Gap Konsult Inc. (“**BGK**”) whereby BGK proposed to deliver bridge financing by the end of March 2012 in an amount sufficient to rectify certain mortgage defaults and to support working capital until BGK could complete a significant raising of equity capital for Ventures LP later in 2012. However, BGK was unable to secure a commitment for the bridge financing and, as a result, Ventures LP and the mortgagees had to explore other options.

33. Since the time of the Initial Order, Ventures LP has worked cooperatively with the mortgagees of the Excluded LPs, who hold mortgages on all of the properties held by the Excluded LPs. In general terms,

- (a) Canadian Imperial Bank of Commerce (“**CIBC**”) holds the first and second mortgages on the properties owned by the Ottawa Excluded LPs;
- (b) KingSett Real Estate Growth Limited Partnership No. 2. (“**KingSett**”) holds third mortgages on, and is a guarantor in respect of the properties owned by the Ottawa Excluded LPs; and

- (c) the Toronto-Dominion Bank ("TD") holds the first mortgages on the properties owned by the Okanagan Excluded LPs.

34. In respect of the Ottawa Excluded LPs, the current mortgage debt owing on all of the properties owned by the Ottawa Excluded LPs (according to pay-out statements effective as of September 1, 2012) is as follows:

- (a) \$40,038,134.61 owing in respect of the first and second mortgages in favour of CIBC; and
- (b) \$19,491,480.33 owing in respect of the third mortgage in favour of KingSett.

35. As such the total amount owing in respect of the properties owned by the Ottawa Excluded LPs is \$59,529,614.94 (the "**Ottawa LP Debt**"). Attached hereto and marked, respectively, as **Exhibits "I" and "J"** are copies of the pay-out statements received from CIBC and KingSett.

36. In respect of the Okanagan Excluded LPs, the mortgage debt owed to TD and registered against the properties owned by the Okanagan Excluded LPs as of August 8, 2012, was \$17,436,585 in aggregate.

37. The above-noted properties owned by the Excluded LPs are retirement residences (the "**Retirement Residences**"). The Retirement Residences are managed by Primetime Living Limited Partnership ("**Primetime**"), in which First Leaside (through First Leaside Retirement Residences Limited Partnership ("**Retirement Residences LP**")) owns a 50.1% interest with the remaining 49.9% being held by Brujjon Real Estate

Holdings Inc. ("**Brujjon**"), which is not related to First Leaside. In addition to its management responsibilities in relation to the Retirement Residences, Primetime owns four properties in Ontario and B.C. (the "**Primetime Properties**"):

- (a) the Abby Lane retirement residence and Whiterock Medical Centre in Surrey, B.C.;
- (b) a 50% ownership interest in the Birkhall property in Vernon, B.C. (the other 50% is owned by Venture LP);
- (c) the Heatherwood retirement residence in St. Catharines, Ontario; and
- (d) the St. Catharines Place retirement residence in St. Catharines, Ontario.

38. With the support of TD, CIBC, and KingSett, the assets of the Excluded LPs have been marketed in order to allow creditors (primarily those three mortgagees) to be paid. However, since the operations of Primetime are so closely connected with the Retirement Residences (given Primetime's role as manager), First Leaside concurrently marketed for sale its ownership interest in Primetime.

Marketing Process for Ottawa Excluded LPs

39. Since approximately March 2012, First Leaside has cooperated with KingSett and CIBC, who have overseen a sales process for the Ottawa Excluded LPs. With the consent of KingSett and CIBC, TD Securities Inc. ("**TDSI**") was retained as broker to run a sales process and solicit offers for the assets of the Ottawa Excluded LP's.

40. As a result of the sales process, an offer was received from Amica Acquisitions Inc. ("**Amica**") for the assets held by the Ottawa Excluded LPs. The offer was in an amount to pay CIBC in full, but was not sufficient to pay Kingsett in full. However,

Kingsett advised that it was prepared to permit the sale notwithstanding that it would not be paid in full.

41. As such, on August 3, 2012, Amica, KingSett, and First Leaside Realty II Inc. ("**Realty II**") in its capacity as general partner for the Excluded Ottawa LPs entered into an Asset Purchase Agreement (the "**Amica APA**") whereby the Excluded Ottawa LPs agreed to sell all of their assets and undertaking to Amica for the aggregate purchase price that is less than the Ottawa LP Debt. CIBC and KingSett have consented to the terms of the Amica APA.

42. The Amica APA was prepared by counsel for KingSett. KingSett has agreed to reimburse the relevant First Leaside general partner, Realty II, for its costs of review of the sale agreement.

43. Prior to the time that TDSI was retained as broker for the properties owned by the Excluded Ottawa LPs, two separate brokers (TDSI and Primecorp) provided opinions of value. The aggregate purchase price pursuant to the Amica APA is in excess of the amounts set out in both opinions of value.

44. Although Realty II is an applicant in these proceedings and my company, G.S. MacLeod & Associates Inc., was appointed as CRO over all Applicants and Included LPs (as defined in the Initial Order), including Realty II, paragraph 4 of the Initial Order provides that the provisions of the Initial Order do not extend to any general partner of the Excluded LPs, to the extent that such general partner exercises powers for or on behalf of the Excluded LPs, holds property on behalf of the Excluded LPs, or owes liabilities in respect of the Excluded LPS. As such, it is not clear whether the CRO has

the authority to execute the Amica APA on behalf of Realty II, without specific court authorization.

45. Prior to the time that the Amica APA was concluded, I considered ways of having Realty II execute that agreement on behalf of the Ottawa Excluded LPs, including through normal corporate processes, such as the existing directors, or through the calling of a shareholders meeting. For various reasons, these options were not practicable, particularly in light of the desire of KingSett and Amica to conclude an agreement as soon as possible.

46. Although the Ottawa Excluded LPs are not subject to the CCAA proceedings, First Leaside has endeavoured to cooperate with the senior secured lenders in their sales process and realization efforts, in the general interest of trying to maximize recovery to stakeholders. To this end, and at the request of KingSett, First Leaside has agreed to sign the Amica APA and seek the relief sought herein authorizing execution by the CRO, nunc pro tunc, of the agreement on behalf of Realty II.

47. The parties to the Amica APA have delivered signed versions of the agreement in escrow on the understanding that I, as CRO, will seek court authorization to execute the Amica APA on behalf of Realty II.

48. The relief sought in this regards is at the request of, and supported by, KingSett and CIBC which, as a result of the shortfall on the total amounts owing against the property, are the only parties having any economic interest in the Ottawa Excluded LPs.

Need to Discharge Fourth Mortgage

49. As part of this motion, the Applicants seek an order permitting First Leaside Finance Inc. ("**FL Finance**") to discharge a fourth mortgage in the amount of \$7,500,000 (the "**FL Finance Mortgage**") which it holds over the property owned by 480 Metcalfe.

50. The FL Finance Mortgage was registered on August 29, 2011 as part of the transaction through which First Leaside acquired the properties now owned by the Ottawa Excluded LPs.

51. The FL Finance Mortgage is deeply subordinated in that it ranks behind the following mortgages on title in favour of CIBC and KingSett.

- (a) a \$40 million mortgage in favour of Canadian Imperial Bank of Commerce;
- (b) a \$32.5 million mortgage in favour of KingSett Real Estate Growth GP No. 2 Inc.; and
- (c) a \$21.875 million mortgage in favour of KingSett Mortgage Corporation.

52. Given that the Ottawa Excluded LPs, including 480 Metcalfe, have cross-guaranteed the overall indebtedness to CIBC and KingSett, and since the aggregate purchase price for the properties owned by those limited partnerships is not sufficient to repay all prior-ranking debt, it is apparent that there is no hope that any funds will flow to FL Finance, no matter how the funds may be marshalled or allocated among the properties. Attached hereto and marked as **Exhibit "K"** is a copy of the parcel register for a sample unit at the property owned by 480 Metcalfe showing the FL Finance

Mortgage. (Since that property is set up as a condominium, the mortgage is registered against each individual unit.)

53. In connection with the closing of the Amica APA, the CRO has been asked to agree to discharge the FL Finance Mortgage. Although the FL Finance Mortgage is clearly “out of the money”, the prior ranking mortgagees do not have an automatic right to have such mortgage discharged on closing because the sale of the 480 Metcalfe property—as well as the other properties included in the Amica APA—is being undertaken by the property owners, the Ottawa Excluded LPs (by their general partner, Realty II), not by the mortgagees under power of sale. I have concluded that it is appropriate and in the interest of the First Leaside estate to agree to discharge the FL Finance Mortgage in order to facilitate the completion of the Amica APA, in circumstances where the FL Finance Mortgage has no value to stakeholders. However, since the mortgage is an asset of FL Finance (which is an Applicant), First Leaside seeks court approval for the discharge of such mortgage.

Sale of BC Properties and Interest in Primetime Living

54. Retirement Residences LP, Realty II, FLWM, First Leaside Universal Limited Partnership, Progressive LP, F.L. Primetime Living Limited Partnership and FLWM Holdings Limited Partnership engaged Grant Thornton Corporate Finance Inc. (“GTCFI”) to act as a financial advisor in connection with the proposed divestiture of two parcels of assets:

- (a) The Retirement Residences owned by the Okanagan Excluded LPS (being “**Parcel A**”); and

(b) Retirement Residences LP's 50.1% interest in PTL (being "**Parcel B**").

55. Pursuant to the June 28 Order, the court approved the retention of GTCFI as financial advisor.

56. GTCFI prepared confidential information memoranda (the "**CIMs**") for each of Parcel A and Parcel B and circulated them to potential purchasers that executed confidentiality agreements.

57. Parcel A and Parcel B were marketed separately because they represent different sets of assets in respect of which there are different stakeholder interests. In addition, Parcel A is owned by an Excluded LP, whereas Parcel B is under the auspices of the CCAA court. As such, different governance considerations apply to their sale. As I have noted above, TD is the major secured creditor of the Okanagan Excluded LPs and thus the sale of Parcel A is intended to benefit TD at first instance.

58. Attached hereto and marked as **Exhibit "L"** is a copy of an organization chart outlining the organizational structure of the Okanagan Excluded LPs and the scope of assets being sold in Parcel A.

59. In contrast to the assets in Parcel A, those in Parcel B are not subject to the same third party encumbrances. However, as I have noted above, Retirement Residences LP is only a 50.1% owner of Primetime, with the remaining 49.9% being owned by Brujjon.

60. Attached hereto and marked as **Exhibit "M"** is a copy of a diagram outlining the ownership structure of Primetime.

61. The sales process run by GTCFI has so far been successful. By July 19, 2012, GTCFI had received a total of four letters of interest (“**LOIs**”) for the purchase of both Parcel A and Parcel B. First Leaside then began negotiations with the bidder which provided the most promising LOI (the “**Preferred Bidder**”). As a result of such negotiations, First Leaside was able to obtain an increase in the proposed purchase price. On August 1, 2012, First Leaside entered into a revised, confidential LOI with the Preferred Bidder. This LOI, which is non-binding, is subject to a number of conditions, including due diligence and court approval. Counsel for the parties are currently in the process of conducting due diligence and negotiating the terms of a definitive asset purchase agreement.

62. First Leaside is also working with Bruijion to provide it with information about the sale of Parcel B.

63. It does not appear that First Leaside will be able to complete a definitive agreement for the sale of Parcel A or Parcel B prior to the hearing of this motion. As such, the agreement will be the subject of a future motion to the court.

64. If a deal with the Preferred Bidder is ultimately concluded on the terms which are currently contained in the LOI, there will be material proceeds realized for First Leaside investors, after re-paying indebtedness to TD.

Sale of Assets of First Leaside Accounting and Tax Services Inc.

65. On this motion, First Leaside also seeks court approval of the terms of a proposed settlement of the interest of First Leaside Accounting and Tax Services Inc.

("FLAT") in certain accounting practices in western Canada, pursuant to two term sheets dated August 10, 2012.

66. FLAT is an Applicant in these proceedings, which was incorporated to make investments in accounting firms in western Canada in order to access a pre-existing list of clients which might be interested in becoming First Leaside investors. Since First Leaside wanted to expand its investor base in western Canada, that is the area where it sought out potential accounting firms to acquire.

67. Ultimately, FLAT advanced funds to two holding companies that would be solely owned by two First Leaside employees. The funds advanced were to be used by the employees' personal holding companies to acquire the shares of four professional corporations engaged in the practice of public accounting in Alberta and B.C. The holding companies and their investees are described further below.

Investment in Joanna L. Hampton Holdings Inc. ("Hampton Inc.")

68. Between June 2008 and December 2010, FLAT provided funding to Hampton Inc. for the acquisition of three certified general accounting firms, for an aggregate total of approximately \$1.8 million:

- (a) McMillan Thorn & Co. Ltd. ("**MTC**"), a B.C. accounting firm;
- (b) D. McCormack & Company Inc. ("**DMC**"), a B.C. accounting firm; and
- (c) Allan Welsh & Company ("**AWC**"), an Alberta accounting firm.

69. Under applicable rules of the Certified General Accountants Associations of Alberta and B.C., these accounting firms can only be owned by corporations that are

controlled by a duly licenced Certified General Accountant ("**CGA**"). As such, since FLAT was not controlled by a CGA, it could not own the shares of MTC, DMC, and AWC (collectively, the "**JH Firms**"). To comply with the applicable rules, First Leaside arranged for Hampton Inc., a corporation owned by FLWM's then-director of finance, Joanna Hampton, CGA ("**Hampton**"), to purchase the shares of the JH Firms. This purchase was funded by advances totalling \$1,799,699 from FLAT to Hampton Inc.

70. Although, on its books, FLAT recorded the advances as an investment in Hampton Inc., FLAT did not otherwise require Hampton Inc. to enter into any written agreement to reflect that FLAT was intended to be the beneficial owner of the JH Firms. Hampton Inc. did, however, execute a "Pledge" dated July 6, 2010 which pledged her interest in Hampton Inc. in favour of FLAT as security for the amounts advanced by FLAT.

Investment in Matthew E. Bakker Professional Corporation ("MEB**")**

71. Between June 2010 and January 2011 FLAT advanced funds totalling \$650,000 to MEB for the acquisition of the business of Ronald M. Coppock Professional Corporation ("**Coppock**"), a Calgary accounting firm.

72. As with MTC, DMC, and AWU, under applicable rules of the Institute of Chartered Accountants of Alberta, Coppock can only be owned by a corporation that is controlled by a duly licenced Chartered Accountant ("**CA**"). Since FLAT was not controlled by a CA, it could not own the shares of Coppock. To comply with this professional regulation, First Leaside arranged for MEB, a corporation owned by FLWM employee, Matthew Bakker, CA ("**Bakker**"), to purchase the shares of Coppock. This

purchase was funded by advances totalling \$650,000 from FLAT to MEB and its successor corporation identified below.

73. Although FLAT recorded the advances as an investment in MEB, FLAT did not appear to initially require MEB to enter into any other written agreement to reflect that FLAT was intended to be the beneficial owner of the JH Firms. There is a “Pledge” dated July 6, 2010 and executed by MEB in favour of FLAT, which appears to pledge the shares of MEB in favour of FLAT as security for the amount which FLAT advanced to MEB.

74. Despite the legal structure of the transaction, the intention was that FLAT would benefit from MEB’s acquisition of Coppock.

Derivative Agreement with Jim Brander

75. In January 2011, Bakker transferred his shares of MEB to Jim Brander Professional Corporation (“JBPC”), a corporation controlled by Jim Brander, CA (“Brander”).

76. In January 2011, following the acquisition of MEB by JBPC, FLAT and several Brander-controlled corporations entered into a Derivative Agreement dated January 25, 2011 (the “**Derivative Agreement**”). Under the Derivative Agreement, JBPC and a related corporation (Smart Books Accounting Services Inc. (“**SBAS**”)) agreed to pay FLAT a set percentage of their annual after-tax profits less agreed-upon cash reserves. FLAT also obtained the right to transfer ownership of the outstanding shares of SBAS,

JBPC, and MEB to a transferee of its choosing upon the termination of the Derivative Agreement.

The TD Loan

77. In order to partially finance the advances to Hampton Inc. and MEB for purposes of acquiring the accounting practices, on June 15, 2010, FLAT borrowed \$1,173,500 from TD (the “**TD Loan**”). The TD Loan was an unsecured reducing term loan. FLAT was the borrower but MEB, Hampton Inc., MTC, DMC and AWC provided joint and several guarantees, supported by general security over the assets of the accounting practices.

Problems with the Accounting Firms

78. In the months preceding the First Leaside filing under the CCAA, the JH Firms experienced operating problems, including the departure of managing partners and senior staff, thereby leaving the practices without direction or proper client support. In December 2011 First Leaside decided that, commencing in January 2012, Hampton would be required to frequently fly out to Alberta to manage the JH Firms while, at the same time, attempting to fulfil her full-time role as Director of Finance at First Leaside. Hampton concluded that she did not wish to continue such a dual role and shortly after First Leaside first sought protection under the CCAA, Hampton resigned from First Leaside and moved permanently to Edmonton to manage the JH Firms.

79. At the time that First Leaside commenced these CCAA proceedings, the outstanding balance on the TD Loan was \$808,170. Since that time, both the JH Firms

and the Brander Firms have continued to service the loan. In light of the use of the proceeds of the TD Loan, the loan balance is notionally allocated 72.31% to the JH Firms and 27.69% to the Brander Firms.

Recovery of FLAT's Advances

80. The accounting firms were marginally profitable in 2011 and there was some erosion of revenues. The loss of partner continuity added risk to the sustainability of future revenue streams. There were other issues impacting their profitability. Applying industry standard valuation methodologies for professional practices of this size, nature and risk profile, First Leaside determined, in consultation with the Monitor, that the aggregate fair market value of the firms is substantially less than the amounts advanced by FLAT (totalling in aggregate approximately \$2.3 million, including the amounts advanced by FLAT by TD) to acquire them.

81. Sale to a third party or wind up of the practices would be impractical for several reasons. First, the value of the firms would be destroyed in a wind up situation. Second, given the ownership structure, a sale to a third party would require the cooperation of Hampton and Brander, and they both indicated that they wanted to retain ownership. Third, the assets of each firm are fully pledged as security for the TD Loan, making it difficult to sell the firms separately.

82. In order to test the level of market interest, First Leaside entered into a non-disclosure agreement with Hampton and a Vancouver-based regional accounting firm with practices in B.C. and Alberta. The firm is one of the largest in the region and ranks in the top 20 in Canada. After preliminary meetings, the firm informed me that they

might have some interest in the JH Firms in Alberta but they had little interest in the B.C. practices. However, it seemed unlikely that they could come to terms with Hampton in the near term. That accounting firm ultimately did not pursue any potential acquisition.

83. FLAT has no reasonable prospect of obtaining repayment in full of its advances to Hampton Inc. and JBPC through a sale of the businesses, and as noted above, the value of the JH Firms and the Brander Firms is less than the amount of FLAT's investment. However, Hampton expressed that she was prepared to "buy out" FLAT's interests in Hampton Inc. for an amount equivalent to the current fair market value of the JH Firms. Likewise, Brander indicated that he wished to obtain a release from FLAT of its interests in the Derivative Agreement. TD indicated that it would be prepared to release FLAT from its obligations under the TD Loan provided Hampton and Brander were able to make satisfactory arrangement to assume the debt.

84. As a result of negotiations in respect of the foregoing, on August 10, 2010, FLAT, Hampton, TD and Brander entered into a term sheet (the "**Hampton Term Sheet**") by which Hampton Inc. will acquire FLAT's interest in the JH Firms for \$734,000 on the following general terms:

- (a) the purchase price will be \$734,000, which represents an aggregate fair market value of the JH Firms, and will be paid by
 - (i) a cash payment to FLAT of \$150,000; and
 - (ii) an assumption of approximately \$584,000 of the amount owing by FLAT under the TD Loan;

- (b) TD has agreed that FLAT will be released from liability under the TD Loan;
- (c) FLAT will surrender any interest that it has in the JH Firms;
- (d) FLAT will also revoke its designation as beneficiary under a policy of term insurance on the life of Hampton, such policy being owned and paid for by Hampton;
- (e) the transaction is subject to court approval.

85. Attached hereto and marked as **Exhibit "N"** is a copy of the Hampton Term Sheet. As the terms of the agreement are straightforward, it is not intended that any additional purchase agreement be executed. Appropriate releases and closing documentation will be prepared.

86. The sale of FLAT's interest in the Brander Firms was somewhat more problematic because the value of the Brander Firms is largely tied up with Brander himself. Although, as noted above, under the terms of the Derivative Agreement FLAT was entitled to receive a percentage of net annual profits of the Brander Firms, the Brander Firms appear to have suffered a loss in the first fiscal year following execution of the Derivative Agreement.

87. Further, the Derivative Agreement can be terminated by either party on 90 days' notice. Although such termination would allow FLAT to designate the next owner of the shares of JBPC, SBAS, and MEB, Brander would not be prevented from leaving those corporations and carrying on business elsewhere. As such, I determined that the best way to obtain value for FLAT from the Brander firms was to reach an agreement to sell them to Brander as a going concern.

88. As a result, after discussions and negotiations with Brander and TD, FLAT has also entered into a Term Sheet dated August 10, 2012 with Brander, JBPC, MEB, SBAS, TD, and Hampton Inc. (the "**Brander Term Sheet**"). Attached hereto and marked as **Exhibit "O"** is a copy of the Brander Term Sheet, along with the Derivative Agreement.

89. Under the terms of the Brander Term Sheet,

- (a) the purchase price will be \$374,000, which represents fair market value of the Brander Firms, and will be paid by
 - (i) a cash payment to FLAT of \$150,000; and
 - (ii) an assumption of approximately \$224,000 of the amount owing by FLAT under the TD Loan;
- (b) TD has agreed that FLAT will be released from liability under the TD Loan;
- (c) FLAT will surrender any interest that it has in the Brander Firms; and
- (d) the transaction is subject to court approval.

90. I believe that the terms of the Hampton Term Sheet and the Brander Term Sheet are fair and represent the best recovery that can be obtained for FLAT in the circumstances. Further, the largest stakeholder is TD, which is owed approximately \$808,000. By having Brander and Hampton assume their respective proportions of the TD Loan, they can continue to service that loan out of revenues generated. At the same time, FLAT will be released of liability as borrower.

91. I have also received the Monitor's input regarding the purchase price for these assets of FLAT. The Monitor reviewed the financial statements of the JH Firms and the

Brander Firms. The Monitor assessed the reasonableness of the financial terms as set out in the Hampton Term Sheet and Brander Term Sheet using general industry guidelines. Although it did not provide a valuation or opinion of value of the enterprises, the Monitor concluded that based on general guidelines to assess valuation of accounting firms the prices provided in the Hampton Term Sheet and Brander Term Sheet are reasonable in the circumstances.

U.S. Properties

92. At this motion, First Leaside also seeks authorization from the court to take no further steps to realize upon its interest in certain limited partnerships located in the United States.

93. As reported in my Initial Affidavit, Wimberly Apartments Limited Partnership (“**WALP**”) is an Included LP in these proceedings. WALP holds indirect equity interests in 11 properties in the United States which are held by 11 Texas-based limited partnerships (“**Texas LPs**”).

94. The structure of the Texas LPs can best be summarized through a simplified organizational chart, a copy of which is attached hereto and marked as **Exhibit “P”**.

95. The Texas LPs are not Included LPs and thus they are not parties to, or beneficiaries of, these CCAA proceedings. The Texas LPs have remained under the day-to-day management of Leaders Corporation (“**Leaders**”), the Dallas, Texas-based property manager, which has continued to collect rents, manage rental operations, and

maintain the bank account for each property from which they have continued to pay mortgages (in most cases), municipal taxes and operating expenses.

96. Prior to the time that the Applicants brought this CCAA application, and particularly during the time prior to November 2011 when Phillips was the directing mind of First Leaside, the affairs of the Texas LPs were run from First Leaside's offices in Uxbridge, Ontario. The First Leaside head office received and consolidated financial information from Leaders, prepared and submitted U.S. corporate tax and regulatory filings, and maintained the corporate affairs of the U.S. corporations and LPs.

97. After the Initial Order was granted, First Leaside began to investigate whether it would be necessary to commence formal restructuring proceedings involving the Texas LPs. As part of that process, First Leaside retained Haynes and Boone LLP ("**H&B**"), a respected general practice law firm with offices in Dallas to conduct due diligence on the Texas LPs and provide legal advice in respect of restructuring options.

98. In general terms, the Texas LPs are beneficially owned by upstream limited partnerships (the "**Aggregator LPs**"), even though the Texas LPs and general partners (the "**Texas GPs**") at the property level itself are special-purpose Texas entities.

99. The two major Aggregator LPs and one minor Aggregator LP are

- (a) FL Master Texas, Ltd., which owns the units of the Texas LPs that own the following properties:
 - (i) Old Mill Pond Apartments;
 - (ii) The Shores Apartments;

- (iii) The Bluffs Apartments/Condominiums;
 - (iv) Preston Racquet Club;
 - (v) Wimberly Pointe Apartments; and
 - (vi) Wimberly Crossing Apartments;
- (b) FL Master Sherman Ltd. which owns the units of the Texas LPs that own the following Texas properties:
- (i) Creekview Apartments;
 - (ii) Country Village Apartments;
 - (iii) Raintree Apartments; and
 - (iv) Parkview Apartments; and
- (c) F.L. U.S. Holdings, Ltd. which owns the Family Tree Apartments (also known as Sedona Creek) ("**Sedona**").

100. As part of its due diligence, H&B reviewed the limited partnership agreements ("**LPAs**") and other constating documents of the Texas LPs. As a result of this analysis, it was confirmed to me that control of the Texas LPs did not reside with "upstream" First Leaside entities such as the Aggregator LP's or WALP. Instead, H&B confirmed that the GPs of the Texas LPs are owned and controlled by Phillips. Although those GPs have minimal economic interest in the Texas LPs (since the GPs typically own only 0.01% the LP units), the GPs (and thus Phillips) are still in control of the Texas LPs. It also appears that, in most cases, the LPAs governing the Texas LPs prevent the GPs from being replaced or else require lengthy notice of termination. As such, although

WALP indirectly owns all (or least 99.99%) of the equity interests in the Texas LPs, it is powerless to control such LPs.

101. First Leaside's lack of *de jure* management control over the Texas LPs is one factor in my decision to take no steps regarding the Texas LPs. In order to sell or restructure those properties, First Leaside would need to control them. First Leaside did explore a number of legal options under Texas law to attempt to gain control of the Texas LPs. However, the ultimate conclusion was that legal proceedings in the Texas courts to seek control (such as by way of receivership) would be expensive and time consuming and there is no certainty that it would lead to a favourable outcome.

102. If First Leaside was not able to gain control of the Texas LPs, it would not have the authority to commence insolvency proceedings against such entities or otherwise effect an in-court restructuring.

103. At the same time that First Leaside was attempting to determine whether it could obtain control of the Texas LPs, it also performed a cost-benefit assessment of whether there was an economic benefit in attempting to obtain recoveries from those properties. As I will describe in the next section below, even if cooperation in respect of the Texas LPs were to be forthcoming, or a litigation strategy to obtain control could be reasonably devised, there is little potential of recovery for WALP from the U.S. properties to justify incurring the further expenses that would be necessary to gain control and realize upon the assets. In addition, it will shortly be necessary for the Texas properties to receive additional funding in order to support their debt obligations and carry on operating. Given the current value of the properties and the long term window for any prospect of

an increase in value, I have determined that it is not practical or appropriate to invest remaining estate assets in the Texas LPs.

No Material Equity in the Texas LPs

104. Although First Leaside clients provided a substantial amount of money to WALP by way of investor loans and equity, there is no material equity value remaining in WALP.

105. In addition to the investor contributions, substantial funds for the Texas LPs were sourced from third party mortgage lenders. Those mortgages, of course, have priority over the equity investors.

106. Over the last several years, WALP has suffered substantial net losses resulting from, among other things,

- (a) excessive leverage, resulting from substantial conventional mortgage financing and unsecured debt raised through several investor funds;
- (b) substantial maintenance and rehabilitation costs on the Texas properties;
- (c) payment of management and other fees;
- (d) high vacancy rates in several properties and an inability to achieve full occupancy overall; and
- (e) depressed rental rates and property values as a consequence of the economic downturn in 2008/2009.

107. These net annual losses, which are reflected on WALP's consolidated income statements, totalled \$13.9 million in the year ended December 31, 2011, \$17.6 million in

the year ended December 31, 2010, and \$18.5 million for the year ended December 31, 2009. These losses, which have been funded primarily by raising new capital from First Leaside investors directly into WALP or borrowing from other entities in the First Leaside Group, have accelerated the erosion of the equity interests of WALP unit holders. As of December 31, 2011, WALP's accumulated deficit reached \$93.5 million.

108. Prior to preparation of the report to investors dated May 1, 2012, and a town hall meeting which the Monitor, Representative Counsel, and I had with investors on May 10, 2012, the Monitor worked with me to prepare an analysis of the financial position of WALP. First Leaside had obtained updated valuation information on all of the WALP properties by either commissioning appraisals or by relying on arm's-length offers that had been made for the properties. As part of this analysis, the Monitor also obtained outstanding mortgage loan balances and calculated the amount of penalties that would be incurred on syndicated mortgages if they were prepaid prior to maturity. The Monitor also estimated realization costs such as closing costs and broker commissions.

109. As a result of this analysis, it became clear that, in aggregate, even without taking into account realization costs, the total net equity value of the Texas properties is less than \$100,000 based on an aggregate valuation of \$59.6 million and outstanding mortgages of \$59.509 million. When estimated realization costs of \$2.98 million are taken into account, the Texas LPs, in aggregate, have negative equity of \$2.889 million. More background in respect of this analysis will be contained in the Monitor's report.

110. On a property-by-property basis, the picture is not much better. Of the eleven properties, seven clearly have negative equity. The other four appear to have potential

positive equity of approximately \$4.39 million. However, this does not take into account the professional costs which First Leaside would have to incur in order to try to take control of those properties (if there even is a way to do so) and effect a restructuring—whether in or out of the U.S. courts.

111. Furthermore, as will be discussed more fully in the Monitor's report, as a result of the manner in which the funds that flowed from WALP to the Texas LPs were recorded on the books and records of First Leaside, it does not appear that there is a clear right of recovery by WALP against the Texas LPs for any amounts that flowed from WALP into the entities.

112. As CRO of First Leaside, my job has been to lead an orderly wind-down of the operations of First Leaside and to maximize recoveries for creditors and investors. Given that control of the Texas LPs rests with Phillips and that there is minimal equity in them, I have reluctantly come to the conclusion that no further steps should be taken by WALP to deal with, or realize value from, the Texas LPs or their various properties.

113. In coming to this unfortunate conclusion, I have consulted with the Monitor and Representative Counsel, both of which have expressed their support. I have also met with the Steering Committee to explain the issues associated with the Texas LPs and to warn them that no steps may be taken. The Steering Committee has expressed its support.

114. In addition to seeking permission of the court to take no further steps relating to the U.S. properties, the Applicants are also seeking authorization to deal with a number of other administrative issues. For example, since the First Leaside head office has

traditionally received and maintained copies of agreements and other documents relating to the Texas LPs, I propose to turn over such documents to the GPs for the Texas LPs. In the case of certain Texas LPs (especially the Aggregator LPs), where the corresponding GP is an Ontario corporation which is one of the Applicants in this proceeding, I propose to have the court permit those GPs to resign as general partner and, where possible, to allow another general partner to assume the role as successor.

Foreclosure on Sedona Property and Concerns About Mortgage

115. F.L. Sedona Creek, Ltd ("**Sedona LP**")., a Texas LP which owns the Sedona property, is unique in that it does not have any commercial third party mortgage but, instead, has given a mortgage ("**Sedona Mortgage**") in the amount of \$5 million to First Leaside Mortgage Fund ("**Mortgage Fund**").

116. Mortgage Fund is one of six different funds (the "**Funds**") into which First Leaside investors have made investments and received units in return. In turn, the Funds have advanced funds from time to time as unsecured loans to First Leaside entities.

117. The Funds are set up as trusts. As such, in legal terms, each Fund is administered by several trustees. However, prior to the commencement of CCAA proceedings, *de facto* management of the Funds took place from First Leaside's offices in Uxbridge. That is because WALP had entered into an Asset Management Agreement dated January 1, 2006 with F.L. Securities Inc. ("**FL Securities**"), one of the Applicants, whereby FL Securities agreed to manage the properties owned by the Texas LPs, including Sedona.

118. Mortgage Fund was established in July 2010 and proceeded to raise \$11.6 million from investors. I assisted the Monitor in analyzing the use of proceeds. Based on the records of the Mortgage Fund, WALP, Sedona and other First Leaside entities, it appears that no portion of the proceeds of Mortgage Fund were advanced to the Sedona bank account or otherwise expended for the direct benefit of Sedona. The monies raised by Mortgage Fund, after payment to First Leaside Securities Inc. of the 5% agency fee, were virtually entirely transferred to WALP and co-mingled with other WALP monies. WALP transferred monies back to the Mortgage Fund to pay monthly interest on the Sedona mortgage and made regular distributions directly to Mortgage Fund unit holders. The Mortgage Fund bank account presently holds a balance of approximately \$333,000, which I will continue to hold pending the further direction of the Court.

119. Payments by WALP to Mortgage Fund on account of Sedona mortgage interest were suspended on or about November 30, 2011 as a result of First Leaside's decision to suspend all interest payments and distributions to investors. On June 26, 2012, Mortgage Fund, through its U.S. counsel, notified First Leaside that the Sedona Mortgage was in default and that Mortgage Fund would conduct a foreclosure sale of Sedona outside the courthouse in Dallas, Texas, on August 7, 2012.

120. Attached hereto and marked as **Exhibit "Q"** is a copy of the June 26, 2012 letter from C. John Scheef III ("**Scheef**") of Scheef & Stone LLP, U.S. counsel for the Mortgage Fund, together with a copy of the Notice of Foreclosure Sale (collectively, the "**Sedona Foreclosure Notice**").

121. Following receipt of this notice, I consulted with First Leaside's Texas counsel, H&B, to learn more about the legal process in Texas for mortgage realization. I now understand that, under Texas law, it is common for foreclosure sales to take place "on the courthouse steps" and there is no specific requirement that properties be openly marketed through real estate agents or exposed to the market for a reasonable period of time. The auction is an accepted method of realization. Further, under Texas law, mortgagees are entitled to credit bid any amount up to the total of their debt and, to the extent that a credit bid is successful, the mortgagee is still entitled to claim the amount of any deficiency (i.e., between the mortgage debt and the amount that was credit-bid).

122. Since the beginning of these CCAA proceedings, First Leaside, in cooperation with the Monitor, has been attempting to fully understand the flows of funds among various First Leaside entities. As I described in my affidavit, it was very common for certain First Leaside trusts and LPs to lend surplus funds to other entities which required cash. This practice led to extremely complex series of inter-company loans.

123. When I received the Sedona Foreclosure Notice, I asked my staff at First Leaside, with the assistance of the Monitor to review the flows of funds among First Leaside entities to determine how Mortgage Fund obtained its mortgage over Sedona. Based on a review of the records of First Leaside it is apparent that until September 30, 2009 a commercial mortgage was in place over the Sedona property. When that mortgage matured, the lender was not prepared to continue providing credit and thus required full payment. WALP was able to source payment of the needed \$2.9 million from FL Securities. Our research also revealed that Mortgage Fund placed its mortgage on the Sedona property on August 1, 2010, which was 11 months after the prior

mortgage had been fully repaid. As such, the Sedona Mortgage does not appear to have been supported by any discernable advance of money by Mortgage Fund to Sedona LP.

124. Given the concern that the Sedona Mortgage might not have been supported by any consideration, I instructed H&B to write to counsel for Mortgage Fund to seek production of proof of consideration for the mortgage. Attached here and marked as **Exhibit “R”** is a copy of an August 3, 2012 letter to Scheef which sets out this request.

125. By letter dated August 6, 2012, Scheef sent a letter to H&B (**Exhibit “S”**) which took the position that the Applicants did not have authority over Sedona LP and therefore he declined to provide information about the Sedona Mortgage.

126. On August 10, 2012, H&B wrote another letter to Scheef (**Exhibit “T”**) to reiterate the basis for the information request. To date, I am not aware of any response to this letter.

127. Shortly after August 7, 2012, I learned that Sedona had indeed been sold. I have been informed that the buyer was Mortgage Fund, which reportedly made a credit bid of approximately \$3 million, leaving a deficiency of approximately \$2 million, given the \$5 million outstanding principal balance.

128. I have no doubt that individual investors advanced funds to Mortgage Fund for investment in mortgage security and that it was their expectation that advances made by Mortgage Fund would be secured by mortgages. However, I am concerned that the repayment of Sedona’s earlier commercial mortgage in September 2009 came from

First Leaside entities other than Mortgage Fund, and I wish to understand further the flow of funds and the interests at stake. As such, in its correspondence with Scheef, First Leaside's counsel (H&B) has reserved its rights.

129. First Leaside wishes to further investigate the interests of the Mortgage Fund in the Sedona Mortgage, and what consideration may have flowed from the investors in Mortgage Fund in return for the Sedona Mortgage and whether, in actual fact, Sedona LP owed the \$5 million to another First Leaside entity such as WALP, and not to Mortgage Fund.

Various First Leaside Funds

130. As previously advised, there are six Funds that were established to loan monies to First Leaside entities. Wimberley Fund, The First Leaside Fund ("**FL Fund**"), and The First Leaside Properties Fund ("**Properties Fund**") made unsecured loans to the Aggregator LP's. Mortgage Fund holds a mortgage on Sedona (as described above) and two other properties. FLWM Fund and FLEX Fund raised money from investors that was invested on an unsecured basis in other First Leaside entities.

131. As I previously stated in my June 19, 2012 affidavit, which was sworn in support of, *inter alia*, an extension of the CCAA stay, a number of the Funds have become active in these CCAA proceedings and are taking steps to assert certain alleged rights.

132. In particular, on June 27, 2012, Fay Sulley ("**Sulley**") of Torkin Manes LLP delivered Notices of Appearance on behalf of Wimberly Fund, Mortgage Fund, and FL Fund. Since that time, on a number of occasions, the Monitor and I have met and

spoken with Sulley and several of the trustees of the Funds that she represents. In order to protect and potentially pursue their interests in the amounts loaned to various entities, particularly Master Sherman and Master Texas, which received loans from Wimberley Fund, First Leaside Fund, and First Leaside Properties Fund, requests have been made by Sulley on behalf of Wimberly Fund and FL Fund and by Ken Rice (“**Rice**”) on behalf of FL Properties Fund for information regarding the properties held by these LPs. The Monitor has coordinated the disclosure of information in the possession of First Leaside as requested, upon settling with Sulley and Rice a form of confidentiality agreement relating to such disclosure.

133. Prior to the commencement of the CCAA proceedings, the trustees of Mortgage Fund, FLWM Fund and FLEX Fund were Phillips, Hampton and John Wilson (“**Wilson**”), a former officer of First Leaside.

134. Hampton was also a trustee of FL Fund together with other investors. Although the trustees of Wimberly Fund and Properties Fund were all independent investors, I am informed and I believe based on conversations that I have had with other trustees, that the appointed trustees tended to act with deference to Phillips and he exerted a measure of *de facto* control over these Funds as well. As such, control of all Funds was not, in general, separate from control of First Leaside.

135. Each of the Funds is governed by a declaration of trust which sets out governance matters including the appointment of trustees. The declarations of trust sometimes require meetings of unit holders to be held annually and for trustees to be elected at such meeting to serve until the next annual meeting. Other declarations of

trust specifically provide that no annual meetings of unit holders are to take place and, in those cases, the only way for unit holders to replace the trustees is by requisitioning a meeting of unit holders.

136. After these CCAA proceedings commenced, Hampton resigned her position as trustee of Mortgage Fund, FLWM Fund, FLEX Fund and FL Fund. I am aware that another trustee, Doug Laws, who is an investor in First Leaside, also resigned from FL Fund. I am not aware of other resignations. However, to the best of my knowledge, Phillips and Wilson remain trustees of Mortgage Fund, FLEX Fund and FLWM Fund.

137. As I have deposed above, Mortgage Fund has been taking active steps to purportedly exercise rights for the benefit of unit holders of that Fund. To date, I have received no documentation to prove that the relevant Fund trustees were validly appointed. The Declaration of Trust for Mortgage Fund (**Exhibit "U"**) provides that the trustees of such fund are Phillips, Wilson, and Hampton. (I have been advised by Hampton that she has recently resigned her position.) The declaration does not require Mortgage Fund to hold annual meetings or provide any regular process for unit holders to re-elect the trustees. Instead, the trustees have permanent appointments, unless a specified percentage of unit holders are able to requisition a unit holder meeting and win a vote to replace the trustees. At the same time, existing trustees are permitted to elect further trustees, including to fill vacancies.

138. I have been informed by certain investors in Mortgage Fund that the current trustees of Mortgage Fund are Phillips and Wilson as well as several other individuals, including Simon Perry, Steve Dietrich, Reinhold Dressler, Greg Wolfe, Gerry Jansen,

and Paul Robbins, who I believe have been recently named as new trustees, although I do not know the process by which these new trustees have been apparently appointed, nor do I have any formal confirmation of their appointments and that they have been validly made pursuant to the provisions of the Declaration of Trust governing such appointments. I am also informed that certain unit holders, including certain of the new trustees, wish to requisition a meeting of unit holders to affirm or replace the trustees, but the trustees have not reached consensus on calling such meeting.

139. The Funds are creditors of various First Leaside entities. As CRO my role is to oversee the orderly wind-down of First Leaside's operations including, in particular, the selling of First Leaside's assets for the benefit of creditors and investors. Although as CRO I do not have any direct power over the Funds, I am concerned that the continued participation of Phillips and Wilson as trustees of Mortgage Fund and the other Funds may not be in the best interests of unit holders of those Funds. In order to ensure that all unit holder interests are fairly represented, the Funds require truly independent trustees who have no personal interests that could compromise or frustrate the efficient operation of the Funds.

140. Further, on June 4, 2012 the Ontario Securities Commission ("**OSC**") commenced proceedings against Phillips and Wilson. The OSC asserts in its Statement of Allegations that Phillips and Wilson engaged or participated in an act, practice or course of conduct relating to securities which they knew, or reasonably ought to have known, would perpetrate a fraud on investors, contrary to subsection 126.1(b) of the *Securities Act*. The OSC also alleges that they made statements a reasonable investor would consider relevant in deciding whether to enter into or

maintain a trading or advising relationship, which statements were untrue or omitted information necessary to prevent the statements from being false or misleading in the circumstances in which they were made, contrary to subsection 44(2) of the *Securities Act*.

141. Phillips is also subject to a temporary order which prevents him from trading in securities, which order could prevent him from taking certain steps on behalf of the Funds, including the raising of additional capital.

Deletion of 970877 Ontario Inc. as Applicant

142. At the time that the Initial Order was granted, it was First Leaside's intention to seek protection under the CCAA for all Canadian corporations within the First Leaside group. First Leaside also sought to extend the protection of the Initial Order to all Canadian LPs.

143. Since the time of the Initial Order, First Leaside has determined that not all of the Applicants are required to be part of these proceedings. In particular, I have recently discovered that 970877 Ontario Inc. was used by Phillips as a personal holding company and not for the business of First Leaside.

144. Given the role of this company, there is no need for it to remain as Applicant in this proceeding. As such, First Leaside seeks an order discontinuing these proceedings in relation to 970877 Ontario Inc. and directing that the title of proceedings be amended accordingly to remove reference to such corporation.

Amounts Owed by First Leaside Employees and Former Employees

145. FLWM historically made a number of loans to its employees and to clients to allow them to purchase limited partnership units and notes without paying cash ("**Investment Loans**"). Most of these loans were made pursuant to demand promissory notes but, in certain cases, loans were extended without having the relevant employee or investor sign a note (in which case the loan was still shown as a "loan receivable" on First Leaside's accounting system). As at December 31, 2011, investment loans to officers, agents, and current and former employees totalled \$1,120,078.63 (inclusive of investment loans to David Phillips and his wife) and investment loans to clients totalled \$2,405,045.23.

146. Further, First Leaside and the Monitor have investigated amounts which Phillips or companies related to or controlled by him, may owe to the Company. The amounts consist both of apparent preferences involving Phillips' companies and advances made to Phillips in 2011.

147. On or about November 3, 2011, a \$500,000 transfer (the "**Transfer**") was made from the bank account of First Leaside Finance Inc. ("**Finance**") to 970877 Ontario Inc. ("**970**"), a corporation controlled by Phillips. According to First Leaside's accounting records, it appears as though the Transfer was made to repay a \$500,000 loan made by 970 to FLWM on September 2, 2011. Phillips is the sole officer and director of 970.

148. The Transfer was made three days after First Leaside agreed to cease trading in securities, and on the same day that the Independent Committee was appointed to control FLWM.

149. Additionally, it has come to my attention that, throughout the course of the 2011 fiscal year, Phillips received advances and other benefits (the “**Phillips Loans**”) totalling approximately \$1.14 million more than what Mr. Phillips was paid as base salary. This \$1.14 million appears to consist of amounts that Mr. Phillips either withdrew from the Company’s bank account, or personal and household expenses which First Leaside paid on Phillips’ behalf.

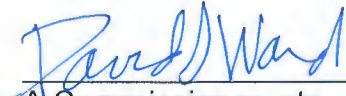
150. In contrast, the base salary which was paid to Phillips in 2011 was only \$77,779.23, inclusive of taxable benefits. This amount was paid to Phillips throughout 2011.

151. The receivables represented by the Investment Loans and the Phillips Loans are assets of First Leaside. I have met with the Monitor and Representative Counsel and they have concur with First Leaside’s decision to take steps to commence legal proceedings (the “**Collection Action**”) against Phillips and his wife, Davis, as well as any corporations connected with them, in order to obtain recovery of the Investment Loans and the Phillips Loans which are owing by Phillips, Davis, and/or 970.

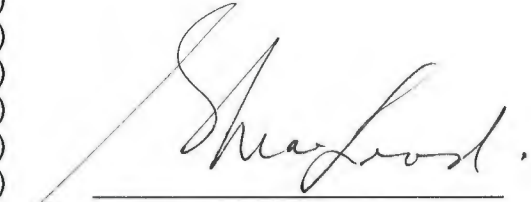
152. However, under the current provisions of the Initial Order, there is a general stay which prevents any party from taking proceedings against any officer or director of the Applicants. Since Phillips and Davis are directors of a number of the Applicants, this stay will have to be lifted in order to permit the Collection Action to be commenced and pursued. I do not believe that the lifting of the stay in this regard would frustrate the objects of the CCAA or these proceedings, nor should it have an affect on the intended wind-down of First Leaside. The Collection Action would simply be part of the

realization upon First Leaside's assets for the benefit of creditors, investors, and other stakeholders.

SWORN before me at the City of Toronto
In the Province of Ontario, this 20th day of
August, 2012



A Commissioner, etc.

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Gregory MacLeod

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

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF First Leaside Wealth Management Inc. et al**

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

Proceeding commenced at Toronto

**AFFIDAVIT OF GREGORY MACLEOD
(sworn August 20TH, 2012)**

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Solicitors for the Applicants

This is Exhibit "A" referred to in the Affidavit of Greg MacLeod
sworn August ..20..., 2012



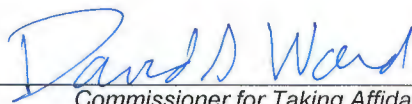
Commissioner for Taking Affidavits (or as may be)

EXHIBIT "A": LIMITED PARTNERSHIPS BENEFITING FROM INITIAL ORDER

B&W Limited Partnership
Development Notes Limited Partnership
Dossierview Limited Partnership
eSight Limited Partnership
F.L. Beverages Group Limited Partnership*
First Leaside Acquisitions 2000 Limited Partnership
First Leaside Acquisitions Limited Partnership
First Leaside Advantage Limited Partnership
First Leaside Developments Limited Partnership
First Leaside Elite Limited Partnership
First Leaside Enterprises Limited Partnership
First Leaside Entities Limited Partnership
First Leaside Expansion Limited Partnership
First Leaside Global Limited Partnership
First Leaside Growth Limited Partnership
First Leaside Income Limited Partnership
First Leaside Investors Limited Partnership
First Leaside Operations Limited Partnership
First Leaside Opportunities Limited Partnership
First Leaside Optimal Limited Partnership
First Leaside Partners Limited Partnership
First Leaside Preferred Limited Partnership
First Leaside Premier Limited Partnership
First Leaside Progressive Limited Partnership
First Leaside Properties Limited Partnership
First Leaside Quality Limited Partnership
First Leaside Real Estate Limited Partnership
First Leaside Realty II Limited Partnership
First Leaside Realty Limited Partnership
First Leaside Retirement Residences Limited Partnership
First Leaside Select Limited Partnership
F.L. Spring Valley Limited Partnership
First Leaside Superior Limited Partnership
First Leaside Technologies Limited Partnership
First Leaside Ultimate Limited Partnership
First Leaside Unity Limited Partnership

First Leaside Universal Limited Partnership
First Leaside Venture Limited Partnership
First Leaside Visions I Limited Partnership
First Leaside Visions II Limited Partnership
First Leaside Visions III Limited Partnership
First Leaside Visions IV Limited Partnership
First Leaside Wealth Management Limited Partnership
F.L. Master Texas, Ltd.
F.L.W. Pond Master, Ltd.
F.L.W. Shores Master, Ltd.
FLWM Holdings Limited Partnership*
Greencore Limited Partnership
Marksman Celiject Limited Partnership
Metabacus Limited Partnership
Mill Street Limited Partnership*
Old Mill Pond Apartments Limited Partnership
OMISA Limited Partnership
Place Concorde East Limited Partnership
Place Concorde West Limited Partnership
Preston Racquet Club Real Estate Limited Partnership Series 910 PA
Preston Racquet Club Real Estate Limited Partnership Series 910 PB
Preston Racquet Club Real Estate Limited Partnership Series 910 PC
Preston Racquet Club Real Estate Limited Partnership Series 910 PD
Queenston Manor Limited Partnership
Special Notes Limited Partnership
Special U.S. Notes Limited Partnership
The Bluffs of Lakewood Limited Partnership
The Shores Limited Partnership
Tyromer Limited Partnership
Uxbridge Development Limited Partnership
Wimberly Apartments Limited Partnership

This is Exhibit "B" referred to in the Affidavit of Greg MacLeod
sworn August 20, 2012



Commissioner for Taking Affidavits (or as may be)

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., 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 GREGORY MACLEOD
(sworn February 22, 2012)**

I, **GREGORY MACLEOD**, of the City of Burlington, in the Province of
Ontario, **MAKE OATH AND SAY:**

1. I am the Chief Restructuring Officer ("CRO") of First Leaside Wealth
Management Inc. ("FLWM"), and the other applicants (collectively, the "Applicants") as
well as the limited partnerships affiliated with the Applicants which are listed in **Exhibit**

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"A" hereto (collectively, "First Leaside" or the "Company"). I have been in the position of CRO since December 6, 2011. As such, I have knowledge of the facts deposed to in this affidavit. To the extent that this affidavit describes events or facts of which I do not have personal knowledge, I have identified the source of the information and, in all cases, believe it to be true.

2. This affidavit is sworn in support of the application by FLWM and the other Applicants for relief under the *Companies' Creditors Arrangement Act*, RSC 1985, c. C-36, as amended (the "CCAA"). The Applicants also seek to have the court extend the benefit of the initial order (including the stay) to various limited partners in respect of which Applicant corporations are the general partners (subject to a "carve out" of certain limited partnerships noted below).

3. Attached hereto as Exhibit "A" is a list of the Applicants, as well as the corresponding non-Applicant limited partnerships to which the Applicants wish to have CCAA protection extended.

I. OVERVIEW

4. First Leaside, through its various affiliated companies, trusts, and limited partnerships ("LPs") (including the LPs which are not part of this filing) runs numerous businesses, including commercial and multi-unit residential properties and retirement residences. In general, First Leaside provides investment and wealth management services to more than 1,200 investors who have invested with the Company. First Leaside also provides its investors with estate planning, insurance, accounting, and tax

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services. A simplified organizational chart of the main corporations constituting First Leaside (but without details of the LPs) is attached hereto and marked as **Exhibit "B"**.

5. First Leaside's operations are centred on two primary companies: FLWM and its wholly-owned subsidiary, First Leaside Securities Inc. ("**FLSI**").

6. FLSI is an investment dealer under Ontario securities law and is regulated by both the Ontario Securities Commission ("**OSC**") and the Investment Industry Regulatory Organization of Canada ("**IIROC**"). FLSI acts as a "one-stop" investment organization for First Leaside's clients. Clients use FLSI to manage a portfolio of non-proprietary investment products, typically consisting of more conservative investments such as bonds, treasury bills, and marketable securities (the "**Marketable Securities**") as well as proprietary equity (such as LP units) and debt securities issued by First Leaside (proprietary equity and debt securities shall hereafter be collectively referred to as the "**FL Products**").

7. The Marketable Securities and available cash balances are segregated in accounts held with Penson Financial Services Canada Inc. ("**Penson**"). Penson is a member of IIROC and provides back-office brokerage and custody services to a wide range of investment dealers, including FLSI. This proposed CCAA proceeding does not involve any lost or misappropriated client securities. All of the Marketable Securities which are owned by First Leaside clients are indeed held with Penson and, as I will describe in further detail below, First Leaside is prepared to allow clients to immediately transfer their Marketable Securities and cash to another investment dealer despite the

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commencement of these proceedings. If clients wish another investment dealer to hold their FL Products in segregation, they are free to do so, as well.

8. The FL Products are intended to provide First Leaside investors with consistent monthly distributions, potential capital appreciation, and, in the case of equity investments, potential tax deductions. With respect to the FL Products, First Leaside generally operates as a real estate syndicate that purchases real estate and rehabilitates it with a view to leasing to tenants at higher rates or reselling the property at a profit. During the early years of real estate developments, clients are able to benefit from tax losses generated by properties and also receive regular tax-free returns of capital.

9. First Leaside's real estate projects are generally set up as LPs for which First Leaside incorporates a special-purpose corporation to act as a general partner ("GP"). The GPs of First Leaside's Canadian LPs (i.e., those that own property in Canada) are part of this CCAA filing and the benefits of the initial order are being requested to extend to the corresponding LPs. The LPs which correspond to the relevant GPs are listed in Exhibit "A".

10. The success of the FL Products depends on a robust real estate market. Thus, the recent economic downturn has had a negative impact on the Company's financial situation: First Leaside has realized lower operating income while simultaneously incurring higher operational costs.

11. Due to this turmoil, and other events described below (including action by securities regulators), in early 2011 First Leaside, through its counsel, Cassels Brock &

Blackwell LLP ("**Cassels**"), engaged an independent consultant, Grant Thornton Limited ("**GTL**"), to review its business operations and assess its overall viability. GTL determined that the Company was facing serious cash flow and operational challenges and concluded that First Leaside's future viability depended on a number of key factors and assumptions, including its ability to raise capital.

12. Despite the Company's efforts to implement GTL's recommendations, First Leaside's financial challenges persisted. In particular, during the course of an investigation by the OSC, First Leaside undertook a voluntary, indefinite cease trade of all FL Products (the "**Cease Trade**"), and later suspended all distributions and interest payments on FL Products. Because First Leaside's business model requires ongoing capital raising to fund capital expenditures and operations, the Cease Trade precluded First Leaside from raising equity to de-leverage properties or to fund business operations. FLWM had also previously relied on revenues from agency fees charged in connection with new capital raises, together with other fee revenue relating to new FL Products, to support corporate operations and to provide working capital to support other entities in the group. The Cease Trade effectively stopped these revenues, thereby threatening FLWM's ability to operate as a going concern.

13. In December 2011, through my corporation, G.S. MacLeod & Associates Inc., I was retained by an independent committee of the board of directors of FLWM (the "**Independent Committee**") to review First Leaside's operations and to provide recommendations of how to deal with various financial and regulatory issues that the Company faced. Attached hereto and marked as **Exhibit "C"** is a copy of my retention agreement. After several weeks of careful consideration of the situation, I concluded

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that it was unlikely that First Leaside would be in a position to resolve issues with securities regulators and thereby resume the raising of capital in the near future. On that basis, I concluded that the best course of action for First Leaside was to undertake an orderly wind-down of operations. Further, I concluded that—in light of the complex corporate structure of the Company, the complex web of numerous inter-company debts and contractual relationships among the corporations, trusts, and LPs in the First Leaside group, and the fact that many First Leaside clients have debt and/or equity investments in multiple First Leaside entities—the proper way to deal with First Leaside's assets and liabilities was to bring the Company within a court-supervised process so that all stakeholder interests can be dealt with in one forum, in a consolidated manner, and recoveries can be maximized. That forum is this CCAA proceeding.

14. First Leaside and the LPs are the owners of numerous real properties located in Ontario, British Columbia, and Texas. The properties include retirement residences, rental apartments, industrial facilities, development projects and raw land.

15. First Leaside's U.S. properties are not, for the present time, intended to come within court-supervised insolvency proceedings whether under the CCAA or Chapter 11 of the *U.S. Bankruptcy Code* (the "USBC"). First Leaside believes that such properties may be able to continue operations over the anticipated wind-up period using the cash flows that they generate and pay their liabilities as they come due, assuming that revenues can be increased and capital costs contained.

II. FIRST LEASIDE'S BUSINESS

General

16. First Leaside was founded in 1989 by David Phillips, an experienced investment advisor and trader who had worked at major brokerage firms. Mr. Phillips wanted to create financial products that were more favourable to investors than those then available in the market.

17. In 1992, Mr. Phillips oversaw the acquisition of First Leaside's first properties, the Wymberly Pointe and Wymberly Crossing apartment complexes in Grand Prairie, Texas (near Dallas), for \$10 million, through a real estate syndication.

18. Since that time, First Leaside has acquired and developed numerous other properties in Texas, expanding to properties in Ontario several years ago, and last year to British Columbia. Apart from straightforward investments in rental real estate projects, First Leaside also has a series of other investments, including ownership of several accounting firms in Alberta and an interest in a brewery/cidery in Ontario. First Leaside also has an interest in seven small start-up technology companies.

Corporate Structure – Operating Companies

19. FLWM is the ultimate parent company of First Leaside. Affiliated with FLWM are six wholly-owned subsidiaries that are operating companies, including FLSI, FL Securities Inc. ("**FL Securities**"), First Leaside Finance Inc. ("**FL Finance**"), First Leaside Management Inc. ("**FL Management**"), First Leaside Insurance Inc. ("**FL Insurance**"), and First Leaside Accounting and Tax Services Inc. ("**FL Services**")

(FLWM and its operating subsidiaries shall hereafter be referred to collectively as the **"Operating Companies"**).

FLWM

20. Mr. Phillips owns all of FLWM's common shares. FLWM has also issued preferred shares, with 96.7% of such shares being owned by First Leaside investors and the remaining 3.3% by Mr. Phillips. FLWM's preferred shares are in several series and provide dividends at annual rates of 6%, 8%, or 10%, depending on the series.

21. First Leaside generates revenue to cover expenses and pay dividends by charging fees to First Leaside clients, both in connection with the sale of new investment products (such as LP units), and as ongoing asset administration fees (calculated as a percentage of client investment holdings).

22. FLWM also owns a small pool of assets including:

- (a) four small accounting firms;
- (b) a 33.3% interest in First Leaside Retirement Residences LP;
- (c) a 34.9% interest in First Leaside Beverages Limited Partnership, which operates a brewery/cidery;
- (d) marketable securities;
- (e) note receivables from investors who borrow short term funds to acquire units in various LPs;
- (f) an interest in seven start-up technology companies; and
- (g) an art collection.

23. Attached hereto and marked as **Exhibit "D"** is a copy of FLWM's internally-prepared financial statements as at December 31, 2010 for the 12 months ending as of such date.

FLSI

24. FLSI is an investment dealer that is regulated by the OSC and IIROC. It is through FLSI that First Leaside clients invest their money in both the Marketable Securities (held in segregation by Penson) and also the FL Products issued by various First Leaside entities. FLSI is also a member of the Canadian Investor Protection Fund ("**CIPF**"), which provides coverage of up to \$1 million per client as a result of securities in client accounts that are lost as a result of the insolvency of a CIPF member. (However, the CIPF does not cover investment losses resulting from the changing value of securities or default by the issuer of securities.)

25. FLSI charges agency fees, business development fees, and acquisition analysis fees for its services. Attached hereto and marked as **Exhibit "E"** are FLSI's unaudited financial statements as at December 31, 2011.

26. Since FLSI became an IIROC dealer, and up to June 30, 2011, it has invested approximately \$370 million on behalf of First Leaside clients. Approximately \$86 million of funds invested were in publicly-traded securities, including Marketable Securities, which are held by for the benefit of First Leaside clients. Attached hereto and marked as **Exhibit "F"** is a table summarizing the third party marketable securities of First Leaside investors held at Penson as at February 14, 2012.

27. Although First Leaside may be insolvent, its client accounts containing Marketable Securities are all intact and held in segregation by Penson. Clients will therefore suffer no loss of Marketable Securities either now or as a result of the CCAA proceeding. First Leaside specifically requests a term in the CCAA initial order permitting First Leaside clients to immediately transfer the Marketable Securities and cash held with Penson to another investment dealer, thereby allowing clients to sell, trade, or maintain their Marketable Securities despite the CCAA proceeding.

28. With respect to the FL Products, those client investments are also intact in the sense that First Leaside clients do hold legitimate preferred shares, common shares, LP units, notes, and debentures in the various First Leaside entities and First Leaside does have up-to-date records of such client holdings. However, the value of individual FL Products is uncertain at this point in time because of the likelihood of losses in the various FL entities. For example, many First Leaside LPs have an equity deficit because there may be limited or no proceeds left to be paid to unitholders after mortgages and notes are paid.

29. FLSI raises debt through a related entity, First Leaside Wealth Management Fund (a trust), at an interest rate of 7% per annum.. FLSI also raises debt through other entities, such as Special Notes Limited Partnership, and Special U.S. Notes Limited Partnership.

FL Finance

30. Traditionally, various First Leaside LPs and corporations have raised more capital than required for their immediate needs. For example, many LPs sold units to

investors before a specific project was identified or land was purchased, and it was not uncommon for months to pass before a property was acquired. However, since First Leaside promised investors substantial regular distributions (often 6% or 7% per annum) on their LP units or notes, and adequate returns could not be obtained by leaving surplus cash in the bank, the LPs with idle capital required some way to generate income to fund those distributions.

31. Thus, First Leaside facilitated the intercompany financial arrangements, using FL Finance as a conduit to borrow surplus funds from some First Leaside entities, and then lend them to other First Leaside entities that required money (such as to rehabilitate properties). The interest rates paid on these loans were typically in the range of 6% to 7% per annum. All of these inter-company loans which FL Finance has facilitated have been duly recorded in First Leaside's records.

32. FL Finance is not registered under Ontario securities laws because it does not distribute or deal in securities.

33. In addition to its capacity as a "central bank" for First Leaside, from time to time FL Finance also acted as a buyer of client positions in FL Products through FLSI. Prior to the fall of 2011, First Leaside had an informal policy of arranging purchases of otherwise illiquid LP units from investors that wished to exit from their investments. Each unit was initially issued at a price of \$1 per unit. As of February 12, 2012, FL Finance held approximately \$16.66 million in LP units, based on a price of \$1 per unit.

34. Attached hereto and marked as **Exhibit "G"** is a copy of FL Finance's internally-prepared financial statements as at December 31, 2010

FL Securities

35. FL Securities, which is a different corporation than FLSI, is an exempt market dealer ("**EMD**") that is registered with the OSC. FL Securities acts as an asset manager and promoter of real estate assets. For its services, FL Securities charges promotional fees, acquisition analysis fees, property management fees, and advisory fees. Despite its registration as a dealer, FL Securities does not engage in securities trading activities. All securities trading activities within First Leaside are conducted exclusively by FLSI.

FL Management

36. FL Management is the property manager of certain Canadian First Leaside properties. It charges all Canadian properties a services fee equal to 2 to 4% of annual net revenues.

37. FL Management employs one individual who is the senior property manager for Canada and who also has partial responsibility for First Leaside's U.S. property management. The day-to-day management of the U.S. properties is, however, conducted by a third party U.S. firm that reports to FL Management on a weekly and monthly basis.

38. In regard to the retirement residences described below, PrimeTime Living LP manages the day-to-day operations of that portfolio of properties. Finally, for the remaining Canadian properties, including Queenston Manor and Harmony (described below), on-site managers are employed by the entities. Attached hereto and marked as

Exhibit "H" are FL Management's unaudited financial statements as at December 31, 2010.

FL Insurance

39. FL Insurance is licensed as a corporate insurance agency with the Financial Services Commission of Ontario. FL Insurance sells, as agent, a variety of third party insurance policies to First Leaside investors. FL Insurance generates a small amount of commission income annually (approximately \$55,000) as a result of its sales of insurance policies.

40. Attached hereto and marked as **Exhibit "I"** are the unaudited financial statements for FL Insurance as at December 31, 2011.

FL Services

41. FL Services provides personal income tax preparation services for Canadian and US investors.

42. Attached hereto and marked as **Exhibit "J"** are the unaudited financial statements for FL Services as at December 31, 2010.

Corporate Structure - LPs

43. First Leaside's investors may invest in the Company's various ventures by purchasing LP units. First Leaside has two types of LPs: individual LPs that acquire and operate a single property or development, and "aggregator" LPs that hold units of multiple LPs.

44. All types of LPs that First Leaside has formed were structured to provide tax advantages to investors as well as regular distributions (typically consisting of tax-free returns of capital in the early years).

45. Generally, First Leaside forms LPs to raise capital in order to locate and acquire real estate that has not been fully or effectively developed. The LPs typically acquire real estate from a third party in an arm's-length transaction. The costs to identify, acquire, and rehabilitate a property usually generate a loss for the LP in the first few years. The LP's investors realize this loss and offset it against their other income, thereby creating short-term tax benefits.

46. Each year a certain percentage of money invested in an LP is distributed by the LP to investors as a return of capital (and, hopefully, in later years, as income from the property), thereby providing investors with a regular cash flow regardless of the stage of the LP's project. Typically, LPs promised a regular annual return to investors in the range of 6% or 7% per annum.

47. Later on, if an LP acquires rental property that is leased after its rehabilitation, the rental payments produce operating income and cash flow that could be distributed to investors on a regular basis. If a property is sold after it is rehabilitated, investors can realize cash proceeds (and generate capital gains). The proceeds from a sale can be withdrawn from First Leaside or "rolled" into new LPs that are subsequently created.

48. Given the level of fees charged to LPs by FLWM to sell LP units, and identify, purchase, and manage properties, as well as the significant returns of capital to investors by way of distributions, investors in longstanding LPs have likely had the cost

base of their investments "ground down" to minimal amounts. In other words, some investors have already received back all or a substantial portion of their initial invested capital through a combination of return of capital and the tax benefits associated with the LP's losses. As a consequence, the properties are often highly leveraged.

49. There are numerous LPs within First Leaside. Certain LPs and their related holdings are listed below.

a. First Leaside Expansion Limited Partnership ("FLEX")

- i. FLEX is one of First Leaside's Canadian real estate LPs. Attached hereto and marked as **Exhibit "K"** is an organizational chart for FLEX. Because FLEX owns more than one property, it is one of First Leaside's aggregator LPs.
- ii. FLEX owns the following properties and LPs:
 - First Leaside Entities LP ("**Entities**"): Entities owns two properties in Uxbridge that are adjacent to the Victoria St. Building (which is detailed below). One property is 1.57 acres and is currently being used as a parking lot for construction workers, while the other is 0.59 acres of land with a small commercial building, and is currently not producing income;
 - First Leaside Growth LP ("**Growth**"): Growth owns a fully occupied 70,000 sq. ft. industrial building in Brampton, Ontario. The property has been profitable since 2008 and was projected to remain profitable through 2013. The property has been sold pursuant to an agreement for purchase and sale and the sale is scheduled to close in March 2012;
 - Queenston Manor LP ("**Queenston**"): Queenston owns a 77-unit retirement living apartment complex in St. Catharines, Ontario. The complex is presently 92% occupied. Rooftop solar panels are currently being installed at the property and once installed are expected to generate \$53,000 a year. Before capital expenditures, the property has been profitable since 2008, and was expected to remain profitable through 2013. Queenston has been listed for sale and management

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is currently considering an offer that has been made on the property;

- First Leaside Unity LP ("**Unity**"): Unity owns 2.74 acres of land in Wheatley, Ontario, that is zoned for a residential townhome complex. Unity has already completed and sold three townhomes. FLEX had planned to develop and sell an additional 16 townhomes over a period of six years beginning in 2012; and
- FLEX had intended to build a four floor, 58,182 sq. ft. office building ("**Victoria St. Building**") for First Leaside on 1.04 acres at 4 Victoria St. in Uxbridge, Ontario. This building would have been the new head office of First Leaside. However, construction of the Victoria St. Building was halted in the fall of 2011 due to a lack of funds following the Cease Trade. As a result of this stoppage, eleven construction liens have been placed against the Victoria St. Building and the property owned by Entities. The total amount of these liens is \$3,446,276.29. Additional details of these liens are attached hereto and marked as **Exhibit "L"**.

- iii. FLEX raises equity and, in the past, paid a 6% distribution. FLEX has raised debt through the Development Notes LP ("**Development Notes**"), and paid a 7.75% interest rate. FLEX also raised debt through the FLEX Fund, paying a 6% interest rate.
- iv. FLEX has also raised \$3.45 million which was used to fund a syndicated mortgage on the Bramtree property.

b. Wimberly Apartments LP ("**WALP**")

- i. WALP is an Ontario limited partnership which, through a series of Texas limited partnerships, holds a variety of properties in the United States (specifically, Texas). Attached hereto and marked as **Exhibit "M"** is an organizational chart for WALP. WALP owns the assets listed below and, as such, is one of First Leaside's aggregator LPs.
 - F.L. Master Texas Ltd. ("**Master Texas**"): Master Texas owns six LPs that each own one apartment complex in the Dallas/Ft. Worth area;
 - (i) Bluffs of Lakewood: The property is a 233-unit rental apartment building located in Dallas, Texas. The building is currently undergoing a rehabilitation program that is scheduled to be completed later this

- 17 -

year. The property is expected to reach 95% occupancy by May 2012. The property is expected to be profitable, before capital expenditures, in 2012 and 2013;

- (II) Old Mill Ponde Apartments: The property is a 244-unit rental apartment building located in Arlington, Texas. The building is currently undergoing rehabilitation and is not fully occupied. The property has not been profitable for the last several years;
 - (III) Preston Racquet Club: The property is a 184-unit condominium complex located in Dallas, Texas. Although the property has not been profitable for the past several years, it is nearing the end of a rehabilitation program and is expected to be profitable in 2012 and 2013 before capital expenditures;
 - (IV) Shores Apartments: The property is a 236-unit rental apartment building located in Arlington, Texas. The building is currently undergoing a rehabilitation program and is not fully occupied. The property has not been profitable for the last several years;
 - (V) Wymberly Crossing Apartments: a 212-unit rental apartment building in Grand Prairie, Texas. The property is expected to be profitable, before capital expenditures in 2012 and 2013, once the rehabilitation program is completed and rent is increased; and
 - (VI) Wymberly Pointe Apartments: The property is a 208-unit rental apartment building located in Grand Prairie, Texas. The property is expected to be profitable, before capital expenditures, in 2012 and 2013, once the rehabilitation program is completed.
- F.L. Master Sherman Ltd. ("**Master Sherman**"): Master Sherman owns four LPs that each own an apartment complex in the Sherman, Texas area;
 - (I) Country Village Apartments: The property is a 148-unit rental apartment building. This property is also currently undergoing a rehabilitation program that is scheduled to be completed later this year. The property has been profitable since 2008, and is projected to remain profitable through 2013;

- (II) Creekview Apartments: The property is a 144-unit rental apartment building. The apartments are currently undergoing a rehabilitation program that is scheduled to be completed later this year. The property has been profitable, before capital expenditures, since 2008, and is expected to increase its profitability through to 2013 due to an expected increase in occupancy, completion of the rehabilitation program, and a series of rent increases;
 - (III) Parkview Apartments: The property is a 200-unit rental apartment building that is currently undergoing a rehabilitation program. The program is scheduled to be completed later this year. The property has been profitable since 2008, and is expected to remain profitable, before capital expenditures, through 2013; and
 - (IV) Raintree Apartments: The property is a 144-unit rental apartment building that is currently undergoing a rehabilitation program. The rehabilitation program is scheduled to be completed later this year. The property has been profitable since 2008, and is expected to remain profitable, before capital expenditures, through 2013.
- F.L. Sedona Creek Ltd. ("**Sedona**"): Sedona owns an apartment complex in the Dallas area. There is currently no scheduled rehabilitation program planned, and the occupancy rate is projected to increase through September 2012. Sedona is expected to be profitable in 2012 and 2013.
- ii. WALP has raised debt and equity in several different ways. WALP has raised equity and paid a 4% distribution as return on capital. First Leaside Fund raised debt at bearing 9% annual interest for WALP. Additionally, Wimberly Fund I raised debt at an interest rate of 8%, and Wimberly Fund II raised debt at interest rates of 7% and 8%. Debt raised for the Master Sherman-owned properties has been through First Leaside Properties Fund at an interest rate of 9%. Finally, WALP raised \$5.3 million through a syndicated mortgage for Sedona and a church property located near Sedona;
- c. First Leaside Retirement Residences LP ("**Retirement**")
 - i. Retirement owns 50.1% of PrimeTime Living LP. PrimeTime Living LP owns several retirement residences and development properties

that are listed below. Retirement's 50.1% interest in PrimeTime Living LP is shared amongst multiple First Leaside entities in the following proportions: 16.67% by First Leaside Wealth Management Holdings Inc., 20% by Progressive (defined below), 30% by Universal (defined below), and 33.3% by FLWM.

- Abby Lane Retirement Residence/Whiterock Medical: This project consists of a medical facility that occupies 40,000 sq. ft., and an 80-unit retirement home occupying 20,000 sq. ft. in Surrey, British Columbia. The medical centre and the retirement residence are located on 2.3 acres of land. The property is currently being developed and is expected to be completed in February 2013;
- The Birkhall Retirement Residence: This property is an 83-unit, 80,000 sq. ft. retirement home in Vernon, British Columbia. The residence is situated on 3 acres. The property is currently being developed and is expected to be completed later this year;
- The Heatherwood Retirement Residence: This property is an 87-unit, 40,000 sq. ft. retirement residence in St. Catharines, Ontario. The residence is situated on 1.5 acres of land; and
- St. Catharines Place Retirement Residence: This property is an 87-unit, 40,000 sq. ft. retirement home in St. Catharines, Ontario. The residence is situated on 1.5 acres of land.

d. First Leaside Realty LP & First Leaside Realty II LP (collectively, "Realty I & II")

- i. Realty I & II own 3,996,160 equity LP units of WALP. Realty I & II raise equity and previously paid a 4.75% distribution. Attached hereto and marked, collectively, as **Exhibit "N"** are the unaudited financial statements for Realty I as at December 31, 2010 and Realty II as at September 30, 2011.

e. First Leaside Acquisitions LP ("Acquisitions")

- i. Acquisitions owns three assets:
 - 143,680 equity LP units of WALP;
 - 625,800 equity LP units of FLEX; and
 - 278,880 equity LP units of F.L. Spring Valley LP.
- ii. Acquisitions raises equity and paid a 9.5% return of capital

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distribution. Attached hereto and marked as **Exhibit "O"** are the unaudited financial statements for Acquisitions as at December 31, 2010.

f. First Leaside Investors LP ("**Investors**")

- i. Investors owns two LPs:
 - Harmony Townhome LP ("**Harmony**"): Harmony is a 50-unit townhome complex in Tilbury, Ontario; and
 - Mill Street LP ("**Mill St.**"): Mill St. is a 3.74 acre plot of land in Uxbridge, Ontario with a small heritage home.
- ii. Investors raises equity and paid a 6% return of capital distribution. There is also a 6% syndicated mortgage on Mill Street. Attached hereto and marked as **Exhibit "P"** are the unaudited financial statements for Investors as at December 31, 2010.

g. First Leaside Progressive LP ("**Progressive**")

- i. Progressive owns two assets:
 - a 20% ownership interest in Retirement;
 - Uxbridge Development LP ("**Cemetery Road**"), 23 acres of land, only four acres of which are developable, in Uxbridge, Ontario.
- ii. Progressive raises equity and paid a 6% distribution. There is also a syndicated mortgage on Cemetery Road bearing interest at 6% per annum. Attached hereto and marked as **Exhibit "Q"** are the draft unaudited financial statements for Progressive as at December 31, 2010.

h. First Leaside Universal LP ("**Universal**")

- i. Universal owns a 30% interest in Retirement. Universal raises equity and paid a 6% distribution. Attached hereto and marked as **Exhibit "R"** are the draft unaudited financial statements for Universal as at December 31, 2010.

i. F.L. Spring Valley LP ("**Spring Valley**")

- i. Spring Valley owns
 - 689,608 LP units of WALP;

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- 640,000 trust units in the Wimberly Fund; and
 - a shopping mall in the greater Dallas, Texas area.
- ii. Spring Valley raises equity and paid an 8% return of capital distribution. Attached hereto and marked as **Exhibit "S"** are the unaudited financial statements for Spring Valley as at December 31, 2010.
- j. FLWM Holdings LP ("FLWM Holdings")
- i. FLWM Holdings owns a 16.67% ownership interest in Retirement and a 10.91% ownership interest in Beverages (defined below). Although equity has been raised, no distributions are paid.
- k. First Leaside Global LP ("Global")
- i. Global does not have any assets, other than an account receivable from FL Finance. Global raises equity and paid a 7% distribution.
- ii. Global had previously entered into an agreement of purchase and sale to purchase property in Florida. However, the sale failed to close as a result of funding issues arising as a result of the Cease Trade. Global is currently pursuing legal action in the U.S. to recover its deposit.
- l. First Leaside Venture LP ("Ventures")
- Ventures owns a 50% interest in the Birkhall Retirement Residence, in addition to the assets listed below.
 - 180 Isabella Street (Ottawa) LP: This LP owns The Palisades Club, a 54-unit retirement condominium in Ottawa, Ontario. The residence is situated on 0.49 acres of land;
 - 480 Metcalfe Street (Ottawa) LP: This LP owns The Palisades Retirement Residence, a 100-unit retirement residence in Ottawa, Ontario. The residence is situated on 0.68 acres of land;
 - The Redwoods Retirement Residence (Ottawa) ("**Redwoods**"): Ventures purchased this property on August 26, 2011, from KingSett Real Estate Growth LP No. 2, along with the Palisades Retirement Residence, for aggregate consideration of \$65 million and, as part of the purchase price, Ventures assumed an \$40 million mortgage in favour of CIBC;

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- 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.

- iii. First Leaside is presently in discussions to sell its collective 54.1% interest in Beverages. If such sale is completed, FLWM Holdings, Progressive, and FLWM will be able to receive proceeds which can then be used to pay creditors in accordance with their priority.

The Blind Pools

50. Although most of First Leaside's LPs hold interests in identifiable properties, there are a small number of LPs where clients provided investment funds without knowing where funds were likely to be invested. Each of these LPs is known as a "blind pool" (a "**Blind Pool LP**"). Some of the funds that the Blind Pool LPs have raised have been lent to FL Finance and then re-lent to WALP to fund its rehabilitation projects and operating losses. The Blind Pool LPs were largely tax-driven investments designed to provide investors with tax savings.

51. Details of the Blind Pool LPs existing at the time of the Cease Trade are as follows:

a. First Leaside Select LP ("**Select**")

- i. Select does not have any assets, other than amounts due from FL Finance. The majority of the funds it has raised have been lent to FL Finance. Select paid a 7% distribution. Attached hereto and marked as **Exhibit "W"** are the unaudited financial statements for Select as at December 31, 2010.

b. First Leaside Elite LP ("**Elite**")

- i. Elite is a Blind Pool LP and does not have any assets, other than an account receivable from FL Finance. The majority of the funds that Equity has raised have been lent to FL Finance. Elite paid a 7% distribution. Attached hereto and marked as **Exhibit "X"** are the unaudited financial statements for Elite as of December 31, 2011.

c. First Leaside Premier LP ("**Premier**")

- i. Premier is a Blind Pool LP and does not have any assets, other than an account receivable from FL Finance. The majority of the

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funds that Premier has raised have been lent to FL Finance. Premier paid a 7% distribution. Attached hereto and marked as **Exhibit "Y"** are the unaudited financial statements for Premier as at December 31, 2010.

d. First Leaside Ultimate LP ("Ultimate")

- i. Ultimate is a Blind Pool LP and does not have any assets, other than an account receivable from FL Finance. The majority of the funds that Ultimate has raised have been lent to FL Finance. Ultimate paid a 7% distribution. Attached hereto and marked as **Exhibit "Z"** are the unaudited financial statements for Ultimate as at December 31, 2010.

Corporate Structure - Funds

52. A number of investors have invested in units of First Leaside trusts (the "**Funds**"). The Funds were created to generate interest income for investors from the properties already owned within First Leaside through an investment that was eligible for tax deferred plans such as RRSPs. The Funds created access to capital for other First Leaside entities that could be used to fund operations and rehabilitation programs and make additional property acquisitions. Capital raised by selling units of the Funds was, in turn, invested by the Funds in unsecured promissory notes issued by other First Leaside entities that already owned property. By lending to other First Leaside entities at specified rates of interest, the Funds aimed to earn steady income that could be distributed to investors. However, as with any First Leaside entity that made inter-company loans, the Funds bear the risk that such loans will never be repaid.

53. Since the Funds are trusts, and not corporations, they do not form part of the proposed CCAA filing. It is intended that the Funds will remain inactive, except to assert their rights as a creditor of other First Leaside entities.

EVENTS LEADING TO THE CCAA FILING

54. The OSC began investigating First Leaside in the fall of 2009 and the investigation continues to date.

55. First Leaside cooperated with the OSC throughout the investigation and endeavoured to respond to each and every one of the OSC's inquiries. In total, First Leaside provided the OSC with hundreds of binders of information including offering memoranda, subscription agreements, client documents, client account statements, and First Leaside financial records. Mr. Phillips was also examined under oath by the OSC.

56. In connection with this OSC investigation, on March 5, 2011, First Leaside, through its counsel, Cassels, retained GTL as a consultant to review, report, and make recommendations about First Leaside's business, assets, affairs, and operations. GTL is a leading Canadian accounting and business advisory firm that provides audit, tax, and advisory services to private and public organizations.

57. Shortly prior to retaining GTL, First Leaside voluntarily arranged for appraisals of its various properties to be obtained in order to assess the value of the assets held in its various entities. GTL later used such appraisals for the purpose of its analysis.

58. From March to August 2011, GTL met with First Leaside personnel to analyze the business and prepare a report. On August 19, 2011, GTL released a detailed report on First Leaside's operations ("**GTL Report**"). A copy of the GTL Report is attached hereto and marked as **Exhibit "AA"**.

59. The GTL Report disclosed that, as at August 19, 2011, the fair market value ("FMV") of First Leaside's real property based, in part, on the third party appraisals of the real property holdings obtained by First Leaside was worth more than the third party mortgages on the respective properties.

60. However, the GTL Report identified numerous issues that threatened First Leaside's future viability and which continue to exist today.

61. After the GTL Report was released, First Leaside took steps to implement the GTL Report's recommendations. It hired four additional employees to improve its accounting resources and financial reporting.

62. On November 3, 2011, First Leaside's board of directors also took steps to strengthen its corporate governance by appointing the Independent Committee to assume all decision-making authority in respect of First Leaside and oversee the Company's operations. As such, since that time, Mr. Phillips has no longer been in charge of the management of First Leaside.

63. The Independent Committee is composed of the following individuals, all of whom have significant business skills and experience:

- (a) Leo de Bever: Chief Executive Officer and Chief Investment Officer of Alberta Investment Management Corp. (an Alberta Crown corporation that manages pension, endowment, and other government funds);
- (b) Douglas Hyatt: Professor of Business Economics, Rotman School of Management, University of Toronto;
- (c) John Cook: President of Tormin Resources Limited and Anton Resources

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Corporation, Chairman of Premier Gold Mines Limited, and a director of several mining companies; and

- (d) Robert Gauld: a chartered accountant and former controller of A. Schulman Canada Ltd.

Regulatory Issues

64. The GTL Report was provided to the OSC and IIROC immediately upon release. In late October 2011, in response to the GTL Report and other information received from First Leaside, the OSC informed First Leaside that, if satisfactory arrangements were not made to deal with First Leaside's situation, they were almost certainly going to take regulatory action including seeking a cease trade. At the same time, IIROC notified FLSI by letter dated October 28, 2011, that it had been designated as being in discretionary early warning level 2 as a result of the pending regulatory action. In this letter, IIROC advised that, pursuant to its Rules, FLSI was prohibited from

- (a) reducing that firm's capital;
- (b) repaying subordinated indebtedness without IIROC approval;
- (c) making bonus, loan, or capital payments to any director, officer, or affiliate of FLSI; and
- (d) reducing the "non-allowable assets" of FLSI.

65. Attached hereto and marked as **Exhibit "BB"** is the October 28, 2011 letter from IIROC to David Phillips on behalf of FLSI.

66. First Leaside advised IIROC and the OSC that it was prepared to put in place appropriate interim protective measures, but with the hope that business affairs could

be restructured within several months. For example, First Leaside agreed to a voluntary Cease Trade, which was implemented on October 31, 2011. Approximately a week later, First Leaside agreed with the OSC that as part of the Cease Trade, the Company would send a letter to its investors in a form approved by both the OSC and IIROC along with a copy of the GTL Report, and to post the letter to investors and the GTL Report on First Leaside's website. This letter to investors (attached as **Exhibit "CC"**) was ultimately sent on November 7, 2011, and provided frank disclosure about the GTL Report, the OSC investigation, and the concerns about First Leaside's viability.

67. On November 4, 2011, First Leaside retained GTL as an independent monitor to, in part, satisfy the OSC and IIROC that the Company was implementing a restructuring plan and establishing rigid reporting requirements. GTL has been providing, and continues to provide, the OSC and IIROC with regular ongoing reports about First Leaside's financial affairs.

68. In mid-November 2011, the Independent Committee engaged a third party financial consultant to conduct a detailed review of the financial state of all material First Leaside entities with a view to creating a restructuring plan pursuant to which First Leaside could emerge from the Cease Trade.

69. First Leaside also recognized at that time that, in order to restructure, it would need to conserve as much cash as possible, especially given its inability to raise further capital (because of the Cease Trade). As such, the Independent Committee decided to cease all distributions to clients indefinitely, including:

- (a) distributions to LP unitholders;

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- (b) interest payments on client notes/debt (including the corresponding distributions made by Funds that hold promissory notes issued by other First Leaside entities); and
- (c) dividends on common or preferred shares.

70. On November 28, 2011, First Leaside sent a letter to investors (attached as **Exhibit "DD"**) providing notice of the suspension of distributions. There have been no distributions since that date.

71. In early December 2011, with the input and approval of the OSC, the Independent Committee caused First Leaside to retain my corporation as CRO. The Independent Committee asked me to develop a workout plan for First Leaside. The workout plan was finalized in late January 2012. The goal of the workout plan, which is described below, is to maximize recoveries for First Leaside's stakeholders.

72. Through December 2011 and into January 2012, I considered plans to move forward with the operations of First Leaside as well as plans to wind-up all or parts of the business. I was cognizant of the limited cash reserves available within First Leaside under the Cease Trade and the projected time over which those reserves would be exhausted. In that context, I took careful note of the risks and uncertainties associated with the go-forward proposals given the significant risk of exhausting the cash reserves before completing a successful exit from the Cease Trade. After carefully analyzing the situation, my ultimate conclusion was that it was too risky and uncertain for First Leaside to pursue a resumption of previous operations, including the raising of capital. My recommendation to the Independent Committee was that First Leaside instead undertake an orderly wind-down of operations, involving:

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- (a) completing any ongoing property development activity which would create value for investors;
- (b) realizing upon assets when it is feasible to do so (even where optimal realization might occur over the next 12 to 36 months);
- (c) dealing with the significant inter-company debts; and,
- (d) distributing proceeds to investors.

73. It is my recommendation to the Independent Committee that an orderly wind-down presents the best opportunity to maximize the recovery by investors.

74. I presented my recommendations to the Independent Committee and it approved my recommendation that First Leaside's affairs be wound down.

75. As I will describe further below, the best way to promote this wind-down is through a filing under the CCAA so that all issues—especially the numerous investor and creditor claims and inter-company claims—can be dealt with in one forum under the supervision of the court.

76. Since last fall, First Leaside has provided other updates to investors. For example, on February 8, 2012, after the decision to wind down operations was made, First Leaside issued an update regarding the outcome of my review of restructuring options (attached as **Exhibit "EE"**). Then, on February 9 and 13, 2012, I held conference calls with investors so that I could answer any questions that the investors had regarding First Leaside's financial position and anticipated CCAA proceeding.

III. FIRST LEASIDE'S FINANCIAL SITUATION

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77. First Leaside has over \$370 million in assets under management, which includes both Marketable Securities and FL Products. As I have described above, the Marketable Securities are all intact and held by Penson. First Leaside clients will be able to transfer Marketable Securities and cash to another investment dealer during the CCAA process.

78. With respect to the FL Products, it remains to be determined specifically how much value will be realized for investors on the LP units, debt instruments, and shares issued by the various First Leaside entities.

79. First Leaside is currently indebted to its secured creditors in the approximate amount of \$176 million, and to its unsecured creditors (including investors holding notes or other debt instruments) in the approximate amount of \$131.8 million.

80. However, since GTL reported that the aggregate value of properties in the First Leaside exceeded the value of the properties, there will be net proceeds remaining to provide at least some return to subordinate creditors or equity holders (i.e., LP unit holders and corporation shareholders) in many of the First Leaside entities. The recovery will, of course, vary depending on the entity. At this stage, however, it is fair to conclude that there is a material equity deficit both in individual First Leaside entities and in the overall First Leaside group.

81. Since equity holders are expected to receive some return, that means that, in many First Leaside entities, both third party long term debt (mortgages) and investor debt (notes) will also be paid in full.

82. First Leaside's primary stakeholders include mortgagees, unsecured debt holders, equity investors, and employees, all of which are discussed below.

83. A summary of the title searches for each of the Ontario properties, generally current to February 16, 2012, are attached to my affidavit as **Exhibit "FF"**.

Secured Debt

84. First Leaside has secured debt financing from banks, and unsecured debt from related party entities and investors. Attached hereto and marked as **Exhibit "GG"** is a list of First Leaside's mortgages, including the amount of the mortgage, the property it relates to, and the mortgagee. This document contains information to the extent that it is available. The appraised value contained in the chart is based on appraisals obtained for the purposes of the GTL Report.

85. First Leaside's primary secured creditors are banks and investors in syndicated mortgages (collectively "**Mortgages**") that provided First Leaside with funding to acquire and service the properties.

86. First Leaside currently has approximately a total of approximately \$175 million in Mortgages. The Mortgages relate to seven First Leaside LPs: FLEX, WALP, Investors, Ventures, Spring Valley, Progressive, Retirement, and Beverages. However, since First Leaside only has a portfolio investment interest in Beverages, and Beverages is not one of the entities in respect of which CCAA protection is sought, the debts of that entity are not discussed below.

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87. FLEX has \$7.12 million in secured debt and owns four properties, two of which are subject to Mortgages. Queenston Manor has a \$3.67 million mortgage with Midland Loan Services, and Growth has a \$3.45 million mortgage with Peoples Trust Company Canada.

88. WALP has \$53.73 million in secured debt. Most of WALP's bank mortgages are held by Wells Fargo or Keybank except for:

- (a) the mortgage on the Shores property, which is held by Midland Loan Services; and
- (b) the mortgage on the Sedona property.

89. The Sedona property was mortgaged using a syndicate of non-accredited investors through Mortgage Fund. As a result of the mortgages, no WALP properties are held free and clear of encumbrances.

90. Ventures has \$75.5 million in secured debt. Approximately \$17.78 million of that debt is held by the Toronto-Dominion Bank ("TD") on three separate properties. Additionally, there are two mortgages on each of two Ottawa properties held by Ventures: \$30.04 million in mortgages held by Canadian Imperial Bank of Commerce ("CIBC") and KingSett Capital on the Redwoods property, and \$27.18 million in mortgages held by the same two financial institutions on The Palisades Retirement Residences property. Ventures also has a \$515,000 syndicated mortgage on the Vernon property. The mortgages were raised through Mortgage Fund.

91. Retirement also has \$33.9 million in Mortgages. Retirement's Whiterock property is subject to a \$5.4 million mortgage held by Fisgard Capital Corporation. The

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Heatherwood property is also mortgaged: \$25.5 million in favour of First Ontario Credit Union, and \$3 million in favour of Henry E. Hildebrand and Grace Hildebrand.

92. Investors is subject to \$2.13 million in Mortgages on two properties. The Harmony property is subject to a \$1.23 million mortgage with TD Bank. The Mill St. property has a \$900,000 mortgage with Peoples Trust Company Canada.

93. Progressive has a \$1.65 million mortgage with Peoples Trust Company Canada on the Cemetery Road development.

94. Spring Valley has a \$910,827 mortgage that is held by Wells Fargo.

95. Finally, FL Services has a \$831,664.87 secured loan with TD.

Construction Liens

96. As noted above, there are also eleven construction liens filed against four First Leaside entities including FLEX and First Leaside Realty II Inc., and the Victoria St. Building and the Entities' owned property. The total amount of these construction liens is \$3,446,276.29. However, one of the liens, in the amount of \$13,034, is filed only against one of the Entities' properties, and not against either the Victoria St. Building or the other Entities' property.

Unsecured Creditors

97. The total amount of unsecured creditor debt is \$131.8 million. This unsecured debt is owed by FLWM, FLEX, WALP, Investors, Progressive, and Mortgage Fund.

98. FLWM has \$18.3 million in investor debt that has been raised through the FLWM Fund, Special Notes Limited Partnership, and Special U.S. Notes Limited Partnership.

99. FLEX has \$16.4 million in investor debt that it raised through Development Notes and FLEX Fund. The debt raised through the Development Notes pays an interest rate of 7.75%, and the FLEX Fund debt pays an interest rate of 6%.

100. FL Finance has borrowed \$27.9 million from within First Leaside and lent \$10.2 million to other LPs. Further, FL Finance has acquired \$16.66 million in LP units through investor redemptions at a rate of \$1 per LP unit.

101. WALP has raised \$68.2 million in debt from First Leaside investors. WALP raises debt at the Master Texas, Master Sherman, and Sedona levels through the First Leaside Fund, First Leaside Properties Fund, and Wimberly Fund. Master Texas has a total of \$53.8 million in investor debt: \$43.3 million through First Leaside Fund and \$10.5 million through Wimberly Fund. Master Sherman has a total of \$14.37 million investor debt raised solely through First Leaside Properties Fund. Master Sherman has also issued a \$500,000 promissory note.

Equity Investors

102. First Leaside has raised approximately \$199.2 million in equity to date through the sale of LP units and common and preferred shares. Set out below is a breakdown of the investor equity investments (based on the purchase price of the equity, but excluding the effect of losses and distributions of capital in the LPs) per First Leaside entity:

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- (a) FLWM – \$30.6 million;
- (b) FLEX – \$37.8 million;
- (c) WALP – \$45.3 million;
- (d) Realty I & II – \$4.5 million;
- (e) Acquisitions – \$1.8 million;
- (f) Investors – \$6.7 million;
- (g) Progressive – \$14.9 million;
- (h) Universal – \$5.8 million
- (i) Ventures – \$14.4 million
- (j) FLWM Holdings – \$3 million
- (k) Spring Valley – \$2.2 million
- (l) Select – \$3.6 million
- (m) Elite – \$6.7 million
- (n) Global – \$9.2 million
- (o) Premier – \$5.6 million
- (p) Ultimate – \$3 million
- (q) Visions I & II – \$4.2 million
- (r) Mortgages - \$11.6 million

103. Equity structures vary from one First Lease entity to another. FLWM, for example, has three series of preferred shares that pay dividends at differing rates.

FLWM also issues common shares. In contrast, FLEX has only one form of equity ownership.

Employees

104. Up until the fall of 2011, First Leaside had approximately 50 employees. However, due to downsizing over the last several months and the decision to wind down operations, approximately 30 employees have been temporarily laid off or terminated. Currently, First Leaside employs 19 salaried employees. First Leaside expects to reduce its workforce to approximately 11 people by month end.

105. First Leaside's current monthly payroll obligation, including CPP and EI contributions, is approximately \$70,650. Payroll is due semi-monthly.

106. First Leaside will take steps to ensure that it has only the bare minimum of employees necessary to provide information and to support a restructuring process. In particular, during the CCAA process, it is likely that staffing levels will be reduced further, especially as properties are sold.

IV. FIRST LEASIDE'S FINANCIAL TROUBLES

107. First Leaside's success in developing and rehabilitating real property is predicated on achieving certain levels of rental revenues and not exceeding certain cost thresholds. Unfortunately, due to the recent recession and its negative impact on the real estate markets in Ontario, British Columbia, and Texas, it has become difficult to achieve First Leaside's estimated rental revenues. Additionally, the capital rehabilitation costs have been higher than forecasted.

108. Moreover, the Cease Trade that First Leaside implemented placed severe financial constraints on the Company. Almost every First Leaside business unit depended on the ability of FLWM and its subsidiaries to raise capital from investors. Additionally, FLWM depended on a primary revenue stream of brokerage and other fees from or in connection with new capital and other services provided by First Leaside entities. In turn, the various LP investments in real estate and commercial enterprises relied on ready access to new capital from investors as well as regular operating cash flow from FLWM. The inability to access the capital market had a significant negative effect on the Company.

109. As noted above, First Leaside's inability to raise capital had detrimental effects on almost all of its business units. For example, First Leaside made a series of investments in R&D technology start-up businesses that are owned by Visions I & II. These businesses depended on FLWM's ability to raise working capital. Since the Cease Trade, although one of the businesses has located a third party financing commitment through the next operating cycle, the others are facing a cessation of operations.

110. There are also immediate cash flow crises at FLWM and virtually every LP. An analysis of the current net asset value in FLWM and almost every LP indicates a substantial loss of investor value.

111. FLWM's financial position has decreased substantially since November 2011 when the Cease Trade was implemented. FLWM's cash reserves have fallen from \$2.8 million to \$1.6 million at the end of January 2012. Absent new cash from asset

disposals, current reserves will be exhausted in April. There are no recurring revenue streams from asset management at present. However, FLWM maintains its \$2.0 regulatory capital in FLSI.

112. On December 31, 2011, Ventures defaulted by failing to make a principal mortgage payment of \$4.25 million which was owing to KingSett. KingSett has issued a default notice and such default has also caused a default in respect of indebtedness owing to CIBC in respect of the same properties.

113. Investors' Harmony property does not generate sufficient net operating income to service its mortgage. Absent cash flow from FLWM, a default is imminent.

114. In addition to the problems flowing from the recession and other factors set out above, First Leaside has also faced regulatory actions that have proved costly.

115. The two year OSC investigation of First Leaside cost the Company substantial amounts in terms of out of pocket expenses in addition to the internal resources of First Leaside which were diverted away from normal operations. The result of the investigation was an agreement by First Leaside to implement the Cease Trade. The Cease Trade resulted in lost agency and business development fees for FLWM.

116. The cumulative effect of the events described above have left First Leaside with a number of properties at various stages of development, but without liquidity or refinancing options to rehabilitate the properties and execute its business plan.

117. Despite these defaults (including the failure to pay for construction work and the resulting construction liens), First Leaside has generally been able to make regular

mortgage payments to its creditors. While the majority of the properties have generated sufficient revenue to carry the corresponding mortgage, given the cash constraints on the Company, it will be difficult for First Leaside entities to make mortgage payments in the near future, especially given the need to expend monies on property development and upgrading activities which are necessary to realize proper value when properties are sold. Although First Leaside has generally been making monthly payments of principal and interest on mortgages when due, it will not be able to do so in the future, given its cash constraints.

V. THE PROPOSED PLAN

Introduction

118. As CRO, I have determined that there is no viable plan to continue First Leaside as a going concern in light of the risks related to the go-forward strategies that I have considered and the limited cash reserves for pursuing those strategies. The largest net debtors are FLWM, WALP, Ventures, and FLEX. These entities are unable to repay their inter-company balances from operating cash flows, thereby affecting investor interests in other entities. There is also insufficient net asset value in these entities to settle the intercompany balances through the immediate liquidation of assets.

119. Thus, the intended plan, which has been approved by the Independent Committee, is to effectuate an orderly wind-down of First Leaside's operations over a period of time and in a manner that will create the opportunity to realize improved net asset value.

120. First Leaside will, in an organized fashion, divest itself of assets, including the accounting firms it owns in Alberta and British Columbia and FLWM's artwork portfolio. First Leaside will also negotiate the sale of the majority interest in Beverages and PrimeTime. This sale is expected to provide working capital to FLWM.

121. Second, as I have noted above, First Leaside clients hold substantial Marketable Securities through FLSI which are in segregation at Penson. Since FLSI will wind down operations, there is no need for clients to continue to hold the Marketable Securities or available cash balances at Penson. Accordingly, as part of the CCAA order being sought, FLSI wishes to allow clients to transfer the Marketable Securities and cash to another investment dealer. FLSI will cooperate in this process. First Leaside is also content to have certificates or other documents at Penson which evidence FL Products to be delivered to a new investment dealer.

122. FLSI also holds approximately \$2.0 million in regulatory capital consisting of \$1,741,000 of risk adjusted capital plus \$250,000 in minimum capital. First Leaside has been in discussions with IIROC concerning the uses to which the regulatory capital can be put, especially after the Marketable Securities are transferred to new investment dealers. First Leaside has agreed to address IIROC concerns by restricting the extent of the application of the proposed Directors' and Officers' Charge to FLSI assets.

Other Possible Asset Sales

123. Queenston Manor has been listed for sale, and First Leaside's management is currently considering an offer that has been made on the property. The sale may

generate approximately \$2 million in net proceeds. To the extent that a binding offer of purchase and sale is signed, First Leaside will bring a further motion for sale approval.

124. Further, the Company intends to sell FLWM's ownership interest in PrimeTime Living LP, with the approval of Progressive, FLWM Holdings, and Universal; and FLWM's interest in Beverages, with the approval of FLWM, Progressive, FLWM Holdings, and FL Beverages Group LP. The Applicants will seek court approval of such transactions.

Refinancing of Ventures

125. Many of the properties that Ventures owns were acquired in the summer of 2011. For example, on August 26, 2011, First Leaside completed the purchase of Redwoods and Palisades from KingSett Real Estate Growth LP No. 2 for \$65 million, part of which purchase price was satisfied through the assumption of an existing CIBC mortgage. KingSett also holds a second mortgage on the properties.

126. On September 8, 2011, First Leaside purchased The Shores, Cherry Park, and Orchard Valley (retirement residences in British Columbia) for the aggregate amount of \$25.4 million, \$19.4 million of which was financed by a mortgage from TD.

127. At the time of these purchases, First Leaside had always intended to de-leverage the properties through several means. First, First Leaside had intended to sell further LP units to raise approximately \$25 million in additional capital. Those funds could be used to complete development work on some of the properties and also reduce the mortgage debt. First Leaside had also planned to sell a number of condominium units

in these developments to generate additional proceeds. The Cease Trade interrupted this process. Because Ventures has not been able to raise more capital, the KingSett mortgage defaulted (regarding payment of principal) and there are issues of unpaid contractors on some of Ventures properties in British Columbia.

128. Given the Cease Trade, Ventures has been attempting to raise new capital from other sources, under the supervision of the OSC. On February 15, 2012, Ventures and Bridge Gap Konsult Inc. ("**Bridge Gap**"), a German firm, signed a non-binding term sheet to sell further LP units and also obtain bridge financing for Ventures. The transactions contemplated by the term sheet are subject to court approval in this CCAA process as well as consent of the OSC under the Cease Trade. Attached hereto and marked as **Exhibit "HH"** is a copy of the Ventures-Bridge Gap term sheet (the "**Ventures Term Sheet**").

129. The Ventures Term Sheet contemplates that Bridge Gap will:

- (a) in the near future provide a short-term bridge loan of \$10 million which will be used as follows:
 - (i) approximately \$4,500,000 will be used to pay down the principal amount of the KingSett mortgages over Ventures' property;
 - (ii) approximately \$5,000,000 will be used to fund working capital and contractor costs; and
 - (iii) \$500,000 will be used for financing fees; and
- (b) subsequently make a \$25,000,000 investment in Ventures (the "**Bridge Gap Equity Investment**") by way of LP units.

130. Now that the Ventures Term Sheet has been signed, First Leaside intends to negotiate with Bridge Gap so that a definitive bridge loan agreement can be prepared and signed.

131. The Bridge Gap Equity Investment will likely take further time to conclude, because Bridge Gap needs to obtain funding from investment vehicles in Germany and is first required to obtain approval of German financial regulators.

132. The bridge loan (as subordinate debt) and the Bridge Gap Equity Investment (as equity) are intended to be subordinate to the existing mortgages, including those of CIBC, TD, and KingSett.

133. On February 21, 2012, I (along with other First Leaside representatives, including the proposed Monitor) held meetings with representatives of CIBC, TD, KingSett, and Laurentian Bank and their counsel to discuss the proposed CCAA filing. At the meetings, those creditors expressed concerns about the proposed CCAA proceedings, especially the fact that the proposed Administrative Charge and Directors' and Officers' Charge (collectively, the "**Charges**") would take priority over those lenders' mortgages. Concerns were also expressed about whether the transactions contemplated by the Ventures Term Sheet would be completed.

134. Following the meeting, First Leaside considered the lenders' objections and received input from the Independent Committee. As such, First Leaside made the decision that the following limited partnerships would not, at this initial stage, be brought within the scope of the CCAA initial order (collectively, the "**Excluded LPs**"):

- (a) First Leaside Retirement Residences (Ottawa) Limited Partnership
- (b) First Leaside Retirement Residences (Okanagan) Limited Partnership
- (c) Cherry Park Retirement Residences Limited Partnership
- (d) Orchard Valley Retirement Residences Limited Partnership
- (e) The Shores Retirement Residences Limited Partnership
- (f) The Redwood Retirement Residences Limited Partnership
- (g) 100 Isabella St. (Ottawa) Limited Partnership and
- (h) 480 Metcalfe St. (Ottawa) Limited Partnership

135. First Leaside has reserved its right to later bring a motion to extend the CCAA initial order and stay to the Excluded LPs and thereby bring them into the CCAA process.

136. For the near term, however, First Leaside intends to introduce Bridge Gap to these lenders so that the lenders can assess the viability of the transactions contemplated by the Ventures Term Sheet. First Leaside also intends to discuss other options for the property of the Excluded LPs in the event that the Bridge Gap equity investment and bridge loan are not put in place.

WALP

137. The WALP properties have, in the past, needed cash for ongoing renovations. However, after considering matters in depth, First Leaside has determined that it does not need to immediately seek bankruptcy protection for the U.S. LPs under the USBC.

138. First Leaside intends to undertake several short term steps, described below, to improve the financial viability of the LPs which WALP owns, so that they can be self-supporting until the completion of a realization strategy. First, I am closely monitoring WALP's aggressive strategy to increase occupancy of the U.S. properties by the second quarter of 2012, so that revenues will increase.

139. Second, a number of the U.S. properties—including Pointe, Crossing, and Sedona—are currently listed for sale. If necessary, the proceeds received from the sale of a handful of U.S. properties can be used to fund completion of the other U.S. properties. Expressions of interest have been received from 48 potential purchasers. First Leaside has also received a number of offers, which we are currently considering.

140. Third, I have taken steps to conserve the amount of cash in the U.S. properties by deferring capital improvements where feasible.

141. Assuming that increased rental revenues and decreased capital spending can be achieved, I have forecast that the U.S. properties will be self-sustaining in 2012, even without selling any properties.

142. The cash-on-hand in the U.S. properties is largely held at the level of the individual properties (i.e., the Texas LPs), not at the level of WALP. Thus, although the general partner of WALP is one of the parties seeking CCAA protection, the U.S. LPs intend to continue to operate (i.e., paying their mortgages and ongoing expenses) in the normal course despite any CCAA order.

143. In the event that the above-noted measures are not sufficient to maintain the U.S. properties in an adequate financial state, First Leaside may need to consider seeking protection from creditors under the USBC. It may also be necessary to seek such relief in the event that mortgagees on the U.S. properties declare defaults or attempt to enforce their security by reason of cross-defaults caused by the CCAA proceedings.

144. As part of the wind-down, the long-term plan is eventually to sell all of the U.S. properties. However, given the need to conduct capital improvements on some of them as well as the currently weak real estate market in Texas, First Leaside may be required to operate a number of the properties for one or more years before an acceptable sale can be achieved.

VI. PROJECTED CASH FLOWS

145. A copy of the Applicants' consolidated projected weekly cash flows will be appended to the Pre-Filing Report of GTL as proposed Monitor, which report is also being filed in support of the CCAA application.

VII. INITIAL CCAA ORDER SOUGHT

Stay of Proceedings

146. As a result of the financial condition of First Leaside, many creditors will likely commence enforcement proceedings against First Leaside, including lenders and LP investors seeking to recover amounts they have lent to and invested in First Leaside. A stay of proceedings is essential for the protection of First Leaside's business and the

properties. Such a stay would create the necessary environment to allow First Leaside to develop, refine, and implement its wind-down plan. It will also allow First Leaside, with the assistance of GTL as the proposed Monitor in the CCAA proceedings, to develop a claims process for First Leaside investors so that that realizations can be distributed amongst the investors in an equitable manner, with Court approval.

Monitor

147. GTL has consented to act as Monitor in First Leaside's CCAA proceedings, if such relief is granted by this Court. An executed consent of GTL to act as Monitor will be filed with the court at the hearing of this application.

Appointment of a CRO

148. Although I have acted as CRO since December 2011, First Leaside is seeking confirmation and approval of my existing appointment during the pendency of the CCAA proceedings.

149. Given the relationship between First Leaside and its investors, and the potentially strained relationship between management and other stakeholders, First Leaside believes that the appointment of a CRO in these proceedings is critical to ensuring independence and objectivity during the restructuring process.

150. I have over 25 years of experience in providing strategic advice and leadership to business organizations. I was a partner in the Financial Advisory Services practice at Deloitte LLP, where I specialized in corporate restructuring and corporate finance. In 2003, I left Deloitte to set up my own business, G.S. MacLeod & Associates Inc. In this

new role I have continued to provide advice and management leadership on corporate reorganizations and transactions to mid-market companies and their stakeholders. I have significant experience working as a CRO, including in relation to Hunjan Automotive, Bob-Lo Island, Brite Manufacturing, Great Lakes Fish Company, and Seaquest Corp./Seaquest Capital Corp. I am a Chartered Accountant, Chartered Insolvency and Restructuring Professional, and licensed bankruptcy trustee.

151. I was retained by First Leaside as CRO on December 6, 2011, and intend to continue in my capacity as CRO with the approval of this Court.

152. First Leaside is seeking the approval of the appointment of a CRO and an indemnity and charge relating to the fees and expenses of the CRO. Such charge is part of the Administrative Charge that First Leaside is seeking, described below.

Cash Management

153. Traditionally, the various entities constituting First Leaside have used TD as their banker and have maintained multiple current accounts (in excess of 50) at such bank. Many of such accounts have limited activity and balances.

154. On February 21, 2012, counsel for TD advised that the bank will require First Leaside to reduce the number of accounts that it maintains. Although First Leaside is prepared to do so, such consolidation will, in effect, create some version of a centralized cash management system whereby balances from multiple entities are combined in a smaller number of accounts. However, the reduction of the number of accounts will make the control and review of First Leaside's financial affairs easier for both the

Company and the proposed Monitor. For purposes of a CCAA order, First Leaside seeks permission to establish a centralized cash management system.

Payment of Professional Fees and the Administrative Charge

155. I believe it is in the interests of First Leaside and all of its stakeholders that First Leaside's legal advisors, the CRO, the Monitor, and the Monitor's proposed counsel (Blake, Cassels & Graydon LLP) (collectively, the "**Estate Professionals**") assist First Leaside throughout this process to proceed with the proposed wind-down. The process will be complicated. The institutional knowledge that the Estate Professionals currently possess is invaluable given the complicated nature of First Leaside's structure and financing.

156. Further, the Estate Professionals will be working with over 1,200 stakeholders to wind-up First Leaside. This will likely be a time-consuming process that will involve both the institutional knowledge and skills of the Estate Professionals.

157. Consequently, it is necessary for First Leaside to pay the reasonable fees and disbursements of the Estate Professionals and it is appropriate that the Estate Professionals be granted a charge in the total amount of \$1 million (the "**Administrative Charge**") on the assets of First Leaside as security for amounts owing by First Leaside to them. It is proposed that the fees of all of the Estate Professionals—except counsel to the Independent Committee (who are proposed to come within the D&O Charge)—be secured under the Administrative Charge.

Allocation of Restructuring Costs

158. The Estate Professionals intend to devise a protocol for allocating among the various Applicants, where possible, their fees and disbursements associated with the restructuring. That will likely require the professionals to open multiple files, each of which relates to work performed on specific First Leaside entities or groups of entities.

D&O Charge

159. Although I am, in essence, instructed only by the four members of the Independent Committee, there are 17 independent directors of First Leaside entities. I, along with the First Leaside directors and officers, have knowledge of the properties, have had ongoing discussions with stakeholders, and have been involved in negotiations with third party investors and developers. There is a significant amount of information and experience in the possession of directors that is necessary to support the restructuring and maximize First Leaside's value.

160. Realistically, it is unlikely that the Independent Committee or other directors would continue their service to First Leaside during CCAA proceedings without an indemnity. In fact, members of the Independent Committee have already advised that they wished to resign from their position in order to minimize their personal liability. First Leaside was able to convince them to remain as directors for the time being, although their long term service is in question, especially if they may be exposed to post-filing liability.

161. First Leaside currently *does not*—and historically has never had—directors' and officers' insurance ("**D&O Insurance**"). Although the Independent Committee tried to secure insurance in 2011, it has not been able to do so until now at reasonable rates

and with a reasonable scope of coverage, given that coverage was sought after First Leaside's problems were already apparent and the regulators' investigation was well underway. Efforts to obtain D&O Insurance continue, although any insurance that is obtained is likely to provide minimal coverage.

162. First Leaside is seeking an order under the CCAA that provides for the indemnification of the directors and officers by First Leaside for any post-CCAA filing liabilities, and that grants to the directors and officers (and their counsel, for fees) a charge on all of First Leaside's assets in the total amount of \$250,000 (the "**D&O Charge**") as security for such indemnification. Since the D&O Charge relates to post-filing liabilities, such figure has been established by taking into account the above-noted ongoing liabilities to employees for wages and vacation pay.

163. First Leaside is requesting that the D&O Charge rank second in priority, behind the Administrative Charge.

164. On February 22, 2012, the Company, at the direction of the Independent Committee, took steps to establish a trust called the "First Leaside Independent Committee Trust", in favour of the non-management directors of FLWM and their designates (including the CRO) in the amount of \$250,000. The purpose of the trust is to pay legal expenses and claims, settlements or judgements from any legal actions commenced against such directors based on claims for actions taken or failed to be taken before the date of this CCAA filing. The proposed trustee is Arden Cornford.

Representative Counsel

165. First Leaside has over 1,200 investors who have invested their money (loans and equity) in various LPs, trusts, and corporations of the First Leaside group.

166. Given the large number of individual investors in First Leaside and the difficulty that investors would individually have in getting their voice heard in this restructuring, First Leaside seeks the appointment of a well-known and experienced law firm to act as representative counsel to such investors.

167. Appointing representative counsel will enable First Leaside to put in place an efficient and effective communication plan, and will assist in the implementation of the wind-up plan. Further, representative counsel will ensure that those investors who do not opt-out of representation will be adequately represented in the CCAA proceedings.

168. First Leaside is seeking an order under the CCAA that both appoints Fraser Milner Casgrain LLP ("**FMC**") as representative counsel, authorizes an initial maximum amount of \$150,000 for legal fees and includes the fees of Representative Counsel in the Administrative Charge.

169. FMC has served as representative counsel on at least one prior occasion when it represented the 26,000 investors in Portus Alternative Asset Management Inc. (and related companies) in bankruptcy proceedings.

170. The Applicants are proposing that Shayne Kukulowicz, a partner at FMC, be the lead lawyer at FMC who acts as representative counsel. FMC has conducted a conflict search and confirmed that it is able to act in this matter. I also believe that Mr.

Kukulowicz is eminently qualified to fill the role of representative counsel and to discharge his responsibilities to investors fully and to act independently of First Leaside.

171. I have already spoken with a number of First Leaside clients about representative counsel. One of these people, Steve Rosenberg, is apparently an investor who has been in contact with dozens of other investors and was (within the last week) seeking potential counsel for investors. Around February 17, 2012, I spoke with Mr. Rosenberg and explained the CCAA process and discussed the possibility of representative counsel. I later sent a follow-up e-mail to him to explain the concept of representative counsel. Mr. Rosenberg also informed me, and I believe, that he spoke with Mr. Kukulowicz on February 18, 2012, and that it was a "good conversation".

172. On February 18, 2012, I also exchanged e-mail messages with two other investors, Keith and Lois Warden, to explain the rationale for, and role of, representative counsel.

173. Mr. Kukulowicz has also advised me, and I believe, that he and other members of FMC have also made contact with a number of investors to explain the possibility of appointing representative counsel. He has also advised me that investors have, in general, been very supportive of the potential appointment of representative counsel.

174. It is not the intention of First Leaside to exclude the participation of other counsel on behalf of individual investors. As such, the proposed CCAA order allows investors to provide representative counsel with written notice if they do not wish to be represented by FMC, thereby creating an "opt-out" process. However, since it would not be

economically feasible for First Leaside to fund numerous counsel for individual investors, parties that opt-out would have to bear their own legal fees.

Priority of the Administrative Charge and the D&O Charge (collectively, the "Charges")

175. Since many of First Leaside's real properties have values which exceed the amount of their underlying mortgages, the proposed charges will likely be borne by subordinate creditors (like noteholders) and, in some cases, by equity holders. However, it is these stakeholders who have the most to gain from an orderly liquidation process which maximizes value, thereby creating a potentially greater surplus after mortgages are paid.

176. The cumulative amount of the Administrative Charge and the D&O Charge would be \$1.25 million. That amount is about 1% of the gross value of First Leaside's real estate assets according to the appraisals referred to in the GTL Report (on page 66).

177. The restructuring will, admittedly, have a cost. However, I believe that the cost of restructuring is likely to be significantly higher if realization of assets occurs in a piecemeal fashion, especially given the large number of creditors and the extensive inter-company loans.

178. First Leaside needs a coordinated process to:

- (a) operate the various properties during the wind-down;
- (b) market and sell properties;
- (c) accept and adjudicate claims from equity-holders, debt holders, trade creditors, construction lien claimants, and mortgages; and

- (d) come to a final reckoning of all assets and liabilities as amongst all entities in the First Leaside group (including payment of inter-company debt).

179. I believe that the most efficient and least expensive way of dealing with these matters is through a coordinated CCAA process.

180. Should the Administrative Charge and D&O Charge not be approved, First Leaside would be unable to proceed under the CCAA and First Leaside's other stakeholders would be significantly prejudiced.

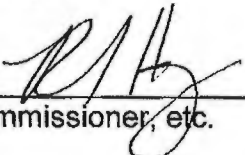
VIII. CONCLUSION

181. If First Leaside is provided with a reasonable period of protection, First Leaside's goal is to refine and implement a wind-down plan that would maximize value for its stakeholders. The granting of the relief requested also provides a single forum for the numerous stakeholders of First Leaside.

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182. If CCAA protection is not granted, First Leaside would likely be faced with the unpalatable requirement of abandoning multiple properties (i.e., those without immediate access to funds). Given the numerous and diverse nature of the stakeholders of First Leaside, it is foreseeable that numerous parties would take individual remedies and there would be layers of costly litigation and an overall diminution of stakeholder recoveries. I believe that such a meltdown would result in the loss of significant value for all stakeholders.

SWORN before me at the City of Toronto
In the Province of Ontario, this 22nd day of
February, 2012

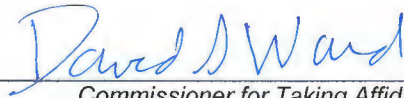


A Commissioner, etc.

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Gregory MacLeod

This is Exhibit "C" referred to in the Affidavit of Greg MacLeod
sworn August 20, 2012



Commissioner for Taking Affidavits (or as may be)

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.	)	THURSDAY, THE 23RD
	)	
JUSTICE DAVID M. BROWN	)	DAY OF FEBRUARY, 2012

**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. (each,
an "Applicant" and collectively, the "Applicant")**

INITIAL ORDER

THIS APPLICATION, made by the Applicant, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Gregory MacLeod sworn February 22, 2012 (the "MacLeod Affidavit") and the Exhibits thereto, and the Pre-filing Report of Grant Thornton Limited as the Proposed Monitor, and on hearing the submissions of counsel for the Applicant, the proposed Monitor, the proposed Representative Counsel, the Ontario Securities Commission, the Investment Industry Regulatory Organization of Canada, the Toronto-Dominion Bank, the Canadian Imperial Bank of Commerce, and KingSett Capital, no one appearing for the other parties on the service list although duly served as appears from the affidavit of service of Patricia Hoogenband sworn February 22, 2012 and on reading the consent of Grant Thornton Limited to act as the Monitor,

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

APPLICATION

2. THIS COURT ORDERS AND DECLARES that the Applicant is a company to which the CCAA applies. Although not an Applicant, the limited partnerships listed in Schedule "A" to this Order (the "LPs") shall enjoy the benefits of and the protections provided to the Applicant by this Order. (The Applicant and the LPs are hereinafter referred to collectively as "First Leaside".)

3. THIS COURT ORDERS that, for greater certainty, the terms of this order shall not apply to the following limited partnerships (collectively, the "Excluded LPs"):

- (a) First Leaside Retirement Residences (Ottawa) Limited Partnership
- (b) First Leaside Retirement Residences (Okanagan) Limited Partnership
- (c) Cherry Park Retirement Residences Limited Partnership
- (d) Orchard Valley Retirement Residences Limited Partnership
- (e) The Shores Retirement Residences Limited Partnership

(f) Redwood Retirement Residences (Ottawa) Limited Partnership

(g) 100 Isabella Street (Ottawa) Limited Partnership and

(h) 480 Metcalfe Street (Ottawa) Limited Partnership

(hereafter, the Excluded LPs identified in (a), (f), (g), and (h) above shall be referred to as the "Ottawa Excluded LPs" and the Excluded LPs identified in (b), (c), (d), and (e) above shall be referred to as the "Okanagan Excluded LPs").

4. THIS COURT ORDERS that the provisions of this order shall not extend to any general partner of the Excluded LPs to the extent that such general partner exercises powers for or on behalf of the Excluded LPs, holds property on behalf of the Excluded LPs, or owes liabilities in respect of the Excluded LPs

5. THIS COURT ORDERS that, for greater certainty, Canadian Imperial Bank of Commerce ("CIBC"), KingSett Mortgage Corporation ("KingSett") and Toronto-Dominion Bank ("TD") shall be unaffected creditors and not stayed by or otherwise subject to the terms of this Order in respect of the Excluded LPs.

6. THIS COURT ORDERS that that no payments, funds or other transfers of value shall be accepted or received by First Leaside from the Excluded LPs, save and except to the extent approved by agreement in writing by CIBC and KingSett with respect to the Ottawa Excluded LPs and by TD with respect to the Okanagan Excluded LPs.

7. THIS COURT ORDERS that the Applicant is at liberty, at any time, on seven days' notice to CIBC, KingSett, and TD, to seek an order extending the scope of these proceedings and the provisions of this order to include the Excluded LPs.

PLAN OF ARRANGEMENT

8. THIS COURT ORDERS that the Applicant shall have the authority to file and may, subject to further order of this Court, file with this Court a plan or plans of compromise or arrangement (hereinafter referred to as the "Plan").

POSSESSION OF PROPERTY AND OPERATIONS

9. THIS COURT ORDERS that First Leaside shall remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "Property").

Subject to further Order of this Court, First Leaside shall continue to carry on its business in a manner consistent with the preservation of its business (the "Business") and Property. First Leaside shall be authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively "Assistants") currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

10. THIS COURT ORDERS that First Leaside shall be entitled to implement a central cash management system as described in the MacLeod Affidavit or replace it with another substantially similar central cash management system (the "Cash Management System") and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by First Leaside of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than First Leaside, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System. The bank accounts of First Leaside Securities Inc. ("FLSI") shall not form part of the Cash Management System.

11. THIS COURT ORDERS that First Leaside shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and
- (b) the fees and disbursements of any Assistants retained or employed by First Leaside in respect of these proceedings, at their standard rates and charges.

12. THIS COURT ORDERS that, except as otherwise provided to the contrary herein, First Leaside shall be entitled but not required to pay all reasonable expenses incurred by First Leaside in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services;
- (b) payment for goods or services actually supplied to First Leaside following the date of this Order; and
- (c) payments of principal and interest in respect of real property mortgages.

13. THIS COURT ORDERS that First Leaside shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
- (b) all goods and services or other applicable sales taxes (collectively, "Sales Taxes") required to be remitted by First Leaside in connection with the sale of

goods and services by First Leaside, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order, and

- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by First Leaside.

14. THIS COURT ORDERS that until a real property lease is disclaimed in accordance with the CCAA, First Leaside shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between First Leaside and the landlord from time to time ("Rent"), for the period commencing from and including the date of this Order, in equal monthly payments on the first day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

15. THIS COURT ORDERS that, except as specifically permitted herein, First Leaside is hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by First Leaside to any of its creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

RESTRUCTURING

16. THIS COURT ORDERS that First Leaside shall, subject to such requirements as are imposed by the CCAA, have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of its business or operations, and to dispose of redundant or non-material assets not exceeding \$50,000 in any one transaction or \$250,000 in the aggregate;
- (b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate;
- (c) pursue all avenues of refinancing of its Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing; and
- (d) pursue all avenues for the potential sale of the Business or Property, in whole or part, subject to further approval of such sale by this Court,

all of the foregoing to permit First Leaside to proceed with an orderly restructuring of the Business (the "Restructuring").

17. THIS COURT ORDERS that First Leaside shall provide each of the relevant landlords with notice of First Leaside's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes First Leaside's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and First Leaside, or by further Order of this Court upon application by First Leaside on at least two (2) days notice to such landlord and any such secured creditors. If First Leaside disclaims the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer of the lease shall be without prejudice to First Leaside's claim to the fixtures in dispute.

18. THIS COURT ORDERS that if a notice of disclaimer is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer, the landlord may show the affected leased premises to prospective

tenants during normal business hours, on giving First Leaside and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against First Leaside in respect of such lease or leased premises and such landlord shall be entitled to notify First Leaside of the basis on which it is taking possession and to gain possession of and re-lease such leased premises to any third party or parties on such terms as such landlord considers advisable, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

NO PROCEEDINGS AGAINST FIRST LEASIDE OR THE PROPERTY

19. THIS COURT ORDERS that until and including March 23, 2012, or such later date as this Court may order (the "Stay Period"), no proceeding or enforcement process in any court or tribunal (each, a "Proceeding") shall be commenced or continued against or in respect of First Leaside or the Monitor, or affecting the Business or the Property, except with the written consent of First Leaside and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of First Leaside or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

20. THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "Persons" and each being a "Person") against or in respect of First Leaside or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of First Leaside and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower First Leaside to carry on any business which First Leaside is not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH RIGHTS

21. THIS COURT ORDERS that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by First Leaside, except with the written consent of First Leaside and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

22. THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with First Leaside or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Business or First Leaside, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by First Leaside, and that First Leaside shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by First Leaside in accordance with normal payment practices of First Leaside or such other practices as may be agreed upon by the supplier or service provider and each of First Leaside and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

23. THIS COURT ORDERS that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to First Leaside. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

24. THIS COURT ORDERS that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of First Leaside with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicant whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicant, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicant or this Court.

CHIEF RESTRUCTURING OFFICER

25. THIS COURT ORDERS that the appointment of G.S. MacLeod & Associates Inc. as chief restructuring officer of First Leaside (the "CRO") is hereby confirmed and approved and the CRO is hereby authorized and empowered to operate and manage the affairs of First Leaside during the pendency of these CCAA proceedings.

26. THIS COURT ORDERS that the CRO shall be paid its fees and disbursements (the "CRO Fees") in accordance with the CRO's engagement letter with First Leaside dated December 21, 2011.

27. THIS COURT ORDERS that the CRO and its officers, directors, employees, and servants shall incur no liability or obligation as a result of the appointment of the CRO or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on their part.

TRANSFER OF CLIENT ACCOUNTS

28. THIS COURT ORDERS that, to the extent that any client of FLSI ("FLSI Client") holds a "security" as defined in section 253 of the *Bankruptcy and Insolvency Act* and/or cash in an account or accounts with Penson Financial Services Canada Inc. (each, a "Client Account"), such FLSI Client shall immediately have the right to transfer any such

security or cash or the entire Client Account with Penson Financial Services Canada Inc. to another licensed securities dealer (an "FLSI Client Account Transfer").

29. THIS COURT ORDERS that FLSI and Penson Financial Services Canada Inc. shall take all reasonable steps to facilitate an FLSI Client Account Transfer.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

30. THIS COURT ORDERS that the Applicant shall indemnify its directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicant after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

31. THIS COURT ORDERS that the directors and officers of the Applicant shall be entitled to the benefit of and are hereby granted a charge (the "Directors' Charge") on the Property, which charge shall not exceed an aggregate amount of \$250,000, as security for the indemnity provided in paragraph 30 of this Order as well as the fees and disbursements of counsel to the Independent Committee of the Board of Directors ("Independent Committee Counsel") to the extent that such fees and disbursements relate to services provided in respect of First Leaside. The Directors' Charge shall have the priority set out in paragraphs 50 and 52 herein. The Applicant is hereby authorized and directed to pay a \$50,000 retainer to Independent Committee Counsel.

32. THIS COURT ORDERS that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicant's directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 30 of this Order.

APPOINTMENT OF MONITOR

33. THIS COURT ORDERS that Grant Thornton Limited is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of First Leaside with the powers and obligations set out in the CCAA or set forth herein and that First Leaside and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by First Leaside pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

34. THIS COURT ORDERS that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor First Leaside's receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) advise First Leaside in its preparation of First Leaside's cash flow statements;
- (d) advise and assist First Leaside concerning the potential sale of the Property and an orderly wind-down of the Business;
- (e) advise First Leaside in its development of the Plan and any amendments to the Plan;
- (f) assist First Leaside, to the extent required by First Leaside, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (g) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of First Leaside, to the extent that is necessary to adequately assess First

Leaside's business and financial affairs or to perform its duties arising under this Order;

- (h) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;
- (i) perform such other duties as are required by this Order or by this Court from time to time; and
- (j) consult with and assist First Leaside in its negotiations and discussions with investors, creditors, and other stakeholders.

35. THIS COURT ORDERS that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

36. THIS COURT ORDERS that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to

be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

37. THIS COURT ORDERS that the Monitor shall provide any creditor of First Leaside with information provided by First Leaside in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by First Leaside is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and First Leaside may agree.

38. THIS COURT ORDERS that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

39. THIS COURT ORDERS that the Monitor, counsel to the Monitor, and counsel to First Leaside shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by First Leaside as part of the costs of these proceedings. First Leaside is hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for First Leaside on a bi-weekly basis and, in addition, First Leaside is hereby authorized to pay retainers of \$150,000 to the Monitor, \$100,000 to counsel to the Monitor, and \$150,000 to counsel to First Leaside, to be held by each of them as security for payment of their respective fees and disbursements outstanding from time to time.

40. THIS COURT ORDERS that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

41. THIS COURT ORDERS that the Monitor, counsel to the Monitor, First Leaside's counsel, and Representative Counsel (defined below) shall be entitled to the benefit of and are hereby granted a charge (the "Administration Charge") on the Property, which charge shall not exceed an aggregate amount of \$1,000,000, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 50 and 52 hereof.

APPOINTMENT OF REPRESENTATIVE COUNSEL

42. THIS COURT ORDERS that Fraser Milner Casgrain LLP ("Representative Counsel") is appointed as representative counsel in these proceedings to represent the interests of clients of FLSI (the "Clients"), unless and until written notice is provided by a particular Client to Representative Counsel that such Client does not wish to be represented by Representative Counsel.

43. THIS COURT ORDERS that First Leaside shall provide to Representative Counsel the last known e-mail addresses (to the extent available) or other available contact information for each Client and, within ten days of the date of this Order, Representative Counsel shall provide the Clients with a copy of this Order, which shall constitute sufficient notice to Clients of this Order and the appointment of Representative Counsel and such step shall relieve the Monitor of its duty to provide notice to such Clients under section 23 of the CCAA.

44. THIS COURT ORDERS that Representative Counsel shall be paid its reasonable fees and disbursements by First Leaside, up to an initial maximum amount of \$150,000 (the "Representative Counsel Allowance") with any subsequent increases to the Representative Counsel Allowance being determined by further Order of this Court. Representative Counsel shall be paid by First Leaside in a timely manner for fulfilling its mandate in accordance with this Order, upon the provision of invoices to First Leaside, subject to such redactions to the invoices as are necessary to maintain solicitor-client privilege between Representative Counsel and the Clients.

45. THIS COURT ORDERS that First Leaside shall pay to Representative Counsel a retainer of \$25,000 to be held by it as security for payment of its fees and disbursements outstanding from time to time.

46. THIS COURT ORDERS that Representative Counsel is hereby authorized to take all steps and do all acts necessary or desirable to carry out the terms of this Order.

47. THIS COURT ORDERS that Representative Counsel shall be at liberty, and is hereby authorized, at any time, to apply to this Court for advice and directions in respect of its appointment or the fulfillment of its duties in carrying out the provisions of this Order or any variation of the powers and duties of Representative Counsel, which shall be brought on notice to First Leaside, the Monitor, and other interested parties, unless the Court orders otherwise.

48. THIS COURT ORDERS that Representative Counsel shall have no personal liability or obligations as a result of the performance of its duties in carrying out the provisions of this Order, save and except for liability arising out of gross negligence or wilful misconduct.

49. THIS COURT ORDERS that no action or other proceeding may be commenced against Representative Counsel in respect of the performance of its duties under this Order without leave of the Court on seven days' notice to Representative Counsel.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

50. THIS COURT ORDERS that the priorities of the Directors' Charge and the Administration Charge, as between them, shall be as follows:

First – Administration Charge (to the maximum amount of \$1,000,000);

Second – Directors' Charge (to the maximum amount of \$250,000).

51. THIS COURT ORDERS that the filing, registration or perfection of the Directors' Charge or the Administration Charge (collectively, the "Charges") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to

the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

52. THIS COURT ORDERS that each of the Directors' Charge and the Administration Charge (all as constituted and defined herein) shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "Encumbrances") in favour of any Person, provided, however, that

- (a) the Directors' Charge shall not attach to any monies or other Property of FLSI ("FLSI Property") including, without limitation, property which constitutes "risk adjusted capital" plus the \$250,000 "minimum capital requirement" in accordance with applicable securities laws and regulations; and
- (b) the Administration Charge shall not attach to the FLSI Property in an amount exceeding the lesser of (A) \$1 million and (B) the portion of costs secured by the Administration Charge which are attributable to, or for the benefit of, FLSI.

53. THIS COURT ORDERS that except as otherwise expressly provided for herein, or as may be approved by this Court, First Leaside shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Directors' Charge, or the Administration Charge, unless First Leaside also obtains the prior written consent of the Monitor and the beneficiaries of the Directors' Charge and the Administration Charge and further Order of this Court.

54. THIS COURT ORDERS that the Directors' Charge and the Administration Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "Chargees") shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e)

any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "Agreement") which binds First Leaside, and notwithstanding any provision to the contrary in any Agreement:

- (a) the creation of the Charges shall not create or be deemed to constitute a breach by First Leaside of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by the creation of the Charges; and
- (c) the payments made by First Leaside pursuant to this Order, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

55. THIS COURT ORDERS that any Charge created by this Order over leases of real property in Canada shall only be a Charge in First Leaside's interest in such real property leases.

56. THIS COURT ORDERS that the CRO Fees and the professional fees and expenses of the Monitor, counsel to the Monitor, First Leaside's counsel and Representative Counsel paid or incurred in accordance with the provisions of this Order shall be allocated by First Leaside with the assistance of the Monitor to the various business units pursuant to a protocol to be proposed by First Leaside with the assistance of the Monitor, which protocol shall be approved upon motion to this Court. First Leaside and the Monitor shall endeavour to make recommendations in respect of a protocol on or before March 30, 2012.

SERVICE AND NOTICE

57. THIS COURT ORDERS that the Monitor shall (i) without delay, publish in the national edition of the *Globe and Mail* a notice containing the information prescribed

under the CCAA, (ii) within five days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against First Leaside of more than \$1000, and (C) prepare a list showing the aggregate amounts owed to equity investors, debt investors, and employees, but not names and addresses of those creditors, and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

58. THIS COURT ORDERS that First Leaside, Representative Counsel, and the Monitor be at liberty to serve this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to First Leaside's creditors or other interested parties at their respective addresses as last shown on the records of First Leaside and that any such service or notice by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

59. THIS COURT ORDERS that First Leaside, Representative Counsel, and the Monitor, and any party who has filed a Notice of Appearance may serve any court materials in these proceedings by e-mailing a PDF or other electronic copy of such materials to counsels' email addresses as recorded on the Service List from time to time, and the Monitor may post a copy of any or all such materials on its website at www.grantthornton.ca/firstleaside.

GENERAL

60. THIS COURT ORDERS that First Leaside or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

61. THIS COURT ORDERS that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of First Leaside, the Business or the Property.

62. 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 First Leaside, the Monitor and their respective 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 First Leaside and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist First Leaside and the Monitor and their respective agents in carrying out the terms of this Order.

63. THIS COURT ORDERS that each of First Leaside and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

64. THIS COURT ORDERS that any interested party (including First Leaside and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

65. THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard Time on the date of this Order.

ENTERED AT / INSCRIT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

FEB 24 2012

NB



Natasha Brown
Registrar

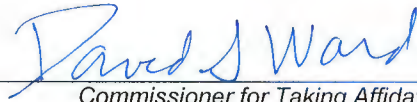
SCHEDULE "A"—PARTNERSHIPS ENTITLED TO THE BENEFIT OF THIS ORDER

Mill Street Limited Partnership	The Bluffs of Lakewood LP
Development Notes Limited Partnerships	First Leaside Spring Valley LP
Special Notes LP	First Leaside Partners LP
First Leaside Properties LP	First Leaside Opportunities LP
First Leaside Realty LP	Preston Racquet Club Real Estate Limited Partnership Series 910 PA
First Leaside Real Estate LP	Preston Racquet Club Real Estate Limited Partnership Series 910 PB
First Leaside Global LP	Preston Racquet Club Real Estate Limited Partnership Series 910 PC
First Leaside Income LP	Preston Racquet Club Real Estate Limited Partnership Series 910 PD
First Leaside Investors LP	FL Master Texas Ltd.
First Leaside Optimal LP	FLW Pond Master Ltd.
First Leaside Preferred LP	FLW Shores Master Ltd.
First Leaside Premier LP	First Leaside Acquisitions LP
First Leaside Progressive LP	Queenston Manor LP
First Leaside Quality LP	First Leaside Acquisitions 2000 LP
First Leaside Real Estate LP	First Leaside Advantage LP
First Leaside Realty II LP	First Leaside Developments LP
First Leaside Retirement Residences LP	First Leaside Elite LP
First Leaside Superior LP	First Leaside Select LP
First Leaside Ultimate LP	First Leaside Enterprises LP
First Leaside Universal LP	B&W LP
Uxbridge Development LP	First Leaside Entities LP
First Leaside Retirement Residences Limited Partnership	First Leaside Expansion LP
First Leaside Venture Limited Partnership	First Leaside Growth LP
Wimberly Apartments LP	First Leaside Operations LP
The Shores LP	First Leaside Unity LP
Old Mill Pond LP	

First Leaside Visions I LP
First Leaside Visions II LP
First Leaside Visions III LP
First Leaside Visions IV LP
Metabacus LP
Greencore LP
Marksman Cellject LP
OMISA LP
Dossierview LP
eSight LP
Tyromer LP
Place Concorde East LP
Place Concorde West LP
First Leaside Wealth Management LP
First Leaside Technologies LP
F.L. Beverages Group Limited

Partnership
F.L. Retirement Residences Limited Partnership
First Leaside Global Limited Partnership
First Leaside Ventures Limited Partnership
Special U.S. Notes Limited Partnership
FLWM Holdings Limited Partnership

This is Exhibit "D" referred to in the Affidavit of Greg MacLeod
sworn August 20, 2012



Commissioner for Taking Affidavits (or as may be)

CITATION: First Leaside Wealth Management Inc. (Re), 2012 ONSC 1299
COURT FILE NO.: CV-12-9617-00CL
DATE: 20120226

SUPERIOR COURT OF JUSTICE – ONTARIO

COMMERCIAL LIST

RE: 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

BEFORE: D. M. Brown J.

COUNSEL: J. Birch and D. Ward, for the Applicants

P. Huff and C. Burr, for the proposed Monitor, Grant Thornton Limited

D. Bish, for the Independent Directors

B. Empey, for Investment Industry Regulatory Organization of Canada

J. Grout, for the Ontario Securities Commission

R. Oliver, for Kenaidan Contracting Limited

J. Dietrich, the proposed Representative Counsel for the investors

E. Garbe, for Structform International Limited

N. Richter, for Gilbert Steel Limited

M. Sanford, for Janick Electrick Limited

M. Konyukhova, for Midland Loan Services Inc.

C. Prophet, for the Canadian Imperial Bank of Commerce

HEARD: February 23, 2012

REASONS FOR DECISION

I. Overview: CCAA Initial Order

[1] On Thursday, February 23, 2012, I granted an Initial Order under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, in respect of the Applicants. These are my Reasons for that decision.

II. The applicant corporations

[2] The Applicants are members of the First Leaside group of companies. They are described in detail in the affidavit of Gregory MacLeod, the Chief Restructuring Officer of First Leaside Wealth Management ("FLWM"), so I intend only refer in these Reasons to the key entities in the group. The parent corporation, FLWM, owns several subsidiaries, including the applicant, First Leaside Securities Inc. ("FLSI"). According to Mr. MacLeod, the Group's operations centre on FLWM and FLSI.

[3] FLSI is an Ontario investment dealer that manages clients' investment portfolios which, broadly speaking, consist of non-proprietary Marketable Securities as well as proprietary equity and debt securities issued by First Leaside (the so-called "FL Products"). All segregated Marketable Securities are held in segregated client accounts with Penson Financial Services Canada Inc.

[4] First Leaside designed its FL Products to provide investors with consistent monthly distributions. First Leaside acts as a real estate syndicate, purchasing real estate through limited partnerships with a view to rehabilitating the properties for lease at higher rates or eventual resale. First Leaside incorporated special-purpose corporations to act as general partners in the various LPs it set up. The general partners of First Leaside's Canadian LPs – i.e. those which own property in Canada – are applicants in this proceeding. First Leaside also seeks to extend the benefits of the Initial Order to the corresponding LPs.

[5] First Leaside has two types of LPs: individual LPs that acquire and operate a single property or development, and aggregator LPs that hold units of multiple LPs. Investors have invested in both kinds of LPs. In paragraph 49 of his affidavit Mr. MacLeod detailed the LPs within First Leaside. While most First Leaside LPs hold interests in identifiable properties, for a few, called "Blind Pool LPs", clients invest funds without knowing where the funds likely were to be invested. Those LPs are described in paragraph 51 of Mr. MacLeod's affidavit.

[6] The applicant, First Leaside Finance Inc. ("FL Finance"), acted as a "central bank" for the First Leaside group of entities.

III. The material events leading to this application

[7] In the fall of 2009 the Ontario Securities Commission began investigating First Leaside. In March, 2011, First Leaside retained the proposed Monitor, Grant Thornton Limited, to review and make recommendations about First Leaside's businesses. Around the same time First Leaside arranged for appraisals to be performed of various properties.

[8] Grant Thornton released its report on August 19, 2011. For purposes of this application Grant Thornton made several material findings:

- (i) There exist significant interrelationships between the entities in the FL Group which result in a complex corporate structure;
- (ii) Certain LPs have been a drain on the resources of the Group as a result of recurring operating losses and property rehabilitation costs; and,
- (iii) The future viability of the FL Group was contingent on its ability to raise new capital:

"If the FL Group was restricted from raising new capital, it would likely be unable to continue its operations in the ordinary course, as it would have insufficient revenue to support its infrastructure, staffing costs, distributions, and to meet their funding requirements for existing projects."

[9] As a result of the report First Leaside hired additional staff to improve accounting resources and financial planning. Last November the Board appointed an Independent Committee to assume all decision-making authority in respect of First Leaside; the Group's founder, David Phillips, was no longer in charge of its management.

[10] FLSI is regulated by both the OSC and the Investment Industry Regulatory Organization of Canada ("IIROC"). In October, 2011, IIROC issued FLSI a discretionary early warning level 2 letter prohibiting the company from reducing capital and placing other restrictions on its activities. At the same time the OSC told First Leaside that unless satisfactory arrangements were made to deal with its situation, the OSC almost certainly would take regulatory action, including seeking a cease trade order.

[11] First Leaside agreed to a voluntary cease trade, retained Grant Thornton to act as an independent monitor, informed investors about those developments, and made available the August Grant Thornton report.

[12] Because the cease trade restricted First Leaside's ability to raise capital, the Independent Committee decided in late November to cease distributions to clients, including distributions to LP unit holders, interest payments on client notes/debts, and dividends on common or preferred shares.

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[13] In December the Independent Committee decided to retain Mr. MacLeod as CRO for First Leaside and asked him to develop a workout plan, which he finalized in late January, 2012. Mr. MacLeod deposed that the downturn in the economy has resulted in First Leaside realizing lower operating income while incurring higher operational costs. In his affidavit Mr. MacLeod set out his conclusion about a workout plan:

After carefully analyzing the situation, my ultimate conclusion was that it was too risky and uncertain for First Leaside to pursue a resumption of previous operations, including the raising of capital. My recommendation to the Independent Committee was that First Leaside instead undertake an orderly wind-down of operations, involving:

- (a) Completing any ongoing property development activity which would create value for investors;
- (b) Realizing upon assets when it is feasible to do so (even where optimal realization might occur over the next 12 to 36 months);
- (c) Dealing with the significant inter-company debts; and,
- (d) Distributing proceeds to investors.

Mr. MacLeod further deposed:

[T]he best way to promote this wind-down is through a filing under the *CCAA* so that all issues – especially the numerous investor and creditor claims and inter-company claims – can be dealt with in one forum under the supervision of the court.

The Independent Committee approved Mr. MacLeod's recommendations. This application resulted.

IV. Availability of *CCAA*

A. The financial condition of the applicants

[14] According to Mr. MacLeod, First Leaside has over \$370 million in assets under management. Some of those, however, are Marketable Securities. First Leaside is proposing that clients holding Marketable Securities (which are held in segregated accounts) be free to transfer them to another investment dealer during the *CCAA* process. As to the value of FL Products, Mr. MacLeod deposed that "it remains to be determined specifically how much value will be realized for investors on the LP units, debt instruments, and shares issued by the various First Leaside entities."

[15] First Leaside's debt totals approximately \$308 million: \$176 million to secured creditors (mostly mortgagees) and \$132 million to unsecured creditors, including investors holding notes or other debt instruments.

[16] Mr. MacLeod summarized his assessment of the financial status of the First Leaside Group as follows:

[S]ince GTL reported that the aggregate value of properties in the First Leaside exceeded the value of the properties, there will be net proceeds remaining to provide at least some return to subordinate creditors or equity holders (i.e., LP unit holders and corporation shareholders) in many of the First Leaside entities. The recovery will, of course, vary depending on the entity. At this stage, however, it is fair to conclude that there is a material equity deficit both in individual First Leaside entities and in the overall First Leaside group.

[17] In his affidavit Mr. MacLeod also deposed, with respect to the financial situation of First Leaside, that:

- (i) The cease trade placed severe financial constraints on First Leaside as almost every business unit depended on the ability of FLWM and its subsidiaries to raise capital from investors;
- (ii) There are immediate cash flow crises at FLWM and most LPs;
- (iii) FLWM's cash reserves had fallen from \$2.8 million in November, 2011 to \$1.6 million at the end of this January;
- (iv) Absent new cash from asset disposals, current cash reserves would be exhausted in April;
- (v) At the end of December, 2011 Ventures defaulted by failing to make a principal mortgage payment of \$4.25 million owing to KingSett;
- (vi) Absent cash flow from FLWM a default is imminent for Investor's Harmony property;
- (vii) First Leaside lacks the liquidity or refinancing options to rehabilitate a number of the properties and execute on its business plan; and,
- (viii) First Leaside generally has been able to make mortgage payments to its creditors, but in the future it will be difficult to do so given the need to expend monies on property development and upgrading activities

[18] In his description of the status of the employees of the Applicants, Mr. MacLeod did not identify any issue concerning a pension funding deficiency.¹ The internally-prepared 2010 FLWM financial statements did not record any such liability. Grant Thornton did not identify any such issue in its Pre-filing Report.

[19] First Leaside is not proposing to place all of its operations under court-supervised insolvency proceedings. It does not plan to seek Chapter 11 protection for its Texas properties

¹ MacLeod Affidavit, paras. 104 to 106.

since it believes they may be able to continue operations over the anticipated wind-up period using cash flows they generate and pay their liabilities as they become due. Nor does First Leaside seek to include in this CCAA proceeding the First Leaside Venture LP ("Ventures") which owns and operates several properties in Ontario and British Columbia. On February 15, 2012 Ventures and Bridge Gap Konsult Inc. signed a non-binding term sheet to provide some bridge financing for Ventures. First Leaside decided not to include certain Ventures-related limited partnerships in the CCAA application at this stage,² while reserving the right to later bring a motion to extend the Initial Order and stay to these Excluded LPs. The Initial Order which I signed reflected that reservation.

[20] As noted above, over the better part of the past year the proposed Monitor, Grant Thornton, has become familiar with the affairs of the First Leaside Group as a result of the review it conducted for its August, 2011 report. Last November First Leaside retained Grant Thornton as an independent monitor of its business.

[21] In its Pre-filing Report Grant Thornton noted that the last available financial statements for FLWM were internally prepared ones for the year ended December 31, 2010. They showed a net loss of about \$2.863 million. The Pre-filing Report contained a 10-week cash flow projection (ending April 27, 2012) prepared by the First Leaside Group. The Cash Flow Projection does not contemplate servicing interest and principal payments during the projection period. On that basis the Cash Flow Projection showed the Group's combined closing bank balance declining from \$6.97 million to \$4.144 million by the end of the projection period. Grant Thornton reviewed the Cash Flow Projection and stated that it reflected the probable and hypothetical assumptions on which it was prepared and that the assumptions were suitably supported and consistent with the plans of the First Leaside Group and provided a reasonable basis for the Cash Flow Projection.

[22] Grant Thornton reported that certain creditors, specifically construction lien claimants, had commenced enforcement proceedings and it concluded:

Given creditors' actions to date and due to the complicated nature of the FL Group's business, the complex corporate structure and the number of competing stakeholders, it is unlikely that the FL Group will be able to conduct an orderly wind-up or continue to rehabilitate properties without the stability provided by a formal Court supervised restructuring process.

...

As the various stakeholder interests are in many cases intertwined, including intercompany claims, the granting of the relief requested would provide a single forum for the numerous stakeholders of the FL Group to be heard and to deal with such parties' claims in an orderly manner, under the supervision of the Court, a CRO and a Court-appointed Monitor. In particular, a simple or forced divestiture of the properties of the

² The Excluded LPs were identified in paragraph 134 of Mr. MacLeod's affidavit.

FL Group would not only erode potential investor value, but would not provide the structure necessary to reconcile investor interests on an equitable and ratable basis.

A stay of proceedings for both the Applicants and the LPs is necessary if it is deemed appropriate by this Honourable Court to allow the FL Group to maintain its business and to allow the FL Group the opportunity to develop, refine and implement their restructuring/wind-up plan(s) in a stabilized environment.

B. Findings

[23] I am satisfied that the Applicants are “companies” within the meaning of the *CCAA* and that the total claims against the Applicants, as an affiliated group of companies, is greater than \$5 million.

[24] Are the Applicant companies “debtor companies” in the sense that they are insolvent? For the purposes of the *CCAA* a company may be insolvent if it falls within the definition of an insolvent person in section 2 of the *Bankruptcy and Insolvency Act* or if its financial circumstances fall within the meaning of insolvent as described in *Re Stelco Inc.*, which include a financially troubled corporation that is “reasonably expected to run out of liquidity within reasonable proximity of time as compared with the time reasonably required to implement a restructuring”.³

[25] When looked at as a group the Applicants fall within the extended meaning of “insolvent”: as a result of the cease trade their ability to raise capital has been severely restricted; cash reserves fell significantly from November until the time of filing, and the Cash Flow Projection indicates that cash reserves will continue to decline even with the cessation of payments on mortgages and other debt; Mr. MacLeod estimated that cash reserves would run out in April; distributions to unit holders were suspended last November; and, some formal mortgage defaults have occurred.

[26] However, a secured creditor mortgagee, Midland Loan Services Inc., submitted that to qualify for *CCAA* protection each individual applicant must be a “debtor company” and that in the case of one applicant, Queenston Manor General Partner Inc., that company was not insolvent. In his affidavit Mr. MacLeod deposed that the Queenston Manor LP is owned by the First Leaside Expansion Limited Partnership (“FLEX”). Queenston owns and operates a 77-unit retirement complex in St. Catharines, has been profitable since 2008 and is expected to remain profitable through 2013. Queenston has been listed for sale, and management currently is considering an offer to purchase the property. Midland Loan submitted that in light of that financial situation, no finding could be made that the applicant, Queenston Manor General Partner Inc., was a “debtor company”.

[27] Following that submission I asked Applicants’ counsel where in the record one could find evidence about the insolvency of each individual Applicant. That prompted a break in the

³ (2004), 48 C.B.R. (4th) 299 (Ont. S.C.J.).

hearing, at the end of which the Applicants filed a supplementary affidavit from Mr. MacLeod. Indicating that one of the biggest problems facing the Applicants was the lack of complete and up-to-date records, in consultation with the Applicants' CFO Mr. MacLeod submitted a chart providing, to the extent possible, further information about the financial status of each Applicant. That chart broke down the financial status of each of the 52 Applicants as follows:

Insolvent	28
Dormant	15
Little or no realizable assets	5
More information to be made available to the court	3
Other: management revenue stopped in 2010; \$70,000 cash; \$270,000 in related-company receivables	1

Queenston Manor General Partner Inc. was one of the applicants for which "more information would be made available to the court".

[28] As I have found, when looked at as a group, the Applicants fall within the extended meaning of "insolvent". When one descends a few levels and looks at the financial situation of some of the aggregator LPs, such as FLEX, Mr. MacLeod deposed that FLEX is one of the largest net debtors – i.e. it is unable to repay inter-company balances from operating cash flows and lacks sufficient net asset value to settle the intercompany balances through the immediate liquidation of assets. The evidence therefore supports a finding that the corporate general partner of FLEX is insolvent. Queenston Manor is one of several assets owned by FLEX, albeit an asset which uses the form of a limited partnership.

[29] If an insolvent company owns a healthy asset in the form of a limited partnership does the health of that asset preclude it from being joined as an applicant in a CCAA proceeding? In the circumstances of this case it does not. The jurisprudence under the CCAA provides that the protection of the Act may be extended not only to a "debtor company", but also to entities who, in a very practical sense, are "necessary parties" to ensure that that stay order works. Morawetz J. put the matter the following way in *Prizm Income Fund (Re)*:

The CCAA definition of an eligible company does not expressly include partnerships. However, CCAA courts have exercised jurisdiction to stay proceedings with respect to partnerships and limited partnerships where it is just and convenient to do so. See *Lehndorff, supra*, and *Re Canwest Global Communications Corp.*, 2009 CarswellOnt 6184 (S.C.J.).

The courts have held that this relief is appropriate where the operations of the debtor companies are so intertwined with those of the partnerships or limited partnerships in question, that not extending the stay would significantly impair the effectiveness of a stay in respect of the debtor companies.⁴

[30] Although section 3(1) of the *CCAA* requires a court on an initial application to inquire into the solvency of any applicant, the jurisprudence also requires a court to take into account the relationship between any particular company and the larger group of which it is a member, as well as the need to place that company within the protection of the Initial Order so that the order will work effectively. On the evidence filed I had no hesitation in concluding that given the insolvency of the overall First Leaside Group and the high degree of inter-connectedness amongst the members of that group, the protection of the *CCAA* needed to extend both to the Applicants and the limited partnerships listed in Schedule "A" to the Initial Order. The presence of all those entities within the ambit of the Initial Order is necessary to effect an orderly winding-up of the insolvent group as a whole. Consequently, whether Queenston Manor General Partner Inc. falls under the Initial Order by virtue of being a "debtor company", or by virtue of being a necessary party as part of an intertwined whole, is, in the circumstances of this case, a distinction without a practical difference.

[31] In sum, I am satisfied that those Applicants identified as "insolvent" on the chart attached to Mr. MacLeod's supplementary affidavit are "debtor companies" within the meaning of the *CCAA* and that the other Applicants, as well as the limited partnerships listed on Schedule "A" of the Initial Order, are entities to which it is necessary and appropriate to extend *CCAA* protection.

C. "Liquidation" *CCAA*

[32] While in most circumstances resort is made to the *CCAA* to "permit the debtor to continue to carry on business and, where possible, avoid the social and economic costs of liquidating its assets" and to create "conditions for preserving the *status quo* while attempts are made to find common ground amongst stakeholders for a reorganization that is fair to all", the reality is that "reorganizations of differing complexity require different legal mechanisms."⁵ That reality has led courts to recognize that the *CCAA* may be used to sell substantially all of the assets of a debtor company to preserve it as a going concern under new ownership,⁶ or to wind-up or liquidate it. In *Lehndorff General Partner Ltd. (Re)*⁷ Farley J. observed:

It appears to me that the purpose of the *CCAA* is also to protect the interests of creditors and to enable an orderly distribution of the debtor company's affairs. This may involve a winding-up or liquidation of a company or simply a substantial downsizing of its

⁴ 2011 ONSC 2061, paras. 26-27.

⁵ *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60, paras. 15, 77 and 78.

⁶ *Nortel Networks Corp. (Re)*, 2009 ONCA 833, para. 46; see Kevin P. McEleheran, *Commercial Insolvency in Canada, Second Edition* (Toronto: LexisNexis, 2011), pp. 284 et seq.

⁷ [1993] O.J. No. 14 (Gen. Div.). In *Brake Pro, Ltd. (Re)*, [2008] O.J. No. 2180 (S.C.J.), Wilton-Siegel J. stated, at paragraph 10: "While reservations are expressed from time to time regarding the appropriateness of a "liquidating" *CCAA* proceeding, such proceedings are permissible under the *CCAA*."

business operations, provided the same is proposed in the best interests of the creditors generally. See *Assoc. Investors, supra*, at p. 318; *Re Amirault Co.* (1951), 32 C.B.R. 1986, (1951) 5 D.L.R. 203 (N.S.S.C.) at pp. 187-8 (C.B.R.).

[33] In the decision of *Associated Investors of Canada Ltd. (Re)* referred to by Farley J., the Alberta Court of Queen's Bench stated:

The realities of the modern marketplace dictate that courts of law respond to commercial problems in innovative ways without sacrificing legal principle. In my opinion, the Companies' Creditors Arrangement Act is not restricted in its application to companies which are to be kept in business. Moreover, the Court is not without the ability to address within its jurisdiction the concerns expressed in the Ontario cases. The Act may be invoked as a means of liquidating a company and winding-up its affairs but only if certain conditions precedent are met:

1. It must be demonstrated that benefits would likely flow to Creditors that would not otherwise be available if liquidation were effected pursuant to the Bankruptcy Act or the Winding-Up Act.
2. The Court must concurrently provide directions pursuant to compatible legislation that ensures judicial control over the liquidation process and an effective means whereby the affairs of the company may be investigated and the results of that investigation made available to the Court.
3. A Plan of Arrangement should not receive judicial sanction until the Court has in its possession, all of the evidence necessary to allow the Court to properly exercise its discretion according to standards of fairness and reasonableness, absent any findings of illegality.⁸

The editors of *The 2012 Annotated Bankruptcy and Insolvency Act* take some issue with the extent of those conditions:

With respect, these conditions may be too rigorous. If the court finds that the plan is fair and reasonable and in the best interests of creditors, and there are cogent reasons for using the statute rather than the *BIA* or *WURA*, there seems no reason why an orderly liquidation could not be carried out under the *CCAA*.⁹

[34] Mr. MacLeod, the CRO, deposed that no viable plan exists to continue First Leaside as a going concern and that the most appropriate course of action is to effect an orderly wind-down of First Leaside's operations over a period of time and in a manner which will create the opportunity to realize improved net asset value. In his professional judgment the *CCAA* offered the most appropriate mechanism by which to conduct such an orderly liquidation:

⁸ *First Investors Corp. (Re)* (1987), 46 D.L.R. (4th) 669 (Alta Q.B.), para. 36.

⁹ Houlden, Morawetz & Sarra, *The 2012 Annotated Bankruptcy and Insolvency Act*, N§1, p. 1099.

[T]he best way to promote this wind-down is through a filing under the *CCAA* so that all issues – especially the numerous investor and creditor claims and the inter-company claims – can be dealt with in one forum under the supervision of the court.

In its Pre-filing Report the Monitor also supported using the *CCAA* to implement the “restructuring/wind-up plan(s) in a stabilized environment”.

[35] Both the CRO and the proposed Monitor possess extensive knowledge about the workings of the Applicants. Both support a process conducted under the *CCAA* as the most practical and effective way in which to deal with the affairs of this insolvent group of companies. No party contested the availability of the *CCAA* to conduct an orderly winding-up of the affairs of the Applicants (although, as noted, some parties questioned whether certain entities should be included within the scope of the Initial Order). Given that state of affairs, I saw no reason not to accept the professional judgment of the CRO and the proposed Monitor that a liquidation under the *CCAA* was the most appropriate route to take.

[36] Moreover, I saw no prejudice to claimant creditors by permitting the winding-up of the First Leaside Group to proceed under the *CCAA* instead of under the *BIA* in view of the convergence which exists between the *CCAA* and *BIA* on the issue of priorities. As the Supreme Court of Canada pointed out in *Century Services*:

Because the *CCAA* is silent about what happens if reorganization fails, the *BIA* scheme of liquidation and distribution necessarily supplies the backdrop for what will happen if a *CCAA* reorganization is ultimately unsuccessful.¹⁰

As the British Columbia Court of Appeal observed in *Caterpillar Financial Services Ltd. v. 360networks corp.* interested parties also use that priorities backdrop to negotiate successful *CCAA* reorganizations:

While it might be suggested that *CCAA* proceedings may require those with a financial stake in the company, including shareholders and creditors, to compromise some of their rights in order to sustain the business, it cannot be said that the priorities between those with a financial stake are meaningless. The right of creditors to realize on any security may be suspended pending the final approval of the court, but this does not render their potential priority nugatory. Priorities are always in the background and influence the decisions of those who vote on the plan.¹¹

[37] I therefore concluded that the *CCAA* was available to the Applicants in the circumstances, and I so ordered.

¹⁰ *Century Services*, *supra*, para. 23.

¹¹ (2007), 279 D.L.R. (4th) 701 (B.C.C.A.), para. 42.

V. Representative Counsel, CRO and Monitor

[38] The Applicants sought the appointment of Fraser Milner Casgrain ("FMC") as Representative Counsel to represent the interests of the some 1,200 clients of FLSI in this proceeding, subject to the right of any client to opt-out of such representation. The proposed Monitor expressed the view that it would be in the best interests of the FL Group and its investors to appoint Representative Counsel. No party objected to such an appointment. I reviewed the qualifications and experience of proposed Representative Counsel and its proposed fees, and I was satisfied that it would be appropriate to appoint FMC as Representative Counsel on the terms set out in the Initial Order.

[39] The Applicants sought the appointment of G.S. MacLeod & Associates Inc. as CRO of First Leaside. No party objected to that appointment. The Applicants included a copy of the CRO's December 21, 2011 Retention Agreement in their materials. The proposed Monitor stated that the appointment of a CRO was important to ensure an adequate level of senior corporate governance leadership. I agree, especially in light of the withdrawal of Mr. Phillips last November from the management of the Group. The proposed Monitor reported that the terms and conditions of the Retention Agreement were consistent with similar arrangements approved by other courts in *CCAA* proceedings and the remuneration payable was reasonable in the circumstances. As a result, I confirmed the appointment of G.S. MacLeod & Associates Inc. as CRO of First Leaside.

[40] Finally, I appointed Grant Thornton as Monitor. No party objected, and Grant Thornton has extensive knowledge of the affairs of the First Leaside Group.

VI. Administration and D&O Charges and their priorities

A. Charges sought

[41] The Applicants sought approval, pursuant to section 11.52 of the *CCAA*, of an Administration Charge in the amount of \$1 million to secure amounts owed to the Estate Professionals – First Leaside's legal advisors, the CRO, the Monitor, and the Monitor's counsel.

[42] They also sought an order indemnifying the Applicants' directors and officers against any post-filing liabilities, together with approval, pursuant to section 11.51 of the *CCAA*, of a Director and Officer's Charge in the amount of \$250,000 as security for such an indemnity. Historically the First Leaside Group did not maintain D&O insurance, and the Independent Committee was not able to secure such insurance at reasonable rates and terms when it tried to do so in 2011.

[43] The Monitor stated that the amount of the Administration Charge was established based on the Estate Professionals' previous history and experience with restructurings of similar magnitude and complexity. The Monitor regarded the amount of the D&O Charge as reasonable under the circumstances. The Monitor commented that the combined amount of both charges (\$1.25 million) was reasonable in comparison with the amount owing to mortgagees (\$176 million).

[44] In its Pre-filing Report the Monitor did note that shortly before commencing this application the Applicants paid \$250,000 to counsel for the Independent Committee of the Board. The Monitor stated that the payment might "be subject to review by the Monitor, if/when it is appointed, in accordance with s. 36.1(1) of the CCAA". No party requested an adjudication of this issue, so I refer to the matter simply to record the Monitor's expression of concern.

[45] Based on the evidence filed, I concluded that it was necessary to grant the charges sought in order to secure the services of the Estate Professionals and to ensure the continuation of the directors in their offices and that the amounts of the charges were reasonable in the circumstances.

B. Priority of charges

[46] The Applicants sought super-priority for the Administration and D&O Charges, with the Administration Charge enjoying first priority and the D&O Charge second, with some modification with respect to the property of FLSI which the Applicants had negotiated with IIROC.

[47] In its Pre-filing Report the proposed Monitor stated that the mortgages appeared to be well collateralized, and the mortgagees would not be materially prejudiced by the granting of the proposed priority charges. The proposed Monitor reported that it planned to work with the Applicants to develop a methodology which would allocate the priority charges fairly amongst the Applicants and the included LPs, and the allocation methodology developed would be submitted to the Court for review and approval.

[48] In *Indalex Limited (Re)*¹² the Court of Appeal reversed the super-priority initially given to a DIP Charge by the motions judge in an initial order and, instead, following the sale of the debtor company's assets, granted priority to deemed trusts for pension deficiencies. In reaching that decision Court of Appeal observed that affected persons – the pensioners – had not been provided at the beginning of the CCAA proceeding with an appropriate opportunity to participate in the issue of the priority of the DIP Charge.¹³ Specifically, the Court of Appeal held:

In this case, there is nothing in the record to suggest that the issue of paramountcy was invoked on April 8, 2009, when Morawetz J. amended the Initial Order to include the super-priority charge. The documents before the court at that time did not alert the court to the issue or suggest that the PBA deemed trust would have to be overridden in order for Indalex to proceed with its DIP financing efforts while under CCAA protection. To the contrary, the affidavit of Timothy Stubbs, the then CEO of Indalex, sworn April 3, 2009, was the primary source of information before the court. In para. 74 of his affidavit, Mr. Stubbs deposes that Indalex intended to comply with all applicable laws including "regulatory deemed trust requirements".

¹² 2011 ONCA 265.

¹³ *Ibid.*, para. 155.

While the super-priority charge provides that it ranks in priority over trusts, "statutory or otherwise", I do not read it as taking priority over the deemed trust in this case because the deemed trust was not identified by the court at the time the charge was granted and the affidavit evidence suggested such a priority was unnecessary. As no finding of paramountcy was made, valid provincial laws continue to operate: the super-priority charge does not override the *PBA* deemed trust. The two operate sequentially, with the deemed trust being satisfied first from the Reserve Fund.¹⁴

[49] In his recent decision in *Timminco Limited (Re)*¹⁵ ("Timminco I") Morawetz J. described the commercial reality underpinning requests for Administration and D&O Charges in *CCAA* proceedings:

In my view, in the absence of the court granting the requested super priority and protection, the objectives of the *CCAA* would be frustrated. It is not reasonable to expect that professionals will take the risk of not being paid for their services, and that directors and officers will remain if placed in a compromised position should the Timminco Entities continue *CCAA* proceedings without the requested protection. The outcome of the failure to provide these respective groups with the requested protection would, in my view, result in the overwhelming likelihood that the *CCAA* proceedings would come to an abrupt halt, followed, in all likelihood, by bankruptcy proceedings.¹⁶

[50] In its Pre-filing Report the proposed Monitor expressed the view that if the priority charges were not granted, the First Leaside Group likely would not be able to proceed under the *CCAA*.

[51] In my view, absent an express order to the contrary by the initial order applications judge, the issue of the priorities enjoyed by administration, D&O and DIP lending charges should be finalized at the commencement of a *CCAA* proceeding. Professional services are provided, and DIP funding is advanced, in reliance on super-priorities contained in initial orders. To ensure the integrity, predictability and fairness of the *CCAA* process, certainty must accompany the granting of such super-priority charges. When those important objectives of the *CCAA* process are coupled with the Court of Appeal's holding that parties affected by such priority orders be given an opportunity to raise any paramountcy issue, it strikes me that a judge hearing an initial order application should directly raise with the parties the issue of the priority of the charges sought, including any possible issue of paramountcy in respect of competing claims on the debtor's property based on provincial legislation.

[52] Accordingly I raised that issue at the commencement of the hearing last Thursday and requested submissions on the issues of priority and paramountcy from any interested party. Several parties made submissions on those points: (i) the Applicants, proposed Monitor and proposed Representative Counsel submitted that the Court should address any priority or

¹⁴ *Ibid.*, paras. 178 and 179.

¹⁵ 2012 ONSC 506.

¹⁶ *Ibid.*, para. 66.

paramountcy issues raised; (ii) IIROC advised that it did not see any paramountcy issue in respect of its interests; (iii) counsel for Midland Loan submitted that a paramountcy issue existed with respect to its client, a secured mortgagee, because it enjoyed certain property rights under provincial mortgage law; she also argued that the less than full day's notice of the hearing given by the Applicants was inadequate to permit the mortgagee to consider its position, and her client should be given seven days to do so; and, (iv) counsel for a construction lien claimant, Structform International, who spoke on behalf of a number of such lien claimants, made a similar submission, contending that the construction lien claimants required 10 days to determine whether they should make submissions on the relationship between their lien claims and any super-priority charge granted under the CCAA.

[53] I did not grant the adjournment requested by the mortgagee and construction lien claimants for the following reasons. First, the facts in *Indalex* were quite different from those in the present case, involving as they did considerations of what fiduciary duty a debtor company owed to pensioners in respect of underfunded pension liabilities. I think caution must be exercised before extending the holding of *Indalex* concerning CCAA-authorized priority charges to other situations, such as the one before me, which do not involve claims involving pension deficiencies, but claims by more "ordinary" secured creditors, such as mortgagees and construction lien claimants.

[54] Second, I have some difficulty seeing how constitutional issues of paramountcy arise in a CCAA proceeding as between claims to the debtor's property by secured creditors, such as mortgagees and construction lien claimants, and persons granted a super-priority charge by court order under sections 11.51 and 11.52 of the CCAA. At the risk of gross over-simplification, Canadian constitutional law places the issue of priorities of secured creditors in different legislative balliwicks depending on the health of the debtor company. When a company is healthy, secured creditor priorities usually are determined under provincial laws, such as personal property security legislation and related statutes, which result from provincial legislatures exercising their powers with respect to "property and civil rights in the province".¹⁷ However, when a company gets sick - becomes insolvent - our *Constitution* vests in Parliament the power to craft the legislative regimes which will govern in those circumstances. Exercising its power in respect of "bankruptcy and insolvency",¹⁸ Parliament has established legal frameworks under the BIA and CCAA to administer sick companies. Priority determinations under the CCAA draw on those set out in the BIA, as well as the provisions of the CCAA dealing with specific claims such as Crown trusts and other claims.

[55] As it has evolved over the years the constitutional doctrine of paramountcy polices the overlapping effects of valid federal and provincial legislation: "The doctrine applies not only to cases in which the provincial legislature has legislated pursuant to its ancillary power to trench on an area of federal jurisdiction, but also to situations in which the provincial legislature acts within its primary powers, and Parliament pursuant to its ancillary powers."¹⁹ Since 1960 the

¹⁷ *Constitution Act, 1867*, s. 92 ¶13.

¹⁸ *Ibid.*, s. 91 ¶21.

¹⁹ *Canadian Western Bank v. Alberta*, [2007] 2 S.C.R. 3, para. 69.

Supreme Court of Canada has travelled a “path of judicial restraint in questions of paramouncy”.²⁰ That Court has not been prepared to presume that, by legislating in respect of a matter, Parliament intended to rule out any possible provincial action in respect of that subject,²¹ unless (and it is a big “unless”), Parliament used very clear statutory language to that effect.²²

[56] I have found that the Applicants have entered the world of the sick, or the insolvent, and are eligible for the protection of the federal *CCAA*. The federal legislation *expressly* brings mortgagees and construction lien claimants within its regime – the definition of “secured creditor” contained in section 2 of the *CCAA* specifically includes “a holder of a mortgage” and “a holder of a ...lien...on or against...all or any of the property of a debtor company as security for indebtedness of the debtor company”. The federal legislation also *expressly* authorizes a court to grant priority to administration and D&O charges over the claims of such secured creditors of the debtor.²³ In light of those express provisions in sections 2, 11.51 and 11.52 of the *CCAA*, and my finding that the Applicants are eligible for the protection offered by the *CCAA*, I had great difficulty understanding what argument could be advanced by the mortgagees and construction lien claimants about the concurrent operation of provincial and federal law which would relieve them from the priority charge provisions of the *CCAA*. I therefore did not see any practical need for an adjournment.

[57] Finally, sections 11.51(1) and 11.52(1) of the *CCAA* both require that notice be given to secured creditors who are likely to be affected by an administration or D&O charge before a court grants such charges. In the present case I was satisfied that such notice had been given. Was the notice adequate in the circumstances? I concluded that it was. To repeat, making due allowance for the unlimited creativity of lawyers, I have difficulty seeing what concurrent operation argument could be advanced by mortgagee and construction lien claims against court-ordered super-priority charges under sections 11.51 and 11.52 of the *CCAA*. Second, as reported by the proposed Monitor, the quantum of the priority charges (\$1.25 million) is reasonable in comparison with the amount owing to mortgagees (\$176 million) and the mortgages appeared to be well collateralized based on available information. Third, the Applicant and Monitor will develop an allocation methodology for the priority charges for later consideration by this Court. The proposed Monitor reported:

It is the Proposed Monitor’s view that the allocation of the proposed Priority Charges should be carried out on an equitable and proportionate basis which recognizes the separate interests of the stakeholders of each of the entities.

The secured creditors will be able to make submissions on any proposed allocation of the priority charges. Finally, while I understand why the secured creditors are focusing on their specific interests, it must be recalled that the work secured by the priority charges will be performed for

²⁰ *Rothmans, Benson & Hedges Inc. v. Saskatchewan*, [2005] 1 S.C.R. 188, para. 21

²¹ *Canadian Western Bank*, *supra.*, para. 74.

²² *Rothmans*, *supra.*, para. 21.

²³ *CCAA* ss. 11.51(2) and 11.52(2).

the benefit of all creditors of the Applicants, including the mortgagees and construction lien claimants. All creditors will benefit from an orderly winding-up of the affairs of the Applicants.

[58] In the event that I am incorrect that no paramountcy issue arises in this case in respect of the priority charges, I echo the statements made by Morawetz J. in *Timminco I* which I reproduced in paragraph 49 above. In *Indalex* the Court of Appeal accepted that "the CCAA judge can make an order granting a super-priority charge that has the effect of overriding provincial legislation".²⁴ I find that it is both necessary and appropriate to grant super priority to both the Administration and D&O Charges in order to ensure that the objectives of the CCAA are not frustrated.

[59] For those reasons I did not grant the adjournment requested by Midland Loan and the construction lien claimants, concluding that they had been given adequate notice in the circumstances, and I granted the requested Administration and D&O Charges.

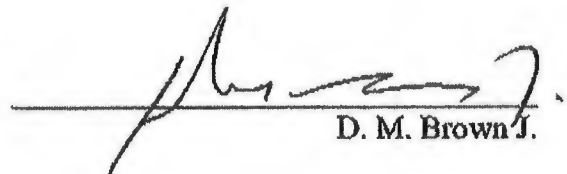
VII. Other matters

[60] At the hearing counsel for one of the construction lien claimants sought confirmation that by granting the Initial Order a construction lien claimant who had issued, but not served, a statement of claim prior to the granting of the order would not be prevented from serving the statement of claim on the Applicants. Counsel for the Applicants confirmed that such statements of claim could be served on it.

[61] At the hearing the Applicants submitted a modified form of the model Initial Order. Certain amendments were proposed during the hearing; the parties had an opportunity to make submissions on the proposed amendments.

VIII. Summary

[62] For the foregoing reasons I was satisfied that it was appropriate to grant the CCAA Initial Order in the form requested. I signed the Initial Order at 4:08 p.m. EST on Thursday, February 23, 2012.



D. M. Brown J.

Date: February 26, 2012

²⁴ *Indalex, supra.*, para. 176.

This is Exhibit "E" referred to in the Affidavit of Greg MacLeod
sworn August ²⁰....., 2012



Commissioner for Taking Affidavits (or as may be)



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

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

THE HONOURABLE MR.
JUSTICE COLIN L. CAMPBELL

)
)
)

THURSDAY, THE 28th
DAY OF JUNE, 2012

**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.**

**ORDER
(Second Extension of Stay Period)**

THIS MOTION, made by the Applicants for an order, among other things,
extending the Stay Period to October 26, 2012, was heard this day at the Court House,
330 University Avenue, Toronto, Ontario.

ON READING the notice of motion dated June 19, 2012, the affidavit of Gregory MacLeod sworn June 19, 2012 ("**MacLeod Affidavit**"), and the third report to the court of Grant Thornton Limited dated June 22, 2012 (the "**Third Report**"), in its capacity as court appointed monitor ("**Monitor**") of the Applicants and the limited partnerships listed on Schedule "A" hereto (the "**Included LPs**") (collectively, "**First Leaside**"), and upon hearing the submissions of counsel for First Leaside, the Monitor, Fraser Milner Casgrain LLP, in its capacity as Court-appointed representative counsel for the clients of Applicant First Leaside Securities Inc. ("**Representative Counsel**"), and counsel for Wimberly Fund, and The First Leaside Fund, no one else appearing, although served as indicated by the Affidavits of Service of Patricia Hoogenband sworn June 22, 2012 and John N. Birch sworn June 27, 2012.

SERVICE

1. **THIS COURT ORDERS** that the time for the service of the notice of motion and motion record herein be validated and abridged, any further service of this motion record is dispensed with, and this motion is validly returnable today.

EXTENSION OF STAY PERIOD

2. **THIS COURT ORDERS** that the "Stay Period" as defined at paragraph 19 of the order of the Honourable Mr. Justice David M. Brown dated February 23, 2012 (the "**Initial Order**") be and is hereby extended to October 26, 2012.

THIRD-RANKING INTER-COMPANY CHARGE

3. **THIS COURT ORDERS** that the Initial Order is hereby amended, *nunc pro tunc*, to add a new paragraph 49A that states as follows:

49A. **THIS COURT ORDERS** that to the extent that (i) an Applicant or Included LP (a "**Borrower**") receives an inter-company loan or other transfer (a "**Transfer**") from another Applicant or Included LP (a "**Lender**") on or after February 23, 2012, or (ii) on a final allocation by the Court of administration costs, certain of the administration costs of an Applicant or Included LP (also a "**Borrower**" for the purposes of this paragraph) secured by the Administration Charge have been paid by another Applicant or Included LP (also a "**Lender**" for the purposes of this paragraph) (a "**Reallocated Cost**"), then, subject to the limitations set forth in this paragraph:

(a) the Lender shall have a proven and valid claim against such Borrower for the amount of such Transfer or Reallocated Cost (each, an "**Inter-Company Claim**"); and

(b) the Lender shall be entitled to the benefit of and is hereby granted a charge (collectively, the "**Inter-Company Charge**") on the Property, which charge shall not exceed the aggregate amount of such Lender's Inter-Company Claim, as security for the Inter-Company Claim.

The Inter-Company Charge shall have the priority set out in paragraphs 50 and 52 hereof.

4. **THIS COURT ORDERS** that the Initial Order is hereby amended, *nunc pro tunc*, to add a new paragraph 49B that states as follows:

49B. **THIS COURT ORDERS** that pending further order of this Court, a Lender shall not exercise any right or remedy relating to any Inter-Company Claim held by such Lender.

5. **THIS COURT ORDERS** that paragraph 50 of the Initial Order is hereby replaced, *nunc pro tunc*, with the following:

50. **THIS COURT ORDERS** that the priorities of the Directors' Charge, the Administration Charge and the Inter-Company Charge, as between them, shall be as follows:

First – Administration Charge (to the maximum amount of \$1,000,000);

Second – Directors' Charge (to the maximum amount of \$250,000); and

Third – Inter-Company Charge (to the maximum amount of aggregate Inter-Company Claims).

6. **THIS COURT ORDERS** that the first clause in paragraph 51 of the Initial Order is hereby replaced, *nunc pro tunc*, with the following:

51. **THIS COURT ORDERS** that the filing, registration or perfection of the Directors' Charge, Administration Charge or Inter-Company Charge (collectively, the "**Charges**") shall not be required...

7. **THIS COURT ORDERS** that the first clause in paragraph 52 of the Initial Order is hereby replaced, *nunc pro tunc*, with the following:

52. **THIS COURT ORDERS** the each of the Directors' Charge, Administration Charge and Inter-Company Charge (all as constituted and defined herein) shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests...

8. **THIS COURT ORDERS** that paragraph 53 of the Initial Order is hereby replaced, *nunc pro tunc*, with the following:

53. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, First Leaside shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Directors' Charge, Administration Charge or the Inter-Company Charge, unless First Leaside also obtains the prior written consent of the Monitor and the beneficiaries of the

Directors' Charge, Administration Charge and Inter-Company Charge and further Order of this Court.

9. **THIS COURT ORDERS** that the first clause in paragraph 54 of the Initial Order is hereby replaced, *nunc pro tunc*, with the following:

54. **THIS COURT ORDERS** that the Directors' Charge, the Administration Charge and the Inter-Company Charge shall not be rendered invalid or unenforceable...

AMENDMENT OF SCHEDULE 'A'

10. **THIS COURT ORDERS** that Schedule "A" to the Initial Order is hereby amended, *nunc pro tunc*, by deleting it in its entirety and replacing it with the entities listed in Column B of Schedule "A" to this Order.

APPROVAL OF THE COMMUNICATIONS PROTOCOL

11. **THIS COURT ORDERS** that the "Communications Protocol (Re Potential Asset Transactions)" dated as of May 24, 2012, and made between G.S. MacLeod & Associates Inc., in its capacity as the Chief Restructuring Officer ("**CRO**") of First Leaside, the Monitor, Representative Counsel, and certain other investors who are clients of First Leaside Securities Inc. and have agreed to form a Transaction Subcommittee (as defined in the MacLeod Affidavit), is hereby approved *nunc pro tunc*.

APPROVAL OF THE RETENTION OF GTCFI

12. **THIS COURT ORDERS** that the agreement between First Leaside Retirement Residences Limited Partnership ("**FLRR**"), First Leaside Realty II Inc., First Leaside Wealth Management Inc., First Leaside Universal Limited Partnership, First

Leaside Progressive Limited Partnership, F.L. PrimeTime Living Limited Partnership and FLWM Holdings Limited Partnership on the one hand, and Grant Thornton Corporate Finance Inc. ("GTCFI") on the other hand, pursuant to which GTCFI will act as exclusive financial advisor in connection with the proposed sale, merger, consolidation or other business combination of FLRR's interest in PrimeTime Living LP Limited Partnership and the real property assets owned by Cherry Park Retirement Residence LP, Orchard Valley Retirement Residence LP, The Shore Retirement Residence LP and First Leaside Venture LP is hereby approved *nunc pro tunc*.

AMENDMENT OF REPRESENTATIVE COUNSEL PROVISIONS

13. **THIS COURT ORDERS** that paragraph 42 of the Initial Order is hereby replaced with the following:

42. **THIS COURT ORDERS** that Fraser Milner Casgrain LLP ("**Representative Counsel**") is appointed as representative counsel in these proceedings to represent the interests of clients of FLSI (the "**Clients**"), and to assist the Clients with the filing of claims with the Canadian Investor Protection Fund ("**CIPF**"), and the coordination of the CIPF claims process with any future claims process that may be conducted in the within proceedings. This representation will continue unless and until written notice is provided by a particular Client to Representative Counsel that such Client does not wish to be represented by Representative Counsel.

14. **THIS COURT ORDERS** that paragraph 44 of the Initial Order is hereby replaced with the following:

44. **THIS COURT ORDERS** that Representative Counsel shall be paid its reasonable fees and disbursements by First Leaside. Representative Counsel shall be paid by First Leaside in a timely manner for fulfilling its mandate in accordance with this Order, upon the provision of invoices to

First Leaside, subject to such redactions to the invoices as are necessary to maintain solicitor-client privilege between Representative Counsel and the Clients.

15. **THIS COURT ORDERS** that the Initial Order is amended to add a new paragraph 44A that states as follows:

44A. **THIS COURT ORDERS** that Representative Counsel shall pass its accounts from time to time, and for this purpose the accounts of the Representative Counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

APPROVAL OF VISIONS II OWNERSHIP INTEREST

16. **THIS COURT ORDERS** that the proposed restructuring of the interest of First Leaside Visions II ("**Visions II**") in eSight Corp. as described in paragraph 93 of the MacLeod Affidavit (the "**Visions II Restructuring**") is hereby approved and the CRO is hereby authorized and directed to take such steps and execute such documents in the name of Visions II as are necessary to carry out the Visions II Restructuring.

APPROVAL OF CRO ACTIVITIES

17. **THIS COURT ORDERS** that the conduct and activities of the CRO, as described in the MacLeod Affidavit, be and are hereby approved.

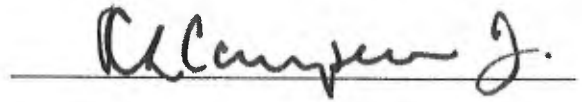
APPROVAL OF MONITOR'S ACTIVITIES

18. **THIS COURT ORDERS** that the conduct and activities of the Monitor, as described in the Third Report, be and are hereby approved.

19. **THIS COURT ORDERS** that, despite the provisions of paragraphs 3 through 9 herein, the Inter-Company Charge shall not apply to F.L. Master Texas, Ltd.,

F.L.W. Pond Master, Ltd., or F.L.W. Shores Master, Ltd. (collectively, the "Excluded LPs") provided, however, that First Leaside may later seek to extend the Inter-Company Charge to the Excluded LPs by motion brought on notice to Wimberly Fund and The First Leaside Fund.

20. **THIS COURT ORDERS** that the extension of the Stay Period in paragraph 2 herein is without prejudice to the right of Wimberly Fund and The First Leaside Fund to bring a motion to lift the stay in respect of the Excluded LPs.



ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

JUN 28 2012



SCHEDULE "A": CORRECTION OF NAMES OF INCLUDED LPs

Column A: NAME ON INITIAL COURT ORDER	Column B:REVISED LEGAL NAME
B&W LP	B&W Limited Partnership
Development Notes Limited Partnerships	Development Notes Limited Partnership
Dossierview LP	Dossierview Limited Partnership
eSight LP	eSight Limited Partnership
F.L. Beverages Group Limited Partnership	F.L. Beverages Group Limited Partnership*
First Leaside Acquisitions 2000 LP	First Leaside Acquisitions 2000 Limited Partnership
First Leaside Acquisitions LP	First Leaside Acquisitions Limited Partnership
First Leaside Advantage LP	First Leaside Advantage Limited Partnership
First Leaside Developments LP	First Leaside Developments Limited Partnership
First Leaside Elite LP	First Leaside Elite Limited Partnership
First Leaside Enterprises LP	First Leaside Enterprises Limited Partnership
First Leaside Entities LP	First Leaside Entities Limited Partnership
First Leaside Expansion LP	First Leaside Expansion Limited Partnership
- First Leaside Global Limited Partnership - First Leaside Global LP	First Leaside Global Limited Partnership
First Leaside Growth LP	First Leaside Growth Limited Partnership
First Leaside Income LP	First Leaside Income Limited Partnership
First Leaside Investors LP	First Leaside Investors Limited Partnership
First Leaside Operations LP	First Leaside Operations Limited Partnership
First Leaside Opportunities LP	First Leaside Opportunities Limited Partnership
First Leaside Optimal LP	First Leaside Optimal Limited Partnership
First Leaside Partners LP	First Leaside Partners Limited Partnership
First Leaside Preferred LP	First Leaside Preferred Limited Partnership
First Leaside Premier LP	First Leaside Premier Limited Partnership
First Leaside Progressive LP	First Leaside Progressive Limited Partnership
First Leaside Properties LP	First Leaside Properties Limited Partnership
First Leaside Quality LP	First Leaside Quality Limited Partnership
First Leaside Real Estate LP	First Leaside Real Estate Limited Partnership
First Leaside Realty II LP	First Leaside Realty II Limited Partnership
First Leaside Realty LP	First Leaside Realty Limited Partnership
- First Leaside Retirement Residences Limited Partnership - First Leaside Retirement Residences LP - F.L. Retirement Residences Limited Partnership	First Leaside Retirement Residences Limited Partnership
First Leaside Select LP	First Leaside Select Limited Partnership
First Leaside Spring Valley LP	F.L. Spring Valley Limited Partnership
First Leaside Superior LP	First Leaside Superior Limited Partnership
First Leaside Technologies LP	First Leaside Technologies Limited Partnership

First Leaside Ultimate LP	First Leaside Ultimate Limited Partnership
First Leaside Unity LP	First Leaside Unity Limited Partnership
First Leaside Universal LP	First Leaside Universal Limited Partnership
- First Leaside Venture Limited Partnership - First Leaside Ventures Limited Partnership	First Leaside Venture Limited Partnership
First Leaside Visions I LP	First Leaside Visions I Limited Partnership
First Leaside Visions II LP	First Leaside Visions II Limited Partnership
First Leaside Visions III LP	First Leaside Visions III Limited Partnership
First Leaside Visions IV LP	First Leaside Visions IV Limited Partnership
First Leaside Wealth Management LP	First Leaside Wealth Management Limited Partnership
FL Master Texas Ltd.	F.L. Master Texas, Ltd.
FLW Pond Master Ltd.	F.L.W. Pond Master, Ltd.
FLW Shores Master Ltd.	F.L.W. Shores Master, Ltd.
FLWM Holdings Limited Partnership	FLWM Holdings Limited Partnership*
Greencore LP	Greencore Limited Partnership
Marksman Celiject LP	Marksman Celiject Limited Partnership
Metabacus LP	Metabacus Limited Partnership
Mill Street Limited Partnership	Mill Street Limited Partnership*
Old Mill Pond LP	Old Mill Pond Apartments Limited Partnership
OMISA LP	OMISA Limited Partnership
Place Concorde East LP	Place Concorde East Limited Partnership
Place Concorde West LP	Place Concorde West Limited Partnership
Preston Racquet Club Real Estate Limited Partnership Series 910 PA	Preston Racquet Club Real Estate Limited Partnership Series 910 PA
Preston Racquet Club Real Estate Limited Partnership Series 910 PB	Preston Racquet Club Real Estate Limited Partnership Series 910 PB
Preston Racquet Club Real Estate Limited Partnership Series 910 PC	Preston Racquet Club Real Estate Limited Partnership Series 910 PC
Preston Racquet Club Real Estate Limited Partnership Series 910 PD	Preston Racquet Club Real Estate Limited Partnership Series 910 PD
Queenston Manor LP	Queenston Manor Limited Partnership
Special Notes LP	Special Notes Limited Partnership
Special U.S. Notes Limited Partnership	Special U.S. Notes Limited Partnership
The Bluffs of Lakewood LP	The Bluffs of Lakewood Limited Partnership
The Shores LP	The Shores Limited Partnership
Tyromer LP	Tyromer Limited Partnership
Uxbridge Development LP	Uxbridge Development Limited Partnership
Wimberly Apartments LP	Wimberly Apartments Limited Partnership

Note: * indicates that the correct legal name was previously provided and the entity name has not changed from Column A to Column B

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,
U.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
(Second Extension of Stay Period)

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

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Tel: 416.860.5225
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David S. Ward LSUC#: 33541W
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Fax: 416.360.3154
dward@casselsbrock.com

Lawyers for the Applicants

This is Exhibit "F" referred to in the Affidavit of Greg MacLeod
sworn August 20, 2012

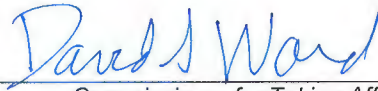


Commissioner for Taking Affidavits (or as may be)

ADDITIONAL FIRST LEASIDE CANADIAN PROPERTIES LISTED FOR SALE

PROPERTY	FIRST LEASIDE LP THAT OWNS THE PROPERTY	LIST PRICE
36 Bramtree Court, Brampton	First Leaside Growth LP	\$ 5,000,000
164 Cemetery Road, Uxbridge	First Leaside Progressive LP	\$2,700,000
62 Mill Street, Uxbridge	First Leaside Investors LP	\$1,600,000
168 Brock Street, Uxbridge	First Leaside Expansion LP	\$1,500,000
4 Victoria Street, Uxbridge	First Leaside Expansion LP	\$1,500,000
65 Fort Street, Tilbury	First Leaside Investors LP	\$ 3,250,000
123 Erie Street, Wheatly	First Leaside Unity LP	\$ 450,000

This is Exhibit "G" referred to in the Affidavit of Greg MacLeod
sworn August 20....., 2012



Commissioner for Taking Affidavits (or as may be)

AGREEMENT OF PURCHASE AND SALE

Outset Media Corporation (hereinafter called the "Purchaser") hereby offers to purchase from 2085306 Ontario Inc. (hereinafter called the "Vendor"), through, Colliers Macaulay Nicolls (Ontario) Inc., Brokerage, (the "Listing Broker") the Property (as hereinafter defined) subject to the terms and conditions hereinafter set forth.

1. In this agreement the following terms shall have the following respective meanings:
 - (a) "Agreement" means this Agreement of Purchase and Sale to be constituted by the acceptance of the offer herein;
 - (b) "Building" means the multi-unit industrial building of approximately 69,895 square feet constructed upon the Lands, outdoor parking areas and all other plant, equipment, landscaping and other improvements affixed to and forming part of the Property;
 - (c) "Building Contracts and Warranties" has the meaning set out in subsection 3(c)(vi) hereof;
 - (d) "Business Day" means a day upon which the Land Registry Office in the [City/Town] of Brampton is open for business;
 - (e) "Chattels" means the goods, equipment and chattels owned by the Vendor and comprising part of and/or used in the operation and management of the Property, as set out in a list to be provided by the Vendor pursuant to section 3 (c) (iv) of this Agreement;
 - (f) "Closing Date" means the 15th Business Day after the expiry of the Conditional Period;
 - (g) "Conditional Period" has the meaning set out in section 4 of this Agreement;
 - (h) "Inspection Reports" has the meaning set out in subsection 3(c)(viii) hereof;
 - (i) "Lands" means the lands of approximately 3.54 acres situate in the [City/Town] of Brampton, municipally designated as 36 Bramtree Court, Brampton and being composed of Plan 43M 873 Pt Blk 2 Rp 43R25991 Part 2, PIN 14207-0166;
 - (j) "Lease Agreements" has the meaning set out in subsection 3(c)(v) hereof;
 - (k) "Permitted Encumbrances" means the encumbrances listed in Schedule "A" attached hereto;

- (l) "Plans and Specifications" means the plans and specifications for the Building and other improvements to be made available to the Purchaser pursuant to sub-section 3 (c)(vii) hereof;
- (m) "Property" means collectively the Lands and the Building, and, where the context permits, the Chattels;
- (n)

2. (a) Subject to Court approval of this Agreement and the transactions contemplated herein, the Purchaser hereby agrees to purchase from the Vendor and the Vendor hereby agrees to sell to the Purchaser the Property on the terms and conditions hereby contained for the aggregate purchase price of ~~Five Million Six Hundred Thousand Dollars (\$5,600,000.00)~~ to be paid or satisfied as follows:

- (i) The Purchaser shall submit, within twenty four (24) hours of acceptance of this offer, the sum of One Hundred Thousand Dollars (\$100,000.00) by negotiable cheque payable to the Listing Broker as a deposit to be held by it in trust pending completion or other termination of this Agreement and to be credited towards the purchase price on completion; \$150,000 DM 
- (ii) The Purchaser shall pay a further deposit of One Hundred and Fifty Thousand ~~(\$200,000.00)~~ Dollars upon waiver of the conditions as described in Section 4 (b) of this Agreement to be held by the Listing Broker in trust pending completion or other termination of this Agreement and to be credited towards the purchase price on completion. The initial deposit and the further deposit shall be placed in an interest bearing account or term deposit with all interest to be paid to the Purchaser as soon as possible after closing or other termination of this Agreement;
- (iii) The Purchaser agrees to pay the balance of the purchase price by certified cheque or bank draft from a Canadian chartered bank, subject to the adjustments provided for herein, on the Closing Date.

This Agreement shall be completed on the Closing Date at the offices of the Vendor's solicitor subject to real property registrations sent electronically effected in the Peel Registry Office.

- (b) If the transaction contemplated by this Agreement is not completed for any reason other than as a result of the default by the Purchaser, then all deposits together with all interest accrued thereon shall be returned to the Purchaser without deduction.

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3. The Vendor covenants and agrees to:

- (a) Provide to the Purchaser's solicitors, within two (2) Business Days of a written request therefor, written authorizations addressed to governmental authorities having jurisdiction over the Property or any part thereof, authorizing such departments to release to the Purchaser or its solicitors any information contained in their files.
- (b) During the Conditional Period, permit the purchaser to conduct inspections and tests of the Property (including environmental and engineering investigations) provided such inspections and tests shall not interfere with the rights of the Tenants and] that the Purchaser shall repair any damage resulting from the inspection and tests.
- (c) Provide to the Purchaser, within five (5) Business Days following acceptance of this offer, either through provision of hard copies or by providing access to a virtual data room, the following:
 - (i) survey of the Building and Lands prepared by a duly licensed Ontario Land Surveyor, if in the possession of the Vendor;
 - (ii)] a rent roll current as of June, 2012;
 - (iii) a list of all the goods and equipment and chattels owned by the Vendor and comprising part of and/or used in the operation or management of the Property (the "Chattels").
 - (iv) all offers to lease, leases, assignments and renewals thereof (the "Lease Agreements") relating to the Property;
 - (v) management, maintenance, service and repair contracts, equipment rental contracts or leases, building and equipment warranties effecting the Property (the "Building Contracts and Warranties");
 - (vi) all architectural, mechanical, electrical, site and structural plans and specifications for the Building (the "Plans and Specifications"), if any, which are in the possession or control of the Vendor;
 - (vii) all environmental assessment reports and building inspection reports relating to the Property (the "Inspection Reports") which are in the possession or control of the Vendor; and
 - (viii) true copies of all realty tax bills for 2011 and interim statements for 2012, statement of operating expenses for 2011 and any operating expense estimates for 2012 and a breakdown of these expenses for each Tenant for these periods (if applicable)];

4. (a) The Purchaser's obligations to complete the agreement to be constituted

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by the acceptance of this offer shall be conditional until 5:00 o'clock p.m. on the 20th Business Day following the final acceptance of this offer (the "Conditional Period") upon each of the following conditions:

- (i) the Purchaser approving the Lease Agreements pertaining to the Property and being satisfied, in its sole discretion, as to the status of the tenancies;
 - (ii) the Purchaser being satisfied, in its sole discretion, with the Permitted Encumbrances; and
 - (iii) the Purchaser being satisfied, in its sole discretion, with the condition of the Property and the Inspection Reports; and
 - (iv) the Purchaser, in its sole discretion, securing satisfactory financing; and
- (b) If the conditions set out above are not fulfilled within the Conditional Period and the Purchaser fails to notify the Vendor or Vendor's solicitor that such conditions have been waived within the Conditional Period, then this Agreement shall be null and void notwithstanding any intermediate acts or negotiations, and in such event, the Purchaser's deposit, together with any interest accrued thereon, shall be forthwith returned to the Purchaser without deduction and neither party shall be liable to the other for any loss, costs or damages.

5. The Vendor represents, covenants, and warrants to the Purchaser that:

- (a) the Vendor will not rent or lease any premises, nor will it amend or terminate any current lease, nor will it lower its standards for acceptance of tenants, nor will it enter into any servicing agreements with respect to the Property after the date of acceptance herein except with the consent of the Purchaser, such consent not to be unreasonably withheld;
- (b) the Vendor will operate and maintain the Property until the Closing Date in a manner equivalent to the Vendor's prior management;
- (c) the Vendor will, on the Closing Date, arrange for final meter readings to be performed for all utilities that are not paid by the Tenants;
- (d) the Vendor is not a non-resident of Canada within the meaning of The Income Tax Act of Canada;
- (e) all of the representations, warranties and covenants of the Vendor contained in this section shall be true on and as of the Closing Date with the same effect as if made on and as of the Closing Date;

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- (f) the Vendor has provided to the Tenants statements for year end adjustments for additional rent for all prior periods ending on or before December 31, 2011, and has settled with the Tenants any claims for overpayment during such periods. The Vendor shall be responsible to reimburse any Tenant for any overpayments of basic rent or additional rent for any period ending on or before December 31, 2011;
 - (g) the Vendor has no knowledge and has received no notice of the following:
 - (i) any claim of or proceedings commenced with respect to the expropriation of the whole or any part of the Lands;
 - (ii) any pending or threatened litigation as a result of any violation of any existing by-laws, regulations or statutes relating to the use of the Lands;
 - (h) the Vendor shall pay and discharge any financial encumbrance, which is not to be specifically assumed by the Purchaser pursuant to this Agreement;
6. The Purchaser's obligations to complete this agreement shall be conditional upon all of the representations, covenants and warranties of the Vendor contained in this Agreement being true, complete and fulfilled as at the Closing Date.
7. The Purchaser acknowledges that there are no representations, warranties, collateral agreements or conditions affecting this Agreement or the property other than as expressed herein in writing. The representations, warranties and covenants contained in this Agreement and made by the Vendor shall survive the closing of the transaction contemplated herein and shall remain in full force and effect.
8. The Vendor covenants and agrees to deliver to the Purchaser on the Closing Date in a form satisfactory to the Purchaser's solicitor, acting reasonably:
- (a) A sale approval and vesting order in a form acceptable to the Purchaser acting reasonably;
 - (b) Assignments in favour of the Purchaser of such warranties, guarantees, and indemnities relating to the Property as may be in existence at the Closing Date, provided that same are assignable;
 - (c) Statement of Adjustments in duplicate, with the draft Statement of Adjustments to be provided at least 3 Business Days in advance of the Closing Date;
 - (d) Originals and executed copies of all Lease Agreements in the Vendor's possession and all tenant files in the possession or control of the Vendor;


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- (e) A general assignment of the Lease Agreements together with directions executed by the Vendor addressed to the occupants directing all future rental payments to be paid to the Purchaser or as it may direct;
 - (f) Tenant estoppel certificates executed by each of the Tenants wherein each Tenant acknowledges and confirms the status of such Tenant's lease, rental payments made, deposits and the lease documentation, in a form acceptable to the Purchaser, acting reasonably;
 - (g) Equipment and building warranties, building plans and specifications, operating manuals and any service and maintenance contracts affecting the Property which the Purchaser has agreed in writing to assume and which are in the possession of the Vendor;
 - (h) A complete set of keys and any codes, locks and related information for the Property;
 - (i) Copies of all rent rolls, ledgers and any documents showing the amount of base rents, separate charges, facilities and services included in the base rent or covered by separate charges and the dates and amounts of all increases; and
 - (j) An undertaking to readjust with respect to the Statement of Adjustments, which undertaking shall contain the acknowledgement and undertaking of the Vendor that it is responsible for any adjustments for overpayment of basic rent or additional rent paid by Tenants for any period prior to the Closing Date.
9. All documentation to be produced by the Vendor on closing shall be prepared by and at the expense of the Vendor unless otherwise provided. Any tender of documentation or money may be made upon the parties hereto or upon the solicitors acting for them, respectively, and money may be tendered by certified cheque or bank draft from a Canadian chartered bank acceptable to the Vendor, acting reasonably.
10. The Vendor and the Purchaser shall adjust the Purchase Price, as of the Closing Date, in respect of the following items:
- (a) Realty taxes and local improvements rates and charges, if any;
 - (b) Any amounts paid under the contracts which the Purchaser has agreed in writing to assume on closing;
 - (c) All current rents;

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- (d) Security deposits and pre-paid rents paid to, and held by, the Vendor pursuant to the Lease Agreements; and
- (e) All other items reasonably capable of and, subject to the provisions of this agreement, properly and usually the subject of adjustment in connection with the ownership, operating and management of the Property of whatsoever nature as mutually agreed to by the parties acting reasonably (collectively the "adjustments") with the Closing Date itself to be appointed to the Purchaser. The Vendor and the Purchaser acknowledge and agree that the Purchaser shall arrange its own insurance coverage to be effective as of Closing.

Rental arrears recoveries which have accrued prior to and including the Closing Date shall remain the property of the Vendor. The Purchaser shall not be required to collect any arrears of rent, additional rent, or the charges due from the Tenant on behalf of the Vendor, but the Vendor may do so after closing. Arrears of rent shall not be adjusted, but if the Purchaser receives any payments on account of arrears, it shall remit the same to the Vendor.

11. Each of the Vendor and the Purchaser shall retain a lawyer to complete this Agreement of Purchase and Sale and where the transaction will be completed by electronic registration pursuant to Part III of the Land Registration Reform Act, R.S.O. 1990, Chapter L4 and the Electronic Registration Act, S.O. 1991, Chapter 44, and any amendments thereto, the Vendor and the Purchaser acknowledge and agree that the exchange of closing funds, non-registerable documents and other items (the "Requisite Deliveries") and the release thereof to the Vendor and the Purchaser will (a) not occur at the same time as the registration of the Transfer/Deed (and any other documents intended to be registered in connection with the completion of this transaction) and (b) shall be subject to conditions whereby the lawyers receiving any of the Requisite Deliveries will be required to hold same in trust and not release same except in accordance with the terms of a Document Registration Agreement between the said lawyers. The Vendor and the Purchaser irrevocably instruct the said lawyers to be bound by the Document Registration Agreement which is recommended from time to time by the Law Society of Upper Canada. Unless otherwise agreed to by the lawyers, such exchange of the Requisite Deliveries will occur in the applicable Land Titles Office or such other location agreeable to both lawyers. This Agreement shall be completed by no later than 5:00 p.m. on the Closing Date.
12. Title to the Lands shall be good and free on the Closing Date from encumbrances, registered restrictions, charges, and liens except for Permitted Encumbrances. In the event that a discharge of any mortgage or charge held by a chartered bank, trust company, credit union or insurance company which is not to be assumed by the Purchaser on completion is not available in registerable form on Closing, the Purchaser agrees to accept the Vendor's solicitors' personal undertaking to obtain a discharge of such charge/mortgage in registerable form and to register same on



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title within ninety (90) days after completion, provided that on or before completion the Vendor shall provide to the Purchaser a mortgage statement prepared by the mortgagee addressed to the Purchaser and setting out the balance required to obtain the discharge, together with a direction executed by the Vendor directing payment to the mortgagee of the amount required to obtain the discharge out of the balance due on closing. The Purchaser is not allowed to call for production of any title deed not in the Vendor's possession or under its control. The Purchaser shall be allowed until the expiry of the Conditional Period to satisfy itself that there are no municipal work orders or deficiency notices outstanding against the Property and that its present use, multi-unit industrial may be lawfully continued, that the Building may be insured against fire, and to examine the title of the Vendor to the Property at the Purchaser's own expense. If within the aforesaid period any valid objections to title are made in writing to the Vendor which the Vendor shall be unable or unwilling to remove and which the Purchaser will not waive, this Agreement shall, notwithstanding any intermediate acts or negotiations in respect of any such objections, be null and void and neither party shall be liable for any costs or damages and the deposit together with the accrued interest thereon shall be paid and returned forthwith to the Purchaser without deduction and neither party shall have any further rights or obligations hereunder.

13. The Property shall be and remain at the risk of the Vendor until the Closing Date. Pending completion of this Agreement, the Vendor shall hold all fire insurance policies and the proceeds thereof in trust for the parties hereto as their respective interests may appear. In the event of damage to the Property, or any part thereof, in excess of One Hundred Thousand (\$100,000.00) prior to the Closing Date, then the following provisions shall apply:
- (i) The Purchaser may elect within ten (10) days after the receipt from the Vendor of notice of the happening of such damage, but not thereafter, to terminate this agreement, or
 - (ii) The Purchaser may elect to take the proceeds of the insurance (if such are available to it) and complete this agreement.

If the damage to the Property is less than One Hundred Thousand (\$100,000.00), the Vendor shall repair the damage to the Property and if the Vendor is unable to complete such repairs prior to the Closing Date, the amount required to pay for such repairs shall be held back in trust by the solicitor for the Vendor from the funds payable on closing and shall not be released until such repairs are completed and paid for by the Vendor.

14. All notices and communications which may be or are required to be given by any party to the other party, shall be in writing and (i) delivered personally, (ii) sent by prepaid courier service, (iii) sent by facsimile or other similar means of electronic communication or (iv) sent by registered mail, charges prepaid, to the parties at their following respective addresses:

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(a) If to the Vendor: _____

 Attention: _____

Facsimile: _____

E-mail: _____

with a copy to Vendor's Counsel

Cassels Brock & Blackwell
 40 King St. West, Suite 2100
 Toronto, Ontario
 M5H 3C2

Attention: Paul Muchnik

Facsimile: (416) 642-7115

E-mail: pmuchnik@casselsbrock.com

If to the Purchaser:

Outset Media Corporation

#106-4226 Commerce Circle

Victoria BC, V8Z 6N6

Attention: Dave Manga

Facsimile: 250-592-7522

E-mail: dave@outsetmedia.com

with a copy to Purchaser's Counsel

Attention:

Facsimile:

E-mail:



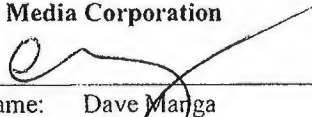
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- (b) Any such notice or other communication shall be deemed to have been given and received on the day on which it was delivered or transmitted (or, if such day is not a Business Day, on the next following Business Day) or, if mailed, on the third Business Day following the date of mailing; provided, however, that if at the time of mailing or within three Business Days thereafter there is or occurs a labour dispute or other event that might reasonably be expected to disrupt the delivery of documents by mail, any notice or other communication hereunder shall be delivered or transmitted by means of recorded electronic communication as aforesaid.
 - (c) Any party may at any time change its address for service from time to time by giving notice to the other parties in accordance with this clause 14.
- 15. This Agreement is subject to the express condition that it shall be effective to create an interest in the Property only if the land division control provisions of the Planning Act, as amended are complied with.
- 16. Time shall in all respects be of the essence of this agreement, provided that the time for doing or completing of any matter provided for herein may be extended or abridged by an agreement in writing signed by the Vendor and Purchaser or by their respective solicitors who are hereby expressly appointed in this regard. If any relevant dates set out in this Agreement for the performance of any act by the Vendor or the Purchaser falls upon a day which is not a Business Day, then in such case the date shall be automatically extended to the next Business Day.
- 17. This agreement shall be read with all changes of gender or number required by the context and shall enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.
- 18. This Agreement may be executed in any number of counterparts, and/or by facsimile or e-mail transmission of Adobe Acrobat files, each of which shall constitute an original and all of which, taken together, shall constitute one and the same instrument. Any party executing this Agreement by fax or Adobe Acrobat file, shall, immediately following the request by any other party, provide an originally executed counterpart of this Agreement provided, however, that any failure to so provide shall not constitute a breach of this Agreement.
- 19. The Purchaser shall be responsible for paying all transfer taxes applicable to this transaction, including, without limitation, land transfer tax. The Purchaser represents, warrants and agrees that on or before closing the Purchaser shall provide to the Vendor its H.S.T. registration number and/or that of any assignee. The Purchaser shall deliver to the Vendor on closing a written covenant that the Purchaser shall be liable, shall self assess and remit to the appropriate governmental authority all H.S.T. which may be payable in connection with the transfer of the property made pursuant to this Agreement and that the Purchaser shall indemnify the Vendor in respect thereof.

20. This transaction shall be conditional upon the Vendor receiving approval from the Ontario Court of Justice pursuant to the Canadian Companies Creditors Arrangement Act.
21. It is agreed that the Purchaser shall have the right at any time up to five (5) days before the Closing Date to assign this Agreement to a corporation or corporations, and/or person or persons, and when such assignment shall have been made and written notice thereof shall have been given to the Vendor or its Solicitors, the assignee shall assume all of the Purchaser's rights and obligations hereunder to the same extent and in the same manner as if such assignee had executed this Agreement as Purchaser. However the by virtue of such assignment the existing Purchaser is not released of their obligation.
22. The Vendor agrees that this offer shall be irrevocable by it until 4:00 p.m. on the 25th day of July, 2012, after which time, if not accepted, this offer shall be null and void.

IN WITNESS WHEREOF the Purchaser has executed this Agreement this day of July, 2012.

Outset Media Corporation

Per: 

Name: Dave Marga

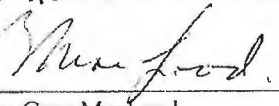
Position: President

I have authority to bind the Corporation

The Vendor accepts the offer.

IN WITNESS WHEREOF the Vendor has executed this Agreement this 23rd day of July, 2012.

*G.S. MacLEOD & ASSOCIATES INC.,
CHIEF RESTRUCTURING OFFICER*

Per: 

Name: Greg MacLeod

Position: A. S. O.

I have authority to bind the Corporation



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SCHEDULE "A"

PERMITTED ENCUMBRANCES

"Permitted Encumbrances" means:

1. the reservations, limitations, exceptions, provisos and conditions, if any, expressed in any original grants from the Crown including, without limitation, the reservation of any mines and minerals in the Crown or in any other person;
2. encumbrances respecting minor encroachments by any Property over neighbouring lands and/or permitted under agreements with the owners of such other lands and minor encroachments over any Property by improvements of abutting land owners;
3. title defects or irregularities which are of a minor nature and in the aggregate will not materially impair the use or marketability of the Property;
4. all easements, servitudes and rights-of-way which are registered against the Property;
5. any subdivision, site plan, development or other similar regional or municipal agreements and registered restrictions, provided the same have been complied with;
6.] the Leases and any charge of the Tenant's or a subtenant's interest therein;


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This is Exhibit "H" referred to in the Affidavit of Greg MacLeod
sworn August ²⁰....., 2012



Commissioner for Taking Affidavits (or as may be)

Signed JPS.

SKYLINE REAL ESTATE ACQUISITIONS (II) INC.

PURCHASE FROM

HARMONY TOWN HOMES LIMITED PARTNERSHIP
BY ITS GENERAL PARTNER, F.L. SECURITIES INC.

AGREEMENT OF PURCHASE AND SALE

Property:

65 Fort Street, Tilbury, Ontario

AGREEMENT OF PURCHASE AND SALE

BETWEEN

SKYLINE REAL ESTATE ACQUISITIONS INC.
(hereinafter called the "Purchaser")

OF THE FIRST PART

- and -

HARMONY TOWNHOMES LIMITED PARTNERSHIP
BY ITS GENERAL PARTNER, F.L. SECURITIES INC.

(hereinafter called the "Vendor")

OF THE SECOND PART

WHEREAS the Vendor is the sole registered and beneficial owner of the Purchased Assets;

AND WHEREAS subject to Court Approval of this Agreement and the transactions contemplated hereby, the Vendor has agreed to sell the Purchased Assets to the Purchaser and the Purchaser has agreed to purchase the Purchased Assets from the Vendor on the terms and conditions set forth in this Agreement;

FOR VALUE RECEIVED, the parties covenant and agree as follows:

ARTICLE 1 DEFINITIONS AND SCHEDULES

1.1 In this Agreement, the following terms will have the following meanings:

- (a) **"Agreement"** means the agreement of purchase and sale to be constituted by acceptance of the offer herein.
- (b) **"Applicable Laws"** means all laws, by-laws, rules, regulations, orders, judgments, decrees, decisions or other requirements having the force of law in Ontario.
- (c) **"Assignment of Assumed Contracts"** has the meaning ascribed thereto in Section 10.1(l).
- (d) **"Assignment of Leases"** has the meaning ascribed thereto in Section 10.1(b).
- (e) **"Assumed Contracts"** means all Contracts that the Purchaser agrees to assume on Closing, if any.
- (f) **"Buildings"** means the three four-storey, multi-unit residential buildings located on the Lands bearing municipal address 65 Fort Street, Tilbury, Ontario, consisting of 50 residential townhouses with no commercial units or uses, together with those fixtures and improvements located therein, thereon or elsewhere on the Lands which are owned by the Vendor and used in connection therewith.
- (g) **"Business Day"** means any day other than a Saturday, Sunday or statutory holiday in Ontario.
- (h) **"Chattels"** means the equipment, inventory, appliances, supplies, machinery and other chattels located in the Buildings or on the Lands owned by the Vendor and used in connection with the operation of the Buildings and the Lands, all to be detailed in the Vendor's Deliveries.
- (i) **"Claims"** means all past, present and future claims, suits, proceedings, liabilities, obligations, losses, damages, penalties, judgments, costs, expenses, fines, disbursements, legal fees on a full indemnity basis and other professional fees and disbursements, interest, demands and actions of any nature or any kind whatsoever.
- (j) **"Closing Date"** means October 1,, 2012 .
- (k) **"Closing"** means completion of the Transaction.
- (l) **"Condition Date"** means that date which is 35 days after acceptance of this offer.

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- (m) **"Contracts"** means all service and other agreements, other than the Leases, relating to the Purchased Assets.
- (n) **"Deposit"** means the First Deposit and, if paid, the Second Deposit.
- (o) **"Existing Survey"** means all existing surveys and site plans of the Lands and Buildings in the Vendor's control or possession.
- (p) **"First Deposit"** has the meaning ascribed thereto in Section 2.1(a).
- (q) **"Governmental Authority"** means any regulatory authority, government (including the Municipality) or quasi-governmental department, agency, utility, commission, board, tribunal or court having jurisdiction on behalf of any nation, province or state or other subdivision thereof or any municipality, district or other subdivision thereof having jurisdiction over the Purchased Assets.
- (r) **"Hazardous Substances"** means any pollutants, dangerous substances, liquid waste, industrial waste, hauled liquid waste, toxic substances, hazardous waste, hazardous materials, hazardous substances or contaminants pursuant to Applicable Laws.
- (s) **"Landlord"** has the meaning ascribed thereto in Section 1.1(u).
- (t) **"Lands"** means the lands municipally and legally described in Schedule "A" annexed hereto.
- (u) **"Leases"** means the leases, offers to lease and rental agreements, and any extensions thereof and/or amendments thereto, together with all indemnifications/guarantees thereof, in respect of the premises at the Buildings existing as of the date hereof and at Closing between the landlord described therein or its predecessor or successor (the "Landlord") and the tenants of such premises (the "Tenants"), as described in the Rent Rolls to be delivered by the Vendor pursuant hereto.
- (v) **"Municipality"** means the City of Tilbury.
- (w) **"Permitted Encumbrances"** means any encumbrances/registrations listed on Schedule "D".
- (x) **"Person"** includes an individual, a corporation, a partnership, a trust, an unincorporated organization, the government of a country or any political subdivision thereof, or any agency or department of any such government, and the executors, administrators or other legal representatives of an individual.
- (y) **"Purchased Assets"** means, collectively:
 - (i) the Lands;
 - (ii) the Buildings;
 - (iii) the Chattels;
 - (iv) the Assumed Contracts; and
 - (v) the Warranties
 - (vi) and all other rights and all other property, assets, rights, interests, entitlements, benefits and privileges of the Vendor of every nature and kind whatsoever related to the foregoing owned by the Vendor or used by the Vendor in connection with the ownership, maintenance, repair, leasing, operation, cleaning, security, fire protection, or servicing of any part or all of the Lands and Buildings.
- (z) **"Purchase Price"** has the meaning ascribed thereto in Section 2.1.
- (aa) **"Purchaser's Architect"** means an architect, engineer or other qualified expert appointed by the Purchaser who is at arm's length to the Purchaser.
- (bb) **"Purchaser's Solicitors"** means Christopher P. Moes, Barrister & Solicitor, 70 Fountain Street East, Guelph, Ontario, N1H 3N6; Phone (519) 826-0439; Fax: (519) 836-2320; email: cmoes@skylineonline.ca and/or such firm or firms of solicitors or agents as are retained by the Purchaser from time to time and notice of which is provided to the Vendor.
- (cc) **"Realty Taxes"** means all realty taxes and like taxes and charges levied against the Lands or any part thereof by the Municipality, including municipal and education levies.

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development or redevelopment charges, local improvement charges, business improvement area charges, supplementary taxes, etc

- (dd) **"Release"** means, in addition to the meaning given to it under any Applicable Laws, any release, spill, leak, pumping, pouring, emission, emptying, discharge, injection, escape, leaching, disposal, dumping, deposit, spraying, burial, abandonment, incineration, seepage or placement
 - (ee) **"Rent-Paying Governmental Authority"** has the meaning ascribed thereto in Section 4.4.
 - (ff) **"Rent Rolls"** means the rent rolls for the Buildings outlining (i) the units rented, including suite numbers, Tenants' names in full, and apartment types, (ii) rent and other fees payable by Tenants, (iii) Tenant move-in and move-out dates, (iv) prepaid rents and security deposits (including key/card deposits), (v) vacancies, and (vi) parking, including which parking spaces are assigned to which Tenants and the monthly fees therefor.
 - (gg) **"Requisition Satisfaction Date"** has the meaning set out in Section 7.1.
 - (hh) **"Requisition Time"** has the meaning set out in Section 7.1.
 - (ii) **"Retained Employees"** has the meaning set out in Section 8.6.
 - (jj) **"Second Deposit"** has the meaning ascribed thereto in Section 2.1(b).
 - (kk) **"Tenant Acknowledgements"** Intentionally Deleted.
 - (ll) **"Tenants"** has the meaning ascribed thereto in Section 1.1(u).
 - (mm) **"Transaction"** means the transaction of purchase and sale of the Purchased Assets provided for in this Agreement.
 - (nn) **"Vendor's Deliveries"** means the information and documentation set out in Schedule "C", if in the Vendor's possession.
 - (oo) **"Vendor's Solicitors"** means Cassels Brock & Blackwell LLP, attention: Paul Muchnik and/or such firm or firms of solicitors or agents as are retained by the Vendor from time to time and notice of which is provided to the Purchaser.
 - (pp) **"Warranties"** means all existing warranties, guarantees and indemnities and similar rights, if any, which the Vendor may have relating to the Lands, Buildings and Chattels.
 - (qq) **"Work Order"** means any infraction, order, notice to comply or remedy, work order, directive or deficiency notice issued by a Governmental Authority
- 1.2 The following Schedules form part of this Agreement:
- (a) Schedule "A" -- Legal Description.
 - (b) Schedule "B" -- Form of Authorization.
 - (c) Schedule "C" -- Vendor's Deliveries.
 - (d) Schedule "D" -- Permitted Encumbrances.

ARTICLE 2 PURCHASE PRICE AND TERMS

- 2.1 The Purchaser hereby agrees to purchase from the Vendor and the Vendor hereby agrees to sell to the Purchaser the Purchased Assets at a purchase price (the **"Purchase Price"**) ~~of TWO HUNDRED THIRTY FIVE THOUSAND DOLLARS (\$235,000.00)~~ payable as follows:
- (a) **TWENTY FIVE THOUSAND DOLLARS (\$25,000.00)** as a deposit (the **"First Deposit"**) to be paid by wire/electronic transfer to the Vendor's Solicitors' trust account on or before the third Business Day following acceptance hereof, to be held in trust by the Vendor's Solicitors for the benefit of the Purchaser pending completion of or other termination of this Agreement and to be credited on account of the Purchase Price on Closing (and the Vendor hereby irrevocably directs the Vendor's Solicitors accordingly); and
 - (b) **ONE THOUSAND DOLLARS (\$100,000)** as a further deposit (the **"Second Deposit"**) on or before the third Business Day following waiver by the Purchaser of those conditions described in Section 4.1 that run to the Condition Date (provided that the Purchaser has not terminated this Agreement in accordance with Section 4.1), by wire/electronic transfer to the Vendor's Solicitors' trust account, to be held in trust by the Vendor's Solicitors for

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the benefit of the Purchaser pending completion of or other termination of this Agreement and to be credited on account of the Purchase Price on Closing (and the Vendor hereby irrevocably directs the Vendor's Solicitors accordingly); and

- (c) the balance by wire/electronic transfer to the Vendor's Solicitors' trust account on Closing, subject to the adjustments specified herein.
- 2.2 The Vendor hereby irrevocably instructs the Vendor's Solicitors to transfer the Deposit upon receipt into an interest-bearing account or instrument. All accrued interest thereon will be paid to the Purchaser following Closing.
- 2.3 If the Transaction is not completed for any reason other than the Purchaser's default, then the Deposit, together with all interest accrued thereon, will be returned forthwith to the Purchaser, and the Vendor hereby irrevocably instructs the Vendor's Solicitors accordingly. If the Transaction is not completed as a result of the Purchaser's default, then the Deposit and all accrued interest thereon will be forfeited to the Vendor as liquidated damages, and the Purchaser hereby irrevocably instructs the Vendor's Solicitors accordingly.
- 2.4 The Purchaser and the Vendor agree that the Purchase Price will be allocated as follows:
 - Lands: 12% of the Purchase Price
 - Buildings: 88% of the Purchase Price.

ARTICLE 3 CLOSING

- 3.1 Closing will occur on the Closing Date.

ARTICLE 4 CONDITIONS

- 4.1 The obligation of the Purchaser to complete the Transaction is subject to the following conditions (it being understood that each of these conditions is for the benefit of the Purchaser and any of them may be waived in whole or in part by the Purchaser by notice to the Vendor on or before the applicable date for the satisfaction of such condition):
 - (a) on or before 6:00 p.m. on the Condition Date, the Purchaser has satisfied itself in its sole, absolute, arbitrary, unfettered and unreviewable discretion with respect to the Vendor's Deliveries, the Permitted Encumbrances and the physical, environmental, contractual and financial aspects of the Purchased Assets;
 - (b) on or before 6:00 p.m. on the Condition Date, the Purchaser has arranged financing on terms satisfactory to it in its sole, absolute, arbitrary, unfettered and unreviewable discretion;
 - (c) Intentionally Deleted; and
 - (d) on the Closing Date, all representations and warranties of the Vendor in this Agreement are materially true and complete.
- 4.2 If each of the conditions in Section 4.1 is not satisfied or waived as therein provided on or before the applicable date referred to therein, this Agreement will, at the option of the Purchaser, be terminated, null and void and of no further force or effect whatsoever.
- 4.3 At least ten days prior to the Closing Date, the Vendor will notify any Governmental Authority that pays sums on account of rent, in whole or in part, to the Vendor on behalf of a Tenant, or on its own behalf, or otherwise (any of the foregoing being referred to as a "Rent-Paying Governmental Authority"), of the pending sale of the Lands and that all payments on account of rent due from and after Closing are to be made payable to Skyline Management Incorporated or as the Purchaser may otherwise direct. The Vendor will copy the Purchaser on all correspondence sent to, or received from, any Rent-Paying Governmental Authority. The Vendor will ensure that any sums received by it from a Rent-Paying Governmental Authority with respect to the period from and after Closing will be forwarded to the Purchaser forthwith or, at the Purchaser's direction, the Vendor will arrange for the deposit of same into its own account and will then forthwith issue a cheque to Skyline Management Incorporated for said sums. The foregoing obligation survives Closing.
- 4.4 Intentionally Deleted.

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ARTICLE 5 DELIVERY OF DOCUMENTS

- 5.1 The Vendor will deliver the Vendor's Deliveries to the Purchaser on or before the fifth Business Day following acceptance hereof. At the request of the Purchaser, the Vendor will deliver to the Purchaser such other information and documentation in the possession or control of the Vendor as the Purchaser reasonably requires. During the period up to and including the Condition Date, the Vendor will deliver or disclose to the Purchaser any information and/or documentation in respect of the Purchased Assets, which, to the best of the Vendor's knowledge, was not included in the Vendor's Deliveries which might have a material effect on the value, income or operation of the Lands and Buildings or which might have an effect on the Purchaser's due diligence deliberations.
- 5.2 The Vendor will deliver to the Purchaser no later than five (5) Business Days prior to Closing, Rent Rolls for the month in which Closing takes place as well as Rent Rolls for that month one year earlier, failing which Closing will, at the Purchaser's option, be postponed by up to the number of days that the Vendor is late in delivering same.
- 5.3 The Vendor will on one (1) occasion prior to the Closing Date, deliver to the Purchaser up-to-date Rent Rolls, as well as Rent Rolls for that month one year earlier, within five (5) Business Days of the Purchaser's request for same.
- 5.4 The Vendor or staff will co-operate and make itself available, in a timely manner, with the Purchaser in connection with all phases of the Purchaser's due diligence investigations, including signing whatever documents and authorizations the Purchaser may reasonably require in this regard. The Vendor will provide the Purchaser and its consultants with access upon reasonable notice, to the Lands and Buildings, subject to the rights of the tenants.
- 5.5 The Purchaser may communicate with parties to the Contracts. The Purchaser may communicate with the Vendor's property manager and its staff.

ARTICLE 6 COVENANTS, REPRESENTATIONS AND WARRANTIES

- 6.1 The Vendor hereby represents and warrants to the Purchaser, which representations and warranties will, unless otherwise provided, survive and not merge on Closing, and acknowledges that the Purchaser has relied on and continues to rely on such representations and warranties in entering into and completing this Agreement, as follows:
- (a) the Vendor has not done any act to encumber the Purchased Assets or to sell or dispose of any of the same;
 - (b) the Vendor is not, and on Closing will not be, a non-resident of Canada within the meaning of the *Income Tax Act* (Canada);
 - (c) upon granting of the Approval and Vesting Order, the Vendor has the right to enter into this Agreement and complete the Transaction; and
 - (d) to the best of the Vendor's knowledge, no actions or proceedings are pending and none have been threatened to restrain or prohibit the entering into of this Agreement or the completion of the Transaction contemplated by this Agreement
- 6.2 The Purchaser will be permitted to assume all of the phone number(s), fax number(s) and internet address(es) currently connected to the Buildings and used by the Vendor or agents or affiliates with respect to the Buildings that the Purchaser elects to assume, and the Vendor will co-operate in a timely manner to ensure assignment/transfer of same to the Purchaser by Closing, including the timely execution of whatever documentation may be required by the services providers and/or the Purchaser in this regard.
- 6.3 The Purchaser will advise the Vendor on or before the Requisition Time which Contracts it wishes to assume on Closing, if any. All other Contracts will be terminated by the Vendor on or before Closing, at its cost, and the Vendor will provide the Purchaser on or before Closing with proof of same (e.g. copies of termination letters, etc.).
- 6.4 During the period prior to Closing, the Vendor will, and agrees to direct its property manager to, co-operate and work with the Purchaser to ensure a timely, efficient, effective and accurate transition of all aspects of management of the Purchased Assets. In this connection, the Vendor will, or will direct its property manager as appropriate, to disclose to the Purchaser on Closing all passwords to on-site equipment included in the Purchased Assets (such as passwords to answering machines, computers, etc.) and to arrange an electronic download of all Tenant and property information to the Purchaser or its property manager.

ARTICLE 7 TITLE

- 7.1 Title to the Lands will be examined by the Purchaser at the Purchaser's expense. The Purchaser will be allowed until 11:00 p.m. on the Condition Date (the "**Requisition Time**") to investigate title to the Lands, and to conduct its off-title searches with respect thereto. If by the Requisition Time the Purchaser furnishes the Vendor or the Vendor's Solicitors (i) with any objections to title to the Lands other than the Permitted Encumbrances, or (ii) with any objections in connection with its off-title searches (collectively, the "**Requisitions**"), which Requisitions the Vendor or the Vendor's Solicitors is/are unable to remove, remedy or satisfy to the Purchaser's satisfaction within ten days of receiving such Requisitions (the "**Requisition Satisfaction Date**"), and which the Purchaser will not waive, this Agreement, notwithstanding any intermediate acts or negotiations with respect to such objections, will be null and void and the Deposit will be returned with accrued interest. Save as to any objections so made by the Requisition Time, and save as to any objection arising after the Requisition Time, and except for any objections going to the root of title, the Purchaser will be deemed to have accepted the Vendor's title to the Lands.

ARTICLE 8 ADJUSTMENTS

- 8.1 All adjustments established by the usual practice in the Province of Ontario for the purchase and sale of multi-unit residential properties will be apportioned and allowed to the Closing Date (the day itself to be apportioned to the Purchaser). The Vendor acknowledges that the Purchaser will be arranging its own insurance coverage to be effective on completion and no adjustment will be made in this regard. Rent for the month in which Closing occurs will be adjusted as if paid in full. The Vendor and the Purchaser agree that no adjustment will be made for rental arrears (and last month's rent deposits will not be applied by the Vendor to rent arrears), provided that to the extent the Purchaser, after Closing, receives any amount from a Tenant on account of receivables in favour of the Vendor at a time when no amounts are owing by that Tenant to the Purchaser, the Purchaser will pay such amount to the Vendor. If Closing occurs on the first day of a calendar month, the Purchaser will be responsible to collect rent for that month and there will be no adjustment for rent.
- 8.2 The Purchaser will not be required to offer employment to any employees of the Vendor or any third party, or any of their respective affiliates (individually and collectively, the "**Employer**"), including any on-site building managers or superintendents, or to assume any liability with respect to such employees. The Purchaser will be given opportunities to interview the on-site building manager(s)/superintendent(s) and any other individuals who provide property management or like services to the Lands (the "**Employees**"). The Vendor will ensure that no on-site building manager or superintendent is removed or replaced prior to Closing without the prior written consent of the Purchaser, which consent may not be unreasonably withheld, failing which the Purchaser may, at its option, postpone the Closing Date until such time as it is satisfied that suitable replacement(s) are in place. On or before the 7th Business Day prior to the Closing Date, the Purchaser will notify the Vendor which Employees, if any, it wishes to hire on Closing (the "**Retained Employees**"). The employment of all other Employees will be either retained or terminated by the Employer at its cost. If any on-site building manager or superintendent occupies a unit in the Buildings, the Vendor will deliver vacant possession of said unit on Closing unless said on-site building manager or superintendent is a Retained Employee or signs a Lease with respect thereto on or before Closing. Provided that Closing occurs and the Retained Employees agree, and subject to the provisions of the balance of this Section, the Purchaser will, effective as of Closing, hire, or cause its property manager to hire, the Retained Employees. Effective immediately before Closing, the Vendor will cause the Employer of the Retained Employees to terminate their employment and pay all sums and compensation payable as a result of such termination of employment, including but not limited to vacation pay, notice/termination pay and severance pay, to such Retained Employees, as required by Applicable Laws. **On or before Closing, the Vendor will provide the Purchaser with proof of such payments**, which proof will take the form of a letter from the Employer addressed to the Purchaser.

ARTICLE 9 VENDOR'S CLOSING DOCUMENTS

- 9.1 The Vendor agrees to execute or cause to be executed, where appropriate, and at its expense, and delivered, the following to the Purchaser, unless otherwise provided, on or before the Closing Date or such earlier date as specified below:
- (a) a registrable Vesting Order vesting title in the name of the Purchaser;
 - (b) a bill of sale;
 - (c) a statutory declaration from a senior officer of the Vendor stating that the Vendor is not a non-resident of Canada pursuant to Section 116 of the *Income Tax Act* (Canada);

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- (d) a statement of adjustments, a draft of which will be delivered at least three Business Days prior to Closing for the Purchaser's review and comment;
- (e) the original copies of the Leases and lease files, including all New Leases;
- (f) an assignment by the Vendor and assumption by the Purchaser of the Leases (the "Assignment of Leases");
- (g) a certificate from the Vendor confirming the accuracy of the Rent Rolls attached thereto, which Rent Rolls will be for the month in which Closing takes place and for the same month one year previously;
- (h) a direction by the Vendor to the Tenants directing future rent payments be made payable to Skyline Management Incorporated or as the Purchaser may otherwise direct;
- (i) a direction by the Vendor to each applicable Rent-Paying Governmental Authority directing future payments on account of rent be made payable to Skyline Management Incorporated or as the Purchaser may otherwise direct;
- (j) an assignment by the Vendor and assumption by the Purchaser of the Assumed Contracts (the "Assignment of Assumed Contracts") which will have attached to it a list of the Assumed Contracts including a list of all Assumed Contracts with Governmental Authorities;
- (k) any keys and post-dated or other cheques (endorsed without recourse) in the Vendor's possession or control;
- (l) an undertaking to pay all metered utilities to Closing and to readjust all items on or omitted from the statement of adjustments; and
- (m) a bring down certificate from the Vendor stating that the Vendor represents and warrants as to the representations and warranties set forth in Section 6.1.

Where applicable, drafts of the items referred to above will be prepared by the Purchaser's Solicitors and delivered to the Vendor's Solicitors. All documentation will be in form and substance acceptable to the Purchaser and the Vendor each acting reasonably and in good faith.

On Closing, the Vendor will provide all keys to the Buildings and leave them on-site at the management office for the Purchaser's immediate use, together with all applicable passwords. All tenant files, including Leases, correspondence, applications, guarantees, indemnifications, agreements with Rent-Paying Governmental Authorities, etc. and the original copies of all items furnished or required to be furnished to the Purchaser as provided herein will, including original copies of all Vendor's Deliveries, unless the Purchaser directs otherwise, be delivered to the Purchaser's head office in Guelph immediately after Closing.

ARTICLE 10 PURCHASER'S CLOSING DOCUMENTS

- 10.1 The Purchaser agrees to execute or cause to be executed, where appropriate and at its expense, and delivered, the following to the Vendor on or before the Closing Date:
- (a) an undertaking to readjust all items on or omitted from the statement of adjustments;
 - (b) the Assignment of Leases;
 - (c) the Assignment of Assumed Contracts; and
 - (d) a bring down certificate from the Purchaser stating that the Purchaser represents and warrants as to the representations and warranties set forth in Section 13.1; and
 - (e) all other documents which are required or desirable and which the Vendor has reasonably requested on or before the Closing Date to give effect to the Transaction.

ARTICLE 11 ASSIGNMENT

- 11.1 The Purchaser has the right to assign this Agreement to Skyline Real Estate Holdings Inc. (the "Assignee"). Upon assignment, the Assignee will be entitled to the benefits and be subject to the liabilities of the Purchaser under this Agreement and the Purchaser will cease to be entitled to such benefits and will cease to be subject to such liabilities.

**ARTICLE 12
LEASING AND CONTRACTS**

- 12.1 The Vendor will be entitled to enter into, renew or amend any Leases (each, a "New Lease") provided that (i) it acts reasonably and in the ordinary course of business when doing so, (ii) no New Lease will be for a term of more than one (1) year, and (iii) no New Lease will have concessions, rebates, allowances or free rent which would have effect from and after the Closing Date. The Vendor will forthwith furnish the Purchaser with particulars and copies of all New Leases as they are entered into.
- 12.2 If the conditions in favour of the Purchaser that are to be satisfied or waived by the Condition Date have in fact been satisfied or waived by the Purchaser, then the Vendor will not enter into any new Contracts following such satisfaction and/or waiver without the consent of the Purchaser, which consent may be arbitrarily or unreasonably withheld. **The Vendor will promptly deliver to the Purchaser copies of all Contracts that are entered into prior to said satisfaction and/or waiver.**

**ARTICLE 13
REPRESENTATIONS AND WARRANTIES OF THE PURCHASER**

- 13.1 The Purchaser represents and warrants to the Vendor as follows:
- (a) the Purchaser is duly incorporated and validly existing under the laws of its jurisdiction of incorporation;
 - (b) the Purchaser has the corporate power and capacity to enter into and to perform its obligations under this Agreement. This Agreement has been duly authorized, executed and delivered by the Purchaser and is a valid and binding obligation of the Purchaser, enforceable in accordance with its terms; and
 - (c) the Purchaser is not a non-Canadian within the meaning of Investment Canada Act (Canada).

**ARTICLE 14
ACKNOWLEDGEMENTS BY PURCHASER**

- 14.1 The Purchaser acknowledges that:
- (a) except as otherwise provided for in this Agreement, the Vendor is selling and the Purchaser is purchasing the Purchased Assets on an "as is, where is" basis subject to whatever defects, conditions, impediments, Hazardous Substances or deficiencies which may exist on the Closing Date, including, without limiting the generality of the foregoing, any latent or patent defects in the Purchased Assets;
 - (b) it has entered into this Agreement on the basis that the Vendor does not guarantee title to the Purchased Assets, that the Purchaser shall, by the Condition Date, have conducted such inspections of the condition of the Purchased Assets as it deems appropriate and shall have satisfied itself with regard to these matters;
 - (c) the description of the Purchased Assets contained in this Agreement is for the purposes of identification and no representation, warranty or condition has or will be given by the Vendor concerning the existence or accuracy of such descriptions unless otherwise provided herein;
 - (d) it will be making its own investigations and inspections of the Purchased Assets and all matters and things connected with or in any way related to the Purchased Assets, and that it will rely entirely upon such investigations and inspections;
 - (e) any information provided by the Vendor describing the Purchased Assets has been prepared solely for the convenience of prospective purchasers and the Vendor warrants that to its knowledge such information is complete, accurate and correct;
 - (f) the inclusion of any item in Schedule "C" shall not be a representation by the Vendor that such item exists;
 - (g) that it shall, at its own expense, examine title to the Lands and satisfy itself as to the state thereof, satisfy itself as to outstanding work orders affecting the Lands, satisfy itself as to the use of the Lands being in accordance with applicable zoning requirements and satisfy itself that the Buildings may be insured to the satisfaction of the Purchaser, all in accordance with the provisions of Article 7
 - (h) the Vendor has no obligations to and is not responsible for conducting or arranging any environmental studies or investigations in respect of the Purchased Assets;

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- (i) the Vendor has no obligation to and is not responsible for remedying any of the matters identified in any environmental report,
- (j) the Vendor has no obligation to and is not responsible for ensuring that the Purchased Assets comply with any environmental law,
- (k) except as expressly provided herein, there is no representation, warranty or condition, express or implied, statutory or otherwise, as to the Purchased Assets or the Debtor including title, outstanding liens or charges, assignability, amount owing, description, fitness for purpose, collectability, merchantability, quantity, condition, defect (patent or latent), value, quality thereof, any requirement for licences, permits, approvals, consents for ownership, occupation or use or in respect of any other matter or thing whatsoever; and
- (l) no adjustment shall be allowed to the Purchaser for changes to the Purchased Assets from the time of any inspection to the Closing.

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- 14.3 The Vendor shall not be required to furnish or produce any document or evidence of title with respect to the Purchased Assets, except those in its possession or control.

ARTICLE 15 GENERAL

- 15.1 This Agreement will be effective to create an interest in the Lands only if the subdivision control provisions of the Planning Act (Ontario) are complied with on or before completion. The Vendor hereby covenants to proceed diligently at its expense to obtain any necessary consent on or before the Closing Date.
- 15.2 The interest of the Vendor in the Lands and Buildings will be at the risk of the Vendor until Closing. If any loss or damage occurs before Closing to the Buildings, the Vendor will forthwith notify the Purchaser in writing of the loss or damage and the extent thereof, as well as details regarding insurance proceeds payable with respect thereto, if any. The parties will determine what steps to take in connection therewith, provided that if the parties are unable to agree within ten days of the occurrence of the damage, this Agreement will, at the Purchaser's option, be at an end and of no further force or effect and the parties will be released from all further obligations hereunder.
- 15.3 If the loss or damage occurs within the period of time that is 10 days prior to Closing, the Closing Date and any other applicable dates referred to herein will be postponed accordingly.
- 15.4 Time will in all respects be of the essence hereof provided that the time for doing or the completing of any matter provided for herein may be extended or abridged by an agreement in writing between the Vendor and the Purchaser or by their respective solicitors, who are hereby expressly appointed in this regard. The Vendor's Solicitors and the Purchaser's Solicitors are hereby authorized to settle and agree on, on behalf of the Vendor and the Purchaser respectively, the following dates: (i) the Condition Date, (ii) the Requisition Time, (iii) the Requisition Satisfaction Date, and (iv) the Closing Date. In the event that any date or expiration of time period provided for in this Agreement falls upon a day that is not a Business Day, such date or time period will be deemed extended to the following Business Day.
- 15.5 Any tender of documents or money hereunder may be made upon the Vendor or the Purchaser or their respective solicitors on the Closing Date. Money may be tendered by wire/internet transfer. Where not inappropriate or inapplicable, tender may be made via email with pdf attachments and/or facsimile delivery, with fully-inked originals of same to be delivered/exchanged on or before the fifth Business Day after Closing. If the Vendor, for whatever reason, is unable or unwilling to close and the parties have not agreed to waive tender, the Vendor agrees that tender by the Purchaser will have been met where all closing documents to be signed by the Purchaser are signed by it and delivered to the Vendor's Solicitors either by personal delivery (including courier), fax or by email with pdf attachments, and that it will be sufficient for the Purchaser to tender closing funds by having the Purchaser's Solicitors confirm in writing (including email) to the Vendor's Solicitors that the Purchaser is in funds and able to electronically forward same to the Vendor's Solicitors' trust account on the Closing Date; and that it will not be necessary for the Purchaser to actually attend at the relevant registry/land titles office with original documents and an original certified cheque/money order for the closing funds in order for tender to have been sufficiently and properly made by the Purchaser. If the Purchaser, for whatever reason, is unable or unwilling to close and the parties have not agreed to waive tender, the Purchaser agrees that tender by the Vendor will have been met where all closing documents to be signed by the Vendor are signed by it and delivered to the Purchaser's Solicitors, along with current payout or assumption statements for any mortgages on title being discharged or assumed, either by personal delivery (including courier), fax or by email with pdf attachments, and that it will not be necessary for the Vendor to actually attend at the relevant

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registry/land titles office with original documents in order for tender to have been sufficiently and properly made by the Vendor

- 15.6 Any notice, document, or communication ("**Notice**") required or permitted to be given will be given by delivery (including courier), facsimile transmission, electronic mail or other means of electronic communication to the recipient as follows:

to the Purchaser:

Skyline Real Estate Acquisitions (II) Inc.
70 Fountain Street East
Guelph, ON N1H 3N6

Attention: Mike Bonneveld, Director of Acquisitions

Fax No. (519) 836-2320
E-Mail: mbonneveld@skylineonline.ca

and to the Purchaser's Solicitor:

Christopher P. Moes
70 Fountain Street East
Guelph, ON N1H 3N6

Fax No.: (519) 836-2320
E-mail: cmoes@skylineonline.ca

to the Vendor:

**Harmony Townhomes Limited Partnership by its General Partner,
F.L. Securities Inc.**
c/o Greg MacLeod
Address 15 Allstate Parkway
Suite 600
Markham, ON L3R 5B4

Fax No.: 1-888-389-1136
E-mail: gmacleod@firstleaside.com

and to the Vendor's Solicitors.

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

Fax No.: (416) 642-7165
E-mail: pmuchnik@casselsbrock.com

or to such other address or facsimile number or electronic mail address as either party may in writing advise by notice given in accordance with this Section. Any Notice, if personally delivered, will be deemed to have been validly and effectively given and received on the date of such delivery and if sent by telecopier or other electronic communication with confirmation of transmission, will be deemed to have been validly and effectively given and received on the date of transmission if sent before 5:00 p.m. (Ontario time) on a Business Day, and if sent after 5:00 p.m. (Ontario time) on a Business Day or other than on a Business Day, then the Notice will be deemed to have been validly and effectively given on the Business Day next following the day it was sent. Any Notice delivered by the Purchaser to the Vendor's Solicitors or any agent/broker of the Vendor, will be deemed delivery of such Notice to the Vendor. If the Vendor consists of more than one Person, delivery of a Notice to any of such Persons will be deemed delivery of such Notice to all Persons comprising the Vendor.

- 15.7 This Agreement constitutes the entire agreement between the Purchaser and the Vendor with respect to the subject matter hereof. This Agreement will be read with all changes of gender or number required by the context, and will enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.
- 15.8 This Agreement will be governed by and construed in accordance with the laws of the Province of Ontario. All references to currency are to Canadian currency.
- 15.9 The Vendor will be responsible for any and all commissions/fees and applicable taxes payable in connection with the Transaction.

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- 15.10 The Vendor and the Purchaser covenant and agree to cause their respective solicitors to enter into a document registration agreement as approved by the Law Society of Upper Canada to govern the electronic submission of all documents to be registered.
- 15.11 This Agreement and any and all amendments thereto may be executed in counterparts and such counterparts will for all purposes constitute one agreement binding the parties. The Vendor and the Purchaser acknowledge and agree that this offer, acceptance of this offer or counter-offer, any amendments hereto/thereto, and any notices required to be given hereunder, may be communicated by facsimile transmission or email with pdf attachments, which will be equally binding and duly accepted as an original agreement. Acceptance will be deemed communicated at the time and on the date of faxing or email transmission. The Vendor and the Purchaser agree to execute two (2) copies of this Agreement on the same paper document and provide each other an original "inked" paper copy of this Agreement immediately following acceptance, so that each party will have a fully-inked original paper copy hereof for its file (and the same shall apply to any and all amendments to this Agreement). however failure to do so does not invalidate this Agreement or any amendments thereto.
- 15.12 This offer is irrevocable by the Purchaser until 5.00 p.m. (Guelph time) on the 22nd day of June, 2012, after which time if not accepted this offer will be null and void.
- 15.13 Each of the parties will from time to time hereafter and upon any reasonable request of the other, execute and deliver, make or cause to be made all such further acts, deeds, assurances and things as may be required or necessary to more effectually implement and carry out the Transaction and the true intent and meaning of this Agreement. This Section survives Closing.

ARTICLE 16 VENDOR'S CONDITIONS

- 16.1 This Agreement is conditional upon the Vendor receiving approval from the Ontario Superior Court of Justice pursuant to the *Canadian Creditors Arrangement Act*.

DATED this 23rd day of July, 2012.

SKYLINE REAL ESTATE ACQUISITIONS (H) INC.

Per: [Signature]

Name: Mike Bonneveld

Title: Director of Acquisitions

I/We have authority to bind the Corporation

The Vendor hereby accepts the above offer, this 24th day of July, 2012.

HARMONY TOWNHOMES LIMITED PARTNERSHIP By its General Partner, F.L. SECURITIES INC.

Per: [Signature]

Name: Greg MacLeod

Title: Chief Restructuring Officer

I/We have authority to bind the Corporation

SCHEDULE "A"Municipal Description

65 Fort Street, Tilbury, Ontario

Legal Description

LTS 132 & 133, PLAN 254 & PT LT 27, NORTH MIDDLE RD,
GEOGRAPHIC TOWNSHIP OF TILBURY EAST AS IN 442766 S/T
T17216 SUBJECT TO AN EASEMENT IN GROSS OVER LTS 132 & 133,
PLAN 254 & PT LT 27, NORTH MIDDLE RD (TILBURY EAST) AS IN
442766 AS IN CK45280 MUNICIPALITY CHATHAM-KENT

SCHEDULE "B"

AUTHORIZATION

TO: ALL PUBLIC UTILITIES AND GOVERNMENTAL AUTHORITIES

RE: Skyline Real Estate Acquisitions Inc. (the "Purchaser") purchase from Harmony Townhomes Limited Partnership by its General Partner, F.L. Securities Inc. (the "Vendor")
65 Fort Street, Tilbury, Ontario (the "Property")

This is to advise that the Vendor is the present registered owner of the Property and that the Purchaser has entered into an agreement of purchase and sale with the Vendor relating to the Property.

Upon request by the Purchaser or by its solicitors, you are hereby authorized to disclose or release any and all information maintained in your records as to outstanding work orders, contraventions, notices, violations, infractions, and current and prior utility accounts, which are within your jurisdiction affecting the Property.

And for so doing, this will be your good and sufficient authority.

A photocopy, facsimile or electronic version of this executed Authorization may be relied upon to the same extent as if it were an original executed version.

AN INSPECTION OF THE PROPERTY IS NEITHER REQUIRED NOR AUTHORIZED HEREUNDER.

DATED this _____ day of June, 2012.

HARMONY TOWNHOMES LIMITED PARTNERSHIP
by its General Partner, F. L. SECURITIES INC.

Per: _____
Name: Greg MacLeod
Title: Chief Restructuring Officer

I/We have authority to bind the Corporation

SCHEDULE "C"

VENDOR'S DELIVERIES**Tenant and Leasing Information**

- (a) current Rent Rolls, together with Rent Rolls for the month one year previous thereto;
- (b) the originals or true copies of each of the Leases and written details as to any oral lease agreement affecting the Lands and Buildings (or access to) which may be in the Vendor's possession;
- (c) outline of all rent and other incentives provided to Tenants, including any rental incentive programs currently in place or which have been in place over the past 12 months;
- (d) access to all Tenant files;

Operational Information

- (e) complete list and copies of all Contracts including, without limitation, all agreements with Governmental Authorities and Rent-Paying Governmental Authorities (e.g. housing, ODSP, Canadian Mental Health Association, Ontario Works etc.) and Warranties, and where any contracts are oral, the details of same;
- (f) a list of all Chattels;
- (g) copies of all insurance policies that relate to the Lands, including title insurance policies;
- (h) fire safety plans (if available);
- (i) list of all phone numbers, cellphone numbers, fax numbers, cable and internet accounts for the Buildings used in the operation or management of the Buildings, together with a brief description of their uses or purposes (e.g. elevator phone, enter phone, resident manager's phone and fax number, etc.);
- (j) a list of all fixtures, systems, services and improvements and any chattels and equipment used in connection with the maintenance and repair of the Lands and Buildings, in each case to the extent not owned by the Vendor or not to be transferred to the Purchaser on Closing;
- (k) capital expense/repair invoices for the period from January 1, 2009, to date, together with copies of contracts relating to the capital expenses, together with a summary thereof;
- (l) copies of all AGI submissions and related correspondence;

Structural/Building and Site Information

- (m) a copy of all plans, drawings and specifications of the Buildings in the Vendor's possession or control;
- (n) copies of floor plans and site plans (if available);
- (o) the Existing Survey (if available);
- (p) the Authorization in Schedule "B", signed by the Vendor;
- (q) all environmental and engineering reports, building-condition reports, soil tests and as-built drawings including any of the foregoing commissioned in connection with any financing in the Vendor's possession or control;

Financial Information

- (r) current Realty Tax assessment and Realty Tax bills for 2010, 2011 and 2012 to date, as well as all files relating to any ongoing Realty Tax appeals;
- (s) current 2012 budget and actual historical financials for 2010 and 2011;
- (t) current tenant aged receivables report;

- 2 -

- (u) a summary of all utility bills for the Property for calendar 2011 and copies of such bills, including a list of what utilities are paid for by Tenants and what utilities are paid for by the Vendor, and

Legal and Title Information

- (v) copies of all current and pending applications and proceedings before the Landlord and Tenant Board and/or its predecessors, together with any proceedings of a like nature and a brief explanation of progress to date.

SCHEDULE "D"

PERMITTED ENCUMBRANCES

"Permitted Encumbrances" means:

1. the reservations, limitations, exceptions, provisos and conditions, if any, expressed in any original grants from the Crown including, without limitation, the reservation of any mines and minerals in the Crown or in any other person;
2. encumbrances respecting minor encroachments by any property over neighbouring lands and/or permitted under agreements with the owners of such other lands and minor encroachments over any property by improvements of abutting land owners provided that such encroachments do not affect the use of the Lands as four-storey, multi-unit residential buildings consisting of 50 residential townhouses;
3. title defects or irregularities which are of a minor nature and in the aggregate do not materially impair the use or marketability of the Lands and Buildings for the purposes for which they are presently used;
4. all easements, servitudes and rights-of-way which are registered against the Property;
5. any subdivision, site plan, development or other similar regional or municipal agreements and registered restrictions, provided the same have been complied with;
6. the Leases;
7. Airport Zoning Regulations and amendments thereto;
8. Instrument No. T17215 registered June 7, 1951 being a Transfer of Easement to The Hydro-Electric Power Commission of Ontario;
9. Instrument No. 443108 registered April 9, 1987 being a Site Plan Agreement;
10. Instrument No. CK9747 registered January 11, 2007 being a Land Registrar's Order; and
11. Instrument No. CK45280 registered May 14, 2010 being a Transfer of Easement in favour of Union Gas Limited.

SCHEDULE "B"

AUTHORIZATION

TO ALL PUBLIC UTILITIES AND GOVERNMENTAL AUTHORITIES

RE: Skyline Real Estate Acquisitions Inc. (the "Purchaser") purchase from Harmony Townhomes Limited Partnership by its General Partner, F.L. Securities Inc. (the "Vendor")

65 Fort Street, Tilbury, Ontario (the "Property")

This is to advise that the Vendor is the present registered owner of the Property and that the Purchaser has entered into an agreement of purchase and sale with the Vendor relating to the Property.

Upon request by the Purchaser or by its solicitors, you are hereby authorized to disclose or release any and all information maintained in your records as to outstanding work orders, contraventions, notices, violations, infractions, and current and prior utility accounts, which are within your jurisdiction affecting the Property.

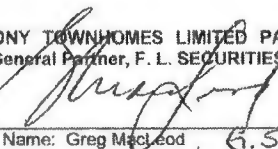
And for so doing, this will be your good and sufficient authority.

A photocopy, facsimile or electronic version of this executed Authorization may be relied upon to the same extent as if it were an original executed version.

AN INSPECTION OF THE PROPERTY IS NEITHER REQUIRED NOR AUTHORIZED HEREUNDER.

DATED this 24 ^{July} day of June, 2012.

HARMONY TOWNHOMES LIMITED PARTNERSHIP
by its General Partner, F. L. SECURITIES INC.

Per: 

Name: Greg MacLeod

Title: Chief Restructuring Officer

G.S. MacLeod + Associates
Inc.,

I/We have authority to bind the Corporation

This is Exhibit "I" referred to in the Affidavit of Greg MacLeod
sworn August 20, 2012



Commissioner for Taking Affidavits (or as may be)



Paul Montgomery
Special Loans, Head Office
25 King Street West, 16th Floor
Toronto, Ontario
M5L 1A2

August 13, 2012

Via Email to John Birch of Cassels Brock

First Leaside Realty II Inc.
First Leaside Retirement Residences (Ottawa) Limited Partnership
480 Metcalfe Street (Ottawa) Limited Partnership
100 Isabella Street (Ottawa) Limited Partnership
Redwood Retirement Residences (Ottawa) Limited Partnership
c/o F.L. Securities Inc.
430 Regional Road #8, RR #1
Uxbridge, Ontario
L9P 1R1

Dear Sirs:

Reference is made to that certain Credit Agreement dated August 26, 2011 between Canadian Imperial Bank of Commerce, in its capacity as sole book runner, sole lead arranger and administrative agent (the "**Agent**") acting for and on behalf of itself and Laurentian Bank of Canada and other lenders from time to time (collectively, the "**Lenders**"), First Leaside Realty II Inc., in its capacity as general partner of, First Leaside Retirement Residences (Ottawa) Limited Partnership (the "**Borrower**"), First Leaside Realty II Inc., in its capacity as general partner of, 480 Metcalfe Street (Ottawa) Limited Partnership, First Leaside Realty II Inc., in its capacity as general partner of, 100 Isabella Street (Ottawa) Limited Partnership and First Leaside Realty II Inc., in its capacity as general partner of, Redwood Retirement Residences (Ottawa) Limited Partnership (collectively, the "**Guarantors**" and each a "**Guarantor**") (as amended, restated, supplemented and modified from time to time, the "**Credit Agreement**"). Each capitalized term used and not otherwise defined in this letter shall have the meaning given to it in the Credit Agreement.

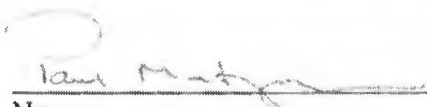
You have requested confirmation of the amounts that would be owing under the Credit Agreement as of September 1, 2012 (assuming a payment in full on that date). According to the Agent's records, the Borrower is or will be indebted or otherwise liable to the Agent and the Lenders for the amounts set out in Schedule A to this letter (collectively, the

"Indebtedness") under the Credit Agreement as of September 1, 2012 subject to the assumptions and exceptions set out in such Schedule.

The Borrower and Guarantors continue to be in default under the Credit Agreement and the Agent and the Lenders expressly reserve its and their rights and remedies under the Credit Agreement, all Loan Documents and applicable law with respect to all existing and future defaults under the Credit Agreement.

Yours very truly,

CANADIAN IMPERIAL BANK OF COMMERCE, as Agent

Per: 

Name:

Title:

**Paul Montgomery
CIBC General Manager**

Per: _____

Name:

Title:

**SCHEDULE A
INDEBTEDNESS**

As of and assuming payment on September 1, 2012

Principal	\$39,776,589.61
Accrued Interest	\$168,914.29
Costs and Expenses	<u>\$92,630.71</u>
Total	\$40,038,134.61
Per Diem	\$5,448.85

Assumptions:

Interest Rate: 5% per annum (being a Prime Rate of 3% plus 2%); the accrued interest and per diem rate will change if the Prime Rate changes.

Costs & Expenses: The costs and expenses are those outstanding as of August 13, 2012 and this amount will change as a result of costs and expenses being paid by the Borrower and continuing to be incurred by the Agent or the Lenders.

Errors & Omissions Excepted

This is Exhibit "J" referred to in the Affidavit of Greg MacLeod
sworn August 20, 2012

A handwritten signature in blue ink, reading "David D. Ward". The signature is written in a cursive style with a large initial "D".

Commissioner for Taking Affidavits (or as may be)

Mortgage Payout Statement
Issued August 13, 2012
Effective September 1, 2012

Lender: KINGSETT MORTGAGE CORPORATION
Borrower: FIRST LEASIDE RETIREMENT RESIDENCES (OTTAWA) LIMITED PARTNERSHIP

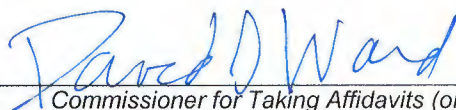
Outstanding Loan Balance as at August 13, 2012	\$ 19,267,020.54
31 Days Accrued Interest (Aug 1 - 31, 2012)	154,875.34
KingSett Legal Fees, Disbursements and HST re: Lender's security	(Note 4)
Reimbursements Owed to KingSett as at August 13, 2012 (Note 5)	<u>69,584.45</u>
Required Discharge Proceeds (Note 1, 2, 3)	<u>\$ 19,491,480.33</u>
Per Diem loan interest September 2 through to September 7, 2012	<u>\$ 5,041.20</u>

Notes:

- 1) Lender to receive proceeds by 2.00 pm Toronto time for same day value; failing which interest will be charged through to the next business day.
- 2) Funds to be delivered to Lender by wire transfer, certified cheque or bank draft only. Cheques must be made payable to **KingSett Real Estate Mortgage LP No. 3**. An uncertified cheque is not acceptable. Delivery of funds to Lender's legal counsel does not constitute delivery of funds to Lender.
- 3) This mortgage discharge statement is in effect until September 7, 2012 and is not applicable thereafter; a new statement will be required to reflect revised discharge amount.
- 4) Discharge of Lender's mortgage and other security is also subject to payment of the Lender's legal fees, disbursements and HST.
- 5) Requests for reimbursement owed to KingSett for various invoices/expenses paid in connection with the Loan were previously sent and remain outstanding as at the issue date of this payout statement. Additional copies of invoices are available upon request.

E. & O.E.

This is Exhibit "K" referred to in the Affidavit of Greg MacLeod
sworn August 20, 2012



Commissioner for Taking Affidavits (or as may be)



Ontario ServiceOntario

LAND
REGISTRY
OFFICE #4

PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

04123-0135 (LT)

SUBJECT TO RESERVATIONS IN CROWN GRANT

PAGE 1 OF 2
PREPARED FOR DSimpson2
ON 2012/07/19 AT 12:07:37

Netcall

PROPERTY DESCRIPTION:

PART OF LOT 1 AND LOTS 2 AND 3 ON PLAN 61, WEST METCALFE STREET, AND LOTS 39 TO 42 ON PLAN 35403, DESIGNATED AS PART 1 ON PLAN 4R-16354, SAVE AND EXCEPT PART 1 ON PLAN 4R-21437, OTTAWA. SUBJECT TO AN EASEMENT IN FAVOUR OF BELL CANADA AS IN OC35862.

PROPERTY REMARKS:

SUBJECT TO, ON DECEMBER 29TH, 2000, SUBSECTION 44(1) OF THE LAND TITLES ACT EXCEPT PARAGRAPHS 3 AND 14 AND PROVINCIAL SUCCESSION DUTIES.

ESTATE/QUALIFIER:

RECENTLY

FEE SIMPLE

DIVISION FROM 04123-0125

ABSOLUTE

OWNERS' NAMES

CAPACITY SHARE

FIRST LEASIDE REALTY II INC.

FIN CREATION DATE

2007/05/07

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
** PRINTOUT INCLUDES ALL DOCUMENT TYPES AND DELETED INSTRUMENTS SINCE: 2007/05/07 **						
4R16354	2000/12/29	PLAN REFERENCE		THE PALISADES OTTAWA RETIREMENT RESIDENCE INC.	BELL CANADA	C
OC35862	2002/01/18	TRANSFER EASEMENT			THE PALISADES OTTAWA RETIREMENT RESIDENCE INC.	C
OC163781	2003/01/28	NOTICE	\$10	CITY OF OTTAWA	THE PALISADES CLUB INC.	C
OC572745	2006/03/17	NOTICE	\$1	CITY OF OTTAWA	ROSE RETIREMENT PROPERTIES 1 INC.	C
OC572746	2006/03/17	NOTICE	\$1	CITY OF OTTAWA	THE PALISADES CLUB INC.	C
OC609589	2006/06/30	TRANSFER		*** DELETED AGAINST THIS PROPERTY *** ROSE RETIREMENT PROPERTIES 1 INC.	ROSE RETIREMENT PROPERTIES 1 INC.	C
REMARKS: PLANNING ACT STATEMENTS						
OC609590	2006/06/30	CHARGE		*** DELETED AGAINST THIS PROPERTY *** PALISADES OTTAWA RETIREMENT COMMUNITY INC.	PALISADES OTTAWA RETIREMENT COMMUNITY INC.	
4R21437	2006/09/21	PLAN REFERENCE			CANADIAN IMPERIAL BANK OF COMMERCE	C
OC695575	2007/03/12	NOTICE		*** DELETED AGAINST THIS PROPERTY *** PALISADES OTTAWA RETIREMENT COMMUNITY INC.		
OC714811	2007/05/03	CONSTRUCTION LIEN		*** DELETED AGAINST THIS PROPERTY *** B.J. NORMAND LIMITED	THE PALISADES CLUB INC.	C
OC719046	2007/05/16	APL AMEND ORDER		*** COMPLETELY DELETED *** ONTARIO SUPERIOR COURT OF JUSTICE		
REMARKS: OC714811						

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.
NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.

LA 001276878

PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

LAND

REGISTRY

OFFICE #4

Ontario ServiceOntario

PAGE 2 OF 2

PREPARED FOR DSimpson2

ON 2012/07/19 AT 12:07:37

04123-0135 (LT)

SUBJECT TO RESERVATIONS IN CROWN GRANT

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
OC955501	2009/02/25	NOTICE	\$1	CITY OF OTTAWA	PALISADES OTTAWA RETIREMENT COMMUNITY INC. THE PALISADES CLUB INC. OTTAWA-CARLETON STANDARD CONDOMINIUM CORPORATION NO. 758	C
N/A OC1275977	2011/08/29	TRANSFER	\$18,525,000	PALISADES OTTAWA RETIREMENT COMMUNITY INC.	FIRST LEASIDE REALTY II INC. ✓	C
- OC1276644	2011/08/29	CHARGE	\$40,000,000	FIRST LEASIDE REALTY II INC.	CANADIAN IMPERIAL BANK OF COMMERCE	C
- OC1276645	2011/08/29	NO ASSIGN RENT GEN REMARKS: OC1275544		FIRST LEASIDE REALTY II INC.	CANADIAN IMPERIAL BANK OF COMMERCE	C
- OC1276850	2011/08/29	CHARGE	\$32,500,000	FIRST LEASIDE REALTY II INC.	KINGSETT REAL ESTATE GROWTH GP NO. 2 INC.	C
- OC1276854	2011/08/29	CHARGE	\$21,875,000	FIRST LEASIDE REALTY II INC.	KINGSETT MORTGAGE CORPORATION	C
- OC1276867	2011/08/29	NO ASSIGN RENT GEN REMARKS: OC1276854		FIRST LEASIDE REALTY II INC.	KINGSETT MORTGAGE CORPORATION	C
+ OC1276878	2011/08/29	CHARGE	\$7,500,000	FIRST LEASIDE REALTY II INC.	FIRST LEASIDE FINANCE INC.	C
OC1285197	2011/09/20	DISCH OF CHARGE REMARKS: OC609590.		*** COMPLETELY DELETED *** CANADIAN IMPERIAL BANK OF COMMERCE		
OC1338479	2012/03/02	CONSTRUCTION LIEN		*** COMPLETELY DELETED *** 1017834 ONTARIO LIMITED		
OC1345700	2012/03/27	CERTIFICATE REMARKS: OC1338479		*** COMPLETELY DELETED *** 1017834 ONTARIO LIMITED		
OC1362839	2012/05/17	DIS CONSTRUCT LIEN REMARKS: OC1338479.		*** COMPLETELY DELETED *** 1017834 ONTARIO LIMITED		

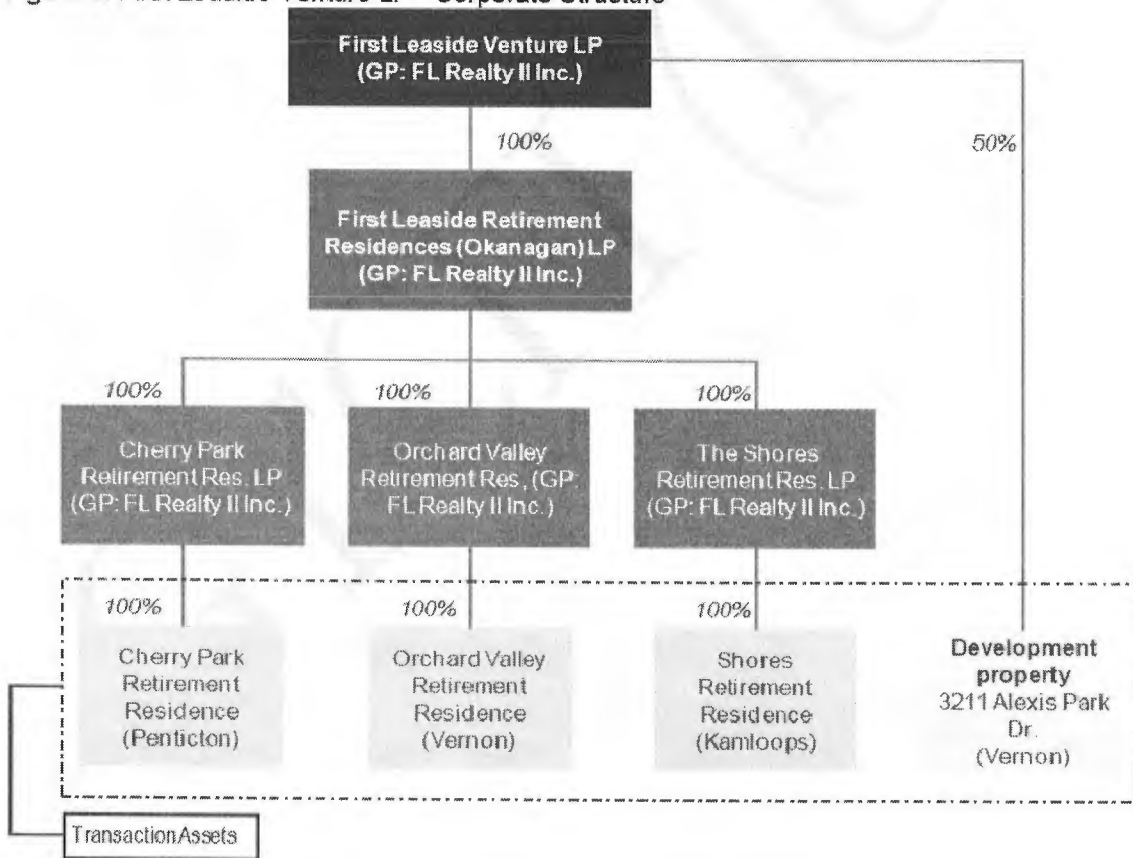
NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.
NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.

This is Exhibit "L" referred to in the Affidavit of Greg MacLeod
sworn August 20....., 2012



Commissioner for Taking Affidavits (or as may be)

Figure 3: First Leaside Venture LP - Corporate Structure



Source: Partnership Management

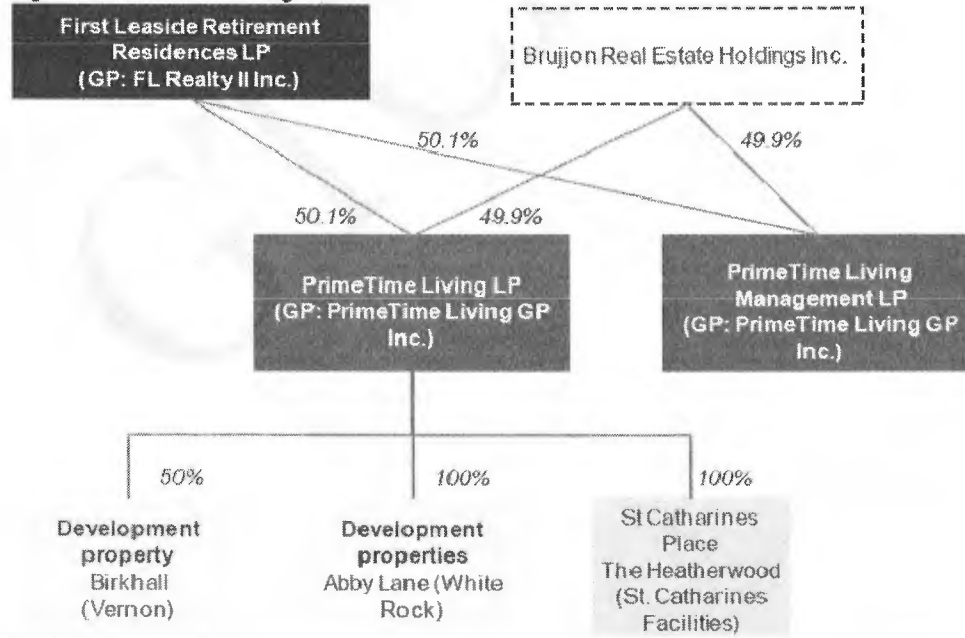
Note: The Shores Retirement Residence includes the development land adjacent to the facility.

This is Exhibit "M" referred to in the Affidavit of Greg MacLeod
sworn August 20, 2012



Commissioner for Taking Affidavits (or as may be)

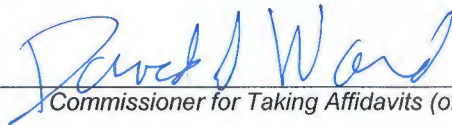
Figure 1: PrimeTime Organization



Source: Management

Note: The remaining 50% interest in Birkhall is owned by the **First Leaside Ventures Limited Partnership**, a partnership entity within the FL Group.

This is Exhibit "N" referred to in the Affidavit of Greg MacLeod
sworn August 20th, 2012

A handwritten signature in blue ink, reading "David J. Ward". The signature is written in a cursive style with a large initial "D".

Commissioner for Taking Affidavits (or as may be)

TERM SHEET

BETWEEN

JOANNA L. HAMPTON HOLDINGS INC., a company incorporated under the laws of the Province of Ontario, all of its issued and outstanding shares being owned by Joanna L. Hampton ("**Holdings**");

-and-

McMILLAN THORN & CO. LTD., a professional corporation engaged in the practice of accounting in the Province of British Columbia, all of its issued and outstanding share capital being owned by Holdings ("**MTC**");

-and-

D. McCORMACK & COMPANY INC., a professional corporation engaged in the practice of accounting in the Province of British Columbia, all of its issued and outstanding share capital being owned by Holdings ("**DMC**");

-and-

ALLAN WELSH & COMPANY, a professional corporation engaged in the practice of accounting in the Province of Alberta, all of its issued and outstanding share capital being owned by Holdings ("**AWC**");

-and-

FIRST LEASIDE ACCOUNTING AND TAX SERVICES INC., a company incorporated under the laws of the Province of Ontario and currently operating subject to the *Companies' Creditors Arrangements Act* pursuant to an Order issued by the Ontario Superior Court of Justice on February 23, 2012 ("**FLAT**");

-and-

THE TORONTO-DOMINION BANK, a Canadian banking corporation having its Head Office in the City of Toronto in the Province of Ontario ("**the Bank**")

-and-

JIM BRANDER PROFESSIONAL CORPORATION, a company incorporated under the laws of the Province of Alberta, all of its issued and outstanding shares being owned by Brander ("**JBPC**")

Background

1. Holdings acquired the outstanding shares of the three professional corporations as follows:
 - 1.1. all of the outstanding shares of MTC on or about June 26, 2008 for the price of \$587,000;
 - 1.2. all of the outstanding shares of DMC on or about December 4, 2009 for the price of \$350,000 plus a working capital adjustment of \$102,699; and,
 - 1.3. all of the outstanding shares of AWC on or about December 4, 2009 for the price of \$760,000.
2. FLAT provided funds to Holdings for the acquisitions in the total amount of \$1,799,699. The advances were recorded in the books and records of FLAT as an investment in Holdings, however, the advances are not documented in any way. They are non-interest bearing and there are no terms of repayment.
3. The shares of MTC, DMC and AWC are owned by Holdings in order to comply with professional regulations requiring legal control to reside with a qualified Certified General Accountant, in this case, Joanna Hampton. Notwithstanding the legal form of the transactions, the intention of Holdings and FLAT was that FLAT would be an economic beneficiary of Holdings' acquisition of the professional corporations. However, there is no written documentation of FLAT's or Holdings' intentions.
4. Through the end of the 2011 fiscal year, the balance of the investment account on FLAT's books has been increased by an amount equal to the accumulated post-acquisition profits and losses of the professional practices in the net amount of \$34,185. As at December 31, 2011, the investment account balance was \$1,833,884.
5. Pursuant to a Letter Agreement dated June 15, 2010 (the "**Agreement**"), FLAT borrowed \$1,223,500 from the Bank by way of a reducing term facility in the principal amount of \$1,173,500 and a demand operating loan to fund working capital requirements at MTC in the amount of \$50,000. The term facility amounted to approximately one-half of FLAT's investment in Holdings and Brander Professional Corporation ("**Brander**"), an unrelated professional corporation that is not a party to this agreement. FLAT provided no security for the loans, however, Holdings, MTC, DMC, AWC and Brander each provided joint and several guarantees of the full amount of the indebtedness, supported by general security agreements.
6. On February 23, 2012, FLAT was granted protection from its creditors under the *Companies' Creditors Arrangements Act* ("**CCAA**").
7. At the date of the Initial Order under the CCAA, the balance outstanding on the term facility was \$808,170. For purposes of servicing the term facility, the balance is notionally allocated 72.31% to Holdings and 27.69% to Brander.

8. On April 25, 2012, the Bank notified FLAT that it was in default of certain borrowing covenants and the breach has not been rectified.
9. Given FLAT's insolvency, Holdings wishes to discharge its obligations to FLAT and to obtain a full and final release from FLAT of its interests in Holdings, MTC, DMC, and AWC. Holdings is prepared to compensate FLAT based on the value of its three professional practices as at the date of the CCAA filing by way of cash payment and assumption of FLAT's indebtedness to the Bank.

Transaction Terms

10. FLAT will provide to Holdings a release of its interests in Holdings of any nature whatsoever and full and final settlement of any and all present and future obligations of Holdings and its subsidiary professional corporations to FLAT.
11. As consideration for the release, Joanna Hampton and Holdings agree to compensate FLAT at the time of closing in the amount of \$734,000 as follows:
 - 11.1. Payment of \$150,000 in cash by Joanna Hampton; and
 - 11.2. Assumption by Holdings of a portion of FLAT's indebtedness to the Bank equal to Holdings' notional share of the reducing term facility outstanding as at February 23, 2012 in the approximate amount of \$584,000 ("**Bank Debt**").
12. Additionally, in the event that Holdings sells any or all of MTC, DMC or AWC within 18 months of closing ("**Sold Entities**"), Holdings will first apply the proceeds of sale, net of taxes and closing costs, to the reduction of the Bank Debt. After repayment in full of the Bank Debt, Holdings will make additional cash payment or payments to FLAT equal to the proceeds of sale of the Sold Entities, net of taxes and closing costs in excess of the following threshold amounts:
 - 12.1.1. In respect of MTC, \$220,000;
 - 12.1.2. In respect of DMC, \$140,000;
 - 12.1.3. In respect of AWC, \$374,000.

Conditions Precedent to Closing

13. This transaction is conditional on the following:
 - 13.1. The Bank providing a full and final release to FLAT in respect of FLAT's obligations under the Agreement;
 - 13.2. Holdings and the Bank coming to an agreement or agreements in respect of the assumption of outstanding indebtedness under the reducing term facility contained in the Agreement by Holdings, on such terms respecting the principal

amount borrowed, interest, repayment, collateral security (including additional security as may be required by the Bank) , guarantees (including additional guarantees as may be required by the Bank), and other terms as may agreed to by the Bank in its sole discretion;

- 13.3. Completion of documentation in a form that is mutually satisfactory to the parties;
- 13.4. Approval of the transaction by the Ontario Superior Court of Justice in the CCAA proceedings; and
- 13.5. The written consent of JBPC.

Closing

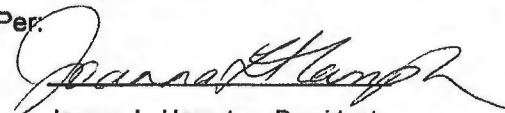
- 14. The parties agree that closing will occur forthwith after court approval and, in any event, not later than 120 days after the execution of this term sheet on the date written below.
- 15. Each party will bear its own costs associated with the execution of this agreement.
- 16. This terms sheet may be signed in counterpart.

[THE REMAINDER OF THIS PAGE IS LEFT INTENTIONALLY BLANK]

17. Dated this 10 day of August, 2012

JOANNA L. HAMPTON HOLDINGS INC.

Per:


Joanna L. Hampton, President

**FIRST LEASIDE ACCOUNTING AND TAX
SERVICES INC., by the Court-Appointed
Chief Restructuring Officer,**

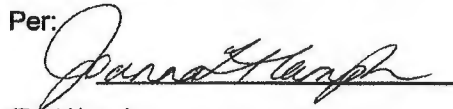
G.S. MACLEOD & ASSOCIATES INC.,

Per:

Greg S. MacLeod, President

McMILLAN THORN & CO. LTD.

Per:


(Print Name):

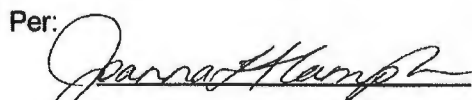
THE TORONTO-DOMINION BANK

Per:

(Print Name):

D. McCORMACK & COMPANY INC.

Per:


(Print Name):

**JIM BRANDER PROFESSIONAL
CORPORATION**

Per:

(Print Name):

ALLAN WELSH & COMPANY

Per:


(Print Name):

17. Dated this 10th day of August, 2012

JOANNA L. HAMPTON HOLDINGS INC.

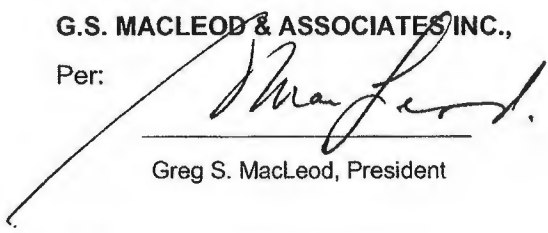
Per:

Joanna L. Hampton, President

**FIRST LEASIDE ACCOUNTING AND TAX
SERVICES INC., by the Court-Appointed
Chief Restructuring Officer,**

G.S. MACLEOD & ASSOCIATES INC.,

Per:



Greg S. MacLeod, President

McMILLAN THORN & CO. LTD.

Per:

(Print Name):

THE TORONTO-DOMINION BANK

Per:

(Print Name):

D. McCORMACK & COMPANY INC.

Per:

(Print Name):

**JIM BRANDER PROFESSIONAL
CORPORATION**

Per:

(Print Name):

ALLAN WELSH & COMPANY

Per:

(Print Name):

17. Dated this 10th day of August, 2012

JOANNA L. HAMPTON HOLDINGS INC. **FIRST LEASIDE ACCOUNTING AND TAX SERVICES INC.,** by the Court-Appointed Chief Restructuring Officer,
 Per: _____
 Joanna L. Hampton, President
G.S. MACLEOD & ASSOCIATES INC.,
 Per: _____

Greg S. MacLeod, President

McMILLAN THORN & CO. LTD.

Per: _____

(Print Name): _____

THE TORONTO-DOMINION BANK

Per: _____

(Print Name): TRACEY DEAN

D. McCORMACK & COMPANY INC.

Per: _____

(Print Name): _____

JIM BRANDER PROFESSIONAL CORPORATION

Per: _____

(Print Name): _____

ALLAN WELSH & COMPANY

Per: _____

(Print Name): _____

17. Dated this _____ day of _____, 2012

JOANNA L. HAMPTON HOLDINGS INC.

Per:

Joanna L. Hampton, President

FIRST LEASIDE ACCOUNTING AND TAX SERVICES INC., by the Court-Appointed Chief Restructuring Officer,

G.S. MACLEOD & ASSOCIATES INC.,

Per:

Greg S. MacLeod, President

McMILLAN THORN & CO. LTD.

Per:

(Print Name):

THE TORONTO-DOMINION BANK

Per:

(Print Name):

D. McCORMACK & COMPANY INC.

Per:

(Print Name):

JIM BRANDER PROFESSIONAL CORPORATION

Per:

(Print Name):

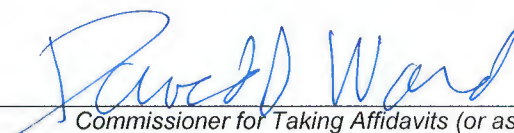
ALLAN WELSH & COMPANY

Per:

(Print Name):

Jim Brander
Jim Brander
10 August 2012

This is Exhibit "O" referred to in the Affidavit of Greg MacLeod
sworn August 20, 2012



Commissioner for Taking Affidavits (or as may be)

TERM SHEET

BETWEEN

JIM BRANDER, Chartered Accountant, a resident of the Province of Alberta ("Brander");

-and-

JIM BRANDER PROFESSIONAL CORPORATION, a company incorporated under the laws of the Province of Alberta, all of its issued and outstanding shares being owned by Brander ("JBPC");

-and-

BRANDER PROFESSIONAL CORPORATION, a company incorporated under the laws of the Province of Alberta, all of its issued and outstanding shares being owned by JBPC ("BPC") and formerly named **MATTHEW E. BAKKER PROFESSIONAL CORPORATION** ("MEB");

-and-

SMART BOOKS ACCOUNTING SERVICES INC., a company incorporated under the laws of the Province of Alberta, all of its issued and outstanding shares being owned by Brander ("SBAS");

-and-

FIRST LEASIDE ACCOUNTING AND TAX SERVICES INC., a company incorporated under the laws of the Province of Ontario and currently operating subject to the *Companies' Creditors Arrangements Act* pursuant to an Order issued by the Ontario Superior Court of Justice on February 23, 2012 ("FLAT");

-and-

THE TORONTO-DOMINION BANK, a Canadian banking corporation having its Head Office in the City of Toronto in the Province of Ontario ("the Bank")

-and-

JOANNA L. HAMPTON HOLDINGS INC., a company incorporated under the laws of the Province of Ontario, all of its issued and outstanding shares being owned by Joanna L. Hampton ("Hampton Holdings")

Background

1. On June 30, 2010, MEB entered into an agreement to acquire the outstanding shares of Rodney M. Coppock Professional Corporation, a firm engaged in the practice of public accounting based in Calgary, Alberta ("Coppock"). At that time MEB was wholly owned by Matthew Bakker, an employee of the First Leaside Group of Companies and a qualified Chartered Accountant. Professional regulations require that legal ownership of the professional corporation is with a Chartered Accountant in good standing.
2. FLAT provided funds totaling \$650,000 to MEB to complete the acquisition. The advances were recorded in the books and records of FLAT as an investment in MEB although MEB gave FLAT a promissory note for the amount of the advances. Notwithstanding the legal form of the transaction, the intention of the parties was that FLAT would be an economic beneficiary of MEB's acquisition of Coppock.
3. In January 2011, MEB changed its name to BPC and ownership was transferred to JBPC. On January 25, 2011 Brander, JBPC, SBAS and FLAT entered into an agreement (the "**Derivative Instrument**"), which provided that at the end of each fiscal year, JBPC and SBAS would pay to FLAT 65% of their pre-tax profits less any agreed cash reserves. The Derivative Instrument provided that, upon termination, FLAT was entitled to compel the transfer of all outstanding shares of JBPC, MEB and SBAS to a nominee of FLAT's choosing. A copy of the Derivative Instrument is annexed as **Exhibit 1**.
4. At December 31, 2011, the balance of the investment account on FLAT's books was \$641,573 although the balance has not been reconciled to reflect the actual loss incurred by JBPC in 2011.
5. Pursuant to a Letter Agreement dated June 15, 2010 (the "**Agreement**"), FLAT borrowed \$1,173,500 from the Bank by way of a reducing term facility. The term facility amounted to approximately one-half of FLAT's investment in MEB and Hampton Holdings, an unrelated investee of FLAT that owns and operates three professional accounting practices in Alberta and British Columbia. FLAT provided no security for the loans, however, MEB and Hampton Holdings provided joint and several guarantees of the full amount of the indebtedness to the Bank, supported by general security agreements.
6. On February 23, 2012, FLAT was granted protection from its creditors under the *Companies' Creditors Arrangements Act* ("**CCAA**").
7. At the date of the Initial Order under the CCAA, the balance outstanding on the term facility was \$808,170. For purposes of servicing the term facility, the balance is notionally allocated 72.31% to Hampton Holdings and 27.69% to MEB.
8. On April 25, 2012, the Bank notified FLAT that it was in default of certain borrowing covenants and the breach has not been rectified.

9. Given FLAT's insolvency, Brander, JBPC and SBAS wish to terminate the Derivative Instrument and obtain a full and final release from FLAT of its interests and entitlements in and under the Derivative Instrument and a waiver of repayment from FLAT in respect of all advances to MEB. In consideration, JBPC, BPC and SBAS are prepared to compensate FLAT based on the value of their professional practices as at the date of the CCAA filing by way of cash payment and assumption of FLAT's indebtedness to the Bank.

Transaction Terms

10. FLAT will provide to Brander, JBPC, BPC and SBAS a release of its interests of any nature whatsoever and full and final settlement of all present and future obligations of Brander, JBPC, BPC and SBAS and their respective, employees, directors, subsidiaries, affiliates and successors under the Derivative Instrument.
11. As consideration for the release, Brander, JBPC and SBAS jointly and severally promise to compensate FLAT at closing in the amount of ~~\$280,000~~ as follows:
- 11.1. Payment of ~~\$150,000~~ ^{150,000} by Brander in cash; and;
- 11.2. Assumption of a portion of FLAT's indebtedness to the Bank equal to JBPC's, BPC's and SBAS' share of the reducing term facility outstanding as at February 23, 2012, on a joint and several basis, in the approximate amount of \$224,000.

Conditions Precedent to Closing

12. This transaction is conditional on the following:
- 12.1. The Bank providing a full and final release to FLAT in respect of FLAT's obligations under the Agreement;
- 12.2. Brander, JBPC, SBAS and the Bank coming to an agreement or agreements in respect of the assumption of outstanding indebtedness under the reducing term facility contained in the Agreement by Brander, JBPC and SBAS on a joint and several basis, on such terms respecting the principal amount borrowed, interest, repayment, collateral security (including additional security as may be required by the Bank), guarantees (including additional guarantees as may be required by the Bank), and other terms as may be agreed to by the Bank in its sole discretion;
- 12.3. Completion of documentation in a form that is mutually satisfactory to the parties;

- 12.4. Approval of the transaction by the Ontario Superior Court of Justice in the CCAA proceedings; and
- 12.5. The written Consent of Hampton Holdings.

Closing

- 13. The parties agree that closing will occur forthwith after court approval and, in any event, not later than 120 days after the execution of this term sheet on the date written below.
- 14. Each party will bear its own costs associated with the execution of this agreement.
- 15. This terms sheet may be signed in counterpart.

[THE REMAINDER OF THIS PAGE IS LEFT INTENTIONALLY BLANK]

16. Dated this 10 day of August, 2012

JIM BRANDER

Jim Brander

**SMART BOOKS ACCOUNTING
SERVICES INC**

Per: *Jim Brander*

(Print Name): Jim Brander

**JIM BRANDER PROFESSIONAL
CORPORATION**

Per: *Jim Brander*

(Print Name): Jim Brander

THE TORONTO-DOMINION BANK

Per: _____

(Print Name): _____

**JIM BRANDER PROFESSIONAL
CORPORATION**

Per: *Jim Brander*

(Print Name): Jim Brander

**FIRST LEASIDE ACCOUNTING AND
TAX SERVICES INC., by the Court-
Appointed Chief Restructuring Officer,
G.S. MACLEOD & ASSOCIATES INC.,**

Per: _____

Greg S. MacLeod, President

JOANNA L. HAMPTON HOLDINGS INC.

Per: _____

Joanna L. Hampton, President

16. Dated this 10th day of August, 2012

JIM BRANDER

**SMART BOOKS ACCOUNTING
SERVICES INC**

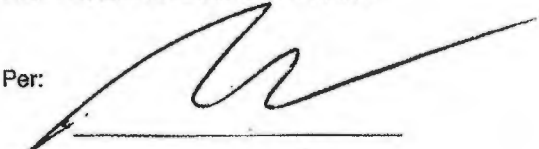
Per: _____

(Print Name): _____

**JIM BRANDER PROFESSIONAL
CORPORATION**

THE TORONTO-DOMINION BANK

Per: _____

Per: 

(Print Name): _____

(Print Name): TRACEY BEAN

**JIM BRANDER PROFESSIONAL
CORPORATION**

**FIRST LEASIDE ACCOUNTING AND
TAX SERVICES INC., by the Court-
Appointed Chief Restructuring Officer,
G.S. MACLEOD & ASSOCIATES INC.,**

Per: _____

Per: _____

(Print Name): _____

Greg S. MacLeod, President

JOANNA L. HAMPTON HOLDINGS INC.

Per: _____

Joanna L. Hampton, President

16. Dated this 10th day of August, 2012

JIM BRANDER

**SMART BOOKS ACCOUNTING
SERVICES INC**

Per: _____

(Print Name): _____

**JIM BRANDER PROFESSIONAL
CORPORATION**

THE TORONTO-DOMINION BANK

Per: _____

Per: _____

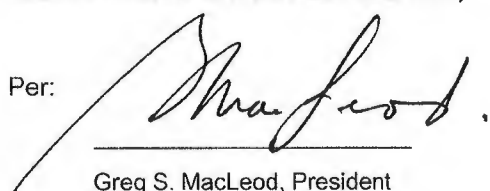
(Print Name): _____

(Print Name): _____

**JIM BRANDER PROFESSIONAL
CORPORATION**

**FIRST LEASIDE ACCOUNTING AND
TAX SERVICES INC., by the Court-
Appointed Chief Restructuring Officer,
G.S. MACLEOD & ASSOCIATES INC.,**

Per: _____

Per:  _____

(Print Name): _____

Greg S. MacLeod, President

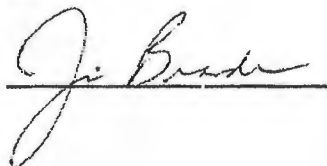
JOANNA L. HAMPTON HOLDINGS INC.

Per: _____

Joanna L. Hampton, President

16. Dated this 10 day of August, 2012

JIM BRANDER

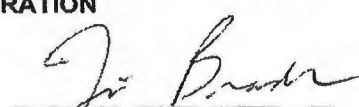


**SMART BOOKS ACCOUNTING
SERVICES INC**

Per: 

(Print Name): Jim Brander

**JIM BRANDER PROFESSIONAL
CORPORATION**

Per: 

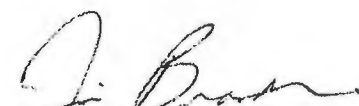
(Print Name): Jim Brander

THE TORONTO-DOMINION BANK

Per: _____

(Print Name): _____

**JIM BRANDER PROFESSIONAL
CORPORATION**

Per: 

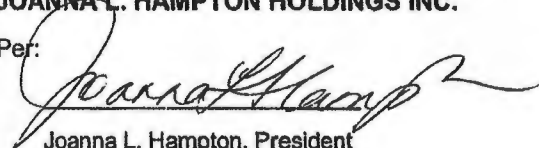
(Print Name): Jim Brander

**FIRST LEASIDE ACCOUNTING AND
TAX SERVICES INC., by the Court-
Appointed Chief Restructuring Officer,
G.S. MACLEOD & ASSOCIATES INC.,**

Per: _____

Greg S. MacLeod, President

JOANNA L. HAMPTON HOLDINGS INC.

Per: 

Joanna L. Hampton, President

Exhibit 1:

Derivative Instrument dated January 25, 2011 between Jim Brander, Jim Brander Professional Corporation, Smart Books Accounting Services Inc. and First Leaside Accounting and Tax Services Inc.

DERIVATIVE INSTRUMENT

THIS AGREEMENT dated January 25th, 2011 JB

Among:

JIM BRANDER an individual resident in Calgary Alberta and the President and Sole Shareholder of the Corporation and Smart Books ("Jim").

and

JIM BRANDER PROFESSIONAL CORPORATION a professional corporation engaged in the practice of accounting being registered in the Province of Alberta having offices in the City of Calgary (the "Corporation").

and

SMART BOOKS ACCOUNTING SERVICES INC. a professional corporation engaged in the practice of consulting being registered in the Province of Alberta having offices in the City of Calgary ("Smart Books")

and

FIRST LEASIDE ACCOUNTING AND TAX SERVICES INC., a corporation registered in the Province of Ontario having offices in the town of Uxbridge in the Province of Ontario ("First Leaside").

(collectively referred to as the "Parties")

WHEREAS Jim is the President and sole shareholder of the Corporation and Smart Books;

AND WHEREAS the Corporation requires capital in the amount of \$650,000 (the "Capital") to complete a transaction involving the acquisition of all of the shares of Matthew E. Bakker Professional Corporation ("MEB").

AND WHEREAS the Corporation, MEB and Smart Books will continue to operate as **[Jim Brander & Company]** (JB&Co.)

AND WHEREAS First Leaside has agreed to provide Jim and the Corporation the Capital in exchange for a derivative instrument (the "Derivative Instrument");

AND WHEREAS, the Parties have agreed that the Derivative Instrument shall include terms whereby First Leaside shall pay the Capital in exchange for a percentage of the profits of the Corporation and Smart Books during the term of the Derivative Instrument (the "Swap").

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants and agreements herein contained and other good and valuable consideration receipt of which is hereby acknowledged, the Parties hereto hereby agree as follows:

1. AMOUNT AND TERMS OF THE SWAP

1.1 The Capital shall be funded on January 24th, 2011.

1.2 The Corporation, MEB and Smart Books shall transfer SIXTY-FIVE PERCENT (65%) of all Profits of JB&Co. to First Leaside for the term of this Derivative Instrument and Jim shall receive 35% of all profits of JB&Co. for the term of the Derivative Instrument. For greater certainty, profits shall mean the revenues of JB&Co. less expenses, including but not limited to the salary of Jim Brander, prior to the payment of any applicable corporate income taxes and less any amounts agreed to by the parties to be held as cash reserves for JB&Co.

1.3 Subject to compliance with Article 2 hereof and all regulatory requirements including the Institute of Chartered Accountants of Alberta, First Leaside shall, upon termination of the Derivative Instrument, be entitled to compel the transfer of all of the issued and outstanding Class "A" Shares of the Corporation, MEB and Smart Books owned by Jim (the "Shares") to a nominee of First Leaside's choosing (the "Transfer").

2. SETTLEMENT OF THE SWAP AND TERMINATION OF THE DERIVATIVE INSTRUMENT JB

2.1 The JB&Co. shall pay to First Leaside 65% of the Profits of the Corporation ^{✓, MEB} and Smart Books within 90 days of the end of JB&Co's fiscal year

2.2 The Derivative Instrument will terminate upon the occurrence of the following events:

2.2.1 Either of First Leaside or Jim may terminate the Derivative instrument upon ninety (90) days written notice;

2.2.2 The death or disability of Jim. For the purposes of this Section 2.2.2 Disability shall mean: a state of disablement due to injury or sickness, where the Employee: (i) is unable to perform his duties as the principal of the Corporation and/or Smart Books for a continuous period of at least three months; or (ii) in the opinion of a qualified medical practitioner, consulted with respect to such injury or sickness, will not be able to perform such duties for a period of at least three months.

2.2.3 An Event of Default as defined in Article 6 hereof.

2.3 The effective date of the termination of the Derivative Instrument (the "Effective Date") shall be the date of the Transfer.

2.4 Upon the Effective Date the Swap will be settled as follows:

2.4.1 If the Effective Date is less than one year from the date of this instrument Jim shall receive a payment from First Leaside equivalent to 100% of the revenues of the Corporation and Smart Books for the last year ended. If the Effective Date is more than one year from the date of this Derivative Instrument Jim shall receive a payment from First Leaside equivalent to 35% of the revenues of the JB&Co. for the last year ended (the "Close-Out Amount");

2.4.2 The Close-Out Amount shall be adjusted as follows:

2.4.2.1 If the Effective Date is less than one year from the date of this Derivative Instrument, the Close-Out Amount shall be increased by the amount by which 35% of the year-to-date revenues of JB&Co., as of the Effective Date exceeds

the year-to-date revenues of the Corporation and Smart Books as of the same date in the preceding year for the last year ended. The Close-Out Amount shall be decreased by the amount by which 35% of the year-to-date revenues of JB&Co., as of the Effective Date, are less than the revenues of the Corporation and Smart Books as of the same date in the preceding year.

2.4.2.2 If the Effective Date is more than one year from the date of this Derivative Instrument, the Close-Out Amount shall be decreased % of the year-to-date revenues of JB&Co., as of the Effective Date, are greater than the revenues of the Corporation and Smart Books for the last year ended the year-to-date revenues of JB&Co. Jim shall receive a cash payment. on the same date 1 year prior to the Effective Date. If the Effective Date is more than one year from the date of this Derivative Instrument, if the year-to-date revenues of JB&Co., as of the Effective Date, are greater than the year-to-date revenues of JB&Co. on the same date 1 year prior to the Effective Date ("Year-To-Date Increase"), Jim shall receive a cash payment of THIRTY-FIVE PERCENT (35%) of Year-To-Date Increase.

2.4.3 For the purposes of calculating the Year-To-Date Increase revenues shall include: (i) all work in progress as of the Effective Date, that has a reasonable expectation of collection of all billings; and (ii) all accounts receivable as of the Effective Date that are less than 60 days past due.

3. REPRESENTATIONS AND WARRANTIES OF THE CORPORATION, SMART BOOKS, JIM BRANDER, and MEB

3.1 The Corporation represents and warrants to First Leaside as follows:

- 3.1.1 the Corporation is a duly constituted corporation validly existing under the laws of Alberta;
- 3.1.2 Jim is the sole director of the Corporation;
- 3.1.3 Jim is the sole shareholder of the Corporation;
- 3.1.4 the execution, delivery and performance of the obligations required to be performed by the Corporation pursuant to this Derivative Instrument do not and will not;

3 require the consent or approval of its shareholders or such consent or approval has been obtained,

- 3.1.4.2 contravene any of the Corporations organizational documents,
- 3.1.4.3 to the best of the Corporation's knowledge, violate any provision of, or require any filing, registration, consent or approval under, any Law, order, writ, judgment, injunction, decree, determination or award presently in effect having applicability to it,
- 3.1.4.4 result in a breach of or constitute a default under or require any consent under any indenture or loan or credit agreement or any other agreement, lease or instrument to which the Corporation may be a party or by which their

properties may be bound or affected except for consents which have been obtained,

- 3.1.4.5 result in, or require, the creation or imposition of any lien, upon or with respect to any of the Corporation's properties now owned or hereafter acquired, or
- 3.1.4.6 to the best of the Corporation's knowledge, cause the Corporation to be in default under any such law, order, writ, judgment, injunction, decree, determination or award or any such indenture, agreement, lease or instrument; to the best of Jim's knowledge, the Corporation is in material compliance with all laws applicable to it and its properties
- 3.1.5 This Derivative Instrument and the terms of the Swap represent legal, valid and binding obligation of the Corporation, enforceable against the Corporation in accordance with its terms, except to the extent that such enforcement may be limited by applicable bankruptcy, insolvency and other similar laws affecting creditors' rights generally;
- 3.1.6 there are no disputes and legal or other proceedings pending or threatened before any court, tribunal or other regulatory/governmental authority involving the Corporation which are reasonably likely to result in a material adverse change; and
- 3.1.7 The Corporation has completed all governmental approval, authorization, licensing, registration, filing and otherwise necessary act to carry out the business of the Corporation.

3.2 Smart Books represents and warrants to First Leaside as follows:

- 3.2.1 Smart Books is the duly constituted corporation validly existing under the laws of Alberta;
- 3.2.2 Jim is the sole director of Smart Books;
- 3.2.3 Jim is the sole shareholder of Smart Books;
- 3.2.4 the execution, delivery and performance of the obligations required to be performed by Smart Books pursuant to this Derivative Instrument do not and will not;
 - 3.2.4.1 require the consent or approval of its shareholders or such consent or approval has been obtained,
 - 3.2.4.2 contravene any of Smart Books' organizational documents,
 - 3.2.4.3 to the best of Smart Books' knowledge, violate any provision of, or require any filing, registration, consent or approval under, any Law, order, writ, judgment, injunction, decree, determination or award presently in effect having applicability to it,
 - 3.2.4.4 result in a breach of or constitute a default under or require any consent under any indenture or loan or credit agreement or any other agreement, lease or

instrument to which Smart Books may be a party or by which their properties may be bound or affected except for consents which have been obtained,

- 3.2.4.5 result in, or require, the creation or imposition of any lien, upon or with respect to any of Smart Books' properties now owned or hereafter acquired, or
- 3.2.4.6 to the best of Smart Books' knowledge, cause Smart Books to be in default under any such law, order, writ, judgment, injunction, decree, determination or award or any such indenture, agreement, lease or instrument; to the best of Jim's knowledge, Smart Books is in material compliance with all laws applicable to it and its properties.
- 3.2.5 This Derivative Instrument and the terms of the Swap represent a legal, valid and binding obligation of Smart Books, enforceable against the Smart Books in accordance with its terms, except to the extent that such enforcement may be limited by applicable bankruptcy, insolvency and other similar laws affecting creditors' rights generally;
- 3.2.6 there are no disputes and legal or other proceedings pending or threatened before any court, tribunal or other regulatory/governmental authority involving Smart Books which are reasonably likely to result in a material adverse change; and
- 3.2.7 Smart Books has completed all governmental approval, authorization, licensing, registration, filing and otherwise necessary act to carry out the business of Smart Books.

3.3 Jim represents and warrants to First Leaside as follows:

- 3.3.1 Jim is the sole director of the Corporation and Smart Books;
- 3.3.2 Jim is the sole shareholder of the Corporation and Smart Books;
- 3.3.3 Jim is a duly qualified Chartered Accountant in the Province of Alberta and is eligible to own the Corporation and Smart Books;
- 3.3.4 the execution, delivery and performance of the obligations required to be performed by Jim pursuant to this Derivative Instrument do not and will not;
 - 3.3.4.1 to the best of Jim's knowledge, violate any provision of, or require any filing, registration, consent or approval under, any Law, order, writ, judgment, injunction, decree, determination or award presently in effect having applicability to it,
 - 3.3.4.2 result in a breach of or constitute a default under or require any consent under any indenture or loan or credit agreement or any other agreement, lease or instrument to which Jim may be a party or by which the Shares may be bound or affected except for consents which have been obtained,
 - 3.3.4.3 to the best of Jim's knowledge, cause Jim to be in default under any such law, order, writ, judgment, injunction, decree, determination or award or any such

indenture, agreement, lease or instrument; to the best of Jim's knowledge, Jim is in material compliance with all laws applicable to him,

- 3.3.5 This Derivative Instrument and the terms of the Swap represent a legal, valid and binding obligation of Jim, enforceable against Jim in accordance with its terms, except to the extent that such enforcement may be limited by applicable bankruptcy, insolvency and other similar laws affecting creditors' rights generally;
- 3.3.6 there are no disputes and legal or other proceedings pending or threatened before any court, tribunal or other regulatory/governmental authority involving Jim which are reasonably likely to result in a material adverse change; and
- 3.3.7 Jim has completed all governmental approval, authorization, licensing, registration, filing and otherwise necessary act to carry out the business of the Corporation and Smart Books.

3.4 MEB represents and warrants to First Leaside as follows:

- 3.4.1 MEB is a duly constituted corporation validly existing under the laws of Alberta;
- 3.4.2 Jim is the sole director of MEB;
- 3.4.3 Jim is the sole shareholder of the MEB;
- 3.4.4 the execution, delivery and performance of the obligations required to be performed by the Corporation pursuant to this Derivative Instrument do not and will not;
 - 3.4.4.1 require the consent or approval of its shareholders or such consent or approval has been obtained,
 - 3.4.4.2 contravene any of MEB's organizational documents,
 - 3.4.4.3 to the best of MEB's knowledge, violate any provision of, or require any filing, registration, consent or approval under, any Law, order, writ, judgment, injunction, decree, determination or award presently in effect having applicability to it,
 - 3.4.4.4 result in a breach of or constitute a default under or require any consent under any indenture or loan or credit agreement or any other agreement, lease or instrument to which MEB may be a party or by which their properties may be bound or affected except for consents which have been obtained,
 - 3.4.4.5 result in, or require, the creation or imposition of any lien, upon or with respect to any of MEB's properties now owned or hereafter acquired, or
 - 3.4.4.6 to the best of MEB's knowledge, cause MEB to be in default under any such law, order, writ, judgment, injunction, decree, determination or award or any such indenture, agreement, lease or instrument; to the best of Jim's knowledge, MEB is in material compliance with all laws applicable to it and its properties

- 3.4.5 This Derivative Instrument and the terms of the Swap represent legal, valid and binding obligations of MEB, enforceable against MEB in accordance with its terms, except to the extent that such enforcement may be limited by applicable bankruptcy, insolvency and other similar laws affecting creditors' rights generally;
- 3.4.6 Other than as already disclosed to First Leaside, there are no disputes and legal or other proceedings pending or threatened before any court, tribunal or other regulatory/governmental authority involving MEB which are reasonably likely to result in a material adverse change; and
- 3.4.7 MEB has completed all governmental approval, authorization, licensing, registration, filing and otherwise necessary act to carry out the business of the MEB.

4. REPRESENTATIONS AND WARRANTIES OF FIRST LEASIDE

- 4.1 First Leaside is a duly constituted corporation validly existing under the laws of Ontario;
- 4.2 Joanna L. Hampton is the sole director of First Leaside;
- 4.3 First Leaside Wealth Management Inc. is the sole shareholder of First Leaside;
- 4.4 First Leaside hereby represents and warrants to the Corporation, Smart Books, Jim and MEB that, from the execution date of this Derivative Instrument until the date the Derivative Instrument terminates,
 - 4.4.1 The execution, delivery and performance of the obligations required to be performed by First Leaside pursuant to this Derivative Instrument do not and will not:
 - 4.4.1.1 to the best of First Leaside's knowledge, violate any provision of, or require any filing, registration, consent or approval under, any Law, order, writ, judgment, injunction, decree, determination or award presently in effect having applicability to it,
 - 4.4.1.2 result in a breach of or constitute a default under or require any consent under any indenture or loan or credit agreement or any other agreement, lease or instrument to which First Leaside may be a party or by which it or its properties may be bound or affected except for consents which have been obtained.
 - 4.4.2 The execution and the performance of this Derivative Instrument is not in breach of any effective laws and regulations, governmental approval, authorization and notification, other government documents and any contracts executed with, or commitments made to, any third party; and
 - 4.4.3 The Derivative Instrument and the terms of the Swap are legal, valid and binding obligation of First Leaside, enforceable against First Leaside, in accordance with its terms, except to the extent that such enforcement may be limited by applicable bankruptcy, insolvency and other similar laws affecting creditors' rights generally.

5. COVENANTS OF JIM, MEB SMART BOOKS AND THE CORPORATION

5.1 The Corporation, MEB and Smart Books covenant and agree that until full and complete performance by the Corporation, MEB and Smart Books of all obligations arising under this Derivative Instrument, the Corporation MEB, and Smart Books shall:

- 5.1.1 Not create, authorize, issue or sell any shares of capital stock or other securities of the Corporation, MEB or Smart Books without the prior written consent of First Leaside;
- 5.1.2 Not sell, assign, transfer, dispose of, donate, mortgage, pledge, hypothecate, charge or otherwise encumber any of the Shares to any person other than a nominee of First Leaside;
- 5.1.3 Not declare any dividends, other than dividends whereby Jim chooses to receive his 35% of the Profits, distribution of assets or return of capital, without the consent of First Leaside, ;
- 5.1.4 Not enter into: a partnership, any arrangement for the sharing of profits, joint ventures or arrangement involving the sale, assignment or dilution of any material property of the Corporation, unless consented to by First Leaside;
- 5.1.5 Not repay any Shareholder loans without the consent of First Leaside;
- 5.1.6 Not amend the Articles or By-Laws of the Corporation, MEB or Smart Books;
- 5.1.7 Not undertake any capital expenditures in excess of \$25,000 without the consent of First Leaside;
- 5.1.8 Not take any action which may lead to or result in a material change without the consent of First Leaside;
- 5.1.9 Not sell, lease, exchange or dispose of all or substantially all of the property or assets of the Corporation, MEB, or Smart Books;
- 5.1.10 Not take any steps to wind up or terminate the corporate existence of the Corporation, MEB or Smart Books;
- 5.1.11 Cooperate with First Leaside and execute such further instruments and documents as First Leaside shall reasonably request to carry out to its satisfaction the transactions contemplated by this Derivative Instrument and the terms of the Swap;
- 5.1.12 As soon as possible and in any event within two business days after acquiring knowledge thereof notify First Leaside in writing of the occurrence of any Default or Event of Default;
- 5.1.13 Provide First Leaside with:
 - 5.1.13.1 quarterly management prepared financial statements for JB&Co. compared with budget within forty-five (45) days of quarter end;

- 5.1.13.2 monthly management prepared financial statements for JB&Co. compared with budget within twenty days (20) days of each month end; and
 - 5.1.13.3 an annual operating plan and budget no later than thirty (30) days before the start of each fiscal year.
 - 5.1.14 Promptly provide First Leaside with such other information respecting condition or operations, financial or otherwise, of JB&Co. as First Leaside may from time to time reasonably request;
 - 5.1.15 Promptly notify First Leaside of all actions, suits and proceedings before any domestic or foreign governmental authority or arbitrator, affecting: JB&Co. the Corporation, MEB, or Smart Books, except those which in the aggregate, if adversely determined, would have no material adverse effect on the Corporation's ability to meet its obligations pursuant to this Derivative Instrument; and
 - 5.1.16 Promptly (and in any event within two business days) after the Corporation, MEB, Smart Books, or JB&Co. becomes aware of the existence of (i) any breach or non-performance of, or any default under, any contractual obligation which is material to the financial condition of the Corporation, MEB, Smart Books, or JB&Co. or (ii) any event, development or other circumstances which has any reasonable likelihood of causing or resulting in a material adverse effect on JB&Co.'s, the Corporation's, MEB's or Smart Books' ability to meet its obligations pursuant to this Agreement.
- 5.2 Jim covenants and agrees that until full and complete performance by Jim of all obligations arising under this Derivative Instrument, Jim shall:
- 5.2.1 Not sell, assign, transfer, dispose of, donate, mortgage, pledge, hypothecate, charge or otherwise encumber the Shares to any person, including by way of a will or testamentary trust, other than a nominee of First Leaside;
 - 5.2.2 Not declare any dividends, other than dividends whereby Jim chooses to receive his 35% of the Profits,, distribution of assets or return of capital, without the consent of First Leaside;
 - 5.2.3 Not enter into: a partnership, any arrangement for the sharing of profits, joint ventures or arrangement involving the sale, assignment or dilution of any material property of: the Corporation, MEB or Smart Books, unless consented to by First Leaside;
 - 5.2.4 Not amend the Articles or By-Laws of: MEB, the Corporation or Smart Books;
 - 5.2.5 Not take any action which may lead to or result in a material change without the consent of First Leaside;
 - 5.2.6 Not sell, lease, exchange or dispose of all or substantially all of the property or assets of: MEB, the Corporation or Smart Books;
 - 5.2.7 Not take any steps to wind up or terminate the corporate existence of: MEB, the Corporation or Smart Books, without the consent of First Leaside;

- 5.2.8 Cooperate with First Leaside and execute such further instruments and documents as First Leaside shall reasonably request to carry out to its satisfaction the transactions contemplated by this Derivative Instrument and the terms of the Swap;
- 5.2.9 As soon as possible and in any event within two business days after acquiring knowledge thereof notify First Leaside in writing of the occurrence of any Default or Event of Default;
- 5.2.10 Promptly notify First Leaside of all actions, suits and proceedings before any domestic or foreign governmental authority or arbitrator involving Jim, except those which in the aggregate, if adversely determined, would have no material adverse effect on Jim's ability to meet his obligations pursuant to this Derivative Instrument; and
- 5.2.11 Promptly (and in any event within two business days) after Jim becomes aware of the existence of any breach or non-performance of, or any default under, any contractual obligation which has any reasonable likelihood of causing or resulting in a material adverse effect on the Jim's ability to meet his obligations pursuant to this Derivative Instrument.
- 5.2.12 Maintain his licensing as a Chartered Accountant in the Province of Alberta.

6. EVENTS OF DEFAULT; ACCELERATION

3 Events of Default. Each of the following shall constitute an "Event of Default":

- 6.1.1 Jim shall fail to perform any term, covenant or agreement contained herein and such failure shall continue for five (5) days after the earlier of the date on which (i) First Leaside becomes aware of such failure and has given Jim notice of the Event of Default (ii) written notice of such failure has been given to Jim, the Corporation, or Smart Books, by First Leaside;
- 6.1.2 If Jim, MEB, the Corporation or Smart Books becomes insolvent within the meaning of the *Bankruptcy and Insolvency Act* (Canada), files or notifies First Leaside that it intends to file a petition under the *Bankruptcy and Insolvency Act* (Canada), initiates a proceeding under any similar law or statute relating to bankruptcy, insolvency, reorganization, winding up or adjustment of debts (collectively, an "Action"), becomes the subject of either an involuntary Action or petition under the *Bankruptcy and Insolvency Act* (Canada) without such involuntary Action or petition being dismissed within 30 days of filing or, if Jim, MEB, the Corporation, or Smart Books is diligently proceeding to dismiss such petition, such longer period of time if required, but in no event shall such longer period of time be greater than 90 days, or is not generally paying its debts as the same become due.

6.2 Remedies Upon Default. Immediately upon the occurrence of any Event of Default and during the continuance thereof, First Leaside may, by providing written notice, exercise its right to effect the Transfer.

7. NOTIFICATIONS

7.1 Notice or other communications under this Derivative Instrument shall be delivered personally or sent by facsimile transmission or by registered mail to the address set forth below, except that such address has been changed in writing. The date noted on the return receipt of the registered mail is the service date of the notice if the notice is sent by registered mail; the sending date is the service date of the notice if the notice is sent personally or by facsimile transmission. The original of the notice shall be sent personally or by registered mail to the following address after the notice is sent by facsimile.

If to: **First Leaside**
Attn: Joanna L. Hampton
 430 Regional Road #8, R.R. 1
 Uxbridge, Ontario L9P 1R1
 fax: (905) 852-0273

and if to: **Jim, MEB, the Corporation or Smart Books**
Attn: Jim Brander
 604 - 550 11th. Avenue SW
 Calgary, AB
 T2R 1M7
 Fax: 403-920-0383

8. GOVERNING LAW AND SETTLEMENT OF DISPUTES

- 4 The execution, validity, interpretation, performance, implementation, termination and settlement of disputes of this Derivative Instrument shall be governed exclusively by the laws of the Province of Alberta and the Parties hereto irrevocably attorn to the exclusive jurisdiction of the Courts of the Province of Ontario and agree that any proceedings taken in respect to this Agreement shall be taken in such courts and no other.

9. MISCELLANEOUS

- 5 This Derivative Instrument shall be effective as of the date above written and shall expire when all the Parties have fully performed their obligations under this Derivative Instrument.

9.2 The Parties may amend and supplement this Derivative Instrument with a written agreement. The amendment and supplement duly executed by all the Parties shall be part of this Derivative Instrument and shall have the same legal effect as this Derivative Instrument.

9.3 This Derivative Instrument constitutes the entire agreement among the Parties relating to the subject matter hereof.

9.4 Nothing in this Agreement shall be construed so as to create a partnership or joint venture between First Leaside, and any of: MEB, Jim, the Corporation, or Smart Books and nothing herein shall be construed so as to impose any liability as such on First Leaside.

9.5 Any provisions of this Derivative Instrument that are invalid or unenforceable shall not affect the validity and enforceability of any other provisions hereof.

9.6 This Derivative Instrument shall enure to the benefit of and be binding upon all the Parties and their successors and assigns.

9.7 First Leaside may assign its rights pursuant to this Derivative Instrument to any affiliate or subsidiary of the First Leaside Group of Companies without notice to Jim, MEB, the Corporation, or Smart Books and any assignee pursuant to this Section 9.7 shall be subject to the terms of this Derivative Instrument.

9.8 Jim, MEB the Corporation and Smart Books agree to indemnify, hold harmless and defend First Leaside and each of its successors, assigns, and trustees, as applicable (collectively, the "Indemnified Parties"), from and against any and all losses, costs, claims, liabilities, damages and expenses, including, without limitation, reasonable Lawyers' fees (collectively, "Losses"), arising as the result of a breach of any of the representations, warranties, covenants, or obligations of Jim, the Corporation or Smart Books set forth in this Agreement, but excluding Losses suffered by an Indemnified Party directly arising out of such Indemnified Party's gross negligence or willful misconduct.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date hereof.

FIRST LEASIDE ACCOUNTING AND TAX SERVICES INC.

Per:

Name: Joanna L. Hampton
President
I have the authority to bind the corporation.

JIM BRANDER PROFESSIONAL CORPORATION

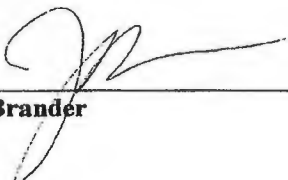
Per:

Name: Jim Brander
Title: Director
I have the authority to bind the corporation

SMART BOOKS ACCOUNTING SERVICES INC.

Per:

Name: Joanna L. Hampton
President
I have the authority to bind the corporation.


Jim Brander

Witness
Name:
Address


LUIS MORALES
Barrister and Solicitor
200, 602 - 11 Avenue SW
Calgary, Alberta
T2R 1S8

9.5 Any provisions of this Derivative Instrument that are invalid or unenforceable shall not affect the validity and enforceability of any other provisions hereof.

9.6 This Derivative Instrument shall enure to the benefit of and be binding upon all the Parties and their successors and assigns.

9.7 First Leaside may assign its rights pursuant to this Derivative Instrument to any affiliate or subsidiary of the First Leaside Group of Companies without notice to Jim, MEB, the Corporation, or Smart Books and any assignee pursuant to this Section 9.7 shall be subject to the terms of this Derivative Instrument.

9.8 Jim, MEB the Corporation and Smart Books agree to indemnify, hold harmless and defend First Leaside and each of its successors, assigns, and trustees, as applicable (collectively, the "Indemnified Parties"), from and against any and all losses, costs, claims, liabilities, damages and expenses, including, without limitation, reasonable Lawyers' fees (collectively, "Losses"), arising as the result of a breach of any of the representations, warranties, covenants, or obligations of Jim, the Corporation or Smart Books set forth in this Agreement, but excluding Losses suffered by an Indemnified Party directly arising out of such Indemnified Party's gross negligence or willful misconduct.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date hereof.

**FIRST LEASIDE ACCOUNTING AND TAX
SERVICES INC.**

Per: _____

Name: Joanna L. Hampton
President

I have the authority to bind the corporation.

**JIM BRANDER PROFESSIONAL
CORPORATION**

Per: _____

Name: Jim Brander
Title: Director

I have the authority to bind the corporation

**SMART BOOKS ACCOUNTING
SERVICES INC.**

Per: _____

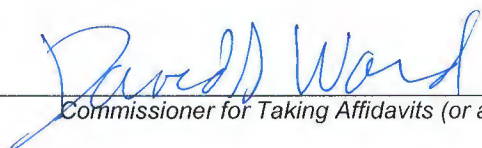
Name: Jim Brander
President

I have the authority to bind the corporation.

Jim Brander

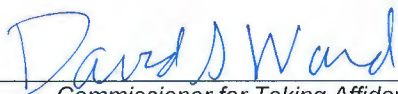
Witness
Name:
Address

This is Exhibit "P" referred to in the Affidavit of Greg MacLeod
sworn August 20..., 2012

A handwritten signature in blue ink, reading "David Ward", is written over a horizontal line.

Commissioner for Taking Affidavits (or as may be)

This is Exhibit "Q" referred to in the Affidavit of Greg MacLeod
sworn August 30, 2012



Commissioner for Taking Affidavits (or as may be)



SCHEEF & STONE, L.L.P.

Legal counsel based on solid principles.

June 26, 2012

F.L. Sedona Creek, Ltd.
430 Durham Rd. 8
Uxbridge, Ontario
Canada L9P1R1

VIA Registered Mail
Return Receipt Requested
and VIA Regular Mail

F.L. Sedona Creek, Ltd.
c/o Leaders Property Management
7798 Spring Valley Road
Dallas, Texas 75254

VIA Registered Mail
Return Receipt Requested
and VIA Regular Mail

F.L. Sedona Creek, Ltd.
15 Allstate Pkwy., Suite 600
Markham, Ontario
Canada L3R5B4

VIA Registered Mail
Return Receipt Requested
and VIA Regular Mail

Re: Promissory Note ("Note") dated August 1, 2010, in the original principal sum of Five Million and No/100 Canadian Dollars (\$5,000,000.00), executed by F.L. Sedona Creek, Ltd., a Texas limited partnership (the "Borrower") and payable to the order of First Leaside Mortgage Fund ("Lender"); the Note is secured by certain real property (the "Property") known as being situated in the City of Dallas, Dallas County, Texas, as more particularly described on Exhibit "A" to that certain Deed of Trust ("Deed of Trust") dated August 1, 2010, executed by Borrower to John A. Wise, Trustee for the benefit of Lender and recorded under Document Number 201000210383 of the Real Property Records of Dallas County, Texas (the Note, Deed of Trust, and all other documents collateral or ancillary thereto and all amendments thereto are collectively be referred to in this letter as the "Loan Documents").

Gentlemen:

This firm represents First Leaside Mortgage Fund ("Lender"). This letter is written for, and on behalf of, Lender. For your information, many of the capitalized words and terms used below are defined in the reference caption above.

Please be advised that a default has occurred in the payment of the Note. Payments of accrued interest in the amount of \$27,500.00 were due on November 29, 2011, December 29, 2011, January 29, 2012, February 29, 2012, March 29, 2012, April 29, 2012, and May 29, 2012 for a total amount past due of \$192,500.00 (the "Past Due Amount"). Your failure to pay the Past Due Amount

F.L. Sedona Creek, Ltd.
June 26, 2012
Page 2

in accordance with the terms of the Note constitutes a default under the terms of the Loan Documents entitling Lender to, among other things, accelerate the maturity of the Note. Accordingly, Lender has elected to exercise its right to accelerate the maturity of the Note. Therefore, the entire outstanding principal balance of the Note, together with all accrued but unpaid interest thereon and any fees or costs incurred by Lender (the "Amount Due") is now fully due and payable. Demand is hereby made for the immediate payment of the Amount Due.

Lender has further elected to exercise the rights and remedies available to it for the enforcement and collection of the obligations evidenced by the Loan Documents, including, but not limited to, sale of the Property at a public auction to the highest bidder for cash. In the event the Property is not sold at foreclosure for an amount sufficient to satisfy the entire unpaid principal balance of the Note, together with accrued and unpaid interest, and such other expenses provided for by any of the Loan Documents, you may be liable for the deficiency.

Please find enclosed a copy of the Notice of Foreclosure Sale (the "Notice") which shall be posted in connection with the public sale of the Property. Such public sale, as authorized by the Deed of Trust, shall take place on **Tuesday, August 7, 2012, between the hours of 10:00A.M. and 1:00P.M.** at the place as more particularly described in the Notice, with the Property being sold to the highest bidder for cash.

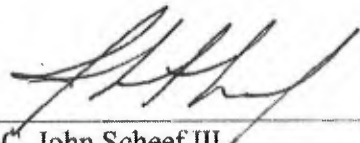
Nothing contained in this letter nor any prior act of Lender shall be construed to amend or waive any of Lender's rights or remedies under the Loan Documents, or to constitute a waiver of any event of default which may exist under the Loan Documents. **Acceptance by Lender of partial payments shall not be construed as an acceptance in satisfaction of the defaults.** Lender expressly reserves all rights and remedies available to it under applicable law and under the Loan Documents.

YOU ARE HEREBY ADVISED THAT THIS MATTER HAS BEEN PLACED IN THE HANDS OF THIS FIRM FOR COLLECTION AND THAT ANY INFORMATION OBTAINED IN CONNECTION THEREWITH SHALL BE USED FOR THAT PURPOSE. THIS FIRM REPRESENTS FIRST LEASIDE MORTGAGE FUND AND THIS LETTER IS WRITTEN ON ITS BEHALF.

Sincerely,

SCHEEF & STONE, L.L.P.

By:


C. John Scheef III

NOTICE OF FORECLOSURE SALE

Notice is hereby given of a public non-judicial foreclosure sale.

1. Property To Be Sold. The property to be sold is described as follows:

All property (real, personal or otherwise) described in the Deed of Trust, including, but not limited to, **the real property situated in the City of Dallas, Dallas County, Texas, as more particularly described on Exhibit "A" attached hereto and made a part hereof**, together with the rights, appurtenances and improvements thereto and certain other personal property as more particularly described in the Deed of Trust referenced herein (the "Property").

2. Date, Time, and Place of Sale. The sale is scheduled to be held at the following date, time, and place:

Date: **Tuesday, August 7, 2012**

Time: The sale shall begin no earlier than **10:00 A.M.** or no later than three hours thereafter. The sale shall be completed by no later than **1:00 P.M.**

Place: **The area outside on the north side of the George Allen Courts Building facing Commerce Street below the overhang. The George Allen Courts Building is located at 600 Commerce Street, Dallas, Texas 75202.**

The trustee appointed by beneficiary to conduct the sale has been authorized by the beneficiary to postpone, withdraw, or reschedule the sale for another day if directed by beneficiary. In that case, the trustee or substitute trustee under the Deed of Trust need not appear at the date, time, and place of a scheduled sale to announce the postponement, withdrawal, or rescheduling. Notice of the date of any rescheduled foreclosure sale will be reposted and refiled in accordance with the posting and filing requirements of the Texas Property Code. Such reposting or refiling may be after the date originally scheduled for this sale.

3. Terms of Sale. The sale will be conducted as a public auction to the highest bidder for cash, subject to the provisions of the Deed of Trust. The beneficiary thereunder intends to bid at the sale and any such bid made on behalf of beneficiary shall be in the form of a credit owed against the amounts secured by the Deed of Trust at the time of sale.

Those desiring to purchase the Property will need to demonstrate their ability to pay cash on the day the Property is sold.

The sale will be made expressly subject to any title matters of record or as set forth in the Deed of Trust, but prospective bidders are reminded that by law the sale will necessarily be made subject to all prior matters of record affecting the Property, if any, to the extent that they remain in force and effect and have not been subordinated to the Deed of Trust. Prospective bidders are strongly urged to examine the applicable property records to determine the nature and extent of such matters, if any.

4. Type of Sale. The sale is a nonjudicial deed of trust lien and security interest foreclosure sale being conducted pursuant to the power of sale granted by the Deed of Trust executed by F.L. Sedona Creek, Ltd., a Texas limited partnership (the "Borrower"), to John A. Wise, Trustee for the benefit of First Leaside Mortgage Fund (the "Lender") dated August 1, 2010 and recorded under Document Number 201000210383 of the Real Property Records of Dallas County, Texas (the "Deed of Trust").

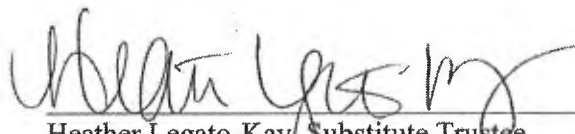
5. Obligations Secured. The Deed of Trust provides that it secures the payment of the indebtedness and obligations therein described (collectively the "Obligations") including but not limited to the Promissory Note (the "Note") in the original principal amount of Five Million and No/100 Canadian Dollars (\$5,000,000.00) executed by Borrower, and payable to the order of Lender, and all renewals, modifications and extensions of the Note. First Leaside Mortgage Fund is the current owner and holder of the Note and the Obligations and is the beneficiary under the Deed of Trust.

Questions concerning the sale may be directed to the undersigned or to the beneficiary:

First Leaside Mortgage Fund
Attn: David Phillips
430 Durham Rd. 8
Uxbridge, Ontario
Canada L9P1R1

6. Default and Request To Act. Default has occurred under the Deed of Trust, and the beneficiary has requested me, as Substitute Trustee, to conduct this sale. Notice is given that before the sale the beneficiary may appoint another person as substitute trustee to conduct the sale.

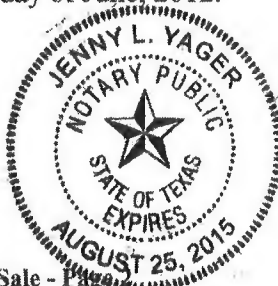
DATED June 26, 2012.



Heather Legato-Kay, Substitute Trustee
2601 Network Blvd. Suite 102
Frisco, Texas 75034
Telephone: (214) 472-2100

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

The foregoing instrument was acknowledged before me by Heather Legato-Kay, Substitute Trustee, on the 26th day of June, 2012.



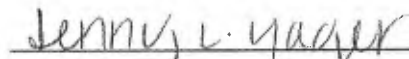

Notary Public, State of Texas

Exhibit A

BEING a tract of land out of the J.G. Jackson Survey, Abstract No. 707 and being all of City of Dallas Block C/8100 of Highland Oaks Addition as recorded in Volume 78168, Page 0451 of the Plat Records of Dallas County, Texas said tract being more particularly described as follows:

BEGINNING at a 5/8" iron rod found for a corner in the north right-of-way line of Whitehurst Drive (64 feet wide) said point being westerly 1048.21 feet, along the said northerly line of Whitehurst Drive, from the westerly right-of-way line of Skillman Street (a variable width), said iron rod being in a circular curve to the left having a radius of 552.56 feet;

THENCE Westerly, with above said circular curve to the left and along the above said north line of Whitehurst Drive, thru a central angle of 7 degrees 25 minutes 52 seconds, an arc distance of 71.67 feet with a chord bearing of N 85 degrees 55 minutes 34 seconds W, to a 5/8" iron rod set for the point of tangency;

THENCE N 89 degrees 38 minutes 30 seconds W, continuing along the above said north line of Whitehurst Drive, 467.81 feet to 5/8" iron rod found for the beginning of a circular curve to the right having a radius of 445.50 feet;

THENCE Northwesterly, with above said circular curve to the right and along the above said north line of Whitehurst Drive, thru a central angle of 54 degrees 10 minutes 14 seconds an arc distance of 421.20 feet to a 5/8" iron rod found for the point of tangency;

THENCE N 35 degrees 28 minutes 16 seconds W, continuing along the north line of Whitehurst Drive 82.06 feet to a point for a corner in Audelia Branch;

THENCE the following courses and distances along Audelia Branch:

N 74 degrees 20 minutes 30 seconds E, 95.99 feet;
 N 32 degrees 13 minutes 16 seconds E, 90.00 feet;
 S 77 degrees 43 minutes 25 seconds E, 202.00 feet;
 N 43 degrees 06 minutes 12 seconds E, 118.00 feet;
 S 88 degrees 21 minutes 04 seconds E, 158.50 feet;
 N 64 degrees 14 minutes 37 seconds E, 41.50 feet;
 N 40 degrees 53 minutes 39 seconds E, 44.00 feet;
 N 19 degrees 07 minutes 43 seconds E, 36.50 feet;
 N 1 degrees 20 minutes 36 seconds E, 94.00 feet;
 N 47 degrees 04 minutes 51 seconds E, 39.00 feet;
 N 0 degrees 00 minutes 10 seconds E, 70.00 feet to a point for a corner;

Exhibit A (Continued)

THENCE S 53 degrees 10 minutes 39 seconds E, 338.99 feet to a 5/8 iron rod found for a corner;

THENCE S 1 degrees 14 minutes 00 seconds W, 475.76 feet to the POINT OF BEGINNING and CONTAINING 370,737 square feet or 8.5109 acres of land.

This is Exhibit "R" referred to in the Affidavit of Greg MacLeod
sworn August 20..., 2012

David S Ward

Commissioner for Taking Affidavits (or as may be)

haynesboone

August 3, 2012

Direct Phone Number: 214-651-5053

Direct Fax Number: 214-200-0612

scott.everett@haynesboone.com

Via fax, email, and U.S. Mail:

C. John Scheef III
Scheef and Stone, LLP
2601 Network Boulevard, Suite 102
Frisco, Texas 75034
john.scheef@solidcounsel.com
Fax: 214-472-2150

Re: First Leaside Mortgage Fund / F.L. Sedona Creek, Ltd.

Dear John,

My firm represents the direct and indirect owners of the limited partnership interests in F.L. Sedona Creek, Ltd. I have received a copy of your June 26, 2012 default letter and notice regarding a scheduled foreclosure on August 7, 2012. For convenience, this letter uses the same defined terms in yours.

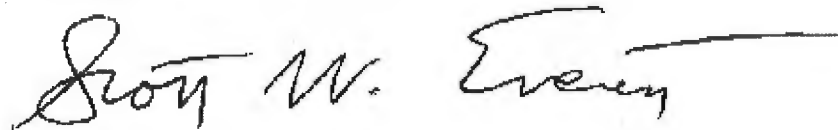
We are investigating the facts and circumstances surrounding the transaction contemplated by the Deed of Trust and Note. Based on our investigation so far, it appears that Borrower did not receive (directly or indirectly) any of the loan proceeds that are the subject of the Deed of Trust and Note and did not receive any other benefits in exchange for the \$5 million encumbrance placed on Borrower's property. It also appears that David Phillips actively participated in the transaction on all sides, including the side of Borrower and Lender.

We request that Lender provide to us, no later than noon Central time on Monday, August 6, 2012 (the day before the scheduled foreclosure), any written documents or other evidence that show the benefits that Borrower may have received in connection with the August 2010 transaction.

I also wanted to let you know that in light of the information that our client has obtained so far, it is reserving all of rights to seek whatever recourse it deems advisable in the circumstances.

If you have any questions about this inquiry, please do not hesitate to contact me.

Sincerely,



Scott Everett

Haynes and Boone, LLP
Attorneys and Counselors
2323 Victory Avenue, Suite 700
Dallas, Texas 75219-7672
Phone: 214.651.5000
Fax: 214.651.5940

This is Exhibit "S" referred to in the Affidavit of Greg MacLeod
sworn August 20, 2012



Commissioner for Taking Affidavits (or as may be)

**SCHEEF & STONE, L.L.P.***Legal counsel based on solid principles.*

August 6, 2012

Direct Dial: (214) 472-2114

Writer's E-Mail Address
john.scheef@solidcounsel.com

Mr. Scott Everett
Haynes and Boone, LLP
2323 Victory Avenue, Suite 700
Dallas, Texas 75219-7672

VIA FACSIMILE & EMAIL

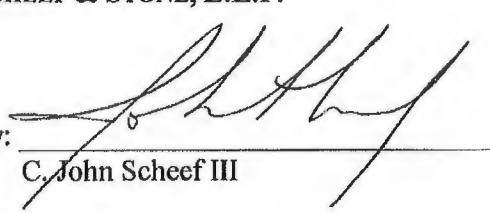
Re: First Leaside Mortgage Fund/F. L. Sedona Creek, Ltd.
Our File No. 6179.101

Dear Scott:

I am in receipt of your letter dated August 3, 2012. Before I communicate with you, I need to know specifically who you represent. It is my understanding that the "direct and indirect owners of limited partnership interests in F.L. Sedona Creek, Ltd." do not have authority to act on behalf of F.L. Sedona Creek, Ltd. As such, until such time as you are able to establish that you have authority to speak on behalf of that entity, the request set forth in your August 3, 2012 letter will not be addressed.

If you have any questions or have any additional information, please do not hesitate to contact me.

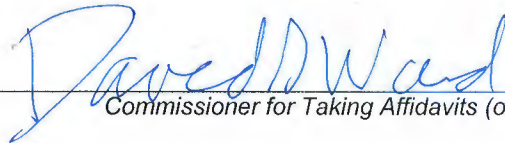
Sincerely,

SCHEEF & STONE, L.L.P.By: 

C. John Scheef III

CJS/jh

This is Exhibit "T" referred to in the Affidavit of Greg MacLeod
sworn August 20, 2012

A handwritten signature in blue ink, reading "David D. Ward", is written over a horizontal line.

Commissioner for Taking Affidavits (or as may be)

haynesboone

August 10, 2012

Direct Phone Number: 214-651-5053

Direct Fax Number: 214-200-0612

scott.everett@haynesboone.com

Via fax, email, and U.S. Mail:

C. John Scheef III
Scheef and Stone, LLP
2601 Network Boulevard, Suite 102
Frisco, Texas 75034
john.scheef@solidcounsel.com
Fax: 214-472-2150

Re: First Leaside Mortgage Fund / F.L. Sedona Creek, Ltd.

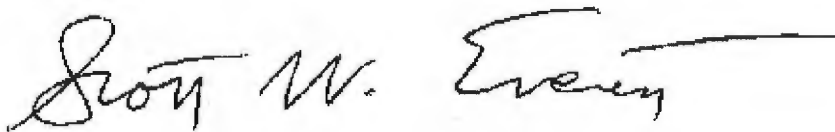
Dear John,

You asked in your August 6 letter specifically who I represent. As you may know, Wimberly Apartments Limited Partnership ("WALP") and various entities in the First Leaside group of companies are the subject of a CCAA (Companies' Creditors Arrangement Act) proceeding pending in the Ontario Superior Court of Justice (Commercial List). I understand that Mortgage Fund is familiar with the proceeding based in part on its appearance in the case. My information request to you and Mortgage Fund is made on behalf of WALP and the other direct and indirect owners of the limited partnership interests in Sedona, F.L. US Holdings, Ltd. and First Leaside Partners LP. Contrary to the suggestion in your letter, my clients do not need to control Sedona (or its and your agent, David Phillips) to make the request.

Please let me know if you need additional information before responding substantively to my August 3 letter. I reiterate that in light of the information that our client has obtained so far, it is reserving all of rights to seek whatever recourse it deems advisable in the circumstances.

If you have any questions about this inquiry, please do not hesitate to contact me.

Sincerely,



Scott Everett

Haynes and Boone, LLP
Attorneys and Counselors
2323 Victory Avenue, Suite 700
Dallas, Texas 75219-7672
Phone: 214.651.5000
Fax: 214.651.5940

This is Exhibit "U" referred to in the Affidavit of Greg MacLeod
sworn August 20, 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 18th 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 Leaside 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 18th 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 18th, 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

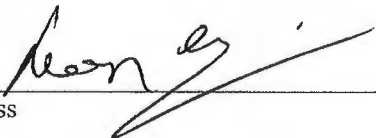
All accounting terms not specifically defined in this Declaration of Trust will be interpreted in accordance with GAAP. Where the character or amount of any asset or liability or item of revenue or expense or amount of equity is required to be determined, or any consolidation or other accounting computation 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.

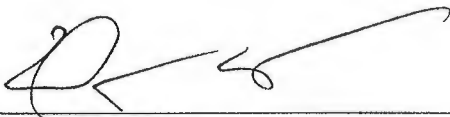
18.4 Language

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.*

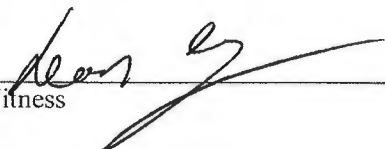
IN WITNESS WHEREOF this Trust Agreement had been executed as of the 18th day of June, 2010.

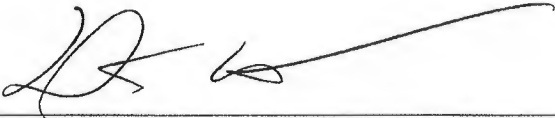
TRUSTEE


Witness


David C. Phillips

INITIAL UNITHOLDER


Witness


David C. Phillips