

**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. (the "Applicants")

**MOTION RECORD OF THE APPLICANTS
(Returnable October 22, 2012)**

October 15, 2012

CASSELS BROCK & BLACKWELL LLP
2100 Scotia Plaza
40 King Street West
Toronto, Ontario M5H 3C2

John Birch LSUC#38698U
Tel: 416-860-5225
Fax: 416-640-3057

David S. Ward LSUC#: 33541W
Tel: 416.869.5960
Fax: 416.360.3154

Lawyers for the Applicants

TO: ATTACHED SERVICE LIST

SERVICE LIST

TO: FASKEN MARTINEAU DUMOULIN LLP
333 Bay St., Suite 2400
Toronto, ON M5H 2T6

Stuart Brotman
Tel: (416) 865-5419
Fax: (416) 364-7813
sbrotman@fasken.com

Conor O'Neill
Tel: (416) 865-4517
Fax: (416) 364-7813
coneill@fasken.com

Lawyers for the Toronto-Dominion Bank

AND TO: GOWLING LAFLEUR HENDERSON LLP
1 First Canadian Place, Suite 1600
100 King St. West
Toronto, ON M5X 1G5

Cliff Prophet
Tel: (416) 862-7525
Fax: (416) 863-3422
clifton.prophet@gowlings.com

Lilly Wong
Tel: (416) 369-4630
Fax: (416) 369-7230
lilly.wong@gowlings.com

Lawyers for the Canadian Imperial Bank of Commerce

AND TO: TORYS LLP
79 Wellington St. West,
Suite 3000,
Toronto, ON M5K 1N2

David Bish
Tel: (416) 865-7353
Fax: (416) 865-0040
dbish@torys.com

John A. Fabello
Tel: (416) 865-8228
Fax: (416) 865-0040
jfabello@torys.com

**Lawyers for the Independent Committee of the Board of Directors of
First Leaside Wealth Management Inc.**

AND TO:

BENNETT JONES LLP
1 First Canadian Place, Suite 3400
Toronto, ON M5X 1A4

Mark S. Laugesen.
Tel: (416) 777-4802
Fax: (416) 863-1716
laugesenm@bennettjones.com

John D. van Gent
Tel: (416) 777-6522
Fax: (416) 863-1716
vangentj@bennettjones.com

Lawyers for KingSett Capital

AND TO:

CRAWLEY MEREDITH BRUSH LLP
179 John St., Suite 800
Toronto, ON M5T 1X4

Alistair M. Crawley
Tel: (416) 217-0806
Fax: (416) 217-0220
acrawley@cmblaw.ca

Bruce O'Toole
Tel: (416) 217-0885
botoole@cmblaw.ca

Lawyers for David Phillips

AND TO:

TORKIN MANES LLP
Suite 1500
151 Yonge Street
Toronto ON M5C 2W7

Fay Sulley
Tel: +1 (416) 777-5419
Fax: +1 (888) 587-5769
fsulley@torkinmanes.com

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

AND TO: ONTARIO SECURITIES COMMISSION
20 Queen Street West, Suite 1900
Toronto, ON M5H 3S8

Yvonne B. Chisholm
Tel: (416) 593-2363
Fax: (416) 593-2319
ychisholm@osc.gov.on.ca

AND TO: THORNTON GROUT FINNIGAN LLP
Suite 3200, 100 Wellington St. W.
Toronto ON M5K 1K7

James H. Grout
Tel: (416) 304-0557
Fax: (416) 304-1313
jgrout@tgf.ca
Danny M. Nunes
Tel: 416.304.0592
Fax: 416.304.1313
dnunes@tgf.ca
Lawyers for the Ontario Securities Commission

AND TO: GOODMAN LLP
Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto ON M5H 2S7

Brian Empey
Tel: (416) 597-4194
Fax: (416) 979-1234
bempey@goodmans.ca

**Lawyers for Investment Industry Regulatory
Organization Of Canada**

AND TO: BLAKE, CASSELS & GRAYDON LLP
199 Bay Street
Suite 4000, Commerce Court West
Toronto ON M5L 1A9

Ms. Pamela Laurie Jane Huff
Tel: (416) 863-2958
Fax: (416) 863-2653
pamela.huff@blakes.com
Katherine McEachern
Tel: (416) 863-2566
Fax: (416) 863-2653
katherine.mceachern@blakes.com

Lawyers for the Monitor

AND TO:

FRASER MILNER CASGRAIN LLP

Suite 400
77 King Street West
Toronto-Dominion Centre
Toronto ON M5K 0A1

R. Shayne Kukulowicz LL.B., B.A.
Tel: (416) 863-4740
Fax: (416) 863-4592
shayne.kukulowicz@fmc-law.com

Jane Dietrich
Tel: (416) 863-4467
Fax: (416) 863-4592
jane.dietrich@fmc-law.com

**Lawyers for Proposed Representative Counsel
for First Leaside Investors**

AND TO:

MCLAUCHLIN & ASSOCIATES

Suite 200, 155 University Avenue
Toronto, ON M3K 2A3

Megan Sanford
Tel: 416 368-2555
Fax: 416 368-2599
msanford@mclauchlin.ca

Lawyers for Janick Electrick Limited

AND TO:

WILSON VUKELICH LLP

Valleywood Corporate Centre
60 Columbia Way
Suite 710
Markham ON L3R 0C9

Dan Condon
Tel: (905) 940-5505
Fax: (905) 940-8785
dcondon@wvllp.ca

Lawyers for Aquanorth Contracting Ltd.

AND TO: **WAGNER SIDLOFSKY LLP**
100 Richmond Street West
Suite 316
Toronto, ON M5H 3K6

Gregory Sidlofsky
Tel: 416- 601-9279
Fax: 416-364-6579
gmsidlofsky@wagnersidlofsky.com

Lawyers for 792873 Ontario Limited (H&S Equipment)

AND TO: **FEIGE, NAWROCKI LLP**
3300-130 Adelaide Street West
Toronto, ON M5H 3P5

Julian Nawrocki
Tel: 416-366-8833
Fax: 416-366-3992
nawrocki@fnlawyers.com

Lawyers for Municipal Mechanical Contractors Limited

AND TO: **NORTON ROSE CANADA LLP**
Suite 3800, Royal Bank Plaza, South Tower
200 Bay Street. P.O. Box 84
Toronto, ON M5J 2Z4

Michael Tamblyn
Tel: 416.202.6705
Fax: 416 216-3930
michael.tamblyn@nortonrose.com
Alan B. Merskey
Tel: 416.216.4805
Fax: 416.216.3930
alan.merskey@nortonrose.com

Lawyers for Kenaidan Contracting Limited

AND TO: **PETRO MACCALLUM LTD.**
165 Cartwright Avenue
Toronto, ON M6A 1V5
Tel: 416-785-7202

Judy Singh, Manager, Administration
jsingh@petomacallum.com

AND TO: E ALAN GARBE LAW OFFICE
7507 Kennedy Road
Markham, ON L3R 0L8

Tel: 905-415-9100
Fax: 905 479 3625
eagarbe@garbe-law.com

Lawyers for Stuctform International Limited, Gilbert Steel Limited and LaFarge Canada Inc.

AND TO: STIKEMAN ELLIOTT LLP
Barristers & Solicitors
5300 Commerce Court West,
199 Bay Street,
Toronto, ON, Canada M5L 1B9

Maria Konyukhova
Tel : (416) 869-5230
Fax: (416) 947-0866
mkonyukhova@stikeman.com

Lawyers for Midland Loan Services Inc. and Computershare Trust Canada

AND TO: PEOPLES TRUST COMPANY CANADA
Citigroup Place
Suite 901, 123 Front Street West
Toronto, ON M5J 2M2

Julie Berks, Senior Manager, MBS & Mortgage Banking Administration
Tel: 416-368-3266
Fax: 416-368-3328
julieb@peoplestrust.com

AND TO: OWEN BIRD LAW CORPORATION
Three Bentall Centre
595 Burrard Street, P. O. Box 49130
Vancouver BC V7X 1J5

Alan Frydenlund
Tel: (604) 691-7511
Fax: (604) 632-4486
afrydenlund@owenbird.com

Lawyers for Fisgard Capital Corporation

AND TO: **LANCASTER, BROOKS & WELCH LLP**
80 King St.
St. Catharines, ON L2R 6Z1

Malte von Anrep, Q.C.
Tel: 905-641-1551
Fax: 905-641-3340
mvonanrep@lbwlawyers.com

Lawyers for First Ontario Credit Union

AND TO: **PENSON FINANCIAL SERVICES CANADA INC.**
330 Bay Street, Suite 711
Toronto, ON M5H 2S8

John M. Skain, President & CEO
Tel: 416-943-9700
Fax: 416-943-9800
jskain@penson.ca

AND TO: **CBSC CAPITAL INC.**
100-1235 North Service Rd. W.
Oakville, ON L6M 2W2

Faseeh Ahmad
Loss Mitigation Group
Tel: 1-855-732-2818
Fax: 1-866-318-3447
fahmad@leasedirect.com

AND TO: **HEENAN BLAIKIE**
333 Bay Street, Suite 2900
Bay Adelaide Centre
Toronto, ON M5H 2T4

John Salmas LSUC 42336B
Tel: 416.360-3570
Fax: 866-895-2093
E-mail: jsalmas@heenan.ca

Renée Brosseau LSUC 47074B
Tel: 416.643-6992
Fax: 866.846-2913
E-mail: rbrosseau@heenan.ca

Lawyers for Canada Mortgage and Housing Corporation

AND TO: **DEPARTMENT OF JUSTICE**
Department of Justice
130 King Street West
Suite 3400
Toronto ON M5X 1K6

Diane Winters
Tel: 416-973-3172
Fax: 416 973-0810
diane.winters@justice.gc.ca

Peter Zevenhuizen
CRA Collections Liaison
Tel: 416- 952-8563
E-mail: Peter.Zevenhuizen@justice.gc.ca

AND TO: **INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA**
1600-121 King St W
Toronto ON M5H 3T9

Diana Iannetta
Tel: 416 943 5781
E-mail: dianetta@iiroc.ca

AND TO: **JOHN WILSON**
18 Ringwood Drive, Suite 5-225
Stouffville, ON L4A 0N2

Tel: 647-385-6543
E-mail: jwilsoncanada@gmail.com

AND TO: **BEARD WINTER LLP**
130 Adelaide Street West
Suite 701
Toronto ON M5H 2K4

Mr. N. Peter Silverberg
Tel: (416) 306-1737
Fax: (416) 593-7760
E-mail: psilverberg@beardwinter.com

Lawyers for Rounthwaite Dick & Hadley Architects Inc.

AND TO: **BENNETT JONES LLP**
3400 One First Canadian Place
P.O. Box 130
Toronto, ON M5X 1A4

John D. van Gent
Tel: 416-777-6522
Fax: 416-863-1716

E-mail: vangentj@bennettjones.com

Lawyers for KingSett Mortgage Corporation

AND TO:

GOODMANS LLP

Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7

Ryan Szainwald
Tel: 416-849-6892
Fax: 416-979-1234
E-mail: rszainwald@goodmans.ca

Lawyers for Brujjon Real Estate Holdings Inc.

AND TO:

TORYS LLP

79 Wellington St. West,
Suite 3000,
Toronto, ON M5K 1N2

Simon C. Knowling
Tel: (416) 865-7374
Fax: (416) 865-7380
sknowling@torys.com

Lawyers for BayBridge Seniors Housing Trust

AND TO:

TORKIN MANES LLP

Barristers & Solicitors
151 Yonge Street, Suite 1500
Toronto, ON M5C 2W7

S. Fay Sulley
Tel: 416-777-5419
Fax: 1-888-587-5769
E-mail: fsulley@torkinmanes.com

Jeffrey J. Simpson
Tel: 416-777-5413
Fax: 1-888-587-9143
E-mail: jsimpson@torkinmanes.com

**Lawyers for First Leaside Fund, First Leaside Mortgage Fund and
Wimberly Fund**

AND TO: **FARRIS, VAUGHAN, WILLIS & MURPHY LLP**
1708 Dolphin Avenue, Suite 800
Kelowna, BC V1Y 9S4

Dylana R. Bloor
Tel: 250-869-3870
Fax: 250-861-8772
E-mail: dbloor@farris.com

Lawyers for Scuka Enterprises Ltd.

AND TO: **BROOKS TOMCHENKO MORRISON LLP**
301-2502 St. Johns Street
Port Moody, BC V3H 2B4

Daniel C. Richardson
Tel: 604-917-0126
Fax: 604-937-5577
E-mail: dcr@btmlawyers.com

Lawyers for Gienow Windoor Ltd.

AND TO: **NIXON WENGER LLP**
301-2707 30th Avenue
Vernon, BC V1T 2B6

Kent G. Burnham
Tel: 250-542-5353
Fax: 250-542-7273
E-mail: kent.burnham@nixonwenger.com

Lawyers for Okanagan Sundeck Centre Ltd.

AND TO: **ROYAL BANK OF CANADA**
Corporate Banking
P.O. Box 50, 200 Bay Street
4th Floor, South Tower
Toronto, ON M5J 2W7

Sam Su, Vice-President, Corporate Banking
Tel: 416-842-3765
Fax: 416-842-5321
E-mail: sam.su@rbccm.com

Parties w/o e-mail addresses

AND TO: CIT FINANCIAL
207 Queens Quay West
Suite 700
Toronto, ON M5J 1A7

Phone: 877-639-2687
Fax: 416-594-5995

AND TO: NATIONAL LEASING GROUP INC.
1525 Buffalo Place
Winnipeg, MB R3T 1L9

Phone: (204) 954-9000
Toll Free Phone: (800) 665-1326
Toll Free Fax: (800) 882-0560

AND TO: PITNEY BOWES

Tel: 905-219-3000
Fax: 905-219-3193

AND TO: MCMILLAN LLP
Royal Centre, 1055 West Georgia Street
Suite 1500, P.O. Box 11117
Vancouver, BC V6E 4N7

Tel: 604-689-9111
Fax: 604-685-2351

Lawyers for Canadian Western Bank

AND TO: FARRIS VAUGHAN WILLS AND MURPHY LLP
700 West George Street, 25th Floor
Vancouver, BC V7Y 1B3

Tel: 604-684-9151
Fax: 604-661-9349

Lawyers for Kingstreet Real Estate Growth LP No. 2

AND TO: **TOYOTA CREDIT CANADA INC.**
80 Micro Court
Markham, Ontario L3R 9Z5

Tel: 905-513-8200
Fax: 905-513-9776

AND TO: **SUTHERLAND MARK FLEMMING SNYDER-PENNER PROFESSIONAL CORPORATION**

675 Queen Street South, Suite 100
Kitchener, ON N2M 1A1
Tel: 519-725-2500
Fax: 519-725-2525

Lawyers for Henry and Grace Hildebrand

AND TO: **OWEN BIRD LAW CORPORATION**
Three Bentall Centre
595 Burrard Street, 29th Floor
P.O. Box 49130
Vancouver, BC V7X 1J5

Tel: 604-688-0401
Fax: 604-688-2827
Lawyers for Fisgard Capital Corporation

AND TO: **LANCASTER, BROOKS & WELCH LLP**
P.O. Box 790
80 King Street, Suite 800
St. Catharines, ON L2R 6Z1

Tel: 905-641-1551
Fax: 905-641-1830

Lawyers for First Ontario Credit Union Limited

AND TO: **MCAP LEASING INC.**
Equipment Finance and Leasing
5575 North Service Road, Suite 300
Burlington, ON L7L 6M1

Tel: 905-639-3995
Fax: 800-436-0884

AND TO: **THE TORONTO-DOMINION BANK**
55 King Street West, 3rd Floor
Toronto, ON M5K 1A2

BLANEY MCMURTRY LLP

2 Queen Street East, Suite 1500
Toronto, ON M5C 3G5

Tel: 416-593-1221

Fax: 416-593-5437

Ontario Lawyers for the Toronto-Dominion Bank

OWEN BIRD LAW CORPORATION

P.O. Box 49130
2900-595 Burrard Street
Vancouver, BC V7X 1J5

Tel: 604-688-0401

Fax: 604-688-2827

B.C. Lawyers for the Toronto-Dominion Bank

AND TO:

VECTOR ENGINEERING SERVICES LTD.

3375 Norland Avenue
Burnaby, BC V5B 3A9

Richard Margetson

Tel: 604-298-2333

Fax: 604-298-5652

**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")

INDEX

<u>Tab</u>	<u>Document</u>	<u>Page No.</u>
1.	Notice of Motion dated October 15, 2012	1-20
2.	Affidavit of Gregory MacLeod sworn October 15, 2012	21-58
<i>Exhibits to Affidavit of Gregory MacLeod</i>		
A.	List of limited partnerships affiliated with the Applicants	59-61
B.	Initial Order dated February 23, 2012	62-84

C.	Endorsement of the Honourable Mr. Justice Brown dated February 26, 2012	85-103
D.	Second Extension Order dated June 28, 2012	104-115
E.	Chart of Additional First Leaside Canadian Properties Listed for Sale	116-117
F.	First Leaside Venture LP Organization Chart	118-119
G.	PrimeTime Organization Chart	120-121
H.	List of Construction and Building Liens	122-124
I.	Order of the Honourable Mr. Justice Strathy dated August 23, 2012	125-131
J.	U.S. Entities Wind-Down Order dated August 31, 2012	132-136
K.	Bramtree Vesting Order dated August 23, 2012	137-146
L.	Assignment of Bramtree Purchase Agreement dated August 31, 2012	147-151
M.	<u>Amended</u> Bramtree Vesting Order dated September 19, 2012	152-161
N.	Bramtree CRO Certificate	162-165
O.	Harmony Townhomes Vesting Order dated August 23, 2012	166-175
P.	Letter from General Counsel for Skyline to Cassels Brock & Blackwell dated August 29, 2012	176-180
Q.	<u>Amended</u> Harmony Townhomes Vesting Order dated September 19, 2012	181-190
R.	Harmony Townhomes CRO Certificate	191-194
S.	Assignment of Asset Purchase Agreement between Amica and KingSett dated September 5, 2012	195-199
T.	KingSett Waiver Notice dated September 5, 2012	200-201
U.	Endorsement of Justice Morawetz dated September 26, 2012	202-203

V.	Endorsement of Justice Campbell dated October 5, 2012	204-205
W.	Statement of Claim dated August 28, 2012 Issued by First Leaside Against David Philips and Margaret Davis	206-234
X.	Endorsement of Justice Cumming dated October 1, 2012	235-243
Y.	OSC Cease Trade Order dated May 30, 2012	244-246
Z.	OSC Extended Cease Trade Order dated September 26, 2012	247-250
AA.	First Leaside Cease Trade Orders	251-255
BB.	Investment Industry Regulatory Organization of Canada Notice of Hearing	256-279
CC.	Letter from Counsel for David Phillips to Cassels Brock & Blackwell dated September 6, 2012	280-297
DD.	Letter from Cassels Brock & Blackwell to Counsel for David Phillips dated September 11, 2012	298-300
3.	Draft Sale Approval and Vesting Order	
4.	Draft Order	

TAB 1

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

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

NOTICE OF MOTION

(Stay Extension and Sale Approval)

The Applicants will make a motion to a judge presiding over the Commercial List
on Monday, October 22, 2012 at 10:00 a.m., or as soon after that time as the Motion can
be heard at the court house, 330 University Avenue, 8th Floor, Toronto, Ontario, M5G
1R7.

PROPOSED METHOD OF HEARING: The motion is to be heard

- ☐ in writing under subrule 37.12.1(1);
- ☐ in writing as an opposed motion under subrule 37.12.1(4);
- ☒ orally.

THE MOTION IS FOR

- (a) an Order, if necessary, validating and abridging the time for service of this notice of motion and motion record and directing that any further service of the notice of motion and motion record be dispensed with such that this motion is properly returnable on October 22, 2012;
- (b) an Order extending the Stay Period as defined in the initial order granted by this Court on February 23, 2012, as amended (the “**Initial Order**”), which currently expires on October 26, 2012, to December 11, 2012;
- (c) an Order amending paragraph 3 of the Initial Order to delete the following limited partnerships from the “Excluded LPs” as defined in the Initial Order and to add the same limited partnerships to Schedule “A” to the Initial Order as entities entitled to the benefit of the Initial Order:
 - i. First Leaside Retirement Residences (Okanagan) Limited Partnership;
 - ii. Cherry Park Retirement Residence Limited Partnership (“**Cherry Park LP**”);

- iii. Orchard Valley Retirement Residence Limited Partnership (“**Orchard Valley LP**”); and
- iv. The Shores Retirement Residence Limited Partnership (“**The Shores LP**”).

(collectively, the “**Okanagan LPs**”).

- (d) an Order approving the Vendors’ entry into, and the terms and conditions of, and the transactions contemplated under, the Purchase Agreement dated September 27, 2012, as amended by an Amending Agreement dated October 4, 2012, and further amended by an Amending Agreement dated October 5, 2012, (the “**Purchase Agreement**”) (including, without limitation, the allocation of proceeds and assumption of liabilities set out in the Purchase Agreement), made among First Leaside Ventures Limited Partnership (“**Ventures LP**”), the Okanagan LPs, and First Leaside Retirement Residences Limited Partnership, as vendors (the “**Vendors**”), and BayBridge Seniors Housing Trust, as purchaser (“**BayBridge**”), and vesting all of the Vendors’ rights, title, and interest in and to the Purchased Assets* in the Purchaser* (or an affiliate or assignee thereof or as directed by BayBridge) free and clear of all Encumbrances* other than the Permitted Encumbrances* on the Purchased Assets* (terms marked with an asterisk are as defined in the Purchase Agreement);
- (e) an Order authorizing and directing G.S. MacLeod & Associates Inc., the Chief Restructuring Officer (the “**CRO**”), by its President, Gregory MacLeod

to, *nunc pro tunc*, execute the Purchase Agreement (and any amendments and ancillary documents related thereto) on behalf of the Okanagan LPs by their general partner, First Leaside Realty II Inc., an Applicant herein;

- (f) an Order sealing the Purchase Agreement attached as a Confidential Exhibit to the Affidavit of Greg McLeod sworn October 15, 2012, until the transaction contemplated by the Purchase Agreement (the "**BayBridge Transaction**") is completed;
- (g) an Order exempting the BayBridge Transaction from the provisions of the *Bulk Sales Act* (Ontario);
- (h) subject to the receipt by the Monitor of a security opinion confirming the validity and enforceability of the secured obligations to be discharged and/or assumed in connection with the closing of the BayBridge Transaction, as provided for by the Purchase Agreement, an Order authorizing and directing the CRO to apply sufficient proceeds of sale arising from the BayBridge Transaction to discharge the following secured obligations in respect of the Purchased Assets:

Date	Secured Party	Debtor(s)	Amount	Reference Number / Comments
September 8, 2011	The Toronto-Dominion Bank	First Leaside Realty II Inc. (Cherry Park)		British Columbia Mortgage and Assignment of Rents CA2181507 CA2181508

Date	Secured Party	Debtor(s)	Amount	Reference Number / Comments
September 8, 2011	The Toronto-Dominion Bank	First Leaside Realty II Inc. (Orchard Valley)		British Columbia Mortgage and Assignment of Rents CA2181511 CA2181512
September 8, 2011	The Toronto-Dominion Bank	First Leaside Realty II Inc. (Orchard Valley)		British Columbia Mortgage and Assignment of Rents CA2181509 CA2181510
August 25, 2011	The Toronto-Dominion Bank ¹	First Leaside Retirement Residences (Okanagan) Limited Partnership	Aggregate balance of TD mortgages is \$17,332,061 as of October 4, 2012.	ON PPSA File No. 672443073 Ref. No. 20110825 1031 1862 6989
August 25, 2011	The Toronto-Dominion Bank ¹	First Leaside Venture Limited Partnership	Aggregate balance of TD mortgages is \$17,332,061 as of October 4, 2012.	ON PPSA File No. 672443127 Ref. No. 20110825 1033 1862 6991
August 25, 2011	The Toronto-Dominion Bank ¹	Cherry Park Retirement Residence Limited Partnership	Aggregate balance of TD mortgages is \$17,332,061 as of October 4, 2012.	ON PPSA File No. 672443226 Ref. No. 20120825 1037 1862 6994
August 25, 2011	The Toronto-Dominion Bank ¹	Orchard Valley Retirement Residence Limited Partnership	Aggregate balance of TD mortgages is \$17,332,061 as of October 4, 2012.	ON PPSA File No. 672443262 Ref. No. 20120825 1038 1862 6996
August 25, 2011	The Toronto-Dominion Bank ¹	The Shores Retirement Residence Limited Partnership	Aggregate balance of TD mortgages is \$17,332,061 as of October 4, 2012.	ON PPSA File No. 672443235 Ref. No. 20120825 1037 1862 6995
August 24, 2011	The Toronto-Dominion Bank ¹	First Leaside Realty II Inc. Cherry Park Retirement Residence Limited	Aggregate balance of TD mortgages is \$17,332,061 as	BC Base Reg. No. 318116G

Date	Secured Party	Debtor(s)	Amount	Reference Number / Comments
		Partnership Orchard Valley Retirement Residence Limited Partnership The Shores Retirement Residence Limited Partnership	of October 4, 2012.	

- (i) in the alternative, if BayBridge and the Toronto-Dominion Bank (“**TD**”) reach agreement to have BayBridge assume the above-noted liabilities to TD (the “**TD Debt**”) and permit the above-noted security of TD (the “**TD Security**”) to be maintained, an order providing that the TD Security and TD Debt shall not be vested out of the Purchased Assets but, instead, the TD Security shall continue in effect as a Permitted Encumbrance;
- (j) an order vesting out all other claims to, and encumbrances on, the Purchased Assets* including, without limitation, construction liens (collectively, “**Claims and Encumbrances**”) and directing the proceeds of the Purchased Assets (the “**Proceeds**”) shall stand in the place and stead of the Purchased Assets and that Claims and Encumbrances shall only be asserted against the Proceeds;
- (k) subject to the provision sought in subparagraph (l), below, an Order authorizing and directing the CRO to distribute the sum of \$3,597,672.50 plus per diem interest of \$632.50 after September 24, 2012 less proper fees (collectively, the “**Bramtree Proceeds**”), from the net proceeds of sale of Bramtree (as defined below) to Peoples Trust Company or First Leaside

Nominee Services Inc., a wholly owned subsidiary of First Leaside Wealth Management Inc. ("**FLWM**"), which is subject to the CCAA proceedings;

- (l) an Order authorizing the Applicants and the Included LPs (as defined in the Initial Order) (collectively, "**First Leaside**") to reserve from any distribution of money or property which would otherwise be made to a First Leaside investor who is indebted to First Leaside (a "**Debtor Investor**"), such money or property (collectively, the "**Reserved Property**") with a value up to the total amount of any debt then owing to First Leaside by such Debtor Investor (the "**Investor Debt**"), pending the determination of set-off rights of First Leaside, if any, with respect to the Reserved Property and subject to further Order of the Court; and
- (m) subject to the provision sought in subparagraph (l) above, an Order authorizing FLWM to cause First Leaside Nominee Services Inc. to distribute to holders of a syndicated mortgage in respect of the property known municipally as 90 King St. East, Thornbury, Ontario (Parcel Identification Number 37140-0546 (LT)) (the "**Thornbury Property**") the current and future net proceeds on account of principal and interest received from the mortgagor of the Thornbury Property on account of principal and interest;

THE GROUNDS FOR THE MOTION ARE

A. Background

1. The Applicants applied for and were granted protection from creditors under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 ("**CCAA**") on February 23, 2012 pursuant to the Initial Order. The benefit of the Initial Order, including the stay, was extended to a number of limited partnerships associated with the Applicants (the "**Included LPs**", as defined in the Initial Order);
2. The Initial Order also appointed Grant Thornton Limited as Monitor (the "**Monitor**") and Fraser Milner Casgrain LLP as Representative Counsel ("**Representative Counsel**") for investors in First Leaside;
3. The Initial Order provides for a general stay of all proceedings against First Leaside for the Stay Period;
4. The Stay Period was most recently extended by order dated June 28, 2012 and currently expires on October 26, 2012;

B. Extension of Stay

5. Since the most recent stay extension 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 for the orderly wind-down of First Leaside's operations and portfolio of assets, including:

- a) completing the sale of 36 Bramtree Court, a 70,000 square foot industrial building in Brampton, Ontario ("**Bramtree**") which was owned by First Leaside Growth Limited Partnership ("**Growth LP**"), which limited partnership is, in turn, owned by First Leaside Expansion Limited Partnership, which sale was approved by order of this Court dated August 23, 2012;
- b) completing the sale of 65 Fort Street, a 50-unit townhome complex in Tilbury, Ontario ("**Harmony Townhomes**") which was owned by Harmony Town Homes Limited Partnership which limited partnership is, in turn, owned by First Leaside Investors Limited Partnership, which sale was approved by order of this Court dated August 23, 2012;
- c) completing the sale of assets of the Excluded Ottawa LPs (defined below) to KingSett Real Estate Growth Limited Partnership No. 2 ("**KingSett**") pursuant to an assignment by Amica Acquisitions Inc. to KingSett of the Agreement of Purchase and Sale dated August 3, 2012, which agreement the CRO was authorized to execute pursuant to order of this Court dated August 23, 2012;
- d) commencing an action against David C. Phillips and his wife, Margaret Davis, for recovery of certain loans made by FLWM to Mr. Phillips and Ms. Davis, and for funds allegedly diverted by Mr. Phillips from First Leaside entities;

- e) seeking and obtaining a Certificate of Pending Litigation in respect of certain real property owned by Ms. Davis;
 - f) continuing to market the remaining unsold properties of First Leaside in Canada;
 - g) working with the Monitor and Representative Counsel to ensure that all stakeholders, including mortgagees, investors, employees (past and current), suppliers, and claimants are receiving information and updates on a timely basis;
 - h) participating with the Monitor and Representative Counsel in conference calls and town hall meetings with investors;
 - i) negotiating and entering into the Purchase Agreement; and
 - j) working with the assistance of the Monitor to update cash flow statements for First Leaside.
6. First Leaside respectfully requests an extension of the Stay Period to December 11, 2012. During this period, First Leaside expects to
- a) complete the BayBridge Transaction;
 - b) pursue the continued marketing and sale of the remaining First Leaside properties in Canada which are currently listed on the market for sale;

- c) continue to pursue restructuring options with respect to the First Leaside Visions group of companies;
 - d) finalize a proposed plan for the allocation of administration costs as amongst the Applicants and Included LPs (as defined in the Initial Order), with the assistance of the Monitor;
 - e) further investigate First Leaside's rights with respect to set-off claims and distributions to investors; and
 - f) determine, on an entity by entity basis, whether the CCAA proceedings should be further continued beyond December 11, 2012, or whether the wind-down of First Leaside (or some or all of its corporate entities and partnerships) is more appropriately pursued in the context of a receivership and/or bankruptcy proceedings.
7. First Leaside is working diligently and in good faith to effect an orderly wind-down of operations so that all stakeholder interests can be dealt with in one forum, in a consolidated manner, and so that recovery can be maximized;
8. The extension of the Stay Period will provide First Leaside with the additional time required to take appropriate steps to maximize value for creditors and to wind-up the CCAA Proceedings for some or all of the Applicants and Included LPs;

9. First Leaside has and continues to proceed in good faith and with due diligence, and circumstances otherwise exist that make the grant of an extension of the Stay Period appropriate;

C. Approval of BayBridge Transaction and Amendment to Initial Order

10. At the time that 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, subject to paragraph 7 of the Initial Order, which permits First Leaside to seek a further order extending the scope of the proceedings to include these Excluded LPs. The Ottawa Excluded LPs and the Okanagan Excluded LPs are ultimately owned by Ventures LP, which is subject to the CCAA proceedings;
11. The properties owned by the Ottawa Excluded LPs and the Okanagan Excluded LPs are retirement residences managed by PrimeTime Living Limited Partnership ("**PrimeTime Living**"), a limited partnership 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;
12. First Leaside 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) certain retirement residences owned by the Okanagan Excluded LPs (the “**Retirement Residences**”), and (b) Retirement Residences LP’s 50.1% interest in PrimeTime Living (collectively, the “**Parcels**”). The Court approved the retention of GTCFI as financial advisor pursuant to an Order dated June 28, 2012.

13. GTCFI prepared confidential information memoranda for each of the Parcels and circulated them to potential purchasers. GTCFI received a number of letters of interest (“**LOI**”) for the purchase of the Parcels. BayBridge provided the most promising LOI. As a result of negotiations with BayBridge, First Leaside was able to obtain an increase in the proposed purchase price and entered into a revised confidential LOI with BayBridge.
14. After further extensive and good faith discussions and negotiations between First Leaside and BayBridge, the parties executed the Purchase Agreement pursuant to which BayBridge agreed to purchase, and the Vendors agreed to sell, all of
 - a) the right, title and interest of Ventures LP, First Leaside Retirement Residences (Okanagan) Limited Partnership, Cherry Park LP, Orchard Valley LP, and The Shores LP (collectively, the “**BC Vendors**”) in certain retirement residences, including the shares of 0742962 B.C. Ltd., the nominee title holder of undeveloped lands

situate at 3211 Alexis Park, Vernon, British Columbia (the "**Retirement Residences**"), and all assets related thereto, and

- b) all of Retirement Residences LP's (the "**LP Vendor**") right, title and interest in and to: (i) the limited partnership units of PrimeTime Living and PrimeTime Management Limited Partnership, which represents 50.1% of the total issued and outstanding limited partnership units of such entities, (ii) the shares of PrimeTime Living GP Inc., the sole general partner of PrimeTime Living and Prime Time Management (collectively, the "**PTL Assets**");
15. It is a condition of closing that, among other things, the BC Vendors and LP Vendor obtain a Court order authorizing and approving the purchase and sale of the Retirement Residences and the PTL Assets (collectively, the "**Purchased Assets**") and vesting the Vendors' rights, title and interest in and to the Purchased Assets in BayBridge free and clear of all Encumbrances* other than the Permitted Encumbrances* on the First Leaside Purchased Assets*;
16. Many of the BC Vendors are Excluded LPs, as defined in the Initial Order, and as such are not currently subject to the CCAA proceedings, although the general partner is an Applicant. However, since BayBridge has required that the sale approval and a vesting order be granted by all BC Vendors – including the Okanagan LPs who are currently Excluded LPs in the Initial Order – First Leaside seeks to bring the Okanagan LPs into these

proceedings by extending the benefit of the Initial Order to them as permitted by paragraph 7 of the Initial Order;

D. Distribution of Sale Proceeds – Harmony Townhomes and Bramtree

17. The Harmony Townhomes and Bramtree sale transactions closed on September 20 and 24, 2012;
18. The closing of the sale of Harmony Townhomes resulted in gross proceeds of \$2,600,000, of which \$1,378,615.01 was due and owing to Toronto-Dominion Bank as at September 20, 2012, the first mortgagee of Harmony Townhomes. The Monitor has independently reviewed TD Canada Trust's security and has concluded, subject to the usual assumptions and qualifications, that the security is valid, enforceable and first registered and properly discharged upon closing;
19. The closing of the sale of Bramtree resulted in gross proceeds of \$5,600,000, which amount has been paid to the account of Growth LP, in trust, pending approval of this Court on the distribution of these proceeds of sale. The CRO has control over the Growth LP account;
20. As of the date of closing, the syndicated mortgage debt owing on the Bramtree property was \$3,597,672.50 (the "**Bramtree Mortgage**").
21. There are several hundred investors who hold an interest in the Bramtree Mortgage and are entitled to a distribution, certain of which are Debtor Investors;

22. Certain Debtor Investors, who are eligible to receive distributions on account of their First Leaside interests, such as promissory notes, limited partnership units, and mortgages ("**Distributions**"), owe Investor Debts to First Leaside entities, including on account of monies advanced to them by other First Leaside entities;
23. It appears that First Leaside may be in a position to assert set-off in respect of the Investor Debts. First Leaside seeks court authorization to withhold Distributions to Debtor Investors to the extent of the amount of their Investor Debts, pending a determination of the set-off rights that may be available to First Leaside in respect of those Distributions;
24. First Leaside is also seeking authorization and direction from the Court to distribute the amount owing under the Bramtree Mortgage to the mortgagee, First Leaside Nominee Services Inc. The total amount owing to the mortgagee as at September 24, 2012 is \$3,597,672.50. Accordingly, the Applicants seek an order to pay to Peoples Trust Company, the payment agent of the mortgagee, the total amount of \$3,551,773.47 (\$3,597,672.50 less \$45,899.03 on account of Reserved Property), together with any interest payable thereon to the date of payment, from the Bramtree sale proceeds. The Monitor has independently reviewed the mortgagee's security and concluded, subject to the usual assumptions and qualifications, that the security is valid, enforceable and first registered. First Leaside will hold back approximately \$45,000 in respect of investors in the Bramtree Mortgage who have Investor Debts.

Distribution of Mortgage Interest for Beverages LP

25. First Leaside Beverages Limited Partnership ("**Beverages LP**") owns a property located at 90 King Street East, Thornbury, Ontario (the "**Thornbury Property**"), which is the operating premises for Thornbury Cidery, a cider manufacturer. First Leaside held a 54.1% majority interest in Beverages LP with the remaining 45.9% interest being held by third party investors.
26. On May 3, 2012, First Leaside obtained the court's approval to sell First Leaside's 54.1% interest in Beverages LP to Provincial Beverages of Canada Inc. ("**Provincial Beverages**"). As part of the sale, Provincial Beverages agreed to assume the existing syndicated mortgage over the Thornbury Property and to continue to make monthly payments of principal and interest.
27. Since this was a syndicated mortgage made by First Leaside investors and administered by First Leaside, First Leaside Nominee Services Inc. has continued to collect monthly mortgage payments from Provincial Beverages since the time that the transaction closed. The total amount on hand is now \$38,500.
28. As part of the within motion, First Leaside seeks authorization to distribute the current money on hand as well as future receipts from the mortgage on the Thornbury Property subject to the Monitor's review of the validity and

enforceability of the mortgage over the Thornbury Property and the entitlement of individual investors to receive proceeds.

29. There will be no prejudice to First Leaside associated with the distribution of the Thornbury Mortgage proceeds, since this represents proceeds of a portfolio investment where First Leaside no longer owns or operates the underlying property or business. Any distributions will be subject to the right of First Leaside (if the court grants such authority) to withhold the Reserved Property.

Other Grounds

30. Sections 11, 11.03, 32, and 56 of the CCAA;
31. Rules 2.03, 3.02, 5.03, 14.05 and 37 of the *Rules of Civil Procedure*, R.R.O. 1990, reg. 194 as amended;
32. sections 11, 97, and 100 of the *Courts of Justice Act*, R.S.O. 1990, c. C-43, as amended;
33. section 3 of the *Bulk Sales Act*, R.S.O. 1990, c. B.14; and
34. Such further and other grounds as the lawyers may advise.

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

1. The affidavit of Gregory MacLeod, sworn October 15, 2012;
2. The Fifth Report of the Monitor;

3. Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

October 15, 2012

CASSELS BROCK & BLACKWELL LLP

2100 Scotia Plaza
40 King Street West
Toronto, ON M5H 3C2

John N. Birch LSUC #: 38968U

Tel: 416.860.5225

Fax: 416.640.3057

jbirch@casselsbrock.com

David S. Ward LSUC #: 33541W

Tel: 416.869.5960

Fax: 416.640.3154

dward@casselsbrock.com

Lawyers for the Applicants

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

IN THE MATTER OF

**PROCEEDING COMMENCED AT
TORONTO**

**NOTICE OF MOTION
(RETURNABLE OCTOBER 22, 2012)**

CASSELS BROCK & BLACKWELL LLP
2100 Scotia Plaza
40 King Street West
Toronto, ON M5H 3C2

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

David S. Ward LSUC #: 33541W
Tel: 416.869.5960
Fax: 416.640.3154
dward@casselsbrock.com

Lawyers for the Applicants

TAB 2

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

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

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

AFFIDAVIT OF GREGORY MACLEOD
(sworn October 15, 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 in my affidavit sworn February 22, 2012 (the "**Initial Affidavit**").

A. 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 "B"**. A copy of Justice Brown's reasons for decision dated February 26, 2012 is attached hereto and marked as **Exhibit "C"**.

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 “D”** 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 extension of the Stay Period to December 11, 2012, the approval of the sale of certain property owned by First Leaside Retirement Residences Limited Partnership (“**Retirement Residences LP**”) and First Leaside Venture Limited Partnership (“**Venture LP**”), amending the Initial Order to include the Okanagan Excluded LPs (as defined in paragraph 3 of the Initial Order) as Included LPs, and for other relief.

B. 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 has also been participating in a communications program that includes conference calls and meetings with the Monitor and Representative Counsel. First Leaside has 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 certain real property sales, including offers received and likely counter-offers to be made by First Leaside.

C. Remaining First Leaside Canadian Real Property Assets

10. Since August 20, 2012, the date of my last affidavit filed in these proceedings, First Leaside has continued to market the following properties in Canada:

- (a) 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 First Leaside Expansion Limited Partnership ("**FLEX**") and in respect of which construction was suspended in November 2011;
- (b) 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;
- (c) 123 Erie Street, Wheatley, Ontario ("**Erie Street**"), a development site

owned by First Leaside Unity Limited Partnership ("**Unity LP**"), which is in turn owned by FLEX;

- (d) 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**"); and
- (e) 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**").

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

12. So far, First Leaside has not received any offers for Victoria Street and Brock 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).

13. In respect of Erie Street, First Leaside received an offer dated August 15, 2012 that was substantially below the appraised value. First Leaside made a counter offer on August 31, 2012 but has not yet received a response.

14. 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.

15. 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. After consultation with the listing agent, First Leaside did not agree to the price reduction and the agreement of purchase and sale lapsed. No further offers have been received.

16. The listing agreement for the above First Leaside properties has expired. Accordingly, First Leaside and the Monitor have been engaged in discussions to determine other means of marketing these properties.

D. Sale of Assets of Certain Excluded LPs and Interest in PrimeTime Living

17. 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.

18. 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**").

19. The Okanagan Excluded LPs are as follows:

- (a) First Leaside Retirement Residences (Okanagan) Limited Partnership ("**First Leaside Okanagan LP**");
- (b) Cherry Park Retirement Residences Limited Partnership ("**Cherry Park LP**");
- (c) Orchard Valley Retirement Residences Limited Partnership ("**Orchard Valley LP**"); and
- (d) The Shores Retirement Residences Limited Partnership ("**The Shores LP**")

20. The limited partnership units of the Okanagan Excluded LPs and the Ottawa Excluded LPs (collectively, the "**Excluded LPs**") are ultimately owned by Venture LP which is an Included LP and therefore subject to the CCAA proceedings.

21. Attached hereto and marked as **Exhibit "F"** is a copy of an organization chart outlining the organizational structure of the Okanagan Excluded LPs.

22. The Excluded LPs own property which comprises retirement residences (the "**Retirement Residences**"). The Retirement Residences are managed by PrimeTime

Living Limited Partnership ("**PrimeTime Living**"), in which First Leaside, through Retirement Residences LP, owns a 50.1% partnership interest (the "**PTL Interest**") with the remaining 49.9% being held by Brujjon Real Estate Holdings Inc. ("**Brujjon**"), a company not related to First Leaside.

23. In addition to its management responsibilities in relation to the Retirement Residences, PrimeTime Living 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.

24. Attached hereto and marked as **Exhibit "G"** is a copy of a diagram outlining the ownership structure of PrimeTime Living.

25. As of the date of the Initial Order, Venture LP had hoped to refinance the Excluded LPs. However, such refinancing efforts were unsuccessful and Venture LP, with the consent of the relevant mortgage lenders, decided to sell the properties and related assets that are held by the Ottawa Excluded LPs and the Okanagan Excluded LPs.

26. Since the date of the Initial Order, Venture LP has worked cooperatively with the mortgagees of the properties owned by both the Ottawa Excluded LPs and the Okanagan Excluded LPs to market these properties for sale.

27. First, the mortgagees of the Ottawa Excluded LPs are: (i) Canadian Imperial Bank of Commerce ("**CIBC**") who held a first and second mortgage, and (ii) KingSett Real Estate Growth Limited Partnership No. 2. ("**KingSett**") who held third mortgages and was a guarantor of the CIBC obligation. As discussed more fully below, the properties owned by the Ottawa Excluded LPs have been sold, in accordance with a transaction that was described to the court in my earlier affidavit dated August 20, 2012.

28. Second, the Toronto-Dominion Bank ("**TD**") holds the first mortgages on each of the three limited partnership properties owned by the Okanagan Excluded LPs. The mortgage debt owed to TD and registered against the properties owned by the Okanagan Excluded LPs (the "**Okanagan Properties**") as of October 4, 2012, was \$17,332,061 in aggregate (the "**Okanagan LP Debt**").

29. The Okanagan Excluded LPs are not meeting all of their obligations as they come due. For example, substantial renovation costs on the Okanagan Properties are unpaid and therefore multiple trade creditors have registered construction liens. Attached hereto and marked as **Exhibit "H"** is a list of the construction and building liens for the Okanagan Properties.

30. 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 Living are so closely connected with the

Retirement Residences (given PrimeTime Living's role as manager), First Leaside concurrently marketed for sale its ownership interest in PrimeTime Living.

E. Marketing and Sales Process of the Okanagan Excluded LPs

31. Retirement Residences LP, First Leaside Realty II Inc. ("**Realty II**"), FLWM, First Leaside Universal Limited Partnership, Progressive LP, F.L. PrimeTime Living 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) The PTL Interest (or "**Parcel B**").

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

33. 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.

34. Parcel A and Parcel B were marketed separately because they represent different sets of assets in respect of which there are different stakeholder interests. Parcel A consists of assets of the Okanagan Excluded LPs which were not brought into these CCAA proceedings at the time of the Initial Order. In contrast, Parcel B represents an asset which has been subject to the CCAA proceedings since the time of the Initial Order. Furthermore, Parcel B carried with it the added complication of

requiring the consent of Brujjon under the terms of the limited partnership agreement. As I have noted above, as mortgagee of all of the real property related to the Retirement Residences, TD is the major secured creditor of the Okanagan Excluded LPs.

35. 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 Living, with the remaining 49.9% being owned by Brujjon.

36. The sales process run by GTCFI was successful. By July 19, 2012, GTCFI had received a number of letters of interest ("**LOIs**") for the purchase of both Parcel A and Parcel B. The bidding group was made up of several Canadian industry participants and one financial investor. First Leaside then began negotiations with BayBridge Seniors Housing Inc., (a subsidiary of Ontario Teachers' Pension Plan Board), the bidder which provided the most promising LOI. BayBridge Seniors Housing Inc. proposed to acquire Parcel A and Parcel B in the name of BayBridge Seniors Housing Trust (the "**Purchaser**"). The Purchaser also had the support of Brujjon whose consent was required to sell Parcel B.

37. As a result of such negotiations, GTCFI was able to obtain an increase in the proposed purchase price on terms to the satisfaction of First Leaside. On August 1, 2012, First Leaside entered into a revised, confidential LOI with the Purchaser, which was non-binding and subject to a number of conditions, including due diligence and court approval. The extensive due diligence process concluded in late September 2012 after two short-term extensions.

38. First Leaside also worked with Bruijon to provide it with information about the sale of the PTL Interest.

F. Sale of the Okanagan Excluded LPs' Retirement Residences and the PTL Interest

39. After extensive and good faith discussions and negotiations, Venture LP, the Okanagan Excluded LPs (collectively, the "**BC Vendors**") and Retirement Residences LP (the "**LP Vendor**", and together with the BC Vendors, the "**Vendors**") entered into an Purchase Agreement dated September 27, 2012, as amended by and Amending Agreement dated October 4, 2012, and further amended by an Amending Agreement dated October 5, 2012, and as may be further amended from time to time (the "**BayBridge Agreement**"), with the Purchaser, pursuant to which the Purchaser agreed to acquire a whole or controlling interest in all of Parcel A and Parcel B (the "**Transaction**"). To protect the integrity of the sales process in the event the Transaction does not close, the details of the Transaction and underlying negotiations must be kept strictly confidential. Accordingly, the BayBridge Agreement will be made available to the Court at the hearing of the Applicant's motion and I request that it otherwise remain under seal to the public until further order of this Court.

40. The BayBridge Agreement provides for the purchase and sale of the following property and assets, subject to a working capital adjustment (collectively, referred to as the "**Purchased Assets**") and a hold back to secure certain indemnity obligations of the Vendors:

- (a) The sale by the BC Vendors to the Purchaser, of the assets used in the business of Cherry Park LP, Orchard Valley LP and The Shores LP and

the 50.1% undivided interest in the lands, premises, building and improvements and all appurtenant interests thereto known municipally as 3211 Alexis Park Drive, Vernon, British Columbia (the "**Vernon Lands**");

- (b) The sale by the LP Vendor of: (i) the limited partnership units of PrimeTime Living and PrimeTime Living Management Limited Partnership ("**PrimeTime Management**") held by the LP Vendor (representing 50.1% of the total issued and outstanding limited partnership units) (the "**PrimeTime LP Units**"), and (ii) the shares of PrimeTime Living GP Inc. ("**PrimeTime GP**"), the sole general partner of PrimeTime Living and PrimeTime Management (collectively, the "**PrimeTime Entities**"), held by the LP Vendor (representing 50.1% of the total issued and outstanding shares) (the "**PrimeTime Shares**"); and
- (c) The sale of the shares of 0742962 B.C. Ltd., a British Columbia company (the "**Vernon Nominee**") held by Venture LP (representing 50% of the total issued and outstanding shares) (the "**First Leaside Shares**"), which represent the means by which the LP Vendor holds its 50% interest in the Vernon Lands.

41. The Purchased Assets comprise all of the property and assets used in connection with or otherwise relating to the Retirement Residences carried on by the Vendors. Certain assets such as any cash on hand are excluded from the Transaction.

42. The sale and purchase of the Purchased Assets is subject to a number of terms and conditions, which terms and conditions must be performed or fulfilled prior to closing. The key transaction terms and conditions under the BayBridge Agreement are as follows:

- (a) The BayBridge Agreement requires the Purchaser to obtain the consent of Brujjon to the transfer all of the First Leaside Shares, PrimeTime Shares

and PrimeTime LP Units. Such consent has already been obtained;

- (b) The BayBridge Agreement provides for the delivery of two deposits which deposits have already been paid;
- (c) The Transaction is conditional upon the Vendors obtaining an order of the court: (i) authorizing and approving the purchase and sale of the Purchased Assets pursuant to the BayBridge Agreement; (ii) vesting all of the Vendors' right, title, and interest in and to the Purchased Assets in the Purchaser free and clear of all encumbrances other than the encumbrances permitted under the BayBridge Agreement, which includes the assumption of certain mortgage obligations discussed more fully below; and (iii) exempting the transaction from the application of the *Bulk Sales Act* (Ontario); and
- (d) Subject to court approval, the Transaction is anticipated to close on or about November 26, 2012.

43. The BayBridge Agreement includes an exclusivity clause that restricts the Vendors from soliciting any offers for the sale of the Purchased Assets or participating in any discussions or negotiations regarding the sale of the Purchased Assets. There are also provisions requiring, in limited circumstances, the reimbursement of the Purchaser's out-of-pocket expenses in the event that the BayBridge Agreement is terminated through no fault of the Purchaser and First Leaside enters into and completes an alternative transaction within a specified period.

G. Assumption of Mortgages, Related Party Debt & Capital Gains Adjustment

44. There are two key sets of mortgages over the properties owned by the Okanagan Excluded LPs and Primetime Living (collectively, the "**Mortgages**"). Each of these sets of mortgages will be dealt with differently in the Baybridge Transaction.

45. First, the Okanagan Excluded LPs have given mortgages to TD to secure indebtedness amounting to \$17,332,061 as of October 4, 2012 (the “**TD Mortgages**”). The Purchaser intends to seek the consent of TD to assume the TD Mortgages upon closing of the BayBridge Transaction. If the TD Mortgages are assumed, they will be listed as Permitted Encumbrances in the sale approval and vesting order and will thus not be affected by such order. In the event that the TD Mortgages are not being assumed by the Purchaser, they will be paid on closing.

46. Second, Primetime Living’s various properties are subject to the following mortgages (the “**PrimeTime Continuing Mortgages**”):

- (a) Charge from St. Catharines Place Inc. registered on September 15, 2008 in favour of FirstOntario Credit Union Limited (“**FOCUL**”) securing the original principal sum of \$26,000,000;
- (b) Charge from St. Catharines Place Inc. registered on December 22, 2011 in favour of Henry E. Hildebrand and Grace Hildebrand securing the original principal sum of \$3,000,000, which amount was increased to \$5,500,000 on May 15, 2012 by notice of agreement; and
- (c) Charge registered on August 10, 2011 with respect to certain parcels of land from 0714500 B.C. Ltd. and from Abby Lane, PrimeTime Living and PrimeTime GP in favour of Fisgard Capital Corporation securing the original principal sum of \$5,400,000.

47. Since the BayBridge Transaction represents a change of control of PrimeTime Living, the Purchaser will seek the consent of the mortgagees of the PrimeTime Continuing Mortgages with respect to the Transaction. However, since the property being transferred to the Purchaser in relation to the PrimeTime Living portion of the

BayBridge Transaction (i.e., Parcel B) consists of shares and limited partnership units—rather than the properties subject to the PrimeTime Continuing Mortgages, there is no need or intention to vest out the PrimeTime Continuing Mortgages. Such mortgages will remain in place and PrimeTime Living will continue to make payments after closing. However, claims and security relating to the PTL Interest (i.e., the shares and limited partnership units) will be vested out of such assets and the proceeds will stand in the place and stead.

48. The Monitor is currently reviewing the Mortgages to be assumed and/or discharged in order to satisfy itself that the security is valid and enforceable.

49. The Purchase Agreement provides that all other claims, encumbrances or liens which are not otherwise being assumed or discharged on closing of the BayBridge Transaction shall vest in the Purchaser. Accordingly, First Leaside is seeking an order as part of its motion that all of the Vendors' rights, title and interest in and to the Purchased Assets vest in the Purchaser free and clear of all encumbrances, other than the Mortgages and the permitted encumbrances under the Purchase Agreement.

50. First Leaside Mortgage Fund holds a pledge of the shares of the Vernon Nominee to secure a loan made to the Vendor LP to partially finance the purchase of its interest in the Vernon Lands. First Leaside intends to have this security vested out upon closing and to have the proceeds stand in the place and stead of such security. The Monitor will have to review the validity of this security and then determine whether proceeds should be paid out.

51. In addition to the Mortgages, there are two other relevant debts which will be satisfied upon the closing of the Transaction. First, there is a related party debt owing by Primetime Living to the LP Vendor in the outstanding principal amount of approximately \$1.7 million plus accrued interest as of September 27, 2012 ("**Related Party Debt**"). Second, the Okanagan LPs owe the remaining amount of approximately \$9.2 million (inclusive of accrued interest) to PrimeTime Living in connection with a promissory note dated September 8, 2011 given as part of the BC Vendors' acquisition of the Retirement Residences ("**PTL Debt**"). (The original principal amount of the note was \$12,106,032).

52. As part of the closing of the Transaction, both the Related Party Debt and the PTL Debt will be paid in full through the following mechanism. First, the Related Party Debt will be set off against the PTL Debt, leaving a net debt of approximately \$7.5 million which is owing to PrimeTime Living, which amount will be directed by the LP Vendor to be paid from the purchase price payable on closing to PrimeTime Living, in satisfaction of the PTL Debt. Second, since the LP Vendor has a 50.1% interest in PrimeTime Living, the Purchaser will pay to the LP Vendor an amount representing 50.1% of the net \$7.5 million debt repayment amount.

53. The properties owned by the Okanagan Excluded LPs were acquired by Venture LP from Primetime Living on September 8, 2011. That transaction resulted in a capital gain in PrimeTime Living in its 2011 taxation year. After the commencement of the CCAA proceedings, the full capital gain in the amount of \$3,540,397 (the "**Capital Gain**") was mistakenly allocated by PrimeTime Living to Brujjon, and the 2011 tax filings for PrimeTime Living were completed on this basis (the "**Capital Gain Allocation**").

The partnership agreement between Brujjon and Retirement Residences LP in respect of PrimeTime Living called for a *pro rata* allocation based on the partners' proportionate interests.

54. The Vendors have provided a proposal to Brujjon to re-allocate the Capital Gain between Brujjon and the LP Vendor (and other limited partners of PrimeTime Living) in proportion to their ownership interests (i.e. 49.9% and 50.1% respectively) in accordance with the existing partnership agreement. The Purchaser has agreed to pay to Brujjon the amount of \$409,439 in satisfaction of any tax liability Brujjon may incur in connection with the Capital Gain Allocation (the "**BayBridge Payment**"), which amount has been reflected in the purchase price. The effect of this adjustment on First Leaside investors will be the same as if the Capital Gain had originally been allocated *pro rata* as provided for in the partnership agreement.

H. **BayBridge Agreement Conclusion**

55. I believe that the BayBridge Agreement is in the best interest of First Leaside for the following reasons:

- (a) First Leaside and GTCFI have extensively and diligently canvassed the market to identify and solicit parties that would be interested in purchasing the Retirement Residences owned by the Okanagan Excluded LPs and the Purchased Securities it is my belief that the BayBridge Agreement represents the only commercially reasonable method to obtain the maximum realizable value for the Vendors' interests in the circumstances;
- (b) There is no basis to expect that the Vendors would be able to obtain a better realization on their investment than what is offered in the BayBridge Agreement;

- (c) The purchase price negotiated under the BayBridge Agreement is in excess of the appraised value of each of the Purchased Assets; and
- (d) I have had discussions with the Monitor with respect to the BayBridge Agreement and understand that the Monitor supports the transaction.

I. Expanding Scope of CCAA Proceeding to Cover Okanagan Excluded LPs

56. Since the Vendors (with the exception of Venture LP) are also Excluded LPs, they are currently not subject to the CCAA proceedings and do not have the benefit of the Initial Order. Thus, as part of the motion to approve the Transaction and the above distribution of proceeds, the Applicants seek an order amending paragraph 3 of the Initial Order to delete the Okanagan Excluded LPs from the scope of the definition of "Excluded LPs" as defined in the Initial Order and to add the Okanagan Excluded LPs to Schedule "A" to the Initial Order as the "**Okanagan LPs**" entitled to the benefit of the Initial Order. Paragraph 7 of the Initial Order permits the Applicants at any time, on seven days' notice to CIBC, KingSett and TD to seek an order extending the scope of the CCAA proceedings and the provisions of the Initial Order to include the Excluded LPs.

57. At the time of the Initial Order, First Leaside made the decision not to bring the Excluded LPs within the scope of the Initial Order because of concerns raised by CIBC, KingSett and TD that the proposed Administrative Charge and Directors' and Officers' Charge would take priority over the lenders' mortgages. These concerns are no longer applicable in relation to the Okanagan Excluded LPs in that the consideration to be received in respect of Parcel A is sufficient to ensure that TD will not experience a deficiency on its mortgage, even after taking into account expenses secured by the

Administrative Charge and the Directors' and Officers' Charge. Further, as I have stated above, the Okanagan Excluded LPs are not meeting all of their obligations as they come due, as evidenced by the fact that substantial construction liens have been filed.

J. Extension of the Stay Period

58. Since the granting of the Initial Order, as further detailed in this Affidavit, First Leaside has acted and continues to act in good faith and with due diligence.

59. I believe that an extension of the Stay Period (as defined in the Initial Order) to December 11, 2012, is necessary in order to provide stability to First Leaside's business while the company, with the assistance of its advisors and the Monitor, continues to work diligently on preparing and executing a liquidation strategy that will maximize the recoveries for all stakeholders.

60. During the extension of the Stay Period, First Leaside intends to complete the transaction contemplated by the BayBridge Agreement, finalize a proposed plan for the allocation of administration costs as amongst the Applicants and the Included LPs, and determine whether the CCAA Stay should be further continued beyond December 11, 2012 for some or all of the Applicants and Included LPs.

61. These CCAA proceedings have now been ongoing for approximately 7½ months. During that time, First Leaside has made significant progress in winding down operations and realizing on its assets. In particular, including the transaction contemplated by the BayBridge Agreement, First Leaside has achieved gross proceeds from property sales totalling approximately \$125 million. Where appropriate (based on

a security review by the Monitor's counsel and court authorization), First Leaside has distributed proceeds to mortgagees of real property that has been sold.

62. Upon the closing of the transaction contemplated by the BayBridge Agreement (assuming that court approval is obtained), a significant proportion of First Leaside's assets will have been sold and there will be only a much smaller number of remaining realizations to be achieved. During the contemplated period of extension of the CCAA stay, First Leaside intends to pursue the sale of the remaining five properties it has listed for sale. During this period, First Leaside will also give serious consideration to the method and timing of completion of CCAA proceedings and the potential use of other insolvency regimes such as bankruptcy or receivership to complete the realization of assets and the acceptance and adjudication of creditors' claims. It is entirely possible that First Leaside will not seek any further stay extensions beyond December 11, 2012 for a majority of the Applicants and the Included LPs.

63. I do not believe that any creditor will face significant prejudice if the Stay Period is extended to December 11, 2012.

K. The Applicants' August Motions

64. On August 23, 2012, the Court issued an Order (the "**August 23 Order**"), a copy of which is attached hereto as **Exhibit "I"**, granting the relief requested by First Leaside with respect to, among other things, the approval of the sale of certain businesses carried on by First Leaside and the sale of First Leaside's interests in certain businesses, including the following:

(a) **Bramtree Property.** The Court approved the proposed sale of the

property located at 36 Bramtree Court, Brampton, Ontario ("**Bramtree**"), a 70,000 square foot industrial building which is owned by First Leaside Growth LP ("**Growth LP**"), which is in turn owned by FLEX, to Outset Media Corporation ("**Outset**").

- (b) **Harmony Townhomes.** The Court approved the proposed sale of the property located at 65 Fort Street, Tilbury, Ontario ("**Harmony Townhomes**"), a 50-unit townhome complex which is owned by Harmony Town Homes Limited Partnership ("**Harmony LP**"), which is in turn owned by Investors LP to Skyline Real Estate Acquisitions Inc. ("**Skyline**") for the purchase price of \$2,600,000.
- (c) **First Leaside Accounting and Tax Services Inc.** The Court approved the proposed settlement of the interest of First Leaside Account and Tax Services Inc. ("**FLAT**") in certain accounting practices in western Canada, pursuant to two term sheets.
 - (i) **Hampton Term Sheet.** The first sale of FLAT's interest is pursuant to a term sheet entered into between FLAT, Joanna Hampton, TD Canada Trust ("**TD**") and Jim Brander ("**Brander**"), by which Hampton Holdings Inc. ("**Hampton Inc.**") will acquire FLAT's interest in McMillan Thorn & Co. Ltd., a B.C. accounting firm; D. McCormack & Company Inc., a B.C. accounting firm; and Allan Welsh & Company, an Alberta accounting firm, for \$734,000. This amount is composed of: (a) a cash payment to FLAT in the amount of \$150,000, and (ii) an assumption of approximately \$584,000 of the amount owing by FLAT to TD, in return for FLAT agreeing to the sale and surrendering its interest in the aforementioned firms, TD has agreed that FLAT is released from liability under a loan made by TD to FLAT in the amount of \$1,173,500.
 - (ii) **Brander Term Sheet.** The second sale of FLAT's interest is pursuant to a term sheet entered into between FLAT, Brander, Jim

Brander Professional Corporation ("**JBPC**"), Brander Professional Corporation ("**BPC**"), TD Hampton Inc., Smart Books Accounting Services Inc. ("**SBAS**") and Matthew E. Bakker Professional Corporation ("**MEB**") by which FLAT will provide Brander, JPC, BPC and SBAS a release of its interests in the Rodney M. Coppcock Professional Corporation accounting practice. As consideration for the release of FLAT's interest, Brander, JBPC, and SBAS agree to compensate FLAT for \$374,000. This amount is comprised of: (a) a cash payment of \$150,000 by Brander to FLAT; and (b) an assumption of approximately \$224,000 of the amount owing by FLAT to TD.

- (d) **Sale of Ottawa Excluded LPs to Amica Acquisitions Inc.** The Court authorized and directed myself, as CRO, to execute on behalf of Realty II, as general partner of an Asset Purchase Agreement dated August 23, 2012 between the Ottawa Excluded LPs and Amica Acquisitions Inc., and authorizing and directing First Leaside Finance Inc. ("**FL Finance**") to discharge a mortgage in respect of the 480 Metcalfe property.
- (e) **Lifting of Stay to File Claim Against Davis and Phillips.** The Court permitted the lifting of the Stay Period provided for in paragraph 24 of the Initial Order to permit First Leaside to commence actions against David C. Phillips ("**Phillips**") and Margaret Davis ("**Davis**"), directors of certain of the Applicants.
- (f) **No Further Action Regarding U.S. Entities.** As part of the August 23 motion, the Court heard, in part, the Applicants' request to be relieved from taking any steps with respect to the wind-down of the First Leaside entities located in the United States. This matter was subsequently adjourned and on August 31, 2012 (the "**August 31 Order**") the Court authorized and directed First Leaside not to take any steps to manage, administer or maintain any limited partnerships, corporations, trusts, or

properties located or subsisting in the United States ("**U.S. Entities**") in which First Leaside has a direct or indirect equity or other interest (collectively, the "**U.S. Entities Wind-down**"). The Court also authorized First Leaside to take additional prescribed steps in furtherance of the U.S. Entities Wind-Down which are described in the August 31 Order attached hereto as **Exhibit "J."**

L. Update on Matters Arising From August Orders

Sale of Bramtree Property

65. In connection with the August 23 Order, the Court issued a sale approval and vesting order in respect of the sale of Bramtree (the "**Bramtree Vesting Order**"). A copy of the Bramtree Vesting Order is attached hereto as **Exhibit "K."**

66. At the time of the Bramtree Vesting Order, the Agreement and Purchase of Sale dated July 23, 2012 (the "**Outset APS**") between Outset and Growth LP by its general partner 2085306 Ontario Inc., remained conditional until August 23, 2012, giving Outset the right to terminate the offer up to that date. Subsequent to the Bramtree Vesting Order, Outset agreed to waive all remaining conditions under the Outset APS and informed the Applicants of its intention to complete the transactions.

67. On or about August 31, 2012, Outset executed an Assignment of the Outset APS in favour of a related company, 0947907 B.C. Ltd. ("**New Outset**") under which Outset assigned its right, title and interest in the Outset APS to New Outset (the "**Assignment**"). A copy of the Assignment is attached hereto as **Exhibit "L."** The Assignment was made in accordance with section 21 of the Outset APS, which gave Outset the right, at any time up to five (5) days before the date of closing, to assign the Outset APS to a corporation(s) and/or person(s).

68. On September 19, 2012, First Leaside brought a motion to amend the definition of "Purchaser" in the Bramtree Vesting Order to properly reflect the Assignment of the Outset APS to New Outset. Apart from this minor amendment the terms of the Outset APS remained the same. The Court granted First Leaside's motion to amend the Bramtree Vesting Order on September 19, 2012. A copy of the Amended Bramtree Vesting Order is attached hereto as **Exhibit "M."**

69. The Bramtree sale was completed on September 20, 2012. On closing, I delivered a CRO's Certificate (as defined in paragraph 3 of Amended Vesting Order) to the purchaser of the property, New Outset. A copy of the CRO's certificate is attached hereto as **Exhibit "N."**

70. The closing of the sale of Bramtree resulted in the receipt of net proceeds of approximately \$5,322,914 (the "**Bramtree Sale Proceeds**"). This amount has been paid to the account of Growth LP, the owner of Bramtree, which account is managed by me, as CRO for the Applicants.

71. On January 24, 2011, Growth LP, as borrower and First Leaside Nominee Services Inc. ("**FLNS**"), as servicing agent on behalf of the mortgagee entered into a mortgage in the principal amount of \$3,450,000 plus interest at a rate of 6.6% per annum. The mortgage was registered against the Bramtree property on or about February 7, 2011 (the "**Bramtree Mortgage**"). As servicing agent, FLNS is authorized under the Mortgage to act for and on behalf of the mortgagee. The Mortgage provides that all payments of principal and interest in connection with the Mortgage are to be made payable to Peoples Trust Company ("**Peoples**"), who has been retained as sub-

servicer for the purposes of overseeing the collection and remittance of payments made by the mortgagor.

72. The Bramtree Mortgage, which had a outstanding balance of \$3,598,305 as of September 24, 2012, is a syndicated mortgage. In particular, numerous First Leaside investors advanced funds to fund such mortgage and (subject to confirmation of the validity of the mortgage and the set-off issues described below) they are entitled to receive payment of their investment.

73. First Leaside has asked the Monitor to review the security over the property, including the Bramtree Mortgage. I understand that the Monitor has satisfied itself concerning the enforceability of the Bramtree Mortgage.

Sale of Harmony Townhomes

74. Pursuant to a sale approval and vesting order issued by the Court on August 23, 2012 (the "**Harmony Vesting Order**"), First Leaside completed the sale of the Company's interest in Harmony Townhomes. The Harmony Vesting Order approved the sale transaction contemplated by the Agreement of Purchase and Sale dated July 23, 2012 (the "**Harmony APS**") between Harmony LP, by its general partner F.L. Securities Inc. ("**FL Securities**") and Skyline. A copy of the Harmony Vesting Order is attached as **Exhibit "O"**.

75. At the time the Harmony Vesting Order was granted, the Harmony APS remained conditional on due diligence. The conditional period expired on August 28, 2012 and Skyline subsequently waived all remaining conditions.

76. On August 29, 2012, General Counsel for Skyline advised counsel for the Applicants, Cassels Brock & Blackwell LLP, that it would be assigning the Harmony APS to a related company, Skyline Real Estate Holdings Inc. (the “**New Skyline**”) in accordance with section 11.2 of the Harmony APS. Attached as **Exhibit “P”** is a copy of the letter from General Counsel for Skyline to Cassels Brock & Blackwell LLP dated August 29, 2012.

77. Since the Harmony Vesting Order defined the “Purchaser” as Skyline, on September 19, 2012, the Applicants brought a motion to amend the Harmony Vesting Order to reflect the assignment of the Harmony APS to New Skyline. Apart from the amendment to the definition of “Purchaser” in the Harmony Vesting Order, the terms of the Harmony APS remained the same. The Court granted the Applicants’ motion and issued an Amended Vesting Order on September 19, 2012, a copy of which is attached hereto as **Exhibit “Q.”**

78. The sale of Harmony Townhomes was completed on September 20, 2012. On closing, I delivered a CRO’s Certificate (as defined in paragraph 3 of Amended Vesting Order) to the purchaser of the property, New Skyline. A copy of the CRO’s certificate is attached hereto as **Exhibit “R.”**

79. The closing of the sale of Harmony Townhomes resulted in net sale proceeds of \$2,600,000, of which \$1,378,615.01 has been paid to TD, the only secured creditor and first mortgagee of Harmony Townhomes. The Monitor’s counsel has independently reviewed TD’s security and has concluded, subject to the usual assumptions and qualifications, that the security is valid, enforceable and first registered.

Marketing and Sale of the Ottawa Excluded LPs to Amica Acquisitions Inc.

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

81. 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 sufficient 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 this deficiency.

82. Since the Ottawa Excluded LPs were not subject to the CCAA proceedings at the time of the August 23 Order, First Leaside sought and obtained court authorization on August 23, 2012 to execute the Amica APA on behalf of Realty II, the general partner of the Ottawa Excluded LPs.

83. As part of the August 23 Order, the Court also authorized and directed 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.

Assignment of Amica APA to KingSett

84. Shortly after the August 23 Order was granted to approve the discharge of the mortgage and authorize the CRO to execute the Amica APA, Amica advised KingSett

that it would not waive the inspection condition in section 7.02 of the Amica APA, but that it was prepared to assign the Amica APA to KingSett as permitted under the terms of the Amica APA.

85. On September 5, 2012, Amica executed an Assignment of Asset Purchase Agreement in favour of KingSett wherein it assigned absolutely all of its right, title and interest in the Amica APA (the "**Amica Assignment**"). KingSett subsequently executed a notice waiving the inspection conditions under the Amica APA (the "**Amica Waiver**"). Attached hereto as **Exhibits "S"** and "**T**", is a copy of the Amica Assignment and Amica Waiver, respectively.

86. The transaction ultimately closed, with KingSett as purchaser, around October 5, 2012. KingSett has agreed to provide funding of up to \$10,000 plus HST and disbursements on account of the legal fees that First Leaside incurred in reviewing closing documents and completing the transaction.

M. Meetings of Unitholders of First Leaside Funds

87. As noted above, on August 31, 2012, the Court authorized First Leaside not to take any steps to manage the U.S. Entities. A recital to the August 31 Order stated that the trustees for each of the First Leaside-affiliated investment funds, namely First Leaside Fund, Wimberly Fund, First Leaside Mortgage Fund and First Leaside Properties Fund (collectively, the "**Funds**") had agreed to call and hold a meeting of their respective trust unitholders within 60 days of August 31, 2012. The purpose of the meetings was, among other things, to provide a report to the trust unitholders and to elect trustees.

88. The trustees subsequently sought and were granted two court authorized extensions of the time to hold the unitholder meetings. The unitholder meetings are now required to take place by no later than January 4, 2013. A copy of the extension endorsement of Justice Morawetz dated September 26, 2012 is attached as **Exhibit “U”**. A copy of the extension endorsement of Justice Campbell dated October 5, 2012 is attached as **Exhibit “V”**.

N. Reserve of Proceeds Re: Investor Loans from First Leaside

89. As I described in my August 20, 2012 affidavit, several First Leaside entities (most notably FLWM) made loans to various investors to allow them to acquire equity and debt instruments issued by First Leaside (“**Investment Loans**”). At the time that the CCAA proceedings began, and to this date, the Investment Loans have not been repaid. In the course of reviewing the list of syndicated investors who advanced funds for the Bramtree Mortgage, First Leaside has determined that four of those investors have unpaid Investment Loans due to First Leaside entities in the total amount of \$45,899.03. In respect of the Thornbury Mortgage, there are two investors with unpaid Investment Loans.

90. I am concerned that persons with outstanding Investment Loans may receive proceeds from realizations on certain First Leaside assets but then fail to repay the other First Leaside entity which granted the Investment Loans. Such failure to repay the Investment Loan would prejudice creditors of the entity which made the loan.

91. Accordingly, First Leaside seeks the court’s authorization, on an interim basis, to withhold all First Leaside distributions of money or property to any investor which has an

outstanding Investment Loan (the “**Reserved Property**”). The maximum aggregate amount that would be withheld is the amount of the Investment Loan. At this point, First Leaside is not seeking court authorization to set-off distributions against Investment Loans but such authorization may be sought in the future, after due consideration by the Company and the Monitor as to First Leaside’s set-off rights, if any, and further Order of the Court.

O. Request to Distribute Certain Proceeds of Thornbury Mortgage

92. At this motion, First Leaside is seeking authorization to distribute certain proceeds received from a syndicated mortgage held beneficially by First Leaside investors over a property located at 90 King St. East, Thornbury, Ontario (Parcel Identification Number 37140-0546 (LT)) (the “**Thornbury Property**”).

93. The Thornbury Property is the operating premises for the Thornbury Cidery, a cider manufacturer which was, at relevant times, one of the businesses owned by First Leaside Beverages Limited Partnership (“**Beverages LP**”). First Leaside held a majority interest in Beverages LP, as follows:

- (a) 10.9% was held by First Leaside Wealth Management Holdings Limited Partnership;
- (b) 8.3% was held by First Leaside Progressive Limited Partnership; and
- (c) 34.9% was held by FLWM.

94. The remaining 45.9% interest in Beverages LP was held by third party investors.

95. Pursuant to a court order dated May 3, 2012, First Leaside obtained approval to sell the above-noted 54.1% interest in Beverages LP to Provincial Beverages of Canada Inc. ("**Provincial Beverages**").

96. As part of the sale, Provincial Beverages agreed to assume the existing syndicated mortgage over the Thornbury Property and to continue to make monthly payments of principal and interest. Since this was a syndicated mortgage made by First Leaside investors and administered by First Leaside, FLNS has continued to collect monthly mortgage payments from Provincial Beverages since the time that the transaction closed. The total amount on hand is now \$38,500. First Leaside seeks authorization to distribute the current money on hand as well as future receipts from the mortgage on the Thornbury Property (collectively, "**Thornbury Mortgage Proceeds**") to investors. The Monitor is in the process of reviewing the validity and enforceability of the mortgage over the Thornbury Property and the entitlement of individual investors to receive proceeds.

97. There will be no prejudice to First Leaside associated with the distribution of the Thornbury Mortgage Proceeds, since this represents proceeds of a portfolio investment where First Leaside no longer owns or operates the underlying property or business. Any distributions will be subject to the right of First Leaside (if the court grants such authority) to withhold the Reserved Property in respect of investors with Investment Loans. The Company and the Monitor continue to investigate ways on administering the Thornbury Mortgage on a going forward basis.

P. First Leaside's Claim Against Phillips and Davis

98. As I deposed in my August 20, 2012 affidavit, I have concluded that Phillips and Davis received certain monetary and other benefits from First Leaside which were not properly approved and that Phillips and Davis also obtained a number of loans which have not been repaid. Pursuant to the August 23 Order, First Leaside was granted leave, despite the CCAA stay preventing claims against directors, to commence an action against Phillips and Davis to seek repayment of these benefits and Investor Loans. In that regard, First Leaside issued a Statement of Claim against Phillips and Davis on August 28, 2012, a copy of which is attached hereto as **Exhibit "W."**

99. Among other things, the Statement of Claim alleges as a result of fraudulent misrepresentation, breach of contract, breach of fiduciary duty, oppression, conversion, conspiracy and unjust enrichment by Phillips and Davis the following sums (among others) are owed to First Leaside:

- (a) \$202,420 for loans made by FLWM to Phillips;
- (b) \$160,000 for loans made by FLWM to Davis;
- (c) \$3,843,549.92 for funds allegedly diverted from First Leaside by Phillips to himself and Davis; and
- (d) \$2,541,419.50 for funds allegedly diverted from FL Securities and FLSI by Phillips and Davis directly, or to benefit and improve the personal residence of Phillips and Davis located at 430 Regional Road #8 in Uxbridge, Ontario (the "**Uxbridge Property**").

100. The Statement of Claim also requests, among other things, the following relief from the Court:

- (a) An interim, interlocutory and permanent injunction enjoining Davis and any corporations controlled or owned by her, or anyone acting on her behalf or at her direction from dissipating, depleting or otherwise interfering with any funds resulting from the sale of the Uxbridge Property or any of its related assets;
- (b) An order permitting a Certificate of Pending Litigation to be issued and registered against the Uxbridge Property;
- (c) A declaration that Davis holds the Uxbridge Property in trust and on behalf of First Leaside; and
- (d) An order to preserve, trace, locate and account for all funds which Phillips and Davis have taken from First Leaside.

Q. First Leaside Obtains a Certificate of Pending Litigation

101. FLWM, FL Finance, FLSI and FL Securities (the “**FL Plaintiffs**”) brought a motion against Phillips and Davis pursuant to section 103 of the *Courts of Justice Act* for leave to file a Certificate of Pending Litigation (“**CPL**”) against the Uxbridge Property. Davis brought a cross-motion to strike out certain paragraphs of my affidavit sworn on September 14, 2012 in support of the FL Plaintiffs’ motion. The matter was heard by Justice Cumming on September 27, 2012.

102. On June 20, 2102, Davis had listed the Uxbridge Property for sale and an Agreement of Purchase and Sale was entered into on August 7, 2012 with a closing date of October 1, 2012. The motion brought by the FL Plaintiffs sought to preserve their claimed rights in the Uxbridge Property as set out in the Statement of Claim and

claimed a tracing order and a constructive trust in respect of the alleged improper payments made in respect of the Uxbridge Property. On the motion, Davis and Phillips claimed that they were impecunious and required the sale of the Uxbridge Property for ongoing living expenses.

103. By endorsement dated October 1, 2012 Justice Cumming dismissed Davis's cross-motion as lacking in merit and granted the FL Plaintiffs' request for leave to file a CPL. Justice Cumming found that there was an interest in the Uxbridge Property on the part of the FL Plaintiffs such as to support their request for a CPL. Justice Cumming noted that the FL Plaintiffs had established that there were triable issues, as asserted in the Statement of Claim, including, among other things, that there has been a misappropriation of the FL Plaintiffs' monies through unauthorized payments in respect of rent, maintenance and improvements relating to the Uxbridge Property so as to constitute an unjust enrichment and subject to a constructive trust. Attached hereto as **Exhibit "X"** is a copy of the Endorsement of Justice Cumming's dated October 1, 2012.

R. Update on Other Activities and Proceedings

The Ontario Securities Commission Proceedings

104. On June 4, 2012 the Ontario Securities Commission ("**OSC**") commenced proceedings against Phillips and John Wilson ("**Wilson**"), a former officer of First Leaside. 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 the *Securities Act*, R.S.O. 1990, c. S.5. 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, false, or misleading contrary to the *Securities Act*.

105. The hearing in this matter was scheduled to be held on August 28, 2012 but has since been adjourned to February 11, 2013.

106. Phillips is also subject to a temporary order issued by the OSC on May 30, 2012, which prevents him from trading in securities (the "**Cease Trade Order**"). Attached hereto as **Exhibit "Y"** is a copy of the Cease Trade Order. The Cease Trade Order could effectively prevent Phillips from taking certain steps on behalf of the Funds, including the raising of additional capital.

107. On June 6, 2012, the OSC extended the Cease Trade Order until September 28, 2012, and on September 26, 2012 it was extended further until the conclusion of the OSC's hearing into the allegations against Phillips and Wilson (the "**Extended Cease Trade Order**"). A copy of the Extended Cease Trade Order is attached hereto as **Exhibit "Z."** During this time, Phillips is prohibited from trading in all securities.

108. First Leaside Properties Fund was also directed by the OSC and the Alberta Securities Commission to cease trading in all securities as of May 18, 2012 (collectively, the "**First Leaside Cease Trade Orders**"). Attached hereto as **Exhibit "AA"** is a copy of the First Leaside Cease Trade Orders.

The Investment Industry Regulatory Organization of Canada Proceedings

109. In November 2011, the Investment Industry Regulatory Organization of Canada ("**IIROC**") initiated a formal investigation into Phillips and Wilson's conduct in respect of

alleged violations that occurred when both Phillips and Wilson were Registered Representatives with FLSI, a regulated member of IIROC.

110. On October 2, 2012 IIROC issued a Notice of Hearing alleging that Phillips and Wilson

- (a) misrepresented the risk level of certain securities;
- (b) issued and distributed misleading marketing materials;
- (c) failed to ensure that recommendations were made and orders accepted in accordance with their clients' risk tolerances; and
- (d) preferred their own interests ahead of their clients' interests in soliciting sales of certain securities.

111. The Notice of Hearing also concerns allegations that Phillips failed to address a conflict of interest with his clients in a fair and equitable manner and in a manner in the best interest of his clients. The hearing is scheduled to be heard before IIROC's Hearing Panel on October 17, 2012. Attached hereto and marked as **Exhibit "BB"** is a copy of the Notice of Hearing.

Phillips' Claim for Legal Fees of Collection Action and the OSC Proceeding

112. On September 6, 2012, Phillips counsel advised the Company that he was seeking to be reimbursed for legal fees associated with: (a) the Collection Action; and (b) the regulatory proceedings brought by Staff of the OSC. In response, counsel for the Company advised Phillips that any claims against the Company for indemnification were unsecured pre-filing claims which are stayed by the Initial Order as both the OSC proceedings and the Collection Action relate to events which occurred prior to the

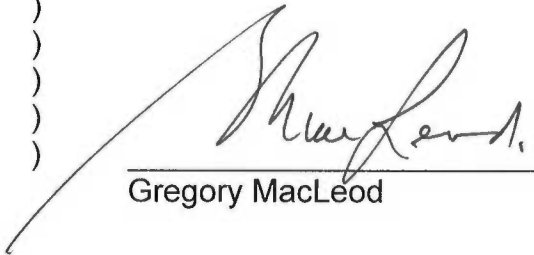
granting of the Initial Order. A copy of the correspondence between counsel for Phillips dated September 6, 2012 and counsel for the Company dated September 11, 2012 are attached hereto as **Exhibits "CC" and "DD"**, respectively.

113. The directors' and officers' indemnification provisions and the Directors' Charge which are provided for in the Initial Order only deal with liability arising out of the conduct occurring after the date of the Initial Order. As such, I believe that those provisions are not applicable to Phillips's request for indemnification.

SWORN before me at the City of Burlington,)
In the Province of Ontario, this 15th day of)
October, 2012)
)
)
)
)



A Commissioner, etc.


Gregory MacLeod

Patrick Joseph MacDonald, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires April 6, 2014.

THIS IS EXHIBIT "A" REFERRED TO IN THE
AFFIDAVIT OF GREGORY MACLEOD
SWORN BEFORE ME,
THIS 15TH DAY OF OCTOBER, 2012



Commissioner for Taking Affidavits, Etc.

Patrick Joseph MacDonald, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires April 6, 2014.

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 GREGORY MACLEOD
SWORN BEFORE ME,
THIS 15TH DAY OF OCTOBER, 2012



Commissioner for Taking Affidavits, Etc.

Patrick Joseph MacDonald, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires April 6, 2014.

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



**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.
JUSTICE DAVID M. BROWN

)
)
)

THURSDAY, THE 23RD
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.

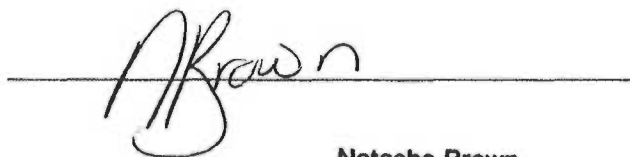
61. THIS COURT ORDERS that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of First Leaside, the Business or the Property.

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.



Natasha Brown
Registrar

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

FEB 24 2012



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 "C" REFERRED TO IN THE
AFFIDAVIT OF GREGORY MACLEOD
SWORN BEFORE ME,
THIS 15TH DAY OF OCTOBER, 2012



Commissioner for Taking Affidavits, Etc.

**Patrick Joseph MacDonald, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires April 6, 2014.**



**SUPERIOR COURT OF JUSTICE
COUR SUPÉRIEURE DE JUSTICE**

*361 University Avenue
Toronto, ON M5G 1T3
Telephone: (416) 327-5284 Fax: (416) 327-5417*

FAX COVER SHEET

Date: February 27, 2012

TO:

John Birch and David Ward
Pamela Huff and Chris Burr
David Bish
Brian Empey
James H. Grout
Richard Oliver
Jane Dietrich
E. Alan Garbe
Nicholas Richter
Megan Sanford
Maria Konyukhova
Clifton Prophet

FAX NO.:

416-640-3057 / 416-360-3154
416-863-2653
416-865-7380
416-979-1234
416-304-1313
416-360-8277
416-863-4592
905-479-3625
1-905-523-6286
416-368-2599
416-222-8402
416-863-3509

FROM: The Honourable Mr. Justice David M. Brown

TOTAL PAGES (INCLUDING COVER PAGE): 18

MESSAGE:

In the Matter of a Plan of Compromise or Arrangement of First Leaside Wealth Management Inc.

Please see Reasons for Decision in the above noted matter attached.

The information contained in this facsimile message is confidential information. If the person actually receiving this facsimile or any other reader of the facsimile is not the named recipient or the employee or agent responsible to deliver it to the named recipient, any use, dissemination, distribution, or copying of the communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone and return the original message to us at the above address.

Original will NOT follow. If you do not receive all pages, please telephone us immediately at the above number.

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

- Page 2 -

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.

- Page 3 -

[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.

- Page 4 -

[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:

- Page 5 -

[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.

- Page 6 -

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.

- Page 7 -

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. Catherines, 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.).

- Page 9 -

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. McElcheran, *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.

- Page 11 -

[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.

- Page 12 -

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).

- Page 13 -

[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 IROC.

[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 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 paramountcy".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).

- Page 17 -

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.

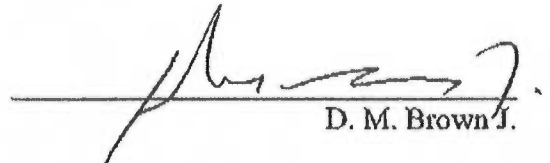
VII. Other matters

[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 "D" REFERRED TO IN THE
AFFIDAVIT OF GREGORY MACLEOD
SWORN BEFORE ME,
THIS 15TH DAY OF OCTOBER, 2012



Commissioner for Taking Affidavits, Etc.

Patrick Joseph MacDonald, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires April 6, 2014.



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.

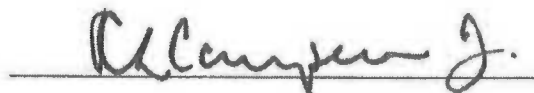
APPROVAL OF MONITOR'S ACTIVITIES

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

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

Proceeding commenced at Toronto

ORDER
(Second Extension of Stay Period)

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

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

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

Lawyers for the Applicants

THIS IS EXHIBIT "E" REFERRED TO IN THE
AFFIDAVIT OF GREGORY MACLEOD
SWORN BEFORE ME,
THIS 15TH DAY OF OCTOBER, 2012

A handwritten signature in cursive script, appearing to read "Pat MacDonald", written over a horizontal line.

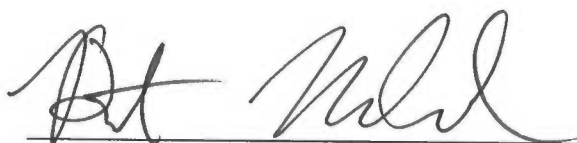
Commissioner for Taking Affidavits, Etc.

Patrick Joseph MacDonald, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires April 6, 2014.

ADDITIONAL FIRST LEASIDE CANADIAN PROPERTIES LISTED FOR SALE

PROPERTY	FIRST LEASIDE LP THAT OWNS THE PROPERTY	LIST PRICE
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
123 Erie Street, Wheatly	First Leaside Unity LP	\$ 450,000

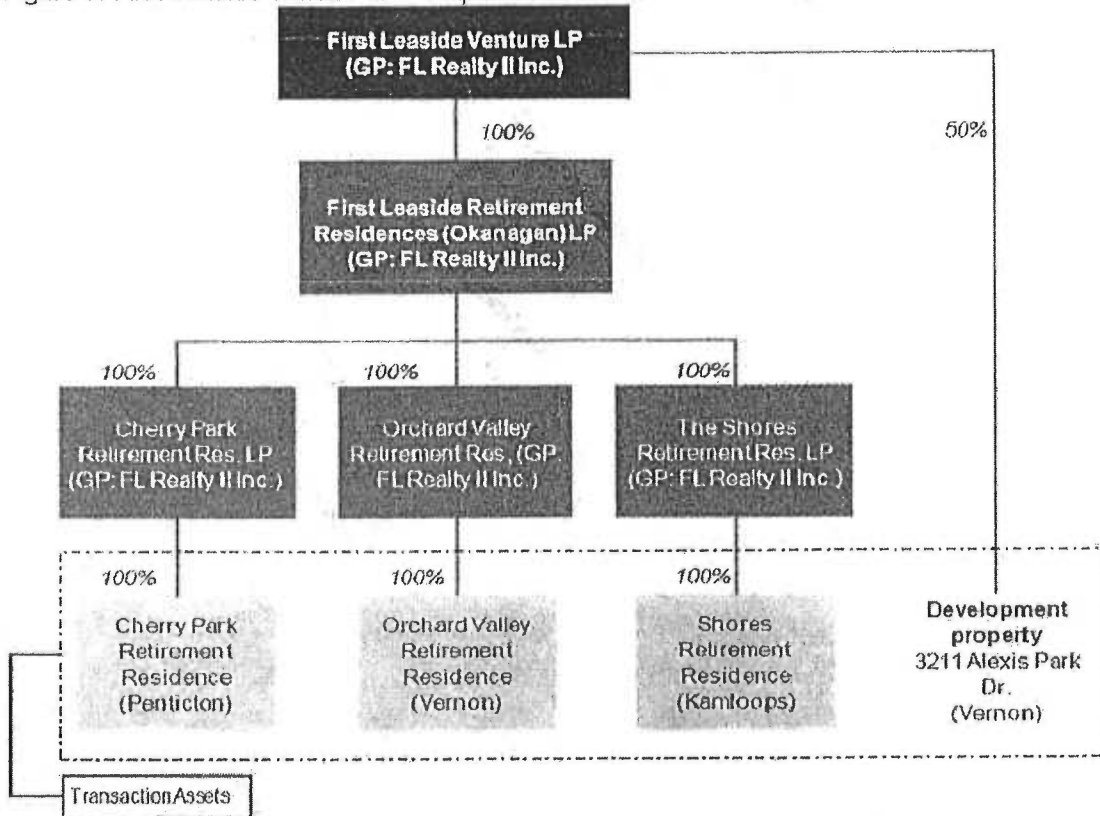
THIS IS EXHIBIT "F" REFERRED TO IN THE
AFFIDAVIT OF GREGORY MACLEOD
SWORN BEFORE ME,
THIS 15TH DAY OF OCTOBER, 2012

A handwritten signature in black ink, appearing to read 'PJ MacDonald', written over a horizontal line.

Commissioner for Taking Affidavits, Etc.

**Patrick Joseph MacDonald, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires April 6, 2014.**

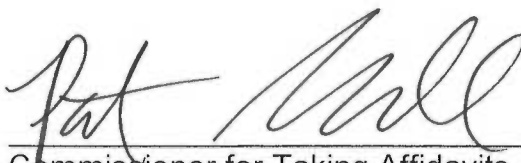
Figure 3: First Leaside Venture LP - Corporate Structure



Source: Partnership Management

Note: The Shores Retirement Residence includes the development land adjacent to the facility.

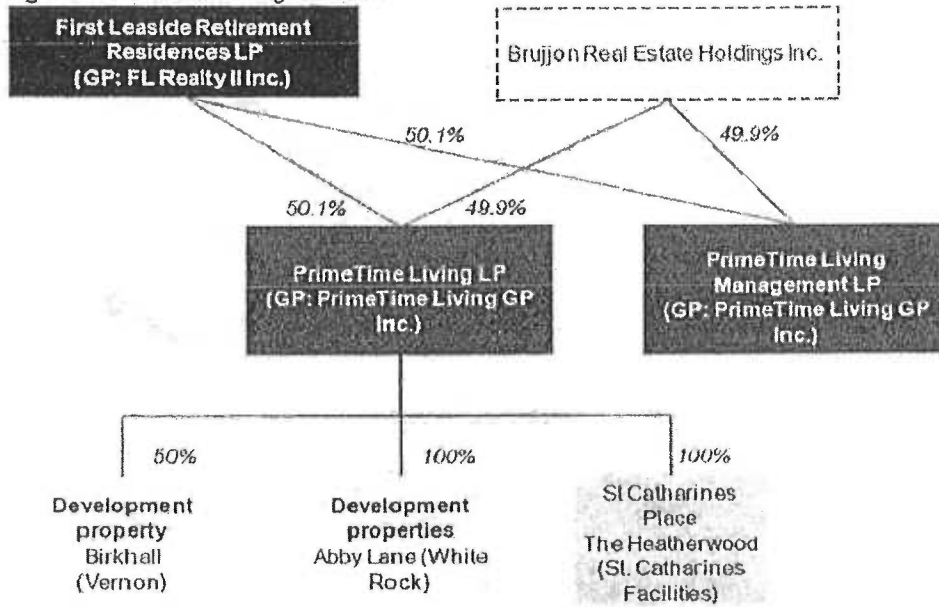
THIS IS EXHIBIT "G" REFERRED TO IN THE
AFFIDAVIT OF GREGORY MACLEOD
SWORN BEFORE ME,
THIS 15TH DAY OF OCTOBER, 2012

A handwritten signature in cursive script, appearing to read "Pat Mac", written in black ink.

Commissioner for Taking Affidavits, Etc.

Patrick Joseph MacDonald, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires April 6, 2014.

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 "H" REFERRED TO IN THE
AFFIDAVIT OF GREGORY MACLEOD
SWORN BEFORE ME,
THIS 15TH DAY OF OCTOBER, 2012



Commissioner for Taking Affidavits, Etc.

**Patrick Joseph MacDonald, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires April 6, 2014.**

CONSTRUCTION AND BUILDING LIENS FOR THE B.C. PROPERTIES

Construction and Building Lien Description	Construction Lien Claimant(s)
A. As to Orchard Valley Retirement Residences: Legal Description: PID: 015-305-775 Lot A, District Lot 72, Osoyoos Division Yale District, Plan 42205 (a) Claim of Builders Lien CA2390138 (b) Claim of Builders Lien CA2394578 (c) Claim of Builders Lien CA2433061	(a) Okanagan Sundeck Centre Ltd. (b) Gienow Windoor Ltd. (c) Scuka Enterprises Ltd.
B. As to Cherry Park Retirement Residence: Legal Description: PID: 016-044-355 Lot A, District Lot 4, Group 7, Similkameen Division Yale (Formerly Yale-Lytton) District, Plan 43044 (a) Claim of Builders Lien CA2394579 (b) Claim of Builders Lien CA2433060	(a) Gienow Windoor Ltd. (b) Scuka Enterprises Ltd.
C. As to the Shores Retirement Residence: Legal Description: PID: 017-700-892 Lot A, District Lot 256, Kamloops Division Yale District, Plan KAP46785 (a) Claim of Builders Lien CA2433059	(a) Scuka Enterprises Ltd.
D. As to Lot 5: Legal Description: PID: 012-463-124 West Half Lot 5, Block 1, Section 14, Township 1, New Westminster District, Plan 2015 (a) Claim of Builders Lien BB1496108	(a) Vector Engineering Services Ltd.

Construction and Building Lien Description	Construction Lien Claimant(s)
E. As to Lot 6: Legal Description: PID: 012-463-159 Parcel "A" (Explanatory Plan 12913) Lot 6, Block 1, Section 14, Township 1, New Westminster District, Plan 2015 (a) Claim of Builders Lien BB1496110	(a) Vector Engineering Services Ltd.
F. As to Lot 206: Legal Description: PID: 005-502-128 Lot 206, Section 14, Township 1, New Westminster District, Plan 56570 (a) Claim of Builders Lien BB1496109	(a) Vector Engineering Services Ltd.

THIS IS EXHIBIT "I" REFERRED TO IN THE
AFFIDAVIT OF GREGORY MACLEOD
SWORN BEFORE ME,
THIS 15TH DAY OF OCTOBER, 2012



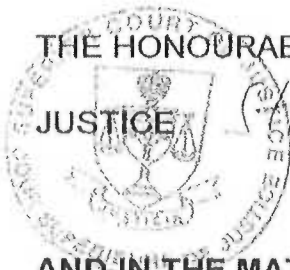
Commissioner for Taking Affidavits, Etc.

Patrick Joseph MacDonald, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires April 6, 2014.

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**



THE HONOURABLE

JUSTICE

Shirley

)
)
)

THURSDAY, THE 23RD

DAY OF AUGUST, 2012

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

ORDER

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

- 2 -

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

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

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

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

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

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF First Leaside Wealth Management Inc., First Leaside Finance Inc., First Leaside Securities Inc., FL Securities Inc., First Leaside Management Inc., First Leaside Accounting and Tax Services Inc., First Leaside Holdings Inc., 2086056 Ontario Inc., First Leaside Realty Inc., First Leaside Capital Inc., First Leaside Realty II Inc., First Leaside Investments Inc., 965010 Ontario Inc., 1045517 Ontario Inc., 1024919 Ontario Inc., 1031628 Ontario Inc., 1056971 Ontario Inc., 1376095 Ontario Inc., 1437290 Ontario Ltd., 1244428 Ontario Ltd., PrestonOne Development (Canada) Inc., PrestonTwo Development (Canada) Inc., PrestonThree Development (Canada) Inc., PrestonFour Development (Canada) Inc., 2088543

- 3 -

Ontario Inc., 2088544 Ontario Inc., 2088545 Ontario Inc., 1331607 Ontario Inc., Queenston Manor General Partner Inc., 1408927 Ontario Ltd., 2107738 Ontario Inc., 1418361 Ontario Ltd., 2128054 Ontario Inc., 2069212 Ontario Inc., 1132413 Ontario Inc., 2067171 Ontario Inc., , 2085306 Ontario Inc., 2059035 Ontario Inc., 2086218 Ontario Inc., 2085438 Ontario Inc., First Leaside Visions Management Inc., 1049015 Ontario Inc., 1049016 Ontario Inc., 2007804 Ontario Inc., 2019418 Ontario Inc., FL Research Management Inc., 1031628 Ontario Inc., 1045516 Ontario Inc., 2004516 Ontario Inc., 2192341 Ontario Inc., and First Leaside Fund Management Inc.

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

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

5. **THIS COURT ORDERS** that First Leaside Finance Inc. be and is hereby authorized and directed to discharge the mortgage registered as Instrument No.

- 4 -

OC1276878 concurrently with the closing of the transaction contemplated in the Amica APA, [✓] provided that the monitor consents to such discharge. [✓] *BS*

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

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

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

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

- 5 -

effect to this Order or to assist the Monitor and its agents in carrying out the terms of this Order.

9. **THIS COURT ORDERS** that the conduct of the CRO as described in the MacLeod Affidavit be and the same is hereby approved.

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

✓ 11. **THIS COURT DIRECTS** that the burden of the relief sought, in respect of the JS Entities and/or, is adjourned to August 30, 2012 and in the interim First Leaside shall work with the Representative Counsel, the Trustees of the W. Ambury Fund, The First Leaside Fund, The First Leaside Properties Fund and the First Leaside Mortgage Fund, or such counsel as the Trustees may direct, and with the Monitor, to determine a transition plan which shall be subject to further Court approval.

GR Muty

HSJ

FILED AT / DÉPOSÉ À LA COUR DE
JUDICATURE
LE / DANS LE REGISTRE NO.:

AUG 23 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. et al

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

ONTARIO
SUPERIOR COURT OF JUSTICE
 (Commercial List)

Proceeding commenced at Toronto

ORDER

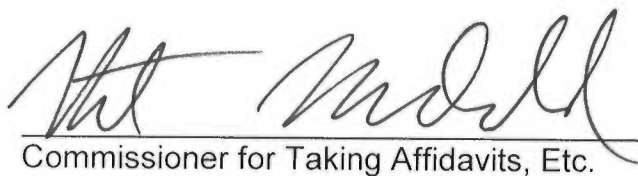
Cassels Brock & Blackwell LLP
 2100 Scotia Plaza
 40 King Street West
 Toronto, Ontario M5H 3C2

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

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

Lawyers for the Applicant

THIS IS EXHIBIT "J" REFERRED TO IN THE
AFFIDAVIT OF GREGORY MACLEOD
SWORN BEFORE ME,
THIS 15TH DAY OF OCTOBER, 2012



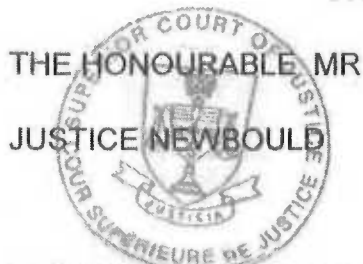
Commissioner for Taking Affidavits, Etc.

Patrick Joseph MacDonald, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires April 6, 2014.

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**



THE HONOURABLE MR

JUSTICE NEWBOULD

)
)
)

FRIDAY, THE 31ST

DAY OF AUGUST, 2012

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

ORDER

(U.S. Entities Wind-down)

THIS MOTION, brought by the Applicants, for approval of the sale of certain assets of the Applicants, and such other relief as described in the amended notice of motion dated August 20, 2012, was heard in part on August 23, 2012, with the balance

of the relief sought adjourned on consent to be heard on August 30, 2012, and then further adjourned to a date to be coordinated with the Commercial List Office, was heard this day at the Court House, 330 University Avenue, Toronto, Ontario.

ON READING the amended notice of motion, the affidavit of Gregory MacLeod sworn August 20, 2012, the affidavit of Henry Wenekamp sworn August 22, 2012, and the Fourth Report of the Grant Thornton Limited, in its capacity as court appointed monitor ("**Monitor**") dated August 21, 2012, and upon hearing the submissions of counsel for the Applicants and G.S. MacLeod & Associates ("**CRO**"), counsel for the Monitor, Fraser Milner Casgrain LLP in its capacity as court appointed Representative Counsel, and counsel for the trustees ("**Trustees**") of certain First Leaside-affiliated investment funds, namely First Leaside Fund, Wimberly Fund, First Leaside Mortgage Fund and First Leaside Properties Fund (collectively, the "**Funds**"),

AND UPON BEING ADVISED by counsel for the Trustees that each of the Funds will call and hold a meeting of their respective trust unitholders within sixty (60) days of the date of this order for the purpose, among other things, of reporting to trust unitholders and electing trustees of the Funds and will provide a reporting letter to the Monitor with respect to such meeting,

AND UPON BEING FURTHER ADVISED that this order is made on consent of First Leaside and the Monitor and the Trustees,

1. **THIS COURT AUTHORIZES AND DIRECTS** that First Leaside (as defined in the initial order of Justice D. M. Brown dated February 23, 2012) ("**First Leaside**") take no steps to manage, administer or maintain any limited partnerships, corporations, trusts,

or properties located or subsisting in the United States in which First Leaside has a direct or indirect equity or other interest including, without limiting the generality of the foregoing, properties held directly or indirectly by Wimberly Apartments Limited Partnership, 2088544 Ontario Inc., 2088545 Ontario Inc., 2088543 Ontario Inc., FL Master Sherman GP, Inc., FL Master Texas, Ltd., FL Master Sherman Ltd., or F.L. US Holdings GP, Inc. but excepting the Sherman Church property municipally known as 920 South Heritage Parkway, Sherman, Texas and the Spring Valley Mall property municipally known as 7800-7798 Spring Valley Road, Dallas, Texas ("**US Entity**" or collectively the "**US Entities**").

2. **THIS COURT ORDERS** that, notwithstanding the terms of paragraph 1 of this order, First Leaside is authorized to attend to the preparation and filing of tax returns in respect of the US Entities for the 2011 taxation year.

3. **THIS COURT ORDERS** that First Leaside is authorized to deliver copies of any business or corporate records in its possession relating to the US Entities to an officer or director of the relevant US Entity.

4. **THIS COURT ORDERS AND DIRECTS** that the CRO forthwith transfer the funds available as at August 31, 2012 in the First Leaside Mortgage Fund Bank Account at the TD Bank, 55 King Street West, Toronto, account numbered 1020-5397336 to Torkin Manes LLP, In Trust, counsel for First Leaside Mortgage Fund.

ENTERED AT / ENTRE A L'ORDRE
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

AUG 31 2012

RECEIVED

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

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

Proceeding commenced at Toronto

ORDER

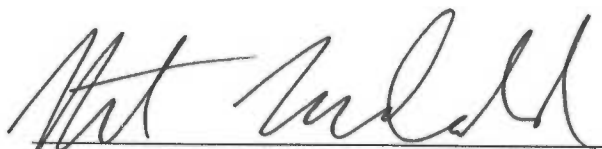
Cassels Brock & Blackwell LLP
2100 Scotia Plaza
40 King Street West
Toronto, Ontario M5H 3C2

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

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

Lawyers for the Applicant

THIS IS EXHIBIT "K" REFERRED TO IN THE
AFFIDAVIT OF GREGORY MACLEOD
SWORN BEFORE ME,
THIS 15TH DAY OF OCTOBER, 2012

A handwritten signature in black ink, appearing to read 'Pat MacDonald', written over a horizontal line.

Commissioner for Taking Affidavits, Etc.

Patrick Joseph MacDonald, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires April 6, 2014.

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

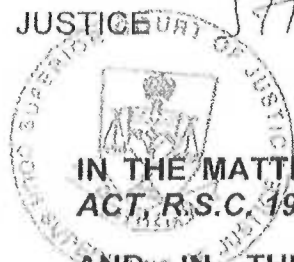
**ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)**

THE HONOURABLE

THURSDAY, THE 23RD

JUSTICE

DAY OF AUGUST, 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. (the "Applicant")**

**VESTING ORDER
(First Leaside Growth Limited Partnership)**

THIS MOTION, made by the Applicants for an order approving the sale transaction (the "**Transaction**") contemplated by an Agreement of Purchase and Sale (the "**Sale Agreement**") between First Leaside Growth Limited Partnership by its general partner, 2085306 Ontario Inc. (the "**Vendor**"), and Outset Media Corporation

(the "**Purchaser**") dated July 23, 2012 and appended as Exhibit "G" to the Affidavit of Greg MacLeod, sworn August 20, 2012 (the "**MacLeod Affidavit**"), and vesting in the Purchaser the right, title and interest of the Vendor in and to the assets described in the Sale Agreement (the "**Purchased Assets**"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the MacLeod Affidavit, the fourth report of Grant Thornton Limited, in its capacity as court appointed monitor (the "**Monitor**") dated August 21, 2012, (the "**Report**") and on hearing the submissions of counsel for the Applicants and G.S. MacLeod & Associates Inc. (the "**CRO**"), the Monitor, Fraser Milner Casgrain LLP in its capacity as Court appointed Representative Counsel, no one appearing for any other person on the service list, although properly served as appears from the affidavits of service of Mary Carreiro sworn August 20, 2012, filed:

1. **THIS COURT ORDERS** that the time for service and filing of the notice of motion and the motion record is hereby abridged and validated so that the motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Sale Agreement by the CRO is hereby authorized and approved, with such minor amendments as the CRO may deem necessary. The CRO is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.
3. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a CRO's certificate to the Purchaser substantially in the form attached as **Schedule "A"** hereto (the "**CRO'S Certificate**"), all of the Debtor's right, title and interest in and to the Purchased Assets described in the Sale Agreement and listed on **Schedule "B"** hereto shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise

(collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of Mr. Justice Brown dated February 23, 2012; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on **Schedule "C"** and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

4. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the Land Titles Division of Peel (No. 43) of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*, the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject real property identified in Schedule B hereto (the "**Real Property**") in fee simple.

5. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the CRO's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

6. **THIS COURT ORDERS AND DIRECTS** the Monitor to file with the Court a copy of the CRO's Certificate, forthwith after delivery thereof.

7. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtor and any bankruptcy order issued pursuant to any such applications; and

(c) any assignment in bankruptcy made in respect of the Debtor;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

8. **THIS COURT ORDERS AND DECLARES** that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario).

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



RECEIVED AT THE COURT OF A TOWNSHIP
IN BOOK NO.
LE / DANS LE REGISTRE NO.

AUG 23 2012

RECEIVED



Schedule A – Form of CRO's Certificate

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. (the "Applicant")

CRO's CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice Brown of the Ontario Superior Court of Justice (the "**Court**") dated February 23, 2012, G.S. MacLeod & Associates Inc. was appointed as the chief restructuring officer (the "**CRO**") of the undertaking, property and assets of the Applicants.

B. Pursuant to an Order of the Court dated August 23, 2012, the Court approved the agreement of purchase and sale dated July 23, 2012 (the "**Sale Agreement**") between First Leaside Growth Limited Partnership by its general partner 2085306 Inc. (the "**Vendor**"), and Outset Media Corporation (the

"Purchaser") and provided for the vesting in the Purchaser of the Debtor's right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the CRO to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in the Sale Agreement have been satisfied or waived by the CRO and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the CRO.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE CRO CERTIFIES the following:

1. The Purchaser has paid and the Vendor has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in the Sale Agreement have been satisfied or waived by the CRO and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the CRO.
4. This Certificate was delivered by the CRO at _____ on _____, 2012.

**G.S. MacLeod & Associates Inc., in its
capacity as court appointed chief
restricting officer of the Applicants, and
not in its personal capacity**

Per: _____
Name: Greg MacLeod
Title: President

**Schedule B
Purchased Assets**

Municipal Description

36 Bramtree Court, Brampton

Legal Description

PT BLK 2 PL 43M873 DES PT 2 PL 43R25991 BRAMPTON T/W EASEMENT OVER PT LT 6 CON 6 EHS DES PT 4 PL 43R14988 IN FAVOUR OF PT BLK 2 PL 43M873 DES PT 2 PL 43R25991 AS IN LT828989. T/W EASEMENT OVER PT LT 8 CON 6 EHS DES PT 2 PL 43R16911 IN FAVOUR OF PT BLK 2 PL 43M873 DES PT 2 PL 43R25991 AS IN LT1098794. T/W EASEMENT OVER PT BLK 1 PL 43M873 DES PTS 1,2, 12 PL 43R22485, PT BLK 6 M873 DES PT 4 PT CORPORATION DR. M876 PTS 6,7 PL 43R22485, PT BLK 5 M876 DES PT 8 PL 43R2 2485, PT BLK 1 M 876 DES PTS 10, 11, 14 PL 43R22485, IN FAVOUR OF PT BLK 2 PL 43M873 DES PT 2 PL 43R25991 AS IN LT1773259. (S/T LT974291, LT974305, LT990706, LT1570384, LT1766971, LT1773254, LT1773255, LT1773256, LT1773257, LT1773258) T/W EASEMENT OVER BLK 1 M874 IN FAVOUR OF PT BLK 2 PL 43M873 DES PT 2 PL 43R25991 AS IN LT1773260. (S/T LT974305, LT974291, LT9907060, LT1570384, LT1769971, LT1773254, LT1773255, LT1773256, LT1773257, LT1773258, LT1773259)

Handwritten signature/initials

Schedule C

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 for the purposes for which it is 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 and any charge of the Tenant's or a subtenant's interest therein;
 7. the Mortgage, and related collateral security thereto;
 8. Airport Zoning Regulations and amendments thereto. (Instrument No. LT2057426)
 9. Instrument No. LT974291;
 10. Instrument No. LT990706
 11. Instrument No. LT1570384
 12. Instrument No. LT1700376
 13. Instrument No. LT1769971
 14. Instrument No. LT2050883
 15. Instrument No. PR21490
 16. Instrument No. PR798994
 17. Instrument No. PR814994
 18. Instrument No. PR1884605
- 

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

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

Proceeding commenced at Toronto

SALE APPROVAL AND VESTING ORDER
(First Leaside Growth Limited Partnership)

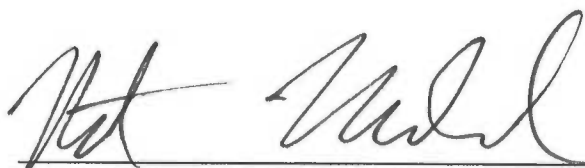
Cassels Brock & Blackwell LLP
2100 Scotia Plaza
40 King Street West
Toronto, Ontario M5H 3C2

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

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

Lawyers for the Applicant

THIS IS EXHIBIT "L" REFERRED TO IN THE
AFFIDAVIT OF GREGORY MACLEOD
SWORN BEFORE ME,
THIS 15TH DAY OF OCTOBER, 2012



Commissioner for Taking Affidavits, Etc.

Patrick Joseph MacDonald, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires April 6, 2014.

ASSIGNMENT OF PURCHASE AGREEMENT

THIS AGREEMENT made as of the 31st day of August, 2012.

BETWEEN:

OUTSET MEDIA CORPORATION

(the "Assignor")

- and -

0947907 B.C. LTD

(the "Assignee")

- A. Outset Media Corporation (the "Assignor"), as purchaser, entered into an Agreement of Purchase and Sale dated July 23, 2012 (as amended from time to time, the "Purchase Agreement") with 2085306 Ontario Inc. (the "Vendor") for the purchase of the property described in Schedule "A" (the "Property").
- B. The Assignor desires to assign, transfer and set over to the Assignee the right, title, estate and interest of the Assignor in the Purchase Agreement and the benefit of the covenants thereunder and the advantages to be derived therefrom as the same pertain to the Property.
- C. Subject to the terms and conditions of this Agreement, the Assignee has agreed to assume all of the covenants, obligations and agreements of the Assignor under the Purchase Agreement.

NOW THEREFORE in consideration of \$1.00 and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

- 1. **Definitions.** All defined terms used in this Agreement shall, unless explicitly defined herein, have the same meaning as in the Purchase Agreement.
- 2. **Assignment.** Effective as of the date of this Agreement, the Assignor hereby assigns, transfers, sets over and releases unto the Assignee, for its sole use and benefit, the right, title, estate and interest of the Assignor in and to the Purchase Agreement with respect to the Property and the benefit of all covenants, and all other advantages to be derived therefrom.
- 3. **Assumption.** The Assignee hereby assumes all of the liabilities and obligations of the Assignor and covenants and agrees with the Assignor to perform the obligations of the Assignor in accordance with the provisions of the Purchase Agreement with respect to the Property and covenants to be bound by and to comply with and observe all the covenants, obligations and agreements of the Assignor arising from the Purchase Agreement, as if the Assignee were the original purchaser under the Purchase Agreement with respect to the Property. This Assignee agrees to reimburse the Assignor for the deposits paid to the Listing Broker under the Purchase Agreement. The parties hereto agree that the Vendor may rely on the Assignee's covenant to be bound by the Purchase Agreement.
- 4. **Time of Essence.** Time shall be of the essence of this Agreement and of each of its provisions.

- 2 -

5. **Further Assurances.** Each of the parties hereto shall promptly do, make, execute or deliver, or cause to be done, made, executed or delivered, all such further acts, documents and things as the other party hereto may reasonably require from time to time for the purpose of giving effect to this Agreement and shall use its reasonable commercial efforts and take all such steps as may be reasonably within its power to implement to their full extent the provisions of this Agreement.
6. **Successors and Assigns.** This Agreement shall enure to the benefit of and shall be binding upon the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns.
7. **Governing Law.** This Agreement shall be construed and enforced in accordance with the laws of the Province of Quebec and the laws of Canada applicable therein and shall be treated in all respects as a Quebec contract.
8. **Counterparts.** This Agreement may be executed in several counterparts and by facsimile transmission of an originally executed document, each of which shall be deemed to be an original, and all such counterparts shall constitute one and the same instrument.

[SIGNATURE PAGE(S) FOLLOW ON NEXT PAGE]

- 3 -

IN WITNESS WHEREOF the parties have executed this Agreement as of the date hereof.

OUTSET MEDIA CORPORATION

Per: _____

Name: Dave Manga

Title: President

0947907 B.C. LTD.

Per: _____

Name: Joy Marie Manga

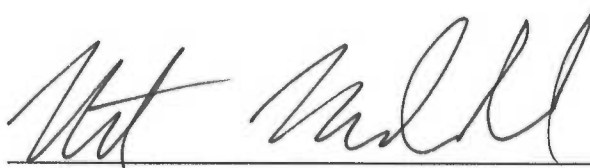
Title: President

4 *

Schedule "A"**Property**36 Bramptree Court, Brampton, ON

PIN 14207 - 0166 (LT) - Land Registry Office # 43

THIS IS EXHIBIT "M" REFERRED TO IN THE
AFFIDAVIT OF GREGORY MACLEOD
SWORN BEFORE ME,
THIS 15TH DAY OF OCTOBER, 2012

A handwritten signature in black ink, appearing to read 'Pat MacDonald', written over a horizontal line.

Commissioner for Taking Affidavits, Etc.

Patrick Joseph MacDonald, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires April 6, 2014.



THE HONOURABLE

JUSTICE STRATHY

)
)
)

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

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

THURSDAY, THE 23RD

DAY OF AUGUST, 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. (the "Applicant")**

**AMENDED VESTING ORDER
(First Leaside Growth Limited Partnership)**

THIS MOTION, made by the Applicants for an order approving the sale transaction (the "**Transaction**") contemplated by an Agreement of Purchase and Sale (the "**Sale Agreement**") between First Leaside Growth Limited Partnership by its general partner, 2085306 Ontario Inc. (the "**Vendor**"), and Outset Media Corporation

(**"Outset Media"**) dated July 23, 2012 and appended as Exhibit "G" to the Affidavit of Greg MacLeod, sworn August 20, 2012 (the **"MacLeod Affidavit"**), and vesting in the Purchaser the right, title and interest of the Vendor in and to the assets described in the Sale Agreement (the **"Purchased Assets"**), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the MacLeod Affidavit, the fourth report of Grant Thornton Limited, in its capacity as court appointed monitor (the **"Monitor"**) dated August 21, 2012, (the **"Report"**) and on hearing the submissions of counsel for the Applicants and G.S. MacLeod & Associates Inc. (the **"CRO"**), the Monitor, Fraser Milner Casgrain LLP in its capacity as Court appointed Representative Counsel, no one appearing for any other person on the service list, although properly served as appears from the affidavits of service of Mary Carreiro sworn August 20, 2012, filed:

AND UPON the Applicants reappearing before the Court on September 19, 2012 to seek an amendment to the form of this order to permit title to the Purchased Assets to be taken in the name of 0947907 B.C. Ltd. (the **"Purchaser"**), rather than Outset Media, as permitted by section 21 of the Sale Agreement.

1. **THIS COURT ORDERS** that the time for service and filing of the notice of motion and the motion record is hereby abridged and validated so that the motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Sale Agreement by the CRO is hereby authorized and approved, with such minor amendments as the CRO may deem necessary. The CRO is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.
3. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a CRO's certificate to the Purchaser substantially in the form attached as **Schedule "A"** hereto (the **"CRO'S Certificate"**), all of the Debtor's right, title and interest in and to the Purchased Assets described in the Sale Agreement and listed on **Schedule "B"** hereto

shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of Mr. Justice Brown dated February 23, 2012; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on **Schedule "C"** and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

4. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the Land Titles Division of Peel (No. 43) of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*, the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject real property identified in Schedule B hereto (the "**Real Property**") in fee simple.

5. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the CRO's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

6. **THIS COURT ORDERS AND DIRECTS** the Monitor to file with the Court a copy of the CRO's Certificate, forthwith after delivery thereof.

7. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtor and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtor;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

8. **THIS COURT ORDERS AND DECLARES** that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario).

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

ENTERED AT THE COURT OF TORONTO
ON BOOK NO.
LE / DANS LE REGISTRE NO.

SEP 19 2012

MA

GRF dy J

Schedule A – Form of CRO's Certificate

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. (the "Applicant")

CRO's CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice Brown of the Ontario Superior Court of Justice (the "**Court**") dated February 23, 2012, G.S. MacLeod & Associates Inc. was appointed as the chief restructuring officer (the "**CRO**") of the undertaking, property and assets of the Applicants.

B. Pursuant to an Order of the Court dated August 23, 2012, as amended on September 19, 2012 (collectively the "**Vesting Order**"), the Court approved the agreement of purchase and sale dated July 23, 2012 (the "**Sale Agreement**") between First Leaside Growth Limited Partnership by its general partner

628 J

2085306 Inc. (the "**Vendor**"), and Outset Media Corporation, the benefits of which were assigned to 0947907 B.C. Ltd. (the "**Purchaser**") and provided for the vesting in the Purchaser of the Debtor's right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the CRO to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in the Sale Agreement have been satisfied or waived by the CRO and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the CRO.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE CRO CERTIFIES the following:

1. The Purchaser has paid and the Vendor has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in the Sale Agreement have been satisfied or waived by the CRO and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the CRO.
4. This Certificate was delivered by the CRO at _____ on _____, 2012.

G.S. MacLeod & Associates Inc., in its capacity as court appointed chief restricting officer of the Applicants, and not in its personal capacity

Per: _____

Name: Greg MacLeod

Title: President

**Schedule B
Purchased Assets**

Municipal Description

36 Bramtree Court, Brampton

Legal Description

PT BLK 2 PL 43M873 DES PT 2 PL 43R25991 BRAMPTON T/W EASEMENT OVER PT LT 6 CON 6 EHS DES PT 4 PL 43R14988 IN FAVOUR OF PT BLK 2 PL 43M873 DES PT 2 PL 43R25991 AS IN LT828989. T/W EASEMENT OVER PT LT 8 CON 6 EHS DES PT 2 PL 43R16911 IN FAVOUR OF PT BLK 2 PL 43M873 DES PT 2 PL 43R25991 AS IN LT1098794. T/W EASEMENT OVER PT BLK 1 PL 43M873 DES PTS 1,2, 12 PL 43R22485, PT BLK 6 M873 DES PT 4 PT CORPORATION DR. M876 PTS 6,7 PL 43R22485, PT BLK 5 M876 DES PT 8 PL 43R2 2485, PT BLK 1 M 876 DES PTS 10, 11, 14 PL 43R22485, IN FAVOUR OF PT BLK 2 PL 43M873 DES PT 2 PL 43R25991 AS IN LT1773259. (S/T LT974291, LT974305, LT990706, LT1570384, LT1766971, LT1773254, LT1773255, LT1773256, LT1773257, LT1773258) T/W EASEMENT OVER BLK 1 M874 IN FAVOUR OF PT BLK 2 PL 43M873 DES PT 2 PL 43R25991 AS IN LT1773260. (S/T LT974305, LT974291, LT9907060, LT1570384, LT1769971, LT1773254, LT1773255, LT1773256, LT1773257, LT1773258, LT1773259)

GLS 5

Schedule C

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 for the purposes for which it is 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 and any charge of the Tenant's or a subtenant's interest therein;
7. the Mortgage, and related collateral security thereto;
8. Airport Zoning Regulations and amendments thereto. (Instrument No. LT2057426)
9. Instrument No. LT974291;
10. Instrument No. LT990706
11. Instrument No. LT1570384
12. Instrument No. LT1700376
13. Instrument No. LT1769971
14. Instrument No. LT2050883
15. Instrument No. PR21490
16. Instrument No. PR798994
17. Instrument No. PR814994
18. Instrument No. PR1884605

6255

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 Lease Wealth Management Inc. et al

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

ONTARIO
 SUPERIOR COURT OF JUSTICE
 (Commercial List)

Proceeding commenced at Toronto

SALE APPROVAL AND VESTING ORDER
 (First Lease Growth Limited Partnership)

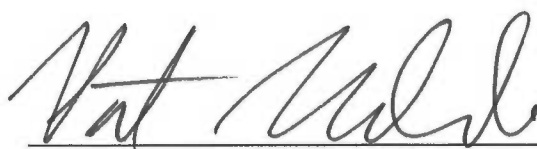
Cassels Brock & Blackwell LLP
 2100 Scotia Plaza
 40 King Street West
 Toronto, Ontario M5H 3C2

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

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

Lawyers for the Applicants

THIS IS EXHIBIT "N" REFERRED TO IN THE
AFFIDAVIT OF GREGORY MACLEOD
SWORN BEFORE ME,
THIS 15TH DAY OF OCTOBER, 2012



Commissioner for Taking Affidavits, Etc.

Patrick Joseph MacDonald, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires April 6, 2014.

**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. (the "Applicant")

CRO's CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice Brown of the Ontario Superior Court of Justice (the "**Court**") dated February 23, 2012, G.S. MacLeod & Associates Inc. was appointed as the chief restructuring officer (the "**CRO**") of the undertaking, property and assets of the Applicants.

B. Pursuant to an Order of the Court dated August 23, 2012, as amended on September 19, 2012 (collectively the "**Vesting Order**"), the Court approved the agreement of purchase and sale dated July 23, 2012 (the "**Sale Agreement**")

between First Leaside Growth Limited Partnership by its general partner 2085306 Inc. (the "**Vendor**"), and Outset Media Corporation, the benefits of which were assigned to 0947907 B.C. Ltd. (the "**Purchaser**") and provided for the vesting in the Purchaser of the Debtor's right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the CRO to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in the Sale Agreement have been satisfied or waived by the CRO and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the CRO.

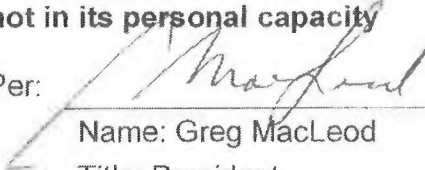
C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE CRO CERTIFIES the following:

1. The Purchaser has paid and the Vendor has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in the Sale Agreement have been satisfied or waived by the CRO and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the CRO.
4. This Certificate was delivered by the CRO at Toronto on September 24, 2012 at 3:18 p.m.



G.S. MacLeod & Associates Inc., in its capacity as court appointed chief restricting officer of the Applicants, and not in its personal capacity

Per: 

Name: Greg MacLeod

Title: President

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 Lease Wealth Management Inc. et al

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

Proceeding commenced at Toronto

CRO'S CERTIFICATE

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

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

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

Lawyers for the Applicants

THIS IS EXHIBIT "O" REFERRED TO IN THE
AFFIDAVIT OF GREGORY MACLEOD
SWORN BEFORE ME,
THIS 15TH DAY OF OCTOBER, 2012



Commissioner for Taking Affidavits, Etc.

Patrick Joseph MacDonald, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires April 6, 2014.

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

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

THE HONOURABLE

)

THURSDAY, THE 23RD

JUSTICE

Strothly

)

)

DAY OF AUGUST, 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. (the "Applicant")**

**VESTING ORDER
(Harmony Town Homes Limited Partnership)**

THIS MOTION, made by the Applicants for an order approving the sale transaction (the "**Transaction**") contemplated by an Agreement of Purchase and Sale (the "**Sale Agreement**") between Harmony Townhomes Limited Partnership by its general partner F.L. Securities Inc. (the "**Vendor**"), and Skyline Real Estate Acquisitions

Inc. (the "**Purchaser**") dated July 23, 2012 and appended as Exhibit "H" to the Affidavit of Greg MacLeod, sworn August 20, 2012 (the "**MacLeod Affidavit**"), and vesting in the Purchaser the right, title and interest of the Vendor in and to the assets described in the Sale Agreement (the "**Purchased Assets**"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the MacLeod Affidavit, the fourth report of Grant Thornton Limited, in its capacity as court appointed monitor (the "**Monitor**") dated August 21, 2012, (the "**Report**") and on hearing the submissions of counsel for the Applicants and G.S. MacLeod & Associates Inc. (the "**CRO**"), the Monitor, Fraser Milner Casgrain LLP in its capacity as Court appointed Representative Counsel, no one appearing for any other person on the service list, although properly served as appears from the affidavits of service of Mary Carreiro sworn August 20, 2012, filed:

1. **THIS COURT ORDERS** that the time for service and filing of the notice of motion and the motion record is hereby abridged and validated so that the motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Sale Agreement by the CRO is hereby authorized and approved, with such minor amendments as the CRO may deem necessary. The CRO is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.
3. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a CRO's certificate to the Purchaser substantially in the form attached as **Schedule "A"** hereto (the "**CRO'S Certificate**"), all of the Debtor's right, title and interest in and to the Purchased Assets described in the Sale Agreement and listed on **Schedule "B"** hereto shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or

been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of Mr. Justice Brown dated February 23, 2012; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on **Schedule "C"** and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

4. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the Land Titles Division of Kent (No. 24) of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*, the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject real property identified in Schedule B hereto (the "**Real Property**") in fee simple.

5. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the CRO's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

6. **THIS COURT ORDERS AND DIRECTS** the Monitor to file with the Court a copy of the CRO's Certificate, forthwith after delivery thereof.

7. **THIS COURT ORDERS** that, notwithstanding:

(a) the pendency of these proceedings;

- 4 -

- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtor and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtor;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

8. **THIS COURT ORDERS AND DECLARES** that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario).

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

RECORDED AT / RECORDE À TORONTO
 DE / BOOK NO.
 LE / DANS LE REGISTRE NO.

AUG 23 2012

RECEIVED




Schedule A – Form of CRO's Certificate

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. (the "Applicant")

CRO's CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice Brown of the Ontario Superior Court of Justice (the "**Court**") dated February 23, 2012, G.S. MacLeod & Associates Inc. was appointed as the chief restructuring officer (the "**CRO**") of the undertaking, property and assets of the Applicants.

B. Pursuant to an Order of the Court dated August 23, 2012, the Court approved the agreement of purchase and sale dated July 23, 2012 (the "**Sale Agreement**") between Harmony Town Homes Limited Partnership by its general partner F.L. Securities Inc. (the "**Vendor**"), and Skyline Real Estate Acquisitions

5083

Inc. (the "**Purchaser**") and provided for the vesting in the Purchaser of the Debtor's right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the CRO to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in the Sale Agreement have been satisfied or waived by the CRO and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the CRO.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE CRO CERTIFIES the following:

1. The Purchaser has paid and the Vendor has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in the Sale Agreement have been satisfied or waived by the CRO and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the CRO.
4. This Certificate was delivered by the CRO at _____ on _____, 2012.

**G.S. MacLeod & Associates Inc., in its
capacity as court appointed chief
restricting officer of the Applicants, and
not in its personal capacity**

Per: _____

Name: Greg MacLeod

Title: President

**Schedule B
Purchased Assets**

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
T17215 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

8225

Schedule C

Permitted Encumbrances, Easements and Restrictive Covenants related to the Real Property

(unaffected by the Vesting Order)

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 for the purposes for which it is 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 and any charge of the Tenant's or a subtenant's interest therein;
 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.
- 

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

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

Proceeding commenced at Toronto

SALE APPROVAL AND VESTING ORDER
(Harmony Town Homes Limited Partnership)

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

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

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

Lawyers for the Applicant

THIS IS EXHIBIT "P" REFERRED TO IN THE
AFFIDAVIT OF GREGORY MACLEOD
SWORN BEFORE ME,
THIS 15TH DAY OF OCTOBER, 2012

A handwritten signature in dark ink, appearing to read 'Pat MacDonald', written over a horizontal line.

Commissioner for Taking Affidavits, Etc.

Patrick Joseph MacDonald, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires April 6, 2014.



August 29, 2012

VIA EMAIL (pmuchnik@CasselsBrock.com)

Paul Muchnik
Cassels Brock & Blackwell LLP
Barristers & Solicitors
2100 Scotia Plaza, 40 King Street West
Toronto ON M5H 3C2

Dear Mr. Muchnik:

RE: Skyline Real Estate Acquisitions (II) Inc. (the "**Purchaser**") p/f Harmony Town Homes Limited Partnership, by its General Partner F.L. Securities Inc. (the "**Vendor**")

65 Fort Street, Tilbury, Ontario (the "**Property**")

Without prejudice to the rights of the Purchaser under the agreement of purchase and sale accepted by the Vendor on July 24, 2012, and all amendments thereto from time to time (collectively, the "**APS**"), and reserving the right to submit such further and other requisitions as may be deemed necessary from time to time, as well as the right to waive any or all of them, I wish to raise the following requisitions (words with capitalized initial letters have the meanings ascribed thereto in the APS, unless defined herein, and references to Sections and subsections are to Sections and subsections of the APS, unless otherwise provided):

1. **REQUIRED:** Per subsection 9.1(a), on or before Closing delivery of a registrable vesting order, together with any other required documentation, to effectively and validly vest title to the Property as follows:

SKYLINE REAL ESTATE HOLDINGS INC.

Address for Service:

70 Fountain Street East
Guelph ON N1H 3N6

On Closing, the Purchaser will be assigning the APS to Skyline Real Estate Holdings Inc., as permitted in Section 11.1

2. **REQUIRED:** As soon as possible, a copy of the Approval and Vesting Order referred to in subsection 6.1(c) and Section 16.1.
3. **Instrument No. CK42354** registered January 18, 2010, is a mortgage from the Vendor in favour of The Toronto-Dominion Bank. **Instrument No. CK42356** registered January 18, 2010, is a notice of a general assignment of rents from the Vendor in favour of The Toronto-

Dominion Bank. This mortgage and general assignment of rents is not being assumed on Closing.

REQUIRED: On or before Closing, registration of a good and valid discharge of this mortgage and notice of general assignment of rents, together with a copy of the discharge.

4. A limited partnerships report on the Vendor indicates that the name registered under the *Limited Partnerships Act* is "Harmony Townhomes Limited Partnership". The APS refers to "Harmony Town Homes Limited Partnership". Please confirm that the proper name of the limited partnership is "Harmony Townhomes Limited Partnership", so that the closing documents will be accurate.
5. My PPSA searches against the limited partnership (the "LP") and the general partner ("FL") have revealed the following PPSA registrations against them:

Debtor	Secured Party	File Number	Collateral
The LP & FL	The Toronto-Dominion Bank	657958788	Accounts and Other. General assignment of rents with respect to the Property.
FL	The Toronto-Dominion Bank	657958851	Inventory, Equipment, Accounts, Other and Motor Vehicle – non-property specific
FL	The Toronto-Dominion Bank	612366084	Inventory, Equipment, Accounts, Other and Motor Vehicle – non-property specific
FL	CBSC Capital	632000142	Equipment and Other – non-property specific

REQUIRED: On or before Closing, (i) discharge of financing statement 657958788, and (ii) discharges or "no interest" letters from the secured creditors with respect to the other financing statements.

6. The Municipality of Chatham-Kent advises that the Property is zoned RM1-510, which permits multi-row housing. Required parking is based on a rate of 1.5 parking spots for dwelling units, at least one of which must be designated and signed for handicapped use. There is no legal non-conforming use for parking.

REQUIRED: On or before Closing, proof that the Property has at least 75 parking spaces, at least one of which is for handicapped use and clearly marked as such, provided that if the Property has fewer than 75 parking spaces, written confirmation from the Municipality, or other suitable written proof, that such fewer number is permitted.

7. In its Certificate of Taxes, the Municipality of Chatham-Kent advises that it does not rebill new owners, and suggests that the original tax bill be given to the new owner.

REQUIRED: On or before Closing, the original(s) of the 2012 tax bill(s).

8. **REQUIRED:** As soon as possible, copies of all agreements with Rent-Paying Governmental Authorities (rent subsidy agreements), if any.
9. **REQUIRED:** On or before Closing, execution, where required, and delivery by the Vendor of the closing documents referred to in the APS. Drafts will be provided in due course. Please provide a draft statement of adjustments at least three Business Days before Closing, as provided in subsection 9.1(d).
10. **REQUIRED:** On or before Closing, satisfactory evidence of compliance with the *Family Law Act*, Ontario. A declaration of possession in this regard will be provided in due course.
11. **REQUIRED:** On or before Closing, satisfactory evidence that there are no executions affecting title to the Property.
12. **REQUIRED:** On or before Closing, production and delivery of evidence that all buildings situated on the Property are located entirely within the limits thereof, that possession has been consistent with registered title to the Property and that there are no encumbrances, liens, rights-of-way, easements, encroachments (on or from the Property), restrictions, or agreements of any kind affecting the Property which are not disclosed by the registered title. A declaration of possession will be provided in due course.
13. **REQUIRED:** On or before Closing, evidence that there are no work orders outstanding and that the Property and all structures erected thereon comply with all by-laws, standards and regulations enacted or passed by the Municipality and any other governmental body or department having jurisdiction thereover.
14. **REQUIRED:** On or before Closing, evidence that:
 - (a) there are no arrears of municipal taxes or other municipal charges or assessments, including penalties, and that taxes have been paid in accordance with the statement of adjustments; and
 - (b) all water, hydro, and gas accounts are not in arrears and that each will be paid by the Vendor to the date of Closing.

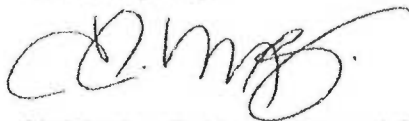
Please have your client arrange for all meters to be read on the Closing Date.

15. **REQUIRED:** On or before Closing, satisfactory evidence that the fixtures affixed to the Property and the Chattels included in the Purchase Price, are the property of the Vendor and are not subject to any conditional sales contracts, chattel mortgages or lien notes, and that the Vendor is the absolute owner of all such fixtures and chattels, free of any encumbrances. The declaration of possession from the Vendor will satisfy this requirement.
16. **REQUIRED:** As required by Section 4.3, notification to any Rent-Paying Governmental Authorities of the pending sale and change in payee. As same are sent and received, copies of all correspondence referred to in Section 4.3.
17. **REQUIRED:** Copies of Rent Rolls for October 2012 and October 2011, at least five Business Days before Closing as required by Section 5.2.

18. The Purchaser does not wish to assume any Contracts on Closing. All Contracts should be terminated by the Vendor on or before Closing. Kindly provide proof of such termination on or before Closing, per Section 6.3.
19. **REQUIRED:** On or before Closing, disclosure of all passwords to on-site equipment included in the Purchased Assets (such as passwords to answering machines, computers, etc.), as required by Section 6.4.
20. **REQUIRED:** On or before Closing, an electronic download of all Tenant and property information to the Purchaser or its property manager, as required by Section 6.4.
21. **REQUIRED:** On Closing, vacant possession of any unit occupied by any on-site building manager or superintendent, unless said on-site building manager or superintendent is a Retained Employee or signs a Lease with respect thereto on or before Closing, as required by Section 8.2.
22. **REQUIRED:** On Closing, vacant possession of the Property, subject to the rights of Tenants under the Leases.
23. **REQUIRED:** On or before Closing, proof of payment to all Retained Employees of those sums referred to in Section 8.2, which proof is to take the form of a letter from the Employer addressed to the Purchaser, as set out in said Section.
24. **REQUIRED:** On Closing, keys labeled appropriately and left on site at the management office, as required by the last paragraph of Section 9.1.
25. **REQUIRED:** As soon as possible, copies of any New Leases entered into, as required by Section 12.1.
26. **REQUIRED:** All original tenant files, including originals of the Leases and New 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 required by the APS, including original copies of all Vendor's Deliveries, delivered to the Purchaser's head office in Guelph immediately after Closing, as required by the last paragraph of Section 9.1 and Section 12.1.

Per Sections 7.1 and 15.4, the Requisition Satisfaction Date is September 10, 2012. I look forward to hearing from you.

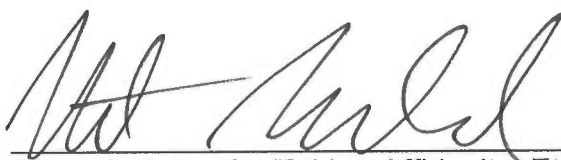
Yours very truly,



Christopher P. Moes, General Counsel

Email: cmoes@skylineonline.ca

THIS IS EXHIBIT "Q" REFERRED TO IN THE
AFFIDAVIT OF GREGORY MACLEOD
SWORN BEFORE ME,
THIS 15TH DAY OF OCTOBER, 2012



Commissioner for Taking Affidavits, Etc.

Patrick Joseph MacDonald, a Commissioner, c/o,
Province of Ontario, while a Student-at-Law.
Expires April 6, 2014.



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

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

THE HONOURABLE
JUSTICE STRATHY

)
)
)

THURSDAY, THE 23rd
DAY OF AUGUST, 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.

**AMENDED VESTING ORDER
(Harmony Town Homes Limited Partnership)**

THIS MOTION, made by the Applicants for an order approving the sale transaction (the "**Transaction**") contemplated by an Agreement of Purchase and Sale (the "**Sale Agreement**") between Harmony Townhomes Limited Partnership by its general partner F.L. Securities Inc. (the "**Vendor**"), and Skyline Real Estate Acquisitions

Inc. ("**Skyline Acquisitions**") dated July 23, 2012, and appended as Exhibit "H" to the Affidavit of Greg MacLeod, sworn August 20, 2012 (the "**MacLeod Affidavit**"), and vesting in the Purchaser the right, title and interest of the Vendor in and to the assets described in the Sale Agreement (the "**Purchased Assets**"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the MacLeod Affidavit, the fourth report of Grant Thornton Limited, in its capacity as court appointed monitor (the "**Monitor**") dated August 21, 2012, (the "**Report**") and on hearing the submissions of counsel for the Applicants and G.S. MacLeod & Associates Inc. (the "**CRO**"), the Monitor, Fraser Milner Casgrain LLP in its capacity as Court appointed Representative Counsel, no one appearing for any other person on the service list, although properly served as appears from the affidavits of service of Mary Carreiro sworn August 20, 2012, filed

AND UPON the Applicants reappearing before the Court on September 19, 2012 to seek an amendment to the form of this order to permit title to the Purchased Assets to be taken in the name of Skyline Real Estate Holdings Inc. (the "**Purchaser**"), rather than Skyline Acquisitions, as permitted by section 11.2 of the Sale Agreement.

1. **THIS COURT ORDERS** that the time for service and filing of the notice of motion and the motion record is hereby abridged and validated so that the motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Sale Agreement by the CRO is hereby authorized and approved, with such minor amendments as the CRO may deem necessary. The CRO is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.
3. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a CRO's certificate to the Purchaser substantially in the form attached as **Schedule "A"** hereto (the "**CRO'S Certificate**"), all of the Debtor's right, title and interest in and to the Purchased Assets described in the Sale Agreement and listed on **Schedule "B"** hereto

shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of Mr. Justice Brown dated February 23, 2012; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on **Schedule "C"** and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

4. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the Land Titles Division of Kent (No. 24) of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*, the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject real property identified in Schedule B hereto (the "**Real Property**") in fee simple.

5. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the CRO's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

6. **THIS COURT ORDERS AND DIRECTS** the Monitor to file with the Court a copy of the CRO's Certificate, forthwith after delivery thereof.

7. **THIS COURT ORDERS** that, notwithstanding:

- 4 -

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtor and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtor;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

8. **THIS COURT ORDERS AND DECLARES** that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario).

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

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

SEP 19 2012

PER/PAR:

MB

G. R. Smith J

Schedule A – Form of CRO's Certificate

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. (the "Applicant")

CRO's CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice Brown of the Ontario Superior Court of Justice (the "**Court**") dated February 23, 2012, G.S. MacLeod & Associates Inc. was appointed as the chief restructuring officer (the "**CRO**") of the undertaking, property and assets of the Applicants.

B. Pursuant to an Order of the Court dated August 23, 2012, as amended on September 19, 2012 (collectively the "**Vesting Order**"), the Court approved the agreement of purchase and sale dated July 23, 2012 (the "**Sale Agreement**") between Harmony Town Homes Limited Partnership by its general partner F.L.

6/25

Securities Inc. (the "**Vendor**"), and Skyline Real Estate Acquisitions Inc., the benefits of which were assigned to Skyline Real Estate Holdings Inc. (the "**Purchaser**") and provided for the vesting in the Purchaser of the Debtor's right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the CRO to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in the Sale Agreement have been satisfied or waived by the CRO and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the CRO.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE CRO CERTIFIES the following:

1. The Purchaser has paid and the Vendor has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in the Sale Agreement have been satisfied or waived by the CRO and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the CRO.
4. This Certificate was delivered by the CRO at _____ on _____, 2012.

G.S. MacLeod & Associates Inc., in its capacity as court appointed chief restricting officer of the Applicants, and not in its personal capacity

Per: _____

Name: Greg MacLeod

Title: President

**Schedule B
Purchased Assets**

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
T17215 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

EST

Schedule C

Permitted Encumbrances, Easements and Restrictive Covenants related to the Real Property

(unaffected by the Vesting Order)

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 for the purposes for which it is 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 and any charge of the Tenant's or a subtenant's interest therein;
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.

GRSJ

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 Lease Wealth Management Inc. et al

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

Proceeding commenced at Toronto

AMENDED SALE APPROVAL AND VESTING
ORDER
(Harmony Town Homes Limited Partnership)

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

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

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

Lawyers for the Applicants

THIS IS EXHIBIT "R" REFERRED TO IN THE
AFFIDAVIT OF GREGORY MACLEOD
SWORN BEFORE ME,
THIS 15TH DAY OF OCTOBER, 2012



Commissioner for Taking Affidavits, Etc.

Patrick Joseph MacDonald, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires April 6, 2014.

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. (the "Applicant")

CRO's CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice Brown of the Ontario Superior Court of Justice (the "**Court**") dated February 23, 2012, G.S. MacLeod & Associates Inc. was appointed as the chief restructuring officer (the "**CRO**") of the undertaking, property and assets of the Applicants.

B. Pursuant to an Order of the Court dated August 23, 2012, as amended on September 19, 2012 (collectively the "**Vesting Order**"), the Court approved the agreement of purchase and sale dated July 23, 2012 (the "**Sale Agreement**")

- 2 -

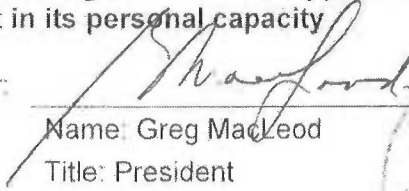
between Harmony Town Homes Limited Partnership by its general partner F.L. Securities Inc. (the "**Vendor**"), and Skyline Real Estate Acquisitions Inc., the benefits of which were assigned to Skyline Real Estate Holdings Inc. (the "**Purchaser**") and provided for the vesting in the Purchaser of the Debtor's right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the CRO to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in the Sale Agreement have been satisfied or waived by the CRO and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the CRO.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE CRO CERTIFIES the following:

1. The Purchaser has paid and the Vendor has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in the Sale Agreement have been satisfied or waived by the CRO and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the CRO.
4. This Certificate was delivered by the CRO at Toronto on September 20, 2012 at 4:03 pm

**G.S. MacLeod & Associates Inc., in its
capacity as court appointed chief
restricting officer of the Applicants, and
not in its personal capacity**

Per: 

Name: Greg MacLeod

Title: President



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

CRO'S CERTIFICATE

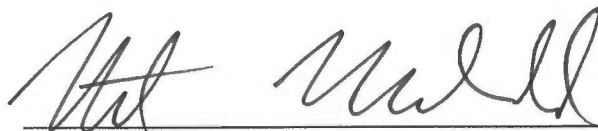
Cassels Brock & Blackwell LLP
2100 Scotia Plaza
40 King Street West
Toronto, Ontario M5H 3C2

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

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

Lawyers for the Applicants

THIS IS EXHIBIT "S" REFERRED TO IN THE
AFFIDAVIT OF GREGORY MACLEOD
SWORN BEFORE ME,
THIS 15TH DAY OF OCTOBER, 2012



Commissioner for Taking Affidavits, Etc.

Patrick Joseph MacDonald, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires April 6, 2014.

ASSIGNMENT OF ASSET PURCHASE AGREEMENT

THIS ASSIGNMENT is made as of the 5th day of September, 2012.

BETWEEN:

AMICA ACQUISITIONS INC.

(hereinafter called the "**Assignor**")

- and -

KINGSETT REAL ESTATE MORTGAGE LP NO. 3

(hereinafter called the "**Assignee**")

- and -

**KINGSETT REAL ESTATE GROWTH LP NO. 3 and
KINGSETT REAL ESTATE GROWTH LP NO. 4**

(hereinafter collectively called the "**Indemnifier**")

WHEREAS:

A. The Assignor entered into an asset purchase agreement dated August 3, 2012 between 480 Metcalfe Street (Ottawa) Limited Partnership, 100 Isabella Street (Ottawa) Limited Partnership and Redwood Retirement Residences (Ottawa) Limited Partnership (collectively, the "**Vendor**"), as vendors, the Assignor, as purchaser, and KingSett Real Estate Growth LP No. 2, as indemnifier (the "**Purchase Agreement**"), whereby the Assignor agreed to purchase from the Vendor all of its interest in and to the Purchased Assets as more particularly described in the Purchase Agreement; and

B. The Assignor wishes to assign absolutely all of its right, title and interest, benefits, advantages, rights, obligations and duties in and to the Purchase Agreement to the Assignee.

NOW THEREFORE this Assignment witnesses that in consideration of the premises and other good and valuable consideration paid by the Assignee to the Assignor (the receipt and sufficiency of which is hereby acknowledged), the Assignor absolutely assigns and transfers all of its right, title and interest in and to the Purchase Agreement and all benefits, advantages, rights, duties and obligations to be derived by the Assignor from the Purchase Agreement to the Assignee.

1. **THE ASSIGNOR** covenants and agrees that:

- (a) it now has full power and absolute authority to assign and transfer the Purchase Agreement to the Assignee; and
 - (b) it shall forthwith on demand enter into, execute and deliver to the Assignee, at the Assignee's expense, such further assignments and assurances of the Purchase Agreement as the Assignee shall reasonably require.
- 2. **THE ASSIGNOR** warrants and represents to the Assignee that:
 - (a) the Purchase Agreement is a valid and subsisting agreement constituting the entire and only agreement between the parties thereto; and
 - (b) no notice has been received from any other party to the Purchase Agreement alleging default by the Assignor in the performance of its obligations pursuant to the Purchase Agreement.
- 3. **THE ASSIGNEE** covenants and agrees that it shall assume all of the Assignor's right, title, interest, benefits, advantages, rights, duties and obligations under the Purchase Agreement and the Assignee agrees that upon execution of this Assignment it shall be solely responsible for performing any and all obligations of the purchaser under the Purchase Agreement.
- 4. **THE ASSIGNEE AND THE INDEMNIFIER** hereby agrees to indemnify and save harmless the Assignor, on a joint and several basis, from any and all damages, costs, losses, expenses, legal fees and disbursements incurred or arising in any way from the Purchase Agreement including, without limitation, as a result of any failure of the Assignee to fulfill and honour its obligations under the Purchase Agreement.
- 5. This Assignment may be executed in counterparts and by facsimile transmission and each such counterpart shall be deemed to be an original, and all such counterparts together shall constitute one and the same instrument.
- 6. This Assignment shall be binding upon and enure to the benefit of and shall be enforceable by the respective successors and assigns of the parties hereto and all words and phrases shall be taken to include the singular or plural or masculine, feminine or neuter gender as the circumstances shall require.
- 7. Capitalized terms used but not defined herein shall have the respective meanings ascribed thereto in the Purchase Agreement.

-- signatures follow on next page --

IN WITNESS WHEREOF the parties hereto have executed this Assignment as of the date and year first written above.

AMICA ACQUISITIONS INC.

Per:



Name: Samir Manji

Title: President

**KINGSETT REAL ESTATE MORTGAGE
GP NO. 3 INC.**, in its capacity as general partner
for and on behalf of KingSett Real Estate
Mortgage LP No. 3

Per:

Name: Rob Kumer

Title: Vice President

**KINGSETT REAL ESTATE GROWTH GP
NO. 3 INC.**, in its capacity as general partner for
and on behalf of KingSett Real Estate Growth LP
No. 3

Per:

Name: Rob Kumer

Title: Vice President

**KINGSETT REAL ESTATE GROWTH GP
NO. 4 INC.**, in its capacity as general partner for
and on behalf of KingSett Real Estate Growth LP
No. 4

Per:

Name: Rob Kumer

Title: Vice President

IN WITNESS WHEREOF the parties hereto have executed this Assignment as of the date and year first written above.

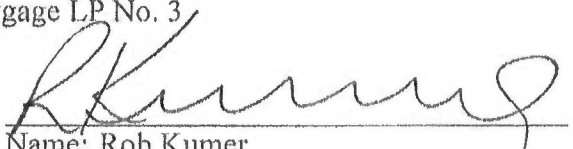
AMICA ACQUISITIONS INC.

Per:

Name: Samir Manji
Title: President

**KINGSETT REAL ESTATE MORTGAGE
GP NO. 3 INC.**, in its capacity as general partner
for and on behalf of KingSett Real Estate
Mortgage LP No. 3

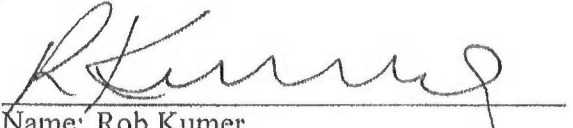
Per:



Name: Rob Kumer
Title: Vice President

**KINGSETT REAL ESTATE GROWTH GP
NO. 3 INC.**, in its capacity as general partner for
and on behalf of KingSett Real Estate Growth LP
No. 3

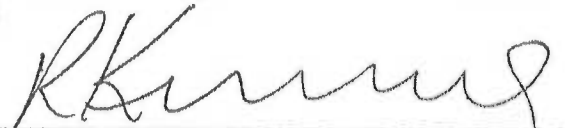
Per:



Name: Rob Kumer
Title: Vice President

**KINGSETT REAL ESTATE GROWTH GP
NO. 4 INC.**, in its capacity as general partner for
and on behalf of KingSett Real Estate Growth LP
No. 4

Per:



Name: Rob Kumer
Title: Vice President

THIS IS EXHIBIT "T" REFERRED TO IN THE
AFFIDAVIT OF GREGORY MACLEOD
SWORN BEFORE ME,
THIS 15TH DAY OF OCTOBER, 2012

A handwritten signature in black ink, appearing to read 'Pat MacDonald', written over a horizontal line.

Commissioner for Taking Affidavits, Etc.

Patrick Joseph MacDonald, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires April 6, 2014.

WAIVER NOTICE

TO: 480 METCALFE STREET (OTTAWA) LIMITED PARTNERSHIP, 100 ISABELLA STREET (OTTAWA) LIMITED PARTNERSHIP and REDWOOD RETIREMENT RESIDENCES (OTTAWA) LIMITED PARTNERSHIP (collectively, the "**Vendor**")

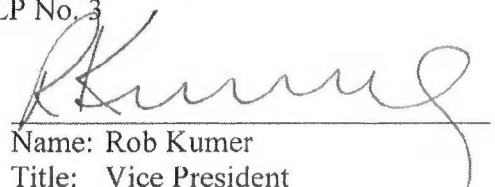
RE: KingSett Real Estate Mortgage LP No. 3 (the "**Purchaser**") acquisition from the Vendor of the property municipally known as 480 Metcalfe Street, 100 Isabella Street, and 2600 & 2604 Draper Avenue, Ottawa, Ontario pursuant to an asset purchase agreement dated August 3, 2012 between the Vendor, as vendor, Amica Acquisitions Inc. ("**Amica**"), as purchaser, and KingSett Real Estate Growth LP No. 2, as indemnifier, the interest of Amica, as purchaser, having been assigned to the Purchaser pursuant to an assignment of asset purchase agreement dated September 5, 2012 between Amica, as assignor, the Purchaser, as assignee, and KingSett Real Estate Growth LP No. 3 and KingSett Real Estate Growth LP No. 4, collectively as indemnifiers (the "**Purchase Agreement**")

The Purchaser hereby waives the Inspection Condition in favour of the Purchaser set out in Section 7.02 of the Purchase Agreement. Capitalized terms used in this Waiver Notice shall have the meaning ascribed thereto in the Purchase Agreement. All terms and conditions of the Purchase Agreement will remain the same and time shall remain of the essence.

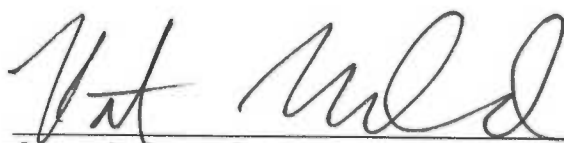
DATED at Toronto this 5th day of September, 2012.

**KINGSETT REAL ESTATE MORTGAGE
GP NO. 3 INC.**, in its capacity as general partner
for and on behalf of KingSett Real Estate
Mortgage LP No. 3

Per:


Name: Rob Kumer
Title: Vice President

THIS IS EXHIBIT "U" REFERRED TO IN THE
AFFIDAVIT OF GREGORY MACLEOD
SWORN BEFORE ME,
THIS 15TH DAY OF OCTOBER, 2012



Commissioner for Taking Affidavits, Etc.

Patrick Joseph MacDonald, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires April 6, 2014.

Court File Number: CV-12-9617-0006

**Superior Court of Justice
Commercial List**

FILE/DIRECTION/ORDER

First Leaside

Plaintiff(s)

AND

Defendant(s)

Case Management ☐ Yes ☐ No by Judge: _____

Counsel	Telephone No:	Facsimile No:
K. Gerra for App	416-869-5324	640-3111
K. Desimari for Monitor	863-2255	863-2653
S. D. Thau.	863-1188	863-00305

- ☐ Order ☐ Direction for Registrar (No formal order need be taken out)
- ☐ Above action transferred to the Commercial List at Toronto (No formal order need be taken out)
- ☐ Adjourned to: _____
- ☐ Time Table approved (as follows):

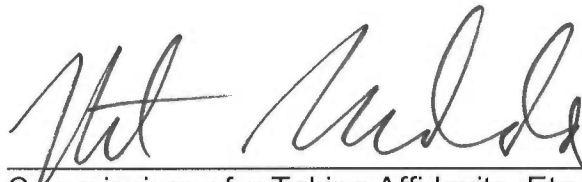
The effect of the preamble to Order of Aug 31, 2012 would require Trustee to hold a meeting of unitholders by Oct 31, 2012. Additional time is required to produce materials. Time to call + hold a meeting of unitholders is extended by 10 days.

Sept. 26 2012
Date

[Signature]
Judge's Signature

☐ Additional Pages _____

THIS IS EXHIBIT "V" REFERRED TO IN THE
AFFIDAVIT OF GREGORY MACLEOD
SWORN BEFORE ME,
THIS 15TH DAY OF OCTOBER, 2012

A handwritten signature in black ink, appearing to read 'Pat MacDonald', written over a horizontal line.

Commissioner for Taking Affidavits, Etc.

Patrick Joseph MacDonald, a Commissioner, ~~sic~~,
Province of Ontario, while a Student-at-Law.
Expires April 6, 2014.

Court File Number: CV-12-9617CLSuperior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

FIRST LEASIDE WEALTH MANAGEMENT.

Plaintiff(s)

AND

Defendant(s)

Case Management ☐ Yes ☐ No by Judge: _____

Counsel	Telephone No:	Facsimile No:

- ☐ Order ☐ Direction for Registrar (No formal order need be taken out)
- ☐ Above action transferred to the Commercial List at Toronto (No formal order need be taken out)
- ☐ Adjourned to: _____
- ☐ Time Table approved (as follows):

Counsel for the Trustees of funds of investors appeared on an unopposed basis for an extension of the date for a meeting of investors currently scheduled to occur by Nov. 10/12. Having heard from Counsel of the difficulties involved in preparing the necessary & relevant information for investors & so as not to set a date that would again have to be extended the Court orders that the meeting be held as soon as practicable given the necessary information for investors but not later than

Oct. 5/12
Date

Per Campbell J
Judge's Signature

☐ Additional Pages _____

THIS IS EXHIBIT "W" REFERRED TO IN THE
AFFIDAVIT OF GREGORY MACLEOD
SWORN BEFORE ME,
THIS 15TH DAY OF OCTOBER, 2012



Commissioner for Taking Affidavits, Etc.

Patrick Joseph MacDonald, a Commissioner, Etc.,
Province of Ontario, while a Student-at-Law.
Expires April 6, 2014.

Cv 12-9821-0002
Court File No.

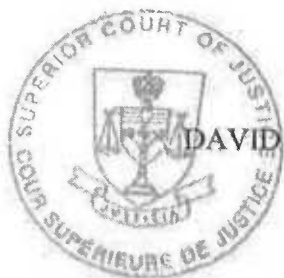
**ONTARIO
SUPERIOR COURT OF JUSTICE
Commercial List**

BETWEEN:

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

Plaintiffs

- and -



DAVID PHILLIPS, MARGARET DAVIS and 970877 ONTARIO INC.

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANT(S):

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

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

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

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

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

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

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

Date August 28, 2012

Issued by


Local Registrar

A. Anissimova
Registrar

Address of
court office:

393 University Avenue, 10th Floor
Toronto ON M5G 1E6

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

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

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

**SUPERIOR COURT OF JUSTICE
COUR SUPÉRIEURE DE JUSTICE
BANKRUPTCY / COMMERCIAL
COURTS
330 UNIVERSITY AVENUE
7TH FLOOR
TORONTO, ONTARIO M5G 1E6**

CLAIM

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

- (a) As against the defendant, David Phillips ("Phillips"), and, as set out below, 970877 Ontario Inc. ("970877"), damages in an amount to be determined before trial, for misrepresentation, fraudulent misrepresentation, breach of contract, breach of fiduciary duty, breach of duty of loyalty, oppression, conversion, conspiracy, unjust enrichment, knowing assistance and knowing receipt, including:
 - (i) An Order for payment of the sum of \$202,420.00 representing loans made by First Leaside Wealth Management ("FLWM") to Phillips, as evidenced by two promissory notes dated December 31, 2009 and December 24, 2010 in the amounts \$50,000.00 USD (converted at the time to \$52,420.00 CAD) and \$150,000.00 respectively, signed by Phillips in favour of FLWM;
 - (ii) An Order for recovery of \$3,843,549.92 of funds improperly diverted from the FL Plaintiffs by the defendant, Phillips, to himself and to his wife, the defendant, Margaret Davis ("Davis"), directly, or to benefit Phillips and Davis, including:
 - (1) \$44,800.38 in improper payments caused by Phillips to be made from FL Securities Inc. ("FL Securities") to Phillips and Davis or to benefit Phillips and Davis throughout the 2011 fiscal year;

-4-

- (2) \$459,418.86 in improper payments caused by Phillips to be made from FLWM to Phillips and Davis or to benefit Phillips and Davis throughout the 2011 fiscal year;
- (3) \$49,384.14 in improper payments caused by Phillips to be made from First Leaside Securities Inc. ("FLSI") to Phillips and Davis or to benefit Phillips and Davis throughout the 2011 fiscal year; and
- (4) \$657,696.54 in improper lump sum payments caused by Phillips to be made from several of the FL Plaintiffs to Phillips and Davis or to benefit Phillips and Davis throughout the 2011 fiscal year, comprising:
 - (A) improper payments amounting to \$131,093.74 caused by Phillips to be made to 970877, a company owned by Phillips, from FLWM; and
 - (B) improper payments amounting to \$526,602.80 caused by Phillips to be made to 970877 from First Leaside Finance Inc. ("First Leaside Finance");
- (5) \$2,632,250.00 of funds improperly diverted from FLWM by Phillips by way of improper and unauthorized dividends caused by Phillips to be declared by FLWM and received by 970877, which dividends Phillips subsequently caused to be paid from 970877 to himself personally, dating from 2004 to 2010;

-5-

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

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

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

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

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

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

-6-

- (ii) An Order for recovery of \$2,541,419.50 of funds improperly diverted from FL Securities and FLSI and paid to Davis directly, or to benefit and improve the Uxbridge Property, as described above;
 - (iii) An interim, interlocutory and permanent injunction enjoining Davis and any corporations controlled or owned by her, or anyone acting on her behalf or at her direction from dissipating, depleting or otherwise interfering with any funds resulting from the sale of the Uxbridge Property or any of its related assets;
 - (iv) An Order permitting a Certificate of Pending Litigation to be issued and registered against the Uxbridge Property (as further described in Schedule "A" hereto); and
 - (v) A declaration that Davis holds the Uxbridge Property in trust and on behalf of FL Securities;
- (c) An Order, injunctive or otherwise, interim and permanent to preserve, trace and locate all funds which the defendants have improperly taken from the FL Plaintiffs as set out above;
- (d) An Order for an accounting of all funds which the defendants have improperly taken from the FL Plaintiffs as set out above;
- (e) Pre-judgment interest in accordance with the promissory notes referred to below, and in the alternative, in accordance with section 128 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;

- (f) Post-judgment interest in accordance with the promissory notes referred to below, and in the alternative, in accordance with section 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (g) The costs of this proceeding on a substantial indemnity basis, plus all applicable taxes; and
- (h) Such further and other relief as to this Honourable Court may deem just.

The Parties

The Plaintiffs

2. The plaintiffs, First Leaside Wealth Management Inc., First Leaside Finance Inc., First Leaside Securities Inc. and FL Securities (as above, the "FL Plaintiffs"), are a group of affiliated companies. The four FL Plaintiffs form part of a greater enterprise that comprises a large number of affiliated companies and limited partnerships (collectively, "First Leaside"). First Leaside is currently under *Companies' Creditors Arrangement Act* ("CCAA") proceedings and is managed and controlled by a Chief Restructuring Officer, discussed in detail below at paragraphs 20 to 28.
3. At the relevant times, First Leaside ran numerous businesses, including the operation and development of commercial and multi-residential properties and retirement residences. It provided investment and wealth management services to investors who had invested with First Leaside. Specifically, First Leaside raised debt and equity, and sought investments with the objective of providing investors with consistent monthly distributions, potential capital appreciation, and, in the case of equity investments, potential tax deductions.

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

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

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

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

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

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

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

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

The Defendants

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

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

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

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

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

The Uxbridge Property

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

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

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

- (a) "The said Lessee shall pay to the Lessor seventy-five percent (75%) of all electricity costs and forty-four percent (44%) of all other expenses, including, but not limited to: maintenance, utilities (excluding electricity), insurance, property tax, security and capital improvements (the "Rent")"; and
- (b) "The Lessee hereby covenants with the Lessor that the Lessee will pay the Rent herein reserved at the times and in the manner aforesaid."

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

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

Events Leading to First Leaside CCAA Filing

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

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

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

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

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

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

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

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

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

The Defendants' Unlawful Conduct is Revealed

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

Accounts Receivable

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

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

- (a) to pay for landscaping, renovation, repair, utilities, telephone and other household expenses relating to the Uxbridge Property, with title taken in Davis' name to shield the Uxbridge Property from Phillips' creditors;
- (b) to pay the salaries of household staff, including a housekeeper, a dogsitter and a gardener;
- (c) to fund the purchase of luxury goods, including rare wines and expensive art for Phillips and Davis' own benefit;
- (d) to pay Phillips' life insurance policy;
- (e) to purchase Phillips' vehicles, and pay for vehicle costs, including gas, repairs and other expenses;
- (f) to pay personal credit card debts and other personal obligations;
- (g) to pay Phillips' and Davis' personal taxes; and
- (h) to pay for Phillips' and Davis' personal travel, hotel and meal expenses.

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

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

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

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

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

Loans Receivable

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

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

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

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

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

Improvements to the Uxbridge Property Funded by the FL Plaintiffs

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

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

- (a) \$1,687,564.00 in leasehold improvements to the Uxbridge Property caused by Phillips to be paid from FL Securities (the "Leasehold Improvement Payments");
- (b) \$267,855.50 in payments towards the purchase and maintenance of a windmill on the Uxbridge Property caused by Phillips to be paid from FL Securities (the "Windmill Payments"); and
- (c) \$586,000.00 in improper rent payments caused by Phillips to be paid from FLSI (the "Rent Payments") to Davis.

Leasehold Improvement Payments

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

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

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

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

- (a) extensive renovations and upgrades to the bungalow, including additions, renovations and improvements to the living quarters, the establishment of a fitness room and a rooftop deck;
- (b) significant landscaping development, including the development of a pond and well on the property;
- (c) development of a stone pathway entrance to the home and wrought-iron fencing;
- (d) development of a spa, swimming pool and waterfall on the property; and
- (e) the addition of a large garage with a fully finished loft therein on the property, which garage also housed an atrium and a greenhouse.

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

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

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

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

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

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

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

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

Windmill Payments

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

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

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

Rent Payments

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

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

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

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

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

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

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

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

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

The FL Plaintiffs are Entitled to the Relief Claimed

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

Misrepresentation and Fraudulent Misrepresentation

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

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

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

Breach of Contract, Fiduciary Duty and Duty of Loyalty

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

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

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

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

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

Oppression

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

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

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

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

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

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

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

Conversion

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

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

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

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

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

Conspiracy

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

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

Unjust Enrichment

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

Knowing Assistance and Knowing Receipt

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

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

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

Place of Trial

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

August 28, 2012

LAX O'SULLIVAN SCOTT LISUS LLP
Counsel
Suite 1920, 145 King Street West
Toronto, ON M5H 1J8

Matthew P. Gottlieb LSUC#: 32268B
Tel: (416) 644-5353
Shannon Beddoe LSUC#: 59727B
Tel: (416) 646-7998
Fax: (416) 598-3730

Lawyers for the Plaintiffs

SCHEDULE "A"

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

FIRST LEASIDE WEALTH MANAGEMENT INC. ET AL.
Plaintiffs

and

DAVE PHILLIPS ET AL.
Defendants

Court File No.

2012-9821-0002

We hereby accept service of a true copy

of the within _____

on this _____ day of _____, 20____

Per: _____
Lawyers For

We hereby accept service of a true copy

of the within _____

on this _____ day of _____, 20____

Per: _____
Lawyers For

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT
TORONTO

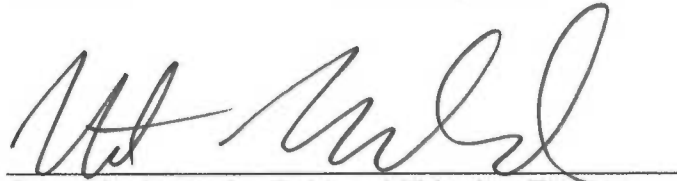
STATEMENT OF CLAIM

LAX O'SULLIVAN SCOTT LISUS LLP
Counsel
Suite 1920, 145 King Street West
Toronto, ON M5H 1J8

Matthew P. Gottlieb LSUC#: 32268B
Tel: (416) 644-5353
Shannon Beddoe LSUC#: 59727B
Tel: (416) 646-7998
Fax: (416) 598-3730

Lawyers for the Plaintiffs

THIS IS EXHIBIT "X" REFERRED TO IN THE
AFFIDAVIT OF GREGORY MACLEOD
SWORN BEFORE ME,
THIS 15TH DAY OF OCTOBER, 2012

A handwritten signature in black ink, appearing to read 'Pat MacDonald', written over a horizontal line.

Commissioner for Taking Affidavits, Etc.

Patrick Joseph MacDonald, a Commissioner, etc.,
Province of Ontario, **while a Student-at-Law.**
Expires April 6, 2014.



SUPERIOR COURT OF JUSTICE
COUR SUPÉRIEURE DE JUSTICE

*361 University Avenue
Toronto, ON M5G 1T3*

Telephone: (416) 327-5284 Fax: (416) 327-5417

FAX COVER SHEET

Date: October 1, 2012

TO:

Matthew P. Gottlieb & J. Renihan
Lisa S. Corne & Elisa G. Giacomelli

FAX NO.:

416-598-3730
416-865-1398

FROM:

The Honourable Mr. Justice Peter A. Cumming

TOTAL PAGES (INCLUDING COVER PAGE): 8

MESSAGE:

Endorsement: First Leaside Wealth Management v. Phillips

The Information contained in this facsimile message is confidential information. If the person actually receiving this facsimile or any other reader of the facsimile is not the named recipient or the employee or agent responsible to deliver it to the named recipient, any use, dissemination, distribution, or copying of the communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone and return the original message to us at the above address

Original will NOT follow. If you do not receive all pages, please telephone us immediately at the above number.

CITATION: First Leaside Wealth Management Inc. v. Phillips, 2012 ONSC 5443
COURT FILE NO.: CV-12-9821-00CL
DATE: 20121001

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

**RE: FIRST LEASIDE WEALTH MANAGEMENT INC., FIRST LEASIDE
FINANCE INC., FIRST LEASIDE SECURITIES INC. AND F.L.
SECURITIES INC., Plaintiffs**

AND:

**DAVID PHILLIPS, MARGARET DAVIS AND 970877 ONTARIO INC.,
Defendants**

BEFORE: CUMMING J.

COUNSEL: Matthew P. Gottlieb and J. Renihan, for the Plaintiffs

Lisa S. Corne and Elisa G. Giacomelli, for the Defendants

HEARD: SEPTEMBER 27, 2012

ENDORSEMENT

The Motions

[1] The Plaintiffs bring a motion pursuant to s. 103 of the *Courts of Justice Act* for leave to issue a Certificate of Pending Litigation ("CPL") against the property known as 430 Regional Road #8, Uxbridge, Ontario (the "Uxbridge Property") or for alternative relief by way of any sale proceeds being paid into court as security or in the further alternative, interlocutory injunctive relief.

[2] In the course of the hearing in respect of the Plaintiffs' motion, the Plaintiffs indicated the sole form of relief they sought was a CPL order. Neither side was prepared to agree that in the event the Plaintiffs were successful that security in respect of the sale proceeds could be given in lieu of a CPL being issued.

- Page 2 -

[3] The Defendant, Margaret Davis ("Davis"), brings a cross-motion to strike certain paragraphs of the affidavit of Greg MacLeod, sworn September 14, 2012, filed in support of the Plaintiffs' motion.

[4] The motions were heard September 27 in a full day hearing. A decision was required by September 28. I communicated my decision the morning of September 28 that the cross-motion was dismissed and the Plaintiffs' motion for leave to issue a CPL was granted, with written reasons to follow. These are my reasons.

Background

[5] The four Plaintiffs (referred to as the "FL Plaintiffs") are a group of affiliated corporations, now insolvent and currently under *Companies' Creditors Arrangement Act* ("CCAA") proceedings, commenced on February 23, 2012. They are controlled by a court-appointed Chief Restructuring Officer ("CRO").

[6] The FL Plaintiffs are part of an enterprise of a much larger number of affiliated corporations involved in the operation and development of commercial properties and the provision of investment and wealth management services to over 1000 investors (the collective larger group or overall enterprise, inclusive of the FL Plaintiffs, is referred to as "First Leaside").

[7] The Defendant, David Phillips, has been the primary directing mind of the First Leaside enterprise. The Defendant Davis is Mr. Phillips' spouse. She was an officer and director of the Plaintiff, First Leaside Wealth Management Inc. ("FLWM"), a holding and operating company and the ultimate parent corporation in the First Leaside group. From its incorporation until November 2011, Mr. Phillips was the Chief Executive Officer of FLWM. Mr. Phillips and Ms. Davis each had signing authority in respect of payments made by First Leaside entities. The Defendant, 970877 Ontario Inc. ("970"), is a holding company wholly owned by Mr. Phillips. Mr. Phillips is the sole common shareholder of the overall First Leaside enterprise.

[8] Ms. Davis is the owner of the Uxbridge Property, in which she and Mr. Phillips reside. The record indicates the home was transferred from the Plaintiff, First Leaside Securities Inc. ("FL Securities"), a wholly owned subsidiary of FLWM, in 1999 for the transfer amount of \$400,000.

[9] A portion of the Uxbridge Property was used to operate First Leaside with its head office located there.

[10] The Uxbridge Property is the subject of a present Agreement of Purchase and Sale by Ms. Davis, with the sale by her scheduled to close October 1, 2012.

[11] The Ontario Securities Commission ("OSC") undertook an investigation into First Leaside about March 2010 following an audit commenced in the fall of 2009. In November 2011, an Independent Committee was appointed to oversee First Leaside's operations in place of Mr. Phillips. In December 2011, G. S. MacLeod & Associates was appointed CRO of the FL Plaintiffs. In the course of the CRO's examination of the financial records of the FL Plaintiffs,

- Page 3 -

the CRO formed the view that Mr. Phillips and Ms. Davis improperly diverted and converted assets of the FL Plaintiffs to their own use.

[12] On June 4, 2012, the OSC issued a Statement of Allegations against Mr. Phillips and John Russell Wilson, a senior sales person at the Plaintiff FL Securities. The OSC alleges that between August 22 and October 28, 2012 Mr. Phillips "a founder and the directing mind of the First Leaside Group...intentionally deceived investors by selling and overseeing the sales of almost \$19 million in securities while withholding important information".

[13] On June 20, 2012, Ms. Davis listed the Uxbridge Property for sale and the Agreement of Purchase and Sale was entered into August 7, 2012, with the closing date of October 1, 2012.

[14] The FL Plaintiffs filed a Statement of Claim on August 28, 2012, which alleges, *inter alia*, that Mr. Philips and Ms. Davis caused the FL Plaintiffs, in particular, FL Securities, to make improper payments for renovations, maintenance and improvements of the Uxbridge Property and caused FL Securities to make improper rent payments to Ms. Davis for the use of the Uxbridge Property under one or more purported office lease agreements. It is alleged the Defendants breached fiduciary duties owed to the Plaintiffs, made fraudulent misrepresentations and converted the Plaintiffs' assets.

[15] The Plaintiffs claim a tracing order and a constructive trust in respect of the alleged improper payments made in respect of the Uxbridge Property. The Plaintiffs by their motion at hand seek to preserve their claimed rights in the Uxbridge Property.

[16] The Defendants Phillips and Davis say that they are impecunious and require the sale of the Uxbridge Property for ongoing living expenses. The FL Plaintiffs say that, if the Uxbridge Property is sold and the proceeds paid out to Ms. Davis, effectively the FL Plaintiffs will be precluded from ever being able to recover some \$4,000,000 alleged to have been misappropriated for maintenance and improvements to the Uxbridge Property.

The Cross -Motion

[17] The Defendant, Ms. Davis, brings the cross-motion under Rules 25.1.1 and 39.01(4) to strike out portions of Mr. MacLeod's affidavit on the asserted basis they are "scandalous, irrelevant, inserted simply for the purpose of atmosphere, are not based upon personal knowledge and do not specify the source of the deponent's information".

[18] The paragraphs in issue are: the second, third and fourth sentences of paragraph 2, paragraph 28, exhibit H, paragraph 29, the third sentence of paragraph 35, the second last sentence of paragraph 40, the last sentence of paragraph 42, the last sentence of paragraph 51, paragraph 52, paragraphs 53, 56, 57 and 62.

[19] In my view, there is no merit to the cross-motion and it is properly dismissed. The complained of provisions are informational, contextual and relevant to the issues at hand, are based upon the forensic investigation of the accounting and financial records, and are necessary

and appropriate to the narrative of Mr. MacLeod as to what his investigation on behalf of the CRO revealed.

The Evidence on the Main Motion seeking Leave to issue a CPL

[20] A CPL operates to protect a claimed interest in land by effectively preventing disposition of the property in issue prior to judgment following a trial on the merits. To succeed in obtaining a CPL, it must be established there is a triable issue as to whether the plaintiff has an interest in the land and the issuance of a CPL must be just in light of all relevant factors. *G.P.I. Greenfield Pioneer Inc. v. Moore* (2002), 58 O.R. (3d) 87 (C.A.); *Roseglen Village for Seniors Inc. v. Doble* (2010), 100 C.P. C. (6th) 183 (Ont. S. C.).

[21] Where the interest claimed is a constructive trust, as in the instant situation, the question is simply whether there is a triable issue in respect of such interest claimed, not whether the plaintiff will likely succeed ultimately at trial. It is enough to establish that a constructive trust is a possible remedy at trial based upon the evidentiary record at this point. Moreover, the Court does not “assess the credibility of deponents or decide disputed issues of fact” at the juncture of an interlocutory motion for a CPL. *Golden Bull Estates Ltd. v. Generex Biotechnology Corp.*, 2012 ONSC 4975 at paras. 2, 10 and 11.

[22] The evidence on the return of the FL Plaintiffs’ motion, through the 19 page affidavit of Mr. MacLeod setting forth his examination of the financial and accounting records, demonstrates that leasehold improvements and property maintenance expenses in respect of the Uxbridge Property have been funded by the FL Plaintiffs, in particular, FL Securities, in the amount of some \$4,000,000. This assertion is not disputed.

[23] These monies were used to maintain and improve the Uxbridge Property by way of such things as extensive landscaping, a home gym, windmill, sauna, multiple ponds, pool and waterfalls, garage, greenhouse and guest house. The FL Plaintiffs assert that these expenditures had no conceivable business purpose.

[24] The position of the Defendants is that the payments by FL Securities were commercially reasonable and were properly and lawfully approved by First Leaside and, in particular, by FL Securities and FLWM. The Defendants assert that the By-Laws of the FL Plaintiffs provide that any contract is binding on the corporations if signed by any one director and the authorization of the Board of Directors is not required. Moreover, Mr. Phillips says he believed that the Director of Finance and in-house legal counsel had obtained all requisite approvals for compensation paid to him. Hence, the Defendants ask that the motion be dismissed.

[25] Ms. Davis and FL Securities entered into a lease agreement on January 1, 2005, effective January 1, 2004, whereby FL Securities would pay 44% of certain maintenance expenses and in respect of capital improvements relating to the Uxbridge Property. It seems that three other lease agreements were later entered into.

[26] The financial records suggest that from, 2004 to 2011, FL Securities paid at least \$742,528.16 in respect of its 44% allocation for leasehold improvements. Moreover, the FL

Plaintiffs assert that some \$334,344.16 relating to the 56% allocation to Ms. Davis in respect of leasehold improvements was improperly allocated to Mr. Phillips' loan receivable account and never repaid.

[27] The records indicate as well that, from 2004 to 2009, the FL Plaintiffs paid some \$2,590,000 (some \$1,326,000 as the FL Securities' 44% allocation and \$1,264,486.94 as the 56% allocation to Ms. Davis) in property maintenance expenses related to the Uxbridge Property.

[28] The FL Plaintiffs claim the lease agreement is oppressive and entered into breach of the duties of directors owed to the FL Plaintiffs.

[29] The record indicates that the 56% allocation of leasehold improvements to Ms. Davis under the lease agreement were typically paid by FL Securities and recorded as a loan by FL Securities to Mr. Phillips, with FL Securities offsetting the outstanding loans payable at the end of the financial year by the issuance of bonuses and dividends within the corporate group to Mr. Phillips.

[30] The FL Plaintiffs allege that the directors of FLWM and FL Securities (other than Mr. Phillips and Ms. Davis) were never made aware of the lease agreements or allocation payable by FL Securities under the lease agreements. The FL Plaintiffs claim that the annual bonuses and dividend payments used as crediting offsets against the outstanding loans were unauthorized. The Defendants claim that all payments were properly and lawfully authorized by the boards of directors and that the lease agreements were approved.

[31] Ms. Joan L. Wilson, in her affidavit sworn September 17, 2012, states that she is a chartered accountant who was an employee of the Plaintiff FLWM between September 2004 and April 2008. She states that, although the company records suggest she was a director of FL Securities, she does not believe she ever knew she was a director and that, while Mr. Phillips advised her at one point that she was the "President" of FL Securities, she did not in any way act as President, nor was she treated as President, and that she signed an office lease agreement dated January 1, 2005 on behalf of FL Securities in respect of the Uxbridge Property simply because she was asked to do so by Mr. Phillips.

[32] Mr. Leo de Bever, a former independent director of FLWM, states in his affidavit that the directors of FLWM were never asked to vote on a resolution to approve the compensation paid to the Defendants Phillips and Davis, were never shown the details of compensation paid to them, never authorized dividends, and were not asked to approve financial statements for most fiscal years.

[33] Mr. John Wilson, an affiant for the Defendants, states that he has been a director of FLWM from 2003 to the present. He says that the compensation payable to Mr. Phillips was transparent to the board of directors as were "the leasing, occupancy and capital improvement costs paid by [FLWM] subsidiary companies in connection with the Uxbridge Property....".

[34] It is noted incidentally that the Agreement of Purchase and Sale provides for a \$25,000 deposit, a further \$875,000 on closing and a vendor take-back mortgage for the balance payable in 54 months with interest only payable in the interim. With an outstanding first mortgage of some \$687,000 in favour of the TD Bank, there would be a minimal cash balance on closing.

[35] However, it is also noted that the financial records indicate that in 2010 and 2011, FL Securities paid a total of \$320,744.76 on account of the 56% allocation for improvements and maintenance to Ms. Davis, which had been charged to Mr. Phillips' loan receivable account but (unlike previous charges) not purportedly offset for those years through bonuses and dividends, due to the CRO's assumption of management of First Leaside in 2011. Thus, the full \$320,744.76 arguably remains outstanding as a debt of Ms. Davis to FL Securities in all events, notwithstanding the bookkeeping paper entry recognition of her debt as a loan to Mr. Phillips.

[36] A claim based upon the doctrine of constructive trust and the right to trace funds in respect of property may give rise to an interest in the property such as to be the subject of a CPL.

[37] In my view, the FL Plaintiffs have established on the evidentiary record to date that there is a triable issue as asserted in the Statement of Claim that there has been a misappropriation of FL Plaintiffs' monies through unauthorized payments in respect of rent, maintenance and improvements relating to the Uxbridge Property owned by Ms. Davis such as to be an unjust enrichment and subject to a constructive trust.

[38] There are triable issues as to alleged unauthorized conversion of debts owed by Ms. Davis to FL Securities into purported loans receivable from Mr. Phillips. There are triable issues as to the arguably unlawful and unauthorized purported offsets to these asserted loans through arguably unauthorized compensation, bonuses and dividends to Mr. Phillips' credit. There are triable issues as to the alleged breach of directors' duties and as to the alleged oppressive conduct.

[39] The Defendants raise a host of defences to the asserted claims of the FL Plaintiffs and their counsel made forceful arguments in respect thereof. However, this hearing was not, of course, properly to equate to a trial of the issues; rather, the question is simply whether or not there are triable issues such that a CPL should properly issue pending the ultimate determination of the issues at trial.

[40] It is not disputed that some \$4,000,000 of the FL Plaintiffs' monies were expended in respect of the Uxbridge Property which is now the subject of the Agreement of Purchase and Sale for \$2,235,000. In my view, given the triable issues, as I have found, as to whether those monies are properly subject to a constructive trust, there is an 'interest' in the Uxbridge Property on the part of the FL Plaintiffs such as to support their request for a CPL.

[41] The record establishes a strong possibility that the FL Plaintiffs and their underlying investors would effectively be without any practical remedy if successful at trial and a CPL were not to be granted.

- Page 7 -

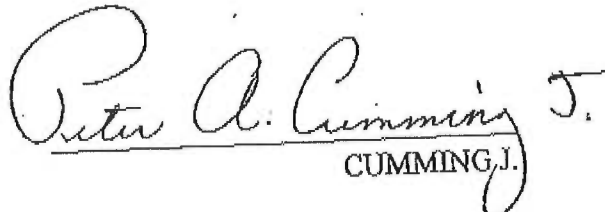
[42] The Defendants argue that if the CPL is granted then they will not only have lost access to funds for which there is an immediate need because of their claimed present impecuniosity but if they are ultimately successful at trial they may well face an unfavourable price as compared to that seen in the present Agreement of Purchase and Sale.

[43] In my view, and I so find on the basis of the evidentiary record, the balance of convenience favours the FL Plaintiffs.

Disposition

[44] For the reasons given, the FL Plaintiffs' motion for leave to issue a CPL in respect of the Uxbridge property is granted. The requisite Order was signed Friday, September 28, 2012, following upon my advising counsel as to my decision.

[45] If the parties cannot agree on the question of costs, the parties may make written submissions. In such event, the FL Plaintiffs shall make their submission by October 10, 2012, the Defendants shall make their submission by October 18, 2012 and the FL Plaintiffs may make any reply thereto by October 22, 2012.


CUMMING J.

Date: October 1, 2012

THIS IS EXHIBIT "Y" REFERRED TO IN THE
AFFIDAVIT OF GREGORY MACLEOD
SWORN BEFORE ME,
THIS 15TH DAY OF OCTOBER, 2012

A handwritten signature in black ink, appearing to read 'PJ MacDonald', written over a horizontal line.

Commissioner for Taking Affidavits, Etc.

Patrick Joseph MacDonald, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires April 6, 2014.



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

P.O. Box 55, 19th Floor
20 Queen Street West
Toronto ON M5H 3S8

CP 55, 19^e étage
20, rue queen ouest
Toronto ON M5H 3S8

**IN THE MATTER OF THE SECURITIES ACT
R.S.O. 1990, c. S.5, AS AMENDED**

- AND -

**IN THE MATTER OF
DAVID CHARLES PHILLIPS**

**ORDER
(Subsections 127(1) and 127(8))**

WHEREAS on May 15, 2012 the Ontario Securities Commission (the "Commission") issued an order (the "Temporary Order") pursuant to subsections 127(1) and 127(5) of the *Securities Act*, R.S.O. 1990 c. S.5, as amended (the "Act") that:

1. David Charles Phillips ("Phillips") shall cease trading in all securities;
2. any exemptions contained in Ontario securities law do not apply Phillips; and
3. the Temporary Order shall take effect immediately and shall expire on the fifteenth day after its making unless extended by order of the Commission;

AND WHEREAS on May 16, 2012, the Commission issued a Notice of Hearing to consider, among other things, the extension of the Temporary Order, to be held on May 30, 2012 at 2:30 p.m. (the "Notice of Hearing");

AND WHEREAS Staff of the Commission ("Staff") have served Phillips with copies of the Temporary Order, the Notice of Hearing, the Affidavit of Stephanie Collins sworn May 23, 2012, the Willsay Statement of Greg MacLeod, the Brief of Documents of Greg MacLeod and

Staff's Factum and Brief of Authorities as evidenced by the Affidavit of Service of Lee Crann sworn May 29, 2012;

AND WHEREAS on May 30, 2012, Staff and counsel to Phillips appeared before the Commission to ask that the hearing of this matter be adjourned to June 6, 2012 and the Temporary Order extended;

AND WHEREAS the Commission is of the opinion that it is in the public interest to make this order;

IT IS ORDERED that:

- (i) the hearing in this matter is adjourned to June 6, 2012 at 10:00 a.m.; and
- (ii) the Temporary Order is extended until June 8, 2012 or until further order of the Commission.

DATED at Toronto this 30th day of May, 2012.

"Edward P. Kerwin"

Edward P. Kerwin

THIS IS EXHIBIT "Z" REFERRED TO IN THE
AFFIDAVIT OF GREGORY MACLEOD
SWORN BEFORE ME,

THIS 15TH DAY OF OCTOBER, 2012



Commissioner for Taking Affidavits, Etc.

Patrick Joseph MacDonald, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires April 6, 2014.



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

P.O. Box 55, 19th Floor
20 Queen Street West
Toronto ON M5H 3S8

CP 55, 19^e étage
20, rue queen ouest
Toronto ON M5H 3S8

**IN THE MATTER OF THE SECURITIES ACT
R.S.O. 1990, c. S.5, AS AMENDED**

- AND -

**IN THE MATTER OF
DAVID CHARLES PHILLIPS**

**ORDER
(Subsection 127(1))**

WHEREAS on May 15, 2012 the Ontario Securities Commission (the “Commission”) issued an order (the “Temporary Order”) pursuant to subsections 127(1) and 127(5) of the *Securities Act*, R.S.O. 1990 c. S.5, as amended (the “Act”) containing allegations against David Charles Phillips (“Phillips”), and ordering that:

1. Phillips shall cease trading in all securities;
2. any exemptions contained in Ontario securities law do not apply Phillips; and
3. the Temporary Order shall take effect immediately and shall expire on the fifteenth day after its making unless extended by order of the Commission;

AND WHEREAS on May 16, 2012, the Commission issued a Notice of Hearing to consider, among other things, the extension of the Temporary Order, to be held on May 30, 2012;

AND WHEREAS counsel to Phillips advised Staff of the Commission (“Staff”) that Phillips intended to challenge any extension of the Temporary Order;

AND WHEREAS on May 29, 2012, Staff filed its Factum and Brief of Authorities and certain evidence in support of an extension of the Temporary Order;

AND WHEREAS on May 30, 2012, Staff and counsel to Phillips appeared before the Commission to ask that the hearing be adjourned to June 6, 2012 and the Temporary Order extended;

AND WHEREAS on May 30, 2012, the Commission adjourned the hearing to June 6, 2012, and ordered the Temporary Order be extended to June 8, 2012, or until further Order of the Commission;

AND WHEREAS on June 4, 2012, the Commission issued a Notice of Hearing and Staff filed a Statement of Allegations in the related matter of *David Charles Phillips and John Russell Wilson* (“the *Phillips and Wilson* proceeding”);

AND WHEREAS on June 6, 2012, the Commission heard evidence and submissions from Staff and counsel for Phillips on the issue of whether the Temporary Order should be extended for a further period of time;

AND WHEREAS the Commission was satisfied that Staff had provided sufficient evidence of conduct that may be harmful to the public interest and, accordingly, in the public interest, justified an extension of the restrictions set out in the Temporary Order;

AND WHEREAS at the conclusion of the hearing on June 6, 2012, the panel made an order (the “June 6, 2012 Order”) that:

- (a) The Temporary Order dated May 15, 2012, as varied by (b) below, is extended for a period ending Friday, September 28, 2012;
- (b) During this extended period, Phillips shall cease trading in all securities, except for trades made through a registrant for his own account or for the account of his “registered retirement savings plans”, “registered retirement income fund” or “tax free savings account” (as those terms are defined in the *Income Tax Act* (Canada)) in respect of (i) government debt securities within the scope of clause 1 of subsection 35(1) of the Act, and (ii) those securities that are listed and posted for trading on the Toronto Stock Exchange or the New York Stock Exchange (or their successor exchanges); and

(c) During this extended period, any exemptions contained in Ontario securities law do not apply to Phillips.

AND WHEREAS on August 28, 2012, the Commission ordered that the hearing of the merits in the *Phillips and Wilson* proceeding shall commence on February 11, 2013, and will continue on certain dates, if necessary, until March 6, 2013;

AND WHEREAS on September 19, 2012, Staff filed evidence in support of an extension of the June 6, 2012 Order;

AND WHEREAS counsel to Phillips advised Staff that Phillips does not oppose an extension of the June 6, 2012 Order;

AND WHEREAS the Commission is satisfied that it is in the public interest to extend the June 6, 2012 Order;

IT IS ORDERED THAT:

The June 6, 2012 Order is extended until the conclusion of the hearing on the merits in the *Phillips and Wilson* proceeding;

DATED at Toronto this 26th day of September 2012.

"Edward P. Kerwin"

Edward P. Kerwin