Execution Copy

UNDERWRITING AGREEMENT

September 20, 2010

Wajax Income Fund
3280 Wharton Way
Mississauga, Ontario
L4X 2C5
Attention: Neil D. Manning

Empire Company Limited
115 King Street
Stellarton, Nova Scotia
B0K 1S0
Attention: Paul D. Sobey and Paul V. Beesley

ECL Western Holdings Limited
115 King Street
Stellarton, Nova Scotia
B0K 1S0
Attention: Paul D. Sobey and Paul V. Beesley

The Sobey Foundation
115 King Street
Stellarton, Nova Scotia
B0K 1S0
Attention: Paul D. Sobey

Dear Sirs:

Scotia Capital Inc. ("**Scotia Capital**"), BMO Nesbitt Burns Inc. ("**BMO**"), CIBC World Markets Inc. and TD Securities Inc. (collectively, the "**Underwriters**" and individually an "**Underwriter**") understand that ECL Western Holdings Limited ("**ECL**"), a wholly-owned subsidiary of Empire Company Limited (**"Empire"**) and The Sobey Foundation (the "**Foundation"** and together with ECL, the "**Selling Unitholders**"), respectively, intend to sell 4,368,194 and 209,800 units of Wajax Income Fund (the "**Fund**") to the Underwriters (collectively, the "**Offered Units"**).

We also understand that at the request of the Selling Unitholders, the Fund will prepare and file, a preliminary short form prospectus and a (final) short form prospectus and all other necessary documents in order to qualify the Offered Units for distribution to the public in each of the provinces and territories of Canada (the **"Offering"**).

Based upon the foregoing and on the basis of the representations, warranties, covenants and agreements contained herein and subject to the terms and conditions set out below the Selling Unitholders agree severally (and not jointly or jointly and severally) to sell to each of the Underwriters, and each of the Underwriters agrees severally (and not jointly or jointly and severally) to purchase from each of the Selling Unitholders, the respective percentage of the Offered Units set forth opposite the name of such Underwriter in Section 18(1) at a purchase price of $27.75 per Offered Unit (for an aggregate purchase price of $127,039,333.50).

This offer is subject to the following terms and conditions:

Section 1 Definitions

(1) In this Agreement, unless otherwise defined herein, the following words and terms shall have the following meanings:

"1933 Act" means the United States *Securities Act of 1933*, as amended;

"1934 Act" means the United States *Securities Exchange Act of 1934*, as amended;

"Business" means the business carried on by the Wajax Entities, all as described in the Prospectus;

"business day" means a day which is not a Saturday, a Sunday or a statutory or civic holiday in the City of Toronto, Ontario;

"CBCA" means the *Canada Business Corporations Act*, as amended, including the regulations promulgated thereunder;

"Claim" has the meaning ascribed thereto in Section 15 hereof;

"Closing Date" means October 5, 2010 or such other date as the Fund, the Selling Unitholders and Scotia Capital and BMO, on behalf of the Underwriters, may agree, provided that in no event shall the Closing Date be later than November 5, 2010;

"Closing Time" means 8:30 a.m. (Toronto time) on the Closing Date or such other time on the Closing Date, as the Fund, the Selling Unitholders and Scotia Capital and BMO, on behalf of the Underwriters, may agree;

"Commission" has the meaning ascribed thereto in Section 11(1) hereof;

"**Condition of the Wajax Entities**" means the assets, liabilities (contingent or otherwise), financial condition, prospects, properties, business, affairs, operations, results of operations, income, cash flow or capital of the Fund and its Subsidiaries on a consolidated basis;

"**Credit Agreement**" means the Credit Agreement dated June 8, 2005, as amended, among The Bank of Nova Scotia as Administrative Agent and Wajax Limited, Kinecor Limited Partnership and Integrated Distribution Systems Limited Partnership as Borrowers;

"Defaulted Securities" has the meaning ascribed thereto in Section 18(2) of this Agreement;

"Directed Selling Efforts" means **"directed selling efforts"** as that term is defined in Regulation S. Without limiting the foregoing, but for greater clarity in this Agreement, it means, subject to the exclusions from the definition of "directed selling efforts" contained in Regulation S, any activity undertaken for the purpose of, or that could reasonably be expected to have the effect of, conditioning the market in the United States for any of Offered Units, and includes the placement of any advertisement in a publication with a general circulation in the United States that refers to the Offering;

"distribution" and **"distribution to the public"** shall have the respective meanings ascribed thereto in the Securities Laws;

"Final Decision Document" means a receipt for the Prospectus issued in accordance with National Policy 11-202 - *Process for Prospectus Reviews in Multiple Jurisdictions* among the Securities Regulators and other securities regulatory authorities in each of the provinces and territories of Canada;

"Financial Information" has the meaning ascribed thereto in Section 4(1)(c) of this Agreement;

"Fund" has the meaning ascribed thereto in the first paragraph hereof;

"Fund's Auditors" means KPMG LLP;

"Fund's Counsel" means the law firm of Ogilvy Renault LLP**,** counsel for the Fund;

"**Fund Declaration**" means the declaration of trust governing the Fund, as amended and restated and dated June 14, 2005;

"Fund Units" means the units of the Fund;

"**GP Holdco**" means Wajax GP Holdco Inc., a corporation incorporated under the CBCA and a beneficiary of the GP Trust;

"**GP Trust**" means Wajax GP Trust, an Ontario trust established pursuant to a declaration of trust dated May 30, 2005 (as amended or amended and restated from time to time), the general partner of both IDS LP and Kinecor LP;

"**Governmental Authority**" means any (a) multinational, federal, provincial, state, regional, municipal, local or other government, governmental or public department, central bank, court, tribunal, arbitral body, arbitrator, board, bureau, agency or instrumentality, domestic or foreign, (b) any subdivision, agent, commission, board, or authority of any of the foregoing, or (c) any quasi- governmental or private body exercising any regulatory, expropriation or taxing authority under or for the account of any of the foregoing, and any stock exchange or self-regulatory authority and, for greater certainty, includes the Securities Regulators and the Toronto Stock Exchange;

"**IDS LP**" means Integrated Distribution Systems Limited Partnership, a limited partnership created under the laws of Manitoba;

"**including**" means including, without limitation;

"Indemnified Party" has the meaning ascribed thereto in Section 15(1) of this Agreement;

"Indemnifying Party" means the Fund in respect of a claim for indemnification under Section 15(1) hereof and Empire in respect of a claim under Section 15(2) hereof;

"**Kinecor LP**" means Kinecor Limited Partnership, a limited partnership created under the laws of Manitoba;

"**Laws**" means Securities Laws and all other statutes, regulations, statutory rules, orders, by-laws, codes, ordinances, decrees, the terms and conditions of any grant of approval, permission, authority or license, or any judgment, order, decision, ruling, award, policy or guideline, of any Governmental Authority, and the term "applicable" with respect to such Laws and in the context that refers to one or more persons, means that such Laws apply to such person or persons or its or their business, undertaking, property or securities and emanate from a Governmental Authority having jurisdiction over the person or persons or its or their business, undertaking, property or securities;

"Lien" means any mortgage, charge, pledge, hypothecation, security interest, assignment, lien (statutory or otherwise), charge, title retention agreement or arrangement, restrictive covenant or other encumbrance of any nature, or any other arrangement or condition which, in substance, secures payment or performance of an obligation;

"**Material Adverse Effect**" or "**Material Adverse Change**" means any effect or change that is reasonably likely to (i) be materially adverse to the results of operation, financial condition, assets, properties, capital, liabilities (contingent or otherwise), prospects, cash flow, income or business operations of the Fund or its Subsidiaries, or the Business, taken as a whole, after giving effect to this Agreement and the transactions contemplated hereby; or (ii) result in the Prospectus containing a misrepresentation;

"misrepresentation", **"material fact"** and **"material change"** have the respective meanings ascribed thereto in the *Securities Ac*t (Ontario);

"**Offered Units**" has the meaning ascribed thereto in the first paragraph of this Agreement;

"Offering" has the meaning ascribed thereto in the first paragraph of this Agreement;

"**Offering Price**" means $27.75 per Offered Unit;

"person" means any individual, partnership, limited partnership, limited liability company, joint venture, syndicate, sole proprietorship, company or corporation with or without share capital, unincorporated association, trust, trustee, executor, administrator or other legal personal representative, regulatory body or agency, government or governmental agency, authority or entity however designated or constituted;

"Preliminary Decision Document" means a receipt for the Preliminary Prospectus issued in accordance with National Policy 11-202 - *Process for Prospectus Reviews in Multiple Jurisdictions* among the securities commissions and other securities regulatory authorities in each of the provinces and territories of Canada;

"**Preliminary Prospectus**" means the preliminary short form prospectus of the Fund (in both the English and French languages, unless the context indicates otherwise), signed and certified in accordance with the Securities Laws, relating to the qualification for distribution of the Offered Units under applicable Securities Laws in the Qualifying Jurisdictions, and the term "**Preliminary Prospectus**" shall be deemed to refer to and to include all the documents incorporated therein by reference;

"Private Placement Memorandum" means the Prospectus or Preliminary Prospectus, as the case may be, together with a customary U.S. offering memorandum, which will be delivered to purchasers and prospective purchasers, as the case may be, of the Offered Units under Rule 144A;

"Prospectus" means the (final) short form prospectus of the Fund (in both the English and French languages, unless the context indicates otherwise), signed and certified in accordance with the Securities Laws, relating to the qualification for distribution of the Offered Units under applicable Securities Laws in the Qualifying Jurisdictions, and the term "**Prospectus**" shall be deemed to refer to and include all the documents incorporated therein by reference;

"Qualified Institutional Buyer" means a **"qualified institutional buyer"** as that term is defined in Rule 144A;

"Qualifying Jurisdictions" means all of the provinces and territories of Canada;

"Regulation D" means Regulation D adopted by the SEC under the 1933 Act;

"Regulation M" means Regulation M adopted by the SEC under the 1934 Act;

"Regulation S" means Regulation S adopted by the SEC under the 1933 Act;

"Rule 144A" means Rule 144A under the 1933 Act;

"SEC" means the United States Securities and Exchange Commission;

"Securities Laws" means the applicable securities laws, regulations, rules, policy statements and prescribed forms, collectively, of each of the Qualifying Jurisdictions;

"Securities Regulators" means the applicable securities commission or regulatory authority in each of the Qualifying Jurisdictions;

"**Selling Unitholder Matters**" means the first and fourth paragraphs below the logo on the face page of the Prospectus; the paragraph immediately preceding the section entitled "Table of Contents", insofar as the section relates directly to the Selling Unitholders or Empire; the section of the Prospectus entitled "Plan of Distribution", insofar as the section relates directly to the Selling Unitholders or Empire; the section of the Prospectus entitled "Relationships with Certain Underwriters", insofar as the section relates directly to the Selling Unitholders or Empire; and the sections of the Prospectus entitled "Use of Proceeds" and "The Selling Unitholders", and the corresponding paragraphs and sections in any Supplementary Material;

"Subsidiary" has the meaning ascribed thereto in National Instrument 45-106 Prospectus and Registration Exemptions;

"Substantial U.S. Market Interest" means **"substantial U.S. market interest"** as that term is defined in Regulation S;

"Supplementary Material" means, collectively, any amendment or supplement to the Preliminary Prospectus or the Prospectus or any other similar documents required to be filed by the Fund under the Securities Laws in connection with the Offering;

"to the knowledge of" means (unless otherwise expressly stated) the knowledge of the declarant's executive officers in the case of any entity and in all other cases, the knowledge of the declarant, after having made due inquiries and investigations in connection with such facts and circumstances;

"Tax Act" means the *Income Tax Act* (Canada) and the regulations thereunder;

"**TSX**" means the Toronto Stock Exchange;

"Underwriters" has the meaning ascribed thereto in the first paragraph hereof;

"Underwriters' Counsel" means the law firm of Stikeman Elliott LLP, counsel for the Underwriters;

"United States" means the United States of America, its territories and possessions, any State of the United States, and the District of Columbia;

"U.S. Securities Laws" means the 1933 Act, the 1934 Act and any other laws of the United States or any State therein applicable in connection with the offering for sale of the Offered Units;

"**Wajax**" means Wajax Limited, a CBCA corporation;

"Wajax Entities" means the Fund and its Subsidiaries, and each of them a "**Wajax Entity**";

"**Wajax Trust**" means Wajax Trust, a trust established under the laws of Ontario pursuant to the Wajax Trust Declaration; and

"**Wajax Trust Declaration**" means the declaration of trust governing the Wajax Trust, dated April 28, 2005, as amended and restated on June 7, 2005, and as amended and restated on June 14, 2005, as the same may be amended or amended and restated from time to time.

(2) Any reference in this Agreement to any Section, Appendix or Exhibit shall refer to a Section, Appendix or Exhibit of this Agreement unless specifically referring to another source.

Section 2 Filing of Preliminary Prospectus and Prospectus

(1) The Fund shall prepare and file the Preliminary Prospectus and obtain the Preliminary Decision Document in order to qualify the Offered Units for distribution in each of the Qualifying Jurisdictions in accordance with the Securities Laws not later than 5:00 p.m. (Toronto time) on September 20, 2009.

(2) The Fund shall file the Prospectus and obtain the Final Decision Document in order to qualify the Offered Units for distribution in each of the Qualifying Jurisdictions in accordance with the Securities Laws not later than 5:00 p.m. (Toronto time) on September 27, 2010.

Section 3 Qualification for Distribution and Compliance with the Securities Laws

(1) The Fund shall take all steps and proceedings as may be necessary for the Fund to qualify the distribution of the Offered Units in the Qualifying Jurisdictions by or through the Underwriters or any other registrant who complies with the relevant provisions of the Securities Laws.

(2) Until the date on which the distribution of the Offered Units is completed, the Fund will promptly take, or cause to be taken, all additional steps and proceedings that may from time to time be required under the Securities Laws to continue to qualify the distribution in each Qualifying Jurisdiction of the Offered Units or, in the event that the Offered Units have, for any reason, ceased to so qualify in each Qualifying Jurisdiction, to again qualify the Offered Units for distribution in the Qualifying Jurisdictions in accordance with the Securities Laws.

(3) The Underwriters covenant and agree that the Offered Units shall be offered for sale by the Underwriters to the public in the Qualifying Jurisdictions in compliance with applicable laws including the Securities Laws upon the terms and conditions set forth in the Prospectus. Each Underwriter shall cause similar undertakings to be contained in any agreements among the members of any banking, selling or other groups formed for the distribution of the Offered Units. After the Underwriters have made reasonable efforts to sell all the Offered Units at the Offering Price, the Underwriters may sell Offered Units to the public at prices below the Offering Price.

(4) The Underwriters covenant and agree that if they offer to sell or sell any Offered Units in jurisdictions other than the Qualifying Jurisdictions,

   (a) such offers or sales shall be effected in accordance and compliance with the applicable laws of such jurisdictions,

(b) shall be effected in such manner so as not to require registration of the Offered Units, or the filing of a prospectus, registration statement or any other notice or document with respect to the distribution of the Offered Units, and

(c) will not subject the Fund or any of its insiders to any disclosure or other similar obligations under the laws of any jurisdiction outside the Qualifying Jurisdictions including, without limitation, the United States.

The Underwriters shall cause similar undertakings to be contained in any agreements among the members of any banking, selling or other groups formed for the purpose of selling the Offered Units.

(5) The Underwriters agree, and will require each member of any banking, selling or other group formed for the purposes of selling the Offered Units, to agree to observe the United States selling restrictions set forth in Section 21 hereof and the Fund agrees for the benefit of the Underwriters to comply with the covenants as set forth in Section 21 hereof. Each Underwriter represents and agrees that it will not offer or sell any of the Offered Units within the United States except for offers and sales made in accordance with Rule 144A.

Section 4 Deliveries Upon Filing of Prospectus

(1) The Fund shall deliver or cause to be delivered, to the Underwriters, without charge, in Toronto, Ontario, contemporaneously with or prior to the filing of the Preliminary Prospectus or Supplementary Material, as the case may be:

(a) a copy of the Preliminary Prospectus in the English and French languages, signed as required by the Securities Laws, including copies of documents incorporated by reference therein;

(b) a copy of any Supplementary Material required to be filed by the Fund under the Securities Laws;

(c) an opinion of the Fund's Counsel, addressed to the Underwriters, the Underwriters' Counsel, the Fund, the Selling Unitholders and their counsel, dated the date of the Preliminary Prospectus or Supplementary Material, as the case may be, acceptable in form and substance to the Underwriters' Counsel, acting reasonably, that except for certain financial or statistical information (collectively, the "**Financial Information**") the French translation of such document includes the same information and in all material respects carries the same meaning as the English language version thereof; and

(d) an opinion of the Fund's Auditors addressed to the Underwriters, the Underwriters' Counsel, the Fund's Counsel, the Fund, the Selling Unitholders and their counsel, dated the date of the Preliminary Prospectus or Supplementary Material, as the case may be, and acceptable in form and substance to the Underwriters' Counsel, acting reasonably, that the Financial Information in respect of the Fund contained in such document in the French language includes the same information and in all material respects carries the same meaning as the English language version of such Financial Information.

(2) The Fund shall deliver or cause to be delivered to the Underwriters, at the expense of the Selling Unitholders, in Toronto, Ontario as soon as possible and in any event not later than the first business day after the date that the Preliminary Prospectus or Supplementary Material is filed with the Securities Regulators, such number of commercial copies of the Preliminary Prospectus or Supplementary Material (including the French language version thereof) and the Private Placement Memorandum as the Underwriters reasonably require.

(3) The Fund shall deliver or cause to be delivered, to the Underwriters, at the expense of the Selling Unitholders , in Toronto, Ontario, contemporaneously with or prior to the filing of the Prospectus or any Supplementary Material, as the case may be, (except that the French language version of such documents, together with the opinions referred to in paragraphs (c) and (d) below, may be delivered contemporaneously with the filing of the Prospectus or any Supplementary Material, as the case may be, in the Province of Québec):

(a) a copy of the Prospectus in the English and French languages, signed as required by the Securities Laws, and if requested, copies of documents incorporated by reference therein and the Private Placement Memorandum;

(b) a copy of any Supplementary Material required to be filed by the Fund under the Securities Laws;

(c) an opinion of the Fund's Counsel, addressed to the Underwriters, the Underwriters' Counsel, the Fund, the Selling Unitholders and their counsel, dated the date of the Prospectus or Supplementary Material, as the case may be, acceptable in form and substance to the Underwriters' Counsel, acting reasonably, that except for the Financial Information, the French translation of such document includes the same information and in all material respects carries the same meaning as the English language version thereof;

(d) an opinion of the Fund’s Auditors addressed to the Underwriters, the Underwriters’ Counsel, the Fund’s Counsel, the Fund, the Selling Unitholders and their counsel, dated the date of the Prospectus or Supplementary Material, as the case may be, and acceptable in form and substance to the Underwriters’ Counsel, acting reasonably, that the Financial Information in respect of the Fund contained in such document in the French language is in all material respects a complete and proper translation of such Financial Information contained in such document in the English language; and

(e) a comfort letter or letters dated the date of the Prospectus and addressed by the Fund’s Auditors to the Underwriters, the Trustees of the Fund and the Selling Unitholders and their counsel, in form and substance satisfactory to the Underwriters and Underwriters’ Counsel, acting reasonably, with respect to Financial Information in respect of the Fund contained in the Prospectus.

(4) The Fund shall deliver or cause to be delivered to the Underwriters, at the expense of the Selling Unitholders, in Toronto, Ontario as soon as possible and in any event not later than the first business day after the date that the Prospectus or Supplementary Material is filed with the Securities Regulators, such number of commercial copies of the Prospectus or Supplementary Material in respect thereof (including the French language version thereof), and the Private Placement Memorandum as the Underwriters reasonably require.

Section 5 Notice of Material Change

(1) During the period of distribution to the public of the Offered Units, which shall be the period from the date hereof to the date which the Fund receives the notice of termination contemplated in Section 19(1) or the notice that distribution has ceased contemplated in Section 22 hereof, whichever is earlier, the Fund and the Selling Unitholders shall promptly notify the Underwriters in writing of:

(a) any material fact that has arisen or has been discovered which would have been required to have been stated in the Preliminary Prospectus, the Prospectus, the Private Placement Memorandum, or any Supplementary Material, as the case may be, had the fact arisen or been discovered on, or prior to, the date of such document; and

(b) any change in a material fact in the Preliminary Prospectus, the Prospectus, the Private Placement Memorandum, or any Supplementary Material, as the case may be, or the existence or discovery of any new material fact, which change or new material fact is, or may be of such a nature as:

(i) to render the Preliminary Prospectus, the Prospectus, the Private Placement Memorandum, or the Supplementary Material misleading or untrue;

(ii) would result in the Preliminary Prospectus, the Prospectus or the Supplementary Material not complying with Securities Laws, or the Private Placement Memorandum not complying with U.S. Securities Laws;

(iii) would reasonably be expected to have a significant effect on the market price or value of the Offered Units or the Fund Units or which would restrict or prevent the trading of the Offered Units or the Fund Units; or

(iv) would be material to a prospective purchaser of the Offered Units.

(2) In any such case described in Section 5(1), the Fund shall promptly and, in any event within applicable time limitations set out in the Securities Laws, comply with all legal requirements necessary to comply with the Securities Laws in order to allow for the continued distribution of the Offered Units in the Qualifying Jurisdictions as contemplated hereunder and the sale of the Offered Units in the United States in accordance with Section 21 hereof, provided that no Supplementary Material shall be filed by the Fund without the consent of Scotia Capital and BMO, (on behalf of the Underwriters), such consent not to be unreasonable withheld or delayed, acting reasonably, and without complying with Section 20 hereof.

(3) The Fund shall in good faith discuss with the Underwriters any change in a fact or circumstances (actual, proposed or prospective) which is of such a nature that there is reasonable doubt whether notice need be given to the Underwriters pursuant to this Section 5.

Section 6 Representations and Warranties of the Fund

(1) The Fund represents and warrants to the Underwriters, and acknowledges that the Underwriters are relying on such representations and warranties in entering into this Agreement, that (it being understood that any certificate signed by any trustee or officer, as the case may be, of the Fund and delivered to the Underwriters shall be deemed a representation and warranty by the Fund to the Underwriters as to matters covered thereby):

(a) the Fund is eligible to file a short form prospectus in each of the Qualifying Jurisdictions and there are no reports or information that in accordance with the requirements of the Securities Laws must be made publicly available in connection with the Offering as at the date hereof that have not been made publicly available as required;

(b) the Fund has been duly created and is existing as a trust under the laws of the Province of Ontario and pursuant to the Fund Declaration, and the Trustees have been duly appointed as trustees of the Fund and the Trustees have all necessary power and authority to carry on the affairs of the Fund as described in the Prospectus and to execute, deliver and perform the obligations of the Fund under this Agreement;

(c) each Subsidiary of the Fund is a corporation, partnership or trust duly amalgamated, incorporated, established or created and existing in good standing under the laws of its jurisdiction of amalgamation, incorporation, establishment or creation and has the power and authority to carry on its business or affairs, as the case may be, as described in the Prospectus;

(d) the Fund is authorized to issue an unlimited number of Fund Units, of which, as of the date hereof, 16,621,457 Fund Units are issued and outstanding as fully paid units;

(e) the Fund, directly or indirectly, is the beneficial owner of all issued and outstanding securities of each of its Subsidiaries, and all such securities are (i) validly issued and outstanding, (ii) if applicable, fully paid and non-assessable, and (iii) free and clear of all Liens, other than Liens granted in connection with the Credit Agreement;

(f) the section entitled "Current Organizational Structure" in the Prospectus does not contain any misrepresentation;

(g) except as disclosed in the Prospectus, no person has any written or oral agreement, option, understanding or commitment, or any right or privilege capable of becoming such, under which any of the Wajax Entities is, or may become, obligated to issue any of its securities or for the purchase of any security (including debt) of a Wajax Entity or other than in the ordinary course of business, any material property or assets used in the Business;

(h) the Fund does not, directly or indirectly, hold any shares, other securities, options or rights to subscribe for shares or other securities of any corporation, partnership or other person except as disclosed in the Prospectus;

(i) there is no agreement in force or effect which in any manner affects or will affect the voting or control of any of the securities of the Subsidiaries of the Fund or, to the knowledge of the Fund, the securities of the Fund;

(j) this Agreement has been duly authorized, executed and delivered by the Fund and constitutes a legal, valid and binding obligation of the Fund enforceable in accordance with its terms, provided that enforcement may be limited by bankruptcy, insolvency and other similar Laws of general application affecting the enforcement of creditors' rights generally, specific performance, injunctive relief and other equitable remedies may be granted only in the discretion of a court of competent jurisdiction, indemnity and related rights may be limited under applicable Law and that provisions relating to severing unenforceable provisions may be limited by applicable Law;

(k) each of the Wajax Entities is conducting its business in compliance in all material respects with all applicable Laws;

(l) each of the Wajax Entities possesses all licenses, permits, franchises, certificates, registrations and authorizations necessary to conduct its business as described in the Prospectus and owns its property and assets and is not in default or breach of any of the foregoing, except for failures to possess, defaults or breaches which would not individually or in the aggregate reasonably be expected to have a Material Adverse Effect;

(m) except those that would not reasonably be expected to have a Material Adverse Effect, none of the Wajax Entities are in breach of, in conflict with, or in default under, and no event or omission has occurred which, after notice or lapse of time or both, would constitute a breach of, conflict with, or default under, any material mortgage, hypothec, note, indenture, contract, commitment, agreement (written or oral), instruments, lease, license or other document to which it is a party or is subject or by which it is bound, and to the knowledge of the Fund, no party to any material mortgage, hypothec, note, indenture, contract, agreement (written or oral), instruments, lease, license or other document with any Wajax Entity is in breach of its obligations thereunder;

(n) except those that would not reasonably be expected to have a Material Adverse Effect, no supplier, manufacturer or contractor of any Wajax Entity has indicated it intends to terminate its relationship with such entity or that it will be unable to meet such entity's supply, manufacturing or contracting requirements;

(o) each of the Wajax Entities has good and marketable title to the material property and assets owned by it and holds a valid leasehold interest in all material property leased by it, in each case, free and clear of all Liens other than those described in the Prospectus and those that would not individually or in the aggregate reasonably be expected to have a Material Adverse Effect;

(p) each of the Wajax Entities maintain insurance policies with reputable insurers against risk of loss or damage to its material properties, assets and business of such types as are appropriate to its business and in such amounts and against such risks as are prudent, and none of the Wajax Entities are in default with respect to any provision of such policies nor have failed to give any notice or to present any claim under any such policy in a due and timely fashion, expect those that would not reasonably be expected to have a Material Adverse Effect;

(q) except as described in the Prospectus, there is no action, suit, investigation or proceeding, at law or in equity, by any person, nor any arbitration, administrative or other proceeding by or before any Governmental Authority pending or, to the knowledge of the Fund, threatened against or affecting any of the Wajax Entities or any of their respective properties, rights or assets or the Business which, individually or in the aggregate, if determined adversely to the interest of any of the Wajax Entities would reasonably be expected to have a Material Adverse Effect;

(r) other than as disclosed in the Prospectus, and except as would not individually or in the aggregate reasonably be expected to have a Material Adverse Effect, (i) none of the Wajax Entities are in violation of any applicable Law relating to pollution or occupational health and safety, the environment (including ambient air, surface water, groundwater, land surface or subsurface strata) or wildlife, including Laws relating to the release or threatened release of chemicals, pollutants, contaminants, wastes, toxic substances, hazardous substances, petroleum or petroleum products (collectively, "**Hazardous Materials**") or to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials (collectively, "**Environmental Laws**"), (ii) each of the Wajax Entities has all permits, authorizations and approvals required under any applicable Environmental Laws and is in compliance with their requirements, (iii) to the knowledge of the Fund, there are no pending or threatened administrative, regulatory or judicial actions, suits, demands, demand letters, claims, liens, notices of non-compliance or violation, investigation or proceedings relating to any Environmental Laws against any of the Wajax Entities and (iv) to the knowledge of the Fund, there are no events or circumstances that would reasonably be expected to form the basis of an order for clean-up or remediation, or an action, suit or proceeding by any private party or governmental body or agency, against or affecting any of the Wajax Entities relating to Hazardous Materials or any Environmental Laws;

(s) except as would not individually or in the aggregate reasonably be expected to have a Material Adverse Effect, the Fund is not aware of any claim of any infringement or breach by any of the Wajax Entities of any industrial, patent or intellectual property rights of any other person, nor has the Fund received any notice, and the Fund is not aware, that the use of the business names, trademarks, service marks and industrial, patent or copyright or other intellectual property of any of the Wajax Entities infringes upon or breaches any industrial, patent, copyright or other intellectual property rights of any other person;

(t) other than as disclosed in the Prospectus, and except as would not individually or in the aggregate reasonably be expected to have a Material Adverse Effect, each of the Wajax Entities (as applicable) have satisfied all obligations under, and there are no outstanding defaults or violations with respect to, and no taxes, penalties, or fees are owing or exigible under or in respect of, any employee benefit, incentive, pension, retirement, stock option, stock purchase, stock appreciation, health, welfare, medical, dental, disability, life insurance and similar plans, arrangements or practices relating to the current or former employees, officers or directors of any of the Wajax Entities and its subsidiaries maintained, sponsored or funded by them, whether written or oral, funded or unfunded, insured or self-insured, registered or unregistered and all contributions or premiums required to be paid thereunder have been made in a timely fashion and any such plan or arrangement which is a funded plan or arrangement is fully funded on an ongoing and termination basis;

(u) except as disclosed in the Prospectus, since December 31, 2009, there has not been any Material Adverse Change and no event has occurred or circumstances exists which would be reasonably expected to result in a Material Adverse Change;

(v) each of the Preliminary Prospectus and the Prospectus, in both the French and English languages, and the execution and filing of each of the Preliminary Prospectus and the Prospectus, in both the French and English languages, with the Securities Regulators have been duly approved and authorized by all necessary action on the part of the Fund, and each of the Preliminary Prospectus and the Prospectus, in both the French and English languages, has been duly executed by and on behalf of the Fund;

(w) the terms and provisions of, and the attributes attaching to the Fund Units are consistent in all material respects with the descriptions thereof in the Prospectus;

(x) Computershare Trust Company of Canada has been duly appointed as the registrar and transfer agent for the Fund Units;

(y) the Fund Units are and will following the Closing continue to be listed and posted for trading on the TSX;

(z) the form and terms of the certificates for the Fund Units have been approved and adopted by the Trustees and comply with all legal requirements, including the requirements of the TSX, if any, and do not conflict with the Fund Declaration;

(aa) the audited and unaudited consolidated financial statements of the Fund together with the notes thereto included in the Prospectus fairly present in all material respects the consolidated financial position, results of operations, income, earnings and cash flow of the Fund as at the dates and for the periods indicated and do not contain a misrepresentation. Such financial statements have been prepared in accordance with Canadian generally accepted accounting principles on a basis consistent throughout the periods indicated and are in accordance with the books and records of the Fund;

(bb) other than as disclosed in the Financial Information, there are no off-balance sheet transactions, arrangements, obligations (including contingent obligations) or other relationships of the Fund or any of the Wajax Entities with unconsolidated entities or other persons that may have a material current or future effect on the financial condition, changes in financial condition, results of operations, earnings, cash flow, liquidity, capital expenditures, capital resources, or significant components of revenues or expenses of such persons or that would reasonably be expected to be material to an investor in making a decision to purchase the Offered Units;

(cc) except as disclosed in the Prospectus, none of the Wajax Entities have any contingent liabilities in excess of the liabilities that are either reflected or reserved against in the Financial Information which would reasonably be expected to have a Material Adverse Effect;

(dd) the Wajax Entities each maintain a system of internal controls sufficient to provide reasonable assurances that (i) transactions are executed in accordance with management's general or specific authorization; (ii) transactions are recorded as necessary to permit the financial statements to be fairly presented in accordance with Canadian generally accepted accounting principles and to maintain accountability for assets; (iii) access to its assets is permitted only in accordance with management's general or specific authorization; (iv) the amount recorded in the books of the Wajax Entity for assets is compared with existing assets at reasonable intervals and appropriate action is taken with respect to differences; and (v) material information relating to each of the Wajax Entities is made known to those within the Wajax Entity responsible for the preparation of the financial statements during the period in which the financial statements have been prepared and that such material information is disclosed to the public if required by Law within the time periods required by applicable Laws;

(ee) all income and other tax returns of each of the Wajax Entities required by Law to be filed in any jurisdiction have been filed and all taxes shown on such returns or otherwise assessed which are due and payable have been paid, except tax assessments against which appeals have been or will be promptly taken and as to which adequate reserves have been provided and are reflected in the financial statements contained in the Prospectus. Each of the Wajax Entities has made instalments of taxes as and when required. Each of the Wajax Entities has duly and timely withheld from any amount paid or credited by it to or for the account or benefit of any person, including any employee, officer, director, or non-resident person, the amount of all taxes and other deductions required by applicable Law to be withheld and has duly and timely remitted the withheld amount to the appropriate taxing or other authority and has duly and timely issued tax reporting slips or returns in respect of any amount so paid or credited by it as required by applicable Law, except in each such case where such failure would not result in a Material Adverse Effect;

(ff) the Fund is, and has qualified as, a mutual fund trust under the Tax Act from inception;

(gg) the Offered Units have been validly issued and are fully paid and non-assessable Fund Units;

(hh) the Offered Units are not and at the Closing Time will not be “foreign property” as defined in the Tax Act;

(ii) except as disclosed in the Prospectus or employment, option and similar arrangements, to the knowledge of the Fund, none of the trustees, directors, officers or employees of any of the Wajax Entities, any person who owns, directly or indirectly, more than 10% of any class of securities of any of the Wajax Entities, or any associate or affiliate of any of the foregoing, had or has any material interest, direct or indirect, in any material transaction or any proposed material transaction with the Wajax Entities which, as the case may be, materially affects, is material to or could reasonably be expected to materially affect the Wajax Entities, taken as a whole;

(jj) since December 31, 2001, there has not been any reportable event (within the meaning of National Instrument 51-102 of the Canadian Securities Administrators) with the auditors of any of the Wajax Entities;

(kk) to the knowledge of the Fund, no Governmental Authority has issued any order preventing or suspending the use of the Preliminary Prospectus, the Prospectus or any Supplementary Material or preventing or suspending the distribution of the Offered Units or the trading of securities of the Fund generally and the Fund is not aware of any investigation, order, inquiry or proceeding which has been commenced or which is pending, contemplated or threatened by any such authority;

(ll) the minute books and corporate records of the Fund made available to Stikeman Elliott LLP, counsel to the Underwriters in connection with its due diligence investigations for the periods requested are copies of the original minute books and records and contain copies of all proceedings (or certified copies thereof) of the unitholders, the board of trustees and all committees of the board of trustees of the Fund that have been minuted or resolved during such periods and there have been no other meetings, resolutions or proceedings of the shareholders, boards of directors or any committee thereof to the date of review of such corporate records and minute books not reflected in such minute books and other corporate records other than those which are not material in the context of such entities, as applicable;

(mm) there is no person acting or purporting to act at the request of the Fund, who is entitled to any brokerage or agency fee in connection with the sale of the Offered Units;

(nn) other than as disclosed in the Prospectus, there are no restrictions upon or impediment to the declaration or payment of distributions by the Fund to the holders of Fund Units;

(oo) the Wajax Entities enter into derivative transactions for hedging purposes only, all such transactions are disclosed in the Fund's financial statements in accordance with generally accepted accounting principles and the Wajax Entities have no material exposure to any one counterparty;

(pp) the Fund has no knowledge of any material default, or any circumstances which with the giving of notice or lapse of time (or both) would give rise to a material default, by any counterparty to any derivative transaction entered into with any Wajax Entity;

(qq) except as disclosed in the Preliminary Prospectus and the Prospectus, no lender to the Fund or any of its Subsidiaries has reduced, or has given notice to the Fund or any of its Subsidiaries, or has commenced negotiations with the Fund or any of its Subsidiaries regarding the reduction of any credit facility, hedge facility or any other commitment with the Fund or any of its Subsidiaries and the Fund has no knowledge that any lender will not be able to fulfill its obligations and other commitments to the Fund or any of its Subsidiaries; and

(rr) the Fund has filed all documents required to be filed by it with the Securities Regulators under applicable Securities Laws, and no document has been filed on a confidential basis with the Securities Regulators that remains confidential at the date hereof.

Section 7 Representations and Warranties of Empire and ECL

(1) Each of Empire and ECL jointly and severally represents and warrants to the Underwriters, and acknowledges that the Underwriters are relying on such representations and warranties in entering into this Agreement, that (it being understood that any certificate signed by any officer of any of Empire and ECL and delivered to the Underwriters shall be deemed a representation and

warranty by Empire and ECL to the Underwriters as to matters covered thereby):

(a) each Selling Unitholder has the full legal right, power and authorization to sell, assign, transfer and deliver the Offered Units in the manner provided in this Agreement and upon delivery of and payment for the Offered Units, such Selling Unitholder will transfer to the Underwriters good and marketable title to such Offered Units free and clear of all Liens;

(b) as at the date hereof and as at the Closing Date, no Person (except the Underwriters) has or will have any agreement or option, or right or privilege (whether pre-emptive or contractual) capable of becoming an agreement, for the purchase of any of the Offered Units;

(c) this Agreement has been duly authorized, executed and delivered by each of the Selling Unitholders and Empire and constitutes a valid and binding obligation of each of the Selling Unitholders and Empire, enforceable in accordance with their respective terms, provided that enforcement may be limited by bankruptcy, insolvency and other similar laws of general application affecting the enforcement of creditors' rights generally, specific performance, injunctive relief and other equitable remedies may be granted only in the discretion of a court of competent jurisdiction, indemnity and related rights may be limited under applicable law and that provisions relating to severing unenforceable provisions may be limited by applicable law;

(d) the execution, delivery and performance by each of the Selling Unitholders and Empire of this Agreement and the sale of the Offered Units by the Selling Unitholders:

  (i) have been, or will prior to the Closing Time be, duly authorized by all necessary action on the part of each of the Selling Unitholders and Empire, as applicable;

  (ii) do not require the consent, approval, authorization, registration or qualification of or with any Governmental Authority or other third party, except: (i) those which have been or will, prior to the Closing Time be, obtained; and (ii) those as may be required (and will be obtained prior to the Closing Time) under applicable Securities Laws;

  (iii) do not (or will not with the giving of notice, the lapse of time or the happening of any other event or condition) result in a breach or a violation of, or conflict with or result in a default under, or allow any other person to exercise any rights under, any of the terms or provisions of the constating documents, by-laws or resolutions of the board of directors (or any committee thereof) or securityholders of the Selling Unitholders or Empire, or any judgment, decree, order or award of any Governmental Authority having jurisdiction over the Selling Unitholders or Empire, or any agreement, licence or permit to which the Selling Unitholders or Empire are a party or by which their property or assets may be affected; and

(iv) do not and will not result in the violation of any Law;

(e) there is no action, suit, investigation or proceeding, at law or in equity, by any person, nor any arbitration, administrative or other proceeding by or before any Governmental Authority pending or, to the best of its knowledge, threatened against or affecting either of the Selling Unitholders or Empire which questions the sale and delivery of the Offered Units or the validity of any action taken or to be taken by the Selling Unitholders or Empire pursuant to or in connection with this Agreement;

(f) the Prospectus constitutes full, true and plain disclosure of all material facts relating to the Selling Unitholders and contains no misrepresentation relating to the Selling Unitholders; and

(g) neither of the Selling Unitholders is a non-resident of Canada as such term is defined in the Tax Act;

Section 8 Covenants of the Selling Unitholders

(1) Each of Empire and the Selling Unitholders covenants and agrees with the Underwriters that such parties will do or perform all things required to be done by it or performed by it prior to the Closing Date to satisfy all conditions precedent to the delivery of the Offered Units pursuant to this Agreement.

(2) Each of Empire and the Selling Unitholders agree not to issue, offer, sell, contract to sell, grant any option to purchase, transfer, assign or otherwise dispose of any Fund Units or any securities convertible into or exchangeable for any Fund Units, or announce any intention to effect the foregoing other than the Offered Units (other than sales arising from security arrangements previously entered into by Empire), until 90 days following closing of the

Offering without the prior written consent of Scotia Capital and BMO, which consent will not be unreasonably withheld or delayed.

Section 9 Representations and Warranties Regarding the Prospectus and the Supplementary Material

(1) The delivery to the Underwriters of the Preliminary Prospectus, the Prospectus, the Private Placement Memorandum or any Supplementary Material shall constitute the representation and warranty of the Fund to the Underwriters that, at the time of such delivery, the information and statements contained therein (except information and statements relating solely to, or provided by, the Underwriters or the Selling Unitholders in writing):

(a) are true and correct in all material respects;

(b) constitute full, true and plain disclosure of all material facts relating to (i) the Fund and its Subsidiaries on a consolidated basis; and (ii) the Offered Units;

(c) contain no misrepresentation; and

(d) do not omit a material fact (except for information relating solely to the Underwriters or the Selling Unitholders) which is necessary to make the information and statements contained therein not misleading in light of the circumstances in which they were made.

(2) Such delivery shall also constitute the Fund's consent to the use of the Preliminary Prospectus, the Prospectus, or the Supplementary Material, as the case may be by the Underwriters for the purpose of offering and selling the Offered Units in the Qualifying Jurisdictions in accordance with the Securities Laws, as contemplated herein and the consent to the use of the Private Placement Memorandum by the Underwriters for the purpose of selling the Offered Units as contemplated in Section 21. The Underwriters covenant and agree not to make any representation or warranty as to the Fund or the Offered Units other than as set forth in the Preliminary Prospectus, the Prospectus, the Private Placement Memorandum or any Supplementary Material.

Section 10 Covenants of the Fund

The Fund covenants and agrees with each of the Underwriters that:

(a) at the respective times of filing, the Preliminary Prospectus, the Prospectus and any Supplementary Material will fully comply with the requirements of the Securities Laws;

(b) make all necessary filings and use its commercially reasonable best efforts to obtain all necessary regulatory and other consents, exemptions and approvals required in connection with the transactions contemplated by this Agreement;

(c) the Fund will advise the Underwriters of the time when any amendment or supplement to the Prospectus has been filed and, promptly after receiving notice thereof, when the Preliminary Decision Document and the Final Decision Document has been issued, and will provide evidence satisfactory to the Underwriters of any such filing or document;

(d) the Fund will, until the completion of the distribution of the Offered Units, advise the Underwriters, promptly after receiving notice, or obtaining knowledge of (i) the issuance of any order suspending or preventing the use of the Preliminary Prospectus, the Prospectus, the Private Placement Memorandum or any Supplementary Material; (ii) the imposition of cease trading or similar orders affecting the Offered Units, the Fund Units or any other securities of the Fund, or the institution, threatening or contemplation of any proceeding for any such purpose; or (iii) any request made by any Securities Regulator or other authority to amend or supplement the Preliminary Prospectus, the Prospectus, the Private Placement Memorandum or any Supplementary Material. The Fund will use its commercially reasonable best efforts to prevent the issuance of any such order and, if any such order is issued, to obtain the withdrawal thereof as quickly as possible; and

(e) Until the date that is 90 days after the Closing Date, the Fund will not, without the prior written consent (not to be unreasonably withheld or delayed) of Scotia Capital and BMO, directly or indirectly, offer, issue, contract to issue, sell, contract to sell or otherwise dispose of any Fund Units (or any warrants, rights, options or other securities at any time convertible into or exchangeable or exercisable for Fund Units) or any securities which are substantially similar to Fund Units, or enter into any swap or any other agreement or any transaction that transfers the economic consequence of ownership of Fund Units, whether that agreement or transaction may be settled by the delivery of Fund Units or other securities or cash, or in any case agree to do so, or announce publicly its intention to do so, other than pursuant to the Fund’s existing incentive and deferred unit plans and securities or instruments currently outstanding.

Section 11 Underwriters' Fees

(1) In consideration for the Underwriters' services in:

(a) assisting in the preparation of the Preliminary Prospectus, the Prospectus, the Private Placement Memorandum, and the Supplementary Material;

(b) forming and managing banking, selling or other groups in connection with the distribution of the Offered Units;

(c) distributing the Offered Units, both directly and through other registered dealers and brokers; and

(d) all other matters in connection with the issue and sale of the Offered Units;

each of the Selling Unitholders, severally (and not jointly or jointly and severally) agrees to pay to the Underwriters, by certified cheque or wire transfer, a fee (the "**Commission**") equal to 4.5% of the aggregate gross proceeds to such Selling Unitholders from the Offered Units purchased by the Underwriters hereunder (being $1.24875 per Offered Share).

(2) The Fund and the Selling Unitholders hereby acknowledge and agree that the Underwriters may issue a press release relating to the Offering immediately following the execution of this Agreement provided that the press release is reviewed and approved by the Fund and the Selling Unitholders, acting reasonably and in a timely manner.

Section 12 Closing Procedures

(1) The purchase of the Offered Units shall be completed at the Closing Time at the offices of the Fund's Counsel or at such other place as the Underwriters, Selling Unitholders and the Fund may agree. At the Closing Time, the Selling Unitholders will deliver to the Underwriters:

(a) certificates (including an additional certificate in the event that any Offered Units are sold in accordance with Rule 144A under the 1933 Act), evidencing the Offered Units in definitive form, to be registered as directed by the Underwriters; and

(b) such further deliverables as may be contemplated herein or as the Underwriters or the applicable Securities Regulators or the TSX may reasonably require, against payment by the Underwriters, to each Selling Unitholder, of the purchase price for their respective Offered Units by wire transfer to the order of the relevant Selling Unitholder in Canadian same day funds or by such other method as the Selling Unitholders and the Underwriters may agree upon. In addition, the Selling Unitholders shall contemporaneously pay to the Underwriters, a commission as set forth in Section 11(1) for their services in connection with the sale of the Offered Units by wire transfer in Canadian same day funds or by such other method as the Selling Unitholders and the Underwriters may agree upon.

(2) In order to facilitate an efficient and timely closing at the Closing Time the Underwriters may choose to initiate a wire transfer of funds to the Selling Unitholders prior to the Closing Time. If the Underwriters do so, the Selling Unitholders agree that such transfer of funds prior to the Closing Time does not constitute a waiver by the Underwriters of any of the conditions set out in this Agreement. Furthermore, the Selling Unitholders agree that any such funds received from the Underwriters prior to the Closing Time will be held by the Selling Unitholders in trust solely for the benefit of the Underwriters until the Closing Time and if the closing does not occur at the scheduled Closing Time such funds shall be immediately returned by wire transfer to the Underwriters, without interest. Upon the satisfaction of the conditions of closing at the Closing Time the funds held by the Selling Unitholders in trust for the Underwriters shall be deemed to be delivered by the Underwriters to the Selling Unitholders in satisfaction of the obligation of the Underwriters under Section 12 of this Agreement and upon such delivery the trust constituted by this Section 12(2) shall be terminated without further formality.

Section 13 Expenses

(1) Except as otherwise provided herein, Empire (either directly or through the Selling Unitholders) agrees to pay all costs, fees and expenses incidental to the performance of the obligations set forth under this Agreement, whether or not the transactions contemplated herein are consummated, including, without limitation, all costs and expenses incidental to:

(a) the printing or other publication of all documents contemplated hereby, including all costs of printing the Preliminary Prospectus, the Prospectus, the Private Placement Memorandum, and the Supplementary Material;

(b) all arrangements relating to the delivery to the Underwriters of copies of the foregoing documents;

(c) the reasonable fees and disbursements of each of the Selling Unitholders' counsel, the Fund's Counsel, the Fund's Auditors and any other experts or advisors retained by the Fund or the Selling Unitholders;

(d) the translation of the Preliminary Prospectus, the Prospectus and any Supplementary Material;

(e) the preparation, issue and delivery to the Underwriters of any certificates evidencing the Offered Units, including all fees in connection with the services of any registrar and transfer agent for the Offered Units; and

(f) the qualification for distribution of the Offered Units under the Securities Laws in each of the Qualifying Jurisdictions, including all applicable fees and all listing fees relating to the listing of the Offered Units.

(2) Legal fees and disbursements of the Underwriters' Counsel and out of pocket expenses of the Underwriters shall be borne by the Underwriters, provided however, that in the event that the Offering is terminated, other than by reason of default of the Underwriters, Empire (either directly or through the Selling Unitholders) shall reimburse the Underwriters for any and all out-of-pocket expenses, legal fees and disbursement reasonably incurred by the Underwriters.

Section 14 Conditions of the Underwriters' Obligations

(1) The obligation of the Underwriters to purchase the Offered Units at Closing, shall be subject to the following conditions, which are for the exclusive benefit of the Underwriters, any of which may be waived in writing, in whole or in part, by the Underwriters, in their sole discretion:

(a) the Fund will deliver to the Underwriters and their counsel a legal opinion dated and delivered the Closing Date, in form and substance satisfactory to the Underwriters and their counsel, acting reasonably, and counsel to the Fund may rely upon or arrange for separate deliveries of opinions of local counsel where such counsel deems such reliance or delivery proper as to the laws of jurisdictions other than Canada, Ontario and Quebec and as to matters of fact, on certificates of auditors, public officials and officers of the Wajax Entities, with respect to substantially the matters following and such other matters incidental to the Offering and the transactions contemplated by the Prospectus as the Underwriters may reasonably request:

(i) the Fund has been duly created and is existing as an unincorporated, open-ended, limited purpose trust established under the laws of the Province of Ontario pursuant to the Fund Declaration;

(ii) the Trustees of the Fund have the power to carry on the affairs of the Fund as contemplated in the Prospectus in compliance with the terms of the Fund Declaration;

(iii) the Trustees have been appointed as trustees of the Fund in accordance with the terms and provisions of the Fund Declaration and have all the requisite power and authority under the Fund Declaration to execute, deliver and perform, in their capacity as Trustees, their obligations under this Agreement;

(iv) the attributes attaching to the Fund Units are consistent in all material respects with the descriptions thereof in the Prospectus

(v) the beneficial interests of the Fund consist of an unlimited number of Fund Units;

(vi) the form and terms of the definitive certificates representing the Fund Units have been approved and adopted by the Trustees of the Fund and do not conflict with the Fund Declaration or the requirements of the TSX, if any;

(vii) Computershare Trust Company of Canada has been duly appointed as the registrar and transfer agent for the Fund Units (including the Offered Units);

(viii) each of Wajax, Wajax Trust, GP Holdco, GP Trust, Wajax U.S., IDS LP and Kinecor LP have been amalgamated, incorporated, organized, established or created and is existing under the laws of the jurisdiction of its amalgamation, incorporation, organization, establishment or creation, as the case may be, and has all necessary power, capacity and authority to carry on its business or affairs, as the case may be, as contemplated in the Prospectus;

(ix) each of the Preliminary Prospectus and the Prospectus, in both the French and English languages, and the execution and filing of each of the Preliminary Prospectus and the Prospectus, in both the French and English languages, with the Securities Regulators have been duly approved and authorized by all necessary action on the part of the Fund, and each of the Preliminary Prospectus and the Prospectus, in both the French and English languages, has been duly executed by and on behalf of the Fund;

(x) all the laws of the Province of Quebec relating to the use of the French language (other than those relating to verbal communication) will have been complied with in connection with the sale of the Offered Units to purchasers in such province if such purchasers received a copy of the Prospectus and forms of order and confirmation in the French language only or a copy of each of such documents in the French language and in the English language, provided that such documents in the English language may be delivered, without delivery of the French language versions thereof, to physical persons in the Province of Quebec who have expressly requested them in writing;

(xi) all necessary documents have been filed, all requisite proceedings have been taken and all other legal requirements have been fulfilled under the laws of each of the Qualifying Jurisdictions in order to qualify the distribution of the Offered Units through investment dealers or brokers who are registered under applicable legislation of the Qualifying Jurisdictions and who comply with the relevant provisions of such applicable legislation;

(xii) all necessary action has been taken to authorize the execution and delivery by the Fund of this Agreement and the performance of its obligations hereunder and thereunder, and this Agreement has been duly executed and delivered by or on behalf of it and constitutes a legal, valid and binding obligation of the Fund enforceable against it in accordance with its terms, subject to usual and reasonable qualifications;

(xiii) the statements concerning tax matters under the heading "Eligibility for Investment" in the Prospectus are accurate, subject to the assumptions, qualifications, limitations and restrictions set out therein;

(xiv) subject to the qualifications, assumptions and restrictions referred to therein, the section of the Prospectus entitled

"Canadian Federal Income Tax Considerations" fairly describes the principal Canadian federal income tax considerations generally applicable under the Tax Act to a holder of Offered Units who acquires such securities pursuant to the Prospectus and who for the purposes of the Tax Act is resident in Canada, holds the Offered Units as capital property and deals at arm's length with the Fund and the Underwriters.

(b) In the event of the offering and sale of Offered Units in the United States pursuant to Section 21 hereof, the Underwriters shall have received an opinion from the Fund's special United States counsel, in form and substance reasonably satisfactory to the Underwriters and its counsel and addressed to the Underwriters, to the effect that it is not necessary to register under the 1933 Act the offer, sale and delivery to the Underwriters of the Offered Units, and the initial resale by the Underwriters of the Offered Units to Qualified Institutional Buyers in the United States in the manner contemplated by this Agreement and the Private Placement Memorandum.

(c) Empire and ECL will deliver to the Underwriters and their counsel a legal opinion dated and delivered the Closing Date, in form and substance satisfactory to the Underwriters and their counsel, acting reasonably, and counsel to Empire and ECL may rely upon or arrange for separate deliveries of opinions of local counsel where such counsel deems such reliance or delivery proper as to the laws of jurisdictions other than Canada, Prince Edward Island, Nova Scotia, New Brunswick and Newfoundland and Labrador and as to matters of fact, on certificates of auditors, public officials and officers of Empire and ECL, with respect to substantially the matters following and such other matters incidental to the Offering and the transactions contemplated by the Prospectus as the Underwriters may reasonably request:

(i) each of Empire and ECL have been incorporated and is existing under the laws of the jurisdiction of its incorporation and has all the necessary power, capacity and authority to own or lease its properties and assets, to enter into and perform its obligations under this Agreement and to carry on the transactions contemplated;

(ii) the execution, delivery and performance by Empire and ECL of this Agreement:

(A) has not resulted in a breach of or default under, and did not conflict with any of the terms, conditions or provisions of the constating documents or by-laws of any of Empire or ECL or any resolutions of the directors (or any committee thereof) or the shareholders of Empire or ECL;

(B) has been duly authorized by all necessary corporate action on its part; and

(C) will not result in the violation of any applicable law; and

(iii) this Agreement has been duly executed and delivered by or on behalf of each of Empire, ECL and the Foundation and constitutes a legal, valid and binding obligation of each of Empire, ECL and the Foundation enforceable against it in accordance with its respective terms, provided that enforceability may be limited by bankruptcy, insolvency and other similar laws affecting creditors' rights generally, that specific performance, injunctive relief and other equitable remedies may only be granted in the discretion of a court of competent jurisdiction and that rights of indemnity and/or contribution set out in this Agreement may be limited by applicable law and the ability to sever unenforceable terms may be limited by applicable law.

(d) the Underwriters will have received from their counsel, Stikeman Elliott LLP, a legal opinion dated and delivered the Closing Date, in form and substance satisfactory to the Underwriters, with respect to those matters as the Underwriters may reasonably require relating to the distribution of the Offered Units. In connection with that opinion, counsel to the Underwriters may rely on the opinion of counsel to the Fund and any underlying certificates and, with respect to matters governed by the laws of jurisdictions other than the Province of Ontario, British Columbia, Alberta and Quebec, on the opinions of local counsel to the Fund;

(e) the Underwriters will have received certificates dated the Closing Date signed by those trustees or senior officers, as the case may be, of each of the Wajax Entities as may be acceptable to the Underwriters, acting reasonably, in form and content satisfactory to the Underwriters, acting reasonably, with respect to:

(i) the constating documents of each of the Wajax Entities;

(ii) the resolutions of the Trustees relevant to the issue and sale of the Offered Units pursuant to this Agreement and the authorization of this Agreement and the transactions contemplated thereby; and

(iii) the incumbency and signatures of trustees or signing officers, as the case may be, of each of the Wajax Entities;

(f) the Underwriters will have received a certificate dated the Closing Date addressed to the Underwriters and signed by those senior officers of each of Empire and ECL as may be acceptable to the Underwriters, acting reasonably, (in each case for and on behalf of such entity and without personal liability) in form and content satisfactory to the Underwriters, acting reasonably, with respect to:

(i) the constating documents of each of Empire and ECL;

(ii) the resolutions of the directors of each of Empire and ECL relevant to the sale of the Offered Units in accordance with this Agreement, the authorization of this Agreement and the transactions contemplated by this Agreement and authorizing the execution of this Agreement;

(iii) the incumbency and signatures of signing officers of each of Empire and ECL;

(g) the Underwriters shall have received at the Closing Time a comfort letter dated the Closing Date from the Fund's auditors addressed to the Underwriters, the Trustees of the Fund and the Selling Unitholders, in form and substance satisfactory to the Underwriters, acting reasonably, similar to the comfort letter to be delivered to the Underwriters pursuant to Section 4(3)(e) with such changes as may be necessary to bring the information therein forward to a date which is no earlier than two Business Days prior to the Closing Date, which changes shall be acceptable to the Underwriters, acting reasonably;

(h) the Fund will deliver to the Underwriters, at the Closing Time, a certificate dated the Closing Date addressed to the Underwriters and signed by two senior officers of the Fund (for and on behalf of the Fund and without personal liability) with respect to the following matters:

(i) it has complied with all the covenants and satisfied all the terms and conditions of this Agreement on its part to be complied with and satisfied at or prior to the Closing Time;

(ii) subsequent to the respective dates as at which information is given in the Prospectus, there has not been any Material Adverse Change, or any development which would reasonably be expected to result in a Material Adverse Change, other than as disclosed in the Prospectus or any Supplementary Material, as the case may be;

(iii) subsequent to the respective dates as at which information is given in the Prospectus, no transaction out of the ordinary course of business has been entered into by any of the Wajax Entities, or has been approved by the management of any of them, which results or would reasonably be expected to result in a Material Adverse Change, other than as disclosed in the Prospectus or any Supplementary Material, as the case may be;

(iv) the representations and warranties of the Fund contained in this Agreement are true and correct in all material respects as at the Closing Time, with the same force and effect as if made on and as at the Closing Time, after giving effect to the transactions contemplated by this Agreement except, in each case, for those representations and warranties that are subject to a materiality qualification, which will be true and correct in all respects, and except in respect of any representations and warranties that are to be true and correct as a specified date, in which case, they will be true and correct as of that date only;

(v) no order, ruling or determination having the effect of ceasing the trading or suspending the sale of the Fund Units has been issued and no proceedings for that purpose have been instituted or are pending or, to the knowledge of the senior officers signing the certificates, contemplated or threatened by any Governmental Authority; and

(vi) the representations and warranties of the Fund arising by reason of the delivery of the Preliminary Prospectus, the Prospectus, and any Supplementary Material are true and correct on and as at the Closing Time as if those documents had been dated the Closing Date and delivered to the Underwriters on that date;

(i) Each of Empire and ECL will deliver to the Underwriters, at the Closing Time, a certificate dated the Closing Date addressed to the

Underwriters and signed by those senior officers of each of Empire and ECL as may be acceptable to the Underwriters, acting reasonably, (in each case for and on behalf of such entity and without personal liability) in form and content satisfactory to the Underwriters, acting reasonably, with respect to the following matters:

(i) Empire and ECL have complied with all covenants and satisfied all terms and conditions of the agreement on its part to be complied with and satisfied at or prior to the Closing Time;

(ii) no order, ruling or determination having the effect of ceasing, suspending or restricting trading in the Offered Units has been issued against or in respect of Empire or ECL and no proceedings, investigations or inquiries for such purpose are commenced or, to the best of the knowledge, information and belief of the declarants contemplated or threatened; and

(iii) the representations and warranties of Empire and ECL arising by reason of the delivery of the Preliminary Prospectus, the Prospectus, and any Supplementary Material are true and correct on and as at the Closing Time as if those documents had been dated the Closing Date and delivered to the Underwriters on that date

and all of those matters will in fact be true and correct as at the Closing Time;

(j) the Offered Units are listed and posted for trading on the TSX; and

(k) the Underwriters will have received such other materials or documents in form and substance satisfactory to the Underwriters as the Underwriters may reasonably request.

Section 15 Indemnification

(1) The Fund agrees to protect, hold harmless and indemnify each of the Underwriters and their respective affiliates and their respective directors, officers, employees, shareholders and agents (collectively, the "**Indemnified Parties**") from and against all losses (other than losses of profit in connection with the distribution of the Offered Units), claims, damages, liabilities, costs and expenses, including all amounts paid to settle actions or satisfy judgments or awards and all legal fees and expenses (collectively, a "**Claim**") caused by or arising directly or indirectly by reason of:

(a) any breach of or default under any representation, warranty, covenant or agreement of the Fund in this Agreement or any other document to be delivered by the Fund pursuant hereto or the failure of the Fund to comply with any of its obligations hereunder or thereunder;

(b) any information or statement (except any information or statement relating solely to the Underwriters or the Selling Unitholders, and furnished by such party in writing specifically for use in such document) contained in any of the Preliminary Prospectus, the Prospectus, or any Supplementary Material or any other certificate, document or material filed or delivered by or on behalf of the Fund pursuant to this Agreement (collectively, the "**Offering Documents**") being or being alleged to be a misrepresentation;

(c) any omission or alleged omission to state in any of the Offering Documents any fact, whether material or not (except facts relating solely to the Underwriters or the Selling Unitholders), required to be stated therein or necessary to make any statement therein not misleading in light of the circumstances under which it was made;

(d) any order made or any inquiry, investigation or proceeding instituted, threatened or announced by any Governmental Authority, based upon any untrue statement, omission or misrepresentation or alleged untrue statement, omission or misrepresentation (except a statement, omission or misrepresentation relating solely to the Underwriters or the Selling Unitholders and furnished by such party in writing specifically for use in such document) contained in any of the Offering Documents, based upon any actual or alleged failure to comply with Securities Laws or preventing or restricting the trading in or the sale or distribution of the Fund Units; or

(e) any non-compliance or alleged non-compliance by the Fund with any applicable Securities Laws in connection with the transactions contemplated herein;

and will reimburse the Indemnified Parties for all costs, charges and expenses, as incurred, which any of them may pay or incur in connection with investigating or disputing any Claim or action related thereto.

(2) Empire agrees to hold harmless and indemnify each Indemnified Party from and against all losses (including in connection with the Offered Units sold by each of the Selling Unitholders but excluding losses of profit in connection with the distribution of the Offered Units) and Claims (including in

connection with the Offered Units sold by each of the Selling Unitholders) caused by or arising directly or indirectly by reason of:

(a) any breach of or default under any representation, warranty, covenant or agreement of the Selling Unitholders in this Agreement or any other document to be delivered pursuant hereto or the failure of any such party to comply with any of its obligations hereunder or thereunder;

(b) any information or statement relating to Selling Unitholder Matters contained in any of the Offering Documents being or being alleged to be a misrepresentation;

(c) any omission or alleged omission to state in any of the Offering Documents any fact relating to the Selling Unitholders, whether material or not, required to be stated therein or necessary to make any statement therein not misleading in light of the circumstances under which it was made;

(d) any order made or any inquiry, investigation or proceeding instituted, threatened or announced by any Governmental Authority, based upon any untrue statement, omission or misrepresentation or alleged untrue statement, omission or misrepresentation contained in any of the Offering Documents relating to the Selling Unitholders or to Selling Unitholder Matters, based upon any actual or alleged failure to comply with Securities Laws or preventing or restricting the trading in or the sale or distribution of the Offered Units; or

(e) any non-compliance or alleged non-compliance by any of the Selling Unitholders with any applicable Securities Laws in connection with the transactions contemplated herein;

and will reimburse the Indemnified Parties for all costs, charges and expenses, as incurred, which any of them may pay or incur in connection with investigating or disputing any Claim or action related thereto.

(3) If any Claim contemplated by this section is asserted against any of the Indemnified Parties, or if any potential Claim contemplated by this section comes to the knowledge of any of the Indemnified Parties, the Indemnified Party concerned will notify in writing the Indemnifying Parties, as soon as reasonably practicable, of the nature of the Claim (provided that any failure to so notify will not affect the liability of an Indemnifying Party under this section unless and to the extent that such failure prejudices the ability to defend such claim). The Indemnifying Parties will, subject to the following, be entitled (but not required) to assume the defence on behalf of the Indemnified

Party of any suit brought to enforce the Claim; provided that the defence will be through legal counsel selected by the Indemnifying Parties and acceptable to the Indemnified Party, acting reasonably, and no admission of liability and no settlement of any Claim will be made by the Indemnifying Parties or the Indemnified Party without, in each case, the prior written consent of all the Indemnified Parties and the Indemnifying Parties affected. An Indemnified Party will have the right to employ separate counsel in any such suit and participate in its defence but the fees and expenses of that counsel will be at the expense of the Indemnified Party unless:

(a) the Indemnifying Parties fail to assume the defence of the suit on behalf of the Indemnified Party within ten Business Days of receiving notice of the suit or, having assumed such defence, failed to pursue it diligently;

(b) the employment of that counsel has been authorized by the Indemnifying Parties; or

(c) the named parties to the suit (including any added or third parties) include the Indemnified Party and one or more of the Indemnifying Parties and the Indemnified Party has been advised in writing by counsel that there are legal defences available to the Indemnified Party that are different or in addition to those available to such Indemnifying Parties or that representation of the Indemnified Party by counsel for the Indemnifying Parties is inappropriate as a result of the potential or actual conflicting interests of those represented;

(4) The rights of indemnity contained in this Section 15 will not enure to the benefit of the Underwriters if the Fund or the Selling Unitholders (as the case may be) has complied with the provisions of Section 4 (in relation to Supplementary Material) and Section 5 and the person asserting any Claim contemplated by this Section 15 was not provided with a copy of any Prospectus or Supplementary Material which corrects any misrepresentation which is the basis of the Claim and which is required under Securities Laws to be delivered to that person by the Underwriters or the selling firms.

(5) The parties hereby acknowledge and agree that, with respect to Section 15 and Section 16 of this Agreement, the Underwriters are contracting on their own behalf and as trustees for their affiliates', and their and their affiliates' respective directors, officers, shareholders, employees and agents (collectively, the **"Beneficiaries"**). In this regard, the Underwriters will act as trustees for the Beneficiaries of the covenants of the Indemnifying Parties under Section 15 and Section 16 of this Agreement with respect to the

Beneficiaries and accept these trusts and will hold and enforce those covenants on behalf of the Beneficiaries.

(6) Each of the Fund and Empire hereby waives any right it may have of first requiring an Indemnified Party to proceed against, enforce any other right, power, remedy or security or claim payment from, any other Indemnifying Party or expert named in the Prospectus before claiming against it under this Section 15.

(7) The Foundation shall have no claims or rights against the Underwriters pursuant to Section 15 and Section 16 of this Agreement, provided that the Underwriters hereby extend such rights to Empire.

Section 16 Contribution.

(1) In order to provide for just and equitable contribution in circumstances in which an indemnity provided in Section 15 of this Agreement would otherwise be available in accordance with its terms but is, for any reason not solely attributable to any one or more of the Indemnified Parties, held to be unavailable to or unenforceable by the Indemnified Parties or enforceable otherwise than in accordance with its terms, the Indemnifying Parties will contribute to the aggregate of all claims, damages, liabilities, costs and expenses and all losses (other than losses of profits in connection with the distribution of the Offered Units) of the nature contemplated in Section 15 of this Agreement and suffered or incurred by the Indemnified Parties in proportions reflective of the relative benefits received by the Indemnifying Parties and any Indemnified Party, as well as their relative fault and any other relevant equitable considerations, as determined by a court of competent jurisdiction; provided that the Underwriters will not in any event be liable to contribute, in the aggregate, any amount in excess of the total fee or any portion actually received by them in accordance with Section 11. No party who has been determined by a court of competent jurisdiction in a final judgment that has become non-appealable to have engaged in any fraud, fraudulent misrepresentation or negligence will be entitled to claim contribution from any person who has not been determined by a court of competent jurisdiction in a final judgment that has become non-appealable to have engaged in that fraud, fraudulent misrepresentation or negligence.

(2) In the event that the Indemnifying Party is held to be entitled to contribution from the Underwriters under the provisions of any statute or at law, the Indemnifying Party shall be limited to contribution in an amount not exceeding the lesser of:

(a) the portion of the full amount of the loss or liability giving rise to such contribution for which the Underwriters are responsible, as determined above; and

(b) the amount of the aggregate fee actually received by the Underwriters from the Indemnifying Party hereunder.

(3) The rights to indemnity and contribution provided in Section 15 and Section 16 will be in addition to and not in derogation of any other right which the Indemnified Parties may have by statute or otherwise at law.

(4) The obligations under Section 15 and Section 16 shall survive the completion of transactions contemplated under this Agreement.

Section 17 Survival

(1) The respective representations, warranties, agreements, covenants, indemnities and contribution obligations of the Fund, the Selling Unitholders and the Underwriters set forth in this Agreement shall survive the purchase by the Underwriters of the applicable Offered Units and remain in full force and effect for 3 years following the Closing Date regardless of: (i) any investigation made by or on behalf of the Fund, the Selling Unitholders, the Underwriters or any of their respective officers or directors; (ii) delivery of and payment for the Offered Units; and (iii) any subsequent disposition by the Underwriters of the Offered Units.

(2) The provisions of Section 17(1) shall not apply if the Underwriters do not purchase any of the Offered Units. In such circumstances there shall be no further liability of the Fund, Empire or the Selling Unitholders to the Underwriters under the terms of this Agreement except in respect of any liability that may have arisen or may thereafter arise under Section 13 or Section 15.

Section 18 Obligations of Underwriters

(1) Subject to the terms hereof, the obligations of the Underwriters to purchase the Offered Units at the Closing Time shall be several and not joint and several and their respective obligations and rights in this regard shall be in the following percentages:

Scotia Capital Inc.	40.0%
BMO Nesbitt Burns Inc.	40.0%
TD Securities Inc.	10.0%

CIBC World Markets Inc.	10.0%
Total	100%

(2) If one or more of the Underwriters should default in its obligations to purchase its respective percentage of the Offered Units, as applicable (the "**Defaulted Securities**"), at Closing Time, the non-defaulting Underwriters shall have the right, within 24 hours thereafter, to make arrangements for one or more of the non-defaulting Underwriters, or any other underwriters, to purchase all but not less than all of the Defaulted Securities in such amounts as may be agreed upon and upon the terms herein set forth; if, however, the non-defaulting Underwriters shall not have completed such arrangements within such 24 hour period, then this Agreement shall terminate without liability on the part of any non-defaulting Underwriter.

(3) In the event of any default by an Underwriter as described in this Section 18, the non-defaulting Underwriter shall have the right to postpone the Closing Date for not more than three (3) business days in order that any changes in the arrangements or documents for the purchase and delivery of the Offered Units may be made. Nothing in this Section 18 shall require the Selling Unitholders to sell less than all of the Offered Units, as applicable, or relieve any defaulting Underwriter from liability in respect of its default hereunder to the Fund, the Selling Unitholders and to the non-defaulting Underwriters.

Section 19 Termination

(1) In addition to any other remedies which may be available to the Underwriters, any Underwriter shall be entitled, without liability, at such Underwriter's sole discretion in accordance with Section 19(2), to terminate and cancel such Underwriter's obligations under this Agreement in respect of any Offered Units not then purchased under this Agreement by written notice to that effect given to the Fund and the Selling Unitholders prior to the Closing Time if, at or prior to the Closing Time:

(a) there shall occur or be discovered any material change (actual, anticipated, contemplated or threatened, financial or otherwise) in the Condition of the Wajax Entities or any change in a material fact such as is contemplated in Section 5 hereof, or the Underwriters become aware of any undisclosed material information, which in the opinion of an Underwriter, acting reasonably, could be expected to have a material adverse effect on the market price or value of the Offered Units;

(b) there shall develop, occur or come into effect or existence, or be announced, any event, action, state, condition or occurrence of national or international consequence, acts of hostilities or escalation thereof or other calamity or crisis or any change or development involving a prospective change in national or international political, financial or economic conditions or any law, action, regulation or other occurrence of any nature whatsoever which, in the opinion of an Underwriter, acting reasonably, materially adversely effects or involves, or is expected to materially adversely effect or involve, financial markets generally or the Condition of the Wajax Entities; or

(c) there should occur or commence, or be announced or threatened, any inquiry, action, suit, investigation or other proceeding (whether formal or informal); or any order is issued by any governmental authority; or any law or regulation is promulgated, changed or announced; which in the opinion of an underwriter, acting reasonably, is expected to prevent or materially restrict the trading in or the distribution of the Offered Units or would be expected to have a material adverse effect on the market price or value of the Offered Units.

(2) The rights of termination contained in this Section 19 may be exercised by the Underwriters (or any of them) and are in addition to any other rights or remedies the Underwriters (or any of them) may have in respect of any default, act or failure to act or non-compliance by the Fund or Selling Unitholders in respect of any of the matters contemplated by this Agreement or otherwise. A notice of termination given by an Underwriter under this Section 19 shall not be binding upon the other Underwriters. In the event that one or more, but not all of the Underwriters shall exercise the right of termination herein, the other Underwriter(s) shall have the right, but shall not be obligated, to purchase on a *pro rata* basis in accordance with Section 18(1) (or on such other basis as may be agreed to by the remaining Underwriters) all of the Offered Units which would otherwise have been purchased by the Underwriter(s) which has so terminated. Nothing in this Section 19 shall oblige the Selling Unitholders to sell to the Underwriters less than all of the Offered Units.

Section 20 Due Diligence

Prior to the filing of the Preliminary Prospectus, the Prospectus and any Supplementary Materials, the Fund and the Selling Unitholders shall allow the Underwriters to participate fully in the preparation of the Preliminary Prospectus, the Prospectus and such Supplementary Materials, respectively, and shall allow the Underwriters to conduct all due diligence investigations which the Underwriters may reasonably require in order to fulfil their obligations as underwriters and in order to enable the Underwriters to responsibly execute the certificate required to be executed by the Underwriters in the Preliminary Prospectus, Prospectus and any Supplementary Materials.

Section 21 United States Offers and Sales

(1) The Underwriters intend to offer and sell the Offered Units within the United States on the terms and subject to the conditions of this Section 21. In that connection, the Fund hereby represents and warrants to, and covenants and agrees with, the Underwriters and their U.S. affiliates that:

(a) the Fund is a **"foreign issuer"** within the meaning of Regulation S with no Substantial U.S. Market Interest with respect to the Offered Units; and the Fund is not required and does not own or control an open-end investment company, closed-end investment company, unit investment trust or face-amount certificate company that is or is required, to be registered under Section 8 of the United States *Investment Company Act of 1940*, as amended;

(b) the documents referred to in Section 21(5)(f), at the respective dates thereof, did not contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading. Such documents, at the date hereof, do not and at the Closing Time will not (and any amendment or supplement thereto or final form thereof, at the date thereof and at the Closing Time will not) contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading;

(c) none of the Fund, the Selling Unitholders or their affiliates or anyone acting on its or their behalf (other than the Underwriters, their affiliates or any person acting on their behalf, as to which no representation is made) directly or indirectly, has taken or will take any action in violation of Regulation M in connection with the offer and sale of the Offered Units;

(d) except as will be disclosed in the Private Placement Memorandum, the Fund is not and, as a result of the issue and sale of the Offered Units and the application of the proceeds thereof, will not become a **"passive foreign investment company"** within the meaning of the United States Internal Revenue Code of 1986, as amended;

(e) none of the Fund, the Selling Unitholders or their affiliates or any person acting on its or their behalf (other than the Underwriters, their affiliates or any person acting on their behalf, in respect of which no representation is made) has engaged or will engage in any Directed Selling Efforts in the United States with respect to the Offered Units or has taken or will take any action (including sale of securities into the United States) that would cause the exemption afforded by Rule 144A or Regulation S to be unavailable for offers and sales of the Offered Units pursuant to this Agreement;

(f) the Offered Units satisfy the requirements set forth in Rule 144A(d)(3) under the 1933 Act in that they were not, when issued, of the same class as securities listed on a national securities exchange in the United States, quoted in an automated inter-dealer quotation system in the United States, or convertible or exchangeable at an effective conversion premium (calculated as specified in paragraph (a)(6) of Rule 144A) of less than 10% for securities so listed or quoted; and

(g) none of the Fund, the Selling Unitholders or their affiliates or any person acting on its or their behalf (other than the Underwriters, their affiliates or any person acting on their behalf, in respect of which no representation is made) has offered or will offer to sell, or has solicited or will solicit offers to buy, the Offered Units in the United States by means of any form of general solicitation or general advertising (as those terms are used in Regulation D) or in any manner involving a public offering within the meaning of Section 4(2) of the 1933 Act.

(2) The Underwriters acknowledge that none of the Offered Units has been or will be registered under the 1933 Act or any applicable state securities laws and that the Offered Units are being offered and sold outside the United States in reliance upon an exemption from registration under the 1933 Act provided by Regulation S and may not be offered or sold within the United States except pursuant to Rule 144A and exemptions from applicable state securities laws.

(3) The Underwriters acknowledge that any Offered Units sold in the United States will be first purchased by the Underwriters or affiliates thereof and resold in the United States in accordance with the provisions of this Section 21.

(4) The Underwriters shall require each selling group member to agree, for the benefit of the Fund, to comply with, and shall use their best efforts to ensure that each such member complies with, the provisions of this Section 21 as if such provisions applied to such selling group member.

(5) Each of the Underwriters agrees with the Fund that:

(a) it is an "**accredited investor**" within the meaning of Regulation D;

(b) all offers and sales of the Offered Units in the United States will be effected in compliance with registration and qualification provisions of applicable state securities ("**blue sky**") laws and by or through its U.S. broker-dealer affiliates who are registered in the United States in accordance with all applicable U.S. broker-dealer registration and other requirements;

(c) its U.S. affiliate(s) selling Offered Units in the United States is a Qualified Institutional Buyer within the meaning of Rule 144A;

(d) (A) it will solicit (and will cause its U.S. affiliate(s) to solicit) offers for the Offered Units in the United States only from, and will offer (and cause its U.S. affiliate(s) to offer) the Offered Units only to, persons who it reasonably believes to be Qualified Institutional Buyers in accordance with Rule 144A, (B) it will not, and will cause its U.S. affiliates not to, sell any Offered Units in the United States except in definitive, fully registered form to a limited number of institutions, each of which it reasonably believes to be a Qualified Institutional Buyer in accordance with Rule 144A, and (C) it will not sell (and will cause its U.S. affiliate(s) not to sell) any Offered Units (other than in accordance with Rule 144A) to any purchaser unless it and any person acting on its behalf reasonably believe that at the time the order to purchase such shares was placed, the purchaser was outside the United States;

(e) it will inform (and cause its U.S. affiliate(s) to inform) all purchasers of the Offered Units in the United States that the Offered Units have not been and will not be registered under the 1933 Act and are being sold to them without registration under the 1933 Act in reliance on Rule 144A;

(f) it will deliver, through its U.S. affiliate(s), a copy of each of the preliminary Private Placement Memorandum (if any) and the final Private Placement Memorandum including (i) the Preliminary Prospectus, Prospectus or Supplementary Material, as applicable, relating to the Offered Units; and (ii) the documents incorporated by reference therein to each person in the United States purchasing Offered Units from it; the Private Placement Memorandum for the Offering of the Offered Units in the United States shall contain disclosure in substantially the form set forth below:

"THESE UNITS HAVE NOT BEEN AND WILL NOT BE REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "1933 ACT"), OR ANY STATE SECURITIES LAWS, AND MAY NOT BE OFFERED OR SOLD WITHIN THE UNITED STATES EXCEPT THAT UNITS MAY BE OFFERED AND SOLD TO PERSONS REASONABLY BELIEVED BY THE UNDERWRITERS TO BE QUALIFIED INSTITUTIONAL BUYERS (AS DEFINED IN RULE 144A UNDER THE 1933 ACT) IN RELIANCE ON THE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE 1933 ACT PROVIDED BY RULE 144A AND EXEMPTIONS FROM ANY APPLICABLE STATE SECURITIES LAWS. EACH PROSPECTIVE PURCHASER IS HEREBY NOTIFIED THAT THE OFFER AND SALE OF THE UNITS TO IT ARE BEING MADE IN RELIANCE UPON THE EXEMPTION FROM THE PROVISIONS OF SECTION 5 OF THE 1933 ACT PROVIDED BY RULE 144A.

THE UNITS WILL BE "RESTRICTED SECURITIES" AS DEFINED IN RULE 144 UNDER THE 1933 ACT AND MAY NOT BE REOFFERED OR RESOLD OR OTHERWISE TRANSFERRED EXCEPT (A) TO THE FUND, (B) OUTSIDE THE UNITED STATES IN ACCORDANCE WITH RULE 904 OF REGULATION S UNDER THE 1933 ACT AND APPLICABLE LOCAL LAWS AND REGULATIONS, (C) INSIDE THE UNITED STATES IN ACCORDANCE WITH (1) RULE 144A UNDER THE 1933 ACT TO A PERSON WHO THE SELLER REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER PURCHASING FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER TO WHOM NOTICE IS GIVEN THAT THE OFFER, SALE OR TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A, (2) RULE 144 UNDER THE 1933 ACT, IF AVAILABLE, OR (3) ANOTHER EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE 1933 ACT OR (D) UNDER AN EFFECTIVE REGISTRATION STATEMENT UNDER THE 1933 ACT, AND IN EACH CASE IN ACCORDANCE WITH ANY APPLICABLE STATE SECURITIES LAWS OR SECURITIES LAWS OF ANY OTHER APPLICABLE JURISDICTION AND IN THE CASE OF (C)(3) PROVIDED IT HAS FURNISHED TO THE FUND AND COMPUTERSHARE TRUST COMPANY OF CANADA AN OPINION OF COUNSEL OF RECOGNIZED STANDING, OR OTHER EVIDENCE, REASONABLY SATISFACTORY TO THE FUND TO SUCH EFFECT.

THE UNITS HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE UNITED STATES SECURITIES AND EXCHANGE

COMMISSION OR BY ANY STATE SECURITIES COMMISSION OR REGULATORY AUTHORITY, NOR HAVE ANY OF THE FOREGOING AUTHORITIES OR ANY CANADIAN PROVINCIAL SECURITIES COMMISSION PASSED ON THE ACCURACY OR ADEQUACY OF THIS U.S. PLACEMENT MEMORANDUM OR THE CANADIAN PROSPECTUS. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

Each purchaser of Offered Units offered hereby will, by its purchase of such Offered Units, be deemed to have represented and agreed for the benefit of the Fund, the Selling Unitholders, the Underwriters and their U.S. affiliates as follows:

(i) it is aware that the Offered Units have not been and will not be registered under the 1933 Act or the securities laws of any state and that the sale contemplated hereby is being made to Qualified Institutional Buyers in reliance on Rule 144A and exemptions under applicable state securities laws;

(ii) it is authorized to purchase the Offered Units;

(iii) it is a Qualified Institutional Buyer and is acquiring the Offered Units for its own account or for the account of a Qualified Institutional Buyer as to which it exercises sole investment discretion and not with a view to any resale, distribution, or other disposition of the Offered Units in violation of U.S. federal or state securities laws;

(iv) it acknowledges that it has not purchased the Offered Units as a result of any general solicitation or general advertising, including advertisements, articles, notices, or other communications published in any newspaper, magazine, internet or similar media, or broadcast over internet, radio or television, or any seminar or meeting whose attendees have been invited by general solicitation or general advertising;

(v) it understands that the Offered Units are **"restricted securities"** as defined in Rule 144 under the 1933 Act and that if it decides to offer, sell or otherwise transfer such securities, such securities may be offered, sold or otherwise transferred only (A) to the Fund, (B) outside the United States in accordance with Rule 904 of Regulation S under the 1933 Act, (C) inside the United States in accordance with (i) Rule 144A to a person who the seller reasonably believes is a Qualified Institutional Buyer purchasing for its own account or for the account of a Qualified Institutional Buyer to whom notice is given that the offer, sale or transfer is being made in reliance on Rule 144A, (ii) the exemption from registration under the 1933 Act provided by Rule 144 thereunder, if available, or (iii) another exemption from the registration requirements of the 1933 Act, or (D) under an effective registration statement under the 1933 Act, and in each case in accordance with any applicable state securities laws in the United States or securities laws of any other applicable jurisdiction and in the case of (C)(iii) provided it has furnished to the Fund and Computershare Trust Company of Canada an opinion of counsel of recognized standing, or other evidence, reasonably satisfactory to the Fund to such effect;

(vi) it understands that all certificates representing the Offered Units sold in the U.S. Placement shall bear the following legend:

THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "1933 ACT"), OR UNDER ANY STATE SECURITIES LAWS. THE HOLDER HEREOF, BY PURCHASING SUCH SECURITIES, AGREES FOR THE BENEFIT OF WAJAX INCOME FUND (THE "FUND") THAT SUCH SECURITIES MAY BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED ONLY (A) TO THE FUND, (B) OUTSIDE THE UNITED STATES IN ACCORDANCE WITH RULE 904 OF REGULATION S UNDER THE 1933 ACT, (C) INSIDE THE UNITED STATES IN ACCORDANCE WITH (1) RULE 144A UNDER THE 1933 ACT, (2) RULE 144 UNDER THE 1933 ACT, IF AVAILABLE, OR (3) ANOTHER EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE 1933 ACT OR (D) UNDER AN EFFECTIVE REGISTRATION STATEMENT UNDER THE 1933 ACT, AND IN EACH CASE IN ACCORDANCE WITH ANY APPLICABLE STATE SECURITIES LAWS OR SECURITIES LAWS OF ANY OTHER APPLICABLE JURISDICTION AND IN THE CASE OF (C)(3) PROVIDED IT HAS FURNISHED TO THE FUND AND COMPUTERSHARE TRUST COMPANY OF CANADA AN OPINION OF COUNSEL OF RECOGNIZED STANDING, OR OTHER EVIDENCE, REASONABLY SATISFACTORY TO THE COMPANY TO SUCH EFFECT. DELIVERY OF THIS CERTIFICATE MAY NOT CONSTITUTE "GOOD DELIVERY" IN SETTLEMENT OF

TRANSACTIONS ON STOCK EXCHANGES IN CANADA. A NEW CERTIFICATE BEARING NO LEGEND, DELIVERY OF WHICH WILL CONSTITUTE "GOOD DELIVERY", MAY BE OBTAINED FROM COMPUTERSHARE TRUST COMPANY OF CANADA UPON DELIVERY OF THIS CERTIFICATE AND A DULY EXECUTED DECLARATION, IN A FORM SATISFACTORY TO COMPUTERSHARE TRUST COMPANY OF CANADA AND THE COMPANY, TO THE EFFECT THAT THE SALE OF THE SECURITIES REPRESENTED HEREBY IS BEING MADE IN COMPLIANCE WITH RULE 904 OF REGULATION S UNDER THE 1933 ACT;

provided that, if Offered Units are being sold under clause (B) above, the legend may be removed by providing a declaration to Computershare Trust Company of Canada, as registrar and transfer agent, to the effect set forth in Exhibit A (or in such other form as Computershare Trust Company of Canada or the Fund may prescribe from time to time), and provided further that, if any such Offered Units are being sold under paragraph (C)(3) above, the legend may be removed by delivery to Computershare Trust Company of Canada of an opinion of counsel, of recognized standing, or other evidence, reasonably satisfactory to the Fund, to the effect that such legend is no longer required under applicable requirements of the 1933 Act or state securities laws, provided, however, that such legend may be removed at such time as the directors of the Fund shall determine;

(vii) it consents to the Fund making a notation in its records or giving instructions to any transfer agent of the Offered Units in order to implement the restrictions on transfer set forth herein and in the Private Placement Memorandum; and

(viii) it understands and acknowledges that it is making the representations, warranties and agreements contained in the Private Placement Memorandum with the intent that they may be relied upon by the Fund, the Selling Unitholders, the Underwriters and their U.S. affiliates in determining its eligibility or (if applicable) the eligibility of others on whose behalf it is contracting hereunder to purchase the Offered Units;"

(g) it shall cause its U.S. affiliate(s) to agree to and comply with, for the benefit of the Fund and the Selling Unitholders, the provisions of this Section 21;

(h) at the Closing Time, it, together with its U.S. affiliate(s) selling Offered Units in the United States, will provide a certificate, substantially in the form of Exhibit "1" hereto, relating to the manner of the offer and sale of the Offered Units in the United States;

(i) at least one business day prior to the Closing Date, it shall cause each U.S. broker dealer through which it has effected sales in the United States to provide Computershare Trust Company of Canada with a list of all purchasers of Offered Units in the United States; and

(j) none of the Underwriters, their affiliates or any person acting on their behalf has taken or will take, directly or indirectly, any action in violation of Regulation M in connection with the offer and sale of the Offered Units.

(6) Each Underwriter agrees that neither it nor any of its affiliates nor any person acting on its behalf or on behalf of its affiliates:

(a) will, except to the extent permitted by this Section 21 and in accordance with Rule 144A, offer to sell or make any solicitation of an offer to buy, any Offered Units other than in accordance with Regulation S;

(b) has made or will make any Directed Selling Efforts in the United States with respect to the Offered Units, and has not taken nor will take any action that would cause the exemption afforded by Rule 144A or Regulation S to be unavailable for offers and sales of the Offered Units pursuant to this Agreement; or

(c) has offered or will offer to sell, or has solicited or will solicit any offer to buy, the Offered Units in the United States by means of any form of general solicitation or general advertising (as those terms are used in Regulation D) or in any manner involving a public offering within the meaning of Section 4(2) of the 1933 Act.

(7) The Fund agrees, for the benefit of any holder of Offered Units or potential purchaser thereof, that for so long as any of the Offered Units are outstanding and are **"restricted securities"** within the meaning of Section (a)(3) of Rule 144 under the 1933 Act, it will provide to any holder of Offered Units and any prospective purchaser thereof designated by such holder for so long as such requirement is necessary in order to permit holders of Offered Units to effect

resales under Rule 144A, upon the request of such holder or purchaser, at or prior to the time of purchase, the information required to be provided to such holder or prospective purchaser by Section (d)(4) of Rule 144A unless it is exempt from the reporting requirements of the 1934 Act pursuant to Rule 12g3-2(b) under the 1934 Act or files reports and other information with the SEC under Section 13 or 15(d) of the 1934 Act.

(8) The Underwriters have not entered, and will not enter, into any contractual arrangement with respect to the distribution of the Offered Units in the United States, except with their affiliates, without the prior written consent of the Fund and the Selling Unitholders, except that nothing in this Section 21 shall in any way restrict offers and sales in accordance with Rule 144A.

Section 22 Post-Closing Covenants of the Underwriters

The Underwriters shall after the Closing Time (a) use their best efforts to terminate, and to cause the members of any banking, selling or other group to terminate, distribution to the public of the Offered Units as promptly as possible; and (b) give prompt written notice to the Fund, with a copy to Fund's Counsel, the Selling Unitholders and their counsel, when, in the opinion of the Underwriters, they and the members of such groups have ceased distribution to the public of the Offered Units and of the total proceeds realized from such distribution in each of the respective Qualifying Jurisdictions in which such information is or may be required by the appropriate Securities Regulators.

No Underwriter will be liable for any act, omission, default or conduct by any other Underwriter under this Section 22.

Section 23 Notices

All communications hereunder shall be in writing and shall be telecopied or delivered, and shall, in the case of notice to the Fund, be addressed and sent to:

3280 Wharton Way
Mississauga, Ontario
L4X 2C5
Attention: Neil D. Manning
Facsimile No.: 905-624-6020

with a copy (which shall not constitute notice) to:

Ogilvy Renault
Suite 2500
1 Place Ville Marie
Montreal, Quebec H3B 1R1
Canada

Attention: Norman Steinberg
Facsimile: 514-286-5474

And in the case of notice to ECL or Empire, be addressed and sent to each of the following:

Empire Company Limited
115 King Street
Stellarton, Nova Scotia
B0K 1S0

Attention:	Chief Executive Officer and Chief Financial Officer
Telecopier No.:	902-755-6477

With a copy (which shall not constitute notice) to:

Stewart McKelvey
Suite 900, Purdy's Wharf Tower One
1959 Upper Water Street
P.O. Box 997
Halifax, Nova Scotia
B3J 2X2

Attention:	Jim Dickson and Andrew Burke
Telecopier No.:	902-420-1417

And in the case of notice to the Foundation, be addressed and sent to each of the following:

The Sobey Foundation
115 King Street
Stellarton, Nova Scotia
B0K 1S0

Attention:	Paul D. Sobey, Director
Telecopier No.:	902-755-6477

With a copy (which shall not constitute notice) to:

Stewart McKelvey
Suite 900, Purdy's Wharf Tower One
1959 Upper Water Street
P.O. Box 997

Halifax, Nova Scotia
B3J 2X2

Attention: Jim Dickson and Andrew Burke
Telecopier No.: 902-420-1417

And in the case of notice to the Underwriters, be addressed and sent to each of the following:

Scotia Capital Inc.
Scotia Plaza, 66th Floor
40 King Street West
Toronto, Ontario
M5W 2X6

Attention: Dany Beauchemin
Telecopier No.: (416) 863-7117

and

BMO Nesbitt Burns Inc.
1 First Canadian Place, 40th Floor
P.O. Box 150
Toronto, ON
M5X 1H3

Attention: Glenn Gatcliffe
Facsimile No.: 416-359-7300

and

CIBC World Markets Inc.
161 Bay Street, Brookfield Place
P.O Box 500
Toronto, ON
M5J 2S8

Attention: Daniel J. McCarthy
Facsimile No.: 416-594-8176

and

TD Securities Inc.
66 Wellington Street West
P.O. Box 1, TD Bank Tower

Toronto, ON
M5K 1A2

Attention: Joe Tassone
Facsimile No.: 416-983-3176

With a copy (which shall not constitute notice) to:

Stikeman Elliott LLP
5300 Commerce Court West
199 Bay Street
Toronto, Ontario
M5L 1B9

Attention: Joel Binder
Telecopier: (416) 947-0866

The parties may change their respective addresses and telecopy numbers for notice, by notice given in the manner aforesaid. Any such notification shall be deemed to be effective when telecopied or delivered, if telecopied or delivered to the recipient on a business day and before 3:00 p.m. (local time) on such business day, and otherwise shall be deemed to be given at 9:00 a.m. (local time) on the next following business day.

Section 24 Successors

This Agreement shall enure to the benefit of, and shall be binding upon, the Underwriters, the Selling Unitholders, Empire and the Fund and their respective successors and legal representatives and nothing expressed or mentioned in this Agreement is intended or shall be construed to give any other person any legal or equitable right, remedy or claim under or in respect of this Agreement, or any provisions herein contained, this Agreement and all conditions and provisions hereof being intended to be and being for the sole and exclusive benefit of such persons and for the benefit of no other person.

Section 25 Applicable Law

The validity and interpretation of this Agreement, and the terms and conditions set forth herein, shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein. Any suit, action or proceeding against any party hereto or any of its assets arising out of or relating to this Agreement may be brought in a competent court of the Province of Ontario and each party hereto hereby irrevocably and unconditionally attorns and submits to the non-exclusive jurisdiction of such court over the subject matter of any such suit, action or proceeding. Each party hereto irrevocably waives and agrees not to raise any objection it might now or hereafter have to any such suit, action or proceeding in any such court including any objection that the place where such court is located is an inconvenient forum or that there is any other suit, action or proceeding in any other place relating in whole or in part to the same subject matter.

Section 26 Counterparts

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Section 27 Time of Essence

Time shall be of the essence of this Agreement.

Section 28 Authority of Scotia Capital and BMO

Scotia Capital and BMO are hereby authorized by the other Underwriters to act on its behalf and the Fund, Empire and the Selling Unitholders shall be entitled to and shall act on any notice given in accordance with this Agreement or any agreement entered into by or on behalf of the Underwriters by Scotia Capital and BMO which represent and warrant that they have irrevocable authority to bind the Underwriters, except in respect of any consent to a settlement pursuant to Section 15, which consent shall be given by the Indemnified Party, or a notice of termination pursuant to Section 19, which notice may be given by any of the Underwriters. Scotia Capital and BMO shall consult with the other Underwriters concerning any matter in respect of which it acts as representative of the Underwriters.

Section 29 No Fiduciary Duty

The Fund and the Selling Unitholders hereby acknowledge that (i) the sale of the Offered Units pursuant to this Agreement is an arm's-length commercial transaction between each of Empire and the Selling Unitholders on the one hand, and the Underwriters and any affiliate through which they may be acting to effect sales, on the other, (ii) such Underwriters are acting as principal and not as an agent or fiduciary of the Fund or the Selling Unitholders and (iii) the Selling Unitholders' engagement of such Underwriters in connection with the sale of the Offered Units and the process leading up to the sale of the Offered Units is as independent contractors and not in any other capacity. Furthermore, the Selling Unitholders agree that they are solely responsible for making their own judgments in connection with the sale of the Offered Units (irrespective of whether any of such Underwriters has advised or is currently advising the Fund or the Selling Unitholders on related or other matters). The Fund and the Selling Unitholders agree that they will not claim that such Underwriters have rendered advisory services of any nature or respect, or owe an agency, fiduciary or similar duty to the Fund or the Selling Unitholders in connection with such transaction or the process leading thereto.

[Remainder of page is intentionally blank.]

If the foregoing is in accordance with your understanding and agreed to by you, please signify your acceptance by signing in the space provided below and return this letter to us whereupon this letter as so accepted shall constitute a binding agreement among us in accordance with the foregoing.

Yours very truly,

SCOTIA CAPITAL INC.

By: *(signed) "Dany Beauchemin"*
Dany Beauchemin
Director

BMO NESBITT BURNS INC.

By: *(signed) "Glenn Gatcliffe"*
Glenn Gatcliffe
Director

CIBC WORLD MARKETS INC.

By: *(signed) "Daniel J. McCarthy"*
Daniel J. McCarthy
Vice Chairman

TD SECURITIES INC.

By: *(signed) "Joe Tassone"*
Joe Tassone
Vice President

Accepted and agreed to by the undersigned as of the date of this letter first written above.

WAJAX INCOME FUND

By: (signed) *"Neil D. Manning"*
Neil D. Manning
Chief Executive Officer

By: (signed) *"John J. Hamilton"*
John J. Hamilton
Chief Financial Officer

EMPIRE COMPANY LIMITED

By: *(signed) "Paul D. Sobey"*

Paul D. Sobey
President and Chief Executive Officer

By: *(signed) "Paul V. Beesley"*

Paul V. Beesley
Executive Vice President and Chief Financial Officer

ECL WESTERN HOLDINGS LIMITED

By: *(signed) "Stuart Fraser"*

Stuart Fraser
President

By: *(signed) "Paul Wigginton"*

Paul Wigginton
Chief Financial Officer

THE SOBEY FOUNDATION

By: *(signed) "Paul D. Sobey"*

Paul D. Sobey
Director

EXHIBIT "1"
UNDERWRITERS' CERTIFICATE

In connection with the private placement in the United States of units (the "**Units**") of Wajax Income Fund (the "**Company**") pursuant to the underwriting agreement dated September 20, 2010 (the "**Underwriting Agreement**") among the Company, the other parties thereto and the several Underwriters named therein (the "**Underwriters**"), the undersigned, ●, on behalf of the Underwriters, and ● in its capacity as placement agent in the United States for the Underwriters (the "**Placement Agent**"), does hereby certify that:

(a) all offers and sales of the Units in the United States were effected by or through the Placement Agent;

(b) the Placement Agent is a duly registered broker or dealer with the SEC and is a member of, and in good standing with, the Financial Industry Regulatory Authority on the date hereof;

(c) each offeree and purchaser was provided with a copy of the private placement memorandum, including (A) the Preliminary Prospectus in the case of each offeree and purchaser and the Prospectus and any Supplementary Material, as applicable, in the case of each purchaser relating to the Units, and (B) a U.S. covering private placement memorandum for the offering of the Units in the United States;

(d) immediately prior to our transmitting the Private Placement Memorandum to such offerees, we had reasonable grounds to believe and did reasonably believe in accordance with Rule 144A that each offeree was a Qualified Institutional Buyer, as such term is used under Rule 144A of the United States Securities Act of 1933, as amended ("**QIB**"), and, on the date hereof, we continue to believe that each U.S. person purchasing Units from us is a QIB;

(e) no form of general solicitation or general advertising (as those terms are used in Regulation D) was used by us, including advertisements, articles, notices or other communications published in any newspaper, magazine, internet or similar media or broadcast over radio, internet or television, or any seminar or meeting whose attendees had been invited by general solicitation or general advertising, in connection with the offer or sale of the Units in the United States or to U.S. persons; and

(f) the offering of the Units in the United States has been conducted by us in accordance with the Underwriting Agreement.

Terms used in this certificate have the meanings given to them in the Underwriting Agreement unless otherwise defined herein.

DATED this ____day of ____________, 2010.

●

By: ________________________________

Name:

Title:

●

By: ________________________________

Name:

Title:

EXHIBIT “A”
FORM OF DECLARATION FOR REMOVAL OF LEGEND

To: Computershare Trust Company of Canada, as registrar and transfer agent for the Units of Wajax Income Fund.

The undersigned (A) represents that the sale of _________ units (the “**Units**”) of Wajax Income Fund (the “**Fund**”) represented by certificate number _________ to which this declaration relates is being made in reliance on Rule 904 of Regulation S under the United States Securities Act of 1933, as amended (the "**1933 Act**"), and (B) certifies that (1) it is not an "affiliate" (as defined in Rule 405 under the 1933 Act) of the Fund, (2) the offer of such Units was not made to a person in the United States and either (a) at the time the buy order was originated, the buyer was outside the United States, or the seller and any person acting on its behalf reasonably believe that the buyer was outside the United States, or (b) the transaction was executed on or through the facilities of the Toronto Stock Exchange or any other designated offshore securities market and neither the seller nor any person acting on its behalf knows that the transaction has been prearranged with a buyer in the United States and (3) neither the seller nor any person acting on its behalf engaged in any directed selling efforts in connection with the offer and sale of such Units. Terms used herein have the meanings given to them by Regulation S under the 1933 Act.

Dated: ●

●

By: ________________________________

Name:

Title:

By: ________________________________

Name:

Title: