

UNDERWRITING AGREEMENT

November 22, 2004

Second Cup Royalty Income Fund
6303 Airport Road
Mississauga, Ontario L4V 1R8

New Second Cup Inc.
6303 Airport Road
Mississauga, Ontario L4V 1R8

Cara Operations Limited
6303 Airport Road
Mississauga, Ontario L4V 1R8

Ladies and Gentlemen:

Scotia Capital Inc. ("**Scotia Capital**"), BMO Nesbitt Burns Inc., CIBC World Markets Inc. and TD Securities Inc. (collectively, the "**Underwriters**" and individually an "**Underwriter**") understand that Second Cup Royalty Income Fund (the "**Fund**") proposes to issue and sell 8,145,346 units in the capital of the Fund (the "**Units**") to the Underwriters and the Underwriters understand that the Fund has prepared and filed a Preliminary Prospectus (as defined below) in each of the Qualifying Jurisdictions (as defined below) and has received a Preliminary MRRS Decision Document (as defined below) therefor. The Underwriters also understand that the Fund has prepared a Prospectus (as defined below) and will file the same in each of the Qualifying Jurisdictions promptly after the execution of this agreement.

On the basis of the representations, warranties, covenants and agreements contained herein, but subject to the terms and conditions herein set forth, the Fund agrees to sell to each of the Underwriters, and each of the Underwriters agrees severally (and not jointly or jointly and severally) to purchase from the Fund, the respective percentage of the Units set forth opposite the name of such Underwriter in Section 22 at a purchase price of \$10.00 per Unit (for an aggregate purchase price of \$81,453,460).

In consideration of the agreement of the Underwriters to purchase the Units and to offer them to the public pursuant to the Prospectus, the Fund agrees to pay to the Underwriters, at the Closing Time (as defined below), an aggregate of \$4,887,208 being a fee equal to 6% (exclusive of federal goods and services tax, if applicable) of the aggregate purchase price of the Units or \$0.60 per Unit.

Terms and Conditions

The following are additional terms and conditions of this agreement among the Fund, New Second Cup, Cara and the Underwriters.

Section 1 Definitions.

- (1) In addition to the terms defined above, where used in this agreement, or in any amendment to this agreement, the following terms will have the following meanings, respectively:

“Acquisition Agreement” means the acquisition agreement to be entered into on the Closing Date between Cara, New Second Cup and AcquisitionCo pursuant to which AcquisitionCo will acquire all of the issued and outstanding MarksCo Common Shares;

“AcquisitionCo” means 1636433 Ontario Inc., a wholly-owned subsidiary of the Fund incorporated under the laws of the Province of Ontario;

“AcquisitionCo Common Shares” means the common shares in the capital of AcquisitionCo;

“AcquisitionCo Note Indenture” means the note indenture pursuant to which the AcquisitionCo Notes will be issued, as the same may be amended, supplemented or restated from time to time;

“AcquisitionCo Notes” means the unsecured subordinated debt obligations of AcquisitionCo issuable in series from time to time under the AcquisitionCo Note Indenture;

“Administration Agreement” means the administration agreement to be entered into on the Closing Date among MarksCo, AcquisitionCo and the Fund pursuant to which MarksCo will agree to provide or arrange for the provision of services required for the administration of the Fund and AcquisitionCo;

“affiliate” means, in respect of a person or company, another person or company that would be considered to be an “affiliated entity” in respect of such person or company for the purposes of Ontario Securities Commission Rule 45-501, constituted at the date of this agreement;

“Business” means the business of franchising Second Cup cafés and operating company-owned cafés in Canada as currently carried on by Second Cup and which, following the Closing Date, will be carried on by New Second Cup all as described in the Prospectus;

“business day” means a day other than a Saturday, a Sunday or a day on which chartered banks are not open for business in Toronto, Ontario or on which trading does not occur on the TSX;

“Cara” means Cara Operations Limited, a private corporation formed under the laws of the Province of Ontario;

“Cara Credit Documents” means the credit agreements, security documents, intercreditor agreements, guarantees, debentures and securities pledge agreements relating to the credit facility established in favour of Cara pursuant to the amended and restated credit agreement made as of April 30, 2004, as amended, between Cara, certain guarantors, The Bank of Nova Scotia, as administrative agent, and the lenders named therein;

“Claim” has the meaning given to that term in Section 16(1) of this agreement;

“Closing Date” means December 2, 2004 or any earlier or later date as may be agreed to in writing by the Fund, New Second Cup, Cara and the Underwriters, each acting reasonably, but will in any event not be later than December 31, 2004;

“Closing Time” means 8:00 a.m. (Toronto time) on the Closing Date, or any other time on the Closing Date as may be agreed to by the Fund, Cara, New Second Cup and the Underwriters;

“Computershare” means Computershare Investor Services Inc.;

“Condition” in respect of a person, means the assets, liabilities (contingent or otherwise), business, affairs, prospects, operations, cash flow or capital of such person;

“Continuing Underwriters” has the meaning given to that term in Section 22(2) of this agreement;

“Declaration of Trust” means the declaration of trust dated October 22, 2004 establishing and governing Second Cup Royalty Income Fund, as it may be amended and restated on or before the Closing Date;

“Defaulted Units” has the meaning given to that term in Section 22(2) of this agreement;

“distribution” means distribution or distribution to the public, as the case may be, for the purposes of the Securities Laws or any of them;

“Final MRRS Decision Document” means the final mutual reliance review system decision document issued by the Ontario Securities Commission, in its capacity as principal regulator under MRRS, evidencing that final receipts of the Securities Commissions in each of the Qualifying Jurisdictions have been issued in respect of the Final Prospectus;

“Financial Information” means collectively:

the balance sheet of the Fund, together with the auditor’s report thereon and the notes thereto;

the pro forma consolidated balance sheet of the Fund, together with the compilation report thereon and the notes thereto;

the schedule of system wide sales reported by Second Cup cafés in Canada, together with the auditor’s report thereon and the notes thereto;

the consolidated financial statements of Second Cup, together with the auditor’s report thereon and the notes thereto;

all as included in the Prospectus;

“Fund Subsidiaries” means AcquisitionCo and MarksCo;

“General Security Agreement” means the general security agreement to be executed by New Second Cup on or prior to the Closing Date granting MarksCo a security interest over all the present and after-acquired property and assets of New Second Cup as security for the payment of the Royalty and the performance of all other obligations of New Second Cup under the Licence and Royalty Agreement;

“Governance Agreement” means the governance agreement to be entered into on the Closing Date among New Second Cup, Cara, MarksCo, AcquisitionCo and the Fund providing for, among other matters, the governance of MarksCo;

“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, bureau or agency, 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 Commissions, the TSX and Market Regulation Services Inc.;

“including” means including, without limitation;

“Indemnified Party” means a person entitled to be indemnified pursuant to Section 16 of this agreement;

“Indemnifying Party” means a person required to indemnify another person pursuant to Section 16 of this agreement;

“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;

“Licence” means the licence to use the Second Cup Marks (including for the purpose of trade names and domain names) in all provinces and territories of Canada (except Nunavut) for the period of 99 years;

“Licence and Royalty Agreement” means the licence and royalty agreement to be dated on or prior to the Closing Date between Second Cup USA Holdings Ltd. and New Second Cup pursuant to which New Second Cup will be granted the Licence and will agree to pay the Royalty to Second Cup USA Holdings Ltd.;

“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;

“MarksCo” means the corporation continuing from the amalgamation of Second Cup, 1346071 Ontario Limited and Second Cup USA Holdings Ltd., and, the subsequent amalgamation of such amalgamated entity and Second Cup Trade-Marks Inc.

“MarksCo Common Shares” means the common shares in the capital of MarksCo;

“MarksCo Note Indenture” means the note indenture pursuant to which the MarksCo Notes will be issued, as the same may be amended, supplemented or restated from time to time;

“MarksCo Notes” means the unsecured subordinated debt obligations of MarksCo issuable in series from time to time under the MarksCo Note Indenture;

“MarksCo Predecessors” means Second Cup, 1346071 Ontario Limited, Second Cup USA Holdings Ltd. and Second Cup Trade-Marks Inc.;

“material change” means a material change for the purposes of the Securities Laws or any of them or where undefined under the applicable Securities Laws of a jurisdiction means a change in the business, operations or capital of a Second Cup Entity that would reasonably be expected to have a significant effect on the market price or value of any of the Fund’s securities and includes a decision to implement such a change made by the trustees or board of directors, as applicable, of a Second Cup Entity or by senior management of a Second Cup Entity who believe that confirmation of the decision by the trustees or board of directors, as applicable, of such Second Cup Entity is probable;

“material fact” means a material fact for the purposes of the Securities Laws or any of them or where undefined under the applicable Securities Laws of a jurisdiction means a fact that significantly affects, or would reasonably be expected to have a significant effect on, the market price or value of the Units;

“misrepresentation” means a misrepresentation for the purposes of the Securities Laws or any of them or, where undefined under the applicable Securities Laws of a jurisdiction, means: (i) an untrue statement of a material fact, or (ii) an omission to state a material fact that is required to be stated or that is necessary to make a statement not misleading in the light of the circumstances in which it was made;

“MRRS” means the mutual reliance review system procedures provided for under National Policy 43-201 “Mutual Reliance Review System for Prospectuses and Annual Information Forms” among the Securities Commissions;

“New Second Cup” means New Second Cup Inc., a wholly-owned subsidiary of Cara that will, prior to the Closing Date, acquire the Business as currently carried out by Second Cup;

“Offering Documents” has the meaning given to that term in Section 6(1)(b) of this agreement;

“Preliminary MRRS Decision Document” means the preliminary mutual reliance review system decision document issued by the Ontario Securities Commission, in its capacity as principal regulator under MRRS, evidencing that final receipts of the Securities Commissions in each of the Qualifying Jurisdictions have been issued in respect of the Preliminary Prospectus;

“Preliminary Prospectus” means the preliminary prospectus of the Fund dated October 25, 2004 relating to the qualification for distribution of the Units in the Qualifying Jurisdictions in the English and French languages;

“Prospectus” means the (final) prospectus of the Fund to be dated on or before November 23, 2004, approved, signed and certified in accordance with the Securities Laws, relating to the qualification for distribution of the Units under applicable Securities Laws in the Qualifying Jurisdictions;

“Qualifying Jurisdictions” means, collectively, each of the provinces and territories of Canada;

“Refusing Underwriter” has the meaning given to that term in Section 22(2) of this agreement;

“Related Agreements” means the Declaration of Trust, the Administration Agreement, the Acquisition Agreement, the Licence and Royalty Agreement, the Governance Agreement, the AcquisitionCo Note Indenture, the MarksCo, Note Indenture, the General Security Agreement, the Subscription Agreement and the loan agreements relating to the MarksCo Term Loan and the Operating Loan;

“Release” means a release substantially in the form attached hereto as **Schedule 12(k)**;

“Royalty” means the royalty to be paid pursuant to the Licence and Royalty Agreement by New Second Cup to MarksCo;

“Second Cup” means The Second Cup Ltd.;

“Second Cup cafés” refers to the retail outlets dedicated to the sale of specialty coffee and related products operated by Second Cup or Second Cup franchisees and, on the Closing Date to be operated by New Second Cup or New Second Cup franchisees, and identified by the Second Cup Marks;

“Second Cup Entities” means the Fund, AcquisitionCo, the MarksCo Predecessors, MarksCo and New Second Cup;

“Second Cup Marks” means the trade-marks currently owned by Second Cup and registered or the subject of pending applications for registration under the *Trade-marks Act* (Canada), and such unregistered trade-marks, trade names, operating procedures, methods, systems and others intellectual property and proprietary rights that are currently owned by Second Cup and used in connection with the operation of Second Cup cafes in Canada and all associated rights;

“Securities Commission” means the applicable securities commission or regulatory authority in each of the Qualifying Jurisdictions;

“Securities Laws” means, collectively, the applicable securities laws of each of the Qualifying Jurisdictions and the respective regulations and rules made under those securities laws together with all applicable policy statements, blanket orders and rulings of the Securities Commissions and all discretionary orders or rulings, if any, of the Securities Commissions made in connection with the transactions contemplated by this agreement;

“Selling Firms” means the Underwriters together with such other investment dealers and brokers through which the Underwriters may sell Units to the public under the terms of this agreement;

“Series 1 AcquisitionCo Notes” means the unsecured subordinated debt obligations of AcquisitionCo designated as Series 1 Notes that will be issued from time to time in accordance with the AcquisitionCo Note Indenture;

“Series 2 AcquisitionCo Notes” means the unsecured subordinated debt obligations of AcquisitionCo designated as Series 2 Notes to be issuable in accordance with the AcquisitionCo Note Indenture;

“Series 1 MarksCo Notes” means the unsecured subordinated debt obligations of MarksCo designated as Series 1 Notes that will be issued from time to time in accordance with the MarksCo Note Indenture;

“Series 2 MarksCo Notes” means the unsecured subordinated debt obligations of MarksCo designated as Series 2 Notes to be issuable in accordance with the MarksCo Note Indenture;

“Standard Listing Conditions” has the meaning given to that term in Section 5(3)(d) of this agreement;

“Subscription Agreement” means the subscription agreement to be entered into on the Closing Date among the Fund, AcquisitionCo, MarksCo and New Second Cup pursuant to which, among other things, the Fund will ensure

that MarksCo is able to deliver Units to New Second Cup if required to do so under the Licence and Royalty Agreement;

“subsidiary” means a subsidiary entity for purposes of Section 1.2(3) of Ontario Securities Commission Rule 45-501 under the *Securities Act* (Ontario), as constituted at the date of this agreement and, for greater certainty, includes the Fund Subsidiaries;

“Supplementary Material” means, collectively, any amendment to the Prospectus or the U.S. Placement Memorandum, any amendment or supplemental prospectus or ancillary materials that may be filed by or on behalf of the Fund under the Securities Laws or the U.S. securities laws, as the case may be, relating to the qualification for distribution of the Units, under applicable Securities Laws or the U.S. securities laws, as the case may be;

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

“Trustees” means the trustees of the Fund from time to time;

“TSX” means the Toronto Stock Exchange; and

“United States” or “U.S.” means the United States of America, its territories and possessions, any state of the United States and the District of Columbia.

- (2) Capitalized terms used but not defined in this agreement have the meanings given to them in the Prospectus.
- (3) Any reference in this agreement to a section, paragraph, subsection, subparagraph, clause or subclause will refer to a section, paragraph, subsection, subparagraph, clause or subclause of this agreement.
- (4) All words and personal pronouns relating to those words will be read and construed as the number and gender of the party or parties referred to in each case required and the verb will be construed as agreeing with the required word and/ or pronoun.

Section 2 Attributes of the Units.

The Units to be issued and sold under this agreement by the Fund will be duly and validly created and issued by the Fund and, when issued and sold by the Fund, the Units will have the attributes set out in the Prospectus, subject to those modifications or changes (if any) prior to the Closing Date as may be agreed to in writing by the Fund, New Second Cup, Cara and the Underwriters.

Section 3 Filing of Prospectus.

- (1) The Fund, New Second Cup and Cara will, as soon as possible following the execution of this agreement, prepare and file the Prospectus in both the English and French languages in form and substance satisfactory to the Underwriters in each of the Qualifying Jurisdictions with the Securities Commissions under the Securities Laws, and will use its reasonable efforts to obtain a Final MRRS Decision Document therefor as soon as possible after the filing and, in any event, will obtain such document not later than 5:00 p.m. (Toronto time) on November 23, 2004 (or such other time and/ or later date as the Fund, New Second Cup, Cara and the Underwriters may agree) and the Fund, New Second Cup and Cara will promptly take all other steps and proceedings that may be necessary in order to qualify the Units for distribution in each of the Qualifying Jurisdictions by the Underwriters and other persons who are registered in a category permitting them to distribute the Units under the Securities Laws and who comply with the Securities Laws.
- (2) Until the date on which the distribution of the Units is completed, the Fund, New Second Cup and Cara 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 of the Units or, in the event that the Units have, for any reason, ceased so to qualify, to so qualify again the Units, as applicable, for distribution in the Qualifying Jurisdictions. Notwithstanding the foregoing, the obligations of the Fund, New Second Cup and Cara under this Section 3(2) will terminate if the closing of the Offering does not occur by December 31, 2004.

Section 4 Distribution and Certain Obligations of Underwriters.

- (1) During the course of the distribution of the Units to the public by or through the Underwriters, the Underwriters will offer and sell those Units to the public only in those jurisdictions where they may be lawfully offered for sale or sold and only at the price per Unit set out on the cover page of the Prospectus. For the purposes of this Section 4(1), the Underwriters shall be entitled to assume that the Units may be lawfully offered for sale and sold in the Qualifying Jurisdictions if the Final MRRS Decision Document has been issued evidencing that a receipt for the Prospectus has been issued by the Securities Commission of each of the Qualifying Jurisdictions. The Underwriters will comply with applicable laws, including the Securities Laws, in connection with the offer to sell or distribution of the Units. Except in the Qualifying Jurisdictions, the Underwriters will not, directly or indirectly, solicit offers to purchase or sell the Units or deliver the Preliminary Prospectus, the Prospectus or any Supplementary Material so as to require registration of those Units or filing of a prospectus with respect to those Units

under the laws of any jurisdiction, including, without limitation, the United States. Any offer or sales of Units in the United States will be made in accordance with Section 15 of this agreement.

- (2) The Underwriters will complete and will use their reasonable efforts to cause each Selling Firm to complete the distribution of the Units as promptly as possible after the Closing Time. The Underwriters will promptly notify the Fund when, in the Underwriters' opinion, the Underwriters and the Selling Firms have ceased distribution of the Units and, promptly after completion of the distribution, will provide the Fund, in writing, with a breakdown of the number of Units distributed in each of the Qualifying Jurisdictions where that breakdown is required by the Securities Commission of that province or territory for the purpose of calculating fees payable to that Securities Commission.
- (3) No Underwriter will be liable to the Fund, New Second Cup or Cara under this Section 4 with respect to a default by any of the other Underwriters.
- (4) The Underwriters shall cause the distribution of Units to occur in such a manner that less than 33% of the Units are purchased by non-residents of Canada, within the meaning and for the purposes of the Tax Act, and that the distribution requirements which are necessary in order to enable the Fund to qualify as a mutual fund trust, as defined in the Tax Act, are satisfied. Following the distribution of Units upon request of the Fund, the Underwriters shall, upon request of the Fund, provide the Fund with a certificate specifying the number of Units purchased by non-residents of Canada, if any.
- (5) The Underwriters shall cause the distribution of Units to occur in such a manner that the minimum distribution requirements for the initial listing and posting for trading of the Units on the TSX are satisfied. Upon request of the Fund, the Underwriters shall provide the TSX with a letter setting forth the anticipated distribution of the offering based upon subscriptions for the Units received as of the date of the letter.

Section 5 Delivery of Prospectus and Related Matters.

- (1) The Fund, New Second Cup and Cara will cause to be delivered to the Underwriters, without charge, at those delivery points as the Underwriters reasonably request, as soon as possible and in any event no later than 12:00 p.m. (Toronto time) on November 24, 2004 for local delivery points and November 25, 2004 for all other delivery points and thereafter from time to time during the distribution of the Units, as many commercial copies of the Prospectus in the English language and French language as the Underwriters may reasonably request. The Fund, New Second Cup and Cara will similarly

cause to be delivered to the Underwriters, at those delivery points as the Underwriters may reasonably request, commercial copies of a U.S. Placement Memorandum (if requested by the Underwriters) and any Supplementary Material required to be delivered to purchasers or prospective purchasers of the Units. The Fund, New Second Cup and Cara have previously delivered to the Underwriters copies of the Preliminary Prospectus. Each delivery of the Preliminary Prospectus, the Prospectus or any Supplementary Material will have constituted or constitute, as the case may be, consent by the Fund to the use by the Underwriters and Selling Firms of those documents in connection with the distribution of the Units for sale in all of the Qualifying Jurisdictions, subject to the Securities Laws. Each delivery of the U.S. Placement Memorandum will constitute consent by the Fund to the use of the U.S. Placement Memorandum and any Supplementary Material required to be prepared and/ or filed under U.S. securities laws by the U.S. broker affiliates of the Underwriters and members of their selling group (if any) for the distribution of the Units for sale by them in the United States in accordance with applicable laws and this agreement.

- (2) Each delivery of the Preliminary Prospectus, the Prospectus, the U.S. Placement Memorandum and any Supplementary Material to the Underwriters by the Fund, New Second Cup or Cara in accordance with Section 5(1) will constitute the representation and warranty of the Fund, New Second Cup and Cara to the Underwriters that (except for information and statements relating solely to the Underwriters and furnished by them specifically for use in such document), at the respective times of delivery:
 - (a) the information and statements contained in each of the Preliminary Prospectus, the Prospectus, the U.S. Placement Memorandum and any Supplementary Material:
 - (i) are true and correct in all material respects and contain no misrepresentation; and
 - (ii) constitute full, true and plain disclosure of all material facts relating to the securities referred to in each of those documents, the Second Cup Entities and the Business, and relating to the offering of Units contemplated under this agreement;
 - (b) no material fact has been omitted from any of those documents which is required to be stated in the document or is necessary to make the statements therein not misleading in the light of the circumstances in which they were made; and

- (c) each of those documents complies with applicable Securities Laws and U.S. securities laws, as the case may be.
- (3) The Fund, New Second Cup and Cara will deliver to the Underwriters, without charge, in Toronto, Ontario, contemporaneously with or prior to the filing of the Prospectus, unless otherwise indicated:
- (a) a copy of the Prospectus in the English language and a copy of the Prospectus in the French language, each approved, signed and certified by or on behalf of the Fund and by Cara, as promoter, as required by the Securities Laws of each of the Qualifying Jurisdictions;
 - (b) if requested by the Underwriters, a copy of the U.S. Placement Memorandum prepared as contemplated herein;
 - (c) a copy of any other document required to be filed by the Fund, New Second Cup or Cara under the Securities Laws in connection with the offering of the Units contemplated by this agreement;
 - (d) evidence satisfactory to the Underwriters of the approval of the listing and posting for trading on the TSX of the Units subject only to satisfaction by the Fund of the conditions imposed by the TSX in the letter of the TSX dated November 22, 2004 granting conditional listing approval (the “**Standard Listing Conditions**”);
 - (e) a “**long-form**” comfort letter dated the date of the Prospectus, in form and substance satisfactory to the Underwriters, addressed to the Underwriters, the Trustees and the board of directors of Cara, as promoter, from the auditors of the Fund and Second Cup, and based on a review completed not more than two business days prior to the date of the letter, verifying certain financial and accounting information and numerical data relating to the Fund and Second Cup in the Prospectus and any Supplementary Material, which letter shall be in addition to the auditors’ report contained in the Prospectus and any auditors’ comfort letter addressed to the Securities Commissions in the Qualifying Jurisdictions;
 - (f) an opinion dated the date of the Prospectus from Osler, Hoskin & Harcourt LLP, Quebec, addressed to the Underwriters and, if required for opinion purposes, the Underwriters’ counsel in form and substance satisfactory to the Underwriters, acting reasonably, to the effect that the French language version of the Prospectus, other than the Financial Information and the information appearing in the Prospectus under the headings “Prospectus Summary – Analysis of Distributable Cash”,

“Management’s Discussion and Analysis”, “Consolidated Capitalization of the Fund”, “Index to Financial Statements” and “Auditor’s Consent”, is in all material respects a complete and proper translation of the English language version thereof;

- (g) an opinion dated the date of the Prospectus from Osler, Hoskin & Harcourt LLP, Quebec, addressed to the Underwriters, the Fund and their respective counsel in form and substance satisfactory to the Underwriters, acting reasonably, regarding compliance with all the laws of Quebec relating to the use of the French language in connection with the distribution of the Units; and
 - (h) an opinion dated the date of the Prospectus from PricewaterhouseCoopers LLP addressed to the Underwriters and the Fund and their respective counsel in form and substance satisfactory to the Underwriters, acting reasonably, to the effect that the French translation of the Financial Information and the information appearing in the Prospectus under the headings “Prospectus Summary – Analysis of Distributable Cash”, “Management’s Discussion and Analysis”, “Consolidated Capitalization of the Fund”, “Index to Financial Statements” and “Auditor’s Consent”, is, in all material respects, a complete and proper translation of the English language version.
- (4) The Fund, New Second Cup and Cara agree to deliver opinions, comfort letters and other documents substantially similar to those referred to in Section 5(3) of this agreement to the Underwriters and the Fund and their respective counsel, as applicable, with respect to any Supplementary Material, concurrently with the execution of the Supplementary Material.

Section 6 Material Change.

- (1) The Fund, New Second Cup and Cara will promptly inform the Underwriters in writing during the period prior to the completion of the distribution of the Units of the full particulars of:
- (a) any change (whether actual, anticipated, contemplated, proposed or threatened) in the Condition of any Second Cup Entity;
 - (b) any fact which has arisen or has been discovered and would have been required to have been stated in the Prospectus, the U.S. Placement Memorandum or any Supplementary Material (collectively, the “**Offering Documents**”) had that fact arisen or been discovered on, or prior to, the date of any of the Offering Documents; or

- (c) any change in any fact contained in any of the Offering Documents or the occurrence of any event or state of facts after the date of this agreement,

which, in any case, is of such a nature as to render any of the Offering Documents untrue or misleading in any material respect or to result in any misrepresentation in any of the Offering Documents or which would result in any Offering Document not complying with applicable Securities Laws or U.S. securities laws, as the case may be.

- (2) The Fund will comply with Section 57 of the *Securities Act* (Ontario) and with the comparable prospectus amendment provisions of the other Securities Laws and any applicable U.S. securities laws and the Fund, New Second Cup and Cara will prepare and the Fund will file promptly (and in any event within the applicable time limits prescribed by applicable Securities Laws and U.S. securities laws) to the satisfaction of the Underwriters any Supplementary Material which, in the opinion of the Underwriters, acting reasonably, may be necessary or advisable, and will otherwise comply with all legal requirements necessary to continue to qualify the Units for distribution in each of the Qualifying Jurisdictions and in the United States pursuant to this agreement as a result of an event described in Section 6(1).
- (3) In addition to the provisions of Section 6(1) and Section 6(2), the Fund, New Second Cup and Cara will, in good faith, discuss with the Underwriters any change, event, development or fact contemplated in Section 6(1) which is of such a nature that there may be reasonable doubt as to whether notice should be given to the Underwriters under Section 6(1) of this agreement and will consult with the Underwriters with respect to the form and content of any Supplementary Material proposed to be filed by the Fund, it being understood and agreed that no such Supplementary Material will be filed with any Securities Commission prior to the review and approval by the Underwriters and their counsel, acting reasonably. The Fund, New Second Cup and Cara shall also co-operate in all respects with the Underwriters to allow and assist the Underwriters to participate in the preparation of any Supplementary Material and shall allow the Underwriters to conduct all “due diligence” investigations which in the opinion of the Underwriters are required to be undertaken, including so as to enable the Underwriters to responsibly execute any certificate related to such Supplementary Material.
- (4) During the period commencing on the date hereof and ending on the completion of the distribution of Units hereunder, the Fund will promptly inform the Underwriters of the full particulars of:

- (a) any request of any Securities Commission for any amendment to the Preliminary Prospectus, the Prospectus or any Supplementary Material or for any additional information in connection with the Offering; or
- (b) the issuance by any Securities Commission, the TSX or any other Governmental Authority of any order to cease or suspend trading of any securities of the Fund or of the institution or threat of institution of any proceedings for that purpose.

Section 7 Regulatory Approvals.

- (1) The Fund, New Second Cup and Cara will file or cause to be filed with the TSX all necessary documents and will take or cause to be taken all necessary steps to ensure that the Units have been approved for listing and posting for trading on the TSX, prior to the filing of the Prospectus with the Securities Commissions, subject only to satisfaction by the Fund of the Standard Listing Conditions.
- (2) The Fund, New Second Cup and Cara will make all necessary filings, obtain all necessary regulatory consents and approvals (if any) and pay all filing fees required to be paid in connection with the transactions contemplated in this agreement.

Section 8 Representations and Warranties of the Fund, New Second Cup and Cara.

- (1) The Fund, New Second Cup and Cara jointly and severally represent and warrant to the Underwriters, and acknowledge 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 the Fund, New Second Cup or Cara and delivered and addressed to the Underwriters shall be deemed a representation and warranty by the Fund, New Second Cup or Cara to the Underwriters as to matters covered thereby):
 - (a) the Fund is a trust validly existing under the laws of the Province of Ontario;
 - (b) through its Trustee, the Fund has the power to own its property and to carry on its affairs as described in the Prospectus;
 - (c) the Trustee has been duly appointed as a trustee of the Fund and the Trustee has all necessary power, capacity and authority to enable the Fund to execute, deliver and perform its obligations under this agreement and the Related Agreements to which it is a party;

- (d) AcquisitionCo is a corporation existing in good standing under the laws of the Province of Ontario and has the power, capacity and authority to own, lease and operate its property and assets, carry on its business and to enter into and perform its obligations under each of the Related Agreements to which it will be a party. AcquisitionCo is duly qualified, licensed or registered to carry on business in each jurisdiction where the failure to be so registered, licensed or qualified would have a material adverse effect on the Condition of AcquisitionCo;
- (e) each of the MarksCo Predecessors is, and on the Closing Date, MarksCo will be, a corporation existing in good standing under the laws of the Province of Ontario with the power, capacity and authority to own, lease and operate its property and assets, carry on its business and to enter into and perform its obligations under each of the Related Agreements to which it will be a party. Each of the MarksCo Predecessors is, and on the Closing Date MarksCo will be, duly qualified, licensed or registered to carry on business in each jurisdiction where the failure to be so registered, licensed or qualified would result in a material adverse effect on the Condition of such person;
- (f) the Fund is authorized to issue an unlimited number of Units, of which, as of the date of this agreement, ten Units are issued and outstanding as fully paid and non-assessable Units;
- (g) AcquisitionCo is authorized to issue an unlimited number of AcquisitionCo Common Shares and will, on or before the Closing Date, be authorized to issue an unlimited principal amount of Series 1 AcquisitionCo Notes and an unlimited principal amount of Series 2 AcquisitionCo Notes. As of the date of this agreement, 1 AcquisitionCo Common Share is issued and outstanding as a fully paid and non-assessable share and no Series 1 AcquisitionCo Notes or Series 2 AcquisitionCo Notes are issued and outstanding;
- (h) On the Closing Date, MarksCo will be authorized to issue an unlimited number of MarksCo Common Shares, an unlimited principal amount of Series 1 MarksCo Notes and an unlimited principal amount of Series 2 MarksCo Notes;
- (i) immediately following the Closing Time:
 - (i) the Fund will be the registered and beneficial owner of all of the issued and outstanding AcquisitionCo Common Shares, of

which approximately 8,694,039 AcquisitionCo Common Shares will be validly issued and outstanding as fully paid and non-assessable shares;

- (ii) the Fund will be the registered and beneficial holder of all of the issued and outstanding Series 1 AcquisitionCo Notes and there will be no Series 2 AcquisitionCo Notes outstanding, of which approximately \$78,246,353 principal amount of Series 1 AcquisitionCo Notes will be validly created and issued;
- (iii) AcquisitionCo will be the registered and beneficial holder of all of the issued and outstanding MarksCo Common Shares, of which approximately 8,694,039 MarksoCo Common Shares will be validly issued and outstanding as fully paid and non-assessable shares;
- (iv) AcquisitionCo will be the registered and beneficial holder of all of the issued and outstanding Series 1 MarksCo Notes and there will be no Series 2 MarksCo Notes outstanding, of which approximately \$78,246,353 principal amount of Series 1 MarksCo Notes will be validly created and issued;

in each case, free and clear of all Liens, other than those disclosed in the Prospectus;

- (j) 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 any of the Fund, the Fund Subsidiaries or the MarksCo Predecessors or any of their respective properties, rights or assets or the Second Cup Marks or the Business which, individually or in the aggregate, if determined adversely to the interest of the Fund, the Fund Subsidiaries or the MarksCo Predecessors might reasonably be expected to have a material adverse effect on the Condition of such person or on the consummation of the transactions contemplated by the Prospectus;
- (k) the execution, delivery and performance by the Fund of this agreement and by each of the Fund and the Fund Subsidiaries of each of the Related Agreements to which it is, or is to be, a party and the issuance, sale and delivery of the Units to the Underwriters, the issuance, sale and delivery of the AcquisitionCo Common Shares and the AcquisitionCo Notes to the Fund, the issuance, sale and delivery of the

MarksCo Common Shares and the MarksCo Notes to AcquisitionCo, all as contemplated by the Prospectus:

- (i) has been, or will prior to the Closing Time be, authorized by all necessary action on the part of the Fund and the Fund Subsidiaries, as applicable;
 - (ii) does 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, (ii) those as may be required (and will be obtained prior to the Closing Time) under applicable Securities Laws, (iii) those, the failure of which to obtain, would not have a material adverse effect;
 - (iii) does not (or will not with the giving of notice, the lapse of time or both) 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 (including the Declaration of Trust), by-laws or resolutions of the board of directors or trustees, as applicable, (or any committee thereof) or securityholders of the Fund or any Fund Subsidiary, or any judgment, decree, order or award of any Governmental Authority having jurisdiction over the Fund or any Fund Subsidiary, or any agreement, licence or permit to which the Fund or any Fund Subsidiary is a party or by which their property or assets may be affected, provided in each case, such breach, violation, conflict, default or rights might reasonably be expected to have a material adverse effect on the Condition of the Fund and the Fund Subsidiaries;
 - (iv) will not result in the violation of any applicable law; and
 - (v) will not, other than as disclosed in the Prospectus, give rise to any Lien in or with respect to the properties or assets now owned or hereafter acquired by the Fund or the Fund Subsidiaries or the acceleration of or the maturity of any debt under any material indenture, mortgage, lease, agreement or instrument binding or affecting any of them or any of their properties or assets;
- (1) as of September 12, 2004, Second Cup had 372 Second Cup cafes in its network, of which 346 are franchised and 26 are company-owned, and

351 of these Second Cup cafes will be included in the Royalty Pool at the Closing Date;

- (m) this agreement and the Related Agreements to which the Fund, any Fund Subsidiary or any MarksCo Predecessor is, or is to be, a party have been, or will at the Closing Time be, duly executed and delivered by each of the Fund, the Fund Subsidiaries and the MarksCo Predecessors, respectively, and constitute or, as the case may be, will constitute, when so executed and delivered, legal, valid and binding obligations of the Fund, the Fund Subsidiaries and the MarksCo Predecessors, respectively, enforceable in accordance with their 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 therein may be limited by applicable law;
- (n) other than as set out in the Prospectus, 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 Fund or the Fund Subsidiaries;
- (o) except the AcquisitionCo Common Shares and the Series 1 AcquisitionCo Notes to be held by the Fund at the Closing Time and the MarksCo Common Shares and the Series 1 MarksCo Notes to be held by AcquisitionCo at the Closing Time, all as described in the Prospectus, at the Closing Time neither the Fund nor any Fund Subsidiary, directly or indirectly, will hold any shares, other securities, options or rights to subscribe for shares or other securities of any corporation, partnership or other entity other than pursuant to the Subscription Agreement;
- (p) Computershare Investor Services Inc., at its principal office in Toronto, Ontario, will be duly appointed as the registrar and transfer agent for the Units at or prior to the Closing Time;
- (q) Computershare Trust Company of Canada, at its principal office in Toronto, Ontario, will be duly appointed as the trustee in respect of the AcquisitionCo Notes and the MarksCo Notes at or prior to the Closing Time;
- (r) except as contemplated by this agreement, and the Related Agreements or 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 (i) under which the Fund or a Fund Subsidiary is, or may become, obligated to issue any of its securities or (ii) for the purchase of any security (including debt) of the Fund or a Fund Subsidiary or any part of the Second Cup Marks;

- (s) the TSX has conditionally approved the listing of the Units, subject to satisfaction by the Fund of the Standard Listing Conditions;
- (t) the Units to be issued as described in this agreement and in the Prospectus have been, or prior to the Closing Time will be, duly created and, when issued, delivered and paid for in full will be validly issued as fully paid Units of the Fund, and will not have been issued in violation of or subject to any pre-emptive rights or contractual rights to purchase securities issued by the Fund;
- (u) prior to the Closing Time, the form and terms of the certificate for the Units will have been approved and adopted by the Trustees and will comply with all legal requirements and will not conflict with the Declaration of Trust;
- (v) the Fund and AcquisitionCo have not engaged in any active business nor have they entered into any material agreement, contract or understanding, other than this agreement and the Related Agreements prior to the date of this agreement;
- (w) the Fund has carried out its affairs as described in the Prospectus in compliance in all material respects with the terms and provisions of the Declaration of Trust and applicable law and is not in violation of or in default in the performance of any mortgage, note, indenture, deed of trust, contract, agreement (written or oral), instrument, lease, licence or other document to which it is a party or by which it is bound or to which its property or assets or any of them is subject;
- (x) the terms and provisions of this agreement and the Related Agreements are, and the attributes attaching to the Units, the AcquisitionCo Common Shares, the AcquisitionCo Notes, the MarksCo Common Shares and the MarksCo Notes when issued on the Closing Date will be, consistent in all material respects with the descriptions thereof in the Prospectus;
- (y) except as disclosed in the Prospectus, since March 27, 2004, there has not been any material change in the Condition of the Second Cup Entities and no event has occurred or circumstances exists which would be reasonably expected to result in a material change;

- (z) the audited and unaudited consolidated financial statements of Second Cup together with the notes thereto included in the Prospectus fairly present in all material respects the consolidated financial position, earnings and cash flow of Second Cup as at the dates and for the periods indicated and do not contain a misrepresentation. Such financial statements have been prepared in conformity with Canadian generally accepted accounting principles on a basis consistent throughout the periods indicated and are in accordance with the books and records of Second Cup;
- (aa) the audited balance sheet of the Fund together with the notes thereto included in the Prospectus fairly present in all material respects the financial position of the Fund as at the date of such statement and does not contain any misrepresentation. Such balance sheet has been prepared in conformity with Canadian generally accepted accounting principles and is in accordance with the books and records of the Fund;
- (bb) the unaudited pro forma consolidated balance sheet of the Fund and the related notes thereto included in the Prospectus fairly present in all material respects the pro forma consolidated financial position of the Fund as at the date indicated after giving effect to the transactions and assumptions described in the related notes thereto and does not contain a misrepresentation. Such unaudited pro forma balance sheet has been compiled in accordance with rules and guidelines set forth under Securities Laws with respect to the preparation of pro forma financial statements and the assumptions used in the preparation thereof are reasonable and the adjustments used therein are appropriate to give effect to the transactions and assumptions referred to therein;
- (cc) the audited schedule of system wide sales reported by Second Cup cafes in Canada together with the notes thereto included in the Prospectus fairly present in all material respects the system wide sales reported by Second Cup cafes in Canada for the periods indicated as at the date of such statement and such schedule has been prepared in accordance with the books and records of Second Cup;
- (dd) other than as disclosed in the financial statements referred to in Section 8(1)(z) and Section 8(1)(bb), there are no off-balance sheet transactions, arrangements, obligations (including contingent obligations) or other relationships of any of the Second Cup 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 Units;

- (ee) except as disclosed in the Prospectus, none of the Second Cup Entities has any contingent liabilities in excess of the liabilities that are either reflected or reserved against in Second Cup's financial statements which would reasonably be expected to be material to the Condition of any of the Second Cup Entities;
- (ff) Second Cup maintains, and at the Closing Date New Second Cup will maintain, a system of internal controls that is intended to be 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 recorded accountability for assets is compared with existing assets at reasonable intervals and appropriate action is taken with respect to differences; (v) material information relating to each of the Second Cup Entities is made known to those within the Second Cup 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 within the time periods required by applicable Laws; and (vi) all significant deficiencies and material weaknesses in the design or operation of such internal controls that could adversely affect New Second Cup's ability to disclose to the public information required to be disclosed by it in accordance with applicable Law and all fraud, whether or not material, that involves management or employees that have a significant role in New Second Cup's internal controls have been disclosed to the audit committees of New Second Cup's board of directors;
- (gg) all income and other tax returns of each of the Second Cup 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 Second Cup Entities has made

instalments of taxes as and when required. Each of the Second Cup Entities have 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;

- (hh) subject to meeting the minimum distribution requirements with respect to the purchasers of the Units and the filing of an election under subsection 132(6.1) of the Tax Act, the Fund will at the Closing Date qualify as a mutual fund trust under the Tax Act from inception;
- (ii) the Units are not and at the Closing Time will not be “foreign property” as defined in the Tax Act for deferred income plans, registered pension plans or other persons subject to tax under Part XI of the Tax Act.;
- (jj) except as disclosed in the Prospectus and pursuant to the Related Agreements or employment, option and similar arrangements, none of the trustees, directors, officers or employees of any of the Second Cup Entities, any person who owns, directly or indirectly, more than 10% of any class of securities of any of the Second Cup 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 Second Cup Entities which, as the case may be, materially affects, is material to or will materially affect the Second Cup Entities, taken as a whole;
- (kk) 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 Second Cup Entities;
- (ll) no Governmental Authority has issued any order preventing or suspending the use of the Preliminary Prospectus or any of the Offering Documents or preventing or suspending the distribution of the 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;

- (mm) the minute books and corporate records of the Second Cup Entities made available to Stikeman Elliott LLP, counsel to the Underwriters in connection with its due diligence investigations for the periods requested are the original minute books and records and contain original copies of all proceedings (or certified copies thereof) of the shareholders, the boards of directors and all committees of the boards of directors of each of such entities that have been minuted or resolved 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;
- (nn) except as disclosed in the Prospectus, there is no person acting or purporting to act at the request of the Fund, New Second Cup or Cara, who is entitled to any brokerage or agency fee in connection with the sale of the Units; and
- (oo) each of the representations and warranties given by it or a Second Cup Entity contained in the Related Agreements or in any certificate or other document delivered thereunder will at the Closing Time be true and correct.

Section 9 Representations and Warranties of New Second Cup and Cara.

- (1) New Second Cup and Cara jointly and severally represent and warrant to the Underwriters, and acknowledge 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 New Second Cup or Cara and delivered and addressed to the Underwriters shall be deemed a representation and warranty by New Second Cup and Cara to the Underwriters as to matters covered thereby):
 - (a) New Second Cup is a corporation existing in good standing under the laws of the Province of Ontario and has the power, capacity and authority to own, lease and operate its property and assets, carry on its business and to enter into and perform its obligations under this agreement and each of the Related Agreements to which it will be a party. New Second Cup will, at the Closing Time, be duly qualified, licensed or registered to carry on business in each jurisdiction where the failure to be so registered, licensed or qualified would have a material adverse effect on the Condition of New Second Cup;

- (b) the execution, delivery and performance by New Second Cup of this agreement and each of the Related Agreements to which it is, or is to be, a party:
 - (i) has been, or will prior to the Closing Time be, duly authorized by all necessary corporate action on the part of New Second Cup;
 - (ii) does 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, (ii) those as may be required (and will be obtained prior to the Closing Time) under applicable Securities Laws, (iii) those, the failure of which to obtain would not have a material adverse effect;
 - (iii) does not (or will not with the giving of notice, the lapse of time or both) 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 New Second Cup, or any judgment, decree, order or award of any Governmental Authority having jurisdiction over New Second Cup, or any agreement, licence or permit to which New Second Cup is a party or by which its property or assets may be affected, provided in each case, such breach, violation, conflict, default or rights might reasonably be expected to have a material adverse effect on the Condition of New Second Cup;
 - (iv) will not result in the violation of any applicable law; and
 - (v) will not, other than as disclosed in the Prospectus, give rise to any Lien in or with respect to the properties or assets now owned or hereafter acquired by New Second Cup or the acceleration of or the maturity of any debt under any material indenture, mortgage, lease, agreement or instrument binding or affecting New Second Cup or any of its properties or assets;
- (c) Cara is the registered owner of all of the issued and outstanding shares of New Second Cup;
- (d) this agreement and the Related Agreements to which New Second Cup is a party or is to be a party, have been or will at the Closing Time be,

duly executed and delivered by New Second Cup and constitute or, as the case may be, will constitute, when so executed and delivered, legal, valid and binding obligations of New Second Cup, 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, and that rights of indemnity and/ or contribution set out therein may be limited under applicable law; and

- (e) there is no action, suit, proceeding or investigation, 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 New Second Cup, threatened against or affecting New Second Cup or any of its properties, rights or assets, or the Second Cup Marks or the Business, which individually or in the aggregate, if determined adversely to the interest of New Second Cup might reasonably be expected to have a material adverse effect on the Condition of New Second Cup or on the consummation of the transactions contemplated by the Prospectus; and
- (f) each of the representations and warranties of New Second Cup contained in the Related Agreements or in any certificate or document delivered thereunder will at the Closing Time be true and correct.

Section 10 Representations and Warranties of Cara

- (1) Cara 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 Cara and delivered and addressed to the Underwriters shall be deemed a representation and warranty by Cara to the Underwriters as to matters covered thereby):
 - (a) Cara is a corporation existing in good standing under the laws of the Province of Ontario and has the power, capacity and authority to own, lease and operate its property and assets, carry on its business and to enter into and perform its obligations under this agreement and each of the Related Agreements to which it is a party;
 - (b) the execution, delivery and performance by Cara of this agreement and each of the Related Agreements to which it is, or is to be, a party:

- (i) has been, or will prior to the Closing Time be, duly authorized by all necessary corporate action on the part of Cara;
 - (ii) does 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, (ii) those as may be required (and will be obtained prior to the Closing Time) under applicable Securities Laws, (iii) those, the failure of which to obtain would not have a material adverse effect;
 - (iii) does not (or will not with the giving of notice, the lapse of time or both) 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 Cara, or any judgment, decree, order or award of any Governmental Authority having jurisdiction over Cara, or any agreement, licence or permit to which Cara is a party or by which its property or assets may be affected, provided in each case, such breach, violation, conflict, default or rights might reasonably be expected to have a material adverse effect on the Condition of Cara;
 - (iv) will not result in the violation of any applicable law; and
 - (v) will not, other than as disclosed in the Prospectus, give rise to any Lien in or with respect to the properties or assets now owned or hereafter acquired by Cara or the acceleration of or the maturity of any debt under any material indenture, mortgage, lease, agreement or instrument binding or affecting Cara or any of its properties or assets;
- (c) this agreement and the Related Agreements to which Cara is a party or is to be a party, have been or will at the Closing Time be, duly executed and delivered by Cara and constitute or, as the case may be, will constitute, when so executed and delivered, legal, valid and binding obligations of Cara, 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, and

that rights of indemnity and/ or contribution set out therein may be limited under applicable law; and

- (d) there is no action, suit, proceeding or investigation, 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 Cara, threatened against or affecting Cara or any of its properties, rights or assets, which individually or in the aggregate, if determined adversely to the interest of Cara might reasonably be expected to have a material adverse effect on the Condition of Cara or on the consummation of the transactions contemplated by the Prospectus; and
- (e) each of the representations and warranties of Cara contained in the Related Agreements or in any certificate or document delivered thereunder will at the Closing Time be true and correct.

Section 11 Covenants of the Fund, New Second Cup and Cara.

- (1) The Fund, New Second Cup and Cara covenant and agree with the Underwriters that:
 - (a) the Fund will advise the Underwriters, promptly after receiving notice thereof, of the time when the Prospectus and any Supplementary Material has been filed and the Final MRRS Decision Document and any other receipts have been obtained and will provide evidence satisfactory to the Underwriters of each filing and the issuance of the Final MRRS Decision Document and any other receipts;
 - (b) the Fund will advise the Underwriters, promptly after receiving notice or obtaining knowledge, of: (i) the issuance by any Securities Commission of any order suspending or preventing the use of the Preliminary Prospectus or any Offering Document; (ii) the issuance by the SEC of any order suspending or preventing the use of the U.S. Placement Memorandum; (iii) the suspension of the qualification of the Units for offering or sale in any of the Qualifying Jurisdictions or in the United States in accordance with Section 15(1) of this agreement; (iv) the institution, threatening or contemplation of any proceeding for any of those purposes; or (v) any requests made by any Securities Commission or the SEC to amend or supplement the Prospectus or the U.S. Placement Memorandum or for additional information, and will use its best efforts to prevent the issuance of any such order and, if any such order is issued, to obtain the withdrawal of the order promptly;

- (c) the Fund will apply the net proceeds from the issue and sale of the Units substantially in accordance with the disclosure set out under the heading “Use of Proceeds” in the Prospectus;
- (d) at the Closing Time, the Fund, New Second Cup and Cara will deliver to the Underwriters and their counsel all legal opinions (which shall be addressed to the Underwriters and, if required for opinion purposes, their counsel) which are required to be delivered pursuant to the Related Agreements;
- (e) the Fund will refund to the Underwriters the purchase price paid by them for the Units under this agreement if the transactions contemplated to occur at the Closing Time by the Related Agreements are not completed, provided that the Underwriters return to the Fund the fees paid to them by the Fund pursuant to the second paragraph of this Agreement and return to investors any amounts paid by them for the Units; and
- (f) for a period of one year following the Closing Date, they will not amend or cause to be amended any of the Related Agreements without the consent of Scotia Capital, which consent will not be unreasonably withheld.

Section 12 Conditions of Closing.

- (1) The obligation of the Underwriters to purchase the 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 whole or in part, by the Underwriters, in their sole discretion, pursuant to Section 19 hereof:
 - (a) counsel to the Fund, New Second Cup and Cara will have delivered to the Underwriters and their counsel a legal opinion dated and delivered the Closing Date, in form and substance satisfactory to the Underwriters and, if required for opinion purposes, their counsel, acting reasonably, and counsel to the Fund, New Second Cup and Cara 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, Alberta, Ontario and Quebec and rely as to matters of fact, on certificates of auditors, public officials and officers of the Second Cup Entities, with respect to substantially the following matters 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 created and is existing as a trust under the laws of the Province of Ontario pursuant to the Declaration of Trust;
- (ii) the Trustees have the power, capacity and authority to own the properties and assets of the Fund and to carry on the activities as proposed to be conducted as contemplated in the Prospectus;
- (iii) the Trustees have been appointed as trustees of the Fund in accordance with the terms and provisions of the Declaration of Trust and have all the requisite power and authority under the Declaration of Trust to execute, deliver and perform, in their capacity as trustees, their obligations under this agreement and the Related Agreements to which the Fund is a party, and to issue, sell and deliver the Units;
- (iv) the description of the Declaration of Trust and the attributes and characteristics of the Units in the Prospectus is a fair summary thereof;
- (v) all necessary actions have been taken by the Trustees to validly issue, sell and deliver 8,145,346 Units to the Underwriters and upon receipt of the purchase price therefor and the issuance of certificates therefor in accordance with the Declaration of Trust, such 8,145,346 Units will be validly issued and shall be outstanding as fully paid and non-assessable Units;
- (vi) the Fund is authorized to issue an unlimited number of Units, of which ten Units have been validly issued and are outstanding as fully paid and non-assessable Units;
- (vii) the form and terms of the definitive certificates representing the Units have been approved and adopted by the Trustees of the Fund and comply with the terms and conditions of the Declaration of Trust and applicable law and the certificate representing the Units issued at the Closing Time have been duly executed and delivered by or on behalf of the Trustees;
- (viii) the TSX has conditionally approved the listing and posting for trading of the Units, subject to the Fund fulfilling the Standard Listing Conditions;
- (ix) Computershare Investor Services Inc. has been appointed as the registrar and transfer agent for the Units;

- (x) Computershare Trust Company of Canada has been appointed as indenture trustee in respect of the AcquisitionCo Notes and the MarksCo Notes;
- (xi) each of AcquisitionCo, MarksCo, New Second Cup and Cara is a corporation existing under the laws of the jurisdiction of its incorporation or amalgamation, as the case may be, and has the corporate power and capacity to own or lease its properties and assets and to carry on its business as described in the Prospectus, and to enter into and perform its obligations under this agreement and each of the Related Agreements to which it is a party;
- (xii) assuming the completion of the transactions contemplated to occur on the Closing Date, the authorized capital of AcquisitionCo consists of an unlimited number of AcquisitionCo Common Shares, of which 8,694,039 AcquisitionCo Common Shares are currently issued and outstanding as fully paid and non-assessable shares, and the Fund is the registered holder of all such issued and outstanding Acquisition Common Shares;
- (xiii) assuming the completion of the transactions contemplated to occur on the Closing Date, AcquisitionCo is authorized to issue an unlimited number of Series 1 AcquisitionCo Notes and Series 2 AcquisitionCo Notes pursuant to the AcquisitionCo Note Indenture and \$78,246,353 principal amount of Series 1 AcquisitionCo Notes and no Series 2 AcquisitionCo Notes have been validly created and issued and the Fund is the registered holder of all such issued Series 1 AcquisitionCo Notes;
- (xiv) assuming the completion of the transactions contemplated to occur on the Closing Date, the authorized capital of MarksCo consists of an unlimited number of MarksCo Common Shares, of which 8,694,039 MarksCo Common Shares are currently issued and outstanding as fully paid and non-assessable shares, and AcquisitionCo is the registered holder of all such issued and outstanding MarksCo Common Shares;
- (xv) assuming the completion of the transactions contemplated to occur on the Closing Date, MarksCo is authorized to issue an unlimited number of Series 1 MarksCo Notes and Series 2 MarksCo Notes pursuant to the AcquisitionCo Note Indenture and \$78,246,353 principal amount of Series 1 MarksCo Notes

and no Series 2 MarksCo Notes have been validly created and issued, and AcquisitionCo is the registered holder of all such issued Series 1 MarksCo Notes;

- (xvi) the authorized capital of New Second Cup consists of an unlimited number of common shares and Cara is the registered holder of all issued and outstanding common shares;
- (xvii) 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 Commissions have been duly approved and authorized by all necessary action on the part of the Fund and Cara, 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 and by Cara;
- (xviii) 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 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;
- (xix) all necessary action has been taken by each of the Trustees to authorize the execution and delivery by the Fund, of this agreement and each of the Related Agreements to which it is a party and the performance of its obligations hereunder and thereunder, and this agreement and each of the Related Agreements to which the Fund is a party have been duly executed and delivered by or on behalf of the Trustees and constitute legal, valid and binding obligations of the Fund enforceable against the Trustees in accordance with their terms, subject to usual and reasonable qualifications;
- (xx) all necessary action has been taken by each of AcquisitionCo, MarksCo, New Second Cup and Cara to authorize the execution and delivery by such entity of each of this agreement and the

Related Agreements to which it is a party and the performance of its respective obligations hereunder and thereunder, and each of this agreement and the Related Agreements to which each such entity is a party has been duly executed and delivered by each such entity, as the case may be, and constitutes a legal, valid and binding obligation of each such entity enforceable against each of them in accordance with its terms, subject to usual and reasonable qualifications;

- (xxi) all necessary documents have been filed, all proceedings have been taken and all other legal requirements have been fulfilled by the Fund under the laws of each of the Qualifying Jurisdictions to qualify the distribution of the 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;
- (xxii) the execution, delivery and performance of this agreement and the Related Agreements, by each of the Second Cup Entities who are parties thereto, as applicable, and the issuance, sale and delivery of the Units to the Underwriters, the issuance, sale and delivery of the AcquisitionCo Common Shares and the AcquisitionCo Notes to the Fund and the issuance, sale and delivery of the MarksCo Common Shares and the MarksCo Notes to AcquisitionCo, as contemplated by the Prospectus:
 - (A) do not and will not result in a breach of or default under, and do not and will not create a state of facts which, after notice or lapse of time or both, will result in a breach of or default under, and do not and will not conflict with:
 - (I) any of the terms, conditions or provisions of the constating documents or by-laws (including the Declaration of Trust) of the Second Cup Entities or resolutions of the securityholders, trustees or directors (as applicable), or any committee thereof of the Fund, the Fund Subsidiaries and New Second Cup, as the case may be; or
 - (II) any federal laws of Canada or laws of the Province of Ontario applicable to the Second Cup Entities, as the case may be; and

- (B) to counsel's knowledge, will not give rise to the acceleration of or the maturity of any indebtedness or other material liabilities or obligations under the Cara Credit Documents (other than those which terminate on the Closing Date or in respect of which waivers or consents have been received or will be received prior to the Closing Time);
 - (xxiii) to counsel's knowledge, there are no legal or governmental proceedings pending or threatened to which any of the Second Cup Entities, as the case may be, is a party or to which any of their material properties is subject that are required to be described in the Prospectus and are not so described;
 - (xxiv) the statements concerning tax matters under the heading "Eligibility for Investment" are accurate, subject to the assumptions, qualifications, limitations and restrictions set out therein;
 - (xxv) subject to the qualifications, assumptions and restrictions referred to therein, the section of the Prospectus entitled "Certain Canadian Federal Income Tax Considerations" is an accurate summary of the principal Canadian federal income tax considerations generally applicable under the Tax Act to a holder of Units who acquires such securities pursuant to the Prospectus and who for the purposes of the Tax Act is resident in Canada, holds the Units as capital property and deals at arm's length with the Fund and the Underwriters.
- (b) 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 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;
 - (c) if any Units are to be offered or sold in the United States, the Fund will cause its U.S. counsel to deliver to the Underwriters a favourable legal opinion to the effect that no registration of the Units is required under the United States Securities Act of 1933, as amended, provided that, in

each case, the sale is made in accordance with Section 15(1) of this agreement;

- (d) the Underwriters will have received certificates dated the Closing Date signed by those trustees or senior officers, as the case may be, of the Fund, the Fund Subsidiaries, New Second Cup and Cara 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 the Fund, the Fund Subsidiaries, New Second Cup and Cara, respectively;
 - (ii) the resolutions of the Trustees of the Fund relevant to the allotment, issue and sale, as the case may be, of the Units and the authorization of this agreement and the Related Agreements and transactions contemplated by this agreement and resolutions of the directors of the Fund Subsidiaries, New Second Cup and Cara authorizing the transactions contemplated by this agreement and the Related Agreements, respectively; and
 - (iii) the incumbency and signatures of trustees or signing officers, as the case may be, of the Fund, the Fund Subsidiaries, New Second Cup and Cara, respectively;
- (e) the Underwriters shall have received at the Closing Time a comfort letter dated the Closing Date from the Fund's auditors, PricewaterhouseCoopers LLP, addressed to the Underwriters and the trustees of the Fund, in form and substance satisfactory to the Underwriters and their counsel, similar to the comfort letter to be delivered to the Underwriters pursuant to Section 5(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;
- (f) each of the Fund, New Second Cup and Cara will deliver to the Underwriters, at the Closing Time, a certificate dated the Closing Date addressed to the Underwriters and signed, in the case of the Fund by two trustees, in the case of each of New Second Cup and Cara by the chief executive officer and chief financial officer with respect to the following matters (in each case as to itself only):
 - (i) the Fund, New Second Cup and Cara, as the case may be, have complied with all the covenants and satisfied all the terms and

conditions of this agreement on their respective parts 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 involving a prospective material adverse change in the Condition of the Business or of the Second Cup Entities, 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 Second Cup Entities, or has been approved by the management of any of them, which results or could result in a material adverse change to the Condition of any of the Second Cup Entities, other than as disclosed in the Prospectus or any Supplementary Material, as the case may be;
- (iv) the representations and warranties of the Fund, New Second Cup and Cara, as the case may be, contained in this agreement, and in any certificates of the Fund, New Second Cup and Cara, as the case may be, delivered pursuant to or in connection with this agreement, are true and correct 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; and
- (v) no order, ruling or determination having the effect of ceasing the trading or suspending the sale of the Units of the Fund has been issued and no proceedings for that purpose have been instituted or are pending or, to the knowledge of those officers, contemplated or threatened by any Governmental Authority,

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

- (g) the Fund shall have provided the Underwriters with a certificate stating that the Fund meets the requirements of a mutual fund trust under the Tax Act;
- (h) all actions required to be taken by or on behalf of each of the parties to the Related Agreements will have occurred at or prior to the Closing Time so as to validly authorize the execution, delivery and

performance of each of the Related Agreements by the parties thereto; each of the Related Agreements shall have been executed at or prior to the Closing Time in a form satisfactory to the Underwriters, acting reasonably, and shall not have been terminated; all conditions to the completion of the transactions contemplated by the Related Agreements (excluding the consummation of the issuance of the Units hereunder) shall have been satisfied; the transfer to New Second Cup of substantially all of the assets and liabilities relating to Second Cup's Canadian business and the transfer to Cara of all of the assets and liabilities relating to Second Cup's non-Canadian business in the manner contemplated in the Prospectus shall be completed in a manner satisfactory to the Underwriters; arrangements satisfactory to the Underwriters shall have been made to release the MarksCo Predecessors from all guarantees provided to the lenders to Cara and discharge any related security; and no ruling, order or determination shall have been issued and no proceeding for the same shall have been commenced or threatened and the Underwriters shall be satisfied, acting reasonably, that no circumstances shall exist preventing or materially and adversely affecting the performance of the Related Agreements by the parties thereto or the completion of the transactions contemplated by the Related Agreements in accordance with the terms thereof forthwith following closing of the Offering;

- (i) the Units will have been listed and posted for trading on the TSX on the business day immediately preceding the Closing Date, subject only to the Standard Listing Conditions;
- (j) the Underwriters shall be satisfied with the results of their due diligence investigations;
- (k) New Second Cup shall have executed and delivered to the Underwriters a Release;
- (l) New Second Cup shall have subscribed and paid for 1,437,414 units of the Fund; and
- (m) the Underwriters shall receive an undertaking similar to that set forth in Section 14(1) from each member of senior management of any of the Second Cup Entities and from Cara holding Units.

Section 13 Closing.

- (1) The closing of the purchase and sale of the Units will be completed at the Closing Time at the offices of Osler, Hoskin & Harcourt LLP, 1 First Canadian Place, Toronto, Ontario, M5X 1B8, or at any other place determined in writing

by the Fund, New Second Cup and Cara and the Underwriters. At the Closing Time, the Fund will deliver to Scotia Capital:

- (a) for the respective accounts of the Underwriters, a certificate representing 8,145,346 Units registered in the name of "CDS & Co." for deposit into the book-entry only system administered by the Canadian Depository for Securities Limited;
- (b) one or more certified cheques, bank drafts or wire transfers payable to Scotia Capital, on behalf of the Underwriters, representing, the fees payable by the Fund to the Underwriters as provided in the second paragraph of this agreement, and
- (c) all further documentation as may be contemplated in this agreement or as counsel to the Underwriters may reasonably require;

against payment by the Underwriters to the Fund of the purchase price for the Units being issued and sold to them under this agreement by wire transfer payable to or as directed by the Fund.

Section 14 Restrictions on Further Issues and Transfers.

- (1) Without the prior written consent of Scotia Capital, during the period commencing the date of this agreement and ending on the day which is 180 days following the Closing Date, the Fund will not, directly or indirectly, issue, offer, sell, contract to sell, grant any option to purchase, transfer, assign or otherwise dispose of any Units or any securities convertible into or exchangeable for any Units, or announce any intention to effect the foregoing; and
- (2) During the period commencing on the date of this agreement and ending on the day which is two years from the Closing Date, New Second Cup will not sell, without the prior written consent of Scotia Capital and the Fund, any of the 1,437,414 initial Units of the Fund subscribed for by New Second Cup except in connection with a take-over bid, merger, arrangement, reorganization or similar business combination or pursuant to a pledge and except to an affiliate provided that such affiliate agrees to be bound by the terms hereof.

Section 15 Offering in the United States.

- (1) For the purposes of this agreement, the following terms will have the meanings indicated:
 - (a) **"Directed Selling Efforts"** means **"directed selling efforts"** as defined in Regulation S and, without limiting the foregoing, but for

greater clarity, 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 the Units, and includes the placement of any advertisement in a publication with a general circulation in the United States that refers to the offering of the Units;

- (b) **“General Solicitation”** and **“General Advertising”** means **“general solicitation”** and **“general advertising”**, respectively, as used in Rule 502(c) of Regulation D under the U.S. Securities Act, including advertisements, articles, notices or other communications published in any newspaper, magazine or similar media or broadcast over radio or television, or any seminar or meeting whose attendees had been invited by general solicitation or general advertising;
- (c) **“Institutional Accredited Investor”** means an institutional accredited investor as that term is defined in Rule 501(a)(1),(2),(3) or (7) of Regulation D;
- (d) **“Qualified Institutional Buyer”** means a **“qualified institutional buyer”** as defined in Rule 144A;
- (e) **“Regulation D”** means Regulation D under the U.S. Securities Act;
- (f) **“Regulation S”** means Regulation S under the U.S. Securities Act;
- (g) **“Rule 144A”** means Rule 144A under the U.S. Securities Act;
- (h) **“SEC”** means the United States Securities and Exchange Commission;
- (i) **“Substantial U.S. Market Interest”** means **“substantial U.S. market interest”** as defined in Regulation S;
- (j) **“U.S. Exchange Act”** means the United States Securities Exchange Act of 1934, as amended;
- (k) **“U.S. Placement Memorandum”** means the Prospectus supplemented with wrap pages dated the date of this agreement describing restrictions imposed under the U.S. Securities Act;
- (l) **“U.S. Purchaser’s Letter”** means a letter in the **Schedule 15(1)** form of Schedule 15(1) ;

- (m) **“U.S. Securities Act”** means the United States Securities Act of 1933, as amended.
- (2) The Underwriters may offer and sell the Units within the United States on the terms and subject to the conditions of this Section 15. In connection therewith, the Fund and the Vendor severally represent, warrant and covenant that:
- (a) the Fund is a **“foreign issuer”** (within the meaning of Regulation S) and reasonably believes there is no Substantial U.S. Market Interest with respect to the Units;
 - (b) none of the Fund, New Second Cup, Cara, their respective affiliates or any person acting on its or their behalf, (other than the Underwriters, U.S. affiliates of the Underwriters (**“U.S. Affiliates”**), or any members of the banking and selling group formed by them (collectively, the **“US Selling Firms”**, as to whom the Fund, New Second Cup and Cara make no representation), has engaged or will engage in any Directed Selling Efforts in the United States with respect to the Units;
 - (c) the Fund is not, and as a result of the sale of the Units will not be, an “investment company” pursuant to the provisions of the United States Investment Company Act of 1940, as amended;
 - (d) none of the Fund, New Second Cup, Cara, their respective affiliates or any person acting on its or their behalf, (other than the Underwriters, U.S. Affiliates, or any members of the U.S. Selling Firms, as to whom the Fund, New Second Cup and Cara make no representation), has engaged in any form of General Solicitation or General Advertising in connection with any offer or sale of the Units or any security convertible or exchangeable into Units in the United States within the six month period prior to the date of this agreement;
 - (e) so long as any of the Units are outstanding and are **“restricted securities”** within the meaning of Rule 144(a)(3) under the U.S. Securities Act, the Fund will, unless it becomes subject to and complies with the reporting requirements of Subsection 13(a) or Subsection 15(d) of the U.S. Exchange Act or the information furnishing requirements of Rule 12g3-2(b) thereunder, provide to any holder of those restricted securities, or to any prospective purchaser of those restricted securities designated by a holder, upon the request of that holder or prospective purchaser, at or prior to the time of sale, the information required to be provided by Rule 144A(d)(4) under the U.S. Securities Act (so long as that requirement is necessary in order to permit holders of the restricted securities to effect resales under Rule

144A) to a Qualified Institutional Buyer which is a holder of the restricted securities;

- (f) none of the Fund, New Second Cup, Cara or their respective affiliates:
 - (i) will take any action for a period of forty (40) days from the Closing Date that would cause the registration exemptions in Regulation S, Rule 144A or Rule 506 of Regulation D to be unavailable for the offer and sale of Units pursuant to this agreement, or (ii) has been subject to any order, judgement or decree of any court of competent jurisdiction temporarily, preliminarily or permanently enjoining that person for failure to comply with Rule 503 of Regulation D; and
 - (g) the Units are not, and as of the Closing Time the Units will not be, and no securities of the same class as the Units are or will be, (i) listed on a national securities exchange in the United States registered under Section 6 of the U.S. Exchange Act, (ii) quoted in an **“automated inter-dealer quotation system”**, as such term is used in the U.S. Exchange Act, or (iii) convertible or exchangeable at an effective conversion premium (calculated as specified in paragraph (a)(6) of Rule 144A) of less than ten percent for securities so listed or quoted; and
 - (h) the Fund will, within prescribed time periods, prepare and file any forms or notices required under the U.S. Securities Act or applicable blue sky laws.
- (3) Each Underwriter acknowledges that the Units have not been and will not be registered under the U.S. Securities Act and may be offered and sold in transactions exempt from or not subject to the registration requirements of the U.S. Securities Act. Accordingly, each Underwriter separately and not jointly represents, warrants and covenants that :
- (a) it has not offered or sold, and will not offer or sell, any Units constituting part of its allotment within the United States except as provided in this Section 15 or outside of the United States in accordance with Rule 903 of Regulation S. Accordingly, neither it nor any of its affiliates nor any person acting on its or their behalf has engaged or will engage in: (i) any offer to sell or any solicitation of an offer to buy, any Units to any person in the United States, (ii) any sale of Units to any purchaser unless, at the time the buy order was or will have been originated, the purchaser was outside the United States, or such Underwriter, affiliate or person acting on behalf of either reasonably believed that such purchaser was outside the United States, or (iii) any Directed Selling Efforts with respect to the Units, except as permitted in this Section 15;

- (b) neither it nor any of its affiliates nor any person acting on its or their behalf has or will engage in any form of General Solicitation or General Advertising or in any conduct involving a public offering within the meaning of Section 4(2) of the U.S. Securities Act in connection with its offers or sales of the Units in the United States;
- (c) all offers and sales of the Units in the United States will be effected through its U.S. Affiliate duly registered under the U.S. Exchange Act and all applicable state securities laws, in accordance with all applicable United States state and federal securities (including broker-dealer) laws;
- (d) each U.S. Affiliate which is purchasing the Units in the United States is a Qualified Institutional Buyer and is a member of, and in good standing with, the National Association of Securities Dealers on the date hereof;
- (e) it agrees to deliver, through the U.S. Affiliates, a copy of the U.S. Placement Memorandum to each person in the United States purchasing the Units;
- (f) any offer, sale or solicitation of an offer to buy Units that has been made or will be made in the United States was or will be made only to a person it reasonably believes (i) to be a Qualified Institutional Buyer who is acquiring the Units for its own account or for the account of a Qualified Institutional Buyer with respect to which it exercises sole investment discretion or (ii) to be an Institutional Accredited Investor with whom the Underwriter has a pre-existing relationship, in each case in a transaction that is exempt from registration under the U.S. Securities Act;
- (g) all purchasers of the Units who are buying the Units pursuant to Rule 144A shall be informed that the Units are being offered and sold to such purchasers in reliance on an exemption from the registration requirements of the U.S. Securities Act provided by Rule 144A;
- (h) immediately prior to soliciting such offerees, the Underwriter has reasonable grounds to believe and did believe that each offeree was a Qualified Institutional Buyer or an Institutional Accredited Investor; and
- (i) prior to completion of any sale of Units in the United States, each U.S. Purchaser thereof (a **“U.S. Purchaser”**) who is not a Qualified Institutional Buyer will be required to provide to the Underwriter, or

to the U.S. Affiliate selling Units, the U.S. Purchaser's Letter and each U.S. Purchaser that is a Qualified Institutional Buyer will be deemed to have provided the representations, warranties and covenants in the U.S. Placement Memorandum.

- (j) Each Underwriter agrees that:
 - (i) prior to the Closing Date, it will request Scotia Capital to provide Computershare with a list of all purchasers of the Units in the United States;
 - (ii) at closing, it, together with its U.S. Affiliate selling Units in the United States, will provide a certificate, substantially in the form of Schedule 15(3) to this agreement relating to the manner of the offer and sale of the Units in the United States; and
 - (iii) if the Underwriters authorize any U.S. Selling Firms to offer and sell Units in the United States through the U.S. Affiliates, the Underwriters will cause each such firm to acknowledge in writing, for the benefit of the Fund, its agreement to be bound by the provisions of this Section 15 in connection with all offers and sales of the Units in the United States. The Underwriters have not and will not make any other contractual arrangement for the distribution of the Units in the United States without the prior written consent of the Fund.

Section 16 Indemnification.

- (1) Each of the Fund, New Second Cup and Cara agree to jointly and severally protect, hold harmless and indemnify each of the Underwriters and their respective affiliates and their respective directors, officers, employees, shareholders and agents from and against all losses (other than losses of profit in connection with the distribution of the Units), claims, damages, liabilities, costs and expenses, including, without limitation, all amounts paid to settle actions or satisfy judgments or awards and all reasonable legal fees and expenses (collectively, a **"Claim"**) caused by or arising directly or indirectly by reason of:
 - (a) any breach of or default of any representation or warranty of the Fund, New Second Cup or Cara 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 (except any information or statement relating solely to the Underwriters, and furnished by them specifically

for use in such document) contained in any of the Preliminary Prospectus, the Prospectus, the U.S. Placement Memorandum or any Supplementary Material or any other document or material filed or delivered by or on behalf of the Fund pursuant to this agreement (collectively, the **“IPO Offering Documents”**) being or being alleged to be a misrepresentation;

- (c) any omission or alleged omission to state in any of the IPO Offering Documents or any certificate or other document of Cara or the Second Cup Entities or of any officer of Cara or any of the Second Cup Entities delivered hereunder or pursuant hereto any fact, whether material or not (except facts relating solely to the Underwriters), 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 and furnished by them specifically for use in such document) contained in any of the IPO Offering Documents, based upon any actual or alleged failure to comply with Securities Laws or U.S. securities laws (other than any failure to comply by the Underwriters) or preventing or restricting the trading in or the sale or distribution of the Units; or
- (e) any non-compliance or alleged non-compliance by Cara or the Second Cup Entities with any applicable Securities Laws or U.S. securities laws in connection with the transactions contemplated herein;

and will reimburse the Indemnified Parties for all reasonable 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) 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). 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 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;
 - (d) (in each of the cases of Section 16(2)(a), Section 16(2)(b) or Section 16(2)(c), the Indemnifying Parties will not have the right to assume the defence of the suit on behalf of the Indemnified Party, but the Indemnifying Parties will be liable to pay the reasonable fees and expenses of separate counsel for all Indemnified Parties and, in addition, of local counsel in each applicable jurisdiction). Notwithstanding the foregoing, no settlement may be made by an Indemnified Party without the prior written consent of the Fund, New Second Cup and Cara which consent will not be unreasonably withheld.
- (3) The rights of indemnity contained in this Section 16 will not enure to the benefit of the Underwriters if the Fund has complied with the provisions of Section 5 and Section 6 and the person asserting any Claim contemplated by this Section 16 was not provided with a copy of any Prospectus or Supplementary Material which corrects any untrue statement or information, misrepresentation (for the purposes of Securities Laws or any of them) or omission 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.

- (4) The parties hereby acknowledge and agree that, with respect to Section 16 and Section 17 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 16 and Section 17 of this agreement with respect to the Beneficiaries and accepts these trusts and will hold and enforce those covenants on behalf of the Beneficiaries.
- (5) Each of the Fund, New Second Cup and Cara 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 person before claiming against it under this Section 16.

Section 17 Contribution.

- (1) In order to provide for just and equitable contribution in circumstances in which an indemnity provided in Section 16 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 Indemnified Parties and 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 Units) of the nature contemplated in Section 16 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 13. No party who has engaged in any fraud, fraudulent misrepresentation or negligence will be entitled to claim contribution from any person who has not engaged in that fraud, fraudulent misrepresentation or negligence.
- (2) For greater certainty, the Fund, New Second Cup and Cara will not have any obligation to contribute pursuant to this Section 17 in respect of any Claim except to the extent the indemnity given by it in Section 16 of this agreement would have been applicable to that Claim in accordance with its terms, had

that indemnity been found to be enforceable and available to the Indemnified Parties.

- (3) 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.
- (4) The rights to indemnity and contribution provided in Section 16 and Section 17 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.

Section 18 Expenses.

- (1) Whether or not the purchase and sale of the Units is completed, all expenses of or incidental to the transactions contemplated by this agreement and the Related Agreements, the creation, issuance and delivery of the Units and of or incidental to all matters in connection with the transactions set out in this agreement will be borne by the Fund, New Second Cup and Cara including, without limitation:
 - (a) expenses payable in connection with the qualification for distribution of the Units under applicable Securities Laws and the listing of the Units on the TSX;
 - (b) all fees, disbursements and expenses of the Fund, New Second Cup, Second Cup and Cara's auditors, their counsel and all related local counsel;
 - (c) all costs incurred in connection with the preparation, translation, filing and printing of the Preliminary Prospectus, the "green sheet", the Prospectus, the U.S. Placement Memorandum, any Supplementary Material and any Unit certification costs;
 - (d) all fees and expenses of Computershare Investor Services Inc., Computershare Trust Company of Canada and the Canadian Depository for Securities Limited;

- (e) all expenses of the Underwriters including, without limitation, all expenses associated with advertising, printing, courier, telecommunications, data searches, travel, entertainment, the “road shows” and marketing activities and all travel and lodging expenses; and
- (f) all fees, disbursements and expenses of the Underwriters’ counsel including Canadian federal goods and services tax and provincial sales tax exigible in respect of any of the foregoing.

Section 19 All Terms to be Conditions.

The Fund, New Second Cup and Cara agree that the conditions contained in Section 12 of this agreement will be complied with insofar as they relate to acts to be performed or caused to be performed by the Fund, New Second Cup and Cara, and that each will use its reasonable best efforts to cause all of those conditions to be complied with. All representations, warranties, covenants and other terms of this agreement will be and will be deemed to be conditions, and any breach or failure to comply with any of them or any of the conditions set out in Section 12 will entitle the Underwriters or any of them to terminate their obligation to purchase the Units, by written notice to that effect given to the Fund at or prior to the Closing Time. It is understood that the Underwriters may waive, in whole or in part, or extend the time for compliance with, any of those terms and conditions without prejudice to the rights of the Underwriters in respect of any of those terms and conditions or any other or subsequent breach or non-compliance, provided that to be binding on the Underwriters any such waiver or extension must be in writing.

Section 20 Termination by Underwriters in Certain Events.

- (1) Each Underwriter will also be entitled to terminate its obligation to purchase the Units by written notice to that effect given to the Fund at or prior to the Closing Time if, after the date of this agreement and prior to the Closing Time:
 - (a) any inquiry, action, suit, investigation or other proceeding (whether formal or informal) is instituted, announced or threatened, or any order is made, by any Governmental Authority (other than an inquiry, action, suit, investigation or proceeding or order based solely upon the activities or alleged activities of the Underwriters or the Selling Firms), or there is any change of Law, or interpretation or administration thereof, which, in the opinion of any of the Underwriters, operates to prevent or restrict the distribution of the Units in any of the Qualifying Jurisdictions or would prevent or restrict trading in the Units of the Fund or would reasonably be expected to have a significant adverse effect on the market price or value of the Units;

- (b) there occurs any material change, any other change, event or fact contemplated by Section 6(1) which, in the opinion of that Underwriter, could reasonably be expected to result in the purchasers of a material number of Units exercising their right under Securities Laws to withdraw from or rescind their purchase thereof or sue for damages in respect thereof or which could reasonably be expected to have a significant adverse effect on the market price or value of the Units or any of them;
 - (c) the state of the financial markets is such that in the reasonable opinion of that Underwriter, the Units cannot be profitably marketed;
 - (d) there should develop, occur or come into effect or existence 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 action, law, regulation, inquiry or other occurrence of any nature which, in the opinion of such Underwriter, materially adversely affects or involves or may materially adversely affect or involve the financial markets generally or the business, operations or affairs of any of the Second Cup Entities or the market price or value of the Units; or
 - (e) there is announced any change or proposed change in the income tax laws of Canada or the interpretation or administration thereof and such change would, in the opinion of an Underwriter, be expected to have a significant adverse effect on the marketability of the Units.
- (2) If this agreement is terminated by any of the Underwriters pursuant to Section 19 or Section 20(1) of this agreement, there will be no further liability hereunder on the part of that Underwriter or of the Fund, New Second Cup and Cara to that Underwriter, except in respect of any liability which may have arisen or may later arise under Section 16, Section 17 and Section 18 of this agreement.
- (3) The right of the Underwriters to terminate their respective obligations under this agreement may be exercised by any of the Underwriters and is in addition to all other rights and remedies as they may have in respect of any default, act or failure to act of the Fund, New Second Cup or Cara in respect of any of the matters contemplated by this agreement. A notice of termination given by one Underwriter under this Section 19 or Section 20 will not be binding upon the other Underwriters.

Section 21 Stabilization

In connection with the distribution of the Units, the Underwriters and members of their selling group (if any) may over-allot or effect transactions which stabilize or maintain the market price of the Units at levels above those which might otherwise prevail in the open market, in compliance with Securities Laws. Those stabilizing transactions, if any, may be discontinued at any time.

Section 22 Obligations of the Underwriters to be Several.

- (1) Subject to the terms and conditions of this agreement, the obligation of the Underwriters to purchase the Units, if any, will be several and not joint. The percentage of the Units to be severally purchased and paid for by each of the Underwriters will be as follows:

Scotia Capital Inc.	35%
BMO Nesbitt Burns Inc	35%
CIBC World Markets Inc.	15%
TD Securities Inc.	15%

- (2) If an Underwriter (a **“Refusing Underwriter”**) does not complete the purchase and sale of the Units which that Underwriter has agreed to purchase under this agreement (other than in accordance with Section 19 or Section 20) (the **“Defaulted Units”**), Scotia Capital may delay the closing date for not more than five (5) days and the remaining Underwriters (the **“Continuing Underwriters”**) will be entitled, at their option, to purchase all but not less than all of the Defaulted Units pro rata according to the number of Units to have been acquired by the Continuing Underwriters under this agreement or in any proportion agreed upon, in writing, by the Continuing Underwriters. If no such arrangement has been made:

- (a) the Continuing Underwriters will not be obliged to purchase any of the Units;
- (b) the Fund will not be obliged to sell less than all of the Units;
- (c) the Fund will be entitled to terminate its obligations under this agreement, in which event there will be no further liability hereunder on the part of the Fund, New Second Cup, Cara and the Continuing Underwriters, except pursuant to the provisions of Section 16, Section 17 and Section 18; and
- (d) any liability of the Refusing Underwriter will remain.

Section 23 Notice.

Any notice or other communication required or permitted to be given under this agreement will be in writing and will be delivered to:

- (a) in the case of Cara:

6303 Airport Road
Mississauga, Ontario
L4V 1R8

Attention: Gabriel Tsampalieros
Facsimile No.: (905) 405-6714

- (b) in the case of New Second Cup:

6303 Airport Road
Mississauga, Ontario
L4V 1R8

Attention: Bruce Elliot
Facsimile No.: (905) 863-7450

- (c) in the case of the Fund:

c/ o its attorney, Second Cup Trade-Marks Inc.
6303 Airport Road
Mississauga, Ontario
L4V 1R8

Attention: Gabriel Tsampalieros
Facsimile No.: (905) 405-6714

with a copy in each case to:

Osler, Hoskin & Harcourt LLP
1 First Canadian Place
Toronto, ON
M5X 1B8

Attention: Mark Trachuk
Fax: (416) 862-6666

- (d) in the case of Scotia Capital Inc.:

Scotia Plaza
66th Floor, 40 King Street West
P.O. Box 4085, Station "A"
Toronto, ON
M5W 2X6

Attention: Peter Slan
Facsimile No.: (416) 863-7450

- (e) in the case of BMO Nesbitt Burns Inc.:

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

Attention: Harold Wolkin
Facsimile No.: (416) 359-7300

- (f) in the case of CIBC World Markets Inc.:

BCE Place
161 Bay Street, 4th Floor
Toronto, ON
M5J 2S8

Attention: Andrew Federer
Facsimile No.: (416) 594-8176

- (g) in the case of TD Securities Inc.:

TD Tower
66 Wellington Street West
8th Floor
Toronto, ON
M5K 1A2

Attention: Steve Dumanski
Facsimile No.: (416) 983-3176

- (h) with a copy in each case to:

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

Attention: Joel E. Binder
Facsimile: (416) 947-0866

The parties may change their respective addresses for notices by notice given in the manner set out above. Any notice or other communication will be in writing, and unless delivered personally to the addressee or to a responsible officer of the addressee, as applicable, will be given by telecopy and will be deemed to have been given when (i) in the case of a notice delivered personally to a responsible officer of the addressee, when so delivered; and (ii) in the case of a notice delivered or given by telecopy, on the first business day following the day on which it is sent.

Section 24 Miscellaneous.

- (1) Except with respect to Section 16, Section 17, Section 19 and Section 20 of this agreement, all transactions and notices on behalf of the Underwriters under this agreement or contemplated by this agreement may be carried out or given on behalf of the Underwriters by Scotia Capital and Scotia Capital will in good faith discuss with the other Underwriters the nature of any of the transactions and notices prior to giving effect to them or the delivery of them, as the case may be. The Fund, New Second Cup and Cara may rely entirely on any such transaction or notice as binding all Underwriters.
- (2) This agreement will be governed by and interpreted in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.
- (3) Time will be of the essence of this agreement and, following any waiver or indulgence by any party, time will again be of the essence of this agreement.
- (4) The words “agreement”, “hereof”, “hereunder” and similar phrases mean and refer to the agreement formed as a result of the acceptance by the Fund, New Second Cup and Cara of this offer by the Underwriters to purchase the Units.
- (5) All representations, warranties, covenants and agreements of the Fund, New Second Cup and Cara contained in this agreement or contained in documents submitted pursuant to this agreement and in connection with the transaction of purchase and sale contemplated by this agreement will survive the purchase and sale of the Units and the termination of this agreement and will

- continue in full force and effect for the benefit of the Underwriters for a period of four years, regardless of any subsequent disposition of the Units or any investigation by or on behalf of the Underwriters with respect thereto. The Underwriters will be entitled to rely on the representations and warranties of the Fund, New Second Cup and Cara contained in this agreement or delivered pursuant to this agreement notwithstanding any investigation which the Underwriters may undertake or which may be undertaken on the Underwriters' behalf.
- (6) Each of the parties to this agreement will be entitled to rely on delivery of a facsimile copy of this agreement and acceptance by each party of any such facsimile copy will be legally effective to create a valid and binding agreement between the parties to this agreement in accordance with the terms of this agreement.
 - (7) This agreement may be executed in any number of counterparts, each of which when so executed will be deemed to be an original and all of which, when taken together, will constitute one and the same agreement.
 - (8) To the extent permitted by applicable law, the invalidity or unenforceability of any particular provision of this agreement will not affect or limit the validity or enforceability of the remaining provisions of this agreement.
 - (9) The Fund agrees that it shall not make any public announcements regarding the transactions contemplated hereunder without the prior written consent of Scotia Capital, on behalf of the Underwriters, such consent not to be unreasonably withheld. The Fund agrees that, following Closing, Scotia Capital may place "tombstone" and other advertisements relating to its role in connection with the Offering.
 - (10) This agreement and the other documents referred to in this agreement constitute the entire agreement among the Underwriters and the Fund, New Second Cup and Cara relating to the subject matter of this agreement and supersede all prior agreements between those parties with respect to their respective rights and obligations in respect of the transactions contemplated under this agreement.
 - (11) The terms and provisions of this agreement will be binding upon and enure to the benefit of the Fund, New Second Cup and Cara and the Underwriters, the Beneficiaries and their respective successors and assigns; provided that, except as otherwise provided in this agreement, this agreement will not be assignable by any party without the written consent of the others and any purported assignment without that consent will be invalid and of no force and effort.

- (12) (i) The Trustees, in incurring any debts, liabilities or obligations, or in taking or omitting any other actions for or in connection with the affairs of the Fund are, and shall be conclusively deemed to be, acting for and on behalf of the Fund, and not in their own personal capacities. None of the Trustees shall be subject to any personal liability for any debts, liabilities, obligations, claims, demands, judgements, costs, charges or expenses (including legal expenses) against or with respect to the Fund or in respect to the affairs of the Fund. No property or assets of the Trustees, owned in their personal capacity or otherwise, will be subject to any levy, execution or other enforcement procedure with regard to any obligations under this agreement. No recourse may be had or taken, directly or indirectly, against the Trustees in their personal capacity. The Fund shall be solely liable therefor and resort shall be had solely to the property and assets of the Fund for payment or performance thereof; and (ii) no unitholder of the Fund as such shall be subject to any personal liability whatsoever, in tort, contract or otherwise, to any person in connection with the obligations or the affairs of the Fund or the acts or omissions of the Trustees and all such persons shall look solely to the property and assets of the Fund for satisfaction of claims of any nature arising out of or in connection therewith and the property and assets of the Fund only shall be subject to levy or execution.

If this letter accurately reflects the terms of the transactions which we are to enter into and are agreed to by you, please communicate your acceptance by executing the enclosed copies of this letter where indicated and returning them to us.

Yours very truly,

SCOTIA CAPITAL INC.

By: *(signed) Peter L. Slan*

Peter L. Slan

Director

BMO NESBITT BURNS INC.

By: *(signed) Harold M. Wolkin*

Harold M. Wolkin

Managing Director

CIBC WORLD MARKETS INC.

By: *(signed) Andrew H. Federer*

Andrew H. Federer

Managing Director

TD SECURITIES INC.

By: *(signed) Steve Dumanski*

Steve Dumanski

Vice President and Director

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

**SECOND CUP ROYALTY INCOME
FUND by its attorney SECOND CUP
TRADE-MARKS INC.**

By: (signed) Gabriel T. Tsampalieros

Gabriel T. Tsampalieros
Chief Executive Officer

By: (signed) Doug Moffatt

Doug Moffatt
Chief Financial Officer

NEW SECOND CUP INC.

By: (signed) Gabriel T. Tsampalieros

Gabriel T. Tsampalieros
Chairman

By: (signed) Michael Forsayeth

Michael Forsayeth
Director

CARA OPERATIONS LIMITED

By: (signed) Gabriel T. Tsampalieros

Gabriel T. Tsampalieros
President and Chief Executive
Officer

By: (signed) Michael Forsayeth

Michael Forsayeth
Senior Vice-President and Chief
Financial Officer

SCHEDULE 12(1)(k)

TO: Scotia Capital Inc.
BMO Nesbitt Burns Inc.
CIBC World Markets Inc.
TD Securities Inc.

(collectively, the “Underwriters”)

RELEASE

WHEREAS:

1. Second Cup Royalty Income Fund (the “Fund”) intends to sell units of the Fund (“Units”) as an initial public offering (the “Offering”);
2. the Offering will be made by way of a prospectus dated November 23, 2004 (the “Prospectus”) filed with securities regulatory authorities in each province and territory in Canada;
3. the Underwriters have agreed to purchase from the Fund all Units to be sold to the public under the Offering;
4. the Underwriters have been informed that, Cara Operations Limited, indirectly through New Second Cup Inc. (collectively, the “Releasees”), intends to subscribe for 1,437,414 units of the Fund (the “Initial Units”) to be issued by the Fund at the closing of the Offering;
5. applicable securities laws (“Laws”) would generally restrict the ability of the Releasees to sell the Initial Units received by the Releasees for a period of four months after the completion of the Offering. In order to enable the Releasees, generally, to freely trade the Initial Units immediately upon completion of the Offering, the Fund, on behalf of the Releasees, requested that the Prospectus qualify the distribution of the Initial Units to the Releasees;
6. since the Underwriters will receive no compensation in connection with the distribution of the Initial Units to the Releasees, the Underwriters have requested that the Releasees waive certain legal rights which the Releasees might have against the Underwriters;

NOW THEREFORE THIS RELEASE WITNESSES that, in consideration of the payment to the undersigned of the sum of \$1 of lawful money of Canada by each of the

Underwriters and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged by the undersigned), the Releasees:

- (a) to the fullest extent permitted by law, release and forever discharge each of the Underwriters from all actions, right of action (including, without limitation, pursuant to section 130 of the *Securities Act* (Ontario) and the equivalent thereof under the securities laws of each other province and territory of Canada), causes of action, liabilities, claims and demands, costs and expenses (collectively, "Claims") whatsoever which the Releasees ever had, now have or may hereafter have (for damages, expenses or any other amount of any kind) by reason of, or in any way arising out of, the distribution of the Initial Units to the Releasees under the Prospectus, including, without limitation, any Claim that the Prospectus contains a misrepresentation or that the Prospectus does not constitute full, true and plain disclosure of all material facts relating to the securities offered by the Prospectus (but, for greater certainty, not including any Claim that the Releasees may have against the Underwriters under the underwriting agreement dated November 22, 2004 to which the Releasees and the Underwriters are parties); and
- (b) agrees that the Releasees will not make any Claim or take any proceedings with respect to any matter released and discharged in paragraph (a) above which may result in any Claim arising against any of the Underwriters for contribution or indemnity or other relief.

THE RELEASEES HEREBY DECLARE that the Releasees have had the opportunity to seek independent legal advice with respect to this Release and the Releasees fully understand this Release.

THIS RELEASE shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and will be treated in all respects as an Ontario contract. The Releasees hereby irrevocably submit and attorn to the exclusive jurisdiction of the courts of the Province of Ontario for the purpose of all legal proceedings in connection with this Release.

THIS RELEASE will enure to the benefit of and be binding upon the heirs and legal personal representatives of the Releasees and the respective successors and assigns of the Underwriters, respectively.

IN WITNESS WHEREOF the Releasees have executed this Release on this ____
day of _____, 2004.

CARA OPERATIONS LIMITED

By: _____
Authorized Signing Officer

By: _____
Authorized Signing Officer

NEW SECOND CUP INC.

By: _____
Authorized Signing Officer

By: _____
Authorized Signing Officer

SCHEDULE 15(1)
U.S. Purchaser's Letter

[Scotia Capital Inc.]

[address]

Re: Purchase of Units

Second Cup Royalty Income Fund

Ladies and Gentlemen:

In connection with its agreement to purchase the number of units (the **“Units”**) of Second Cup Royalty Income Fund (the **“Fund”**) indicated herein, the undersigned represents, warrants and covenants to you as follows:

1. it is authorized to consummate the purchase of the Units;
2. it understands that the Units have not been and will not be registered under the United States Securities Act of 1933, as amended (the **“1933 Act”**) or any applicable state securities laws and that the contemplated sale is being made in reliance on a private placement exemption to institutional accredited investors (as such term is defined in Annex A hereto, **“Institutional Accredited Investors”**);
3. it is an Institutional Accredited Investor and is acquiring the Units for its own account or for the account of an Institutional Accredited Investor as to which it exercises sole investment discretion (please tick off in Annex A which category applies), and not with a view to any resale, distribution or other disposition of the Units in violation of United States securities laws or applicable state securities laws;
4. it has received a copy of the U.S. Placement Memorandum and has been afforded the opportunity (i) to ask such questions as it deemed necessary of, and to receive answers from, representatives of the Fund concerning the terms and conditions of the offering of the Units and (ii) to obtain such additional information which the Fund possesses or can acquire without unreasonable effort or expense that is necessary to verify the accuracy and completeness of the information contained in the U.S. Placement Memorandum and that it considered necessary in connection with its investment decision to acquire the Units;
5. it has such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of its investment in the Units and is able to bear the economic risks of such investment;

6. it acknowledges that it has not purchased the Units as a result of any general solicitation or general advertising, including advertisements, articles, notices or other communications published in any newspaper, magazine or similar media or broadcast over radio or television, or any seminar or meeting whose attendees have been invited by general solicitation or general advertising;
7. it agrees that if it decides to offer, sell or otherwise transfer any of the Units, such Units may be offered, sold or otherwise transferred only, (i) to the Fund, (ii) outside the United States in accordance with Rule 904 of Regulation S under the 1933 Act, or (iii) within the United States in accordance with (1) Rule 144A to a person the seller reasonably believes is a Qualified Institutional Buyer (as defined in Rule 144A under the 1933 Act) that is 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, or (2) another available exemption from registration under the 1933 Act provided that it provides an opinion of counsel, of recognized standing reasonably satisfactory to the Fund;
8. it understands and acknowledges that the Units are “restricted securities” as defined in Rule 144 under the 1933 Act and upon the original issuance thereof, and until such time as the same is no longer required under applicable requirements of the 1933 Act or applicable state securities laws, certificates representing Units, and all certificates issued in exchange therefor or in substitution thereof, 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”). THE HOLDER HEREOF, BY PURCHASING SUCH SECURITIES, AGREES FOR THE BENEFIT OF THE FUND THAT 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 OR (C) WITHIN THE UNITED STATES IN ACCORDANCE WITH (1) RULE 144A UNDER THE 1933 ACT OR (2) ANOTHER AVAILABLE EXEMPTION FROM REGISTRATION UNDER THE 1933 ACT PROVIDED THAT AN OPINION OF COUNSEL, OF RECOGNIZED STANDING REASONABLY SATISFACTORY TO THE FUND, IS PROVIDED. DELIVERY OF THIS CERTIFICATE MAY NOT CONSTITUTE GOOD DELIVERY IN SETTLEMENT OF TRANSACTIONS ON STOCK EXCHANGES IN CANADA. PROVIDED THAT THE COMPANY IS A “FOREIGN ISSUER” WITHIN THE MEANING OF REGULATION S AT THE TIME OF SALE, A NEW CERTIFICATE BEARING NO LEGEND MAY BE OBTAINED FROM COMPUTERSHARE INVESTOR SERVICES INC., AS REGISTRAR AND TRANSFER AGENT. UPON DELIVERY OF THIS CERTIFICATE AND A DULY

EXECUTED DECLARATION, IN A FORM SATISFACTORY TO COMPUTERSHARE INVESTOR SERVICES INC. AND THE FUND, TO THE EFFECT THAT SUCH SALE IS BEING MADE IN ACCORDANCE WITH RULE 904 OF REGULATION S UNDER THE 1933 ACT.”;

provided, that if Units are being sold under paragraph (B) above, and provided that the Fund is a “**foreign issuer**” within the meaning of Regulation S at the time of sale, any such legend may be removed by providing a declaration to [**Computershare Investor Services Inc.**], as registrar and transfer agent, to the effect set forth in Annex B hereto (or as the Company may prescribe from time to time); and provided, further, that, if any such Units are being sold under paragraph (C) above, the legend may be removed by delivery to [**Computershare Investor Services Inc.**] and the Fund of an opinion of counsel, or recognized standing reasonably satisfactory to the Fund, that such legend is no longer required under applicable requirements of the 1933 Act or state securities laws;

9. it consents to the Fund making a notation on its records or giving instructions to any transfer agent of the Units in order to implement the restrictions on transfer set forth and described herein;
10. if required by applicable securities legislation, regulatory policy or order by any securities commission, stock exchange or other regulatory authority, it will execute, deliver and file and otherwise assist the Fund in filing reports, questionnaires, undertakings and other documents with respect to the issue of the Units; and
11. it understands and acknowledges that the Fund is not obligated to remain a “**foreign issuer**” within the meaning of Regulation S under the 1933 Act.

The undersigned acknowledges that the representations and warranties and agreements contained herein are made by it with the intent that they may be relied upon by you in determining its eligibility to purchase the Units. By this letter the undersigned represents and warrants that the foregoing representations and warranties are true and that they shall survive the purchase by it of the Units and shall continue in full force and effect notwithstanding any subsequent disposition by the undersigned of Units.

You are irrevocably authorized to produce this letter or a copy hereof to any interested party in any administrative or legal proceeding or official inquiry with respect to the matters covered hereby.

Dated

Name of Purchaser

By: _____
Name:
Title:

DEFINITION OF INSTITUTIONAL ACCREDITED INVESTOR

(Please tick the applicable category)

“Institutional Accredited Investor” means any entity which comes within any of the following categories:

1. Any bank as defined in Section 3(a)(2) of the 1933 Act or any savings and loan association or other institution as defined in Section 3(a)(5)(A) of the 1933 Act whether acting in its individual or fiduciary capacity; any broker dealer registered pursuant to Section 15 of the Securities Exchange Act of 1934; any insurance company as defined in Section 2(13) of the 1933 Act; any investment company registered under the Investment Company Act of 1940 or a business development company as defined in Section 2(a)(48) of that Act; any Small Business Investment Company licensed by the U.S. Small Business Administration under Section 301(c) or (d) of the Small Business Investment Act of 1958; any plan established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions, for the benefit of its employees, if such plan has total assets in excess of US\$5,000,000; any employee benefit plan within the meaning of the Employee Retirement Income Security Act of 1974, if the investment decision is made by a plan fiduciary, as defined in Section 3(21) of such Act, which is either a bank, savings and loan association, insurance company or registered investment adviser, or if the employee benefit plan has total assets in excess of US\$5,000,000, or, if a self-directed plan, with investment decisions made solely by persons that are accredited investors;
2. Any private business development company as defined in Section 202(a)(22) of the Investment Advisors Act of 1940;
3. Any organization described in Section 501(c)(3) of the Internal Revenue Code, corporation, Massachusetts or similar business trust, or partnership, not formed for the specific purpose of acquiring the securities offered, with total assets in excess of US\$5,000,000;
4. A trust, with total assets in excess of US\$5,000,000, not formed for the specific purpose of acquiring the Securities offered, whose purchase is directed by a sophisticated person as described in section Rule 506(b)(2)(ii) of the 1933 Act;

Please check the applicable category.

FORM OF DECLARATION FOR REMOVAL OF LEGEND

TO: Computershare Investor Services Inc.
as registrar and transfer agent
for Units
Second Cup Royalty Income Fund

The undersigned (a) acknowledges that the sale of the securities of Second Cup Royalty Income Fund (the **“Fund”**) 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) the undersigned is not an affiliate of the Fund as that term is defined in Rule 405 under the 1933 Act, (2) the offer of such securities 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 believed that they buyer was outside the United States, or (B) the transaction was executed in, on or through the facilities of The Toronto Stock Exchange 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, (3) neither the seller nor any affiliate of the seller nor any person acting on any of their behalf has engaged or will engage in any **“directed selling efforts”** (as defined in Regulation S under the 1933 Act) in the United States in connection with the offer and sale of such securities, (4) the sale is bona fide and not for the purpose of **“washing off”** the resale restrictions imposed because the securities are **“restricted securities”** (as such term is defined in Rule 144(a)(3) under the 1933 Act), (5) the seller does not intend to replace the securities sold in reliance on Rule 904 of the 1933 Act with fungible unrestricted securities and (6) the contemplated sale is not a transaction, or part of a series of transactions which, although in technical compliance with Regulation S, is part of a plan or scheme to evade the registration provisions of the 1933 Act. Terms used herein have the meanings given to them by Regulation S.

Dated

Name of Purchaser

By:_____

Name:

Title:

SCHEDULE 15(3)
UNDERWRITERS' CERTIFICATE

In connection with the private placement in the United States of the units (the **"Units"**) of Second Cup Royalty Income Fund (the **"Fund"**) pursuant to the underwriting agreement dated November 22, 2004 among the Fund, New Second Cup, Cara and the Underwriters named therein (the **"Underwriting Agreement"**), each of the undersigned does hereby certify as follows:

1. **[Name of U.S. broker-dealer Affiliate]** is a duly registered broker or dealer with the United States Securities and Exchange Commission and is a member of and in good standing with the National Association of Securities Dealers, Inc. on the date hereof;
2. each offeree was provided with a copy of the U.S. private placement memorandum (the **"U.S. Placement Memorandum"**), including the Canadian final prospectus dated November 23, 2004 and the documents incorporated by reference therein for the offering of the Units in the United States;
3. immediately prior to our transmitting such U.S. Placement Memorandum to such offerees, we had reasonable grounds to believe and did believe that each offeree was, and continue to believe that each such offeree who is a U.S. person purchasing Units from us is, either a **"qualified institutional buyer"**, as defined in Rule 144A under the Securities Act of 1933, as amended (the **"1933 Act"**), or an institutional **"accredited investor"** as defined in Rule 501(a)(1), (2), (3) or (7) of Regulation D under the 1933 Act;
4. no form of general solicitation or general advertising (as those terms are used in Regulation D under the 1933 Act) was used by us, including advertisements, articles, notices or other communications published in any newspaper, magazine or similar media or broadcast over radio 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;
5. the offering of the Units in the United States has been conducted by us in accordance with the terms of the Underwriting Agreement; and
6. prior to any sale of Units in the United States, we caused each U.S. purchaser who is not a qualified institutional buyer to execute a U.S. Purchaser's Letter in the form of Schedule 15.1 to the Underwriting Agreement.

Unless otherwise defined, terms used in this certificate have the meanings given to them in the Underwriting Agreement.

Dated this _____ day of _____, 200_.

[UNDERWRITER]

[U.S. BROKER-DEALER AFFILIATE]

By: _____

Name:

Title:

By: _____

Name:

Title: