

Chris A. Gustafson, Kim A. Taddeo, Scott A. Gustafson
14113 Douglass Lane,
Saratoga, CA 95070

March 19, 2019

William J. Brown
Philips Lytle LLP
One Canalside
125 Main Street
Buffalo, NY 14203-2887

Dear Mr. Brown,

I am responding to your letter dated 6 March 2019. We signed the paperwork you sent to us and the co-trustees' signatures have been notarized.

Please let us know when we can expect a settlement check.

Sincerely,


Chris Ann Gustafson, Co-TTEE

The Gustafson Family Trust

Enclosure:

William J. Brown letter dated 6 March 2019

Cc:

Hon. Christian F. Hummel, U.S. Magistrate Judge
James T. Foley U.S. Courthouse
445 Broadway, Room 441
Albany, NY 12207

Temmerman, Cilley & Kohlmann, LLP
Jennifer F. Scharre
2502 Steven Creek Boulevard
San Jose, CA 95128

**William J. Brown, as Receiver
of McGinn, Smith & Co., Inc., et al.**

Tel: 716.847.7089
www.mcginnsmithreceiver.com

One Canalside
125 Main Street
Buffalo, NY 14203

March 6, 2019

Chris A. Gustafson, Co-Trustee
14113 Douglass Lane
Saratoga, CA 95070

Re: McGinn Smith & Co. Inc. - Claim of Donald Gustafson

Dear Ms. Gustafson:

In response to your March 1, 2019 letter, I certainly had received the Declaration Pursuant to California Probate Code Section 13100 and considered it as part of my February 14, 2019 letter to you.

Contrary to what you have stated many times, the McGinn Smith investments were not part of the Trust Agreement. This is so because they were not listed on any Schedule, including Schedule A, to the amended Trust document. The process for the allowance of claims is proposed by the Receiver and approved by the Court. Such an Order has been entered. The Receiver, as an accommodation, will process the claims of Donald B. Gustafson if each of the purported co-Trustees signs and returns an original Declaration in the form enclosed with this letter. Otherwise, you will need to proceed in California Probate Court as I have previously advised.

Very truly yours,



William J. Brown
Receiver

EEEht
Doc #01-3060948.5
Enclosure

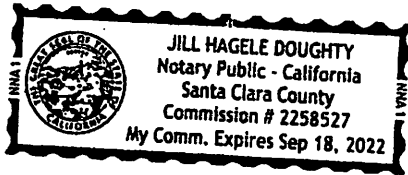
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California }
County of Santa Clara }
On 3/15/19 before me, Jill Hagele Doughty
Date Here Insert Name and Title of the Officer
personally appeared Kim A Taddeo
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Jill Hagele Doughty
Signature of Notary Public

Place Notary Seal and/or Stamp Above

OPTIONAL

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: Declaration

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____ Signer's Name: _____
 Corporate Officer - Title(s): _____ Corporate Officer - Title(s): _____
 Partner - Limited General Partner - Limited General
 Individual Attorney in Fact Individual Attorney in Fact
 Trustee Guardian of Conservator Trustee Guardian of Conservator
 Other: _____ Other: _____
Signer is Representing: _____ Signer is Representing: _____

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Santa Clara)

On 03/14/2019 before me, Lores Lozada Devera, Notary Public,
Date Here Insert Name and Title of the Officer

personally appeared Chris A. Gustafson and Scott A. Gustafson
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature [Signature]
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: Declaration Document Date: _____

Number of Pages: _____ Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- Corporate Officer — Title(s): _____
- Partner — Limited General
- Individual Attorney in Fact
- Trustee Guardian or Conservator
- Other: _____

Signer Is Representing: _____

Signer's Name: _____

- Corporate Officer — Title(s): _____
- Partner — Limited General
- Individual Attorney in Fact
- Trustee Guardian or Conservator
- Other: _____

Signer Is Representing: _____

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

-----X
SECURITIES AND EXCHANGE COMMISSION

Plaintiff,

vs.

Case No. 1:10-CV-457
(GLS/CFH)

McGINN, SMITH & CO., INC.,
McGINN, SMITH ADVISORS, LLC
McGINN, SMITH CAPITAL HOLDINGS CORP.,
FIRST ADVISORY INCOME NOTES, LLC,
FIRST EXCELSIOR INCOME NOTES, LLC,
FIRST INDEPENDENT INCOME NOTES, LLC,
THIRD ALBANY INCOME NOTES, LLC,
TIMOTHY M. McGINN, AND
DAVID L. SMITH, GEOFFREY R. SMITH,
Individually and as Trustee of the David L. and
Lynn A. Smith Irrevocable Trust U/A 8/04/04,
LAUREN T. SMITH, and NANCY McGINN,

Defendants,

LYNN A. SMITH and
NANCY McGINN,

Relief Defendants. and

GEOFFREY R. SMITH, Trustee of the
David L. and Lynn A. Smith Irrevocable
Trust U/A 8/04/04,

Intervenor.
-----X

DECLARATION

Pursuant to 28 U.S.C. § 1746, we hereby declare, under penalty of perjury, that the following is true and correct:

1. We each make this Declaration under penalty of perjury at the request of the Receiver of McGinn Smith & Co., Inc., et al. in order to resolve investor claims held by Donald B. Gustafson, who is deceased.

2. We are each the acting and duly appointed co-Trustees of the Gustafson Family Trust dated April 3, 1985 ("Trust").

3. We each agree to hold the Receiver harmless against all liability, losses, costs, damages or expenses which he may incur by reason of allowing and paying the claims of Donald B. Gustafson to the Trust, including attorneys' fees.

4. Attached to this Declaration as **Exhibit A** is a true copy of the Last Will & Testament of Donald B. Gustafson dated November 12, 1999 ("Will"). There are no other Wills of Donald B. Gustafson. This Will was in effect at the time of the death of Donald B. Gustafson on May 1, 2017. We declare as true that the so-called Donald B. Gustafson McGinn Smith investments did, in fact, pursuant to Section 2.2 of the Will, pass to the Trust upon the death of Donald B. Gustafson.

5. The Receiver may validly rely upon the Declaration pursuant to California Probate Code Section 13100 provided to the Receiver attached as **Exhibit B**.

Dated 3/14/2019

Chris Ann Gustafson
Chris A. Gustafson

Dated 3/14/2019

Kim A. Taddeo
Kim a. Taddeo

Dated 3/14/2019

Scott A Gustafson
Scott A. Gustafson

SEE CA NOTARY ATTACHMENT

Exhibit A

COPY

LAST WILL AND TESTAMENT

OF

DONALD B. GUSTAFSON

I, DONALD B. GUSTAFSON, a resident of Santa Clara County, State of California, do hereby declare this to be my Last Will and Testament, revoking all prior Wills and Codicils.

Article 1 DECLARATIONS

1.1 I declare that I am married to BEVERLY J. GUSTAFSON, and all references in this Will to "my Wife" are to her. We have three (3) children, KIM ANITA TADDEO, CHRIS ANN GUSTAFSON TABOADA and SCOTT ANDREW GUSTAFSON.

1.2 I have no deceased children with lineal descendants.

1.3 I intend by this Will to dispose of all my separate property and quasi-community property, if any, and of both my Wife's interest and my own in our community property, except any interest in community property expressly confirmed to my Wife under other provisions of this Will. If my Wife elects to take the rights given by law, my Wife shall nevertheless be entitled to the benefits given to her by this Will with respect to all property remaining subject to it, and she shall also be entitled to a family allowance and probate homestead.

Article 2 DISPOSITION OF MY PROPERTY

2.1 I give any nonemployee community property interest I may have in my Wife's retirement plans and individual retirement accounts to my Wife.

2.2 All the rest, residue and remainder of my estate, of whatever kind and wheresoever situated, I give to the Trustee of that certain Declaration of Trust entered into by me April 3, 1985 as amended and restated earlier this date, including any amendments thereto, to be combined with the other assets of said trust, and held, administered and distributed as a part thereof.

2.3 If for any reason said Trust Agreement shall not be in existence at the time of my death or for any reason shall be held invalid, or if for any reason it shall be illegal or impossible to transfer the rest, residue and remainder of my estate thereto, then I give all of said property to the Trustee named in said Trust Agreement in trust, to be held in accordance with the terms and conditions of said Declaration of Trust entered into April 3, 1985 as amended and restated earlier this date, which by this reference is incorporated herein as fully set forth.

Article 3 NOMINATION OF EXECUTORS AND EXECUTOR POWERS

3.1 I nominate my Wife as Executor of this Will. If she shall for any reason fail or cease to act as such, I nominate KIM ANITA TADDEO, CHRIS ANN GUSTAFSON TABOADA and SCOTT ANDREW GUSTAFSON as Co-Executors of this Will. If any of them for any reason shall

fail or cease to act as such, the other(s) shall serve as Co-Executors or sole Executor as the case may be.

3.2 My Executor and any administrator with the will annexed nominated by my Executor shall serve without bond.

3.3 I authorize said Executor to sell, with or without notice, at either public or private sale, and to lease any property belonging to my estate, subject only to such confirmation of court as may be required by law.

3.4 The Executor shall have the power to invest and reinvest estate funds in every kind of property, real, personal, or mixed, and every kind of investment, specifically including, but not by way of limitation, corporate obligations of every kind and stocks, preferred or common, which persons of prudence, discretion and intelligence acquire for their own account, if such investments appear advisable in consideration of the duration of the estate and all other relevant factors. My Executor shall not be liable for failure to exercise this power.

3.5 In determining the federal estate and income tax liabilities of my estate, my Executor shall have discretion to select the valuation date and to determine whether any or all of the allowable administrative expenses in my estate shall be used as federal estate tax deductions or as federal income tax deductions.

3.6 I further authorize my Executor either to continue the operation of any business belonging to my estate for such time and in such manner as my Executor may deem advisable and for the best interest of my estate, or to sell or liquidate the business at such time and on such terms as my Executor may deem advisable and for the best interests of my estate. Any such operation, sale or liquidation by my Executor, in good faith, shall be at the risk of my estate and without liability on the part of my Executor for any resulting losses.

3.7 My Executor shall have no power or authority to use, directly or indirectly, any funds my Executor may receive representing employer contributions to any qualified employer-sponsored benefit plan to the extent they qualify for exclusion from the taxable estate for estate tax purposes for the benefit of my estate or to satisfy any of my estate's obligations.

Article 4 MISCELLANEOUS PROVISIONS

4.1 Except as otherwise provided in this Will and the Trust referred to herein, I have intentionally and with full knowledge omitted to provide for my heirs.

4.2 If any beneficiary under this Will and the Trust referred to herein in any manner, directly or indirectly, contests or attacks this Will or any of its provisions, any share or interest given to that contesting beneficiary under this Will and the Trust referred to herein is revoked and shall be disposed of in the same manner provided herein as if that contesting beneficiary had predeceased me without issue.

IN WITNESS WHEREOF, I have executed my Last Will and Testament on November 12, 1999, at San Jose, California.

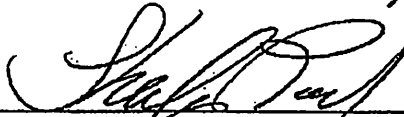

DONALD B. GUSTAFSON, Testator

THE FOREGOING INSTRUMENT consisting of 3 pages, including the page signed by us as witnesses, was signed on the above date by the Testator, DONALD B. GUSTAFSON, in our presence, we being present at the same time, and he then declared to us that such instrument was his Last Will and Testament; and we, at his request and in his presence and in the presence of each other, have signed such instrument as witnesses.

Each of us observed all signatures and knows that each signature is the true signature of the person whose name is signed. Each of us is at least eighteen (18) years of age and a competent witness and resides at the address set forth after his name. We are acquainted with the Testator, and to the best of our knowledge he is at least eighteen (18) years of age, of sound mind, and not acting under duress, menace, fraud, misrepresentation or undue influence.

We declare under penalty of perjury that the foregoing instrument is true and correct.

Executed on 11/12, 1999, at San Jose, California.

 residing at 457 HEATHCLIFF PLACE
SAN JOSE, CA 95111

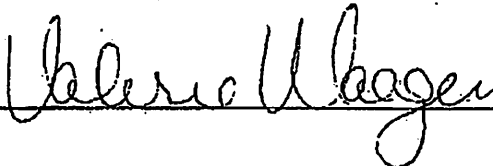
 residing at 102 PALO VERDE TERRACE
SANTA CRUZ, CA 95060

Exhibit B

**DECLARATION PURSUANT TO
CALIFORNIA PROBATE CODE SECTION 13100**

The undersigned, KIM ANITA TADDEO, CHRIS ANN GUSTAFSON, and SCOTT ANDREW GUSTAFSON, declares as follows:

1. Under Probate Code Section 13006, the undersigned is authorized to act on behalf of the successor in interest of Decedent, DONALD B. GUSTAFSON (the "Decedent"), who died in Santa Clara County, California, on May 1, 2017.
2. At least forty (40) days have elapsed since the death of the Decedent, as shown in the certified copy of the Decedent's death certificate attached to this declaration.
3. No proceeding is now being or has been conducted in California for administration of the Decedent's estate.
4. The current gross fair market value of the Decedent's real and personal property in California, excluding the property described in Section 13050 of the California Probate Code, does not exceed one hundred fifty thousand dollars (\$150,000).
5. A description of the property of the Decedent that is to be paid, transferred or delivered to the undersigned is set forth below:

First Advisory Income Notes, LLC

Note # 82 for \$25,000 dated May 23, 2006 at 10.25%

\$25,000

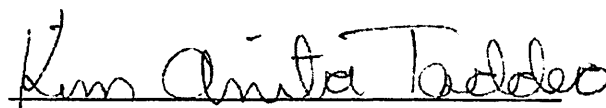
Attached as **Exhibit A**.
6. Decedent died testate and under the terms of the Last Will of DONALD B. GUSTAFSON, all property is bequeathed to the trustee of the GUSTAFSON FAMILY TRUST dated April 3, 1985. The trustees are KIM ANITA TADDEO, CHRIS ANN GUSTAFSON, and SCOTT ANDREW GUSTAFSON.
7. The undersigned is the successor of the Decedent (as defined in Section 13006 of the California Probate Code) to the Decedent's interest in the described property.
8. No other person has a superior right to Decedent's interest in the described property.

9. Pursuant to the facts set forth above and Section 13100 et seq. of the California Probate Code, the undersigned requests that the above asset held in the name of Decedent be transferred to KIM ANITA TADDEO, CHRIS ANN GUSTAFSON, and SCOTT ANDREW GUSTAFSON, Cotrustees of the GUSTAFSON FAMILY TRUST dated April 3, 1985.

10. In consideration of such payment or transfer, the undersigned agrees to hold the transfer agent harmless against all liability, loss, cost, damage or expense which it may occur by reason thereof, including attorney's fees.

The undersigned declares under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: 3/9/18


KIM ANITA TADDEO

Dated: 3/9/2018


CHRIS ANN GUSTAFSON

Dated: 3/9/2018


SCOTT ANDREW GUSTAFSON

ACKNOWLEDGMENT

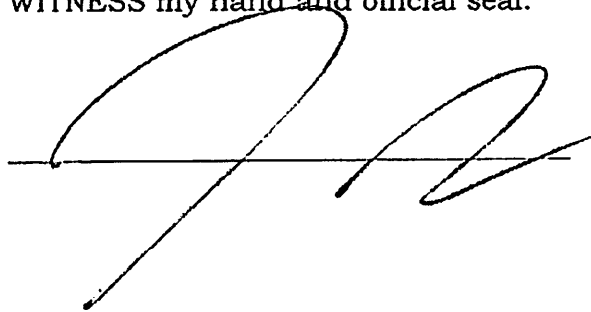
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
) ss.
COUNTY OF SANTA CLARA)

On March 9, 2018, before me, Jennifer Frances Scharre, Notary Public, personally appeared KIM ANITA TADDEO who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies) and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY of PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



(SEAL)

ACKNOWLEDGMENT

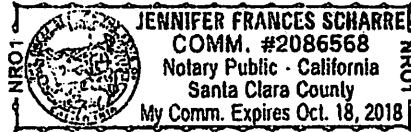
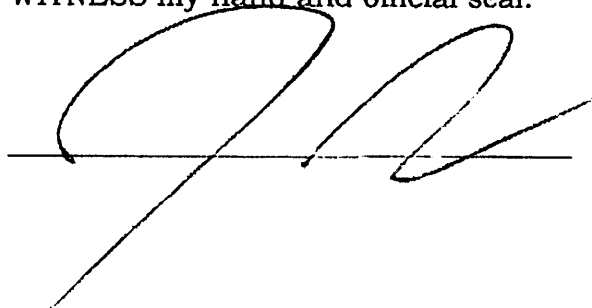
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STATE OF CALIFORNIA)
) ss.
COUNTY OF SANTA CLARA)

On March 9, 2018, before me, Jennifer Frances Scharre, Notary Public, personally appeared CHRIS ANN GUSTAFSON who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies) and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY of PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



(SEAL)

ACKNOWLEDGMENT

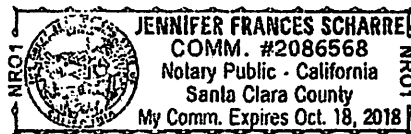
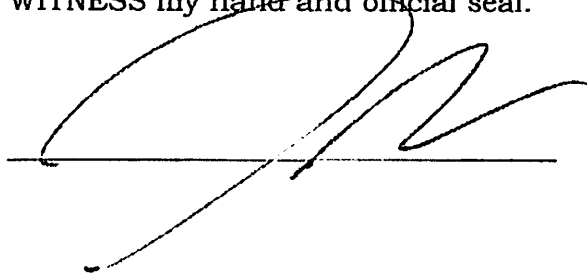
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STATE OF CALIFORNIA)
) ss.
COUNTY OF SANTA CLARA)

On March 9, 2018, before me, Jennifer Frances Scharre, personally appeared SCOTT ANDREW GUSTAFSON, Notary Public, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/~~she~~/~~they~~ executed the same in his/~~her~~/~~their~~ authorized capacity(ies) and that by his/~~her~~/~~their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY of PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



(SEAL)

EXHIBIT A

FIRST ADVISORY INCOME NOTES, LLC

Note #82

10.25% Secured Junior Note Due 2010

THIS NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED ("ACT"), OR UNDER ANY STATE SECURITIES LAW AND MAY NOT BE PLEDGED, SOLD, ASSIGNED OR TRANSFERRED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT WITH RESPECT THERETO UNDER THE ACT AND ANY APPLICABLE STATE SECURITIES LAW, OR UNLESS THE COMPANY RECEIVES AN OPINION OF COUNSEL, SATISFACTORY TO THE COMPANY, THAT SUCH REGISTRATION IS NOT REQUIRED.

\$250005/23/2006

FOR VALUE RECEIVED, FIRST ADVISORY INCOME NOTES, LLC, a New York limited liability company (the "Company," which term includes any successor under the Indenture hereinafter referred to), with its principal office at Capital Center, 5th Floor, 99 Pine Street, Albany, New York 12207, promises to pay to the order of Donald B Gustafson & Beverly J Gustafson Co-TTEES The Gustafson Family Trust U/A 04/03/85 ("Holder"), or registered assigns, upon the first to occur of (i) November 15, 2010 (the "Maturity Date") or (ii) the prepayment of this Junior Note by the Company as set forth herein (the "Redemption Date"), the principal amount of Twenty-Five Thousand Dollars(\$25000), in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public or private debts, together with interest on the unpaid balance of said principal amount outstanding at the rate of 10.25% per annum without compounding payable on the Maturity Date or Redemption Date. Interest at the aforesaid rate of 10.25% per annum will be paid in quarterly installments on the 15th day of February, May, August and November, commencing on February 15, 2006, to and including the Maturity Date (each, an "Interest Payment Date"). Interest on the Junior Note will accrue from the date of authentication of the Junior Note. Interest will be computed on the basis of a 365-day year. This Junior Note shall be paid pro rata with notes of the same series (which, together with this Junior Note, are in the aggregate principal amount of up to \$10,000,000 (collectively, the "Junior Notes")) being issued pursuant to the Indenture referred to herein. Holders must surrender Junior Notes to the Paying Agent (as referenced hereinafter) to collect principal payments. Payments of principal and interest will be made pursuant to the Holder's instructions as set forth in the Subscription Agreement (as hereinafter defined).

This Junior Note is issued pursuant to an offering made by the Company through a confidential private placement memorandum dated October 1, 2005 (the "Memorandum"), a confidential investor questionnaire ("Questionnaire") and a subscription agreement entered into between the Company and the Holder (the "Subscription Agreement"). Each of the foregoing documents is available for inspection at the Company's principal office. Reference herein to the Memorandum, the Subscription Agreement and the Questionnaire shall in no way impair the absolute and unconditional obligation of the Company to pay both principal and interest hereon as provided herein. Capitalized terms used herein and not otherwise defined have the meanings set forth in the Indenture referenced hereinafter.

1. Paying Agent and Registrar. Initially, McGinn, Smith Capital Holdings Corp. (the "Trustee") will act as Paying Agent and Registrar. The Company may change any Paying Agent, Registrar or co-Registrar without notice.

2. Indenture. The Company issued the Junior Notes under an Indenture dated as of October __, 2005 between the Company and the Trustee. The terms of the Junior Notes include those stated in the Indenture. The Junior Notes are subject to all such terms, and Holders of the Junior Notes are referred to the Indenture for a statement of such terms.

3. Optional Redemption. A pro rata portion of the Junior Notes will be redeemable at the option of the Company upon the removal, whether voluntarily or involuntarily, of an Investment from the Company's asset portfolio during the term of the Junior Notes, upon not less than 10 nor more than 30 days' notice at a redemption price equal to 100% of the principal amount of the redeemed Note plus accrued and unpaid interest up to but not including the redemption date, without any penalty or premium. Selection of Junior Notes for redemption will be made by the Trustee on a pro rata basis, by lot or by such method as the Trustee shall deem fair and appropriate; provided that no Junior Notes of \$5,000 or less shall be redeemed in part. Junior Notes called for redemption become due on the date fixed for redemption. On and after the redemption date the Junior Notes shall cease to be entitled to any benefit under the Indenture and the Holders thereof shall have no right in respect of such Junior Notes except the right to receive the redemption price thereof plus any accrued and unpaid interest to the date fixed for redemption.

4. Denominations, Transfer, Exchange. The Junior Notes are in minimum denominations of \$25,000 and integral multiples of \$5,000. A Holder may transfer or exchange Junior Notes only in accordance with the Indenture and as set forth in the Restricted Legend. The Registrar may require a Holder, among other things, to furnish appropriate endorsements and transfer documents and to pay to it any taxes and fees required by law or permitted by the Indenture. The Registrar need not transfer or exchange any Junior Notes or portion of a Junior Note selected for redemption, or transfer or exchange any Junior Notes for a period of 15 days before selection of such Junior Notes to be redeemed.

5. Events of Default.

- (a) An "Event of Default" occurs upon the occurrence of any of the following events:
- (i) the Company fails to pay interest on the Junior Note when the same becomes due and payable (whether or not prohibited by the subordination provisions of the Indenture) and such failure continues for a period of 30 days;
 - (ii) the Company fails to pay the Principal of the Junior Notes when the same becomes due and payable at maturity, upon redemption or otherwise (whether or not prohibited by the subordination provisions of the Indenture), and such failure continues for a period of 30 days;
 - (iii) the Company fails to comply with any of its material covenants, representations, warranties or other agreements in the Junior Notes or the Indenture and such failure continues for 60 days after the Company and the Trustee receives notice from the Trustee or the Majority Holders of the Junior Notes of the Default and the Company does not cure the Default, or it is not waived. The notice must specify the Default, demand that it be remedied to the extent consistent with law, and state that the notice is a "Notice of Default;"
 - (iv) the Company, pursuant to or within the meaning of any Bankruptcy Law:
 - (a) commences a voluntary case;

- (b) consents to the entry of an order for relief against it in an involuntary case;
 - (c) consents to the appointment of a Custodian of it or for all or substantially all of its property; or
 - (d) makes a general assignment for the benefit of its creditors;
- (v) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that:
- (a) is for relief against the Company in an involuntary case;
 - (b) appoints a Custodian of the Company or for all or substantially all of its property; or
 - (c) orders the liquidation of the Company, and the order or decree remains unstayed and in effect for 60 days; or
- (vi) any Lien granted to the Trustee hereunder or under any Collateral Document on any material portion of the Collateral shall cease to be valid and effective.

Subject to the subordination provisions of the Indenture, upon the occurrence of an Event of Default (other than for an Event of Default under the foregoing clauses (iv) and (v)), and in any such event, the Trustee by notice to the Company, or the Majority Holders of the Junior Notes by notice to the Company and the Trustee, may at their option, declare the entire principal amount of the Junior Notes then outstanding together with accrued unpaid interest thereon immediately due and payable. Holders may not enforce the Indenture or the Junior Notes except as provided in the Indenture. The Trustee may require indemnity satisfactory to it before it enforces the Indenture or the Junior Notes. Subject to certain limitations, the Majority Holders of the Junior Notes may direct the Trustee in its exercise of any trust or power. The Trustee may withhold from Holders notice of any continuing Default (except a Default in payment of Principal or interest) if it determines that withholding notice is in the interest of the Holders of Junior Notes.

(b) **Non-Waiver and Other Remedies.** No course of dealing or delay on the part of the Holder of the Junior Notes in exercising any right hereunder shall operate as a waiver or otherwise prejudice the rights of the Holders of the Junior Notes. No remedy conferred hereby shall be exclusive of any other remedy referred to herein or now or hereafter available at law, in equity, by statute or otherwise.

6. Obligation to Pay Principal and Interest; Covenants. No provision of this Junior Note shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay the principal of and interest on this Junior Note at the place, at the respective times, at the rates, and in the currency herein prescribed.

7. Amendment, Supplement, Waiver. The Company and the Trustee may, without the consent of the holders of any outstanding Junior Notes, amend, waive or supplement the Indenture or the Junior Notes for certain specified purposes, including, among other things, curing ambiguities, defects or inconsistencies, providing for assumption of Company obligations to Holders or making any other change that does not adversely affect the rights of any Holder in any material respect. Other amendments and modifications of the Indenture or the Junior Notes may be made by the Company and the Trustee with the consent of the Majority Holders of the Junior Notes as provided in the Indenture.

8. Security; Subordination. In order to secure the Company's obligations under the Indenture, the Company has entered into the Collateral Documents. The Company's obligations under the Indenture shall be secured by Liens on the Collateral granted to the Trustee, as Collateral Agent, on behalf of the Holders in accordance with the terms and provisions of the Collateral

Documents. Each Holder of this Junior Note, by accepting the same, agrees with security provisions of the Indenture and the Collateral Documents.

The Junior Notes are subordinated in right of payment to the 7.75% Secured Senior Subordinated Notes Due 2008 (the "Original Secured Senior Subordinated Notes"), the 6% Secured Senior Notes Due 2006 (the "Original Senior Notes") and any additional one-year secured senior notes ("Additional Senior Notes") or any additional two-year secured subordinated senior notes ("Additional Secured Senior Subordinated Notes") due 2010 that may be issued under the Indenture upon maturity of the Original Senior Notes or the Original Secured Senior Subordinated Notes. The Additional Senior Notes shall have an interest rate equal to the lesser of 6% or the then current prime rate as set forth in the Wall Street Journal ("Prime Rate") +1%, and shall mature on December 15, 2007, 2008, 2009 or 2010 as applicable. The Additional Secured Subordinated Notes shall have an interest rate equal to the lesser of 7.75% or the then current Prime Rate + 2%. The Company agrees, and each Holder by accepting a Junior Note agrees, to the subordination and authorizes the Trustee to give it effect.

9. Satisfaction and Discharge Prior to Redemption or Maturity. Subject to certain conditions, the Company at any time may terminate some or all of its obligations under the Junior Notes and the Indenture if the Company deposits with the Trustee sufficient funds to make payment of Principal and interest on the Junior Notes either at redemption or maturity.

10. No Recourse Against Others. An officer, employee, member or beneficiary, as such, of the Company shall not have any liability for any obligations of the Company under the Junior Notes, the Indenture or the Collateral Documents, or for any claim based on, in respect of or by reason of, such obligations or their creation. Each Holder of the Junior Notes by accepting a Junior Note waives and releases all such liability. The waiver and release are part of the consideration for the issue of the Junior Notes.

11. Authentication. This Junior Note shall not be valid until authenticated by a manual or facsimile signature of the Trustee.

12. Lost Documents. Upon receipt by the Company of evidence satisfactory to it of the loss, theft, destruction or mutilation of this Junior Note or any Junior Note exchanged for it, and (in the case of loss, theft or destruction) of indemnity satisfactory to it, and upon reimbursement to the Company of all reasonable expenses incidental thereto, and upon surrender and cancellation of such Junior Note, if mutilated, the Company will make and deliver in lieu of such Junior Note a new Junior Note of like tenor and unpaid principal amount and dated as of the original date of the Junior Note.

IN WITNESS WHEREOF, this Junior Note has been executed and delivered on the date specified above by the duly authorized representative of the Company.

First Advisory Income Notes, LLC

By: McGinn Smith Advisors, LLC, Managing Member

By: 

Name: David L. Smith

Title: President