

CONFIDENTIAL PRIVATE PLACEMENT MEMORANDUM

**\$3,000,000**  
**TDMM BENCHMARK TRUST 09**

\$180,000 8.00% DUE NOVEMBER 1, 2010  
\$350,000 9.00% DUE NOVEMBER 1, 2011  
\$400,000 10.00% DUE NOVEMBER 1, 2012  
\$470,000 11.00% DUE NOVEMBER 1, 2013  
\$1,600,000 12.00% DUE NOVEMBER 1, 2014  
MINIMUM INVESTMENT \$25,000

TDMM BENCHMARK TRUST 09 (the "Trust") is hereby offering \$3,000,000 of Contract Certificates, entitled to interest at the rates of 8.00% to 12.00% per annum depending upon maturity (the "Certificates"). Principal and Interest on the Certificates due November 1, 2010 is payable in monthly installments commencing on November 1, 2009. Interest only on the remaining Certificates is payable in monthly installments commencing November 1, 2009. Principal and Interest on the remaining Certificates is payable sequentially as prior maturities are fully amortized (see Exhibits D-1 through D-5). See "Description of Trust Agreement and the Certificates".

The Certificates will be issued and registered in the names of the purchasing Certificateholders. Interests in the Certificates will be shown on, and transfers thereof will be effected through, records maintained by the Trustee under the Trust Agreement. See "Description of Trust Agreement and the Certificates".

Price of Certificates 100%

See "Risk Factors" for a discussion of certain risks that should be considered by prospective purchasers of the Certificates offered hereby.

THESE CERTIFICATES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION OR ANY STATE SECURITIES COMMISSION NOR HAS THE SECURITIES AND EXCHANGE COMMISSION OR ANY STATE SECURITIES COMMISSION PASSED UPON THE ACCURACY OR ADEQUACY OF THIS MEMORANDUM. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

	Price to the Public	Selling Commission and Expenses <sup>1</sup>	Proceeds to the Trust
Minimum Offering	100% \$250,000	8.0% \$20,000	92% \$230,000
Maximum Offering	\$3,000,000	\$240,000	\$2,760,000

The date of this Memorandum is August 20, 2009

**MCGINN, SMITH & CO. INC.**  
Capital Center • 99 Pine Street  
Albany, New York 12207

<sup>1</sup> The Certificates due on November 1, 2013 and November 1, 2014 will be offered and sold to investors on a "best efforts" basis by broker-dealers ("Selling Group Members", collectively the "Selling Group") who are members of FINRA. McGinn, Smith & Co. Inc ("McGinn, Smith") will act as Managing Broker-Dealer and will receive selling commissions ("Selling Commissions") equal to 5.5% of the purchase of the Certificates sold by Selling Group Members ("Total Sales"), which it will reallow to the Selling Group Members. McGinn, Smith will also receive a nonaccountable marketing allowance equal to 1.00% of the Total Sales which it may reallow in whole or in part to the Selling Group Members. McGinn, Smith will also receive a wholesale fee equal to 1.50% of Total Sales, some or all of which will be reallowed to wholesalers. The aggregate amount of commission, allowances, expenses, and placement fees paid by the Trust ("Selling Commissions and Expenses") will not exceed 8.00% of Total Sales.

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The Offering of Certificates will terminate on October 31, 2009, unless all are sold prior to that date. McGinn, Smith & Co. Inc. (the "Placement Agent"), upon request from the Trust, will consider an extension of the Offering for four (4) months, terminating on February 28, 2010. All subscriptions will be held in an escrow account (the "Escrow Account") at M&T Bank, Buffalo, New York (the "Escrow Agent") or such other financial institution as may be selected by the Trust in the event that the Escrow Agent is unable or unwilling to serve. Interest will be earned on funds held in the Escrow Account commencing three (3) days after the funds are deposited until the earlier of the termination of this Offering or the investment of such funds in Certificates. During the period that an investor's funds are held in the Escrow Account, he will not be a Certificateholder of the Trust. An investor's funds will not be held in the Escrow Account more than three (3) months before being invested in the Certificates, with Escrow Agent fees being deducted from escrow interest payable to investors. See "Terms of the Offering".

The Trust will furnish to investors certain reports, financial statements and tax information. See "Description of Trust Agreement and the Certificates-Reports".

### WHO MAY INVEST

The Certificates will generally be offered only to accredited investors ("Accredited Investors") as that term is defined under Regulation D promulgated under the Securities Act of 1933, as amended (the "Act"). The Placement Agent may, however, offer and sell Certificates to 35 or fewer non-accredited investors. With certain exceptions (primarily with respect to institutional investors) an Accredited Investor is an individual who (i) has a net worth (along and together with the Investor's spouse) in excess of \$1,000,000 or (ii) has had gross income in excess of \$200,000 in each of the past two years or joint income with that person's spouse in excess of \$300,000 in each of those years and reasonably expects gross income at the same level in the current year. Corporations, partnerships and other entities will be considered Accredited Investors if each of its beneficial owners individually qualify as Accredited Investors, or if such entity has total assets in excess of \$5 million. Prospective investors to be admitted as Accredited Investors will be required to represent that they satisfy the requirements of an Accredited Investor. See "Suitability".

The Certificates offered hereby are suitable only for those investors whose business and investment experience makes them capable of evaluating the merits and risks of their prospective investment in the Certificates, who can afford to bear the economic risk of their investment for an indefinite period of time and have no need for liquidity in this investment. Each investor will be required to represent in the Subscription Agreement that he is acquiring the Certificates for his own account as principal for investment, and not with a view to resale or distribution, and that he is aware that (a) his transfer rights are restricted; and (b) that the Certificates have not been registered under the Securities Act of 1933, as amended, and therefore, cannot be resold unless they are so registered or unless exemption from registration is available with respect to such transaction. (See "Suitability".) Since there can be no assurance that the Contracts (as hereinafter defined) will generate sufficient income necessary to pay the Certificates, investment in the Certificates is suited for persons who have substantial income from other sources. See "Risk Factors".

The Trust may require prospective investors to complete a questionnaire relating to the suitability of the investment for them, and may make or cause to be made such further inquiry as it deems appropriate. The Trust and Placement Agent will collectively have the sole discretion regarding sale of the Certificates to any prospective investor. The Trust and Placement Agent reserve the right to reject any subscription for any reason and to allocate to any investor a smaller amount of Certificates, or fractions thereof, than that for which he has subscribed. See "Suitability".

## SUMMARY OF THE OFFERING

The following summary is qualified in its entirety by the detailed information appearing elsewhere in this Memorandum and the exhibits attached to the Memorandum.

### The Trust

TDMM BENCHMARK TRUST 09 (the "Trust") is a common law trust formed under the laws of the State of New York on July 10, 2009. The Trustee of the Trust is McGinn, Smith Capital Holdings Corp., a New York corporation (the "Trustee"). The Trustee of the Trust will have no liability in connection with the Certificates or the affairs of the Trust in the absence of willful misconduct or gross negligence. Certificateholders will have recourse to all assets of the Trust, which will include a security interest in all assets purchased by TDMM Cable Funding LLC, a New York limited liability company ("TDMM") with the proceeds of a loan made to it by the Trust (the "Collateral"). The specific assets to be purchased by TDMM are all operating assets and customer contracts (the "Contracts") owned by Benchmark LLC ("Benchmark").

The Trust will make a loan to TDMM. TDMM will purchase the operating assets of Benchmark as well as the Contracts for a total consideration of approximately \$1,950,000 and will expend approximately \$600,000 in related acquisition costs utilizing the loan from the Trust.

The following table (the "Table") enumerates the Contracts to be purchased from Benchmark.

BENCHMARK				
Property	Location	Contract End Date	# Units	Contract Revenue
Harborside	Slidell, LA	September 2019	168	\$ 134,532
Marcus Pointe	Pensacola, FL	July, 2014	248	106,488
Legacy Towers	Gulfport, MS	November, 2014	244	221,592
Legacy Oaks	Mobile, AL	March, 2016	138	151,380
Grande View	Biloxi, MS	November, 2012	240	156,804
Stone Gate	Birmingham, AL	November, 2016	260	289,464
Holiday Isle	New Orleans, LA	February, 2017	160	71,700
Huntington	Dauphin Is., LA	December, 2016	144	75,840

Total annual revenues for the properties listed above are \$1,207,800. The average remaining period for the Contracts listed above is 76 months.

Each of the properties listed above is a multi-unit apartment building or apartment complex. The services contract specifies that tenants must use the services provided by Benchmark for Cable TV and Internet connections.

Additionally, three properties not listed in the Table have entered into contracts with Benchmark which will contribute approximately \$450,000 of annual revenue. It is anticipated that this incremental revenue



stream will come online in the third quarter of 2010. The following table identifies the additional properties.

Property	Location	Contract End Date	# Units	Anticipated Return
Meadowrun Apartments	Pensacola, FL	September, 2019	200	\$ 165,000
Pass Pointe	Biloxi, MS	October, 2019	176	140,000
Beaux Terre	Alexandra, LA	January, 2016	168	145,000

TDMM will enter into an agreement with Community Services LLC of Miami, Florida to provide all technical, programming acquisition, billing, and collection functions for the 8 properties being served and for the three additional properties referenced above. Further, Community Services LLC will use its best efforts to renew customer contracts prior to expiration, increase service offerings, improve quality of service and maintain professional relationships with the customer base.

Community Services LLC currently provides similar services in 36 communities serving approximately 9,000 households.

#### The Investment

Certificateholders will purchase up to \$3,000,000 of Certificates issued by TDMM Benchmark Trust 09 which will bear interest at 8.00% to 12.00% per annum depending upon maturity. The Certificates due November 1, 2010 will bear interest at 8.00% per annum. The Certificates due November 1, 2011 will bear interest at 9.00% per annum. The Certificates due November 1, 2012 will bear interest at 10.00% per annum. The Certificates due November 1, 2013 will bear interest at 11.00% per annum. The Certificates due November 1, 2014 will bear interest at 12.00% per annum. Each maturity, with the exception of the November 1, 2014 maturity, will amortize completely. Certificates maturing on November 1, 2014 will amortize to approximately \$1,060,000 or approximately 67% of the original \$1,600,000 and will mature on November 1, 2014. See Exhibits D-1 through D-5.

A schedule of payments of debt service is set forth in Exhibit "D".

The cash flow waterfall from operating business EBITDA is as follows:

1 <sup>st</sup>	Interest and Principal on the Certificates maturing November 1, 2010
2 <sup>nd</sup>	Interest on all other Certificates, pari-passu
3 <sup>rd</sup>	Upon retirement of the Certificates maturing on November 1, 2010, interest and principal on Certificates maturing on November 1, 2011
4 <sup>th</sup>	Interest on successive maturities pari-passu
5 <sup>th</sup>	and on so forth

Certificates may be purchased in denominations of \$5,000 with a minimum purchase of \$25,000. The Trustee may, at its discretion, accept subscriptions of less than \$25,000.

#### EQUITY PARTICIPATION

Certificateholders will be afforded a total of an 18% equity participation in the assets purchased by TDMM Cable Funding, LLC with the proceeds of the loan made by the Trust, under the maximum offering. Such equity participation will vest with certificateholders on November 1, 2014. To the extent that less than the maximum offering is raised, the 18% equity participation will be prorated accordingly.

The 18% equity participation will be allocated as follows, assuming the maximum offering is achieved:

- 0.00% to the Certificates maturing November 1, 2010
- 0.75% to the Certificates maturing November 1, 2011
- 1.25% to the Certificates maturing November 1, 2012
- 2.30% to the Certificates maturing November 1, 2013
- 13.70% to the Certificates maturing November 1, 2014

#### **Risk Factors**

In evaluating this Offering, prospective investors should consider carefully, among others, the following risk factors:

- No assurance that the pre-closing expenses borne by TDMM will be repaid should TDMM fail to close on the acquisition of Benchmark
- No assurance that the Certificates will be paid;
- No market for resale of Certificates;
- Illiquid collateral;
- Potential for Contract defaults;
- Potential conflicts of interest in connection with the acquisition of the assets to be consigned to the Trust;

#### **Description of Trust Agreement and the Certificates**

The Certificates will be issued under a Declaration of Trust by McGinn, Smith Capital Holdings Corp., the Trustee. The Certificates will be available for purchase in denominations of \$5,000.00 with a minimum investment of \$25,000.00. The Certificates will be registered in the name of the individual Certificateholders. See "Description of Trust Agreement and the Certificates."

The Certificates will bear interest at a per annum rate of 8.00% to 12.00% per annum depending upon maturity. Interest will accrue commencing on the Closing Date for the purchase of each Certificate and principal and interest will be payable to Certificateholders, on a sequential maturity basis (see Exhibits D-1 through D-5).

#### **Uses of Proceeds**

The net proceeds from the Offering will be loaned to TDMM. TDMM will acquire the operating assets and customer contracts of Benchmark LLC, pay related acquisition costs, and provide working capital to TDMM.

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TDMM will pledge, as collateral for the loan, all assets and Contracts being acquired.

#### **Income Tax Considerations**

The Certificates will be treated as indebtedness of the Trust for federal income tax purposes. Each Certificateholder will generally be required to report interest income on a Certificate in accordance with such Certificateholder's method of accounting. Each prospective investor should consult with his or her own tax advisor with respect to the tax consequences of the acquisition, ownership and disposition of the Certificates.

### **RISK FACTORS**

In evaluating this Offering, prospective investors should consider carefully all of the information contained in this Memorandum and, in particular, the factors discussed below. The following summary is not intended to state in full or replace portions of this Memorandum that discuss these factors and others in greater depth. Although the risk factors are intended to be presented in order of their materiality to investors, such order may not be indicative of their relative importance to any particular investor.

### **Pre-Closing Expenses**

TDMM will incur approximately \$600,000 in pre-closing expenses associated with the acquisition of Benchmark. To the extent that the acquisition does not occur, TDMM will be liable for repaying that amount to the Trust. There can be no assurance that TDMM will have the requisite resources to liquidate this debt.

### **Limitation of Transfer of Certificates**

The Certificates may not be offered for resale to any person without the consent of the Trust. Prior to this offering, there has been no market for the Certificates of the Trust. Each investor will be required to represent that his purchase of the Certificates will be for investment only and not with a view towards the resale or distribution thereof. A Certificateholder will not have any right to sell, transfer, exchange or otherwise dispose of his Certificates, or to cause a security interest to be created therein, unless the Trust has received evidence satisfactory to it that such disposition or creation of a security interest is not in violation of federal or state securities laws. The Certificates have not been registered or qualified under the Securities Act of 1933, as amended, or applicable state securities laws and may not be sold or transferred without such registration or qualification or an exemption therefrom.

### **Potential for Contract Defaults**

Defaults under the terms of the Contracts and/or any diminution in the discretionary purchases of optional services such as pay for view fees would result in a reduction in the cash flow available to service the Certificates offered hereby.

### **No Independent Counsel to Investors**

Purchasers of the Certificates offered hereby will not be afforded the services of independent counsel. Disclosure of material facts and risks has been reviewed by counsel to the Placement Agent.

### **Lack of Financial Statements**

This Memorandum does not include financial statements for the Trust. The Trust is newly formed for the limited purpose of making a loan to TDMM which will acquire the operating assets and customer contracts of Benchmark.

### **Conflicts of Interest**

The Trustee of the Trust is McGinn, Smith Capital Holdings Corp., the Placement Agent for this offering is McGinn, Smith & Co. Inc., and two of the principals of TDMM Cable Funding, LLC are Timothy M. McGinn and David L. Smith who are also principals of the Trustee and the Placement Agent. Although there is no specified formula for determining the value of the Collateral, the Trustee will advance the loan to TDMM only when TDMM represents to the Trustee that the revenue to be derived from the Collateral will allow the Trust to pay its operating expenses and discharge its obligations with respect to the Certificates.

### **USE OF PROCEEDS**

The net proceeds to the Trust from the sale of the Certificates offered hereby, after deducting the Underwriting Discount, will be \$2,760,000 (92% of gross proceeds) if the Maximum Offering for the Certificates is achieved.

The net proceeds to the Trust from the sale of the Certificates offered hereby, after deducting the Underwriting Discount, will be \$230,000 (92% of gross proceeds) if the Minimum Offering for the Certificates is achieved.

In either case, the net proceeds will be loaned to TDMM Cable Funding LLC by the Trust. TDMM Cable Funding LLC will pay the Trust principal and interest in an amount sufficient to provide for the payments of debt service set forth in Exhibit "D".

## SOURCES AND USES

The following table describes the sources and uses of funds should only the minimum offering be achieved.

Sources		Uses	
Offering Gross Proceeds	\$ 250,000	Benchmark Acquisition	\$ 1,950,000
Acquisition Loan from	2,530,000	Legal	75,000
McGinn, Smith Transaction		Selling Commissions &	
Funding Corp. to the Trust		Expenses	20,000
		Due Diligence	150,000
		Investment Banking	400,000
		Working Capital	130,000
		Printing	5,000
		Loan Origination Fee	50,000
<b>Total Sources</b>	<b>\$ 2,780,000</b>	<b>Total Uses</b>	<b>\$ 2,780,000</b>

The McGinn, Smith Transaction Funding Corp. loan shall be a demand loan which will carry an annual interest rate of 14.0% and will incur an origination fee of \$50,000.

The following table describes the Sources and Uses of funds should the maximum offering be achieved.

Sources		Uses	
Offering Gross Proceeds	\$ 3,000,000	Selling Commissions &	
		Expenses	240,000
		Benchmark Acquisition	\$ 1,950,000
		Legal	75,000
		Due Diligence	150,000
		Investment Banking	400,000
		Working Capital	180,000
		Printing	5,000
<b>Total Sources</b>	<b>\$ 3,000,000</b>	<b>Total Uses</b>	<b>\$ 3,000,000</b>

## THE TRUST

The Trust is a common law trust formed under the laws of the State of New York on July 10, 2009. The principal executive office of the Trust is located at c/o McGinn, Smith Capital Holdings Corp., Trustee, Capital Center, 99 Pine Street, Albany, New York 12207, and its telephone number is 518-449-5131. McGinn, Smith Capital Holdings Corp. is the Trustee of the Trust. The owners of all issued and outstanding common stock of the Trustee are Timothy M. McGinn (30%), David L. Smith (50%), and Thomas E. Livingston (20%); McGinn, Smith & Co. Inc. is the Placement Agent for the offering.

### Business of the Trust

The Trust has been formed solely for the purpose of funding a loan to TDMM Cable Funding LLC. Subsequent to the closing date, the Trust will utilize the net proceeds from the offering to provide a loan to TDMM Cable Funding LLC for the purpose of acquiring the operating assets and customer contracts of as well as paying for certain pre-closing expenses of approximately \$600,000.

### Business of TDMM Cable Funding LLC

TDMM Cable Funding LLC, ("TDMM") is a New York corporation engaged in providing cable TV, internet, telephone, and security services to private communities. TDMM currently services 20 such

communities and residential customers. With the integration of the assets to be acquired with the proceeds of this offering, TDMM will service some 30 communities including 3800 residential customers.

#### **The "Triple Play" Service Industry**

The "Triple Play" Service business is one in which a proprietary communications network which provides Cable TV, Internet Broadband, and Fiber Optic Telephone Service is bundled and sold to the subscriber, generally at a substantial discount to the ala carte pricing.

Community Services LLC, a Florida limited liability company, has developed and managed broadband communication systems providing video, voice, data, telephone, and security monitoring services to approximately 8,000 residential customers in planned communities throughout Florida.

With the acquisition of the Benchmark contracts by TDMM with the loan from the Trust provided hereby, Community Services LLC will operate in 38 communities, serving 9,000 residences and billing approximately \$625,000 per month.

### **DESCRIPTION OF TRUST AGREEMENT AND THE CERTIFICATES**

On July 10, 2009, David L. Smith, as President of McGinn, Smith Capital Holdings Corp., (the "Trustee") executed the Declaration of Trust (the "Declaration") of TDMM Benchmark Trust 09 (the "Trust"), declaring that McGinn, Smith Capital Holdings Corp. was the Trustee of the Trust, establishing the Trust for the benefit of Certificateholders, and defining its purpose.

The Trust is intended to be a common law trust under the laws of the State of New York, with its principal office at Capital Center, 99 Pine Street, Albany, New York 12207, which is the office of the Trustee. The initial capital of the Trust was established at \$100.00, and the purpose of the Trust is to provide a loan to TDMM which will enable TDMM to acquire the operating assets and customer contracts of Benchmark LLC. Under the Declaration, the Trustee acquires virtually complete discretion in the operation of the Trust, so long as that discretion is exercised within the purpose of the Trust. The Declaration limits the liability of the Trustee in two ways. The Trustee will not be liable in the absence of willful misconduct or gross negligence. Further, the Trustee will not be liable, in any event, to pay sums of money beyond the corpus of the Trust. The Trustee is entitled to indemnification from the funds of the Trust (except in the case of willful misconduct or gross negligence) and to reimbursement for the reasonable and necessary fees and expenses incurred in the administration of the Trust. The Trustee is entitled to indemnification and reimbursement from the corpus of the Trust before payments are made to Certificateholders.

The Declaration specifically provides that the Certificateholders shall not have any legal or equitable title to the Trust Estate, that no Certificateholder shall have a voice in the management or control of the property or affairs of the Trust, that the Trustee has no authority to require additional capital contributions from any Certificateholder, and that the Trustee is precluded from taking any action to make Certificateholders liable for the debts or obligations of the Trust.

#### **Certificates**

The Certificates will be issued under the Declaration, a copy of which is included as an exhibit to this Memorandum. The rights of the Certificateholders and the obligations of the Trustee as they relate to the Certificates will be governed by the Declaration. Reference should be made to the Declaration for its complete terms. The statements contained in this Memorandum concerning the Declaration are merely a summary thereof, do not purport to be complete, and do not modify or amend the Declaration.

Subject to the conditions set forth in this Memorandum, Certificates in the maximum amount of \$3,000,000 will be offered by the Trust. The Certificates will bear interest on the outstanding principal at 8.00% to 12.00% per annum depending upon maturity. Interest and Principal on the Certificates will be paid in monthly installments on a sequential maturity basis (see Exhibits D-1 through D-5).

The Certificates will be issued and registered in the name of the purchasing Certificateholder(s). Interest on the Certificates will be shown on, and transfers thereof will be effected through, records maintained by the Trustee.

#### **Prepayments**

The Certificates are not subject to a mandatory prepayment or redemption provision.

#### **Registration**

Each Certificate will be registered in the name of the purchaser thereof.

#### **Limited Transferability of the Certificates**

The Certificates are not freely transferable, and there is no secondary market for the Certificates and none is expected to develop. The Certificates should not be treated by Certificateholders as securities.

The Certificates have not been registered under the Securities Act of 1933, as amended. They may not be offered for resale in the absence of an opinion of counsel, satisfactory to the Trust, that registration is not required.

#### **Reports**

Not later than January 31 of each year, the Trust will furnish to the Certificateholders statements of interest income on IRS Form 1099-INT and such tax information as shall be necessary in the preparation of such person's Federal income tax return.

### **CONFLICTS OF INTEREST**

Timothy M. McGinn, David L. Smith, and Thomas E. Livingston collectively own 100% of the issued and outstanding common shares of McGinn, Smith & Co. Inc. McGinn, Smith & Co. Inc. is acting as the Placement Agent for this Offering and will receive selling commissions and offering expenses equal to eight percent (8%) of the gross proceeds of this Offering. The Underwriting Discount was not negotiated at arms length.

McGinn, Smith & Co. Inc. will be paid a fee for acquisition negotiations, legal, and due diligence activities aggregating \$600,000. This fee will be paid by TDMM prior to the acquisition of the assets by TDMM. Additionally, Mr. McGinn and Mr. Smith are the majority owners of TDMM and Mario Bustamonte, a minority owner of TDMM, is the owner of Community Services, LLC which will be providing services to all of the acquired properties. A potential conflict of interest arises as a result of these various relationships although all parties endeavor to operate at arms length.

McGinn, Smith & Co. Inc. may experience a conflict of interest in performing its obligation to exercise due diligence with respect to the statements made in this Memorandum and, therefore, its due diligence review cannot be considered independent. A qualified independent underwriter has not been retained by the Trust in connection with this offering. However, McGinn, Smith & Co. Inc. believes that such due diligence has, in fact, been exercised.

There has been no independent counsel retained to represent the interests of the Certificateholders.

### **THE TRUSTEE**

The names and positions of the directors and executive officers of the Trustee are as follows:

<u>Name</u>	<u>Position</u>
Timothy M. McGinn	Chairman of the Board and Director
David L. Smith	President and Director
Thomas E. Livingston	Treasurer



The officers and directors of the Trustee will devote such time and effort to the business of the Trust as they may deem necessary and will actively be engaged in other business ventures.

The principal business occupations of the officers and directors during the past five (5) years are as follows:

Timothy M. McGinn, age 61, is the Chairman of the Board and Secretary of McGinn, Smith & Co. Inc. He has served as Chairman of the Board since the inception of this firm in 1980. From 2003 to 2006, Mr. McGinn served as Chairman of the Board and CEO of Integrated Alarm Services Group, Inc. a NASDAQ listed public company. Prior to founding McGinn, Smith & Co. Inc. he was with Paine, Webber, Jackson & Curtis. He has served on a number of corporate and charitable boards of directors and holds a bachelor's degree in Mechanical Engineering from the Rochester Institute of Technology.

David L. Smith, age 64, is the President of McGinn, Smith & Co. Inc. and a member of the Board of Directors. He has served in this capacity since 1980. Prior to founding McGinn, Smith & Co. Inc. he was with Paine Webber, Jackson & Curtis. Mr. Smith has served on a number of charitable and corporate boards of directors and holds a bachelor's degree from Hamilton College.

Thomas E. Livingston, age 51, is Sr. Vice President of McGinn, Smith & Co. Inc. and a member of its Board of Directors. Mr. Livingston has been employed by McGinn, Smith & Co. Inc. since 1986. Prior to joining McGinn, Smith & Co. Inc. he was affiliated with Prudential Bache Securities.

#### COMPENSATION AND FEES

McGinn, Smith Capital Holdings Corp, the Trustee of the Trust, will serve without fee but will be reimbursed for expenses incurred by the Trustee in connection with the Trust by TDMM Cable Funding LLC.

#### SUITABILITY

Certificates will be sold only to investors who make a minimum purchase of \$25,000.00.

As described elsewhere in this Memorandum, the Certificates will generally be sold only to Accredited Investors as defined in Rule 501 of Regulation D promulgated by the Securities and Exchange Commission under the Securities Act of 1933, as amended; provided, however, that at the discretion of the Placement Agent and the Company, Certificates may be sold to up to 35 non-accredited investors. Included in the definition of "Accredited Investor", as defined in Rule 501, are the following:

- (a) any natural person whose individual net worth (including personal residences, furnishings and automobiles), or joint net worth with that person's spouse, at the time of purchase exceeds \$1,000,000;
- (b) any natural person who had an individual income in excess of \$200,000 in each of the two most recent years or joint income with that person's spouse in excess of \$300,000 in each of those years and who reasonably expects gross income at the same level in the current year; and
- (c) any entity in which all of the equity owners are Accredited Investors or which has total assets in excess of \$5,000,000.

Each investor accepted as an Accredited Investor will be required to represent that he satisfies the requirements of an Accredited Investor under Rule 501.

Among other things, each investor will be required to acknowledge and represent in the Subscription Agreement that: (i) he is purchasing the Certificates for his own account for investment and not with a view to the sale or distribution thereof; (ii) he is aware that the Certificates have not been registered for sale under the Securities Act of 1933 as amended, and that he will not transfer his Certificates in the

absence of an opinion of counsel satisfactory to the Trust that the Certificates have been registered or that registration is not required under the Securities Act of 1933, as then in effect, and under applicable state securities laws, if any; (iii) he understands that this investment involves a high degree of risk; (iv) he has adequate means of providing for his current needs and foreseeable personal contingencies, has no need for liquidity in this investment; (v) all books, records and documents pertaining to this investment have been made available to him; and (vi) his overall commitment to investments which are not readily marketable is not disproportionate to his net worth and his purchase of Certificates will not cause such overall commitment to become excessive.

The Placement Agent and Trust reserve the right to reject any subscription in its entirety for any reason or to allocate to any investor Certificates in an aggregate principal amount less than that for which he has subscribed. In the event a subscription is rejected, the investor's subscription check for his Certificates (or the amount thereof) will be returned, and in the event of a partial rejection, a pro rata amount of his subscription check for his Certificates will be refunded.

Prospective investors may be required to complete an Investor Representation Letter relating to the suitability of the investment for them, and the Trust may make or cause to be made such further inquiry as the Trust deems appropriate.

Each prospective investor will be afforded the opportunity to obtain from the Trust prior to the consummation of the transaction contemplated herein any additional information he may request necessary to verify the accuracy of the contents of this Memorandum and which the Trust possesses or can acquire without unreasonable effort or expense and to confer with, ask questions of, and receive answers from the Trust or persons authorized to act on its behalf, concerning the terms and conditions of the transaction, this memorandum and any additional information which has been requested and supplied to a prospective investor or his purchaser representative.

The purchase of Certificates may be suitable for individuals seeking an investment intended to provide income. An investment in Certificates may also be appropriate for corporations and trusts seeking investments which are structured to provide income. Nevertheless, this investment involves a number of significant risks, including no assurance that the Certificates will be paid and illiquidity. See "Risk Factors." Accordingly, the suitability of a purchase of Certificates for any particular investor will depend upon, among other things, such investor's investment objectives and such investor's ability and willingness to accept the risks of an investment in the Certificates.

The Placement Agent Agreement between the Trust and the Placement Agent requires the Placement Agent to make diligent inquiries as required by law of all prospective purchasers in order to ascertain whether a purchase of Certificates is suitable for such person and to transmit promptly to the Trust all fully completed Subscription Agreements. By tendering payment for a Certificate and by acceptance of the confirmation of purchase, an investor represents that he or it satisfies any applicable suitability standards. See "Plan of Distribution."

#### TERMS OF THE OFFERING

The maximum number of investors the Trust will accept is 95.

Subject to the conditions set forth in this Memorandum, Certificates in the maximum amount of \$3,000,000 (the "Maximum Offering") and the minimum amount of \$250,000 (the "Minimum Offering") will be offered by the Trust.

The Certificates will be offered through McGinn, Smith & Co. Inc., the Placement Agent, on a best efforts basis over a period of two (2) months unless extended. The Placement Agent is a member of the Financial Industry Regulatory Authority.

All funds received by the Placement Agent from subscriptions for the Certificates will be placed in an escrow account (the "Escrow Account") maintained at M&T Bank, Boca Raton, Florida (the "Escrow

Agent"). During the period that an investor's funds are held in the Escrow Account he will not be considered a Certificateholder.

With respect to the Certificates, no funding from the Escrow Account will occur until the Minimum Offering is subscribed for. If subscriptions for the Minimum Offering are not received within four (4) months from the date of this Memorandum, subscriptions received with respect to the Certificates will be promptly returned in full to the investor by the Escrow Agent, unless the Offering is extended.

#### **How to Subscribe.**

The Certificates will be available for purchase in the minimum denomination of \$25,000.00 and increments of \$5,000.00. An investor who meets the qualifications set forth under "Who May Invest" and "Suitability" may subscribe for Certificates by completing, signing and delivering to the Placement Agent an executed copy of the Subscription Agreement contained in this Memorandum. All subscriptions must be accompanied by a check in the amount of the Certificate(s) purchased payable to "M&T Bank, Escrow Agent for TDMM Benchmark Trust 09". Upon execution of a Subscription Agreement, the investor agrees to all of the terms and conditions contained in the Agreement. Subscriptions are, however, subject to acceptance by the Trust.

### **PLAN OF DISTRIBUTION**

The Trust is offering a maximum of \$3,000,000 of Certificates, and a minimum of \$250,000. The minimum investment by an investor is \$25,000.00 with increments of \$5,000.00. The Offering of Certificates will terminate on October 31, 2009, unless all are sold prior to that date. McGinn, Smith & Co. Inc. (the "Placement Agent"), upon request from the Trust, will consider an extension of the Offering for four (4) months, terminating on February 28, 2010. No Certificates will be sold unless subscriptions for the Minimum Offering are received and accepted within four (4) months of the date of this Memorandum, unless such time is extended. Subscriptions are subject to acceptance by the Trust. See "Suitability"; "Who May Invest".

During the course of the Offering, the subscription payments will be promptly forwarded by the Placement Agent to the Escrow Agent for deposit in the Escrow Account. For a description of the distribution of funds from the Escrow Account, see "Terms of the Offering".

The Certificates will be offered on a "best efforts" basis by the Placement Agent.

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### **DISCLAIMER OF LIABILITY OF TRUSTEE**

Reference is hereby made to the Declaration of Trust dated July 10, 2009, a copy of which is attached hereto as Exhibit "A". Other than potential liability under the Act, neither the Trustee, nor any shareholder, manager, officer, employee, affiliate or agent of the Trustee may be held to any liability in connection with the Offering or the Certificates, or in connection with the affairs of the Trust, in the absence of willful misconduct or gross negligence. Further, the Trustee will not be liable, in any event, to pay sums of money beyond the corpus of the Trust.

### **INCOME TAX CONSIDERATIONS**

The following discussion summarizes certain material anticipated federal income tax consequences relevant to the acquisition, ownership and disposition of Certificates, but does not purport to address all potential consequences. The summary is for general information only and does not discuss all of the tax consequences that may be relevant to particular investors in light of their personal investment circumstances or holders who receive special treatment under the Internal Revenue Code of 1986, as amended (the "Code"), such as insurance companies, financial institutions, and broker-dealers. In addition, this discussion does not describe any tax consequences arising out of foreign, state or local jurisdictions.

The discussion is based upon current provisions of the Code, applicable regulations promulgated thereunder, judicial authority and administrative rulings and practice. All of the foregoing are subject to change which may be retroactive and could affect the continuing validity of this discussion. There can be no assurance that the Internal Revenue Service (the "IRS") will not take a contrary view, and no ruling from the IRS has been or will be sought.

The Trust has not obtained an independent tax opinion with regard to this Offering. Prospective investors should consult their own tax advisors regarding the federal, foreign, state, local and other tax consequences of purchasing, holding and disposing of the Certificates.

#### **Interest Income to Certificateholders**

It is anticipated that the Certificates will be issued at par value and, therefore, no original issue discount will arise with respect to the Certificates. Accordingly, a Certificateholder will be required to report interest on a Certificate as income for federal income tax purposes in accordance with such holder's method of accounting.

#### **Gain or Loss on Disposition of Certificates**

In general, the holder of a Certificate will recognize gain or loss on the sale, exchange, redemption or other disposition of a Certificate equal to the difference between the amount realized (except to the extent attributable to the payment of accrued interest) and the adjusted basis in his Certificate. Any gain or loss recognized will generally be a Trust gain or loss if the Certificate is held as a Trust asset and will be long-term gain or loss if the Certificate is held for more than one year.

#### **Information Reporting**

The Trust will report interest income to Certificateholders on IRS Form 1099-INT and as otherwise consistent with such treatment.

#### **Backup Withholding**

A Certificateholder may be subject to "backup withholding" at the rate of 31% (see IRC§3406(a)) with respect to interest paid on, or the proceeds of a sale, exchange or redemption of, such Certificates, unless such holder (i) is a corporation or comes within certain other exempt categories and, when required, demonstrates this fact, or (ii) provides a taxpayer identification number, certifies as to no loss of exemption from backup withholding, and otherwise complies with applicable exemption from backup withholding rules. Any amount withheld under these rules will be creditable against the Certificateholder's federal tax liability.

**THE FOREGOING DISCUSSION OF CERTAIN FEDERAL INCOME TAX CONSEQUENCES IS FOR GENERAL INFORMATION ONLY AND IS NOT TAX ADVICE. EACH PROSPECTIVE INVESTOR SHOULD CONSULT WITH HIS OR HER OWN TAX ADVISER WITH RESPECT TO THE TAX CONSEQUENCES OF THE ACQUISITION, OWNERSHIP AND DISPOSITION OF THE CERTIFICATES.**

#### **TABLE OF CONTENTS OF EXHIBITS**

The discussion in this Memorandum of each Exhibit set forth below is qualified in its entirety by reference to such Exhibit.

Exhibit "A"	Declaration of Trust
Exhibit "B"	Subscription Agreement
Exhibit "C"	Investor Representation Letter
Exhibit "D"	Amortization Schedule
Exhibit "E"	Escrow Agreement

#### **ADDITIONAL INFORMATION**

Additional information is available upon request to the Trust. Only additional information provided by the Trust may be relied upon. Prospective investors may request such information from the Placement Agent, McGinn, Smith & Co. Inc., Fifth Floor, 99 Pine Street, Albany, New York 12207.

**EXHIBIT "A"**

**DECLARATION OF TRUST**

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## DECLARATION OF TRUST OF TDMM BENCHMARK TRUST 09

This Trust Agreement (the "Declaration") made as of the 10<sup>th</sup> of July, 2009 by and between McGinn, Smith Capital Holdings Corp., a New York corporation with an address at Capital Center, 99 Pine Street - 5th Floor, Albany, New York 12207 ("Trustee"), and those persons who acquire an interest herein by the execution and performance of a subscription agreement ("Subscription Agreement") attached as Exhibit B to the Confidential Private Placement Memorandum dated as of August 20, 2009 ("Confidential Memorandum").

### WITNESSETH:

WHEREAS, McGinn, Smith Capital Holdings Corp. desires to create a trust (the "Trust") for the purpose of enabling and authorizing a loan from the Trust to TDMM Cable Funding, LLC and

WHEREAS, the Trustee is willing to accept the duties and obligations imposed hereby on the terms and conditions hereinafter set forth;

NOW, THEREFORE, the Trustee does hereby declare, that the Trustee will hold the property which it may acquire as such Trustee, together with the proceeds thereof in trust, to manage and dispose of the same for the benefit of the Certificateholders hereunder in the manner and subject to the stipulations herein contained.

### ARTICLE I NAME

This Trust shall be designated and known as the "TDMM BENCHMARK TRUST 09", not incorporated, and under that name shall, so far as practicable, conduct all activities and execute all instruments in writing in the performance of the Trust.

### ARTICLE II DEFINITIONS

The following words, terms and phrases used herein shall be given the meaning stated below in this Article, unless such meaning would be clearly in conflict with the purposes and spirit of this instrument.

"Certificateholder" shall mean the holder for the time being, according to the books of the Trustee, of the Certificates as evidenced by this Declaration and the Certificates issued by the Trustee.

"Certificates" shall mean the contract certificates issued by the Trustee in favor of Certificateholders to evidence the interest of the Certificateholders in the assets of the Trust.

"Permitted Investments" means a promissory note (the "Note") evidencing a loan from the Trust to TDM Cable Funding, LLC. In addition, to the extent not employed for the loan from the Trust to TDM Cable Funding, LLC, temporary investments may be made in (1) certificates of deposit, in (2) short term AAA rated debt obligations regularly traded on a recognized exchange in the United States, or in (3) obligations issued by the United States Treasury or other obligations backed by the "full face and credit" of the United States.

"Share" shall mean a share in the beneficial interest of the property, assets, trust fund and corpus of the Trust.

"Transaction Documents" shall mean this Declaration of Trust and the Certificates.

"Trust", "Trust Estate", and "Capital" shall mean the trust fund hereunder, consisting of the corpus of the estate; that is, all property, real, personal and mixed of every kind and description howsoever acquired and wherever situated, held under this Declaration of Trust by the Trustee.

"Trustee" shall mean the trustee herein named, and those who are or may be trustees.



### ARTICLE III OFFICE OF THE TRUST

The principal office of this Trust shall be located at Capital Center, 99 Pine Street, 5<sup>th</sup> Floor, Albany, New York 12207, until changed by the Trustee. The principal office may be changed and branch offices established, maintained, changed and discontinued at such times and places as the Trustee in its discretion may determine, with notice to the Certificateholders.

### ARTICLE IV CAPITAL OF THE TRUST

The initial Capital of this Trust shall be One Hundred Dollars (\$100), paid to the Trustee concurrently with execution and delivery hereof. The Capital of the Trust or any part thereof, shall be held for the use and benefit of the Trust at such places and upon such terms as the Trustee may fix. The Trustee may not require any Certificateholder to make any contribution, in addition to the initial contribution made by such Certificateholder, to increase the Capital of the Trust. The Trustee shall receive such contributions to the Capital of the Trust as may be made by Certificateholders from time to time and apply the same for the purpose stated by Article V of this Trust Agreement.

### ARTICLE V PURPOSE OF THE TRUST

The purpose of the Trust is to lend the net proceeds derived from subscriptions from the Certificateholders to TDMM Cable Funding, LLC for the purpose of providing a portion of the amounts necessary to allow TDMM Cable Funding, LLC to acquire the operating assets and customer contracts of Benchmark LLC and to pay acquisition costs related thereto.

(1) The Trustee shall, as far as convenient and practicable, take and hold the title, both legal and equitable, to all property, however acquired under the terms hereof, in the name of the Trust. All conveyances of every kind and description, at any time made to or in the name of the Trustee of the Trust shall be held to vest the title to property so conveyed in the Trustee as such under this instrument, the title "TDMM BENCHMARK TRUST 09" being merely intended as a convenient designation of the Trustee hereunder.

(2) The Trustee shall administer and dispose of all properties for the benefit of Certificateholders hereunder, as represented by their Certificates.

(3) The Trustee shall manage, control and dispose of all the Trust Estate and its business affairs, of every kind and character within the authority granted hereunder.

(4) The Trustee shall, in such capacity, exclusively and absolutely, have full, absolute and plenary rights, authority to pledge, exchange, mortgage and convey or otherwise dispose of property of every kind, character and description, real, personal and mixed, that may be part of the Trust Estate.

(5) The Trustee shall have, in furtherance of the purposes of the Trust, the absolute right, power and authority to institute, maintain and defend actions, suits and proceedings in any court of law or equity either in the name of said Trust or in its name as Trustee thereof; to sell, transfer, assign and convey the whole or any part of the Trust Estate, invest and reinvest the proceeds thereof at any time in Permitted Investments provided that the Trustee shall have no obligation to invest such proceeds and shall not be accountable for any losses howsoever incurred; to collect any money, and pledge the assets of the Trust as security therefor; to execute and deliver in the manner herein provided all deeds, leases, mortgages, powers of attorney and other instruments in writing which the Trustee may deem necessary and proper in the exercise of the powers conferred hereunder; and to perform or withhold any act or thing of any kind or character, which in the Trustee's judgment may be necessary, proper or expedient, in

carrying into effect the purposes of this Trust or any purposes specified in this Declaration of Trust, or in any amendments hereto, duly made and adopted.

#### ARTICLE VI LIMITATION OF LIABILITY OF TRUSTEE AND CERTIFICATEHOLDERS

Neither the Trustee, nor any of its officers or servants shall have any right, power or authority, under any circumstances, or in any event to act as the agent of the Certificateholders or to bind them personally or to impose any liability or obligation upon them in any way whatsoever with respect to this Trust Estate or otherwise. All persons contracting with the Trustee or its officers, agents or employees shall look only to the Trust Fund for the payment of any damage, claim, judgment or decree, or of any money that may become due or payable in any way to them whether founded upon contract or tort, and neither the Trustee nor the Certificateholders, present or future, nor any of them shall as such be personally liable therefore or on any agreement or contract made by the Trustee, or by any officers, agents or employees of the Trustee, its officers or agents, or employees in connection with the Trust Estate. No amendment shall ever be made to this Declaration of Trust, increasing or enlarging the liability of either the Trustee or the Certificateholders as herein stipulated.

#### ARTICLE VII LIMITATION OF LIABILITY OF TRUSTEE; INDEMNIFICATION

The Trustee shall not be liable hereunder in any event or under any circumstances, for the acts or omissions of any other Trustee or of any officer, agent or employee, or any other person whatsoever, whether employed by such Trustee or not, or for any act or thing whatsoever, other than such Trustee's own willful misconduct or gross negligence. The Trustee in its individual capacity and as Trustee shall be indemnified by, and receive reimbursement from the Trust Estate against and from any and all liability, claim, damage or loss, suit, action, tax (including interest and penal ties), fine, penalty, cost and expense (including but not limited to legal fees and disbursements) of whatsoever kind and nature which may be imposed upon, incurred by or asserted at any time against the Trustee (in its individual or trust capacity) in any way relating to or arising out of the administration of the Trust Estate, or arising from any act or omission hereunder or under the Transaction Documents, except such as may arise from such Trustee's own willful misconduct or gross negligence. In addition, the Trustee shall be entitled to indemnification from the Trust Estate for any liability, obligation, loss, damage, penalty, tax, claim, action, suit, cost, expense or disbursement indemnified against pursuant to this Article VII and to secure the same the Trustee shall have a lien on the Trust Estate prior to the interest of the Certificateholders or any other person. Trustee shall file all tax returns and other governmental reports required to be filed by the Trustee in connection with the transaction contemplated hereby. Without limiting the foregoing, the Trustee shall under no circumstances be required to take any action or omit to take any action in the administration of the Trust Estate or otherwise in connection with the transactions contemplated hereunder unless the Trustee determines in its absolute discretion that indemnification in respect of such action or omission is available to it to its reasonable satisfaction, provided that the Trustee shall not be required to take or omit any action if the Trustee shall have been advised by its counsel that taking or omitting such action is contrary to the terms of any other agreement or instrument referred to herein or is otherwise contrary to law. The indemnities contained in this Article VII shall survive the termination of this Trust Agreement.

The Trustee shall not be entitled to receive compensation for its services from the Trust Estate. The Trustee shall not have any duty or obligation to manage, control, use, sell, dispose or otherwise deal with the Trust Estate or to otherwise refrain from taking any such action under or in connection with this Trust Agreement or the other agreements or instruments referred to herein except as expressly provided by the terms of this Trust Agreement, and no implied duties shall be read into this Trust Agreement against the Trustee. The Trustee shall not be answerable or accountable under any circumstances except for its own willful misconduct or gross negligence. The Trustee shall have no duty to see to the payment or discharge of any tax, assessment or other governmental charge or any lien or encumbrance of any kind owing with respect to, or assessed or levied against, any part of the Trust Estate.

The Trustee shall at all times be entitled to request and receive instructions from the Certificateholders prior to being required to take or omit to take any action hereunder, provided that except as therein specified no further instruction is required for taking of the actions provided by the second sentence of Article V hereof.

THE TRUSTEE MAKES NO REPRESENTATION OR WARRANTY AS TO THE VALUE, CONDITIONS, MERCHANTABILITY, FITNESS FOR USE, VALIDITY, ENFORCEABILITY OF OR TITLE TO ANY PROPERTY AT ANY TIME CONSTITUTING PART OF THE TRUST ESTATE, and makes no representation or warranty as to the validity, legality or enforceability of this Trust Agreement or any agreement or instrument referred to herein, except that the Trustee hereby represents and warrants that this Trust Agreement has been duly executed and delivered by one of its officers, who is duly authorized to execute and deliver such document on its behalf.

The Trustee shall not incur any liability to anyone in acting upon any signature, instrument, notice, resolution, request, consent, telegram, order, certificate, report, opinion, bond, or other document or paper believed by it to be genuine and believed by it to be signed or sent by the proper party or parties. As to any fact or matter, the manner of ascertainment of which is not specifically described herein, the Trustee may for all purposes rely on a certificate signed by an officer of any Certificateholder as to such fact or matter, and such certificate shall constitute full protection to the Trustee for any action taken or omitted to be taken by it in reliance thereon. In the performance of its duties hereunder, the Trustee may act directly or through its agents or attorneys and may, at the expense of the Trust Estate, consult with counsel, accountants and other skilled persons to be selected and employed by it, and the Trustee shall not be liable for anything done, suffered or omitted by it in accordance with the advice or opinion of any such counsel, accountants or other skilled persons.

The Trustee or successor trustee may resign at any time without cause by giving at least 10 days' prior written notice to the Certificateholders, such resignation to be effective on the date specified in such notice. In such event, the Certificateholders shall appoint such new Trustee. If a successor trustee shall not have been appointed prior to the effective date of such resignation, the Trustee may apply to any court of competent jurisdiction to appoint a successor trustee until such time, if any, as a successor trustee shall have been appointed. Any successor trustee shall execute and deliver to the predecessor trustee an instrument accepting such appointment and thereupon the predecessor trustee shall be released from its obligations hereunder and the successor trustee shall be vested with all rights, powers, duties and obligations of the Trustee hereunder, and the predecessor trustee shall transfer, deliver, and pay over, at the expense of the Trust Estate, any monies or other property then held by such predecessor trustee upon the Trust herein expressed.

All monies received hereunder by the Trustee shall constitute trust funds for the purpose of which they were paid or are held, but need not be segregated in any manner from any other monies and may be deposited and paid by the Trustee under such conditions as may be prescribed or permitted by law for trust funds.

#### ARTICLE VIII CERTIFICATEHOLDERS, LACK OF CONTROL AND MANAGEMENT

No Certificateholder shall have any title, legal or equitable, to the Trust Estate, real or personal, held from time to time by the Trustee, or to any part thereof, or any right or voice in the management or control of the property or affairs of the Trust, each Certificateholder's interest being only such as is defined in this Declaration of Trust. No Certificateholder shall have the right to call for or demand or secure any partition or accounting during the continuance of this Trust. Its interest in this Trust shall be personal property, carrying only the right to payments pursuant to the Certificate. The Trust shall not be dissolved, nor affected by the death, insolvency or incapacity of the Certificateholder or one or more of the Trustees, nor shall such death, insolvency or incapacity entitle the legal representatives or heirs or assigns, voluntary holder, receiver or trustee to any accounting or to any action at law or in equity or otherwise, against the Certificateholders or Trustee, or against the Trust Estate, or any part thereof, but such legal representative, heir, assign, receiver, or trustee shall succeed to the rights of the deceased, insolvent, bankrupt or incapacitated Certificateholder, subject to this Declaration of Trust and any amendments hereto, and shall succeed to nothing more.

#### ARTICLE IX NO PARTNERSHIP

It is expressly declared that a trust, and not a partnership, is created and established by this instrument. Neither the Trustee nor any Certificateholder shall ever be deemed in any way whatsoever to be liable or responsible hereunder as partners or otherwise.

ARTICLE X  
CERTIFICATEHOLDERS; NO PERSONAL LIABILITY

No assessment or other personal liability or obligation shall, under any circumstances or in any event, be made or imposed upon the Certificateholders.

ARTICLE XI  
REFERENCE TO INSTRUMENT

The Trustee shall, as far as practicable, make reference to the Declaration in every written contract or undertaking that shall be entered into in the name of the Trustee or on behalf of, or relating to the business, affairs or property of this Trust.

ARTICLE XII  
RELATIONSHIP WITH THIRD PARTIES; NO INQUIRY

In no event and under no circumstances shall any one dealing with the Trustee be obligated either at law or in equity to see to the application of any funds or properties passing into the hands of the Trustee, there being no intention that purchasers of Trust property, or any other parties dealing with the Trustee, shall see that the purchase money is applied to the purposes of the Trust.

ARTICLE XIII  
INTEREST AND EARNINGS

The Capital of the Trust and the earnings and interest thereon shall be apportioned and distributed to the Certificateholders in accordance with this Declaration and the Certificates issued by the Trustee.

ARTICLE XIV  
AGREEMENT OF CERTIFICATEHOLDERS

The Certificateholders shall be held to have assented to this Declaration of Trust, and to all acts performed by Trustee within the authority granted by this Declaration.

ARTICLE XV  
TERM AND TERMINATION

Unless earlier terminated, as hereinafter provided, this Trust shall continue until the earlier of either (i) ten years from the date first hereinabove mentioned or (ii) the date when the Trust shall have distributed all of its Capital. The Trustee may otherwise terminate this Trust only with the unanimous written consent of the Certificateholders, provided, however, that any termination of the Trust shall not impair or have any effect whatever upon the contracts, obligations, and liabilities of said Trust Estate existing or outstanding at the time of such termination. At the expiration or upon the termination of the Trust, the Trustee shall proceed to wind up its affairs, liquidate its assets and distribute the same to the Certificateholders, without recourse or warranty of any kind, and for these purposes the then Trustee shall continue act until such duties have been fully performed. Upon completion of such duties, the Trustee shall be deemed discharged in full.

## SUBSCRIPTION AGREEMENT

THE CERTIFICATES WHICH ARE THE SUBJECT OF THIS AGREEMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED. THEY MAY NOT BE OFFERED FOR RESALE IN THE ABSENCE OF AN OPINION OF COUNSEL, SATISFACTORY TO THE TRUST, THAT REGISTRATION IS NOT REQUIRED. IN ADDITION, THIS AGREEMENT AND THE CERTIFICATES CONTAIN SUBSTANTIAL RESTRICTIONS ON TRANSFERABILITY.

### TDMM BENCHMARK TRUST 09 (a New York Trust)

TO: TDMM BENCHMARK TRUST 09. (the "Trust"):

1. Subscriptions. I hereby subscribe for and agree to purchase the dollar amount of the Trust's Certificates (the "Certificates") as is set forth opposite my name acknowledging the minimum purchase to be Twenty-Five Thousand Dollars (\$25,000) and increments of Five Thousand Dollars (\$5,000).
2. Payment. I hereby agree to pay the Trust the purchase price for the Certificates by delivery herewith of a check in the face amount of the Certificates subscribed for payable to the order of "M&T BANK"-Escrow Agent for TDMM Benchmark Trust 09".
3. Restriction on Transfer of the Certificates. I understand that any resale or transfer of the Certificates by me is subject to substantial restriction, in that:
  - (i) The Certificates have not been registered under the Securities Act of 1933, as amended or applicable state securities laws. The Certificates cannot be sold or transferred by subscribers in the absence of an opinion of counsel that registration is not necessary. The Trust is not required to register the Certificates or to make any exemption from registration available.
  - (ii) My right to sell or transfer any of the Certificates will be restricted as follows: (1) restrictions against sale or transfer in violation of applicable securities law; (2) the requirement that I furnish an opinion of counsel that any proposed sale or transfer by me will not violate such laws; (3) the Trust must consent to the transfer of my Certificates; and (4) other restrictions and requirements, including such restrictions on transfer arising under state securities laws.
  - (iii) There will be no public market for the Certificates, and I may not be able to sell my Certificates. Accordingly, I must bear the economic risk of my investment for an indefinite period of time.
4. Investment Representation. I represent and warrant that I am acquiring Certificates for my own account and not on behalf of other persons, and that I am acquiring Certificates for investment purposes only and not with a view to the resale or distribution thereof; I understand that the Certificates will be offered and sold in a manner which would qualify the transaction for an exemption as a private placement under Rule 506 of the Securities Act of 1933, as amended. The Certificates may not be transferred or assigned except as provided herein.
5. Subscription Irrevocable by Certificateholder. This Subscription Agreement is not, and shall not be, revocable by me, except as provided by applicable state securities law requirements and I intend to be legally bound by this Subscription Agreement.
6. Subscription Subject to Acceptance or Rejection by the Trust. The Trust, in its sole discretion, shall have the right to accept or reject this subscription at any time on or before the Closing.

**CONFIDENTIAL**

**PURCHASER QUESTIONNAIRE FOR INDIVIDUALS**

**TDMM BENCHMARK TRUST 09  
(A New York Trust)**

The offering is being made pursuant to Regulation D under the Securities Act of 1933, as amended, (the "Act"). One of the requirements of the Regulation is that the persons involved in the offering and sale of the securities must have reasonable grounds to believe:

(i) that the Offeree has such knowledge and experience in financial and business matters that he is capable of evaluating the merits and risks of the prospective investment; and

(ii) the undersigned is acquiring the Certificates for investment purposes only and not with a view towards resale.

The undersigned is aware that this offering will involve Certificates for which no resale market exists, thereby requiring this investment to be maintained for the stated term of each Certificate.

Your answers will, at all times, be kept strictly confidential; however, each party who signs the questionnaire hereby agrees that the Trust may present this questionnaire to such parties as may seem appropriate in order to insure that the offer and sale of the Certificates to you will not result in violation of any exemption from registration under the Act which may be relied upon by the Trust in connection with the sale of the Certificates.

Please complete this questionnaire as thoroughly as possible and sign, date and return one (1) copy to the Trust c/o McGinn, Smith & Co., Inc., 5th Floor, 99 Pine Street, Albany, New York 12207.

Please print or type:

Name: \_\_\_\_\_

Home Address: \_\_\_\_\_

Date of Birth: \_\_\_\_\_

Social Security No.: \_\_\_\_\_

Occupation: \_\_\_\_\_

Business Address: \_\_\_\_\_

Business Telephone: \_\_\_\_\_

Home Telephone: \_\_\_\_\_

Communications should be sent to:

Home Address \_\_\_\_\_ or Business Address \_\_\_\_\_



1. What is your approximate net worth?

\_\_\_\_\_ \$50,000 - \$100,000  
\_\_\_\_\_ \$100,000 - \$250,000  
\_\_\_\_\_ \$250,000 - \$500,000  
\_\_\_\_\_ \$500,000 - \$1,000,000  
\_\_\_\_\_ Greater than \$1,000,000

2. Did your individual income exceed \$200,000.00 in 2007 and 2008, or did your joint income with your spouse exceed \$300,000.00 in each of those years?

Yes \_\_\_\_\_

No \_\_\_\_\_

3. If the answer to #2 above is "yes", do you expect to reach the same income level in 2009?

Yes \_\_\_\_\_

No \_\_\_\_\_

4. What was your approximate gross income for calendar year 2008?

\_\_\_\_\_ \$25,000 - \$100,000  
\_\_\_\_\_ \$100,000 - \$200,000  
\_\_\_\_\_ \$200,000 - \$300,000  
\_\_\_\_\_ \$300,000 - \$500,000  
\_\_\_\_\_ Greater than \$500,000

5. What will your approximate gross income be for calendar year 2009?

\_\_\_\_\_ \$25,000 - \$100,000  
\_\_\_\_\_ \$100,000 - \$200,000  
\_\_\_\_\_ \$200,000 - \$300,000  
\_\_\_\_\_ \$300,000 - \$500,000  
\_\_\_\_\_ Greater than \$500,000

To the best of my information and belief, the above information is accurate and complete in all respects.  
I agree to notify the Trust promptly of any changes which occur prior to sale of the Certificates.

Purchaser

Date:

\_\_\_\_\_  
Name (printed)

\_\_\_\_\_  
Signature

CONFIDENTIAL

PURCHASER QUESTIONNAIRE FOR CORPORATIONS AND PARTNERSHIPS

TDMM BENCHMARK TRUST 09  
(A New York Trust)

The offering is being made pursuant to Regulation D under the Securities Act of 1933, as amended, (the "Act"). One of the requirements of the Regulation is that the persons involved in the offering and sale of the securities must have reasonable grounds to believe either:

(i) that the Offeree has such knowledge and experience in financial and business matters that he is capable of evaluating the merits and risks of the prospective investment; or

(ii) that the Offeree and its Offeree Representative(s), together, have such knowledge and experience in financial and business matters, that they are capable of evaluating the merits and risks of the prospective investment and that the Offeree is able to bear the economic risk of the investment.

The purpose of this Questionnaire is to assist TDMM BENCHMARK TRUST 09 (the "Trust") in complying with the above requirement.

Please contact McGinn, Smith & Co. Inc., 5th Floor, 99 Pine Street, Albany, New York 12207 (518-449-5131) if you have any questions in answering this questionnaire.

If the answer to any questions "None" or "Not Applicable", please so state.

Your answers will, at all times, be kept strictly confidential; however, each party who signs the Questionnaire hereby agrees that the Trust may present this Questionnaire to such parties as may seem appropriate in order to insure that the offer and sale of the Certificates to you will not result in violation of any exemption from registration under the Act which may be relied upon by the Trust in connection with the sale of the Certificates.

Please complete this Questionnaire as thoroughly as possible and sign, date and return one (1) copy to the Trust c/o McGinn, Smith & Co. Inc., 5th Floor, 99 Pine Street, Albany, New York 12207.

Please print or type:

Name of Organization: \_\_\_\_\_

Business Address: \_\_\_\_\_

Business Telephone: \_\_\_\_\_

Federal ID Number: \_\_\_\_\_

1. Was the organization formed for the specific purpose of acquiring the Trust's Certificates?

Yes \_\_\_\_\_ No \_\_\_\_\_

2. Does the organization possess total assets in excess of \$5,000,000?

Yes \_\_\_\_\_ No \_\_\_\_\_

3. Does each equity owner of the organization:

A. Have a net worth, exclusive of home, furnishings, and automobiles, of at least \$1,000,000?

Yes \_\_\_\_\_ No \_\_\_\_\_

B. Had an individual net income in excess of \$200,000 in 2007 and 2008, or joint income with that person's spouse in excess of \$300,000 in each of those years, and have a reasonable expectation of reaching the same income level in 2009.

Yes \_\_\_\_\_ No \_\_\_\_\_

4. I am aware that the Certificates proposed to be offered will not be readily marketable or transferable.

Yes \_\_\_\_\_ No \_\_\_\_\_

5. The organization can afford the complete loss of its investments in the Certificates and has no need for liquidity in this investment.

Yes \_\_\_\_\_ No \_\_\_\_\_

6. Stated below are the organization's previous investments in similar securities and other private placements during the past five years:

7. I understand that, unless the organization satisfies certain criteria, in order to qualify as a purchaser of Certificates, I must have sufficient knowledge and experience in financial and business matters to be capable of evaluating the merits and risks of an investment in the Trust or I must engage an attorney, accountant or other financial advisor for the purpose of this particular transaction.

I hereby represent, by initialing on the Representation A or Representation B line below, that:

A. I have such knowledge and experience in financial and business matters that I am capable of evaluating the merits and risks of an investment in the Certificates and will not require a Purchase Representative.

Representation A. \_\_\_\_\_

B. I have relied upon the advice of the following Purchaser Representative(s) in evaluating the merits and risks of an investment in the Certificates:

Representation B. \_\_\_\_\_

Name

Name

Relationship

Relationship

To the best of my information and belief, the above information is accurate and complete in all respects. I agree to notify the Trust promptly of any changes which occur prior to sale of the Trust's Certificates.

Purchaser:

Date:

Print Name of Organization

By: \_\_\_\_\_

Title: \_\_\_\_\_

## PURCHASER REPRESENTATIVE QUESTIONNAIRE

### TDMM BENCHMARK TRUST 09

The information contained herein is being furnished to TDMM BENCHMARK TRUST 09 (the "Trust") in order to facilitate a determination as to whether the undersigned may act as a Purchaser Representative, as such term is used in Regulation D promulgated under the Securities Act of 1933, as amended, (the "Act"), in connection with the proposed offer and sale by the Trust of its Contract Certificates (hereinafter referred to as the "Certificates"). The answers below are correct, and the Trustee is entitled to rely on them in making the foregoing determination.

### REPRESENTATIONS

I represent, warrant and covenant to you that:

(a) the information contained herein is complete and accurate and may be relied upon by you in determining whether I may act as a Purchaser Representative pursuant to Regulation D in connection with offers and sales of the Certificates;

(b) I will notify you immediately of any material change in any of such information occurring within ninety (90) days of the close of sale of the Certificates to the Purchaser;

(c) (i) I have been designated, or will be designated, pursuant to the Purchaser Questionnaire of each Purchaser, as the Purchaser Representative or such Purchaser, in connection with evaluating the merits and risks of his prospective investment in the Certificates;

(ii) I have disclosed or will disclose, to each Purchaser, in writing, prior to the designation referred to above, any material relationship between me or my affiliates and the Trust, which now exists or is mutually understood to be contemplated, or which has existed at any time during the previous two (2) years, and any compensation received as a result of such relationship, including any compensation received in connection the offering of Certificates herein; and

(iii) I will deliver to each of you a counterpart of the disclosure statement referred to in (ii) above, and such other documents or information as each of you may request relating to the performance by me of my duties as a Purchaser Representative.

(Attach additional sheets if required)

1. Name: \_\_\_\_\_

Age: \_\_\_\_\_

Social Security No.: \_\_\_\_\_

2. Names of offerees I am representing:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. Firm name: \_\_\_\_\_

Empl. Iden. No.: \_\_\_\_\_

Position: \_\_\_\_\_

Nature of Duties: \_\_\_\_\_

Business Address: \_\_\_\_\_

Business telephone number: (\_\_\_\_) \_\_\_\_\_

4. Prior occupations or positions during the past five years:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

5. Description of prior experience in advising clients with respect to investments, including a description of the types of investments, the dollar amounts involved, and the number of years of experience which you have in financial, business and tax oriented matters:

General Investments (specify)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Private Placements (specify)

\_\_\_\_\_  
\_\_\_\_\_

Other Investments (specify)

\_\_\_\_\_  
\_\_\_\_\_

6. The Professional licenses or registrations (including bar admissions, accounting certificates, real estate brokerage licenses, broker-dealer or investments advisory registrations) held by me are as follows:

Registration	Year Received	Is License or Registration Still Effective?
_____	_____	_____
_____	_____	_____
_____	_____	_____

7. My educational background, including degrees obtained and date of attendance:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

8. (a) Neither I nor any of my affiliates now have or have had any material relationship with the Trust or any of its affiliates, are not affiliates of the Trust, and no such relationship is contemplated in the future, except as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(b) The amounts of compensation received or to be received as a result of the material relationship(s) described in Item 8(a)(including any compensation received or to be received in connection with this transaction) are as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

9. Neither I nor any of my affiliates own beneficially any interest in the Trust except as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

10. I have received and read the Trust's Private Placement Memorandum dated August 20, 2009 and Exhibits thereto and have reviewed it with the Offeree.

11. Other comments or disclosures:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Purchaser Representative Signature

\_\_\_\_\_  
Type Purchaser Representative Name

\_\_\_\_\_  
Firm Name

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
City and State

\_\_\_\_\_  
( )  
Telephone

#### Acknowledgement of Investor(s)

I acknowledge receipt of the foregoing disclosures this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_, and this represents my acknowledgment in writing to the Trust that I have read the foregoing and desire that the above stated person serve as my Purchaser Representative with respect to the offering of the Trust's Certificates.

\_\_\_\_\_  
Investor's Signature

\_\_\_\_\_  
Investor's Signature

\_\_\_\_\_  
Investor's Signature



**EXHIBIT "D"**

**AMORTIZATION SCHEDULE**

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Exhibit "D-1"  
8.00% of November 1, 2010

Month	Payment Date		Begin Balance	Interest	Principal Payments	Total Debt Serv	Ending Balance
1	November	2009	\$180,000	\$1,200	\$11,592	\$12,792	\$168,408
2	December	2009	\$168,408	\$1,123	\$10,773	\$11,896	\$157,635
3	January	2010	\$157,635	\$1,051	\$10,845	\$11,896	\$146,790
4	February	2010	\$146,790	\$979	\$10,917	\$11,896	\$135,873
5	March	2010	\$135,873	\$906	\$10,990	\$11,896	\$124,883
6	April	2010	\$124,883	\$833	\$11,063	\$11,896	\$113,820
7	May	2010	\$113,820	\$759	\$11,137	\$11,896	\$102,683
8	June	2010	\$102,683	\$685	\$11,211	\$11,896	\$91,471
9	July	2010	\$91,471	\$610	\$11,286	\$11,896	\$80,185
10	August	2010	\$80,185	\$535	\$26,361	\$26,896	\$53,824
11	September	2010	\$53,824	\$359	\$26,537	\$26,896	\$27,287
12	October	2010	\$27,287	\$182	\$27,287	\$27,469	\$0

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Exhibit "D-2"  
9.00% of November 1, 2011

Month	Payment Date		Begin Balance	Interest	Principal Payments	Total Debt Serv	Ending Balance
1	November	2009	\$350,000	\$2,625	\$0	\$2,625	\$350,000
2	December	2009	\$350,000	\$2,625	\$0	\$2,625	\$350,000
3	January	2010	\$350,000	\$2,625	\$0	\$2,625	\$350,000
4	February	2010	\$350,000	\$2,625	\$0	\$2,625	\$350,000
5	March	2010	\$350,000	\$2,625	\$0	\$2,625	\$350,000
6	April	2010	\$350,000	\$2,625	\$0	\$2,625	\$350,000
7	May	2010	\$350,000	\$2,625	\$0	\$2,625	\$350,000
8	June	2010	\$350,000	\$2,625	\$0	\$2,625	\$350,000
9	July	2010	\$350,000	\$2,625	\$0	\$2,625	\$350,000
10	August	2010	\$350,000	\$2,625	\$0	\$2,625	\$350,000
11	September	2010	\$350,000	\$2,625	\$0	\$2,625	\$350,000
12	October	2010	\$350,000	\$2,625	\$0	\$2,625	\$350,000
13	November	2010	\$350,000	\$2,625	\$28,608	\$31,233	\$321,392
14	December	2010	\$321,392	\$2,410	\$28,823	\$31,233	\$292,569
15	January	2011	\$292,569	\$2,194	\$29,039	\$31,233	\$263,530
16	February	2011	\$263,530	\$1,976	\$29,257	\$31,233	\$234,274
17	March	2011	\$234,274	\$1,757	\$29,476	\$31,233	\$204,797
18	April	2011	\$204,797	\$1,536	\$29,697	\$31,233	\$175,100
19	May	2011	\$175,100	\$1,313	\$29,920	\$31,233	\$145,180
20	June	2011	\$145,180	\$1,089	\$30,144	\$31,233	\$115,036
21	July	2011	\$115,036	\$863	\$30,370	\$31,233	\$84,666
22	August	2011	\$84,666	\$635	\$30,598	\$31,233	\$54,068
23	September	2011	\$54,068	\$406	\$30,828	\$31,233	\$23,240
24	October	2011	\$23,240	\$174	\$23,240	\$23,414	\$0

Exhibit "D-3-\$25,000"  
10.00% of November 1, 2012

Month	Payment Date		Begin Balance	Interest	Principal Payments	Total Debt Serv	Ending Balance
1	November	2009	\$25,000	\$208	\$0	\$208	\$25,000
2	December	2009	\$25,000	\$208	\$0	\$208	\$25,000
3	January	2010	\$25,000	\$208	\$0	\$208	\$25,000
4	February	2010	\$25,000	\$208	\$0	\$208	\$25,000
5	March	2010	\$25,000	\$208	\$0	\$208	\$25,000
6	April	2010	\$25,000	\$208	\$0	\$208	\$25,000
7	May	2010	\$25,000	\$208	\$0	\$208	\$25,000
8	June	2010	\$25,000	\$208	\$0	\$208	\$25,000
9	July	2010	\$25,000	\$208	\$0	\$208	\$25,000
10	August	2010	\$25,000	\$208	\$0	\$208	\$25,000
11	September	2010	\$25,000	\$208	\$0	\$208	\$25,000
12	October	2010	\$25,000	\$208	\$0	\$208	\$25,000
13	November	2010	\$25,000	\$208	\$0	\$208	\$25,000
14	December	2010	\$25,000	\$208	\$0	\$208	\$25,000
15	January	2011	\$25,000	\$208	\$0	\$208	\$25,000
16	February	2011	\$25,000	\$208	\$0	\$208	\$25,000
17	March	2011	\$25,000	\$208	\$0	\$208	\$25,000
18	April	2011	\$25,000	\$208	\$0	\$208	\$25,000
19	May	2011	\$25,000	\$208	\$0	\$208	\$25,000
20	June	2011	\$25,000	\$208	\$0	\$208	\$25,000
21	July	2011	\$25,000	\$208	\$0	\$208	\$25,000
22	August	2011	\$25,000	\$208	\$0	\$208	\$25,000
23	September	2011	\$25,000	\$208	\$0	\$208	\$25,000
24	October	2011	\$25,000	\$208	\$0	\$208	\$25,000
25	November	2011	\$25,000	\$208	\$2,037	\$2,245	\$22,963
26	December	2011	\$22,963	\$191	\$2,054	\$2,245	\$20,909
27	January	2012	\$20,909	\$174	\$2,071	\$2,245	\$18,838
28	February	2012	\$18,838	\$157	\$2,088	\$2,245	\$16,749
29	March	2012	\$16,749	\$140	\$2,106	\$2,245	\$14,643
30	April	2012	\$14,643	\$122	\$2,123	\$2,245	\$12,520
31	May	2012	\$12,520	\$104	\$2,141	\$2,245	\$10,379
32	June	2012	\$10,379	\$86	\$2,159	\$2,245	\$8,220
33	July	2012	\$8,220	\$69	\$2,177	\$2,245	\$6,043
34	August	2012	\$6,043	\$50	\$2,195	\$2,245	\$3,848
35	September	2012	\$3,848	\$32	\$2,213	\$2,245	\$1,635
36	October	2012	\$1,635	\$14	\$1,635	\$1,648	\$0

Exhibit "D-4-\$25,000"  
11.00% of November 1, 2013

Month	Payment Date		Begin Balance	Interest	Principal Payments	Total Debt Serv	Ending Balance
1	November	2009	\$25,000	\$229	\$0	\$229	\$25,000
2	December	2009	\$25,000	\$229	\$0	\$229	\$25,000
3	January	2010	\$25,000	\$229	\$0	\$229	\$25,000
4	February	2010	\$25,000	\$229	\$0	\$229	\$25,000
5	March	2010	\$25,000	\$229	\$0	\$229	\$25,000
6	April	2010	\$25,000	\$229	\$0	\$229	\$25,000
7	May	2010	\$25,000	\$229	\$0	\$229	\$25,000
8	June	2010	\$25,000	\$229	\$0	\$229	\$25,000
9	July	2010	\$25,000	\$229	\$0	\$229	\$25,000
10	August	2010	\$25,000	\$229	\$0	\$229	\$25,000
11	September	2010	\$25,000	\$229	\$0	\$229	\$25,000
12	October	2010	\$25,000	\$229	\$0	\$229	\$25,000
13	November	2010	\$25,000	\$229	\$0	\$229	\$25,000
14	December	2010	\$25,000	\$229	\$0	\$229	\$25,000
15	January	2011	\$25,000	\$229	\$0	\$229	\$25,000
16	February	2011	\$25,000	\$229	\$0	\$229	\$25,000
17	March	2011	\$25,000	\$229	\$0	\$229	\$25,000
18	April	2011	\$25,000	\$229	\$0	\$229	\$25,000
19	May	2011	\$25,000	\$229	\$0	\$229	\$25,000
20	June	2011	\$25,000	\$229	\$0	\$229	\$25,000
21	July	2011	\$25,000	\$229	\$0	\$229	\$25,000
22	August	2011	\$25,000	\$229	\$0	\$229	\$25,000
23	September	2011	\$25,000	\$229	\$0	\$229	\$25,000
24	October	2011	\$25,000	\$229	\$0	\$229	\$25,000
25	November	2011	\$25,000	\$229	\$0	\$229	\$25,000
26	December	2011	\$25,000	\$229	\$0	\$229	\$25,000
27	January	2012	\$25,000	\$229	\$0	\$229	\$25,000
28	February	2012	\$25,000	\$229	\$0	\$229	\$25,000
29	March	2012	\$25,000	\$229	\$0	\$229	\$25,000
30	April	2012	\$25,000	\$229	\$0	\$229	\$25,000
31	May	2012	\$25,000	\$229	\$0	\$229	\$25,000
32	June	2012	\$25,000	\$229	\$0	\$229	\$25,000
33	July	2012	\$25,000	\$229	\$0	\$229	\$25,000
34	August	2012	\$25,000	\$229	\$0	\$229	\$25,000
35	September	2012	\$25,000	\$229	\$0	\$229	\$25,000
36	October	2012	\$25,000	\$229	\$0	\$229	\$25,000
37	November	2012	\$25,000	\$229	\$2,002	\$2,231	\$22,998
38	December	2012	\$22,998	\$211	\$2,021	\$2,231	\$20,977
39	January	2013	\$20,977	\$192	\$2,039	\$2,231	\$18,938
40	February	2013	\$18,938	\$174	\$2,058	\$2,231	\$16,880
41	March	2013	\$16,880	\$155	\$2,077	\$2,231	\$14,804
42	April	2013	\$14,804	\$136	\$2,096	\$2,231	\$12,708
43	May	2013	\$12,708	\$116	\$2,115	\$2,231	\$10,593
44	June	2013	\$10,593	\$97	\$2,134	\$2,231	\$8,459
45	July	2013	\$8,459	\$78	\$2,154	\$2,231	\$6,305
46	August	2013	\$6,305	\$58	\$2,174	\$2,231	\$4,132
47	September	2013	\$4,132	\$38	\$2,193	\$2,231	\$1,938
48	October	2013	\$1,938	\$18	\$1,938	\$1,956	\$0

Exhibit "D-5"  
12.00% of November 1, 2014

Month	Payment Date		Begin Balance	Interest	Principal Payments	Total Debt Serv	Ending Balance
1	November	2009	\$1,600,000	\$16,000	\$0	\$16,000	\$1,600,000
2	December	2009	\$1,600,000	\$16,000	\$0	\$16,000	\$1,600,000
3	January	2010	\$1,600,000	\$16,000	\$0	\$16,000	\$1,600,000
4	February	2010	\$1,600,000	\$16,000	\$0	\$16,000	\$1,600,000
5	March	2010	\$1,600,000	\$16,000	\$0	\$16,000	\$1,600,000
6	April	2010	\$1,600,000	\$16,000	\$0	\$16,000	\$1,600,000
7	May	2010	\$1,600,000	\$16,000	\$0	\$16,000	\$1,600,000
8	June	2010	\$1,600,000	\$16,000	\$0	\$16,000	\$1,600,000
9	July	2010	\$1,600,000	\$16,000	\$0	\$16,000	\$1,600,000
10	August	2010	\$1,600,000	\$16,000	\$0	\$16,000	\$1,600,000
11	September	2010	\$1,600,000	\$16,000	\$0	\$16,000	\$1,600,000
12	October	2010	\$1,600,000	\$16,000	\$0	\$16,000	\$1,600,000
13	November	2010	\$1,600,000	\$16,000	\$0	\$16,000	\$1,600,000
14	December	2010	\$1,600,000	\$16,000	\$0	\$16,000	\$1,600,000
15	January	2011	\$1,600,000	\$16,000	\$0	\$16,000	\$1,600,000
16	February	2011	\$1,600,000	\$16,000	\$0	\$16,000	\$1,600,000
17	March	2011	\$1,600,000	\$16,000	\$0	\$16,000	\$1,600,000
18	April	2011	\$1,600,000	\$16,000	\$0	\$16,000	\$1,600,000
19	May	2011	\$1,600,000	\$16,000	\$0	\$16,000	\$1,600,000
20	June	2011	\$1,600,000	\$16,000	\$0	\$16,000	\$1,600,000
21	July	2011	\$1,600,000	\$16,000	\$0	\$16,000	\$1,600,000
22	August	2011	\$1,600,000	\$16,000	\$0	\$16,000	\$1,600,000
23	September	2011	\$1,600,000	\$16,000	\$0	\$16,000	\$1,600,000
24	October	2011	\$1,600,000	\$16,000	\$0	\$16,000	\$1,600,000
25	November	2011	\$1,600,000	\$16,000	\$0	\$16,000	\$1,600,000
26	December	2011	\$1,600,000	\$16,000	\$0	\$16,000	\$1,600,000
27	January	2012	\$1,600,000	\$16,000	\$0	\$16,000	\$1,600,000
28	February	2012	\$1,600,000	\$16,000	\$0	\$16,000	\$1,600,000
29	March	2012	\$1,600,000	\$16,000	\$0	\$16,000	\$1,600,000
30	April	2012	\$1,600,000	\$16,000	\$0	\$16,000	\$1,600,000
31	May	2012	\$1,600,000	\$16,000	\$0	\$16,000	\$1,600,000
32	June	2012	\$1,600,000	\$16,000	\$0	\$16,000	\$1,600,000
33	July	2012	\$1,600,000	\$16,000	\$0	\$16,000	\$1,600,000
34	August	2012	\$1,600,000	\$16,000	\$0	\$16,000	\$1,600,000
35	September	2012	\$1,600,000	\$16,000	\$0	\$16,000	\$1,600,000
36	October	2012	\$1,600,000	\$16,000	\$0	\$16,000	\$1,600,000
37	November	2012	\$1,600,000	\$16,000	\$0	\$16,000	\$1,600,000
38	December	2012	\$1,600,000	\$16,000	\$0	\$16,000	\$1,600,000
39	January	2013	\$1,600,000	\$16,000	\$0	\$16,000	\$1,600,000
40	February	2013	\$1,600,000	\$16,000	\$0	\$16,000	\$1,600,000
41	March	2013	\$1,600,000	\$16,000	\$0	\$16,000	\$1,600,000
42	April	2013	\$1,600,000	\$16,000	\$0	\$16,000	\$1,600,000
43	May	2013	\$1,600,000	\$16,000	\$0	\$16,000	\$1,600,000
44	June	2013	\$1,600,000	\$16,000	\$0	\$16,000	\$1,600,000
45	July	2013	\$1,600,000	\$16,000	\$0	\$16,000	\$1,600,000
46	August	2013	\$1,600,000	\$16,000	\$0	\$16,000	\$1,600,000
47	September	2013	\$1,600,000	\$16,000	\$0	\$16,000	\$1,600,000
48	October	2013	\$1,600,000	\$16,000	\$0	\$16,000	\$1,600,000
49	November	2013	\$1,600,000	\$16,000	\$42,583	\$58,583	\$1,557,417
50	December	2013	\$1,557,417	\$15,574	\$43,008	\$58,583	\$1,514,409
51	January	2014	\$1,514,409	\$15,144	\$43,439	\$58,583	\$1,470,970
52	February	2014	\$1,470,970	\$14,710	\$43,873	\$58,583	\$1,427,097
53	March	2014	\$1,427,097	\$14,271	\$44,312	\$58,583	\$1,382,786
54	April	2014	\$1,382,786	\$13,828	\$44,755	\$58,583	\$1,338,031
55	May	2014	\$1,338,031	\$13,380	\$45,202	\$58,583	\$1,292,828
56	June	2014	\$1,292,828	\$12,928	\$45,654	\$58,583	\$1,247,174
57	July	2014	\$1,247,174	\$12,472	\$46,111	\$58,583	\$1,201,063
58	August	2014	\$1,201,063	\$12,011	\$46,572	\$58,583	\$1,154,491
59	September	2014	<b>\$1,154,491</b>	<b>\$11,545</b>	<b>\$47,038</b>	\$58,583	\$1,107,453
60	October	2014	\$1,107,453	\$11,075	\$1,107,453	\$1,118,528	\$0

**EXHIBIT "E"**

**ESCROW AGREEMENT**

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## ESCROW AGREEMENT

THIS AGREEMENT is made and entered into as of July 24, 2009 by and among **Manufacturers and Traders Trust Company**, a New York Banking Corporation, with its principle office located at One M&T Plaza, Buffalo, NY 14203 ("M&T Bank") ("Escrow Agent"), **MCGINN, SMITH & CO. INC.** (the "Underwriter") and **TDMM BENCHMARK TRUST 09** (the "Trust").

### RECITALS

The Trust proposes to offer for sale to investors (the "Offering") through one or more registered broker-dealers \$3,000,000 of Contract Certificates (the "Securities") in the minimum denomination of \$25,000.00, and increments of \$5,000.00, (the "Proceeds").

The Underwriter intends to sell the Securities as the Trust's agent on a best efforts all-or-none maximum/minimum basis in a private offering, with a minimum amount of \$250,000 (the "Minimum") and a maximum amount of \$3,000,000 (the "Maximum").

The Trust and the Underwriter desire to establish an escrow account into which funds received from subscribers will be deposited pending completion of the escrow period. The Escrow Agent agrees to serve as Escrow Agent in accordance with the terms and conditions set forth herein.

### AGREEMENT

Now therefore, in consideration of the foregoing, the covenants and conditions contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is hereby agreed as follows:

1. Appointment of Escrow Agent. The Trust hereby appoints the Escrow Agent as escrow agent in accordance with the terms and conditions set forth herein, and the Escrow Agent hereby accepts such appointment.
2. Selected Dealer. The term "Selected Dealer" as used herein shall include the Underwriter and other co-underwriters and/or other selected dealers as part of the selling group. All Selected Dealers shall be bound by this Agreement. However, for purposes of communications the Escrow Agent will only accept those signed by an authorized representative of the Underwriter.
3. Establishment of Escrow Account. On or prior to the date of the commencement of the Offering, the parties shall establish an escrow account with the Escrow Agent, which escrow account shall be entitled TDMM BENCHMARK TRUST 09, Escrow Account (the "Escrow Account"). The Selected Dealer will instruct subscribers to make checks for subscriptions payable to the order of M&T Bank, Escrow Agent for TDMM BENCHMARK TRUST 09. Any checks received that are made payable to a party other than the Escrow Agent shall be returned to the Selected Dealer who submitted the check.
4. Escrow Period. The Escrow Period shall begin with the commencement of the Offering and shall terminate upon the earlier to occur of the following dates:
  - a. The date upon which the Escrow Agent confirms that it has received in the Escrow Account gross proceeds of \$250,000 in deposited funds (the "Minimum"); or
  - b. The expiration of three (3) months from the date of commencement of the Offering (unless extended as permitted in the offering document for an additional four (4) months by mutual written agreement between the Trust and the Underwriter with a copy of such extension to the Escrow Agent); or
  - c. The date upon which a determination is made by the Trust and the Underwriter to terminate the offering prior to the sale of the Minimum.

The Trust is aware and understands that during the Escrow Period it is not entitled to any funds received into escrow and no amounts deposited in the Escrow Account shall become the property of the Trust or any other entity, or be subject to the debts of the Trust or any other entity.



5. Deposits Into the Escrow Account. The Selected Dealer agrees that it shall promptly deliver all monies received from subscribers for the payment of the Securities to the Escrow Agent for deposit to the Escrow Account together with a written account of each sale, which account shall set forth, among other things, the subscriber's name and address, social security number, the number of securities purchased, the amount paid therefor, and whether the consideration received was in the form of a check, draft or money order (checks, drafts, money orders or similar financial instruments are referred to herein as "Checks"). All monies so deposited in the Escrow Account are hereinafter referred to as the "Escrow Amount".

6. Disbursement From the Escrow Account. In the event the Escrow Agent does not receive deposits totaling \$250,000 Minimum prior to the termination of the Escrow Period, the Escrow Agent shall refund to each subscriber the amount actually received from the subscriber plus a pro-rata share in interest income, and the Escrow Agent shall notify the Trust and the Selected Dealer of its distribution of the funds. In the event the Escrow Agent has not yet collected funds, as defined below, the Escrow Agent may, in its sole discretion, wait until such funds have been collected before it disburses funds to the subscriber whose funds are uncollected. The money returned to each subscriber shall be free and clear of any and all claims of the Trust or any of its creditors.

In the event the Escrow Agent does receive the Minimum prior to termination of the Escrow Period then the Escrow Amount plus the income earned on the Escrow Amount will be distributed to the Trust, but in no event will the Escrow Amount and income earned be released to the Trust until such amount is received by the Escrow Agent in collected funds, as defined below. For purposes of this Agreement, the term "collected funds" shall mean all funds received by the Escrow Agent which have cleared normal banking channels and are in the form of cash.

7. Collection Procedure. The Escrow Agent is hereby authorized to forward each Check for collection and, upon collection of the proceeds of the Check, deposit the collected proceeds in the Escrow Account. As an alternative, the Escrow Agent may telephone the bank on which the Check is drawn to confirm that the Check has been paid.

Any Check returned unpaid to the Escrow Agent shall be returned to the Selected Dealer that submitted the Check. In such cases, the Escrow Agent will promptly notify the Trust of such return.

If the Trust rejects any subscription for which the Escrow Agent has already collected funds, the Escrow Agent shall promptly issue a refund Check to the rejected subscriber. If the Trustee rejects any subscription for which the Escrow Agent has not yet collected funds but has submitted the subscriber's Check for collection, the Escrow Agent shall promptly issue a Check in the amount of the subscriber's Check to the rejected subscriber after the Escrow Agent has cleared such funds. If the Escrow Agent has not yet submitted a rejected subscriber's Check for collection, the Escrow Agent shall promptly remit the subscriber's Check directly to the subscriber.

8. Investment of Escrow Amount. The Escrow Agent may invest the Escrow Amount only in such accounts or investments as the Trust may specify by written notice. The Trust may only specify investments in:

- (1) interest bearing bank savings accounts,
- (2) bank money-market accounts,
- (3) short-term certificates of deposit issued by a bank, or
- (4) short-term securities issued or guaranteed by the U.S. Government.

The Trust will provide Escrow Agent with its taxpayer identification number for the reporting to the Internal Revenue Service for any income earned on the investments.

9. Duties of the Escrow Agent. The Escrow Agent shall have no duties or responsibilities other than those expressly set forth herein. The Escrow Agent shall have no duty to enforce any obligation of any person to make any payment or delivery, or to direct or enforce any obligation of any person to perform any other act. The Escrow Agent shall be under no liability to anyone by reason of any failure on the part of any party hereto or any maker, endorser or other signatory of any document or any other person to perform such person's obligations under any such document. Except for this Escrow Agreement, the Escrow Agent shall not be obligated to recognize any agreement between any or all of the persons referred to herein, notwithstanding its knowledge thereof.

The Escrow Agent shall not be bound by any notice or demand, or any waiver, modification, termination or recession of this Escrow Agreement or any of the terms hereof, unless evidenced by a writing delivered to the Escrow Agent

signed by the proper party or parties and, if the duties or rights of the Escrow Agent are affected, unless Escrow Agent shall give its prior written consent thereof.

The Escrow Agent shall not be under any duty to give the property held hereunder any greater degree of care than it gives its own similar property.

The Escrow Agent may act in reliance upon any instrument or signature believed to be genuine and may assume that any person purporting to give any writing, notice, advice or instruction in connection with the provisions hereof has been duly authorized to do so.

The Escrow Agent may act relative hereto upon advice of counsel in reference to any matter connected herewith, and shall not be liable for any mistake of fact or error of judgment, or for any acts or omissions of any kind unless caused by its willful misconduct, fraud or gross negligence.

This Escrow Agreement sets forth exclusively the duties of the Escrow Agent with respect to any and all matters pertinent hereto and no implied duties or obligations shall be read into this Escrow Agreement against the Escrow Agent, in general or with particular reference to any other agreement between any of the parties hereto, even though reference thereto may be made herein or whether or not it has knowledge thereof.

The Escrow Agent makes no representation as to the validity, value, genuineness or the negotiability or collectibility of any document or instrument held by or delivered to it or by it.

The Escrow Agent shall not be called upon to advise any party as to the wisdom in selling or retaining any document or instrument deposited hereunder.

The Escrow Agent does not have and will not have any interest in the Escrow Deposit but is serving only as escrow holder and having only possession thereof.

The Escrow Agent shall not be liable for any loss that may be incurred by reason of any investment of any monies that it holds hereunder which investment is authorized by this Escrow Agreement pursuant to the provisions of Section 8 hereof.

To the extent that the Escrow Agent becomes liable for the payment of taxes, including withholding taxes, in respect of income derived from the investment of funds held hereunder, the Trust will pay such taxes. In the event the Trust fails to pay such taxes in a timely manner, the Escrow Agent may pay such taxes and the Escrow Agent shall be indemnified by the Trust and the Underwriter and held harmless against any liability for taxes and for any penalties or interest in respect of taxes, on such investment income or payments in the manner provided below.

The Escrow Agent shall be indemnified and held harmless by the Trust and the Underwriter from and against any and all costs, expenses, including reasonable counsel fees and disbursements, or loss suffered by the Escrow Agent in connection with (i) any claim or demand, which, in any way, directly or indirectly, arises out of or relates to this Escrow Agreement, the services of the Escrow Agent hereunder or any income earned from investment of such monies, except, that if the Escrow Agent shall be found guilty of willful misconduct, fraud or gross negligence in connection with the performance of its services under this Escrow Agreement, then, in that event, the Escrow Agent shall bear all such losses, claims, damages and expenses attributable to such misconduct, fraud or gross negligence; or (ii) any action by the Escrow Agent to collect its fees and/or expenses incurred in the performance of its duties as Escrow Agent. Promptly after the receipt by the Escrow Agent of notice of any demand or claim or the commencement of any action, suit or proceeding, the Escrow Agent shall, if a claim in respect thereof is to be made against the Trust, notify the Trust thereof in writing; but the failure by the Escrow Agent to give such notice shall not relieve the Trust from any liability which the Trust may have to be the Escrow Agent hereunder. For the purposes hereof, the term "costs, expenses or loss" shall include all amounts paid or payable to satisfy any claim, demand or liability, or in settlement of any claim, demand, action, suit or proceeding settled with the express written consent of the parties hereto, and all costs and expenses, including, but not limited to, counsel fees and disbursements, paid or incurred in investigating or defending against any such claim, demand, action, suit or proceeding.

10. Request for Documents and Instruments. From time to time on and after the date hereof, the Trust shall deliver or cause to be delivered to the Escrow Agent such further documents and instruments and shall do and cause to be done such further acts as the Escrow Agent shall reasonably request (it being understood that the Escrow Agent shall have no obligation to make any such request) to carry out more effectively the provisions and purposes of the Escrow Agreement, to evidence compliance herewith or to assure itself that it is protected in acting hereunder.

11. Resignation of Escrow Agent. The Escrow Agent may resign at any time and be discharged from its duties as escrow agent hereunder upon thirty (30) days' written notice to the Trust. As soon as practicable after its resignation, the Escrow Agent shall promptly turn over to a successor escrow agent appointed by the Trust all monies and property held hereunder upon presentation of a document appointing the new escrow agent and its acceptance thereof. If no new escrow agent is so appointed with the thirty (30) day period following such notice of resignation, the Escrow Agent may deposit the aforesaid monies and property with the Clerk of the Supreme Court, County of Albany, State of New York.
12. Compensation of Escrow Agent. The Trust shall pay the Escrow Agent a fee for its escrow services in an amount of \$1,000.00 per year or any portion thereof with one year's commission being payable in advance on the execution of the agreement and the Trust shall reimburse Escrow Agent for any and all costs and expenses associated with acting as Escrow Agent. However, no such fee, reimbursement for costs, expenses or loss indemnification for any damages incurred by the Escrow Agent, or any monies whatsoever shall be paid out of or chargeable to the funds on deposit in the Escrow Account.
13. Assignment of Rights and Obligations. The Escrow Agreement and the rights and obligations hereunder of the parties hereto may be assigned by those parties only to a successor to the relevant party's entire business. This Escrow Agreement shall be binding upon and inure to the benefit of each party's respective successors and permitted assigns. No other person shall acquire or have any rights under, or by virtue of, this Escrow Agreement.
14. Governing Law. This Escrow Agreement shall be governed by and construed in accordance with the laws of the State of New York.
15. Survival. The representations and warranties contained in this Escrow Agreement shall survive the execution and delivery hereof.
16. Headings. The headings in this Escrow Agreement are for the purposes of reference only and shall not limit or otherwise affect any of the terms hereof.
17. Authorized Representative. Timothy M. McGinn, Chairman is hereby designated as the authorized representative of McGinn, Smith & Co. Inc.
18. Notices. All notices or other communications shall be in writing and shall be considered to have been duly given if sent by certified mail, return receipt requested, postage prepaid, addressed as follows:
- (a) If to McGinn, Smith & Co. Inc.:  
99 Pine Street  
Albany, New York 12207  
Attn: David L. Smith, President  
  
With a copy to:  
McGinn, Smith & Co. Inc.  
99 Pine Street  
Albany, New York 12207
  - (b) If to TDMM BENCHMARK TRUST 09  
McGinn, Smith Capital Holdings Corp.  
99 Pine Street  
Albany, New York 12207  
Attn: Timothy M. McGinn, Chairman
  - (c) If to Escrow Agent:  
M&T Bank  
One M&T Plaza, 7<sup>th</sup> Floor  
Buffalo, New York 14203  
Attn: Joan Stapley

or at such other addresses or to the attention of such other office, as either party shall have designated in writing to the other.

19. Amendment and Waiver to be in Writing. This Agreement may be amended, modified, superseded or

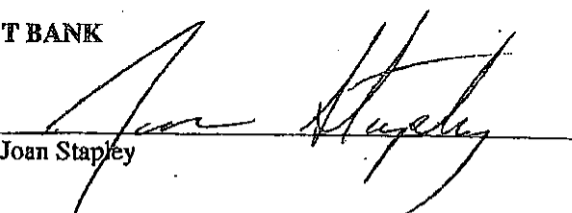
canceled and any of the terms, covenants, representations, warranties or conditions hereof may be waived only by a written instrument executed by all of the parties, or in the case of a waiver, by the party waiving compliance. The failure of any party at any time or times to require performance of any provision hereof shall in no manner affect the right at a later time to enforce same.

20. Severability. In the event that any one or more of the provisions contained in this Agreement or in any other instrument referred to herein, shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement or any other such instrument.

21. Entire Agreement. This Agreement constitutes the full and complete understanding of the parties and supersedes all prior agreements and understandings, oral or written, between the parties, with respect to the subject matter hereof.

IN WITNESS WHEREOF, the parties hereto have signed this agreement as of the day first above written.

**M&T BANK**

By:   
Joan Stapley

**MCGINN, SMITH & CO. INC.**

By:   
Timothy M. McGinn, Chairman

**TDMM BENCHMARK TRUST 09**

By: MCGINN, SMITH CAPITAL HOLDINGS CORP.

By:   
Timothy M. McGinn, Chairman

**\$3,000,000 MAXIMUM  
\$250,000 MINIMUM**

**TDMM Benchmark  
Trust 09**

**Contract Certificates**

**\$180,000 8.00%  
DUE NOVEMBER 1, 2010**

**\$350,000 9.00%  
DUE NOVEMBER 1, 2011**

**\$400,000 10.00%  
DUE NOVEMBER 1, 2012**

**\$470,000 11.00%  
DUE NOVEMBER 1, 2013**

**\$1,600,000 12.00%  
DUE NOVEMBER 1, 2014**

**PRIVATE PLACEMENT  
MEMORANDUM**

**MCGINN, SMITH & CO., INC.  
ALBANY, NEW YORK**

**AUGUST 20, 2009**

No dealer, salesman or other person has been authorized to give any information or to make any representations other than those contained in this Memorandum and if given or made, such information or representations must not be relied upon as having been authorized. This Memorandum does not constitute an offer to sell or a solicitation of an offer to buy any securities to which it relates. This Memorandum does not constitute an offer to sell or a solicitation of an offer to buy such securities in any jurisdiction to any person to whom it is unlawful to make such an offer or solicitation in such jurisdiction. Neither the delivery of this Memorandum nor any sale hereunder shall, under any circumstances, create any implication that there has been no change in the affairs of the Trust since the date hereof or that the information contained herein is correct as of any time subsequent to its date. However, in the event of any material change, this Memorandum will be amended, supplemented or updated accordingly.

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**CONFIDENTIAL PRIVATE PLACEMENT MEMORANDUM**

**\$1,550,000**

**TDM VERIFIER TRUST 11**

**MAXIMUM OFFERING \$1,550,000**

**MINIMUM OFFERING \$250,000**

**EIGHTEEN MONTHS: 9.00%**

**DUE FEBRUARY 15, 2011**

**TDM VERIFIER TRUST 11** (the "Trust") is hereby offering \$1,550,000 of Contract Certificates, entitled to interest at the rate of 9.00% per annum (the "Certificates"). Interest on the Certificates is payable in quarterly installments commencing November 15, 2009. See "Description of the Certificates and the Trust Agreement".

The Certificates will be issued and registered in the names of the purchasing Certificateholders. Interests in the Certificates will be shown on, and transfers thereof will be effected through, records maintained by the Trustee under the Trust Agreement. See "Description of the Certificates and the Trust Agreement."

Price of Certificates 100%

See "Risk Factors" for a discussion of certain risks that should be considered by prospective purchasers of the Certificates offered hereby.

**THESE CERTIFICATES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION OR ANY STATE SECURITIES COMMISSION NOR HAS THE SECURITIES AND EXCHANGE COMMISSION OR ANY STATE SECURITIES COMMISSION PASSED UPON THE ACCURACY OR ADEQUACY OF THIS MEMORANDUM. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.**

	Price to the Public	Underwriting Discount	Proceeds to the Trust
	100%	3.5%	96.5%
Minimum Offering	\$250,000	\$8,750	\$241,250
Maximum Offering	\$1,550,000	\$54,250	\$1,495,750

The date of this Memorandum is September 3, 2009

**MCGINN, SMITH & CO. INC.**  
**Capital Center • 99 Pine Street**  
**Albany, New York 12207**

MS-E-2142827

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The Offering of Certificates will terminate on September 30, 2009, unless all are sold prior to that date. McGinn, Smith & Co. Inc. (the "Placement Agent"), upon request from Verifier Capital LLC (the "Company"), will consider an extension of the Offering for three (3) months, terminating on December 31, 2009. All subscriptions will be held in an escrow account (the "Escrow Account") at M&T Bank, Buffalo, New York (the "Escrow Agent") or such other financial institution as may be selected by the Trust in the event that the Escrow Agent is unable or unwilling to serve. Interest will be earned on funds held in the Escrow Account commencing three (3) days after the funds are deposited until the earlier of the termination of this Offering or the investment of such funds in Certificates. During the period that an investor's funds are held in the Escrow Account, he will not be a Certificateholder of the Trust. An investor's funds will not be held in the Escrow Account more than two (2) months before being invested in the Certificates, with Escrow Agent fees being deducted from escrow interest payable to investors. See "Terms of the Offering".

The Trust will furnish to investors certain reports, financial statements and tax information. See "Description of the Certificates and the Trust Agreement - Reports".

### **WHO MAY INVEST**

The Certificates will generally be offered only to accredited investors ("Accredited Investors") as that term is defined under Regulation D promulgated under the Securities Act of 1933, as amended (the "Act"). The Placement Agent may, however, offer and sell Certificates to 35 or fewer non-accredited investors. With certain exceptions (primarily with respect to institutional investors) an Accredited Investor is an individual who (i) has a net worth (along and together with the Investor's spouse) in excess of \$1,000,000 or (ii) has had gross income in excess of \$200,000 in each of the past two years or joint income with that person's spouse in excess of \$300,000 in each of those years and reasonably expects gross income at the same level in the current year. Corporations, partnerships and other entities will be considered Accredited Investors if each of its beneficial owners individually qualify as Accredited Investors, or if such entity has total assets in excess of \$5 million. Prospective investors to be admitted as Accredited Investors will be required to represent that they satisfy the requirements of an Accredited Investor. See "Suitability".

The Certificates offered hereby are suitable only for those investors whose business and investment experience makes them capable of evaluating the merits and risks of their prospective investment in the Certificates, who can afford to bear the economic risk of their investment for an indefinite period of time and have no need for liquidity in this investment. Each investor will be required to represent in the Subscription Agreement that he is acquiring the Certificates for his own account as principal for investment, and not with a view to resale or distribution, and that he is aware that (a) his transfer rights are restricted; and (b) that the Certificates have not been registered under the Act, and therefore cannot be resold unless they are so registered or unless exemption from registration is available with respect to such transaction. (See "Suitability".) Since there can be no assurance that the Contracts will generate sufficient income necessary to pay the Certificates, investment in the Certificates is suited for persons who have substantial income from other sources. See "Risk Factors".

The Trust may require prospective investors to complete a questionnaire relating to the suitability on the investment for them, and may make or cause to be made such further inquiry as it deems appropriate. The Trust and Placement Agent will collectively have the sole discretion regarding sale of the Certificates to any prospective investor. The Trust and Placement Agent reserve the right to reject any subscription for any reason and to allocate to any investor a smaller amount of Certificates, or fractions thereof, than that for which he has subscribed. See "Suitability".



## SUMMARY OF THE OFFERING

The following summary is qualified in its entirety by the detailed information appearing elsewhere in this Memorandum and the exhibits attached to the Memorandum.

### The Trust

TDM VERIFIER TRUST 11 (the "Trust") is a common law trust formed under the laws of the State of New York on September 2, 2009. The Trustee of the Trust is McGinn, Smith Capital Holdings Corp., a New York corporation (the "Trustee"). The Trustee will have no liability in connection with the Certificates or the affairs of the Trust in the absence of willful misconduct or gross negligence. Although Certificateholders will have recourse to all assets of the Trust, which include an assignment of 1,075,000 face value of Guaranteed Payment Units ("GPU's") issued by Verifier Capital LLC ("the Company"), which when discounted to a present value at the blended interest rates contemplated by this offering, will have a value of \$1,550,000.

The Trust will advance funds to TDM Verifier Trust 07, a New York common law trust which funds will be employed to retire the obligation TDM Verifier Trust 07.

The Company provides capital to security alarm dealers by purchasing some or all of their security alarm monitoring accounts at a multiple of recurring monthly revenue ("RMR") and subcontracting back to such dealers service and monitoring obligations in respect of the purchased accounts for a fixed percentage of RMR received from the underlying customers (the "Subcontract Fee"). As of December 31, 2008, the Company owned 8,000 security alarm accounts purchased from independent security alarm dealers, generating total RMR of \$625,000. The average purchase price paid for accounts was twenty-six (26) times RMR and the average Subcontract Fee was 35%.

The Trust will employ the gross proceeds of this offering to retire certificates issued by TDM Verifier Trust 07 in the amount of \$1,495,500 together with underwriting expenses of approximately \$54,000.

### The Investment

Certificateholders will be issued a Certificate with a 18 month maturity (February 15, 2011). The rate of interest payable will be 9.00% per annum, payable quarterly.

Certificates may be purchased in denominations of \$5,000 with a minimum purchase of \$10,000.

### Risk Factors

In evaluating this Offering, prospective investors should consider carefully, among others, the following risk factors:

- No assurance that the Certificates will be paid;
- No market for resale of Certificates;
- Illiquid collateral;
- Potential for Guaranteed Payment Unit defaults;
- Potential conflicts of interest in connection with the acquisition of the assets to be consigned to the Trust;
- No amortization of principal.

### Description of the Certificates and the Trust Agreement

The Certificates will be issued under a Declaration of Trust by McGinn, Smith Capital Holdings Corp., the Trustee. The Certificates will be available for purchase in denominations of \$5,000.00 with a minimum investment of \$10,000.00. The Certificates will be registered in the name of the individual Certificateholders. See "Description of the Trust Agreement and the Certificates."

The Certificates will bear interest at a per annum rate of 9.00%. Interest will accrue commencing on the Closing Date for the purchase of such Certificate and will be payable to Certificateholders quarterly on the first day of each quarter commencing November 15, 2009.

**Use of Proceeds**

The Trust will employ the gross proceeds of this offering to retire certificates issued by TDM Verifier Trust 07 in the amount of \$1,495,500 together with underwriting expenses of approximately \$54,000.

**Income Tax Considerations**

The Certificates will be treated as indebtedness of the Trust for federal income tax purposes. Each Certificateholder will generally be required to report interest income on a Certificate in accordance with such Certificateholder's method of accounting. Each prospective investor should consult with his or her own tax advisor with respect to the tax consequences of the acquisition, ownership and disposition of the Certificates.

**RISK FACTORS**

In evaluating this Offering, prospective investors should consider carefully all of the information contained in this Memorandum and, in particular, the factors discussed below. The following summary is not intended to state in full or replace portions of this Memorandum that discuss these factors and others in greater depth. Although the risk factors are intended to be presented in order of their materiality to investors, such order may not be indicative of their relative importance to any particular investor.

**Limitation of Transfer of Certificates**

The Certificates may not be offered for resale to any person without the consent of the Trust. Prior to this offering, there has been no market for the Certificates of the Trust. Each investor will be required to represent that his purchase of the Certificates will be for investment only and not with a view towards the resale or distribution thereof. A Certificateholder will not have any right to sell, transfer, exchange or otherwise dispose of his Certificates, or to cause a security interest to be created therein, unless the Trust has received evidence satisfactory to it that such disposition or creation of a security interest is not in violation of federal or state securities laws. The Certificates have not been registered or qualified under the Act or applicable state securities laws and may not be sold or transferred without such registration or qualification or an exemption therefrom.

**Potential for Guaranteed Payment Unit Defaults**

Default by the Company under the terms of the GPUs would result in an interruption in available cash distributed to Certificateholders and could cause significant loss of principal.

**No Monthly Amortization Schedule**

There will be no amortization of the principal arising out of the cash flow generated from the GPUs. It is anticipated that each of the maturities will be refinanced at approximately similar interest rates until the Company redeems the GPUs. It is currently contemplated by the Company that such redemption will occur after six years.

**No Independent Counsel to Investors**

Purchases of the Certificates offered here by will not be afforded the services of independent counsel. Disclosure of material facts and risks has been reviewed by counsel to the underwriter.

**Lack of Financial Statements**

This Memorandum does not include financial statements for the Trust. The Trust is newly formed.

**Conflicts of Interest**

The Trust will acquire the GPUs from the Company. The Trustee of the Trust is McGinn, Smith Capital Holdings Corp., the Placement Agent for this offering is McGinn, Smith & Co. Inc., the principals of TDM Cable Funding LLC are Timothy McGinn, David Smith, and Matthew Rogers. Mr. McGinn and Mr. Smith are principals of McGinn, Smith Capital Holdings Corp. and McGinn, Smith & Co. Inc. Mr. Rogers is the Chairman of the Board of

the Company and is the beneficial owner of 12.50% of the common units of the Company and is a principal of TDM Cable Funding, LLC. Further, Mr. Rogers is a Senior Managing Director of McGinn, Smith & Co. Inc. Although there is no specified formula for determining the purchase price paid for the assets of the Trust, and Certificateholders will not have a voice in the amount paid by the Trust, the Trustee will purchase the assets only when TDM represents to the Trustee that the price of such assets will allow the Trust to pay its operating expenses and discharge its obligations with respect to the Certificates.

### USE OF PROCEEDS

The net proceeds to the Trust from the sale of the Certificates offered hereby, after deducting the Underwriting Discount, will be approximately \$1,495,500 (96.5% of gross proceeds) if the Maximum Offering for the Certificates is achieved.

The net proceeds to the Trust from the sale of the Certificates offered hereby, after deducting the Underwriting Discount, will be approximately \$241,250 (96.5% of gross proceeds) if the Minimum Offering for the Certificates is achieved.

The Trust will employ the gross proceeds of this offering to retire certificates issued by TDM Verifier Trust 07 in the amount of \$1,495,500 together with underwriting expenses of approximately \$54,000.

Maximum Offering	
<u>Sources</u>	
Maximum Net Proceeds	\$1,495,750
Trustee Contributions.	<u>150</u>
Total Sources	\$1,495,900

<u>Uses by TDM Verifier Trust 11</u>	
Certificate Retirement	1,495,500
Printing	<u>400</u>
Total uses	<u>\$1,495,900</u>

Minimum Offering	
<u>Sources</u>	
Minimum Net Proceeds	\$241,250
<u>Uses by TDM Verifier Trust 11</u>	
Certificate Retirement	<u>241,250</u>
Total uses by TDM Verifier Trust 11	<u>\$241,250</u>

### THE TRUST

The Trust is a common law trust formed under the laws of the State of New York on September 2, 2009. The principal executive office of the Trust is located at c/o McGinn, Smith Capital Holdings Corp., Trustee, Capital Center, 99 Pine Street, Albany, New York 12207, and its telephone number is 518-449-5131. McGinn, Smith Capital Holdings Corp. is the Trustee of the Trust. The owners of all issued and out-standing common stock of the Trustee are Timothy M. McGinn (30%), David L. Smith (50%), and Thomas E. Livingston (20%). McGinn, Smith & Co. Inc. is the Placement Agent for the offering.

#### Business of the Trust

The Trust will employ the gross proceeds of this offering to retire the certificates TDM Verifier Trust 07 in the amount of \$1,495,500 together with underwriting expenses of approximately \$54,000.

## **BUSINESS OF VERIFIER CAPITAL LLC**

The Company provides capital to security alarm dealers by purchasing some or all of their security alarm monitoring accounts at an agreed multiple of recurring monthly revenue ("RMR") and subcontracting back to them service and monitoring obligations in respect of the purchased accounts for a fixed percentage of RMR received from the underlying customers (the "Subcontract Fee"). As of December 31, 2008, the Company owned approximately 8,000 security alarm accounts purchased from independent dealers, generating total RMR of \$625,000. The average purchase price paid for accounts in fiscal year 2008 was 26 times RMR and the average Subcontract Fee was 35% of the RMR.

The Company anticipates 2009 revenues of \$11 million and EBITDA of \$3.0 million as compared to 2007 revenues of \$11 million and EBITDA of \$2.2 million.

Trailing three months (March, April, May) actual EBITDA was \$706,000 which annualizes to a \$3.1 million run-rate EBITDA.

The Company has significantly improved its liquidity and capital position over the last 12 months. The Company replaced a \$10 million line of credit priced at 9% with a \$29 million line currently priced at 5.64%. The Company currently has \$16 million available under the facility.

The Company has closed and integrated four acquisitions during the course of 2008, increasing RMR from \$369,000 to \$625,000.

As of November 2008, the Company has seen no adverse effect on either attrition rates or cash collections as a result of the global credit crisis.

The Company believes it is well positioned to continue its growth given:

1. Substantial undrawn credit facility;
2. Estimated 2009 free cash flow in excess of \$1 million;
3. Investment in business and accounting systems which will increase the scalability of the operating platform and;
4. A favorable effect on acquisition pricing resulting in high incremental rates of returns as a result of worldwide macroeconomic conditions.

## **COMPANY INFORMATION**

### **The Company**

The Company provides capital to security alarm dealers by purchasing some or all of their security alarm monitoring accounts at an agreed multiple of recurring monthly revenue ("RMR") and subcontracting back to them service and monitoring obligations in respect of the purchased accounts for a fixed percentage of RMR received from the underlying customers (the "Subcontract Fee"). As of December 31, 2008, the Company owned approximately 8,000 security alarm accounts purchased from eight independent dealers and two wholly-owned dealers, generating total RMR of \$625,000 up from \$372,500 on December 31, 2007. The average purchase price paid for accounts in fiscal year 2007 was 26 times RMR and the average Subcontract Fee was 35% of the RMR. This implies a payback period of 40 months before attrition or account cancellation and overhead expense, on assets with useful lives in excess of ten years.

To date, the Company has primarily financed franchisees of Sonitrol Corporation ("Sonitrol"), which manufactures and distributes a proprietary range of security alarms that use a proprietary audio intrusion technology, instead of passive infra-red detectors and contact switches, as the primary means of detecting an intrusion. Following detection, a communications session is opened between the control panel at the subscriber's premises and an operator at the central monitoring station ("CMS") during which the operator listens into the system and determines the appropriate response. The CMS operator's ability to use additional information from the system, after the initial activation, is called "verification" by the alarm industry, from which the Company has derived its company name. Verified systems were developed in order to improve police response to alarm systems, which suffers as confidence in alarms is undermined by repeated false alarms. When an operator using a verified system determines that there is an intrusion in progress, whether through use of audio or video inputs, the probability of the police making an arrest

at the site increases exponentially. This increase significantly reduces response time, thereby delivering subscribers with an enhanced level of protection. Sonitrol is the North American market leader in verified systems and claims 157,000 apprehensions<sup>1</sup> from its systems since the business was founded in 1963. In addition to its product development, manufacturing and franchising operations, Sonitrol is a significant operator of alarm systems across the United States with approximately \$5 million of RMR and was ranked number 9 in the 2007 Security Distribution & Marketing 100.<sup>2</sup> As of October 31, 2008, the Company owned approximately 4,100 security alarm accounts purchased from five Sonitrol dealers, generating total RMR of \$379,000.

The enhanced features provided by verified systems means that they cost significantly more than conventional systems both to install and to monitor. The average monthly charge for monitoring a conventional security alarm in the United States is approximately \$30 and the average for a Sonitrol system is approximately \$90, with similar premiums being charged at the installation stage.<sup>3</sup> As a result, Sonitrol systems are almost exclusively sold to non-residential customers with a demonstrated need for intruder protection, who make significant cash investments in their installation. These factors mean that the attrition rate on Sonitrol systems is consistently lower than that for conventional systems. For the year ended December 31, 2007, the Company's gross attrition rate was 10.3%, as compared with market leader ADT North America's 11.3% in its commercial business for the trailing twelve months ended June 30, 2007.<sup>4</sup> The Company's gross attrition in the ten months ending October 31, 2008 was 7.8% and its net attrition rate for that period was 4.2%, the difference resulting from price increases.

The Company was established as Verifier Inc. in 1995 by two former owners of Sonitrol. Verifier Inc. was acquired by Verifier Capital, LLC on March 7, 2006 for an enterprise value of \$7.7 million before transaction expenses, equivalent to 31.4 times the RMR of \$244,277. Since the acquisition, the Company has recruited additional management, maintained excellent relations with the five dealers acquired, purchased accounts from three additional dealers, expanded its customer base to two new asset classes, grown RMR at an annualized rate of 56.8% to \$553,000, opened an office in London, England, raised \$9.3 million by way of sale of additional Common Units and Guaranteed Payment Units, completed the reorganization of the various operating entities under a new holding company, Verifier Capital Holdings, LLC, and has completed a senior debt refinancing with First Capital and Full Circle for an aggregate facility of \$29 million, of which \$12.0 million was drawn as of October 31, 2008.

### **The Company's Market Opportunity**

The commercial security alarm monitoring industry in North America is worth approximately \$11 billion per annum, and has enjoyed a compound annual growth rate of approximately 4% over the last five years. Total industry commercial RMR is estimated at over \$300 million.<sup>5</sup> The market is highly fragmented with only three participants with commercial revenues in excess of \$100 million per annum and over 10,000 participants.<sup>6</sup> The Company has decided to focus its activities on alarm accounts which can reasonably be expected to have lower than average attrition rates and on smaller dealers who have difficulties efficiently accessing the capital markets as a result of their size. The Sonitrol network has approximately \$13 million of RMR, of which the franchisor-owned operations accounts for \$5.2 million, leaving \$7.8 million with its franchisees. The Company expects to significantly increase its market share of the franchisee RMR from its current 5% both by increasing its share of RMR with its existing dealers, supporting them in their organic and acquisition growth initiatives and by adding new dealers through various programs including retirement and generational transfers.

The Company is cautious about extending its offering to conventional alarm dealers owing to increased competition in that market which adversely affects purchase multiples and the likely adverse effect such growth would have on its attrition rates. The Company has identified a subset of conventional US alarm dealers who mirror the operating performance histories of our Sonitrol dealers of comparable size. The Company is investigating several of these dealers and expects to develop a comparable financing solution in 2008 that suits their growing need for unique growth financing, and exit strategies to monetize the equity in their business.

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<sup>1</sup> [www.sonitrol.com](http://www.sonitrol.com) / About Sonitrol/History

<sup>2</sup> Security Distributing and Marketing annual industry review and rankings, [www.sdmmag.com](http://www.sdmmag.com)

<sup>3</sup> Management research

<sup>4</sup> Net attrition rate is defined as (Lost RMR minus holdback RMR minus price increases) divided by average RMR in period.

<sup>5</sup> Management research

<sup>6</sup> Security Distributing and Marketing annual industry review and rankings, [www.sdmmag.com](http://www.sdmmag.com)

In 2006 and 2007, the Company investigated a number of alternate market niches into which the Company could aggressively expand its operations and concluded that entering the market in the United Kingdom satisfied its investment criteria for a number of reasons. The UK alarm market at \$2 billion is approximately 20% of the size of the US market in line with both population and GDP, and is by far the most developed market for security alarms in Europe.<sup>7</sup> In the commercial sector, the insurance industry plays a critical role in mandating the purchase of high quality monitored alarm systems by the insured. This is a significant contributory factor to attrition rates in the UK, commercial market being more in line with Sonitrol at 8-9% than with the US average of 12%. However, unlike the US market, the banking sector in the UK has not developed security alarm industry expertise, which means that alarm companies are unable to release capital in their RMR for growth or other purposes, presenting us with an attractive pricing environment. Lastly, the Company's management and major shareholder's background with Automated Security Holdings PLC, which before its purchase by ADT in 1996 was the largest security alarm company in the UK, gives management confidence that the Company has sufficient local industry knowledge and contacts to successfully enter this market. In February, 2007, the Company opened an office and hired a Managing Director for its UK operations. After pursuing several potential deals throughout the year, the Company closed its first transaction in the UK in December, 2007, followed by a second acquisition in February, 2008 and a third in July, 2008. As of October 31, 2008, the Company owned approximately 4,000 security alarm accounts from its three wholly-owned subsidiaries, generating total RMR of \$191,273. Because the Company owns the sales and installation functions in these three subsidiaries, RMR is growing on a net basis in each of the subsidiaries as RMR from new installations exceeds lost RMR through cancellations.

In March, 2007, the Company expanded its US RMR channel beyond Sonitrol into video monitoring, via the acquisition of an affiliate, Hidden Eyes, LLC, doing business as Envera Systems ("Envera"). Institutional industry analysts estimate the US video surveillance market, which includes monitoring services and surveillance equipment sales and installation, at approximately \$3 billion, growing 15% annually. Although video surveillance is one of the fastest growing segments of the electronic security market, the primary focus has been on hardware sales and installation. The Company estimates that in the US, only Sonitrol and Westec Interactive have grown a significant base of video monitoring RMR, and have the highly trained staff in their monitoring centers capable of properly servicing video surveillance accounts. Envera has developed a complete video monitoring system that includes industry leading hardware coupled with proprietary monitoring software, with subscriber accounts monitored out of a brand new, state-of-the-art facility in Sarasota, Florida. As several of Envera's original clients are now entering their fifth year of continued service, the Company has confidence that this RMR channel will exhibit Sonitrol-like attrition rates while growing at a much faster rate than the traditional US and UK commercial alarm markets. To insure this growth benefits the Company, Envera is contractually obligated to sell the Company at least 50% of all its new RMR contracts generated over the next ten years at favorable pricing. Since the new monitoring facility was opened in late summer 2007, Envera has contracted with new clients for a total of approximately \$60,000 of RMR. As of October 31, 2008, the Company owned video monitoring accounts purchased from Envera, generating total RMR of \$41,000, while Envera has retained approximately \$15,000 of RMR on its own books, with the remainder in backlog for commissioning in Q4-08 and Q1-09.

## **The Company's Strategy**

The Company believes that its 13 year operating history gives it unique insights into the critical success factors involved in stripping out the financial from the operating component of a security alarm monitoring contract. Its management has experience in the security alarm industry with many different business models, market segments and geographies. The Company intends to leverage this combined experience to grow its current asset base and seek out other asset classes with similar financial characteristics to generate value for its Common Unit holders, including management. With this end in mind, the Company is pursuing the following business strategies:

- *Grow Market Share within the Sonitrol Franchise Network.* The Company is using its good relationships with its current dealers, together with its industry knowledge, to develop discussions with other Sonitrol franchisees about how the Company can play a role in addressing their capital requirements. The Company is currently in discussions with one franchisee that has over \$100,000 of RMR, and is looking to retire and transfer the business to his children who are actively involved in the business. The retirement and generational transfer exit strategy is increasingly becoming a critical business issue for the aging owners of many of the franchises that were started in the 1970's and 1980's. The Company's business model is the ideal solution, as evidenced by our recent retirement-motivated transaction closed in March, 2008 for approximately \$100,000 in RMR.

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<sup>7</sup> Management research

- *Expand into New Geographic Markets.* The Company has demonstrated that the UK market represents a compelling opportunity to replicate its business model targeted at a larger addressable market, with significantly less competition. To date, The Company has completed transactions with three UK alarm dealers, and is pursuing several other prospects.
- *Expand into New Product Markets.* The Company is continually evaluating expansion opportunities into other asset classes that share financial characteristics with our Sonitrol, Envira, and UK contract pools. As the Company gains additional experience with conventional commercial alarm monitoring through one of its Sonitrol dealers, the Company has further confidence to enter the broader US conventional alarm market. As with the Sonitrol franchisees, the aging owners of the 20 and 30 year-old commercial security firms will find that the Company's custom financing structure achieves many of their conflicting goals of liquidating equity for retirement while still retaining control of the Company within the family or a closely-held group.
- *Improve Back Office Efficiencies.* Key to the Company's business plan is its ability to benefit from operating leverage as the Company grows its assets faster than its expenses, thereby generating more income attributable to its Common Unit holders. The Company is currently investing in automated new accounting systems and plans to invest in a new security business system with a total capital investment of approximately \$150,000. These capital projects are designed to improve efficiencies and thereby leverage the Company's existing overhead over more RMR.

### **The Company's Investors**

The Company's largest Common Unit holder is Thomas Buffett, who owns 520,000 of the Company's Common Units. Mr. Buffett was one of the founders of Verifier Inc. and was the Chairman and Chief Executive Officer of Automated Security Holdings PLC ("ASH") between 1976 and 1995. ASH purchased Sonitrol Corporation in 1992 and operated the business until Sonitrol was in turn purchased by Tyco International/ADT in 1996.

Several other key investors that have relevant experience and insight to contribute to the Board include: Irving Gutin, Verifier Director, former VP of Mergers and Acquisitions at Tyco International, 1979-2002; Michael Robinson, Verifier Director, former Treasurer of Tyco International, 1998-2003; Mike Hawker, over 25 years experience in the UK alarm industry and former Chairman of ASH; Dennis Stern, former General Counsel of Honeywell Security Monitoring ("HSM") and SecurityLink (purchased by ADT in 2001), 1999-2001; Daniel Holtz, Verifier Director, Managing Member of Walden Capital, a Miami-based investment firm.

As of October 31, 2008 the Company's directors and executive officers own 1,594,166 Common Units out of a total of 3,821,167 (41.7%), and the remaining 2,227,001 are owned by 19 private investors.

### **Company Information**

The Company was formed in November, 2005 as Verifier, LLC, a limited liability company organized under the laws of the State of Florida, acquired Verifier Inc. in March, 2006 and changed its name to Verifier Capital LLC in December, 2006. In April, 2008, the Company undertook a reorganization of its legal entities extracting the UK subsidiary, Verifier Capital Limited, and placing it alongside Verifier Capital LLC under a single parent, Verifier Capital Holdings, LLC. This new legal structure accommodates current and future senior lenders who preferred to have the US and UK based assets in two separate legal entities, and to facilitate additional equity raises into a holding company which has single ownership over the varied and growing operating entities under its control. This reorganization was completed in July, 2008.

### **RISK FACTORS**

*The Company made a loss before taxes in the year ended December 31, 2007.* The Company has incurred losses since its acquisition of Verifier, Inc. in March 2006. This is a result of an increase in its interest expense associated with financing its purchase of the shares of Verifier, Inc., and the funding of the overhead expenses for the UK office in its first 11 months of operations prior to acquiring any RMR. These adverse movements have been mitigated by a sustained increase in revenues and gross profits in the US business resulting from accelerated purchases of RMR from existing and new dealers during the year. The Company anticipated incurring a net loss in fiscal year 2008 after accounting for one-time costs relating to its senior debt refinancing and the termination of its

former CFO. Since August, 2008 the Company has generated pre-tax income and anticipates growth in profitability in fiscal 2009.

*Attrition rates may increase in the future.* The purchase price for an acquired alarm account and the service fee the Company pays to its dealers are fixed by contract with those dealers. The only variable, therefore, that has a significant impact on an account's rate of return is the length of time the contract remains with us, the inverse of our attrition rate. While the Company has a 13 year track record of attrition rates of less than ten percent per annum, at which rate the Company believes it can generate attractive rates of return, there is no guarantee that attrition rates will remain at or around these levels. Were the Company's attrition rates to double in the future, the Company would be in breach of its covenants with its senior lender and would generate rates of return significantly below the Company's weighted average cost of capital.

*The Company relies on its dealers to service and monitor its security alarm accounts.* The Company subcontracts back to its dealers the service and monitoring obligations related to the security alarm accounts the Company owns for a fixed percentage of the RMR received by it. Performance of these obligations requires the service provider to be a franchisee in good standing with Sonitrol and ownership, or access to, specialized monitoring equipment provided by Sonitrol. The Company does not own the assets necessary to perform these service and monitoring obligations. While the Company has had a dealer default on its service agreement, the Company has not experienced a material breach thereof, and has not been required to source an alternate service provider in its 13 year history. The Company has contingency plans in place and has investigated the pricing and switching costs involved with moving its contracts to an alternate service provider. If the Company's existing contingency plan was not able to be implemented effectively, a secondary service provider would likely demand a higher service fee, reducing the Company's gross margins, and the transition of the alarm accounts to a secondary service provider would likely cause an upward spike in attrition.

*The Company has only six employees, four of whom have uniquely relevant experience.* The Chairman of the Board of Directors, President and Controller have unique experience across the domestic and global security industry from their employment at the world market leader, ADT. The Company's UK Managing Director has over 15 years experience in the UK security industry and has long-standing relationships with many of our potential prospects in the UK. While the Company believes it maintains adequate key man insurance to protect it against their death or disability, its loss of their services for any reason would have an adverse effect on its business, as it would be difficult for us to find replacements of equal quality and experience.

*The Company has a floating rate senior secured facility.* The current \$25 million senior secured revolving credit facility is priced off one month LIBOR plus a margin of between 350 and 500bps. The Company does not believe it is economically prudent for it to hedge this exposure at this time and has not done so.

*The Company has exposure to hurricanes in Florida and Alabama.* Approximately 52% of the Company's US RMR is located in Florida and Mobile, AL. While the Company did not suffer any adverse attrition experience as a result of the hurricanes in 2004 and 2005, the Company is aware of other security alarm dealers who suffered material attrition in the New Orleans area arising out of Hurricane Katrina. The Company has explored using insurance to mitigate this risk, but has yet to receive an economically viable insurance proposal and therefore has not hedging against this exposure.

*The Company has entered the United Kingdom market without a UK pound denominated debt facility.* Prior to 2007, the Company had only done business in the United States with franchisees of Sonitrol. In order to accelerate the growth of its business, the Company has established operations in the United Kingdom, where the Company has purchased 4,000 conventional security alarm accounts, as of October 31, 2008. While the Company has a \$4 million line of credit for use in UK working capital and RMR acquisitions, the Company does not yet have an appropriately sized UK pound denominated debt facility. While the Company does not forecast repatriating cash from the UK operations to service the US debt facility in 2008, any significant repatriation would subject it to foreign currency fluctuation risk, which the Company has decided not to hedge at this time.

## **Risks Related to this Offering**

*There is no existing market for the Company's Guaranteed Payment Units or the Certificates. You may not be able to resell them.* Currently there is no public market for the Company's GPUs or the Certificates. The Company cannot predict the extent to which investor or acquirer interest in them will lead to the development of a trading market or sale transaction or otherwise provide liquidity to you. The offering price has been determined by



discounting the anticipated cash flow from the GPUs at a discount rate equivalent to the rate ascribed to the Certificates as offered hereby.

## **DESCRIPTION OF TRUST AGREEMENT AND THE CERTIFICATES**

On September 2, 2009 David L. Smith, as President of McGinn, Smith Capital Holdings Corp., (the "Trustee") executed the Declaration of Trust ("Declaration") of TDM Verifier Trust 11 ("Trust"), declaring that McGinn, Smith Capital Holdings was the Trustee of the Trust, establishing the Trust for the benefit of Certificateholders, and defining its purpose.

The Trust is intended to be a common law trust under the laws of the State of New York, with its principal office at Capital Center, 99 Pine Street, Albany, New York 12207, which is the office of the Placement Agent. The initial capital of the Trust was established at \$150,000, and the purpose of the Trust is to retire certificates issued by TDM Verifier Trust 07 in the amount of \$1,495,500 together with underwriting expenses of approximately \$54,000. Under the Declaration, the Trustee acquires virtually complete discretion in the operation of the Trust, so long as that discretion is exercised within the purpose of the Trust. The Declaration limits the liability of the Trustee in two ways. The Trustee will not be liable in the absence of willful misconduct or gross negligence. Further, the Trustee will not be liable, in any event, to pay sums of money beyond the corpus of the Trust. The Trustee is entitled to indemnification from the funds of the Trust (except in the case of willful misconduct or gross negligence) and to reimbursement for the reasonable and necessary fees and expenses incurred in the administration of the Trust. The Trustee is entitled to indemnification and reimbursement from the corpus of the Trust before payments are made to Certificateholders.

The Declaration specifically provides that the Certificateholders shall not have any legal or equitable title to the Trust Estate, that no Certificateholder shall have a voice in the management or control of the property or affairs of the Trust, that the Trustee has no authority to require additional capital contributions from any Certificateholder, and that the Trustee is precluded from taking any action to make Certificateholders liable for the debts or obligations of the Trust.

### **Certificates**

The Certificates will be issued under the Declaration, a copy of which is included as an exhibit to this Memorandum. The rights of the Certificateholders and the obligations of the Trustee as they relate to the Certificates will be governed by the Declaration. Reference should be made to the Declaration for its complete terms. The statements contained in this Memorandum concerning the Declaration are merely a summary thereof, do not purport to be complete, and do not modify or amend the Declaration.

Subject to the conditions set forth in this Memorandum, Certificates in the maximum amount of \$1,550,000 will be offered by the Trust. The Certificates will bear interest on the outstanding principal at a per annum rate of 9.00% with an 18 month maturity. Interest on the Certificates will be paid in quarterly installments on the first day of each quarter commencing November 15, 2009.

The Certificates will be issued and registered in the name of the purchasing Certificateholder(s). Interest on the Certificates will be shown on, and transfers thereof will be effected through, records maintained by the Trustee.

### **Prepayments**

The Certificates are not subject to a mandatory prepayment or redemption provision.

### **Registration**

Each Certificate will be registered in the name of the purchaser thereof.

### **Limited Transferability of the Certificates**

The Certificates are not freely transferable, and there is no secondary market for the Certificates and none is expected to develop. The Certificates should not be treated by Certificateholders as securities.

The Certificates have not been registered under the Securities Act of 1933, as amended. They may not be offered for resale in the absence of an opinion of counsel, satisfactory to the Trust, that registration is not required.

## Reports

Not later than January 31 of each year, the Trust will furnish to the Certificateholders statements of interest income on IRS Form 1099-INT and such tax information as shall be necessary in the preparation of such person's Federal income tax return.

## CONFLICTS OF INTEREST

Timothy M. McGinn, David L. Smith, and Thomas E. Livingston collectively own 100% of the issued and outstanding common shares of McGinn, Smith Capital Holdings Corp. and McGinn, Smith & Co. Inc. McGinn, Smith & Co. Inc. is acting as the Placement Agent for this Offering and will receive an Underwriting Discount equal to three and one-half percent (3.5%) of the gross proceeds of this Offering. The Underwriting Discount was not negotiated at arms length.

Additionally, Mathew Rogers is the Chairman of the Board of the Company, owns 12.5% of the common units of the Company and is a Senior Managing Director of McGinn, Smith & Co. Inc.

McGinn, Smith Capital Holdings Corp. may experience a conflict of interest in performing its obligation to exercise due diligence with respect to the statements made in this Memorandum and, therefore, its due diligence review cannot be considered independent. A qualified independent underwriter has not been retained by the Trust in connection with this offering. However, McGinn, Smith Capital Holdings Corp. believes that such due diligence has, in fact, been exercised.

There has been no independent counsel retained to represent the interests of the Certificateholders.

## THE TRUSTEE

The names and positions of the directors and executive officers of the Trustee are as follows:

Name	Position
Timothy M. McGinn	Chairman of the Board and Director
David L. Smith	President and Director
Thomas E. Livingston	Treasurer

The officers and directors of the Trustee will devote such time and effort to the business of the Trust as they may deem necessary and will actively be engaged in other business ventures.

The principal business occupations of the officers and directors during the past five (5) years are as follows:

Timothy M. McGinn, age 61, is the Chairman of the Board and Secretary of McGinn, Smith & Co. Inc. He has served as Chairman of the Board since the inception of this firm in 1980. From 2003 to 2006, Mr. McGinn served as Chairman of the Board and CEO of Integrated Alarm Services Group, Inc. a NASDAQ listed public company. Prior to founding McGinn, Smith & Co. Inc. he was with Paine, Webber, Jackson & Curtis. He has served on a number of corporate and charitable boards of directors and holds a bachelor's degree in Mechanical Engineering from the Rochester Institute of Technology.

David L. Smith, age 64, is the President of McGinn, Smith & Co. Inc. and a member of the Board of Directors. He has served in this capacity since 1980. Prior to founding McGinn, Smith & Co. Inc. he was with Paine Webber, Jackson & Curtis. Mr. Smith has served on a number of charitable and corporate boards of directors and holds a bachelor's degree from Hamilton College.

Thomas E. Livingston, age 51, is Sr. Vice President of McGinn, Smith & Co. Inc. and a member of its Board of Directors. Mr. Livingston has been employed by McGinn, Smith & Co. Inc. since 1986. Prior to joining McGinn, Smith he was affiliated with Prudential Bache Securities.

## COMPENSATION AND FEES

The Trustee of the Trust will serve without fee but will be reimbursed for expenses incurred by the Trustee in connection with the Trust by TDM Cable Funding LLC.

## SUITABILITY

Certificates will be sold only to investors who make a minimum purchase of \$10,000.00.

As described elsewhere in this Memorandum, the Certificates will generally be sold only to Accredited Investors as defined in Rule 501 of Regulation D promulgated by the Securities and Exchange Commission under the Securities Act of 1933, as amended; provided, however, that at the discretion of the Placement Agent and the Company, Certificates may be sold to up to 35 non-accredited investors. Included in the definition of "Accredited Investor", as defined in Rule 501, are the following:

(a) any natural person whose individual net worth (including personal residences, furnishings and automobiles), or joint net worth with that person's spouse, at the time of purchase exceeds \$1,000,000;

(b) any natural person who had an individual income in excess of \$200,000 in each of the two most recent years or joint income with that person's spouse in excess of \$300,000 in each of those years and who reasonably expects gross income at the same level in the current year; and

(c) any entity in which all of the equity owners are Accredited Investors or which has total assets in excess of \$5,000,000.

Each investor accepted as an Accredited Investor will be required to represent that he satisfies the requirements of an Accredited Investor under Rule 501.

Among other things, each investor will be required to acknowledge and represent in the Subscription Agreement that: (i) he is purchasing the Certificates for his own account for investment and not with a view to the sale or distribution thereof; (ii) he is aware that the Certificates have not been registered for sale under the Securities Act of 1933 as amended, and that he will not transfer his Certificates in the absence of an opinion of counsel satisfactory to the Trust that the Certificates have been registered or that registration is not required under the Securities Act of 1933, as then in effect, and under applicable state securities laws, if any; (iii) he understands that this investment involves a high degree of risk; (iv) he has adequate means of providing for his current needs and foreseeable personal contingencies, has no need for liquidity in this investment; (v) all books, records and documents pertaining to this investment have been made available to him; and (vi) his overall commitment to investments which are not readily marketable is not disproportionate to his net worth and his purchase of Certificates will not cause such overall commitment to become excessive.

The Placement Agent and the Trust reserve the right to reject any subscription in its entirety for any reason or to allocate to any investor Certificates in an aggregate principal amount less than that for which he has subscribed. In the event a subscription is rejected, the investor's subscription check for his Certificates (or the amount thereof) will be returned, and in the event of a partial rejection, a pro rata amount of his subscription check for his Certificates will be refunded.

Prospective investors may be required to complete an Investor Representation Letter relating to the suitability of the investment for them, and the Trust may make or cause to be made such further inquiry as the Trust deems appropriate.

Any prospective investor will be afforded the opportunity to obtain from the Trust prior to the consummation of the transaction contemplated herein any additional information he may request necessary to verify the accuracy of the contents of this Memorandum and which the Trust possesses or can acquire without unreasonable effort or expense and to confer with, ask questions of, and receive answers from the Trust or persons authorized to act on its behalf, concerning the terms and conditions of the transaction, this memorandum and any additional information which has been requested and supplied to a prospective investor or his purchaser representative.

The purchase of Certificates may be suitable for individuals seeking an investment intended to provide income. An investment in Certificates may also be appropriate for corporations and trusts seeking investments which are structured to provide income. Nevertheless, this investment involves a number of significant risks, including no assurance that the Certificates will be paid and illiquidity. See "Risk Factors." Accordingly, the suitability of a purchase of Certificates for any particular investor will depend upon, among other things, such investor's investment objectives and such investor's ability and willingness to accept the risks of an investment in the Certificates.

The Placement Agent Agreement between the Trust and the Placement Agent requires the Placement Agent to make diligent inquiries as required by law of all prospective purchasers in order to ascertain whether a purchase of Certificates is suitable for such person and to transmit promptly to the Trust all fully completed Subscription Agreements. By tendering payment for a Certificate and by acceptance of the confirmation of purchase, an investor represents that he or it satisfies any applicable suitability standards. See "Plan of Distribution."

### **TERMS OF THE OFFERING**

Subject to the conditions set forth in this Memorandum, Certificates in the maximum amount of \$1,550,000 (the "Maximum Offering") and the minimum amount of \$250,000 (the "Minimum Offering") will be offered by the Trust.

The Certificates will be offered through McGinn, Smith Capital Holdings Corp., the Placement Agent, on a best efforts basis over a period of two months. The Placement Agent is a member of the Financial Industry Regulatory Authority.

All funds received by the Placement Agent from subscriptions for the Certificates will be placed in an escrow account (the "Escrow Account") maintained at M&T Bank, (the "Escrow Agent"). During the period that an investor's funds are held in the Escrow Account he will not be considered a Certificateholder.

With respect to the Certificates, no funding from the Escrow Account will occur until the Minimum Offering is subscribed for. If subscriptions for the Minimum Offering are not received within two months from the date of this Memorandum, subscriptions received with respect to the Certificates will be promptly returned in full to the investor by the Escrow Agent.

#### **How to Subscribe.**

The Certificates will be available for purchase in the minimum denomination of \$10,000.00 and increments of \$5,000.00. An investor who meets the qualifications set forth under "Who May Invest" and "Suitability" may subscribe for Certificates by completing, signing and delivering to the Placement Agent an executed copy of the Subscription Agreement contained in this Memorandum. All subscriptions must be accompanied by a check in the amount of the Certificate(s) purchased payable to "*M&T, Escrow Agent for TDM Verifier Trust 11*". Upon execution of a Subscription Agreement, the investor agrees to all of the terms and conditions contained in the Agreement. Subscriptions are, however, subject to acceptance by the Trust.

### **PLAN OF DISTRIBUTION**

The Trust is offering a maximum of \$1,550,000 of Certificates, and a minimum of \$250,000. The minimum investment by an investor is \$10,000.00 with increments of \$5,000.00. The Offering of Certificates will terminate on September 30, 2009, unless all are sold prior to that date. The Placement Agent, upon request from the Company, will consider an extension of the Offering for three (3) months, terminating on December 31, 2009. No Certificates will be sold unless subscriptions for the Minimum Offering are received and accepted within four (4) months of the date of this Memorandum. Subscriptions are subject to acceptance by the Trust. See "Suitability"; "Who May Invest".

During the course of the Offering, the subscription payments will be promptly forwarded by the Placement Agent to the Escrow Agent for deposit in the Escrow Account. For a description of the distribution of funds from the Escrow Account, see "Terms of the Offering".

The Certificates will be offered on a "best efforts" basis by the Placement Agent.

## **DISCLAIMER OF LIABILITY OF TRUSTEE**

Reference is hereby made to the Declaration of Trust dated September 2, 2009 a copy of which is attached hereto as Exhibit "A". Other than potential liability under the Act, neither the Trustee, nor any shareholder, manager, officer, employee, affiliate or agent of the Trustee may be held to any liability in connection with the Offering or the Certificates, or in connection with the affairs of the Trust, in the absence of willful misconduct or gross negligence. Further, the Trustee will not be liable, in any event, to pay sums of money beyond the corpus of the Trust.

## **INCOME TAX CONSIDERATIONS**

The following discussion summarizes certain material anticipated federal income tax consequences relevant to the acquisition, ownership and disposition of Certificates, but does not purport to address all potential consequences. The summary is for general information only and does not discuss all of the tax consequences that may be relevant to particular investors in light of their personal investment circumstances or holders who receive special treatment under the Internal Revenue Code of 1986, as amended (the "Code"), such as insurance companies, financial institutions, and broker-dealers. In addition, this discussion does not describe any tax consequences arising out of foreign, state or local jurisdictions.

The discussion is based upon current provisions of the Code, applicable regulations promulgated thereunder, judicial authority and administrative rulings and practice. All of the foregoing is subject to change which may be retroactive and could affect the continuing validity of this discussion. There can be no assurance that the Internal Revenue Service (the "IRS") will not take a contrary view, and no ruling from the IRS has been or will be sought.

The Trust has not obtained an independent tax opinion with regard to this Offering. Prospective investors should consult their own tax advisors regarding the federal, foreign, state, local and other tax consequences of purchasing, holding and disposing of the Certificates.

### **Interest Income to Certificateholders**

It is anticipated that the Certificates will be issued at par value and, therefore, no original issue discount will arise with respect to the Certificates. Accordingly, a Certificateholder will be required to report interest on a Certificate as income for federal income tax purposes in accordance with such holder's method of accounting.

### **Gain or Loss on Disposition of Certificates**

In general, the holder of a Certificate will recognize gain or loss on the sale, exchange, redemption or other disposition of a Certificate equal to the difference between the amount realized (except to the extent attributable to the payment of accrued interest) and the adjusted basis in his Certificate. Any gain or loss recognized will generally be a Trust gain or loss if the Certificate is held as a Trust asset and will be long-term gain or loss if the Certificate is held for more than one year.

### **Information Reporting**

The Trust will report interest income to Certificateholders on IRS Form 1099-INT and as otherwise consistent with such treatment.

### **Backup Withholding**

A Certificateholder may be subject to "backup withholding" at the rate of 31% (see IRC§3406(a)) with respect to interest paid on, or the proceeds of a sale, exchange or redemption of, such Certificates, unless such holder (i) is a corporation or comes within certain other exempt categories and, when required, demonstrates this fact, or (ii) provides a taxpayer identification number, certifies as to no loss of exemption from backup withholding, and otherwise complies with applicable exemption from backup withholding rules. Any amount withheld under these rules will be creditable against the Certificate-holder's federal tax liability.

**THE FOREGOING DISCUSSION OF CERTAIN FEDERAL INCOME TAX CONSEQUENCES IS FOR GENERAL INFORMATION ONLY AND IS NOT TAX ADVICE. EACH PROSPECTIVE INVESTOR SHOULD CONSULT WITH HIS OR HER OWN TAX ADVISER WITH RESPECT TO THE TAX CONSEQUENCES OF THE ACQUISITION, OWNERSHIP AND DISPOSITION OF THE CERTIFICATES.**

## **TABLE OF CONTENTS OF EXHIBITS**

The discussion in this Memorandum of each Exhibit set forth below is qualified in its entirety by reference to such Exhibit.

Exhibit "A"	Declaration of Trust
Exhibit "B"	Subscription Agreement
Exhibit "C"	Investor Representation Letter

## **ADDITIONAL INFORMATION**

Additional information is available upon request to the Trust. Only additional information provided by the Trust may be relied upon. Prospective investors may request such information from the Placement Agent, McGinn, Smith & Co. Inc., Fifth Floor, 99 Pine Street, Albany, New York 12207.

**EXHIBIT “A”**

**DECLARATION OF TRUST**

## DECLARATION OF TRUST OF TDM VERIFIER TRUST 11

This Trust Agreement made as of the 2<sup>nd</sup> of September, 2009, by and between McGinn, Smith Capital Holdings Corp., a New York corporation with an address at Capital Center, 99 Pine Street - 5th Floor, Albany, New York 12207 ("Trustee"), and those persons who acquire an interest herein by the execution and performance of a subscription agreement ("Subscription Agreement") attached as Exhibit B to the Confidential Private Placement Memorandum dated as of September 3, 2009 ("Confidential Memorandum").

WITNESSETH:

WHEREAS, the Trustee desires to create a trust (the "Trust") for the purpose of retiring the obligation of TDM Verifier Trust 07

WHEREAS, the Trustee is willing to accept the duties and obligations imposed hereby on the terms and conditions hereinafter set forth;

NOW, THEREFORE, the Trustee does hereby declare, that the Trustee will hold said property which it may acquire as such Trustee, together with the proceeds thereof in trust, to manage and dispose of the same for the benefit of the Certificateholders hereunder in the manner and subject to the stipulations herein contained.

### ARTICLE I NAME

This Trust shall be designated and known as the "TDM VERIFIER TRUST 08R", not incorporated, and under that name shall, so far as practicable, conduct all activities and execute all instruments in writing in the performance of the Trust.

### ARTICLE II DEFINITIONS

The following words, terms and phrases used herein shall be given the meaning stated below in this Article, unless such meaning would be clearly in conflict with the purposes and spirit of this instrument.

"Certificateholder" shall mean the holder for the time being, according to the books of the Trustee, of the Certificates as evidenced by this Declaration and the Certificates issued by the Trustee.

"Permitted Investments" means a promissory note (the "Note") evidencing a loan from the Trust to TDM Cable Funding LLC. In addition, to the extent not employed for the loan from the Trust to TDM Cable Funding, LLC, temporary investments may be made in (1) certificates of deposit, in (2) short term AAA rated debt obligations regularly traded on a recognized exchange in the United States, or in (3) obligations issued by the United States Treasury or other obligations backed by the "full face and credit" of the United States.

"Share" shall mean a share in the beneficial interest of the property, assets, trust fund and corpus of the Trust.

"Transaction Documents" shall mean this Declaration of Trust and the Guaranteed Payment Units from Verifier Capital LLC (the "Company").

"Trust", "Trust Estate", and "Capital" shall mean the trust fund hereunder, consisting of the corpus of the estate; that is, all property, real, personal and mixed of every kind and description howsoever acquired and wherever situated, held under this Declaration of Trust by the Trustee.

"Trustee" shall mean the trustee herein named, and those who are or may be trustees.

### ARTICLE III OFFICE OF THE TRUST

The principal office of this Trust shall be located at Capital Center, 99 Pine Street, Albany, New York 12207, until changed by the Trustee. The principal office may be changed and branch offices established,



maintained, changed and discontinued at such times and places as the Trustee in its discretion may determine, with notice to the Certificateholders.

#### ARTICLE IV CAPITAL OF THE TRUST

The initial Capital of this Trust shall be One Hundred Fifty Dollars (\$150), paid to the Trustee concurrently with execution and delivery hereof. The Capital of the Trust or any part thereof, shall be held for the use and benefit of the Trust at such places and upon such terms as the Trustee may fix. The Trustee may not require any Certificateholder to make any contribution, in addition to the initial contribution made by such Certificateholder, to increase the Capital of the Trust. The Trustee shall receive such contributions to the Capital of the Trust as may be made by Certificateholders from time to time and apply the same for the purpose stated by Article V of this Trust Agreement.

#### ARTICLE V PURPOSE OF THE TRUST

The purpose of the Trust is to retire certificates issued by TDM Verifier Trust 07 in the amount of \$1,495,500 together with underwriting expenses of approximately \$54,000.

The Trustee shall, as far as convenient and practicable, take and hold the title, both legal and equitable, to all property, however acquired under the terms hereof, in the name of the Trust. All conveyances of every kind and description, at any time made to or in the name of the Trustee of the Trust shall be held to vest the title to property so conveyed in the Trustee as such under this instrument, the title "TDM VERIFIER TRUST 08R" being merely intended as a convenient designation of the Trustee hereunder.

(1) The Trustee shall administer and dispose of all properties for the benefit of Certificateholders hereunder, as represented by their Certificates.

(3) The Trustee shall manage, control and dispose of all the Trust Estate and its business affairs, of every kind and character within the authority granted hereunder.

(4) The Trustee shall, in such capacity, exclusively and absolutely, have full, absolute and plenary rights, authority to pledge, exchange, mortgage and convey or otherwise dispose of property of every kind, character and description, real, personal and mixed, that may be part of the Trust Estate.

(5) The Trustee shall have, in furtherance of the purposes of the Trust, the absolute right, power and authority to institute, maintain and defend actions, suits and proceedings in any court of law or equity either in the name of said Trust or in its name as Trustee thereof; to sell, transfer, assign and convey the whole or any part of the Trust Estate, invest and reinvest the proceeds thereof at any time in Permitted Investments provided that the Trustee shall have no obligation to invest such proceeds and shall not be accountable for any losses howsoever incurred; to collect any money, and pledge the assets of the Trust as security therefor; to execute and deliver in the manner herein provided all deeds, leases, mortgages, powers of attorney and other instruments in writing which the Trustee may deem necessary and proper in the exercise of the powers conferred hereunder; and to perform or withhold any act or thing of any kind or character, which in the Trustee's judgment may be necessary, proper or expedient, in carrying into effect the purposes of this Trust or any purposes specified in this Declaration of Trust, or in any amendments hereto, duly made and adopted.

#### ARTICLE VI LIMITATION OF LIABILITY OF TRUSTEE AND CERTIFICATEHOLDERS

Neither the Trustee, nor any of its officers or servants shall have any right, power or authority, under any circumstances, or in any event to act as the agent of the Certificateholders or to bind them personally or to impose any liability or obligation upon them in any way whatsoever with respect to this Trust Estate or otherwise. All persons contracting with the Trustee or its officers, agents or employees shall look only to the Trust Fund for the payment of any damage, claim, judgment or decree, or of any money that may become due or payable in any way to

them whether founded upon contract or tort, and neither the Trustee nor the Certificateholders, present or future, nor any of them shall as such be personally liable therefor or on any agreement or contract made by the Trustee, or by any officers, agents or employees of the Trustee, its officers or agents, or employees in connection with the Trust Estate. No amendment shall ever be made to this Declaration of Trust, increasing or enlarging the liability of either the Trustee or the Certificateholders as herein stipulated.

#### ARTICLE VII LIMITATION OF LIABILITY OF TRUSTEE; INDEMNIFICATION

The Trustee shall not be liable hereunder in any event or under any circumstances, for the acts or omissions of any other Trustee or of any officer, agent or employee, or any other person whatsoever, whether employed by such Trustee or not, or for any act or thing whatsoever, other than such Trustee's own willful misconduct or gross negligence. The Trustee in its individual capacity and as Trustee shall be indemnified by, and receive reimbursement from the Trust Estate against and from any and all liability, claim, damage or loss, suit, action, tax (including interest and penal ties), fine, penalty, cost and expense (including but not limited to legal fees and disbursements) of whatsoever kind and nature which may be imposed upon, incurred by or asserted at any time against the Trustee (in its individual or trust capacity) in any way relating to or arising out of the administration of the Trust Estate, or arising from any act or omission hereunder or under the Transaction Documents, except such as may arise from such Trustee's own willful misconduct or gross negligence. In addition, the Trustee shall be entitled to indemnification from the Trust Estate for any liability, obligation, loss, damage, penalty, tax, claim, action, suit, cost, expense or disbursement indemnified against pursuant to this Article VII and to secure the same the Trustee shall have a lien on the Trust Estate prior to the interest of the Certificateholders or any other person. Trustee shall file all tax returns and other governmental reports required to be filed by the Trustee in connection with the transaction contemplated hereby. Without limiting the foregoing, the Trustee shall under no circumstances be required to take any action or omit to take any action in the administration of the Trust Estate or otherwise in connection with the transactions contemplated hereunder unless the Trustee determines in its absolute discretion that indemnification in respect of such action or omission is available to it to its reasonable satisfaction, provided that the Trustee shall not be required to take or omit any action if the Trustee shall have been advised by its counsel that taking or omitting such action is contrary to the terms of any other agreement or instrument referred to herein or is otherwise contrary to law. The indemnities contained in this Article VII shall survive the termination of this Trust Agreement.

The Trustee shall not be entitled to receive compensation for its services from the Trust Estate. The Trustee shall not have any duty or obligation to manage, control, use, sell, dispose or otherwise deal with the Trust Estate or to otherwise refrain from taking any such action under or in connection with this Trust Agreement or the other agreements or instruments referred to herein except as expressly provided by the terms of this Trust Agreement, and no implied duties shall be read into this Trust Agreement against the Trustee. The Trustee shall not be answerable or accountable under any circumstances except for its own willful misconduct or gross negligence. The Trustee shall no duty to see to the payment or discharge of any tax, assessment or other governmental charge or any lien or encumbrance of any kind owing with respect to, or assessed or levied against, any part of the Trust Estate.

The Trustee shall at all times be entitled to request and receive instructions from the Certificateholders prior to being required to take or omit to take any action hereunder, provided that except as therein specified no further instruction is required for taking of the actions provided by the second sentence of Article V hereof.

THE TRUSTEE MAKES NO REPRESENTATION OR WARRANTY AS TO THE VALUE, CONDITIONS, MERCHANTABILITY, FITNESS FOR USE, VALIDITY, ENFORCEABILITY OF OR TITLE TO ANY PROPERTY AT ANY TIME CONSTITUTING PART OF THE TRUST ESTATE, and makes no representation or warranty as to the validity, legality or enforceability of this Trust Agreement or any agreement or instrument referred to herein, except that the Trustee hereby represents and warrants that this Trust Agreement has been duly executed and delivered by one of its officers, who is duly authorized to execute and deliver such document on its behalf.

The Trustee shall not incur any liability to anyone in acting upon any signature, instrument, notice, resolution, request, consent, telegram, order, certificate, report, opinion, bond, or other document or paper believed by it to be genuine and believed by it to be signed or sent by the proper party or parties. As to any fact or matter, the manner of ascertainment of which is not specifically described herein, the Trustee may for all purposes rely on a

certificate signed by an officer of any Certificateholder as to such fact or matter, and such certificate shall constitute full protection to the Trustee for any action taken or omitted to be taken by it in reliance thereon. In the performance of its duties hereunder, the Trustee may act directly or through its agents or attorneys and may, at the expense of the Trust Estate, consult with counsel, accountants and other skilled persons to be selected and employed by it, and the Trustee shall not be liable for anything done, suffered or omitted by it in accordance with the advice or opinion of any such counsel, accountants or other skilled persons.

The Trustee or successor trustee may resign at any time without cause by giving at least 10 days' prior written notice to the Certificateholders, such resignation to be effective on the date specified in such notice. In such event, the Certificateholders shall appoint such new Trustee. If a successor trustee shall not have been appointed prior to the effective date of such resignation, the Trustee may apply to any court of competent jurisdiction to appoint a successor trustee until such time, if any, as a successor trustee shall have been appointed. Any successor trustee shall execute and deliver to the predecessor trustee an instrument accepting such appointment and thereupon the predecessor trustee shall be released from its obligations hereunder and the successor trustee shall be vested with all rights, powers, duties and obligations of the Trustee hereunder, and the predecessor trustee shall transfer, deliver, and pay over, at the expense of the Trust Estate, any monies or other property then held by such predecessor trustee upon the Trust herein expressed.

All monies received hereunder by the Trustee shall constitute trust funds for the purpose of which they were paid or are held, but need not be segregated in any manner from any other monies and may be deposited and paid by the Trustee under such conditions as may be prescribed or permitted by law for trust funds.

#### ARTICLE VIII CERTIFICATEHOLDERS, LACK OF CONTROL AND MANAGEMENT

No Certificateholder shall have any title, legal or equitable, to the Trust Estate, real or personal, held from time to time by the Trustee, or to any part thereof, or any right or voice in the management or control of the property or affairs of the Trust, each Certificateholder's interest being only such as is defined in this Declaration of Trust. No Certificateholder shall have the right to call for or demand or secure any partition or accounting during the continuance of this Trust. Its interest in this Trust shall be personal property, carrying only the right to payments pursuant to the Certificate. The Trust shall not be dissolved, nor affected by the death, insolvency or incapacity of the Certificateholder or one or more of the Trustees, nor shall such death, insolvency or incapacity entitle the legal representatives or heirs or assigns, voluntary holder, receiver or trustee to any accounting or to any action at law or in equity or otherwise, against the Certificateholders or Trustee, or against the Trust Estate, or any part thereof, but such legal representative, heir, assign, receiver, or trustee shall succeed to the rights of the deceased, insolvent, bankrupt or incapacitated Certificateholder, subject to this Declaration of Trust and any amendments hereto, and shall succeed to nothing more.

#### ARTICLE IX NO PARTNERSHIP

It is expressly declared that a trust, and not a partnership, is created and established by this instrument. Neither the Trustee nor any Certificateholder shall ever be deemed in any way whatsoever to be liable or responsible hereunder as partners or otherwise.

ARTICLE X  
CERTIFICATEHOLDERS; NO PERSONAL LIABILITY

No assessment or other personal liability or obligation shall, under any circumstances or in any event, be made or imposed upon the Certificateholders.

ARTICLE XI REFERENCE TO INSTRUMENT

The Trustee shall, as far as practicable, make reference to the Declaration in every written contract or undertaking that shall be entered into in the name of the Trustee or on behalf of, or relating to the business, affairs or property of this Trust.

ARTICLE XII RELATIONSHIP WITH THIRD PARTIES; NO INQUIRY

In no event and under no circumstances shall any one dealing with the Trustee be obligated either at law or in equity to see to the application of any funds or properties passing into the hands of the Trustee, there being no intention that purchasers of Trust property, or any other parties dealing with the Trustee, shall see that the purchase money is applied to the purposes of the Trust.

ARTICLE XIII INTEREST AND EARNINGS

The Capital of the Trust and the earnings and interest thereon shall be apportioned and distributed to the Certificateholders in accordance with this Declaration and the Certificates issued by the Trustee.

ARTICLE XIV AGREEMENT OF CERTIFICATEHOLDERS

The Certificateholders shall be held to have assented to this Declaration of Trust, and to all acts performed by Trustee within the authority granted by this Declaration.

ARTICLE XV TERM AND TERMINATION

Unless earlier terminated, as hereinafter provided, this Trust shall continue until the earlier of either (i) ten years from the date first hereinabove mentioned or (ii) the date when the Trust shall have distributed all of its Capital. The Trustee may otherwise terminate this Trust only with the unanimous written consent of the Certificateholders, provided, however, that any termination of the Trust shall not impair or have any effect whatever upon the contracts, obligations, and liabilities of said Trust Estate existing or outstanding at the time of such termination. At the expiration or upon the termination of the Trust, the Trustee shall proceed to wind up its affairs, liquidate its assets and distribute the same to the Certificateholders, without recourse or warranty of any kind, and for these purposes the then Trustee shall continue act until such duties have been fully performed. Upon completion of such duties, the Trustee shall be deemed discharged in full.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals as of the 2<sup>nd</sup> day of September 2009.

MCGINN, SMITH CAPITAL HOLDINGS CORP., not in its individual capacity, except as specified herein, but solely as Trustee under this Declaration of Trust dated as of September 2, 2009

By: \_\_\_\_\_  
David L. Smith

STATE OF NEW YORK) COUNTY  
OF ALBANY) SS.:

On the 30<sup>th</sup> day of June in the year 2009 before me, the undersigned, a Notary Public in and for said State, personally appeared David L. Smith, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in her/his capacity, and that by her/his signature on the instrument, the individuals, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

**EXHIBIT “B”**

**SUBSCRIPTION AGREEMENT**

## SUBSCRIPTION AGREEMENT

THE CERTIFICATES WHICH ARE THE SUBJECT OF THIS AGREEMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED. THEY MAY NOT BE OFFERED FOR RESALE IN THE ABSENCE OF AN OPINION OF COUNSEL, SATISFACTORY TO THE TRUST, THAT REGISTRATION IS NOT REQUIRED. IN ADDITION, THIS AGREEMENT AND THE CERTIFICATES CONTAIN SUBSTANTIAL RESTRICTIONS ON TRANSFERABILITY.

### TDM VERIFIER TRUST 11 (a New York Trust)

TO: TDM VERIFIER TRUST 11 (the "Trust"):

1. Subscriptions. I hereby subscribe for and agree to purchase the dollar amount of the Trust's Certificates (the "Certificates") as is set forth opposite my name acknowledging the minimum purchase to be Ten Thousand Dollars (\$10,000) and increments of Five Thousand Dollars (\$5,000).
2. Payment. I hereby agree to pay the Trust the purchase price for the Certificates by delivery herewith of a check in the face amount of the Certificates subscribed for payable to the order of "**M&T BANK"-Escrow Agent for TDM Verifier Trust 11**".
3. Restriction on Transfer of the Certificates. I understand that any resale or transfer of the Certificates by me is subject to substantial restriction, in that:
  - (i) The Certificates have not been registered under the Securities Act of 1933, as amended, or applicable state securities laws. The Certificates cannot be sold or transferred by subscribers in the absence of an opinion of counsel that registration is not necessary. The Trust is not required to register the Certificates or to make any exemption from registration available.
  - (ii) My right to sell or transfer any of the Certificates will be restricted as follows: (1) restrictions against sale or transfer in violation of applicable securities law; (2) the requirement that I furnish an opinion of counsel that any proposed sale or transfer by me will not violate such laws; (3) the Trust must consent to the transfer of my Certificates; and (4) other restrictions and requirements, including such restrictions on transfer arising under state securities laws.
  - (iii) There will be no public market for the Certificates, and I may not be able to sell my Certificates. Accordingly, I must bear the economic risk of my investment for an indefinite period of time.
4. Investment Representation. I represent and warrant that I am acquiring my Certificates for my own account and not on behalf of other persons, and that I am acquiring my Certificates for investment purposes only and not with a view to the resale or distribution thereof; I understand that the Certificates will be offered and sold in a manner which would qualify the transaction for an exemption as a private placement under Rule 506 of the Securities Act of 1933, as amended. The Certificates may not be transferred or assigned except as provided herein.
5. Subscription Irrevocable by Certificateholder. This Subscription Agreement is not, and shall not be, revocable by me, except as provided by applicable state securities law requirements, and I intend to be legally bound by this Subscription Agreement.
6. Subscription Subject to Acceptance or Rejection by the Trust. The Trust, in its sole discretion, shall have the right to accept or reject this subscription at any time on or before the Closing.

7. Offering of Certificates Subject to Withdrawal. If the Trust does not receive subscriptions for Certificates in the minimum amount of \$250,000.00 before the Termination Date, as such date may be extended, the Offering of Certificates will be withdrawn and I understand that all my subscription documents and payments will be returned to me, with interest, less the cost of escrow, and without further obligation of the Trust.
8. Additional Representations and Warranties. I represent and warrant that:
- (a) (i) I have received and have carefully read and understood the Private Placement Memorandum dated September 3, 2009 (the "Memorandum") given to me by the Trust in connection with the offering of Certificates.
  - (ii) I have been furnished with all additional documents and information which I have requested.
  - (iii) I have had the opportunity to ask questions of and receive answers from the Trust concerning the Trust and the offering of Certificates and to obtain any additional information necessary to verify the accuracy of the information furnished.
  - (iv) I have relied only on the foregoing information and documents in determining to make this subscription, and the decision to acquire Certificates of the Trust has been made based upon my own evaluation of the merits and risks of the Trust.
  - (v) I will not offer to sell, or resell, the Certificates except in accordance with Section 3(ii) hereof.
  - (vi) I will require any purchaser to provide the Trust with his address.
- (b) I recognize that investment in the Certificates involves substantial risk factors, including those set forth under "Risks" in the Memorandum.
- (c) I have adequate means of providing for my current needs and possible personal contingencies, and I have no need for liquidity in my investment in the Certificates.
- (d) My overall commitment to investments which are not readily marketable is not disproportionate to my net worth and my purchase of Certificates will not cause such overall commitment to become excessive.
9. Indemnification and Hold Harmless. If I breach any agreement, representation or warranty I have made in this Subscription Agreement or any other document I have executed in connection with this offering, I agree to indemnify and hold harmless the Trust, the Trustee, or any officer or director of the Trustee and any person controlling either or any of them against any claims, actions, liability, loss, damage or expense (including attorney's fees and other costs of investigation and litigating claims) caused, directly or indirectly, by my breach.
10. Subscriber Information. This Subscription and my Certificates shall be recorded on the Trust's books.

IN WITNESS WHEREOF, I have executed this Subscription Agreement this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

\_\_\_\_\_  
*Print exact name in which title is to be held*

Name: _____ <div style="display: flex; justify-content: space-between; width: 90%; margin-left: 10%;"> <span>Printed Name</span> <span>Tax ID #</span> </div> Signature: X _____  Address: _____ _____	_____ <div style="display: flex; justify-content: space-between; width: 90%; margin-left: 10%;"> <span>Printed Name</span> <span>Tax ID#</span> </div> Signature X _____  Amount Purchased: \$ _____ <input type="checkbox"/> 9.00%
---	--



ACCEPTED BY TDM VERIFIER TRUST 11 this \_\_\_\_ of \_\_\_\_\_, 20\_\_.

**McGinn, Smith Capital Holdings Corp.  
Trustee**

By: \_\_\_\_\_  
David L. Smith, Principal  
or Timothy M. McGinn, Principal

**EXHIBIT “C”**

**INVESTOR REPRESENTATION LETTER**

**CONFIDENTIAL**

**PURCHASER QUESTIONNAIRE FOR INDIVIDUALS**

**TDM VERIFIER TRUST 11  
(A New York Trust)**

The offering is being made pursuant to Regulation D under the Securities Act of 1933, as amended, (the "Act"). One of the requirements of the Regulation is that the persons involved in the offering and sale of the securities must have reasonable grounds to believe either:

(i) that the Offeree has such knowledge and experience in financial and business matters that he is capable of evaluating the merits and risks of the prospective investment; or

(ii) the undersigned is acquiring the Certificates for investment purposes only and not with a view towards resale.

The undersigned is aware that this offering will involve Certificates for which no resale market exists, thereby requiring this investment to be maintained for the stated term of each Certificate.

Your answers will, at all times, be kept strictly confidential; however, each party who signs the questionnaire hereby agrees that the Trust may present this questionnaire to such parties as may seem appropriate in order to insure that the offer and sale of the Certificates to you will not result in violation of any exemption from registration under the Act which may be relied upon by the Trust in connection with the sale of the Certificates.

Please complete this questionnaire as thoroughly as possible and sign, date and return one (1) copy to the Trust c/o McGinn, Smith & Co. Inc., 5th Floor, 99 Pine Street, Albany, New York 12207.

Please print or type:

Name: \_\_\_\_\_

Home Address: \_\_\_\_\_

\_\_\_\_\_

Date of Birth: \_\_\_\_\_

Social Security No.: \_\_\_\_\_

Occupation: \_\_\_\_\_

Business Address: \_\_\_\_\_

Business Telephone: \_\_\_\_\_

Home Telephone: \_\_\_\_\_

Communications should be sent to:

Home Address \_\_\_\_\_ or Business Address \_\_\_\_\_

1. What is your approximate net worth?

\_\_\_\_\_ \$50,000 - \$100,000  
\_\_\_\_\_ \$100,000 - \$250,000  
\_\_\_\_\_ \$250,000 - \$500,000  
\_\_\_\_\_ \$500,000 - \$1,000,000  
\_\_\_\_\_ Greater than \$1,000,000

2. Did your individual income exceed \$200,000.00 in 2007 and 2008, or did your joint income with your spouse exceed \$300,000.00 in each of those years?

Yes \_\_\_\_\_ No \_\_\_\_\_

3. If the answer to #2 above is "yes", do you expect to reach the same income level in 2009?

Yes \_\_\_\_\_ No \_\_\_\_\_

4. What was your approximate gross income for calendar year 2008?

\_\_\_\_\_ \$25,000 - \$100,000  
\_\_\_\_\_ \$100,000 - \$200,000  
\_\_\_\_\_ \$200,000 - \$300,000  
\_\_\_\_\_ \$300,000 - \$500,000  
\_\_\_\_\_ Greater than \$500,000

5. What will your approximate gross income be for calendar year 2009?

\_\_\_\_\_ \$25,000 - \$100,000  
\_\_\_\_\_ \$100,000 - \$200,000  
\_\_\_\_\_ \$200,000 - \$300,000  
\_\_\_\_\_ \$300,000 - \$500,000  
\_\_\_\_\_ Greater than \$500,000

To the best of my information and belief, the above information is accurate and complete in all respects.  
I agree to notify the Trust promptly of any changes which occur prior to sale of the Certificates.

Purchaser

Date:

\_\_\_\_\_  
Name (printed)

\_\_\_\_\_  
Signature

CONFIDENTIAL

PURCHASER QUESTIONNAIRE FOR CORPORATIONS AND PARTNERSHIPS

TDM VERIFIER TRUST 11  
(A New York Trust)

The offering is being made pursuant to Regulation D under the Securities Act of 1933, as amended, (the "Act"). One of the requirements of the Regulation is that the persons involved in the offering and sale of the securities must have reasonable grounds to believe either:

(i) that the Offeree has such knowledge and experience in financial and business matters that he is capable of evaluating the merits and risks of the prospective investment; or

(ii) that the Offeree and its Offeree Representative(s), together, have such knowledge and experience in financial and business matters, that they are capable of evaluating the merits and risks of the prospective investment and that the Offeree is able to bear the economic risk of the invest.

The purpose of this Questionnaire is to assist TDM VERIFIER TRUST 11 (the "Trust") in complying with the above requirement.

Please contact McGinn, Smith & Co, Inc., 5th Floor, 99 Pine Street, Albany, New York 12207 (518-449-5131) if you have any questions in answering this questionnaire.

If the answer to any questions "None" or "Not Applicable", please so state.

Your answers will, at all times, be kept strictly confidential; however, each party who signs the Questionnaire hereby agrees that the Trust may present this Questionnaire to such parties as may seem appropriate in order to insure that the offer and sale of the Certificates to you will not result in violation of any exemption from registration under the Act which may be relied upon by the Trust in connection with the sale of the Certificates.

Please complete this Questionnaire as thoroughly as possible and sign, date and return one (1) copy to the Trust c/o McGinn, Smith & Co. Inc., 5th Floor, 99 Pine Street, Albany, New York 12207.

Please print or type:

Name of Organization: \_\_\_\_\_

Business Address: \_\_\_\_\_

Business Telephone: \_\_\_\_\_

Federal ID Number: \_\_\_\_\_

1. Was the organization formed for the specific purpose of acquiring the Trust's Certificates?

Yes \_\_\_\_\_ No \_\_\_\_\_

2. Does the organization possess total assets in excess of \$5,000,000?

Yes \_\_\_\_\_ No \_\_\_\_\_

3. Does each equity owner of the organization:

A. Have a net worth, exclusive of home, furnishings, and automobiles, of at least \$1,000,000?

Yes \_\_\_\_\_ No \_\_\_\_\_

B. Had an individual net income in excess of \$200,000 in 2007 and 2008, or joint income with that person's spouse in excess of \$300,000 in each of those years, and have a reasonable expectation of reaching the same income level in 2009?

Yes \_\_\_\_\_ No \_\_\_\_\_

4. I am aware that the Certificates proposed to be offered will not be readily marketable or transferable.

Yes \_\_\_\_\_ No \_\_\_\_\_

5. The organization can afford the complete loss of its investments in the Certificates and has no need for liquidity in this investment.

Yes \_\_\_\_\_ No \_\_\_\_\_

6. Stated below are the organization's previous investments in similar securities and other private placements during the past five years:

\_\_\_\_\_  
\_\_\_\_\_

7. I understand that, unless the organization satisfies certain criteria, in order to qualify as a purchaser of Certificates, I must have sufficient knowledge and experience in financial and business matters to be capable of evaluating the merits and risks of an investment in the Trust or I must engage an attorney, accountant or other financial advisor for the purpose of this particular transaction.

I hereby represent, by initialing on the Representation A or Representation B line below, that:

A. I have such knowledge and experience in financial and business matters that I am capable of evaluating the merits and risks of an investment in the Certificates and will not require a Purchase Representative.

Representation A. \_\_\_\_\_

B. I have relied upon the advice of the following Purchaser Representative(s) in evaluating the merits and risks of an investment in the Certificates:

Representation B. \_\_\_\_\_

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
Relationship

\_\_\_\_\_  
Relationship

To the best of my information and belief, the above information is accurate and complete in all respects. I agree to notify the Trust promptly of any changes which occur prior to sale of the Trust's Certificates.

Purchaser:

Date:

\_\_\_\_\_  
Print Name of Organization

By: \_\_\_\_\_

Title: \_\_\_\_\_

## PURCHASER REPRESENTATIVE QUESTIONNAIRE

### TDM VERIFIER TRUST 11

The information contained herein is being furnished to TDM VERIFIER TRUST 11 (the "Trust") in order to facilitate a determination as to whether the undersigned may act as a Purchaser Representative, as such term is used in Regulation D promulgated under the Securities Act of 1933, as amended, (the "Act"), in connection with the proposed offer and sale by the Trust of its Contract Certificates (hereinafter referred to as the "Certificates"). The answers below are correct, and the Trustee is entitled to rely on them in making the foregoing determination.

### REPRESENTATIONS

I represent, warrant and covenant to you that:

(a) the information contained herein is complete and accurate and may be relied upon by you in determining whether I may act as a Purchaser Representative pursuant to Regulation D in connection with offers and sales of the Certificates;

(b) I will notify you immediately of any material change in any of such information occurring within ninety (90) days of the close of sale of the Certificates to the Purchaser;

(c) (i) I have been designated, or will be designated, pursuant to the Purchaser Questionnaire of each Purchaser, as the Purchaser Representative or such Purchaser, in connection with evaluating the merits and risks of his prospective investment in the Certificates;

(ii) I have disclosed or will disclose, to each Purchaser, in writing, prior to the designation referred to above, any material relationship between me or my affiliates and the Trust, which now exists or is mutually understood to be contemplated, or which has existed at any time during the previous two (2) years, and any compensation received as a result of such relationship, including any compensation received in connection the offering of Certificates herein; and

(iii) I will deliver to each of you a counterpart of the disclosure statement referred to in (ii) above, and such other documents or information as each of you may request relating to the performance by me of my duties as a Purchaser Representative.

(Attach additional sheets if required)

1. Name: \_\_\_\_\_

Age: \_\_\_\_\_

Social Security No.: \_\_\_\_\_

2. Names of offerees I am representing:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. Firm name: \_\_\_\_\_

Empl. Iden. No.: \_\_\_\_\_

Position: \_\_\_\_\_

Nature of Duties: \_\_\_\_\_

Business Address: \_\_\_\_\_

Business telephone number: (\_\_\_\_) \_\_\_\_\_

4. Prior occupations or positions during the past five years:

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5. Description of prior experience in advising clients with respect to investments, including a description of the types of investments, the dollar amounts involved, and the number of years of experience which you have in financial, business and tax oriented matters:

General Investments (specify)

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Private Placements (specify)

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Other Investments (specify)

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6. The Professional licenses or registrations (including bar admissions, accounting certificates, real estate brokerage licenses, broker-dealer or investments advisory registrations) held by me are as follows:

Registration	Year Received	Is License or Registration Still Effective?
_____	_____	_____
_____	_____	_____
_____	_____	_____

7. My educational background, including degrees obtained and date of attendance:

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8. (a) Neither I nor any of my affiliates now have or have had any material relationship with the Trust or any of its affiliates, are not affiliates or the Trust, and no such relationship is contemplated in the future, except as follows:

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(b) The amounts of compensation received or to be received as a result of the material relationship(s) described in Item 8(a)(including any compensation received or to be received in connection with this transaction) are as follows:

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9. Neither I nor any of my affiliates own beneficially any interest in the Trust except as follows:

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10. I have received and read the Trust's Private Placement Memorandum dated September 3, 2009 and Exhibits thereto and have reviewed it with the Offeree.

11. Other comments or disclosures:

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\_\_\_\_\_  
Purchaser Representative Signature

\_\_\_\_\_  
Type Purchaser Representative Name

\_\_\_\_\_  
Firm Name

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
City and State

( ) \_\_\_\_\_  
Telephone

Acknowledgement of Investor(s)

I acknowledge receipt of the foregoing disclosures this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_, and this represents my acknowledgment in writing to the Trust that I have read the foregoing and desire that the above stated person serve as my Purchaser Representative with respect to the offering of the Trust's Certificates.

\_\_\_\_\_  
Investor's Signature

\_\_\_\_\_  
Investor's Signature

\_\_\_\_\_  
Invstor's Signature

**\$1,550,000 MAXIMUM  
\$250,000 MINIMUM**

## **TDM Verifier Trust 11**

**CONTRACT CERTIFICATES  
EIGHTEEN MONTHS—9.00%**

### **PRIVATE PLACEMENT MEMORANDUM**

**DUE FEBRUARY 15, 2011**

**MCGINN, SMITH & CO., INC.  
ALBANY, NEW YORK**

**SEPTEMBER 3, 2009**

No dealer, salesman or other person has been authorized to give any information or to make any representations other than those contained in this Memorandum and if given or made, such information or representations must not be relied upon as having been authorized. This Memorandum does not constitute an offer to sell or a solicitation of an offer to buy any securities to which it relates. This Memorandum does not constitute an offer to sell or a solicitation of an offer to buy such securities in any jurisdiction to any person to whom it is unlawful to make such an offer or solicitation in such jurisdiction. Neither the delivery of this Memorandum nor any sale hereunder shall, under any circumstances, create any implication that there has been no change in the affairs of the Trust since the date hereof or that the information contained herein is correct as of any time subsequent to its date. However, in the event of any material change, this Memorandum will be amended, supplemented or updated accordingly.

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CONFIDENTIAL PRIVATE PLACEMENT MEMORANDUM

**\$3,250,000**

**13% due March 1, 2010**

**CRUISE CHARTER  
VENTURES TRUST 08**

**MAXIMUM OFFERING \$3,250,000**

**MINIMUM OFFERING \$250,000**

CRUISE CHARTER VENTURES TRUST 08 (the "Trust Fund") is hereby offering \$3,250,000 of Contract Certificates entitled to interest at the per annum rate of 13% per annum (the "Certificates"). Interest on the Certificates is payable in quarterly installments commencing June 1, 2008. See "Description of the Certificates and the Trust Agreement".

The Certificates will be issued and registered in the names of the purchasing Certificateholders. Interests in the Certificates will be shown on, and transfers thereof will be effected through, records maintained by the Trustee under the Trust Agreement. See "Description of the Certificates and the Trust Agreement."

Price of Certificates 100%

See "Risk Factors" for a discussion of certain risks that should be considered by prospective purchasers of the Certificates offered hereby.

THESE CERTIFICATES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION OR ANY STATE SECURITIES COMMISSION NOR HAS THE SECURITIES AND EXCHANGE COMMISSION OR ANY STATE SECURITIES COMMISSION PASSED UPON THE ACCURACY OR ADEQUACY OF THIS MEMORANDUM. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

	Price to the Public	Underwriting Discount	Proceeds to the Trust Fund
	100%	4%	96%
Minimum Offering	\$250,000	\$10,000	\$240,000
Maximum Offering	\$3,250,000	\$130,000	\$3,120,000

The date of this Memorandum is February 14, 2008

**MCGINN, SMITH & CO., INC.**

**Capital Center • 99 Pine Street**

**Albany, New York 12207**

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5/12/11

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The Offering of Certificates will terminate on May 31, 2008, unless the Minimum Amount of Certificates are sold prior to that date. All subscriptions will be held in an escrow account (the "Escrow Account") at Mercantile Bank, Boca Raton, Florida (the "Escrow Agent") or such other financial institution as may be selected by the Trustee of the Trust Fund in the event that the Escrow Agent is unable or unwilling to serve. Interest will be earned on funds held in the Escrow Account commencing three days after the funds are deposited until the earlier of the termination of this Offering or the investment of such funds in Certificates. During the period that an investor's funds are held in the Escrow Account, such investor will not be a Certificateholder of the Trust Fund. An investor's funds will not be held in the Escrow Account more than two months before being invested in the Certificates, with Escrow Agent fees being deducted from escrow interest payable to investors. See "Terms of the Offering".

The Trust Fund will furnish to investors certain reports, financial statements and tax information. See "Description of the Certificates and the Trust Agreement - Reports".

### WHO MAY INVEST

The Certificates will generally be offered only to accredited investors ("Accredited Investors") as that term is defined under Regulation D promulgated under the Securities Act of 1933, as amended (the "Act"). McGinn, Smith & Co., Inc. (the "Sales Agent") may, however, offer and sell Certificates to 35 or fewer non-accredited investors. With certain exceptions (primarily with respect to institutional investors) an Accredited Investor is an individual who (i) has a net worth (along and together with the Investor's spouse) in excess of \$1,000,000 or (ii) has had gross income in excess of \$200,000 in each of the past two years or joint income with that person's spouse in excess of \$300,000 in each of those years and reasonably expects gross income at the same level in the current year. Corporations, partnerships and other entities will be considered Accredited Investors if each of its beneficial owners individually qualify as Accredited Investors, or if such entity has total assets in excess of \$5,000,000. Prospective investors to be admitted as Accredited Investors will be required to represent that they satisfy the requirements of an Accredited Investor. See "Suitability".

The Certificates offered hereby are suitable only for those investors whose business and investment experience makes them capable of evaluating the merits and risks of their prospective investment in the Certificates, who can afford to bear the economic risk of their investment for an indefinite period of time and have no need for liquidity in this investment. Each investor will be required to represent in a Subscription Agreement that such investor is acquiring the Certificates for such investor's own account as principal for investment, and not with a view to resale or distribution, and that such investor is aware that (a) such investor's transfer rights are restricted; and (b) that the Certificates have not been registered under the Act, and therefore, cannot be resold unless they are so registered or unless exemption from registration is available with respect to such transaction. (See "Suitability".) Since there can be no assurance that there will be sufficient income available to pay the Certificates, investment in the Certificates is suited for persons who have substantial income from other sources. See "Risk Factors".

The Trust Fund may require prospective investors to complete a questionnaire relating to the suitability of the investment for them, and may make or cause to be made such further inquiry as it deems appropriate. The Trust Fund and Sales Agent will collectively have the sole discretion regarding sale of the Certificates to any prospective investor. The Trust Fund and Sales Agent reserve the right to reject any subscription for any reason and to allocate to any investor a smaller amount of Certificates, or fractions thereof, than that for which such investor has subscribed. See "Suitability".

## SUMMARY OF THE OFFERING

The following summary is qualified in its entirety by the detailed information appearing elsewhere in this Memorandum and the exhibits attached to this Memorandum.

### The Trust Fund

CRUISE CHARTER VENTURES TRUST 08 (the "Trust Fund") is a common law trust formed under the laws of the State of New York on February 12, 2008. The Trustee of the Trust Fund is McGinn, Smith Capital Holdings Corp., a New York Corporation. The Trustee of the Trust Fund will have no liability in connection with the Certificates or the affairs of the Trust Fund in the absence of willful misconduct or gross negligence. However, Certificateholders will have recourse to all assets of the Trust Fund, which include an obligation of Cruise Charter Ventures LLC ("CCV") to pay to the Trust Fund an amount equal to that advanced by the Trust Fund to CCV plus interest thereon calculated at a rate of 10.00% per annum.

CCV will use the net proceeds of the offering to (i) charter M/V Princess Cruises' Sapphire Princess for a one week cruise from Los Angeles, departing January 24, 2009, the cost of which charter will be approximately \$2,300,000 (ii) underwrite the marketing, sales and administration expenses associated with selling 2,678 berths for the cruise and (iii) if successful, replicating the plan for additional cruises.

### The Investment

Certificateholders will purchase a Certificate with a two year maturity due March 1, 2010. The rate of interest payable on the Certificates will be 13% per annum, payable quarterly.

Certificates may be purchased in denominations of \$5,000 with a minimum purchase of \$10,000.

### Risk Factors

In evaluating this Offering, prospective investors should consider carefully, among others, the following risk factors:

- No assurance that the Certificates will be paid;
- No market for resale of Certificates;
- Illiquid collateral;
- Potential for CCV loan defaults;
- Potential conflicts of interest in connection with the acquisition of the assets to be consigned to the Trust Fund;
- No amortization of principal.

### Description of the Certificates and the Trust Agreement

The Certificates will be issued under a Declaration of Trust by McGinn, Smith Capital Holdings Corp., the Trustee. The Certificates will be available for purchase in denominations of \$5,000.00 with a minimum investment of \$10,000.00. The Certificates will be registered in the name of the individual Certificateholders. See "Description of the Trust Agreement and the Certificates."

The Certificates will bear interest at a per annum rate of 13%. Interest will accrue commencing on the Closing Date for the purchase of such Certificate and will be payable to Certificateholders quarterly on the first day of each quarter commencing June 1, 2008.

### Use of Proceeds

The net proceeds from the Offering will be lent to CCV for the charter of the M/V Sapphire Princess and the sale, marketing and administrative expenses associated with selling 2,678 berths for the cruise.

### **Income Tax Considerations**

The Certificates will be treated as indebtedness of the Trust Fund for federal income tax purposes. Each Certificateholder will generally be required to report interest income on a Certificate in accordance with such Certificateholder's method of accounting. Each prospective investor should consult with his or her own tax advisor with respect to the tax consequences of the acquisition, ownership and disposition of the Certificates.

### **RISK FACTORS**

In evaluating this Offering, prospective investors should consider carefully all of the information contained in this Memorandum and, in particular, the factors discussed below. The following summary is not intended to state in full or replace portions of this Memorandum that discuss these factors and others in greater depth. Although the risk factors are intended to be presented in order of their materiality to investors, such order may not be indicative of their relative importance to any particular investor.

#### **Limitation of Transfer of Certificates**

The Certificates may not be offered for resale to any person without the consent of the Trust Fund. Prior to this offering there has been no market for the Certificates of the Trust Fund. Each investor will be required to represent that such investor's purchase of the Certificates will be for investment only and not with a view towards the resale or distribution thereof. A Certificateholder will not have any right to sell, transfer, exchange or otherwise dispose of such Certificateholder's Certificates, or to cause a security interest to be created therein, unless the Trust Fund has received evidence satisfactory to it that such disposition or creation of a security interest is not in violation of federal or state securities laws. The Certificates have not been registered or qualified under the Act or applicable state securities laws and may not be sold or transferred without such registration or qualification or an exemption therefrom.

#### **Potential for Payment Defaults**

Default by CCV on its obligations to the Trust would result in an interruption in available cash distributed to Certificateholders and could cause significant loss of principal.

#### **No Monthly Amortization Schedule**

There will be no amortization of the principal arising out of the cash flow generated from the sale of berths. It is anticipated that the Certificates will be liquidated on March 1, 2010.

#### **No Independent Counsel to Investors**

Purchasers of the Certificates offered hereby will not be afforded the services of independent counsel. Disclosure of material facts and risks has been reviewed by counsel to the underwriter.

#### **Lack of Financial Statements**

This Memorandum does not include financial statements for the Trust Fund. The Trust Fund is newly formed for the limited purpose of lending approximately \$2,600,000 to CCV.

#### **Conflicts of Interest**

The Trust Fund will lend approximately \$2,600,000 to CCV. CCV is 50% owned by McGinn, Smith Holdings, LLC, the parent of McGinn, Smith & Co., Inc., the placement agent for this offering. The Trustee of the Trust is McGinn, Smith Capital Holdings Corp., the Sales Agent for this offering is McGinn,

Smith & Co., Inc. McGinn, Smith Holdings, LLC is also the parent of McGinn, Smith Capital Holdings Corp.

### USE OF PROCEEDS

The net proceeds to the Trust Fund from the sale of the Certificates offered hereby, after deducting the Underwriting Discount, will be approximately \$3,120,000 (96% of gross proceeds) if the Maximum Offering for the Certificates is achieved.

The net proceeds to the Trust Fund from the sale of the Certificates offered hereby, after deducting the Underwriting Discount, will be approximately \$240,000 (96% of gross proceeds) if the Minimum Offering for the Certificates is achieved.

The Trust Fund intends to lend 100% of the Net Proceeds of the offering to CCV.

Maximum Offering	
<u>Sources</u>	
Maximum Net Proceeds	\$3,120,000
<u>Uses by Cruise Charter Ventures Trust 08</u>	
Legal Fees	15,000
Printing, Marketing, Postage	5,000
Loan to CCV	2,600,000
Trust Administration Fee	300,000
Debt Service Reserve Fund	200,000
Total uses by Cruise Charter Ventures Trust 08	\$3,120,000

Minimum Offering	
<u>Sources</u>	
Minimum Net Proceeds	\$240,000
<u>Uses by Cruise Charter Ventures Trust 08</u>	
Legal Fees	15,000
Printing, Marketing, Postage	5,000
Loan to CCV	200,000
Trust Administration Fee	20,000
Total uses by Cruise Charter Ventures Trust 08	\$240,000

### THE TRUST FUND

The Trust Fund is a common law trust formed under the laws of the State of New York on February 12, 2008. The principal executive office of the Trust Fund is located at c/o McGinn, Smith Capital Holdings Corp., Trustee, Capital Center, 99 Pine Street, Albany, New York 12207, and its telephone number is 518-449-5131. McGinn, Smith Capital Holdings Corp. is the Trustee of the Trust Fund. The owner of all issued and outstanding common stock of the Trustee is McGinn, Smith Holdings LLC which is owned by Timothy M. McGinn (30%), David L. Smith (50%), and Thomas E. Livingston (20%). McGinn, Smith Holdings LLC is also the sole shareholder of McGinn, Smith & Co., Inc. which is the Sales Agent for the offering.



### **Business of the Trust Fund**

The Trust Fund has been formed solely for the purpose of lending the Net Proceeds from the sale of the Certificates to CCV. CCV will, in turn, contribute its charter of the M/V Sapphire Princess as well as the receipt of deposits made by those who choose to purchase berths for the January 24, 2009 cruise. Additionally, CCV may undertake additional charters in the Mexican Riviera, Caribbean or Mediterranean.

### **BUSINESS OF CRUISE CHARTER VENTURES LLC**

#### **Cruise Charter Ventures LLC**

Cruise Charter Ventures LLC ("CCV" or the "Company") is a newly created company that is owned 50% by McGinn, Smith Holdings, LLC, and 50% by the principals of Luxury Cruise Center, Inc. Luxury Cruise Center, Inc. ("Luxury Cruise") is based in Miramar, Florida and is one of the nation's largest specialty cruise travel agencies having sold 29,500 cruises for \$158.6 million of cruise revenue between inception in mid 2002 and December 31, 2007, of which 5,500 cruises for \$32 million of cruise revenue were sold in calendar year 2007.

McGinn, Smith Holdings, LLC is the parent of McGinn, Smith & Co., Inc. McGinn, Smith & Co., Inc. has successfully placed in excess of \$1 billion in various private and public transactions since it founding in 1980.

CCV is engaged in the business of procuring whole ship charters and then selling the berths to various affinity groups. CCV has not completed any such transactions. The charter contemplated to be financed by this offering is to be the charter of the M/V Sapphire Princess owned and operated by Princess Cruise Lines, Ltd., a Bermuda corporation.

CCV intends to draw on the cruise industry experience and expertise of the principals of Luxury Cruise to negotiate and procure the ship as well as to market and sell the 2,678 berths.

Under the agreement with Princess Cruise Lines, Ltd. the payment requirements for CCV to charter the M/V Sapphire Princess are as follows:

- a. a non-refundable deposit in the amount of \$571,532.30 on or before February 29, 2008;
- b. A non-refundable and irrevocable standby letter of credit in the amount of \$1,714,596.90; on or before February 29, 2008;
- c. A non-refundable deposit in the amount of \$571,532.30 on or before June 1, 2008;
- d. A non-refundable deposit in the amount of \$1,143,064.60 on or before October 1, 2008.

The standby letter of credit as described in b. above shall be reduced by the payments contemplated in c. and d. above.

In addition to the above costs CCV has agreed to pay Princess Cruise Lines, Ltd. an amount of \$350.00 per passenger for the number of passengers that are less than 2,678.

#### **Cruise Charter Ventures LLC Principals**

The Company's members are Paul Andreassen, who owns approximately 33%, Harry Sommer, who owns approximately 17%, and McGinn, Smith Holdings LLC, which owns 50% of the Company.

Paul was the Director of Treasury Operations of Renaissance Cruises between 1997 and 2000. He subsequently worked with Frank Del Rio to write the business plan for the future Oceania Cruises in 2001. Paul received his Ph.D. from Columbia University in 1984. His first career was as an academic during which he ultimately became an Associate Professor at Harvard University and a visiting scholar at Sloan School of Management, MIT and a resident scholar at the Jerome Levy Economics Institute. Following this he joined JM Family as Director of Long Term Product Development, where he received an Institutional Investor "Deal of the Year" award before moving into the cruise industry with Renaissance. Paul is married with two children.

Harry also worked at Renaissance between 1992 and 2000 in numerous management level positions culminating in Vice President of Revenue Management and Past Guest Marketing. He subsequently worked at Norwegian Cruise Lines between 2000 and 2001 as the Vice President of Revenue Management and Relationship Marketing before founding Luxury Cruise with Paul. Harry is a CPA and received his MBA in Corporate Finance from Pace University in New York. Harry is married with three children.

McGinn, Smith Holdings LLC is the parent of an investment banking firm headquartered in Albany, New York. Founded in 1980, the investment banking firm has raised in excess of \$1 Billion in both private and public transactions.

#### **Risk Factors**

An investment in the Trust involves a high degree of risk. The following risks, as well as the other risks discussed in "Risk Factors", should be carefully considered before participating in this offering:

- The Company has no operating history;
- The Company has not chartered ships of the size of the M/V Sapphire Princess and has had no experience in marketing entire ships;
- The Company's financial stability is totally dependent upon McGinn, Smith & Co., Inc.'s ability to raise sufficient capital to execute the business plan;
- The cruise industry is highly concentrated with the top two participants, Carnival and Royal Caribbean, controlling approximately 75% of the market. Changes in marketing strategy by these two firms could have a material adverse effect on the Company;
- The Company is highly dependent on its owners and managers, two of whom have extensive backgrounds in the cruise industry;
- The Company has no recurring revenues and is highly susceptible to factors affecting overall demand for cruises;
- The Company is highly reliant on its experienced sales agents;
- The Company is based in South Florida, which is susceptible to hurricanes which could interrupt operations,

#### **Corporate Information**

Cruise Charter Ventures LLC was organized as a Florida Limited Liability Company in December, 2007.

#### **Risk Factors**

*Investing in the Trust Fund involves a high degree of risk. Any of these risks could materially adversely affect the business, financial condition and results of operations and the fair market value of the Trust Fund, resulting in significant losses.*

## **Risks related to CCV**

### ***The Company has no operating history***

The Company is a start-up with no operating history, limited financial resources and only one full time employee.

### ***The cruise industry is highly concentrated***

The global cruise industry has been through a period of sustained consolidation which created today's two industry leaders Carnival and Royal Caribbean, which hold, through their multiple cruise lines, approximately 75% market share. Any material move away from use of the independent agency sales channel as the primary means of distributing the product to consumers would have a material adverse effect on the Company. While these industry leaders would like nothing more than to reduce expenses by internalizing agency commissions, their efforts to date have been unsuccessful for all cruises other than short Caribbean cruises costing less than \$500 per passenger. Were current consumer preferences for booking with independent travel agencies to change, this would have a material adverse effect on the Company.

### ***The Company is highly dependent on its owners and senior managers***

Paul Andreassen and Harry Sommer have uniquely relevant backgrounds, having both worked at high levels within a cruise line, as well as within the travel agency business. These "crossovers" are rare, but provide unique insights that add significant value to the Company. Were the services of Mr. Andreassen or Mr. Sommer to be denied to the Company for any reason, this denial would adversely affect the operations and prospects of the Company. The director of sales and marketing for this ventures is Marlene Brussle who has in excess of fifteen years experience in the travel industry, specifically focused on the cruise sector.

### ***The Company has no recurring revenues and is susceptible to factors affecting demand for cruises***

The Company's revenues in any given year are a function of how well it sells out ships chartered and the selling price thereof. A number of factors affect customers' propensity to buy cruises from general economic well-being which affects all vacation categories to more unsystematic risks such as the attempted pirate attack on the Seabourn Spirit off Somalia in November, 2005, the PLO hijacking of the Achille Lauro in the Mediterranean in October 1985 or the less life-threatening outbreak of novovirus on the QE2 in January, 2007. Management's experience is that the cost to the cruise lines of empty berths is so significant, given the huge fixed cost in operating the ships, that reductions in demand are usually affected in pricing as opposed to volume.

## **Risks Related to this Offering**

*There is no existing market for the loan.*

Neither the Sales Agent nor CCV can predict the extent to which investor or acquirer interest will lead to the development of a trading market or sale transaction or otherwise provide liquidity to Certificateholders.

## DESCRIPTION OF TRUST AGREEMENT AND THE CERTIFICATES

On February 12, 2008 David L. Smith, as President of McGinn, Smith Capital Holdings Corp., (the "Trustee") executed the Declaration of Trust ("Declaration") of Cruise Charter Ventures Trust 08 ("Trust"), declaring that McGinn, Smith Capital Holdings Corp. was the Trustee of the Trust, establishing the Trust for the benefit of Certificateholders, and defining its purpose.

The Trust is a common law trust formed under the laws of the State of New York, with its principal office at Capital Center, 99 Pine Street, Albany, New York 12207, which is the office of the Trustee. The initial capital of the Trust was established at \$100.00, and the purpose of the Trust is to lend the net proceeds of this offering to CCV. CCV will use the proceeds of the loan to charter the M/V Sapphire Princess; undertake marketing, sales and administrative expenses of both the business and the offering; and establish a debt service reserve fund (under the maximum offering scenario). Under the Declaration, the Trustee acquires virtually complete discretion in the operation of the Trust, so long as that discretion is exercised within the purpose of the Trust. The Declaration limits the liability of the Trustee in two ways. The Trustee will not be liable in the absence of willful misconduct or gross negligence. Further, the Trustee will not be liable, in any event, to pay sums of money beyond the corpus of the Trust. The Trustee is entitled to indemnification from the funds of the Trust (except in the case of willful misconduct or gross negligence) and to reimbursement for the reasonable and necessary fees and expenses incurred in the administration of the Trust. The Trustee is entitled to indemnification and reimbursement from the corpus of the Trust before payments are made to Certificateholders.

The Declaration specifically provides that the Certificateholders shall not have any legal or equitable title to the Trust Estate, that no Certificateholder shall have a voice in the management or control of the property or affairs of the Trust, that the Trustee has no authority to require additional capital contributions from any Certificateholder, and that the Trustee is precluded from taking any action to make Certificateholders liable for the debts or obligations of the Trust.

### Certificates

The Certificates will be issued under the Declaration, a copy of which is included as an exhibit to this Memorandum. The rights of the Certificateholders and the obligations of the Trustee as they relate to the Certificates will be governed by the Declaration. Reference should be made to the Declaration for its complete terms. The statements contained in this Memorandum concerning the Declaration are merely a summary thereof, do not purport to be complete, and do not modify or amend the Declaration.

Subject to the conditions set forth in this Memorandum, Certificates in the maximum amount of \$3,250,000 will be offered by the Trust Fund. The Certificates will bear interest on the outstanding principal at a per annum rate of 13%. Interest on the Certificates will be paid in quarterly installments on the first day of each quarter commencing June 1, 2008.

The Certificates will be issued and registered in the name of the purchasing Certificateholder(s). Interest on the Certificates will be shown on, and transfers thereof will be effected through, records maintained by the Trustee.

### Prepayments

The Certificates are not subject to a mandatory prepayment or redemption provision.

### Registration

Each Certificate will be registered in the name of the purchaser thereof.

### **Limited Transferability of the Certificates**

The Certificates are not freely transferable, and there is no secondary market for the Certificates and none is expected to develop. The Certificates should not be treated by Certificateholders as securities.

The Certificates have not been registered under the Act. They may not be offered for resale in the absence of an opinion of counsel, satisfactory to the Trust Fund, that registration is not required.

### **Reports**

Not later than January 31 of each year, the Trust Fund will furnish to the Certificateholders statements of interest income on IRS Form 1099-INT and such tax information as shall be necessary in the preparation of such person's Federal income tax return.

### **CONFLICTS OF INTEREST**

Timothy M. McGinn, David L. Smith, and Thomas E. Livingston collectively own 100% of McGinn, Smith Holdings LLC which owns all outstanding common shares of McGinn, Smith Capital Holdings Corp. and McGinn, Smith & Co., Inc. McGinn, Smith & Co., Inc. is acting as the Sales Agent for this Offering and will receive an Underwriting Discount equal to four percent (4%) of the gross proceeds of this Offering. The Underwriting Discount was not negotiated at arms length.

McGinn, Smith Capital Holdings Corp. may experience a conflict of interest in performing its obligation to exercise due diligence with respect to the statements made in this Memorandum and, therefore, its due diligence review cannot be considered independent. A qualified independent underwriter has not been retained by the Trust Fund in connection with this offering. However, McGinn, Smith Capital Holdings Corp. believes that such due diligence has, in fact, been exercised.

There has been no independent counsel retained to represent the interests of the Certificateholders.

### **THE TRUSTEE**

The names and positions of the directors and executive officers of the Trustee are as follows:

Name	Position
Timothy M. McGinn	Chairman of the Board and Director
David L. Smith	President and Director
Thomas E. Livingston	Treasurer

The officers and directors of the Trustee will devote such time and effort to the business of the Trust Fund as they may deem necessary and will actively be engaged in other business ventures.

The principal business occupations of the officers and directors during the past five (5) years are as follows:

Timothy M. McGinn, age 59, is the Chairman of the Board and Secretary of McGinn, Smith & Co., Inc. He has served as Chairman of the Board since the inception of this firm in 1980. From 2003 to 2006, Mr. McGinn served as Chairman of the Board and CEO of Integrated Alarm Services Group, Inc. a NASDAQ listed public company. Prior to founding McGinn, Smith & Co., Inc. he was with Paine, Webber, Jackson & Curtis. He has served on a number of corporate and charitable boards of directors and holds a bachelor's degree in Mechanical Engineering from the Rochester Institute of Technology.

David L. Smith, age 62, is the President of McGinn, Smith & Co., Inc. and a member of the Board of Directors. He has served in this capacity since 1980. Prior to founding McGinn, Smith & Co., Inc. he was

with Paine Webber, Jackson & Curtis. Mr. Smith has served on a number of charitable and corporate boards of directors and holds a bachelor's degree from Hamilton College.

Thomas E. Livingston, age 49, is Sr. Vice President of McGinn, Smith & Co., Inc. and a member of its Board of Directors. Mr. Livingston has been employed by McGinn, Smith & Co., Inc. since 1986. Prior to joining McGinn, Smith he was affiliated with Prudential Bache Securities.

#### COMPENSATION AND FEES

The Trustee of the Trust Fund will be compensated with a minimum fee of \$20,000 and approximately 9.33% of the capital raised in excess of the minimum offering. At the maximum offering, the fee will total \$300,000 for 2 years. All fees, irrespective of amount, will be paid at closing.

#### SUITABILITY

Certificates will be sold only to investors who make a minimum purchase of \$10,000.00.

As described elsewhere in this Memorandum, the Certificates will generally be sold only to Accredited Investors as defined in Rule 501 of Regulation D promulgated by the Securities and Exchange Commission under the Act; provided, however, that at the discretion of the Sales Agent, Certificates may be sold to up to 35 non-accredited investors. Included in the definition of "Accredited Investor", as defined in Rule 501, are the following:

(a) any natural person whose individual net worth (including personal residences, furnishings and automobiles), or joint net worth with that person's spouse, at the time of purchase exceeds \$1,000,000;

(b) any natural person who had an individual income in excess of \$200,000 in each of the two most recent years or joint income with that person's spouse in excess of \$300,000 in each of those years and who reasonably expects gross income at the same level in the current year; and

(c) any entity in which all of the equity owners are Accredited Investors or which has total assets in excess of \$5,000,000.

Each investor accepted as an Accredited Investor will be required to represent that he satisfies the requirements of an Accredited Investor under Rule 501.

Among other things, each investor will be required to acknowledge and represent in a Subscription Agreement that: (i) he is purchasing the Certificates for his own account for investment and not with a view to the sale or distribution thereof; (ii) he is aware that the Certificates have not been registered for sale under the Securities Act of 1933 as amended, and that he will not transfer his Certificates in the absence of an opinion of counsel satisfactory to the Trust Fund that the Certificates have been registered or that registration is not required under the Securities Act of 1933, as then in effect, and under applicable state securities laws, if any; (iii) he understands that this investment involves a high degree of risk; (iv) he has adequate means of providing for his current needs and foreseeable personal contingencies, has no need for liquidity in this investment; (v) all books, records and documents pertaining to this investment have been made available to him; and (vi) his overall commitment to investments which are not readily marketable is not disproportionate to his net worth and his purchase of Certificates will not cause such overall commitment to become excessive.

The Sales Agent and Trust Fund reserve the right to reject any subscription in its entirety for any reason or to allocate to any investor Certificates in an aggregate principal amount less than that for which he has subscribed. In the event a subscription is rejected, the investor's subscription check for his Certificates (or the amount thereof) will be returned, and in the event of a partial rejection, a pro rata amount of his subscription check for his Certificates will be refunded.

Prospective investors may be required to complete an Investor Representation Letter relating to the suitability of the investment for them, and the Trust Fund may make or cause to be made such further inquiry as the Trust Fund deems appropriate.

Any prospective investor will be afforded the opportunity to obtain from the Trust Fund prior to the consummation of the transaction contemplated herein any additional information he may request necessary to verify the accuracy of the contents of this Memorandum and which the Trust Fund possesses or can acquire without unreasonable effort or expense and to confer with, ask questions of, and receive answers from the Trust Fund or persons authorized to act on its behalf, concerning the terms and conditions of the transaction, this memorandum and any additional information which has been requested and supplied to a prospective investor or his purchaser representative.

The purchase of Certificates may be suitable for individuals seeking an investment intended to provide income. An investment in Certificates may also be appropriate for corporations and trusts seeking investments which are structured to provide income. Nevertheless, this investment involves a number of significant risks, including no assurance that the Certificates will be paid and illiquidity. See "Risk Factors." Accordingly, the suitability of a purchase of Certificates for any particular investor will depend upon, among other things, such investor's investment objectives and such investor's ability and willingness to accept the risks of an investment in the Certificates.

The Sales Agent Agreement between the Trust Fund and the Sales Agent requires the Sales Agent to make diligent inquiries as required by law of all prospective purchasers in order to ascertain whether a purchase of Certificates is suitable for such person and to transmit promptly to the Trust Fund all fully completed Subscription Agreements. By tendering payment for a Certificate and by acceptance of the confirmation of purchase, an investor represents that he or it satisfies any applicable suitability standards. See "Plan of Distribution."

#### TERMS OF THE OFFERING

Subject to the conditions set forth in this Memorandum, Certificates in the maximum amount of \$3,250,000 (the "Maximum Offering") and the minimum amount of \$250,000 (the "Minimum Offering") will be offered by the Trust Fund.

The Certificates will be offered by McGinn, Smith & Co., Inc., the Sales Agent, on a best efforts basis over a period of approximately three months. The Sales Agent is a member of the National Association of Securities Dealers, Inc.

All funds received by the Sales Agent from subscriptions for the Certificates will be placed in an escrow account (the "Escrow Account") maintained at Mercantile Bank (the "Escrow Agent"). During the period that an investor's funds are held in the Escrow Account he will not be considered a Certificateholder.

With respect to the Certificates, no funding from the Escrow Account will occur until the Minimum Offering is subscribed for. If subscriptions for the Minimum Offering are not received by May 31, 2008, subscriptions received with respect to the Certificates will be promptly returned in full to the investor by the Escrow Agent.

#### How to Subscribe.

The Certificates will be available for purchase in the minimum denomination of \$10,000.00 and increments of \$5,000.00. An investor who meets the qualifications set forth under "Who May Invest" and "Suitability" may subscribe for Certificates by completing, signing and delivering to the Sales Agent an executed copy of the Subscription Agreement contained in this Memorandum. All subscriptions must be accompanied by a check in the amount of the Certificate(s) purchased payable to "Mercantile Bank, Escrow

*Agent for Cruise Charter Ventures Trust 08*". Upon execution of a Subscription Agreement, the investor agrees to all of the terms and conditions contained in the Agreement. Subscriptions are, however, subject to acceptance by the Trust Fund.

#### PLAN OF DISTRIBUTION

The Trust Fund is offering a maximum of \$3,250,000 of Certificates, and a minimum of \$250,000. The minimum investment by an investor is \$10,000.00 with increments of \$5,000.00. The Offering period will end not later than May 31, 2008. No Certificates will be sold unless subscriptions for the Minimum Offering are received and accepted May 31, 2008. Subscriptions are subject to acceptance by the Trust Fund. See "Suitability"; "Who May Invest".

During the course of the Offering, the subscription payments will be promptly forwarded by the Sales Agent to the Escrow Agent for deposit in the Escrow Account. For a description of the distribution of funds from the Escrow Account, see "Terms of the Offering".

The Certificates will be offered on a "best efforts" basis by the Sales Agent.

#### DISCLAIMER OF LIABILITY OF TRUSTEE

Reference is hereby made to the Declaration of Trust dated February 12, 2008 a copy of which is attached hereto as Exhibit "A". Other than potential liability under the Securities Act, neither the Trustee, nor any shareholder, manager, officer, employee, affiliate or agent of the Trustee may be held to any liability in connection with the Offering or the Certificates, or in connection with the affairs of the Trust Fund, in the absence of willful misconduct or gross negligence. Further, the Trustee will not be liable, in any event, to pay sums of money beyond the corpus of the Trust.

#### INCOME TAX CONSIDERATIONS

The following discussion summarizes certain material anticipated federal income tax consequences relevant to the acquisition, ownership and disposition of Certificates, but does not purport to address all potential consequences. The summary is for general information only and does not discuss all of the tax consequences that may be relevant to particular investors in light of their personal investment circumstances or holders who receive special treatment under the Internal Revenue Code of 1986, as amended (the "Code"), such as insurance companies, financial institutions, and broker-dealers. In addition, this discussion does not describe any tax consequences arising out of foreign, state or local jurisdictions.

The discussion is based upon current provisions of the Code, applicable regulations promulgated thereunder, judicial authority and administrative rulings and practice. All of the foregoing is subject to change which may be retroactive and could affect the continuing validity of this discussion. There can be no assurance that the Internal Revenue Service (the "IRS") will not take a contrary view, and no ruling from the IRS has been or will be sought.

The Trust Fund has not obtained an independent tax opinion with regard to this Offering. Prospective investors should consult their own tax advisors regarding the federal, foreign, state, local and other tax consequences of purchasing, holding and disposing of the Certificates.

#### Interest Income to Certificateholders

It is anticipated that the Certificates will be issued at par value and, therefore, no original issue discount will arise with respect to the Certificates. Accordingly, a Certificateholder will be required to report



interest on a Certificate as income for federal income tax purposes in accordance with such holder's method of accounting.

#### **Gain or Loss on Disposition of Certificates**

In general, the holder of a Certificate will recognize gain or loss on the sale, exchange, redemption or other disposition of a Certificate equal to the difference between the amount realized (except to the extent attributable to the payment of accrued interest) and the adjusted basis in his Certificate. Any gain or loss recognized will generally be a Trust gain or loss if the Certificate is held as a Trust asset and will be long-term gain or loss if the Certificate is held for more than one year.

#### **Information Reporting**

The Trust Fund will report interest income to Certificateholders on IRS Form 1099-INT and as otherwise consistent with such treatment.

#### **Backup Withholding**

A Certificateholder may be subject to "backup withholding" at the rate of 31% (see IRC§3406(a)) with respect to interest paid on, or the proceeds of a sale, exchange or redemption of, such Certificates, unless such holder (i) is a corporation or comes within certain other exempt categories and, when required, demonstrates this fact, or (ii) provides a taxpayer identification number, certifies as to no loss of exemption from backup withholding, and otherwise complies with applicable exemption from backup withholding rules. Any amount withheld under these rules will be creditable against the Certificateholder's federal tax liability.

THE FOREGOING DISCUSSION OF CERTAIN FEDERAL INCOME TAX CONSEQUENCES IS FOR GENERAL INFORMATION ONLY AND IS NOT TAX ADVICE. EACH PROSPECTIVE INVESTOR SHOULD CONSULT WITH HIS OR HER OWN TAX ADVISER WITH RESPECT TO THE TAX CONSEQUENCES OF THE ACQUISITION, OWNERSHIP AND DISPOSITION OF THE CERTIFICATES.

#### **TABLE OF CONTENTS OF EXHIBITS**

The discussion in this Memorandum of each Exhibit set forth below is qualified in its entirety by reference to such Exhibit.

Exhibit "A"	Declaration of Trust
Exhibit "B"	Subscription Agreement
Exhibit "C"	Investor Representation Letter

#### **ADDITIONAL INFORMATION**

Additional information is available upon request to the Trust Fund. Only additional information provided by the Trust Fund may be relied upon. Prospective investors may request such information from the Sales Agent, McGinn, Smith & Co., Inc., Fifth Floor, 99 Pine Street, Albany, New York 12207.



**EXHIBIT "A"**

**DECLARATION OF TRUST**



## DECLARATION OF TRUST OF CRUISE CHARTER VENTURES TRUST 08

This Trust Agreement made as of the 12<sup>th</sup> of February, 2008, by and between McGinn, Smith Capital Holdings Corp., a New York Corporation with an address at Capital Center, 99 Pine Street - 5th Floor, Albany, New York 12207 ("Trustee"), and those persons who acquire an interest herein by the execution and performance of a subscription agreement ("Subscription Agreement") attached as Exhibit B to the Confidential Private Placement Memorandum dated as of February 14, 2008 ("Confidential Memorandum").

### WITNESSETH:

WHEREAS, the Trustee desires to create a trust (the "Trust") for the purpose of enabling and authorizing a loan to be extended to Cruise Charter Ventures, LLC, a Florida limited liability company ("CCV") and

WHEREAS, the Trustee is willing to accept the duties and obligations imposed hereby on the terms and conditions hereinafter set forth;

NOW, THEREFORE, the Trustee does hereby declare that the Trustee will hold said property which it may acquire as such Trustee, together with the proceeds thereof in trust, to manage and dispose of the same for the benefit of the Certificateholders hereunder in the manner and subject to the stipulations herein contained.

### ARTICLE I NAME

This Trust shall be designated and known as the "CRUISE CHARTER VENTURES TRUST 08", not incorporated, and under that name shall, so far as practicable, conduct all activities and execute all instruments in writing in the performance of the Trust.

### ARTICLE II DEFINITIONS

The following words, terms and phrases used herein shall be given the meaning stated below in this Article, unless such meaning would be clearly in conflict with the purposes and spirit of this instrument.

"Certificateholder" shall mean the holder for the time being, according to the books of the Trustee, of the Certificates as evidenced by this Declaration and the Certificates issued by the Trustee.

"Permitted Investments" means the loan to CCV. In addition, to the extent not employed for the loan to CCV, temporary investments may be made in (1) certificates of deposit, in (2) short term AAA rated debt obligations regularly traded on a recognized exchange in the United States, or in (3) obligations issued by the United States Treasury or other obligations backed by the "full face and credit" of the United States.

"Share" shall mean a share in the beneficial interest of the property, assets, trust fund and corpus of the Trust.

"Transaction Documents" shall mean this Declaration of Trust, the Confidential Private Placement Memorandum dated February 14, 2008 relative to CCV and the documents which evidence the loan from the Trust to CCV.

"Trust", "Trust Estate", and "Capital" shall mean the trust fund hereunder, consisting of the corpus of the estate; that is, all property, real, personal and mixed of every kind and description howsoever acquired and wherever situated, held under this Declaration of Trust by the Trustee.

"Trustee" shall mean the trustee herein named, and those who are or may be trustees.

### ARTICLE III OFFICE OF THE TRUST

The principal office of this Trust shall be located at Capital Center, 99 Pine Street, Albany, New York 12207, until changed by the Trustee. The principal office may be changed and branch offices established, maintained, changed and discontinued at such times and places as the Trustee in its discretion may determine, with notice to the Certificateholders.

### ARTICLE IV CAPITAL OF THE TRUST

The initial Capital of this Trust shall be One Hundred Dollars (\$100), paid to the Trustee concurrently with execution and delivery hereof. The Capital of the Trust or any part thereof, shall be held for the use and benefit of the Trust at such places and upon such terms as the Trustee may fix. The Trustee may not require any Certificateholder to make any contribution, in addition to the initial contribution made by such Certificateholder, to increase the Capital of the Trust. The Trustee shall receive such contributions to the Capital of the Trust as may be made by Certificateholders from time to time and apply the same for the purpose stated by Article V of this Trust Agreement.

### ARTICLE V PURPOSE OF THE TRUST

The purpose of the Trust is to lend an amount between \$200,000 and \$2,600,000 to Cruise Charter Ventures LLC ("CCV"). All monies lent to CCV will subsequently be utilized to (i) charter Princess Cruise Lines, Ltd's Sapphire Princess for a one week cruise from Los Angeles, departing January 24, 2009, the cost of which charter will be approximately \$2,300,000, and (ii) underwrite the marketing, sales and administration expenses associated with selling 2,678 berths for the cruise.

(1) The Trustee shall, as far as convenient and practicable, take and hold the title, both legal and equitable, to all property, however acquired under the terms hereof, in the name of the Trust. All conveyances of every kind and description, at any time made to or in the name of the Trustee of the Trust shall be held to vest the title to property so conveyed in the Trustee as such under this instrument, the title "CRUISE CHARTER VENTURES TRUST 08" being merely intended as a convenient designation of the Trustee hereunder.

(2) The Trustee shall administer and dispose of all properties for the benefit of Certificateholders hereunder, as represented by their Certificates.

(3) The Trustee shall manage, control and dispose of all of the Trust Estate and its business affairs, of every kind and character within the authority granted in Article I hereof.

(4) The Trustee shall, in such capacity, exclusively and absolutely, have full, absolute and plenary rights, authority to pledge, exchange, mortgage and convey or otherwise dispose of property of every kind, character and description, real, personal and mixed, that may be part of the Trust Estate.

(5) The Trustee shall have, in furtherance of the purposes of the Trust, the absolute right, power and authority to institute, maintain and defend actions, suits and proceedings in any court of law or equity either in the name of said Trust or in its name as Trustee thereof; to sell, transfer, assign and convey the whole or any part of the Trust Estate, invest and reinvest the proceeds thereof at any time in

Permitted Investments provided that the Trustee shall have no obligation to invest such proceeds and shall not be accountable for any losses howsoever incurred; to collect any money, and pledge the assets of the Trust as security therefor; to execute and deliver in the manner herein provided all deeds, leases, mortgages, powers of attorney and other instruments in writing which the Trustee may deem necessary and proper in the exercise of the powers conferred hereunder; and to perform or withhold any act or thing of any kind or character, which in the Trustee's judgment may be necessary, proper or expedient, in carrying into effect the purposes of this Trust or any purposes specified in this Declaration of Trust, or in any amendments hereto, duly made and adopted.

#### ARTICLE VI

##### LIMITATION OF LIABILITY OF TRUSTEE AND CERTIFICATEHOLDERS

Neither the Trustee, nor any of its officers or servants shall have any right, power or authority, under any circumstances, or in any event to act as the agent of the Certificateholders or to bind them personally or to impose any liability or obligation upon them in any way whatsoever with respect to this Trust Estate or otherwise. All persons contracting with the Trustee or its officers, agents or employees shall look only to the Trust Fund for the payment of any damage, claim, judgment or decree, or of any money that may become due or payable in any way to them whether founded upon contract or tort, and neither the Trustee nor the Certificateholders, present or future, nor any of them shall as such be personally liable therefor or on any agreement or contract made by the Trustee, or by any officers, agents or employees of the Trustee, its officers or agents, or employees in connection with the Trust Estate. No amendment shall ever be made to this Declaration of Trust, increasing or enlarging the liability of either the Trustee or the Certificateholders as herein stipulated.

#### ARTICLE VII

##### LIMITATION OF LIABILITY OF TRUSTEE; INDEMNIFICATION

The Trustee shall not be liable hereunder in any event or under any circumstances, for the acts or omissions of any other Trustee or of any officer, agent or employee, or any other person whatsoever, whether employed by such Trustee or not, or for any act or thing whatsoever, other than such Trustee's own willful misconduct or gross negligence. The Trustee in its individual capacity and as Trustee shall be indemnified by, and receive reimbursement from the Trust Estate against and from any and all liability, claim, damage or loss, suit, action, tax (including interest and penalties), fine, penalty, cost and expense (including but not limited to legal fees and disbursements) of whatsoever kind and nature which may be imposed upon, incurred by or asserted at any time against the Trustee (in its individual or trust capacity) in any way relating to or arising out of the administration of the Trust Estate, or arising from any act or omission hereunder or under the Transaction Documents, except such as may arise from such Trustee's own willful misconduct or gross negligence. In addition, the Trustee shall be entitled to indemnification from the Trust Estate for any liability, obligation, loss, damage, penalty, tax, claim, action, suit, cost, expense or disbursement indemnified against pursuant to this Article VII and to secure the same the Trustee shall have a lien on the Trust Estate prior to the interest of the Certificateholders or any other person. Trustee shall file all tax returns and other governmental reports required to be filed by the Trustee in connection with the transaction contemplated hereby. Without limiting the foregoing, the Trustee shall under no circumstances be required to take any action or omit to take any action in the administration of the Trust Estate or otherwise in connection with the transactions contemplated hereunder unless the Trustee determines in its absolute discretion that indemnification in respect of such action or omission is available to it to its reasonable satisfaction, provided that the Trustee shall not be required to take or omit any action if the Trustee shall have been advised by its counsel that taking or omitting such action is contrary to the terms of any other agreement or instrument referred to herein or is otherwise contrary to law. The indemnities contained in this Article VII shall survive the termination of this Trust Agreement.

The Trustee shall not be entitled to receive compensation for its services from the Trust Estate except that a Trust Administration Fee of between \$20,000 and \$300,000 will be paid depending on the amount of the offering that is achieved. The Trustee shall not have any duty or obligation to manage.

control, use, sell, dispose or otherwise deal with the Trust Estate or to otherwise refrain from taking any such action under or in connection with this Trust Agreement or the other agreements or instruments referred to herein except as expressly provided by the terms of this Trust Agreement, and no implied duties shall be read into this Trust Agreement against the Trustee. The Trustee shall not be answerable or accountable under any circumstances except for its own willful misconduct or gross negligence. The Trustee shall no duty to see to the payment or discharge of any tax, assessment or other governmental charge or any lien or encumbrance of any kind owing with respect to, or assessed or levied against, any part of the Trust Estate.

The Trustee shall at all times be entitled to request and receive instructions from the Certificateholders prior to being required to take or omit to take any action hereunder, provided that except as therein specified no further instruction is required for taking of the actions provided by the second sentence of Article V hereof.

THE TRUSTEE MAKES NO REPRESENTATION OR WARRANTY AS TO THE VALUE, CONDITIONS, MERCHANTABILITY, FITNESS FOR USE, VALIDITY, ENFORCEABILITY OF OR TITLE TO ANY PROPERTY AT ANY TIME CONSTITUTING PART OF THE TRUST ESTATE, and makes no representation or warranty as to the validity, legality or enforceability of this Trust Agreement or any agreement or instrument referred to herein, except that the Trustee hereby represents and warrants that this Trust Agreement has been duly executed and delivered by one of its officers, who is duly authorized to execute and deliver such document on its behalf.

The Trustee shall not incur any liability to anyone in acting upon any signature, instrument, notice, resolution, request, consent, telegram, order, certificate, report, opinion, bond, or other document or paper believed by it to be genuine and believed by it to be signed or sent by the proper party or parties. As to any fact or matter, the manner of ascertainment of which is not specifically described herein, the Trustee may for all purposes rely on a certificate signed by an officer of any Certificateholder as to such fact or matter, and such certificate shall constitute full protection to the Trustee for any action taken or omitted to be taken by it in reliance thereon. In the performance of its duties hereunder, the Trustee may act directly or through its agents or attorneys and may, at the expense of the Trust Estate, consult with counsel, accountants and other skilled persons to be selected and employed by it, and the Trustee shall not be liable for anything done, suffered or omitted by it in accordance with the advice or opinion of any such counsel, accountants or other skilled persons.

The Trustee or successor trustee may resign at any time without cause by giving at least 10 days' prior written notice to the Certificateholders, such resignation to be effective on the date specified in such notice. In such event, the Certificateholders shall appoint such new Trustee. If a successor trustee shall not have been appointed prior to the effective date of such resignation, the Trustee may apply to any court of competent jurisdiction to appoint a successor trustee until such time, if any, as a successor trustee shall have been appointed. Any successor trustee shall execute and deliver to the predecessor trustee an instrument accepting such appointment and thereupon the predecessor trustee shall be released from its obligations hereunder and the successor trustee shall be vested with all rights, powers, duties and obligations of the Trustee hereunder, and the predecessor trustee shall transfer, deliver, and pay over, at the expense of the Trust Estate, any monies or other property then held by such predecessor trustee upon the Trust herein expressed.

All monies received hereunder by the Trustee shall constitute trust funds for the purpose of which they were paid or are held, but need not be segregated in any manner from any other monies and may be deposited and paid by the Trustee under such conditions as may be prescribed or permitted by law for trust funds.

#### ARTICLE VIII CERTIFICATEHOLDERS, LACK OF CONTROL AND MANAGEMENT



No Certificateholder shall have any title, legal or equitable, to the Trust Estate, real or personal, held from time to time by the Trustee, or to any part thereof, or any right or voice in the management or control of the property or affairs of the Trust, each Certificateholder's interest being only such as is defined in this Declaration of Trust. No Certificateholder shall have the right to call for or demand or secure any partition or accounting during the continuance of this Trust. Its interest in this Trust shall be personal property, carrying only the right to payments pursuant to the Certificate. The Trust shall not be dissolved, nor affected by the death, insolvency or incapacity of the Certificateholder or one or more of the Trustees, nor shall such death, insolvency or incapacity entitle the legal representatives or heirs or assigns, voluntary holder, receiver or trustee to any accounting or to any action at law or in equity or otherwise, against the Certificateholders or Trustee, or against the Trust Estate, or any part thereof, but such legal representative, heir, assign, receiver, or trustee shall succeed to the rights of the deceased, insolvent, bankrupt or incapacitated Certificateholder, subject to this Declaration of Trust and any amendments hereto, and shall succeed to nothing more.

ARTICLE IX  
NO PARTNERSHIP

It is expressly declared that a trust, and not a partnership, is created and established by this instrument. Neither the Trustee nor any Certificateholder shall ever be deemed in any way whatsoever to be liable or responsible hereunder as partners or otherwise.

ARTICLE X  
CERTIFICATEHOLDERS; NO PERSONAL LIABILITY

No assessment or other personal liability or obligation shall, under any circumstances or in any event, be made or imposed upon the Certificateholders.

ARTICLE XI  
REFERENCE TO INSTRUMENT

The Trustee shall, as far as practicable, make reference to the Declaration in every written contract or undertaking that shall be entered into in the name of the Trustee or on behalf of, or relating to the business, affairs or property of this Trust.

ARTICLE XII  
RELATIONSHIP WITH THIRD PARTIES; NO INQUIRY

In no event and under no circumstances shall any one dealing with the Trustee be obligated either at law or in equity to see to the application of any funds or properties passing into the hands of the Trustee, there being no intention that purchasers of Trust property, or any other parties dealing with the Trustee, shall see that the purchase money is applied to the purposes of the Trust.

ARTICLE XIII  
INTEREST AND EARNINGS

The Capital of the Trust and the earnings and interest thereon shall be apportioned and distributed to the Certificateholders in accordance with this Declaration and the Certificates issued by the Trustee.

ARTICLE XIV  
AGREEMENT OF CERTIFICATEHOLDERS

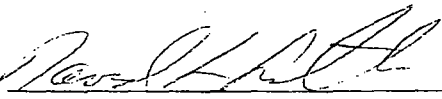
The Certificateholders shall be held to have assented to this Declaration of Trust, and to all acts performed by Trustee within the authority granted by this Declaration.

ARTICLE XV  
TERM AND TERMINATION

Unless earlier terminated, as hereinafter provided, this Trust shall continue until the earlier of either (i) ten years from the date first hereinabove mentioned or (ii) the date when the Trust shall have distributed all of its Capital. The Trustee may otherwise terminate this Trust only with the unanimous written consent of the Certificateholders, provided, however, that any termination of the Trust shall not impair or have any effect whatever upon the contracts, obligations, and liabilities of said Trust Estate existing or outstanding at the time of such termination. At the expiration or upon the termination of the Trust, the Trustee shall proceed to wind up its affairs, liquidate its assets and distribute the same to the Certificateholders, without recourse or warranty of any kind, and for these purposes the then Trustee shall continue act until such duties have been fully performed. Upon completion of such duties, the Trustee shall be deemed discharged in full.

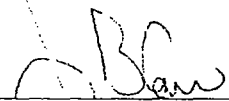
IN WITNESS WHEREOF, the parties have hereunto set their hands and seals as of the 12<sup>th</sup> day of February, 2008.

MCGINN, SMITH CAPITAL HOLDINGS CORP., not in its individual capacity, except as specified herein, but solely as Trustee under this Declaration of Trust dated as of February 12, 2008.

By:   
David L. Smith, President

STATE OF NEW YORK)  
COUNTY OF ALBANY ) SS.:

On the 12<sup>th</sup> day of February in the year 2008 before me, the undersigned, a Notary Public in and for said State, personally appeared David L. Smith, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in her/his capacity, and that by her/his signature on the instrument, the individuals, or the person upon behalf of which the individual acted, executed the instrument.

  
Notary Public

JOSEPH B. CARR  
Notary Public, State of New York  
Qualified in Albany County  
No. 02CA6088208  
Commission Expires March 3, 2011

**EXHIBIT "B"**

**SUBSCRIPTION AGREEMENT**



## SUBSCRIPTION AGREEMENT

THE CERTIFICATES WHICH ARE THE SUBJECT OF THIS AGREEMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933. THEY MAY NOT BE OFFERED FOR RESALE IN THE ABSENCE OF AN OPINION OF COUNSEL, SATISFACTORY TO THE TRUST FUND, THAT REGISTRATION IS NOT REQUIRED. IN ADDITION, THIS AGREEMENT AND THE CERTIFICATES CONTAIN SUBSTANTIAL RESTRICTION ON TRANSFERABILITY.

### CRUISE CHARTER VENTURES TRUST 08 (a New York Trust)

TO: CRUISE CHARTER VENTURES TRUST 08 (the "Trust Fund"):

1. Subscriptions. I hereby subscribe for and agree to purchase the dollar amount of the Trust Fund's Certificates (the "Certificates") as is set forth opposite my name acknowledging the minimum purchase to be Ten Thousand Dollars (\$10,000) and increments of Five Thousand Dollars (\$5,000).
2. Payment. I hereby agree to pay the Trust Fund the purchase price for the Certificates by delivery herewith of a check in the face amount of the Certificates subscribed for payable to the order of "MERCANTILE BANK-Escrow Agent for Cruise Charter Ventures Trust 08".
3. Restriction on Transfer of the Certificates. I understand that any resale or transfer of the Certificates by me is subject to substantial restriction, in that:
  - (i) The Certificates have not been registered under the Securities Act of 1933, as amended, or applicable state securities laws. The Certificates cannot be sold or transferred by subscribers in the absence of an opinion of counsel that registration is not necessary. The Trust Fund is not required to register the Certificates or to make any exemption from registration available.
  - (ii) My right to sell or transfer any of the Certificates will be restricted as follows: (1) restrictions against sale or transfer in violation of applicable securities law; (2) the requirement that I furnish an opinion of counsel that any proposed sale or transfer by me will not violate such laws; (3) the Trust Fund must consent to the transfer of my Certificates; and (4) other restrictions and requirements, including such restrictions on transfer arising under state securities laws.
  - (iii) There will be no public market for the Certificates, and I may not be able to sell my Certificates. Accordingly, I must bear the economic risk of my investment for an indefinite period of time.
4. Investment Representation. I represent and warrant that I am acquiring my Certificates for my own account and not on behalf of other persons, and that I am acquiring my Certificates for investment purposes only and not with a view to the resale or distribution thereof; I understand that the Certificates will be offered and sold in a manner which would qualify the transaction for an exemption as a private placement under Rule 506 of the Securities Act of 1933, as amended. The Certificates may not be transferred or assigned except as provided herein.
5. Subscription Irrevocable by Certificateholder. This Subscription Agreement is not, and shall not be, revocable by me, except as provided by applicable state securities law requirements, and I intend to be legally bound by this Subscription Agreement.
6. Subscription Subject to Acceptance or Rejection by the Trust Fund. The Trust Fund, in its sole discretion, shall have the right to accept or reject this subscription at any time on or before the Closing.

7. Offering of Certificates Subject to Withdrawal. If the Trust Fund does not receive subscriptions for Certificates in the minimum amount of \$250,000.00 before the Termination Date, the Offering of Certificates will be withdrawn and I understand that all my subscription documents and payments will be returned to me, with interest, less the cost of escrow, and without further obligation of the Trust Fund.
8. Additional Representations and Warranties. I represent and warrant that:
- (a) (i) I have received and have carefully read and understood the Private Placement Memorandum dated February 14, 2008 (the "Memorandum") given to me by the Trust Fund in connection with the offering of Certificates.
  - (ii) I have been furnished with all additional documents and information which I have requested.
  - (iii) I have had the opportunity to ask questions of and receive answers from the Trust Fund concerning the Trust Fund and the offering of Certificates and to obtain any additional information necessary to verify the accuracy of the information furnished.
  - (iv) I have relied only on the foregoing information and documents in determining to make this subscription, and the decision to acquire Certificates of the Trust Fund has been made based upon my own evaluation of the merits and risks of the Trust Fund.
  - (v) I will not offer to sell, or resell, the Certificates except in accordance with Section 3(ii) hereof.
  - (vi) I will require any purchaser to provide the Trust Fund with such purchaser's address.
- (b) I recognize that investment in the Certificates involves substantial risk factors, including those set forth under "Risks" in the Memorandum.
  - (c) I have adequate means of providing for my current needs and possible personal contingencies, and I have no need for liquidity in my investment in the Certificates.
  - (d) My overall commitment to investments which are not readily marketable is not disproportionate to my net worth and my purchase of Certificates will not cause such overall commitment to become excessive.
9. Indemnification and Hold Harmless. If I breach any agreement, representation or warranty I have made in this Subscription Agreement or any other document I have executed in connection with this offering, I agree to indemnify and hold harmless the Trust Fund, the Trustee, or any officer or director of the Trustee and any person controlling either or any of them against any claims, actions, liability, loss, damage or expense (including attorney's fees and other costs of investigation and litigating claims) caused, directly or indirectly, by my breach.
10. Subscriber Information. This Subscription and my Certificates shall be recorded on the Trust Fund's books.

"IN WITNESS WHEREOF, I have executed this Subscription Agreement this \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

*Print exact name in which title is to be held*

Name: _____		_____	
Printed Name	Tax ID #	Printed Name	Tax ID#
Signature: X _____		Signature X _____	
Address: _____		Amount Purchased: \$ _____	
_____			

ACCEPTED BY CRUISE CHARTER VENTURES TRUST 08 this \_\_\_\_ of \_\_\_\_\_, 2008.

**McGinn, Smith Capital Holdings Corp.**  
**Trustee**

By: \_\_\_\_\_  
David L. Smith, Principal  
or Timothy M. McGinn, Principal





**EXHIBIT "C"**

**INVESTOR REPRESENTATION LETTER**



CONFIDENTIAL

**PURCHASER QUESTIONNAIRE FOR INDIVIDUALS**

**CRUISE CHARTER VENTURES TRUST 08  
(A New York Trust)**

The offering is being made pursuant to Regulation D under the Securities Act of 1933 (the "Act"). One of the requirements of the Regulation is that the persons involved in the offering and sale of the securities must have reasonable grounds to believe either:

(i) that the Offeree has such knowledge and experience in financial and business matters that he is capable of evaluating the merits and risks of the prospective investment; or

(ii) the undersigned is acquiring the Certificates for investment purposes only and not with a view towards resale.

(iii) the undersigned is aware that this offering will involve Certificates for which no resale market exists, thereby requiring this investment to be maintained for the stated term of each Certificate.

Your answers will, at all times, be kept strictly confidential; however, each party who signs the questionnaire hereby agrees that the Trust may present this questionnaire to such parties as may seem appropriate in order to insure that the offer and sale of the Certificates to you will not result in violation of any exemption from registration under the Act which may be relied upon by the Trust in connection with the sale of the Certificates.

Please complete this questionnaire as thoroughly as possible and sign, date and return to the Trust c/o McGinn, Smith & Co., Inc., 5th Floor, 99 Pine Street, Albany, New York 12207.

Please print or type:

Name: \_\_\_\_\_

Home Address: \_\_\_\_\_  
\_\_\_\_\_

Date of Birth: \_\_\_\_\_

Social Security No.: \_\_\_\_\_

Occupation: \_\_\_\_\_

Business Address: \_\_\_\_\_

Business Telephone: \_\_\_\_\_

Home Telephone: \_\_\_\_\_

Communications should be sent to:

Home Address \_\_\_\_\_ or Business Address \_\_\_\_\_

1. What is your approximate net worth?

\_\_\_\_\_ \$50,000 - \$100,000  
\_\_\_\_\_ \$100,000 - \$250,000  
\_\_\_\_\_ \$250,000 - \$500,000  
\_\_\_\_\_ \$500,000 - \$1,000,000  
\_\_\_\_\_ Greater than \$1,000,000

2. Did your individual income exceed \$200,000.00 in 2005 and 2006, or did your joint income with your spouse exceed \$300,000.00 in each of those years?

Yes \_\_\_\_\_ No \_\_\_\_\_

3. If the answer to #2 above is "yes", do you expect to reach the same income level in 2007?

Yes \_\_\_\_\_ No \_\_\_\_\_

4. What was your approximate gross income for calendar year 2006?

\_\_\_\_\_ \$25,000 - \$100,000  
\_\_\_\_\_ \$100,000 - \$200,000  
\_\_\_\_\_ \$200,000 - \$300,000  
\_\_\_\_\_ \$300,000 - \$500,000  
\_\_\_\_\_ Greater than \$500,000

5. What will your approximate gross income be for calendar year 2007?

\_\_\_\_\_ \$25,000 - \$100,000  
\_\_\_\_\_ \$100,000 - \$200,000  
\_\_\_\_\_ \$200,000 - \$300,000  
\_\_\_\_\_ \$300,000 - \$500,000  
\_\_\_\_\_ Greater than \$500,000

To the best of my information and belief, the above information is accurate and complete in all respects.  
I agree to notify the Trust promptly of any changes which occur prior to sale of the Certificates.

Purchaser

Date:

\_\_\_\_\_  
Name (printed)

\_\_\_\_\_  
Signature

CONFIDENTIAL

PURCHASER QUESTIONNAIRE FOR CORPORATIONS AND PARTNERSHIPS

CRUISE CHARTER VENTURES TRUST 08  
(A New York Trust)

The offering is being made pursuant to Regulation D under the Securities Act of 1933 (the "Act"). One of the requirements of the Regulation is that the persons involved in the offering and sale of the securities must have reasonable grounds to believe either:

(i) that the Offeree has such knowledge and experience in financial and business matters that he is capable of evaluating the merits and risks of the prospective investment; or

(ii) that the Offeree and its Offeree Representative(s), together, have such knowledge and experience in financial and business matters, that they are capable of evaluating the merits and risks of the prospective investment and that the Offeree is able to bear the economic risk of the invest.

The purpose of this Questionnaire is to assist CRUISE CHARTER VENTURES TRUST 08 (the "Trust") in complying with the above requirement.

Please contact McGinn, Smith & Co, Inc., 5th Floor, 99 Pine Street, Albany, New York 12207 (518-449-5131) if you have any questions in answering this questionnaire.

If the answer to any questions "None" or "Not Applicable", please so state.

Your answers will, at all times, be kept strictly confidential; however, each party who signs the Questionnaire hereby agrees that the Trust may present this Questionnaire to such parties as may seem appropriate in order to insure that the offer and sale of the Certificates to you will not result in violation of any exemption from registration under the Act which may be relied upon by the Trust in connection with the sale of the Certificates.

Please complete this Questionnaire as thoroughly as possible and sign, date and return one (1) copy to the Trust c/o McGinn, Smith & Co., Inc., 5th Floor, 99 Pine Street, Albany, New York 12207.

Please print or type:

Name of Organization: \_\_\_\_\_

Business Address: \_\_\_\_\_

Business Telephone: \_\_\_\_\_

Federal ID Number: \_\_\_\_\_

1. Was the organization formed for the specific purpose of acquiring the Trust's Certificates?

Yes \_\_\_\_\_ No \_\_\_\_\_

2. Does the organization possess total assets in excess of \$5,000,000?

Yes \_\_\_\_\_ No \_\_\_\_\_

3. Does each equity owner of the organization:

A. Have a net worth, exclusive of home, furnishings, and automobiles, of at least \$1,000,000?

Yes \_\_\_\_\_ No \_\_\_\_\_

B. Had an individual net income in excess of \$200,000 in 2005 and 2006, or joint income with that person's spouse in excess of \$300,000 in each of those years, and have a reasonable expectation of reaching the same income level in 2007?

Yes \_\_\_\_\_ No \_\_\_\_\_

4. I am aware that the Certificates proposed to be offered will not be readily marketable or transferable.

Yes \_\_\_\_\_ No \_\_\_\_\_

5. The organization can afford the complete loss of its investments in the Certificates and has no need for liquidity in this investment.

Yes \_\_\_\_\_ No \_\_\_\_\_

6. Stated below are the organization's previous investments in similar securities and other private placements during the past five years:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

7. I understand that, unless the organization satisfies certain criteria, in order to qualify as a purchaser of Certificates, I must have sufficient knowledge and experience in financial and business matters to be capable of evaluating the merits and risks of an investment in the Trust or I must engage an attorney, accountant or other financial advisor for the purpose of this particular transaction.

I hereby represent, by initialing on the Representation A or Representation B line below, that:

A. I have such knowledge and experience in financial and business matters that I am capable of evaluating the merits and risks of an investment in the Certificates and will not require a Purchaser Representative.

Representation A. \_\_\_\_\_

B. I have relied upon the advice of the following Purchaser Representative(s) in evaluating the merits and risks of an investment in the Certificates:

Representation B. \_\_\_\_\_

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
Relationship

\_\_\_\_\_  
Relationship

To the best of my information and belief, the above information is accurate and complete in all respects. I agree to notify the Trust promptly of any changes which occur prior to sale of the Trust's Certificates.

Purchaser:

Date:

\_\_\_\_\_  
Print Name of Organization

By: \_\_\_\_\_

Title: \_\_\_\_\_

PURCHASER REPRESENTATIVE QUESTIONNAIRE

CRUISE CHARTER VENTURES TRUST 08

The information contained herein is being furnished to CRUISE CHARTER VENTURES TRUST 08 (the "Trust") in order to facilitate a determination as to whether the undersigned may act as a Purchaser Representative, as such term is used in Regulation D promulgated under the Securities Act of 1933, as amended (the "Act"), in connection with the proposed offer and sale by the Trust of its Contract Certificates (hereinafter referred to as the "Certificates"). The answers below are correct, and the Trustee is entitled to rely on them in making the foregoing determination.

REPRESENTATIONS

I represent, warrant and covenant to you that:

(a) the information contained herein is complete and accurate and may be relied upon by you in determining whether I may act as a Purchaser Representative pursuant to Regulation D in connection with offers and sales of the Certificates;

(b) I will notify you immediately of any material change in any of such information occurring within ninety (90) days of the close of sale of the Certificates to the Purchaser;

(c) (i) I have been designated, or will be designated, pursuant to the Purchaser Questionnaire of each Purchaser, as the Purchaser Representative or such Purchaser, in connection with evaluating the merits and risks of his prospective investment in the Certificates:

(ii) I have disclosed or will disclose, to each Purchaser, in writing, prior to the designation referred to above, any material relationship between me or my affiliates and the Trust, which now exists or is mutually understood to be contemplated, or which has existed at any time during the previous two (2) years, and any compensation received as a result of such relationship, including any compensation received in connection the offering of Certificates herein; and

(iii) I will deliver to each of you a counterpart of the disclosure statement referred to in (ii) above, and such other documents or information as each of you may request relating to the performance by me of my duties as a Purchaser Representative.

(Attach additional sheets if required)

1. Name: \_\_\_\_\_

Age: \_\_\_\_\_

Social Security No.: \_\_\_\_\_

2. Names of offerees I am representing:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. Firm name: \_\_\_\_\_

Empl. Iden. No.: \_\_\_\_\_

Position: \_\_\_\_\_

Nature of Duties: \_\_\_\_\_

Business Address: \_\_\_\_\_

Business telephone number: (     ) \_\_\_\_\_

4. Prior occupations or positions during the past five years:

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5. Description of prior experience in advising clients with respect to investments, including a description of the types of investments, the dollar amounts involved, and the number of years of experience which you have in financial, business and tax oriented matters:

General Investments (specify)

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Private Placements (specify)

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Other Investments (specify)

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6. The Professional licenses or registrations (including bar admissions, accounting certificates, real estate brokerage licenses, broker-dealer or investments advisory registrations) held by me are as follows:

Registration	Year Received	Is License or Registration Still Effective?
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7. My educational background, including degrees obtained and date of attendance:

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8. (a) Neither I nor any of my affiliates now have or have had any material relationship with the Trust or any of its affiliates, are not affiliates of the Trust, and no such relationship is contemplated in the future, except as follows:

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(b) The amounts of compensation received or to be received as a result of the material relationship(s) described in Item 8(a)(including any compensation received or to be received in connection with this transaction) are as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

9. Neither I nor any of my affiliates own beneficially any interest in the Trust except as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

10. I have received and read the Trust's Private Placement Memorandum dated February 23, 2007 and Exhibits thereto and have reviewed it with the Offeree.

11. Other comments or disclosures:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Purchaser Representative Signature

\_\_\_\_\_  
Type Purchaser Representative Name

\_\_\_\_\_  
Firm Name

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
City and State

( ) \_\_\_\_\_  
Telephone

**Acknowledgement of Investor(s)**

I acknowledge receipt of the foregoing disclosures this \_\_\_\_\_ day of \_\_\_\_\_, 2007, and this represents my acknowledgment in writing to the Trust that I have read the foregoing and desire that the above stated person serve as my Purchaser Representative with respect to the offering of the Trust's Certificates.

\_\_\_\_\_  
Investor's Signature

\_\_\_\_\_  
Investor's Signature

\_\_\_\_\_  
Investor's Signature





**\$3,250,000 MAXIMUM  
\$250,000 MINIMUM**

**CRUISE CHARTER  
VENTURES  
TRUST 08**

**CONTRACT CERTIFICATES  
13% DUE MARCH 1, 2010**

**PRIVATE PLACEMENT  
MEMORANDUM**

**MCGINN, SMITH & CO., INC.  
ALBANY, NEW YORK**

**February 14, 2007**

No dealer, salesman or other person has been authorized to give any information or to make any representations other than those contained in this Memorandum and if given or made, such information or representations must not be relied upon as having been authorized. This Memorandum does not constitute an offer to sell or a solicitation of an offer to buy any securities to which it relates. This Memorandum does not constitute an offer to sell or a solicitation of an offer to buy such securities in any jurisdiction to any person to whom it is unlawful to make such an offer or solicitation in such jurisdiction. Neither the delivery of this Memorandum nor any sale hereunder shall, under any circumstances, create any implication that there has been no change in the affairs of the Trust since the date hereof or that the information contained herein is correct as of any time subsequent to its date. However, in the event of any material change, this Memorandum will be amended, supplemented or updated accordingly.

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**CONFIDENTIAL PRIVATE PLACEMENT  
MEMORANDUM**

**\$400,000**

**12% Notes  
Due May 31, 2010**

**CRUISE CHARTER VENTURES, LLC**

**MAXIMUM OFFERING \$400,000  
MINIMUM OFFERING \$100,000**

CRUISE CHARTER VENTURES, LLC (the "Company") is hereby offering \$400,000 of Notes entitled to interest at the rate of 12%, per annum (the "Notes"). Interest on the Notes is payable upon maturity. See "Description of the Notes".

The Notes will be issued and registered in the names of the purchasing Noteholders. Interests in the Notes will be shown on, and transfers thereof will be effected through, records maintained by the Company. See "Description of the Notes".

Price of Notes 100%

See "Risk Factors" for a discussion of certain risks that should be considered by prospective purchasers of the Notes offered hereby.

THIS MEMORANDUM HAS NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION OR ANY STATE SECURITIES COMMISSION NOR HAS THE SECURITIES AND EXCHANGE COMMISSION OR ANY STATE SECURITIES COMMISSION PASSED UPON THE ACCURACY OR ADEQUACY OF THIS MEMORANDUM. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

The date of this Memorandum is September 25, 2009

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5/12/11

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The Offering of Notes will terminate on November 30, 2009, unless all are sold prior to that date. Interest will be earned on funds held by Cruise Charter Ventures, LLC ("CCV" or the "Company") commencing three days after the funds are deposited with the Company until the earlier of the termination of this Offering or the investment of such funds in Notes. During the period that an investor's funds are held by the Company such investor will not be a Noteholder of the Company. An investor's funds will not be held by the Company for more than two months before being invested in the Notes. See "Terms of the Offering".

The Company will furnish to investors certain reports, financial statements and tax information. See "Reports".

#### WHO MAY INVEST

The Notes will be offered only to accredited investors ("Accredited Investors") as that term is defined under Regulation D promulgated under the Securities Act of 1933, as amended (the "Act"). With certain exceptions (primarily with respect to institutional investors) an Accredited Investor is an individual who (i) has a net worth (along and together with the Investor's spouse) in excess of \$1,000,000 or (ii) has had gross income in excess of \$200,000 in each of the past two years or joint income with that person's spouse in excess of \$300,000 in each of those years and reasonably expects gross income at the same level in the current year. Corporations, partnerships and other entities will be considered Accredited Investors if each of its beneficial owners individually qualify as Accredited Investors, or if such entity has total assets in excess of \$5,000,000. Prospective investors to be admitted as Accredited Investors will be required to represent that they satisfy the requirements of an Accredited Investor. See "Suitability".

The Notes offered hereby are suitable only for those investors whose business and investment experience makes them capable of evaluating the merits and risks of their prospective investment in the Notes, who can afford to bear the economic risk of their investment for an indefinite period of time and have no need for liquidity in this investment. Each investor will be required to represent in a Subscription Agreement that such investor is acquiring the Notes for such investor's own account as principal for investment, and not with a view to resale or distribution, and that such investor is aware that (a) such investor's transfer rights are restricted; and (b) that the Notes have not been registered under the Act, and therefore, cannot be resold unless they are so registered or unless exemption from registration is available with respect to such transaction. (See "Suitability"). Since there can be no assurance that there will be sufficient income available to pay the Notes, investment in the Notes is suited for persons who have substantial income from other sources. See "Risk Factors".

The Company may require prospective investors to complete a questionnaire relating to the suitability of the investment for them, and may make or cause to be made such further inquiry as it deems appropriate. The Company will have the sole discretion regarding sale of the Notes to any prospective investor. The Company reserves the right to reject any subscription for any reason and to allocate to any investor a smaller amount of Notes, or fractions thereof, than that for which such investor has subscribed. See "Suitability".

## SUMMARY OF THE OFFERING

The following summary is qualified in its entirety by the detailed information appearing elsewhere in this Memorandum and the exhibits attached to this Memorandum.

### The Company

CRUISE CHARTER VENTURES, LLC ("CCV" or the "Company") is a Florida limited liability company.

CCV will employ the net proceeds of the offering to (i) charter Carnival Cruise Line's M/V "Imagination" for a 3 day cruise departing from Miami, Florida on October 29, 2010, (ii) underwrite the marketing, sales, legal and administrative expenses associated with the selling of 2,046 berths for the cruise, and (iii) general corporate purposes.

### The Investment

Noteholders will purchase a Note with a maturity of May 31, 2010. The interest rate is 12.00% per annum. The Noteholders will also be entitled to contingent interest. The contingent interest earned will be equal to 1.5% of the passenger revenues realized in excess of \$600,000 for each \$50,000 of Notes owned.

### Risk Factors

In evaluating this Offering, prospective investors should consider carefully, among others, the following risk factors:

- No assurance that the Notes will be paid;
- No market for resale of Notes;
- Illiquid collateral;
- Potential for CCV loan defaults;
- No amortization of principal;
- Limited operating history of CCV;
- Dependence upon management of CCV; and
- Financial loss for 2009 inaugural cruise.

### Description of the Notes

The Notes will be available for purchase in denominations of \$25,000.00 with a minimum investment of \$50,000.00. The Notes will be registered in the name of the individual Noteholders.

The Notes will bear interest at a per annum rate of 12%. See "The Investment". Interest will accrue commencing on the Closing Date for the purchase of such Note and principal and interest will be payable to Noteholders upon maturity.

### Use of Proceeds

CCV will employ the net proceeds of the offering to (i) charter Carnival Cruise Line's M/V "Imagination" for a 3 day cruise departing from Miami, Florida on October 29, 2010, (ii) underwriting the marketing, sales, legal and administrative expenses associated with the selling of 2,046 berths for each of the aforementioned cruises, and (iii) general corporate purposes.

### Security Interest in Passenger Receipts

The Noteholders will obtain a security interest in passenger revenues to the extent that these revenues exceed the difference between \$413,000 and the proceeds of this offering. It is anticipated that revenues at 90% capacity utilization will be approximately \$950,000. Accordingly, at 90% utilization, approximately \$950,000 will be available to service repayment of interest and principal of up to \$550,000 (which includes \$150,000 of notes previously issued by the Company).



**Income Tax Considerations**

The Notes will be treated as indebtedness of the Company for federal income tax purposes. Each Noteholder will generally be required to report interest income on a Note in accordance with such Noteholder's method of accounting. Each prospective investor should consult with his or her own tax advisor with respect to the tax consequences of the acquisition, ownership and disposition of the Notes.

**RISK FACTORS**

In evaluating this Offering, prospective investors should consider carefully all of the information contained in this Memorandum and, in particular, the factors discussed below. The following summary is not intended to state in full or replace portions of this Memorandum that discuss these factors and others in greater depth. Although the risk factors are intended to be presented in order of their materiality to investors, such order may not be indicative of their relative importance to any particular investor.

**Limitation of Transfer of Notes**

The Notes may not be offered for resale to any person without the consent of the Company. Prior to this offering there has been no market for the Notes of the Company. Each investor will be required to represent that such investor's purchase of the Notes will be for investment only and not with a view towards the resale or distribution thereof. A Noteholder will not have any right to sell, transfer, exchange or otherwise dispose of such Noteholder's Notes, or to cause a security interest to be created therein, unless the Company has received evidence satisfactory to it that such disposition or creation of a security interest is not in violation of federal or state securities laws. The Notes have not been registered or qualified under the Act or applicable state securities laws and may not be sold or transferred without such registration or qualification or an exemption therefrom.

**Potential for Payment Defaults**

Default by CCV on its obligations to the Noteholders could cause significant loss of principal.

**No Monthly Amortization Schedule**

There will be no amortization of the principal arising out of the cash flow generated from the sale of berths. It is anticipated that the Notes will be fully liquidated on May 31, 2010.

**No Independent Counsel to Investors**

Purchasers of the Notes offered hereby will not be afforded the services of independent counsel. Disclosure of material facts and risks has been reviewed by counsel to the Company.

**Dependence Upon Management**

CCV operates in the trade as YOLO Cruises ("YOLO"). YOLO believes it was the first to charter an entire ship for a "Lifestyle Cruise". YOLO's President, Marlene Brustle, was singularly responsible for filling 1,788 berths on the Legend cruise which was YOLO's first "Lifestyle Cruise". That cruise launched in April, 2009. To the extent that Ms. Brustle is unavailable to direct YOLO's marketing and sales activities, the current slate of cruises would be materially adversely effected.

**Lack of Financial Statements**

This Memorandum does not include financial statements for the Company.

**Financial Loss for Inaugural Cruise**

CCV launched its' first "Lifestyle" cruise in April, 2009. Ship occupancy was 84.6%, with prices cut from initially advertised prices. The charter was procured from Carnival at a charter rate of \$149.00 per day per passenger. The EBITDA loss for the period from February 1, 2008 through June 30, 2009 was \$870,000. Although the charters contemplated for 2010 are at an average cost of \$84.00 per passenger per day, there can be no assurance that sufficient cabins can be sold at prices that will be sufficient to liquidate the Notes.

## USE OF PROCEEDS

The net proceeds to the Company from the sale of the Notes offered hereby if the maximum offering is achieved is \$400,000.

The net proceeds to the Company from the sale of the Notes offered hereby, if the minimum offering is achieved is \$100,000.

The Company intends to utilize the net proceeds as follows:

<b>Maximum Offering Sources</b>	
Maximum Net Proceeds	\$400,000
<b>Uses by Cruise Charter Ventures, LLC</b>	
Charter cost, marketing, general purposes	400,000
Total uses by Cruise Charter Ventures, LLC	<u>\$400,000</u>
<b>Minimum Offering Sources</b>	
Minimum Net Proceeds	\$100,000
<b>Uses by Cruise Charter Ventures, LLC</b>	
Charter cost, marketing, general purposes	100,000
Total uses by Cruise Charter Ventures, LLC	<u>\$100,000</u>

## BUSINESS OF CRUISE CHARTER VENTURES LLC

### Cruise Charter Ventures LLC

Cruise Charter Ventures LLC has undertaken one charter in its history. CCV chartered the M/V Carnival "Legend" for a 7 day cruise departing from Tampa, Florida on April 29, 2009. It is believed to have been the first "Lifestyle" charter of an entire ship. Of 2,114 available berths, CCV filled 1,788 berths for an occupancy rate of 84.6% with total revenue of \$1,742,000.

The CCV income statement showed EBITDA of (\$870,000) for the period February 1, 2008 through June 30, 2009. The Legend charter which was contracted in June, 2008 was priced by Carnival at \$149.00 per passenger per night. The ship intended for the 2010 cruise being financed by this offering will cost approximately \$84.00 per passenger per night. The difference in charter cost from 2009 to the 2010 cruises is approximately \$818,000.

### "Lifestyle" Activities

"Lifestyle" connotes sexually themed activities among and between consenting adults. All sexual activities are required to take place either in the privacy of passenger cabins or in couples only, security monitored "playrooms".

YOLO requires that passengers are a minimum age of 25 on its cruises.

All YOLO cruises are accompanied by Ms. Brustle as well as other YOLO staff members.

CCV is engaged in the business of procuring whole ship charters and then selling the berths to "Lifestyle" participants. CCV has completed one such transaction. The charter contemplated to be

financed by this offering is a 3 day cruise on the Carnival M/V "Imagination" departing October 29, 2010 from Miami.

Under the agreement with Carnival Cruise Lines, a division of Carnival Corporation, a Panamanian corporation, the payment requirements for CCV to charter the M/V "Imagination" are as follows:

August 15, 2009	\$100,000
October 1, 2009	100,000
November 15, 2009	100,000
December 31, 2009	100,000
February 15, 2010	<u>113,206</u>
<b>Total</b>	<b>\$513,206</b>

In addition to the above costs, CCV has agreed to pay Carnival an attrition fee should passenger count fall below certain levels. See page 18 of the Carnival Agreement (Exhibit "C").

#### **Corporate Information**

Cruise Charter Ventures LLC was organized as a Florida limited liability company in December, 2007. The address for CCV is 99 Pine Street, Albany, New York 12207.

#### **Prepayments**

The Notes are not subject to a mandatory prepayment or redemption provision.

#### **Registration**

Each Note will be registered in the name of the purchaser thereof.

#### **Limited Transferability of the Notes**

The Notes are not freely transferable, and there is no secondary market for the Notes and none is expected to develop. The Notes should not be treated by Noteholders as marketable securities.

The Notes have not been registered under the Act. They may not be offered for resale in the absence of an opinion of counsel, satisfactory to the Company, that registration is not required.

#### **Reports**

Not later than January 31 of each year, the Company will furnish to the Noteholders statements of interest income on IRS Form 1099-INT and such tax information as shall be necessary in the preparation of such person's Federal income tax return.

### **SUITABILITY**

Notes will be sold only to investors who make a minimum purchase of \$50,000.00.

As described elsewhere in this Memorandum, the Notes will be sold only to Accredited Investors as defined in Rule 501 of Regulation D promulgated by the Securities and Exchange Commission under the Act. Included in the definition of "Accredited Investor", as defined in Rule 501, are the following:

- (a) any natural person whose individual net worth (including personal residences, furnishings and automobiles), or joint net worth with that person's spouse, at the time of purchase exceeds \$1,000,000;
- (b) any natural person who had an individual income in excess of \$200,000 in each of the two most recent years or joint income with that person's spouse in excess of \$300,000 in each of those years and who reasonably expects gross income at the same level in the current year; and

- (c) any entity in which all of the equity owners are Accredited Investors or which has total assets in excess of \$5,000,000.

Each investor accepted as an Accredited Investor will be required to represent that he satisfies the requirements of an Accredited Investor under Rule 501.

Among other things, each investor will be required to acknowledge and represent in a Subscription Agreement that: (i) he is purchasing the Notes for his own account for investment and not with a view to the sale or distribution thereof; (ii) he is aware that the Notes have not been registered for sale under the Securities Act of 1933, as amended, and that he will not transfer his Notes in the absence of an opinion of counsel satisfactory to the Company that the Notes have been registered or that registration is not required under the Act and under applicable state securities laws, if any; (iii) he understands that this investment involves a high degree of risk; (iv) he has adequate means of providing for his current needs and foreseeable personal contingencies, has no need for liquidity in this investment; (v) all books, records and documents pertaining to this investment have been made available to him; and (vi) his overall commitment to investments which are not readily marketable is not disproportionate to his net worth and his purchase of Notes will not cause such overall commitment to become excessive.

Company reserves the right to reject any subscription in its entirety for any reason or to allocate to any investor Notes in an aggregate principal amount less than that for which he has subscribed. In the event a subscription is rejected, the investor's subscription check for his Notes (or the amount thereof) will be returned, and in the event of a partial rejection, a pro rata amount of his subscription check for his Notes will be refunded.

Prospective investors may be required to complete an Investor Representation Letter relating to the suitability of the investment for them, and the Company may make or cause to be made such further inquiry as the Company deems appropriate.

Any prospective investor will be afforded the opportunity to obtain from the Company prior to the consummation of the transaction contemplated herein any additional information he may request necessary to verify the accuracy of the contents of this Memorandum and which the Company possesses or can acquire without unreasonable effort or expense and to confer with, ask questions of, and receive answers from the Company or persons authorized to act on its behalf, concerning the terms and conditions of the transaction, this Memorandum and any additional information which has been requested and supplied to a prospective investor or his purchaser representative.

The purchase of Notes may be suitable for individuals seeking an investment intended to provide income. An investment in Notes may also be appropriate for corporations and companies seeking investments which are structured to provide income. Nevertheless, this investment involves a number of significant risks, including no assurance that the Notes will be paid and illiquidity. See "Risk Factors." Accordingly, the suitability of a purchase of Notes for any particular investor will depend upon, among other things, such investor's investment objectives and such investor's ability and willingness to accept the risks of an investment in the Notes.

#### TERMS OF THE OFFERING

Subject to the conditions set forth in this Memorandum, Notes in the maximum amount of \$400,000 (the "Maximum Offering") and the minimum amount of \$100,000 (the "Minimum Offering") will be offered by the Company.

The Notes will be offered by the Company or a selected broker dealer on a best efforts basis over a period of approximately two (2) months. The Company will pay a 5% commission to any selected broker dealer who arranges for the sale of Notes.

All funds received by the Company from subscriptions for the Notes will be held until such time as the minimum offering is subscribed for. If subscriptions for the Minimum Offering are not received within two (2) months from the date of this Memorandum, subscriptions received with respect to the Notes will be promptly returned in full to the investor by the Company, unless the Offering is extended.

#### **How to Subscribe.**

The Notes will be available for purchase in the minimum denomination of \$50,000.00 and increments of \$25,000.00. An investor who meets the qualifications set forth under "Who May Invest" and "Suitability" may subscribe for Notes by completing, signing and delivering to the Company an executed copy of the Subscription Agreement contained in this Memorandum. All subscriptions must be accompanied by a check in the amount of the Note(s) purchased payable to "*Cruise Charter Ventures LLC*". Upon execution of a Subscription Agreement, the investor agrees to all of the terms and conditions contained in such Agreement. Subscriptions are, however, subject to acceptance by the Company.

#### **PLAN OF DISTRIBUTION**

The Company is offering a maximum of \$400,000 of Notes, and a minimum of \$100,000. The minimum investment by an investor is \$50,000.00 with increments of \$25,000.00. The Offering of Notes will terminate on November 30, 2009, unless all are sold prior to that date or such date is extended. No Notes will be sold unless subscriptions for the Minimum Offering are received and accepted November 30, 2009 unless such date is extended. Subscriptions are subject to acceptance by the Company. See "Suitability"; "Who May Invest".

The Notes will be offered on a "best efforts" basis by the Company.

#### **DISCLAIMER OF LIABILITY OF THE COMPANY**

Other than potential liability under the Act, neither the Company, nor any shareholder, manager, officer, employee, affiliate or agent of the Company may be held to any liability in connection with the Offering or the Notes, or in connection with the affairs of the Company, in the absence of willful misconduct or gross negligence. Further, the Company will not be liable, in any event, to pay sums of money beyond the proceeds of this offering then remaining under the control of the Company.

#### **INCOME TAX CONSIDERATIONS**

The following discussion summarizes certain material anticipated federal income tax consequences relevant to the acquisition, ownership and disposition of Notes, but does not purport to address all potential consequences. The summary is for general information only and does not discuss all of the tax consequences that may be relevant to particular investors in light of their personal investment circumstances or holders who receive special treatment under the Internal Revenue Code of 1986, as amended (the "Code"), such as insurance companies, financial institutions, and broker-dealers. In addition, this discussion does not describe any tax consequences arising out of foreign, state or local jurisdictions.

The discussion is based upon current provisions of the Code, applicable regulations promulgated thereunder, judicial authority and administrative rulings and practice. All of the foregoing is subject to change which may be retroactive and could affect the continuing validity of this discussion. There can be no assurance that the Internal Revenue Service (the "IRS") will not take a contrary view, and no ruling from the IRS has been or will be sought.

The Company has not obtained an independent tax opinion with regard to this Offering. Prospective investors should consult their own tax advisors regarding the federal, foreign, state, local and other tax consequences of purchasing, holding and disposing of the Notes.

#### **Interest Income to Noteholders**

It is anticipated that the Notes will be issued at par value and, therefore, no original issue discount will arise with respect to the Notes. Accordingly, a Noteholder will be required to report interest on a Note as income for federal income tax purposes in accordance with such holder's method of accounting.

#### **Gain or Loss on Disposition of Notes**

In general, the holder of a Note will recognize gain or loss on the sale, exchange, redemption or other disposition of a Note equal to the difference between the amount realized (except to the extent attributable to the payment of accrued interest) and the adjusted basis in his Note. Any gain or loss recognized will generally be a Company gain or loss if the Note is held as a Company asset and will be long-term gain or loss if the Note is held for more than one year.

#### **Information Reporting**

The Company will report interest income to Noteholders on IRS Form 1099-INT and as otherwise consistent with such treatment.

#### **Backup Withholding**

A Noteholder may be subject to "backup withholding" at the rate of 31% (see IRC§3406(a)) with respect to interest paid on, or the proceeds of a sale, exchange or redemption of, such Notes, unless such holder (i) is a corporation or comes within certain other exempt categories and, when required, demonstrates this fact, or (ii) provides a taxpayer identification number, certifies as to no loss of exemption from backup withholding, and otherwise complies with applicable exemption from backup withholding rules. Any amount withheld under these rules will be creditable against the Note-holder's federal tax liability.

THE FOREGOING DISCUSSION OF CERTAIN FEDERAL INCOME TAX CONSEQUENCES IS FOR GENERAL INFORMATION ONLY AND IS NOT TAX ADVICE. EACH PROSPECTIVE INVESTOR SHOULD CONSULT WITH HIS OR HER OWN TAX ADVISER WITH RESPECT TO THE TAX CONSEQUENCES OF THE ACQUISITION, OWNERSHIP AND DISPOSITION OF THE NOTES.

### **TABLE OF CONTENTS OF EXHIBITS**

The discussion in this Memorandum of each Exhibit set forth below is qualified in its entirety by reference to such Exhibit.

Exhibit "A"	Subscription Agreement
Exhibit "B"	Investor Representation Letter
Exhibit "C"	Charter Agreement

### **ADDITIONAL INFORMATION**

Additional information is available upon request to the Company. Only additional information provided by the Company may be relied upon. Prospective investors may request such information from the Company, Fifth Floor, 99 Pine Street, Albany, New York 12207.

**EXHIBIT "A"**

**SUBSCRIPTION AGREEMENT**

## SUBSCRIPTION AGREEMENT

THE NOTES WHICH ARE THE SUBJECT OF THIS AGREEMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED. THEY MAY NOT BE OFFERED FOR RESALE IN THE ABSENCE OF AN OPINION OF COUNSEL, SATISFACTORY TO THE COMPANY, THAT REGISTRATION IS NOT REQUIRED. IN ADDITION, THIS AGREEMENT AND THE NOTES CONTAIN SUBSTANTIAL RESTRICTIONS ON TRANSFERABILITY.

### CRUISE CHARTER VENTURES, LLC

TO: CRUISE CHARTER VENTURES, LLC (the "Company"):

1. Subscriptions. I hereby subscribe for and agree to purchase the dollar amount of the Company's Notes (the "Notes") as is set forth opposite my name acknowledging the minimum purchase to be Fifty Thousand Dollars (\$50,000) and increments of Twenty-Five Thousand Dollars (\$25,000).
2. Payment. I hereby agree to pay the Company the purchase price for the Notes by delivery herewith of a check in the face amount of the Notes subscribed for payable to the order of "CRUISE CHARTER VENTURES LLC".
3. Restriction on Transfer of the Notes. I understand that any resale or transfer of the Notes by me is subject to substantial restriction, in that:
  - (i) The Notes have not been registered under the Securities Act of 1933, as amended (the "Act") or applicable state securities laws. The Notes cannot be sold or transferred by subscribers in the absence of an opinion of counsel that registration is not necessary. The Company is not required to register the Notes or to make any exemption from registration available.
  - (ii) My right to sell or transfer any of the Notes will be restricted as follows: (1) restrictions against sale or transfer in violation of applicable securities law; (2) the requirement that I furnish an opinion of counsel that any proposed sale or transfer by me will not violate such laws; (3) the Company must consent to the transfer of my Notes; and (4) other restrictions and requirements, including such restrictions on transfer arising under state securities laws.
  - (iii) There will be no public market for the Notes, and I may not be able to sell my Notes. Accordingly, I must bear the economic risk of my investment for an indefinite period of time.
4. Investment Representation. I represent and warrant that I am acquiring my Notes for my own account and not on behalf of other persons, and that I am acquiring my Notes for investment purposes only and not with a view to the resale or distribution thereof; I understand that the Notes will be offered and sold in a manner which would qualify the transaction for an exemption as a private placement under the Act. The Notes may not be transferred or assigned except as provided herein.
5. Subscription Irrevocable by Noteholder. This Subscription Agreement is not, and shall not be, revocable by me, except as provided by applicable state securities law requirements, and I intend to be legally bound by this Subscription Agreement.
6. Subscription Subject to Acceptance or Rejection by the Company. The Company, in its sole discretion, shall have the right to accept or reject this subscription at any time on or before the Closing.
7. Offering of Notes Subject to Withdrawal. If the Company does not receive subscriptions for Notes in the minimum amount of \$100,000.00 before the Termination Date, the Offering of Notes will be



withdrawn and I understand that all my subscription documents and payments will be returned to me, with interest, less the cost of escrow, and without further obligation of the Company.

8. Additional Representations and Warranties. I represent and warrant that:

- (a) (i) I have received and have carefully read and understood the Private Placement Memorandum dated September 25, 2009 (the "Memorandum") given to me by the Company in connection with the offering of Notes.  
(ii) I have been furnished with all additional documents and information which I have requested.  
(iii) I have had the opportunity to ask questions of and receive answers from the Company concerning the Company and the offering of Notes and to obtain any additional information necessary to verify the accuracy of the information furnished.  
(iv) I have relied only on the foregoing information and documents in determining to make this subscription, and the decision to acquire Notes of the Company has been made based upon my own evaluation of the merits and risks of the Company.  
(v) I will not offer to sell, or resell, the Notes except in accordance with Section 3(ii) hereof.  
(vi) I will require any purchaser to provide the Company with his address.
- (b) I recognize that investment in the Notes involves substantial risk factors, including those set forth under "Risks" in the Memorandum.
- (c) I have adequate means of providing for my current needs and possible personal contingencies, and I have no need for liquidity in my investment in the Notes.
- (d) My overall commitment to investments which are not readily marketable is not disproportionate to my net worth and my purchase of Notes will not cause such overall commitment to become excessive.

9. Indemnification and Hold Harmless. If I breach any agreement, representation or warranty I have made in this Subscription Agreement or any other document I have executed in connection with this offering, I agree to indemnify and hold harmless the Company and any officer or director of the Company and any person controlling either or any of them against any claims, actions, liability, loss, damage or expense (including attorney's fees and other costs of investigation and litigating claims) caused, directly or indirectly, by my breach.

10. Subscriber Information. This Subscription and my Notes shall be recorded on the Company's books.

IN WITNESS WHEREOF, I have executed this Subscription Agreement this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
*Print exact name in which title is to be held*

Name: \_\_\_\_\_

Printed Name

Tax ID #

Printed Name

Tax ID#

Signature: X \_\_\_\_\_

Signature X \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Amount Purchased: \$ \_\_\_\_\_

ACCEPTED BY CRUISE CHARTER VENTURES, LLC this \_\_\_\_\_ of \_\_\_\_\_, 20\_\_\_\_.

**Cruise Charter Ventures, LLC**

By: \_\_\_\_\_

**EXHIBIT "B"**

**INVESTOR REPRESENTATION LETTER**

**CONFIDENTIAL**

**PURCHASER QUESTIONNAIRE FOR INDIVIDUALS**

**CRUISE CHARTER VENTURES, LLC**

The offering is being made on a private basis by the Company to not more than ten accredited investors. The persons involved in the offering and sale of the securities must have reasonable grounds to believe either:

(i) that the Offeree has such knowledge and experience in financial and business matters that he is capable of evaluating the merits and risks of the prospective investment; or

(ii) the undersigned is acquiring the Notes for investment purposes only and not with a view towards resale.

The undersigned is aware that this offering will involve Notes for which no resale market exists, thereby requiring this investment to be maintained for the stated term of each Note.

Your answers will, at all times, be kept strictly confidential; however, each party who signs the questionnaire hereby agrees that the Company may present this questionnaire to such parties as may seem appropriate in order to insure that the offer and sale of the Notes to you will not result in violation of any exemption from registration under the Act which may be relied upon by the Company in connection with the sale of the Notes.

Please complete this questionnaire as thoroughly as possible and sign, date and return to the Company c/o Cruise Charter Ventures, LLC, 5th Floor, 99 Pine Street, Albany, New York 12207.

Please print or type:

Name: \_\_\_\_\_

Home Address: \_\_\_\_\_  
\_\_\_\_\_

Date of Birth: \_\_\_\_\_

Social Security No.: \_\_\_\_\_

Occupation: \_\_\_\_\_

Business Address: \_\_\_\_\_

Business Telephone: \_\_\_\_\_

Home Telephone: \_\_\_\_\_

Communications should be sent to:

Home Address \_\_\_\_\_ or Business Address \_\_\_\_\_

1. What is your approximate net worth?

\_\_\_\_\_ \$50,000 - \$100,000  
\_\_\_\_\_ \$100,000 - \$250,000  
\_\_\_\_\_ \$250,000 - \$500,000  
\_\_\_\_\_ \$500,000 - \$1,000,000  
\_\_\_\_\_ Greater than \$1,000,000

2. Did your individual income exceed \$200,000.00 in 2007 and 2008, or did your joint income with your spouse exceed \$300,000.00 in each of those years?

Yes \_\_\_\_\_ No \_\_\_\_\_

3. If the answer to #2 above is "yes", do you expect to reach the same income level in 2009?

Yes \_\_\_\_\_ No \_\_\_\_\_

4. What was your approximate gross income for calendar year 2008?

\_\_\_\_\_ \$25,000 - \$100,000  
\_\_\_\_\_ \$100,000 - \$200,000  
\_\_\_\_\_ \$200,000 - \$300,000  
\_\_\_\_\_ \$300,000 - \$500,000  
\_\_\_\_\_ Greater than \$500,000

5. What will your approximate gross income be for calendar year 2009?

\_\_\_\_\_ \$25,000 - \$100,000  
\_\_\_\_\_ \$100,000 - \$200,000  
\_\_\_\_\_ \$200,000 - \$300,000  
\_\_\_\_\_ \$300,000 - \$500,000  
\_\_\_\_\_ Greater than \$500,000

To the best of my information and belief, the above information is accurate and complete in all respects.  
I agree to notify the Company promptly of any changes which occur prior to sale of the Notes.

Purchaser

Date:

\_\_\_\_\_  
Name (printed)

\_\_\_\_\_  
Signature

CONFIDENTIAL

PURCHASER QUESTIONNAIRE FOR CORPORATIONS AND PARTNERSHIPS

CRUISE CHARTER VENTURES, LLC

The offering is being made on a private basis by the Company to not more than ten accredited investors. The persons involved in the offering and sale of the securities must have reasonable grounds to believe either:

(i) that the Offeree has such knowledge and experience in financial and business matters that he is capable of evaluating the merits and risks of the prospective investment; or

(ii) that the Offeree and its Offeree Representative(s), together, have such knowledge and experience in financial and business matters, that they are capable of evaluating the merits and risks of the prospective investment and that the Offeree is able to bear the economic risk of the invest.

The purpose of this Questionnaire is to assist CRUISE CHARTER VENTURES, LLC (the "Company") in complying with the above requirement.

Please contact Cruise Charter Ventures, LLC, 5th Floor, 99 Pine Street, Albany, New York 12207 (561-998-9656) if you have any questions in answering this questionnaire.

If the answer to any questions "None" or "Not Applicable", please so state.

Your answers will, at all times, be kept strictly confidential; however, each party who signs the Questionnaire hereby agrees that the Company may present this Questionnaire to such parties as may seem appropriate in order to insure that the offer and sale of the Notes to you will not result in violation of any exemption from registration which may be relied upon by the Company in connection with the sale of the Notes.

Please complete this Questionnaire as thoroughly as possible and sign, date and return one (1) copy to the Company c/o Cruise Charter Ventures, LLC, 5th Floor, 99 Pine Street, Albany, New York 12207.

Please print or type:

Name of Organization: \_\_\_\_\_

Business Address: \_\_\_\_\_

Business Telephone: \_\_\_\_\_

Federal ID Number: \_\_\_\_\_

1. Was the organization formed for the specific purpose of acquiring the Company's Notes?

Yes\_\_\_\_\_ No\_\_\_\_\_

2. Does the organization possess total assets in excess of \$5,000,000?

Yes\_\_\_\_\_ No\_\_\_\_\_

3. Does each equity owner of the organization:

A. Have a net worth, exclusive of home, furnishings, and automobiles, of at least \$1,000,000?

Yes\_\_\_\_\_ No\_\_\_\_\_

B. Had an individual net income in excess of \$200,000 in 2007 and 2008, or joint income with that person's spouse in excess of \$300,000 in each of those years, and have a reasonable expectation of reaching the same income level in 2009?

Yes\_\_\_\_\_ No\_\_\_\_\_

4. I am aware that the Notes proposed to be offered will not be readily marketable or transferable.

Yes\_\_\_\_\_ No\_\_\_\_\_

5. The organization can afford the complete loss of its investments in the Notes and has no need for liquidity in this investment.

Yes\_\_\_\_\_ No\_\_\_\_\_

6. Stated below are the organization's previous investments in similar securities and other private placements during the past five years:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

7. I understand that, unless the organization satisfies certain criteria, in order to qualify as a purchaser of Notes, I must have sufficient knowledge and experience in financial and business matters to be capable of evaluating the merits and risks of an investment in the Company or I must engage an attorney, accountant or other financial advisor for the purpose of this particular transaction.

I hereby represent, by initialing on the Representation A or Representation B line below, that:

A. I have such knowledge and experience in financial and business matters that I am capable of evaluating the merits and risks of an investment in the Notes and will not require a Purchase Representative.

Representation A. \_\_\_\_\_

B. I have relied upon the advice of the following Purchaser Representative(s) in evaluating the merits and risks of an investment in the Notes:

Representation B. \_\_\_\_\_

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
Relationship

\_\_\_\_\_  
Relationship

To the best of my information and belief, the above information is accurate and complete in all respects. I agree to notify the Company promptly of any changes which occur prior to sale of the Company's Notes.

Purchaser:

Date:

\_\_\_\_\_  
Print Name of Organization

\_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

## PURCHASER REPRESENTATIVE QUESTIONNAIRE

### CRUISE CHARTER VENTURES, LLC

The information contained herein is being furnished to CRUISE CHARTER VENTURES, LLC (the "Company") in order to facilitate a determination as to whether the undersigned may act as a Purchaser Representative, in connection with the proposed offer and sale by the Company of its Notes (hereinafter referred to as the "Notes"). The answers below are correct, and the Company is entitled to rely on them in making the foregoing determination.

### REPRESENTATIONS

I represent, warrant and covenant to you that:

(a) the information contained herein is complete and accurate and may be relied upon by you in determining whether I may act as a Purchaser Representative in connection with offers and sales of the Notes;

(b) I will notify you immediately of any material change in any of such information occurring within ninety (90) days of the close of sale of the Notes to the Purchaser;

(c) (i) I have been designated, or will be designated, pursuant to the Purchaser Questionnaire of each Purchaser, as the Purchaser Representative or such Purchaser, in connection with evaluating the merits and risks of his prospective investment in the Notes;

(ii) I have disclosed or will disclose, to each Purchaser, in writing, prior to the designation referred to above, any material relationship between me or my affiliates and the Company, which now exists or is mutually understood to be contemplated, or which has existed at any time during the previous two (2) years, and any compensation received as a result of such relationship, including any compensation received in connection the offering of Notes herein; and

(iii) I will deliver to each of you a counterpart of the disclosure statement referred to in (ii) above, and such other documents or information as each of you may request relating to the performance by me of my duties as a Purchaser Representative.

(Attach additional sheets if required)

1. Name: \_\_\_\_\_

Age: \_\_\_\_\_

Social Security No.: \_\_\_\_\_

2. Names of offerees I am representing:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. Firm name: \_\_\_\_\_

Empl. Iden. No.: \_\_\_\_\_

Position: \_\_\_\_\_

Nature of Duties: \_\_\_\_\_

Business Address: \_\_\_\_\_



Business telephone number: (     ) \_\_\_\_\_

4. Prior occupations or positions during the past five years:

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5. Description of prior experience in advising clients with respect to investments, including a description of the types of investments, the dollar amounts involved, and the number of years of experience which you have in financial, business and tax oriented matters:

General Investments (specify)

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Private Placements (specify)

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Other Investments (specify)

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6. The Professional licenses or registrations (including bar admissions, accounting Notes, real estate brokerage licenses, broker-dealer or investments advisory registrations) held by me are as follows:

Registration	Year Received	Is License or Registration Still Effective?

7. My educational background, including degrees obtained and date of attendance:

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8. (a) Neither I nor any of my affiliates now have or have had any material relationship with the Company or any of its affiliates, are not affiliates or the Company, and no such relationship is contemplated in the future, except as follows:

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(b) The amounts of compensation received or to be received as a result of the material relationship(s) described in Item 8(a)(including any compensation received or to be received in connection with this transaction) are as follows:

9. Neither I nor any of my affiliates own beneficially any interest in the Company except as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

10. I have received and read the Company's Private Placement Memorandum dated September 25, 2009 and Exhibits thereto and have reviewed it with the Offeree.

11. Other comments or disclosures:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Purchaser Representative Signature

\_\_\_\_\_  
Type Purchaser Representative Name

\_\_\_\_\_  
Firm Name

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
City and State

( ) \_\_\_\_\_  
Telephone

Acknowledgement of Investor(s)

I acknowledge receipt of the foregoing disclosures this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_, and this represents my acknowledgment in writing to the Company that I have read the foregoing and desire that the above stated person serve as my Purchaser Representative with respect to the offering of the Company's Notes.

\_\_\_\_\_  
Investor's Signature

\_\_\_\_\_  
Investor's Signature

\_\_\_\_\_  
Investor's Signature

**EXHIBIT "C"**

**CHARTER AGREEMENT**

## AGREEMENT COVER PAGE

OWNER: Carnival Cruise Lines, a division of Carnival Corporation, a Panamanian corporation

CHARTERER: Cruise Charter Ventures, LLC.

CHARTERER'S ADDRESS: c/o Timothy McGinn, McGinn Smith & Co. Inc., 99 S. Pine Street, 5<sup>th</sup> Floor, Albany, NY 12207

OPERATOR: Carnival Cruise Lines, a division of Carnival Corporation, a Panamanian corporation

VESSEL: Carnival Imagination

REGISTRY: Bahamas

DEPARTURE DATE: October 29, 2010

RETURN DATE: November 1, 2010

PORT OF EMBARKATION: Miami

PORT OF DEBARKATION: Miami

INCLUDED NUMBER OF PASSENGERS (based on double occupancy): 2046

SCHEDULED ITINERARY: Per Schedule A attached hereto

~~CHARTER HIRE: U.S. \$513,506.00 (Net to OWNER), subject to the additional charges set forth in Schedule B attached hereto.~~

CHARTER HIRE PAYMENT SCHEDULE: Per Schedule B attached hereto.

CHARTER HIRE SECURITY: Non-refundable cash deposit in the amount of US. \$100,000.00 due and payable no later than August 15, 2009.

STANDARD CHARTER HIRE PROVISIONS: OWNER will provide the following:

1. Round trip transportation on the VESSEL for the VOYAGE described on Schedule A, in accordance with the regular form of Cruise Contract to be issued by OWNER.
2. Stateroom accommodations as offered by the VESSEL's normal facilities. Any alterations made on the VESSEL will not diminish the desirability of the accommodations thereon, below those that existed as of the date of signing this Agreement.
3. All onboard meals commencing with sailing from the PORT OF EMBARKATION until the VESSEL shall return the passengers to the PORT OF DEBARKATION.
4. Hot and iced tea and American coffee served in the dining rooms, lido and room service.
5. A Captain's reception including a variety of alcoholic beverages, use of VESSEL's orchestra, and waiters' gratuities. CHARTERER may offer an alternately themed party in lieu of the Captain's reception.

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6. The services of a Cruise Director in planning entertainment and social activities on board the VESSEL.

7. Professional entertainment and orchestra according to normal VESSEL's scheduling.

8. Use of all facilities of the VESSEL which shall include swimming pools, movies, deck sports equipment, but not including golf or other concessionaire provided activities or services.

ADDITIONAL CHARTER HIRE PROVISIONS: OWNER will also provide the following:

1. Up to four (4) cabins will be provided at no charge, except for miscellaneous taxes, fees, gratuities, fuel supplement and non-commission fares, to be used by CHARTERER for the purpose of site inspection and/or planning in advance of the VOYAGE.

SPECIAL CHARTER HIRE PROVISIONS: Notwithstanding any additional or inconsistent terms of this Agreement, the parties expressly agree as follows:

1. Neither OWNER nor CHARTERER shall issue any publicity or press releases, or make any other public statement, identifying the other party or the VESSEL without the prior written consent of the other party in each instance.

2. The CHARTERER agrees, that should it arrange or provide any shore excursions for its passengers, that all such shore excursions will be purchased solely through OWNER

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3. The CHARTERER shall not permit any press, radio or television correspondent or photographer or camera crew to board the VESSEL in any circumstances without the written consent of OWNER, which consent shall not be unreasonably withheld.

4. CHARTERER, for its own account, shall have the right to obtain additional insurance coverage with respect to the VOYAGE or any other related liability under this Agreement.

5. Any consent required or desired under this Agreement will not be unreasonably withheld by any party, who will each carry out their respective obligations in good faith at all times.

6. "6. CHARTERER agrees that it shall not: (i) allow minors under the age of 21 on the VOYAGE; or (iii) permit its passengers to engage in nudity or sexual activities in public rooms, restrooms or other public spaces on the VESSEL. The VESSEL's staff shall be permitted to remove any passengers engaging in such activities from such public room or space.

7. 7. CHARTERER shall not permit, nor permit its employees, representatives or passengers, to make physical contact (other than incidental contact) with ship staff, concessionaire staff or any other onboard personnel. Nor shall CHARTERER, its employees, representatives or passengers invite ship staff, concessionaire staff or any other onboard personnel to participate in, or allow their voluntary participation in any CHARTER activities."

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8. CHARTERER agrees to inform all prospective and booked guests of the mutually agreed upon rules of conduct as outlined below:

- a. "Nudity will be allowed only by the Lido deck pool areas & hot tub areas and at special themed lifestyle parties. Passengers must be clothed while transiting to/from these areas.
- b. Nudity in designated areas will not be allowed while the ship is tendered or in port.
- c. No sexual public displays of affection will be allowed at any time in any public area.
- d. Sexual acts will be permitted only in designated playrooms or guest cabins; playrooms will be open every day with set times announced.
- e. Sexually explicit games of fun are to be enjoyed but not acted on.
- f. For the comfort of the Carnival's staff, all stateroom doors must be closed.
- g. No sexually explicit or nude photos are to be posted on cabin doors and any such materials posted will be removed by YOLO security team or Carnival's staff.
- h. Under no circumstances is a guest allowed to fraternize with a Carnival staff member.
- i. Treat all areas with respect, just as you would in a hotel or your own home.
- j. Handcuffs are prohibited items and cannot be brought on board.
- k. Sexual encounters are not allowed to happen outside of designated areas. YOLO's security and/or Carnival's security reserves the right to remove you from the site for any public sexual act."

9. CHARTERER agrees to provide no less than twenty (20) security team members to ensure that its passengers abide by the rules of conduct and to take prompt action to address infractions. CHARTERER agrees to provide training to security team members and to ensure that they wear uniforms while on duty that clearly designate them as security team members.

**THE BASIC TERMS AND CONDITIONS INCLUDED HERewith  
CONSTITUTE AN INTEGRAL PART OF THIS AGREEMENT**

IN WITNESS WHEREOF, the parties have hereto affixed their signatures as of the 31<sup>st</sup> day of July, 2009.

CRUISE CHARTER VENTURES, LLC.

CARNIVAL CRUISE LINES,  
a division of Carnival Corporation,  
OWNER

By: [Signature]  
Its: [Signature]

By: [Signature]  
Its: JP Group Business Development

Attest: \_\_\_\_\_  
Date: July 31, 2009

Attest: [Signature]  
Date: August 11, 2009

## AGREEMENT BASIC TERMS AND CONDITIONS

1. Agreement to Charter. Subject to and in accordance with the terms of this Agreement, OWNER agrees to and shall let, and CHARTERER agrees to and shall hire, the VESSEL, for one voyage extending for the period from the DEPARTURE DATE to the RETURN DATE, said voyage to commence at the PORT OF EMBARKATION, terminate at the PORT OF DEBARKATION and include the SCHEDULED ITINERARY (the "VOYAGE"). Nothing herein stated is to be construed as a demise of the VESSEL to CHARTERER or as an authorization for CHARTERER to access or use any area of the VESSEL that is customarily not open to passengers. OWNER is to remain responsible for the navigation of the VESSEL, crew and all other matters as when trading for its own account, subject, however, to the terms and conditions hereafter provided.
2. Designation of OPERATOR. If an OPERATOR is specified on the Cover Page, then OPERATOR shall act on behalf of OWNER for such aspects of this Agreement, as OWNER shall determine, without however relieving OWNER of its obligations with respect thereto. If an OPERATOR is not specified on the Cover Page, then there shall be no OPERATOR and all references herein to OPERATOR shall be deemed to refer to OWNER. Any communications, payments or deliveries required to be made to OWNER hereunder shall be made directly to OPERATOR on behalf of OWNER at 3655 NW 87<sup>th</sup> Avenue, Miami, Florida 33178 or at such other address as OWNER shall notify CHARTERER. All rights and limitations on liability granted to OWNER under this Agreement shall also extend to OPERATOR. OPERATOR is duly authorized to act on OWNER's behalf on all matters relating to this Agreement and CHARTERER may rely upon OPERATOR's authority to bind OWNER, unless and until OWNER ~~gives CHARTERER written notice of specific limitations on the scope of OPERATOR's authority.~~
3. Obligations of OWNER. OWNER shall tender the VESSEL for performance hereunder on the DEPARTURE DATE, seaworthy, clean and equipped with all accessories appropriate thereto for the performance of the VOYAGE in accordance with the standards of other cruises normally performed by OWNER with the VESSEL. CHARTERER has examined, or has been afforded the opportunity to examine, the VESSEL and finds it acceptable. For the duration of the VOYAGE and subject to the provisions of this Agreement, OWNER shall provide all maintenance for passengers while aboard the VESSEL, including food and customary entertainment. OWNER shall also pay all port fees, pilotage and other expenses whatsoever pertaining to the running of the VESSEL, except as otherwise provided herein.
4. Charter Hire.
  - A. In consideration for the chartering of the VESSEL for the VOYAGE, CHARTERER shall pay the CHARTER HIRE, and other amounts set forth in Schedule B to OWNER. CHARTER HIRE does not include air transportation costs, gratuities or cruise related government taxes and fees. The CHARTER HIRE is not subject to reduction in the event that there shall be less than the INCLUDED NUMBER OF PASSENGERS. The payment schedule for CHARTER HIRE is specified in Schedule B. In addition to any other remedies available to OWNER as a consequence of a failure of CHARTERER to timely pay the CHARTER HIRE, CHARTERER shall, on demand, pay OWNER a late fee in respect of any overdue installment of CHARTER HIRE, such fee to be in the amount of 5% of the overdue installment. Subject to Section 4(C) below, ADDITIONAL CHARGES and SUPPLEMENTAL CHARGES, if applicable, are due as set forth in Schedule B.

B. Unless otherwise specified, the CHARTER HIRE stated on the Cover Page or Schedule B has been agreed to on the basis of a number of passengers equal to the INCLUDED NUMBER OF PASSENGERS. In the event CHARTERER desires to have more than the INCLUDED NUMBER OF PASSENGERS and OWNER agrees to such increase, the CHARTER HIRE shall, in respect of each additional passenger, be increased by an amount equal to the "Additional Passenger" amount set forth in Schedule B. The total number of passengers shall be limited to the maximum passenger capacity listed in the VESSEL's current Coast Guard Certificate. If the actual number of passengers is less than the INCLUDED NUMBER OF PASSENGERS specified on the Cover Page, the CHARTER HIRE shall, in respect of such passenger reduction, be increased by an amount equal to the Passenger Attrition amount set forth in Schedule B. The increases in CHARTER HIRE above provided shall be payable as set forth in Schedule B.

C. The CHARTER HIRE includes: (i) the cost of all services customarily provided by OWNER at its cost to VESSEL passengers on its regularly scheduled cruises, including food and customary entertainment but excluding personal expenses of passengers that are customarily paid directly by passengers as referred to in Section 4(E) below, it being agreed that receipts from the sale of such items belong to OWNER, that charges for personal expenses shall be in accordance with standard tariffs of OWNER then in effect and that CHARTERER shall have no responsibility for such personal expenses except those incurred by employees of CHARTERER; and (ii) other expenses pertaining to the running of the VESSEL. CHARTERER shall, however, provide reasonable assistance to OWNER in collecting amounts due in respect of those personal expenses for which CHARTERER is not financially liable. The term "TAXES" as used by OWNER refers to certain taxes, fees and charges imposed by governmental or ~~quasi-governmental authorities, including port authorities, relating to any aspect of the~~ VOYAGE. If there shall be enacted subsequent to the DATE OF AGREEMENT any additional TAXES or increases in existing TAXES, which additional or increased TAXES are payable by OWNER with respect to the VOYAGE, OWNER reserves the right to assess CHARTERER the amount of such additional or increased TAXES, which will become due and payable no later than 30 days prior to the DEPARTURE DATE.

D. If CHARTERER's passengers do not occupy all of the passenger cabins during the VOYAGE, OWNER shall have the right to use the unoccupied cabins for non-revenue passengers who are riding with the VESSEL for operational reasons (e.g., service personnel, supervisory personnel and extra crew). Such non-revenue passengers will not otherwise use any passenger facilities (e.g., dining rooms or lounges) on the VESSEL. There will be no reduction in CHARTER HIRE under these circumstances. OWNER will not use any cabins for these purposes that CHARTERER has previously advised OWNER will be needed to store supplies.

E. The CHARTER HIRE has been calculated on the assumption that OWNER will be able to offer and sell to passengers those facilities and services that are customarily sold to passengers on OWNER's regular cruises (e.g., casino, photos, videos, beauty and massage, retail shops, meals in specialty restaurants and other food and drink that are customarily paid for by passengers on OWNER's regular cruises, shore excursions, bingo, internet cafe, shopping promotions, art auction and tuxedo rental – not all of these facilities and services may, in fact, be offered on the VESSEL). Unless otherwise agreed to in writing by OWNER or specified on the Cover Page: (i) OWNER will be entitled to offer those facilities and services during the VOYAGE and to collect and retain all revenues derived therefrom; and (ii) CHARTERER shall not be entitled to make any onboard sales of goods or services to passengers.

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F. GRATUITIES are provided for in Schedule B: (i) such amount shall be paid by CHARTERER to OWNER as set forth in Schedule B for distribution by OWNER to VESSEL crewmembers in lieu of direct tipping by passengers; (ii) under any circumstances in which OWNER is required to refund CHARTER HIRE under Section 6 below, it shall also refund the paid GRATUITIES; and (iii) under any circumstance in which CHARTERER is required to pay the CHARTER HIRE under Section 9 below, it shall also pay the GRATUITIES.

G. OWNER agrees to maintain liability insurance covering their legal liability to passengers, crew and third parties in the amounts typically maintained by OWNER for the rest of its fleet. To the extent CHARTERER is to provide any employees, entertainment and/or equipment on the VESSEL (other than travel escorts), CHARTERER agrees to obtain and maintain at its own expense insurance in the amount of U.S. \$1,000,000.00 to defend and cover its liability, if any, for claims of passengers or other third parties arising out of or in connection with CHARTERER's or its employees operations, actions or equipment (other than travel escorts and their actions as such) (a "CHARTERER Claim"). Such insurance shall be in form, with carriers and on terms satisfactory to OWNER, shall name OWNER as an additional insured and shall waive subrogation against OWNER and the VESSEL. CHARTERER shall provide a certificate of insurance evidencing such coverage within thirty (30) days from the date hereof.

H. CHARTERER shall cause to be issued to OWNER an irrevocable bank standby letter of credit, if applicable, payable against OWNER's sight draft, in the amount specified on the Cover Page, having an expiration date not earlier than the DEPARTURE DATE, and otherwise to be satisfactory to OWNER as to form, substance and issuer. The issuer of the ~~letter of credit must be a bank licensed under United States federal or state law, or a United States branch of a foreign bank, in either case with a short-term credit rating equal to or better than A-1 (Standard & Poors) or P-1 (Moody's).~~

5. Cabin Assignments; Cruise Contract; Embarkation/Debarcation.

A. CHARTERER shall furnish the list of passengers, together with cabin assignments, to OWNER at least sixty (60) days prior to departure. CHARTERER further agrees to comply with such procedural requirements as OWNER may reasonably require in order to facilitate the documentation process.

B. CHARTERER acknowledges that OWNER may reassign cabins as determined necessary or desirable by the Vessel's Safety Department, in its sole discretion. CHARTERER may request discretionary cabin reassignments pursuant to OWNER's procedures on a space available basis.

C. Prior to departure, OWNER shall enable each of CHARTERER's passengers to access their Standard Ticket Contract of Passage via OWNER's web site in the electronic form then being generally issued by OWNER to VESSEL passengers (the "Cruise Contract"). CHARTERER shall be responsible for providing the Cruise Contract to any passengers that do not have, or are not able to, access the Internet. The Cruise Contract, and not this Agreement, defines the entire legal relationship between OWNER, OPERATOR and passengers, it being agreed that passengers shall not be deemed parties to or third party beneficiaries of this Agreement, except that:

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(i) OWNER hereby agrees that it shall not enforce any provision of the Cruise Contract that by its terms would authorize OWNER to assess passengers for any increase in cruise fare;

(ii) all rights granted to OWNER or passengers in the Cruise Contract, or through Carnival's Vacation Guarantee, relating to the payment or refund of cruise fare and to cancellations by passengers shall not be operative, it being agreed that all questions regarding the CHARTER HIRE are to be resolved between OWNER and CHARTERER in accordance with the terms of this Agreement; and

(iii) the right of OWNER to substitute a vessel for the VESSEL, and any consequences thereof, shall be controlled by this Agreement and not by the Cruise Contract.

CHARTERER agrees to deliver the Cruise Contracts to passengers sufficiently in advance of sailing so as to enable them to familiarize themselves with the terms thereof and further to notify passengers of the foregoing provisions of this Section 5(B) at or prior to their receipt of the Cruise Contract.

D. OWNER shall not in any way be responsible for any contract or other understanding between CHARTERER and the passengers except where such contract or understanding has been made with the written approval of OWNER. CHARTERER acknowledges that it has read and understands the Cruise Contract a copy of which is attached hereto as Schedule C. CHARTERER agrees that it shall not make any representation, covenant or warranty, whether oral or written, which may be inconsistent with the terms and conditions of the Cruise Contract. ~~It is understood and agreed that said Cruise Contract shall be valid only for the persons named on the form thereof for whom it is issued and cannot be transferred without OWNER's written consent.~~

E. CHARTERER agrees to ensure that all passengers are provided with such documents as may be necessary to enable them to embark, visit and disembark at the various ports of call designated in Schedule A, and OWNER shall have no responsibility therefor.

6. Special Rights of OWNER.

A. Although OWNER does not guarantee the time of sailing from or arrival at any port, OWNER shall use its commercially reasonable efforts to adhere to the times of sailing from or arriving at any port specified in Schedule A, the SCHEDULED ITINERARY, subject to weather conditions, governmental requirements or restrictions or any other occurrences beyond OWNER's reasonable control. OWNER reserves the right to make non-material changes in the SCHEDULED ITINERARY.

B. In the event of the loss of or damage to the VESSEL, rendering it impossible for her, in the OWNER'S reasonable judgment, to perform or continue the VOYAGE, or in the event the VESSEL should be requisitioned by any government, or in the event of war being declared or imminent, or in the event of strike or other work stoppage, or in the event of Force Majeure or any other condition or development which would render it, in the OWNER'S reasonable judgment, impossible or dangerous to life or property to make or continue the VOYAGE, OWNER may cancel the VOYAGE or make such changes in the SCHEDULED ITINERARY as OWNER reasonably deems necessary or advisable. "Force Majeure" shall include an act of God or the public enemy, political unrest, government regulation, terrorism, threats to public safety, disease, disaster, strikes (except those involving cruise employees or agents) civil disorder,

curtailment of transportation, shortage of energy or any other emergency or unforeseeable cause beyond the parties' control and without the fault or negligence of the party so affected, making it inadvisable, illegal, commercially impracticable or impossible to perform their obligations under this Agreement.

C. OWNER shall have liberty to comply with orders or directions as to arrival, departures, routes, ports of call, stoppages, discharge, destination or otherwise, given by the government of any nation, or by any person acting or purporting to act with authority of such government or on behalf of the United Nations, or by the VESSEL's underwriters or persons acting on their behalf. In case of actual or threatened war, warlike operations or hostilities, the VESSEL, either before or after proceeding to or toward the PORT OF DEBARKATION, may, as OWNER may deem prudent, proceed from or to any port or ports notwithstanding any such risks, or may for the purpose of avoiding any such risks, delay sailing from any port or ports once or more often as convenient and/or wait at any such port or ports and/or cancel the VOYAGE and/or make such changes in the SCHEDULED ITINERARY as OWNER reasonably deems necessary or advisable. Also, in case of actual or threatened war, warlike operations or hostilities, the VESSEL may sail with or without lights, omit observance of practices, rules and regulations as to navigation, cargo or otherwise applicable in time of peace, and sail armed or unarmed and with or without convoy.

D. If at any stage of the VOYAGE the Master considers that the VESSEL should not, for any valid reason whatsoever, proceed in the ordinary course, OWNER shall have the liberty to change the SCHEDULED ITINERARY and/or cancel the VOYAGE. Nothing in this Agreement shall be construed as being in derogation of the OWNER'S and the Master's discretion, right and obligation to provide and take action for the safety of the VESSEL, passengers, officers, crew and other personnel aboard.

E. CHARTERER shall be responsible for the arrival of passengers and their belongings at each port sufficiently in advance of scheduled departure so as to enable timely boarding and loading. In the event of any late arrival of passengers or their belongings at any port, CHARTERER may request a delay in departure. OWNER shall be required to acquiesce to any such request if and only if CHARTERER agrees, prior to the scheduled departure time, to permit such changes in the SCHEDULED ITINERARY as are necessary to compensate for time lost as a result of said delay and further to compensate OWNER for additional costs incurred by OWNER as a consequence of such delay, including, but not limited to, stevedores, crew, fuel, food, and piloting expenses. CHARTERER agrees to pay OWNER for such additional expenses within fifteen (15) days of receipt of an invoice therefor from OWNER.

F. If the VOYAGE is cancelled by OWNER prior to commencement of the VOYAGE other than as a consequence of a CHARTERER Event of Default, OWNER shall return any portion of the CHARTER HIRE and other amounts theretofore received by OWNER plus the CHARTER HIRE SECURITY (if any), which shall constitute the total amount due CHARTERER as a consequence of such cancellation. If, for any reason whatsoever other than OWNER negligence or willful fault, the VOYAGE is cancelled by OWNER after commencement of the VOYAGE, CHARTERER shall be entitled, as its exclusive remedy, to liquidated damages in the amount of the CHARTER HIRE and other amounts paid to OWNER, less: (i) a reasonable allowance for transportation and services provided by OWNER (determined on a pro rata basis taking into account the portion of the VOYAGE performed prior to cancellation relative to the duration of the SCHEDULED ITINERARY), and (ii) GRATUITIES and TAXES incurred by OWNER prior to cancellation. If, as the result of OWNER negligence or willful fault, OWNER cancels the VOYAGE after commencement of the VOYAGE, CHARTERER shall be entitled, as

its exclusive remedy, to liquidated damages in the amount of the CHARTER HIRE and other amounts paid to OWNER. If the VOYAGE is cancelled after its commencement, OWNER may land the passengers and their belongings at any port or ports whereupon OWNER shall use its best efforts to transship and forward (at OWNER's expense, but at the passengers' risk) the passengers and their belongings to or toward the PORT OF EMBARKATION or PORT OF DEBARKATION by other vessels or conveyances, whether belonging to OWNER or not and whether or not bound to such port.

G. OWNER reserves the right to substitute any vessel of adequate size and similar standards as the VESSEL, so long as such substitution receives the prior consent of CHARTERER, which consent shall not be unreasonably withheld. In the event of such substitution, all references herein to the "VESSEL" shall be deemed to refer to the vessel so substituted.

H. Upon any cancellation of the VOYAGE by OWNER as above provided and the payment of amounts, if any, due CHARTERER as above provided, the parties shall have no further rights or obligations under this Agreement.

I. OWNER will not discriminate against persons on the basis of disability. OWNER will seek, to the extent feasible, to accommodate the needs of persons with disabilities so they are able to enjoy the VESSEL. In limited situations where an individual with a disability would be unable to satisfy certain specified safety and other criteria, even when provided with appropriate auxiliary aids and services, OWNER will not permit the person to travel unless he or she is able to make alternative arrangements that would enable him or her to meet such criteria. ~~CHARTERER must notify OWNER of any special medical, physical or other requirements of~~ passengers at least 45 days prior to departure. CHARTERER is also responsible for informing itself as to whether or not the VESSEL has elevators available for use by passengers requiring wheelchairs as well as ascertaining OWNER'S policy regarding transporting pregnant passengers or infants. No person who, in the judgment of OWNER or the Master, is or becomes in such condition as to be unfit to travel or dangerous or obnoxious to other passengers and no person who in the opinion of OWNER or the Master is inadmissible under the laws of any country of debarkation, shall be entitled to transportation; and, either before departure or at any subsequent stage of the VOYAGE, transportation may be refused to any such person, and any such person may be landed or left any place at the convenience of OWNER, without any liability on its part.

J. In no event shall OWNER be liable to CHARTERER for consequential, incidental, special or punitive damages of any kind or nature whatsoever arising out of or in any way connected with the exercise by OWNER of any of its rights under this Agreement.

K. CHARTERER shall be responsible for any damage to the VESSEL and for any personal injury that occurs during, as a consequence of or as a result of any activity on the VESSEL that was organized, approved or sanctioned by CHARTERER.

L. OWNER shall retain all of its rights, statutory or otherwise as owner and operator of the VESSEL and this Agreement is not to be construed as constituting a bareboat, demise voyage or time charter of the VESSEL and notwithstanding any other provisions contained herein the parties agree that OWNER as owner shall have the benefit of all of the rights and privileges and immunities contained in 46 US Code Sections 181-188 and the International Convention on Limitation of Liability for Maritime Claims 1976.

M. CHARTERER acknowledges that federal law prohibits OWNER from transporting passengers or merchandise between ports in the United States pursuant to 46 U.S.C. 289 (the "Coastwise Trade Law"). Accordingly, CHARTERER shall, and shall cause its officers, employees, OPERATOR's and guests, who board the VESSEL pursuant to the terms herein, to comply with the Coastwise Trade Law and shall advise such passengers that they may not disembark the VESSEL, or remove any merchandise from the VESSEL, at any port in the United States, its districts, territories or possessions, other than at the port of debarkation. Should, for any reason, any such passenger violate the Coastwise Trade Laws, CHARTERER shall indemnify, defend and hold OWNER and the VESSEL, harmless from any and all damages, liabilities, fines, charges, suits or claims (including reasonable attorneys fees) arising from such violation.

7. Shore Excursions: Extent of Transportation. OWNER undertakes transportation of the passengers and their property between ports of call only to the VESSEL's dock, or in ports where she does not dock, to an appropriate dock by way of shuttle service on tender or craft between the VESSEL at anchor and the dock facility. All other transportation, shore excursions, victualing, amusement, entertainment, accommodations and other services on shore are not performed by OWNER, but are performed by independent contractors, and are performed at the risk of CHARTERER and the passengers and subject to the terms or arrangements made by or on behalf of CHARTERER or passengers with the independent contractor furnishing such services, and money received in respect thereof by OWNER, its OPERATOR's or employees is received only as the passengers' OPERATOR, to pay the same over to such independent contractor. OWNER shall not be liable for repayment of such money, except to the extent that OWNER may retain the same or receive refund of it. If arrangements for any such shore services are made through OWNER, it is understood and agreed that OWNER is acting solely in the capacity of OPERATOR for the companies and persons providing such services, that said companies and persons are independent contractors and that such services are provided subject to the terms appearing in the tickets, vouchers or notices of such companies and persons or otherwise imposed by such companies and persons.

8. LIMITATION ON OWNER LIABILITY AND INDEMNIFICATION.

A. OWNER SHALL NOT BE LIABLE FOR INJURY, DEATH OR DELAY OF THE PASSENGERS OR FOR LOSS, DAMAGE OR DELAY OF OR TO THEIR BAGGAGE OR OTHER PROPERTY, WHERESOEVER OCCURRING AND WHETHER ON BOARD THE VESSEL OR ON BOARD ANY OTHER VESSEL OR CONVEYANCE, NOR SHALL OWNER BE RESPONSIBLE FOR THE NON-PERFORMANCE OF ANY PROVISION OF THIS AGREEMENT. THE PROVISIONS OF THIS SECTION 8(A) ONLY APPLY TO INJURY, DEATH, DELAY, LOSS, DAMAGE AND NON-PERFORMANCES THAT ARE DUE TO A CAUSE BEYOND OWNER'S CONTROL.

B. OWNER HEREBY ADVISES CHARTERER THAT THE CRUISE CONTRACTS WILL CONTAIN THE FOLLOWING LANGUAGE, OR LANGUAGE SIMILAR THERETO, RELATING TO THE TIME DURING WHICH PASSENGERS ARE ENTITLED TO BRING ACTIONS AGAINST OWNER AND THE VESSEL AS TO CERTAIN MATTERS DESCRIBED THEREIN:

Carnival shall not be liable for any claims whatsoever for personal injury, illness or death of the guest, unless full particulars in writing are given to Carnival within 185 days after the date of the injury, event, illness or death giving rise to the claim. Suit to recover on any such claim shall not be maintainable unless filed

within one year after the date of the injury, event, illness or death, and unless served on Carnival within 120 days after filing. Guest expressly waives all other potentially applicable state or federal limitations periods. Carnival shall not be liable for any claims whatsoever, other than for personal injury, illness or death of the Guest, unless full particulars in writing are given to Carnival within 30 days after the Guest is landed from the Vessel or in the case the Voyage is abandoned, within 30 days thereafter. Suit to recover on any claim whatsoever other than for personal injury, illness or death shall not be maintainable unless filed within six months after the date Guest is landed from the Vessel or in the case the Voyage is abandoned, within six months thereafter, and unless served upon Carnival within 120 days after filing. Guest expressly waives all other potentially applicable state or federal limitation periods for claims which, include but are not limited to, allegations concerning any and all civil rights, the ADA, trade practices and/or advertising.

C. If a passenger shall be injured or shall die, or the passenger's property shall be damaged or the passenger shall otherwise suffer any loss, and, whether as the result of the terms of the Cruise Contract or otherwise, OWNER is not liable to the passenger in respect thereof or OWNER's liability to the passenger is limited, then such non-liability or limitation on liability shall also extend to any claim by CHARTERER against OWNER arising out of such injury, death, damage or loss, regardless of any liability of CHARTERER to the passenger. Subject to the foregoing and other express limitations on the liability of OWNER in this Agreement, in the event that a claim or cause of action shall be asserted against CHARTERER arising from passenger injury, death, property damage or other loss incurred during the VOYAGE, ~~OWNER agrees to assume the defense thereof through legal counsel selected by~~ OWNER and consented to by CHARTERER (which consent shall not be unreasonably withheld) and satisfy any judgment or settlement resulting therefrom but only so long as: (i) OWNER is promptly notified of such claim or cause of action which notice shall include a tender of defense, (ii) CHARTERER provides such cooperation as OWNER may reasonably request in connection with the defense of the claim or cause of action, and (iii) CHARTERER does not settle or compromise the claim or cause of action without the prior written consent of OWNER. The obligations of OWNER under the immediately preceding sentence will not apply to the extent the claim or cause of action is attributable to the negligence or willful fault of CHARTERER.

D. No refunds shall be due from OWNER nor shall OWNER have any obligation or liability of any kind to CHARTERER or passengers for the acts, omissions, malpractice or negligence of independent contractors which provide any service to CHARTERER or passengers. Independent contractors are not OPERATOR's or employees of OWNER. Independent contractors include, but are not limited to: (1) physicians providing medical care to the passenger either on board the VESSEL or on shore; (2) persons or entities providing services or products off the VESSEL or transportation other than on the VESSEL (other than tender services being provided by OWNER) including, without limitation, shore excursions, hotels, air carriers, rail companies, bus companies, sightseeing boat operators, restaurants, gift shops, scuba diving companies, and fishing boat operators.

E. Nothing contained herein shall be deemed to prohibit or deny to OWNER the benefit of all limitations of, and exemptions from, liability accorded to OWNER by any statute or rule of law for the time being in force.

F. OWNER shall hold harmless, indemnify and defend CHARTERER and its affiliates, and their respective directors, officers and OPERATOR's, from and against any and all

liability, including claims, demands, losses, costs, damages and expenses (including reasonable attorneys fees) arising from any claims of passengers or other third parties, arising out of or in connection with (a) OWNER's or its employees operations, actions or equipment, (b) the VESSEL (or any alternate VESSEL provided hereunder) or the VOYAGE, (c) CHARTERER's use of the Marks (as permitted in this Agreement), or (d) a material breach by OWNER of this Agreement, other than to the extent such claim or cause of action is attributable to the gross negligence or willful misconduct of CHARTERER. CHARTERER shall hold harmless, indemnify and defend OWNER and its affiliates, and their respective directors, officers and OPERATOR's, from and against any and all liability, including claims, demands, losses, costs, damages and expenses (including reasonable attorneys fees) arising from any claims of passengers or other third parties, arising out of or in connection with (a) CHARTERER's or its employees operations, actions or equipment, (b) CHARTERER's use of the trademarks, logos, trade names and copyrights of any third party other than OWNER, or (c) a material breach by CHARTERER of this Agreement, other than to the extent such claim or cause of action is attributable to the gross negligence or willful misconduct of OWNER. This section will survive the termination of this Agreement.

9. CHARTERER Event of Default.

A. Each of the following shall constitute a CHARTERER event of default ("CHARTERER Event of Default") under this Agreement:

(i) CHARTERER shall fail to timely pay any installment of CHARTER HIRE, or any other amount due OWNER under this Agreement, and such failure shall be continuing ~~five (5) business days after written notice of such failure is given by OWNER to CHARTERER,~~  
or

(ii) CHARTERER shall fail to timely deliver the CHARTER HIRE SECURITY;  
or

(iii) CHARTERER shall otherwise fail to comply with any other of its obligations under this Agreement and such failure shall be continuing fifteen (15) business days after written notice of such failure is given by OWNER to CHARTERER; or

(iv) CHARTERER shall notify OWNER that it is canceling the charter provided for in this Agreement or otherwise takes actions which clearly demonstrate a decision on CHARTERER's part to cancel the charter.

B. Upon the occurrence of any CHARTERER Event of Default, or at any time thereafter if the CHARTERER Event of Default shall be continuing, OWNER shall be entitled, but not obligated, to exercise any or all of the following rights:

(i) by written notice to CHARTERER, declare the entire unpaid CHARTER HIRE, or any other amount due OWNER under this Agreement, to be immediately due and payable, whereupon such CHARTER HIRE, or any other amount due OWNER under this Agreement, shall become and be immediately due and payable; and/or

(ii) by appropriate notice to the issuer of the CHARTER HIRE SECURITY (if any), realize upon the CHARTER HIRE SECURITY to the extent necessary to receive all amounts which are then due and payable (including amounts which are then due and payable as a result of a declaration under Section 9(B)(i) above). Amounts received by OWNER as a

consequence of realizing upon the CHARTER HIRE SECURITY shall be applied in satisfaction of any amounts then due and payable by CHARTERER including, without limitation, liquidated damages due under Section 9(C) below; and/or

(iii) by written notice to CHARTERER, require payment of that portion of the unpaid CHARTER HIRE, or any other amount due OWNER under this Agreement, necessary to receive all amounts which are then due and payable (including amounts which are then due and payable as a result of a declaration under Section 9(B)(i) above). Amounts received by OWNER as a consequence of such payments shall be applied in satisfaction of any amounts then due and payable by CHARTERER including, without limitation, liquidated damages due under Section 9(C) below; and/or

(iv) by written notice to CHARTERER, cancel the charter provided for in this Agreement. In such event, the parties shall have no further rights or obligations under this Agreement other than the right of OWNER to pursue its remedies in this Section 9 and in Section 12. If the CHARTERER Event of Default was one described in Section 9(A)(i) above, OWNER agrees not to exercise this right of cancellation if, as a result of the application of Section 9(B)(ii) or (iii) and within ten (10) business days of having given the notice under such Section, OWNER receives funds sufficient to satisfy all amounts then due and owing by CHARTERER.

C. CHARTERER acknowledges that it would be difficult, if not impossible, for OWNER to mitigate its damages should CHARTERER cancel the charter pursuant to Section 9(B)(iv) above and further that it would be difficult, if not impossible, to determine OWNER's actual damages resulting from such cancellation. Accordingly, in the event of a cancellation of the charter pursuant to Section 9(B)(iv), OWNER may retain all amounts theretofore paid by CHARTERER and continue to exercise its rights under Section 9(B)(ii) and/or (iii) above. All amounts so retained and all amounts received as a result of the exercise of such rights shall constitute liquidated damages to OWNER.

D. All rights and remedies given by this Agreement to OWNER are cumulative and not exclusive of any thereof or of any other rights or remedies available to OWNER, and every right and remedy may be exercised from time to time and as often as shall be deemed appropriate by OWNER.

11. Special Equipment and Materials. In the event that CHARTERER desires to place any special equipment or materials ("Special Items") aboard the VESSEL for use during the VOYAGE, it shall notify OWNER of such at least thirty (30) days prior to departure, such notice to include a list thereof together with any special requirements associated therewith (such as for electrical power). Although OWNER will provide CHARTERER with every reasonable opportunity to board and utilize Special Items, OWNER reserves the right, for safety or other business reasons, to refuse permission in respect of any or all Special Items. Loading and unloading of Special Items shall be effected by CHARTERER at CHARTERER's cost and risk and at such times as are designated by OWNER and pursuant to OWNER's instructions. OWNER shall not be responsible for any loss or damage to Special Items. CHARTERER is responsible for any damage to the VESSEL or for any personal injury that occurs during, as a consequence of or as a result of any use of any Special Item.

12. Miscellaneous Provisions.

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A. Time of Access: On the DEPARTURE DATE, OWNER will permit CHARTERER to load equipment and board staff as soon as the VESSEL has been cleared by U.S. Customs and Immigrations except that such may not interfere with the offloading of passengers (and their belongings) from the preceding voyage or with the storing of the VESSEL by OWNER for the VOYAGE. Rules and conditions mandated by U.S. Government change frequently and CHARTERER understands that final decision is conditional upon U.S. Customs/Immigration approval, based upon current guidelines at the time of sailing. CHARTERER must vacate the VESSEL, including Special Items, by 10:30 a.m. on the RETURN DATE. OWNER will specify actual passenger embarkation and debarkation times.

B. Marketing Space/Promotional Material: All promotional and advertising materials for the VOYAGE shall be submitted by CHARTERER for OWNER's approval prior to publication, such approval not to be unreasonably withheld. All promotional and advertising materials utilized by CHARTERER in connection with the VOYAGE shall make specific reference to the VESSEL's Registry, such reference to be in the following form: "VESSEL's Registry: Panama".

C. Confidentiality: Each party shall keep strictly confidential the terms of this Agreement and any non-public, proprietary or confidential information relating to the business or customers of the other party either supplied by such other party or learned by the first mentioned party in carrying out this Agreement ("Confidential Information"), except that the first party may disclose the Confidential Information to its employees and agents who have a need to know such Confidential Information for the purpose of this Agreement and may use such Confidential Information only for the purpose of fulfilling its obligations under this Agreement. ~~The confidentiality provisions shall not apply to (i) information that a party is required to disclose~~ by law (in which case it will provide prompt written notice to the other party so the latter may seek a protective order or waive compliance with these confidentiality provisions), (ii) if the other party consents to the disclosure, (iii) information that is or becomes public through no breach of the confidentiality provisions, (iv) information that was available to a party on a non-confidential basis prior to its disclosure, (v) information that is independently developed by a party without any breach of this Agreement and (vi) information received from a third party that is not, to the best knowledge of a party, in breach of any confidentiality obligation. The confidentiality provisions apply to a party's employees and agents and each party shall ensure that such employees or agents comply with the confidentiality obligations hereunder, and agrees that it shall be liable for any breaches of these confidentiality terms of its employees and agents. Either party's failure to comply with these confidentiality provisions shall be considered a breach of this Agreement and may result in immediate termination of the Agreement. The non-breaching party shall be entitled to equitable relief (including injunctive relief and specific performance) in addition to all other remedies available to it at law or in equity. This provision shall survive the termination of this Agreement.

D. Entire Agreement; Amendments; Waivers; Headings and Governing Law: This Agreement contains the entire agreement of the parties with respect to the subject matter hereof. This Agreement may not be changed orally, nor may any provision or right be waived, modified, enlarged, amended or varied in any manner, nor may it be abrogated or discharged, except in each case by a written instrument signed by a duly authorized officer of the party to be charged therewith. The failure of any party to insist upon strict compliance or performance with any of the provisions of this Agreement shall not constitute a waiver or the abrogation of such provisions, or any other provision, nor shall it constitute a waiver of compliance or performance in any other instance. No course of dealing between the parties shall operate as a waiver of any right of the parties, and no delay on the part of any party in exercising any right hereunder

shall operate as a waiver of any right of the parties. This Agreement may be executed in counterparts, which such counterparts, when taken together, shall constitute one and the same instrument. Headings are inserted in this Agreement for convenience of reference only and shall not be construed as a part of this Agreement. This Agreement shall be governed by and in accordance with the federal maritime laws of the United States of America.

E. Consent to Jurisdiction: In the event of judicial action or proceedings of any kind or nature whatsoever arising out of or connected with this Agreement, the parties agree that said action or proceedings shall be initiated and maintained only in the United States District Court for the Southern District of Florida or in the Florida state court of the State of Florida for Miami-Dade County. Each party hereby irrevocably submits to the exclusive jurisdiction of such courts in any such action or proceeding. Each party hereby irrevocably waives, to the fullest extent it may effectively do so, the defense of an inconvenient forum to the maintenance of such action or proceedings. Each party irrevocably consents to the service of any and all process in any such action or proceedings by the delivery or mailing of copies of such process to it at its address specified in this Agreement for notices. Without waiver of its right of appeal permitted by relevant law, each party agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

F. Litigation: In the event that either party shall retain or engage an attorney or attorneys to collect or enforce or protect its interest with respect to this Agreement, the prevailing party shall be entitled to receive payment of all costs and expenses of such collection, enforcement or protection, including reasonable attorney's fees.

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G. Use of Passenger Names: Unless CHARTERER otherwise notifies OWNER in writing thirty (30) days prior to commencement of the VOYAGE, OWNER may, without the requirement of compensation to CHARTERER, include the names of passengers on the mailing lists maintained either by it or its affiliates and to utilize such mailing lists in promotional mailings routinely made to past passengers.

H. Legal Relationship: The relationship created by this Agreement between the parties is an independent contractor relationship. Nothing contained in this Agreement shall constitute either party as the OPERATOR, employee, servant, partner or joint venturer of the other party for any purpose whatsoever.

I. Assignability and Separability: Other than as between OWNER and OPERATOR, neither party may assign or delegate any of its rights or obligations under this Agreement, whether by operation of law or otherwise, without the express written consent of the other party. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability and the validity and enforceability of the remaining terms and conditions of this Agreement shall not otherwise be affected, nor shall the validity and enforceability of such provision be affected in any other jurisdiction.

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CRUISE CHARTER VENTURES  
CARNIVAL IMAGINATION – OCTOBER 29, 2010  
SCHEDULE A – SCHEDULED ITINERARY

<u>DAY</u>	<u>DATE</u>	<u>PORT</u>	<u>ARRIVE</u>	<u>DEPART</u>
Friday	October 29, 2010	Miami		4:00 PM
Saturday	October 30, 2010	Nassau	10:00 AM	
Sunday	October 31, 2010			7:30 AM
Monday	November 1, 2010	Fun Day at Sea Miami	8:AM	

ALL ARRIVAL AND DEPARTURE TIMES ARE APPROXIMATE.

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INITIALED:

  
\_\_\_\_\_  
(FOR OPERATOR)

   
\_\_\_\_\_  
(FOR CHARTERER)

CRUISE CHARTER VENTURES  
CARNIVAL IMAGINATION – OCTOBER 29, 2010  
SCHEDULE B – PAYMENT SCHEDULE

The VESSEL charter will be confirmed and finalized upon the receipt of this signed Agreement and the CHARTER HIRE SECURITY, the amount sufficient to cover the CHARTER HIRE due to OWNER under the Agreement.

**CHARTER HIRE:**

For the charter of the VESSEL described in the Agreement, CHARTERER agrees to pay OWNER the total amount of U.S. \$513,560.00 for 2046 passenger accommodations for the INCLUDED NUMBER OF PASSENGERS. The CHARTER HIRE shall be paid with an initial cash deposit of U.S. \$100,000, and four additional monthly installments with the final installment due and payable on November 4, 2009; Payment schedule shall be as follows:

1. U.S. \$100,000.00 due and payable August 18, 2009. *24 TAM W*
2. U.S. \$100,000.00 due and payable on or before, October 1, 2009
3. U.S. \$100,000.00 due and payable on or before, November 15, 2009.
4. U.S. \$100,000.00 due and payable on or before, December 31, 2009
5. U.S. \$113,206.00 due and payable on or before, February 15, 2010

**CHARTER HIRE SECURITY:**

A cash deposit in the amount of U.S. \$100,000.00 is to be provided by CHARTERER no later than the option date as determined by OWNER. Once the Agreement and the CHARTER HIRE SECURITY are received, the CHARTER HIRE will no longer be subject to increase except as expressly provided for in this Agreement and its Schedules.

**ADDITIONAL CHARGES:**

Miscellaneous charges including government taxes and fees, gratuities, and other charges without limitation, levied by any government upon each passenger or ticket including gratuities as set forth below shall be paid no later than 45 days before DEPARTURE DATE. These fees are as follows:

Government Taxes & Fees:	U.S. \$43.21 per passenger (subject to change)
Gratuities:	U.S. \$30.00 per included number of passengers (subject to change), for the Dining Room team service, Alternative Dining Service, and Room Steward.

**SUPPLEMENTAL CHARGES:**

*TAM W  
7/15/09*

Additional Passengers. In the event the CHARTERER's passenger count is greater than the INCLUDED NUMBER OF PASSENGERS as specified in Cover Page of the Agreement, additional passenger rates are U.S. \$110.00 per person. Gratuities, and government taxes and fees are additional per person as set forth above. The number of additional passengers permitted is subject to the VESSEL's maximum passenger capacity listed in its current Coast Guard Certificate, which is 2600. CHARTERER shall pay all sums due to OWNER for such additional passenger accommodations no later than 45 days prior to DEPARTURE DATE.

Passenger Attrition: In the event the CHARTERER's final passenger count is less than 1831 passengers, then CHARTERER shall pay to OWNER the following supplemental charges no later than 30 days prior to the DEPARTURE DATE:

1. A supplemental charge of \$58,000.00 if the ship sails with 1830 to 1550 guests on board.
  2. A supplemental charge of \$122,500.00 if the ship sails with 1549 to 1000 guests on board.
  3. A supplemental charge of \$171,000.00 if the ship sails with less than 1000 guests on board
- 

Fuel Supplement Adjustments. The CHARTER HIRE includes the current fuel supplement rate of \$-0- per person, per day for all passengers up to the INCLUDED NUMBER OF PASSENGERS and all "Additional Passengers," if any, at \$-0- per person per day. In the event that OPERATOR effects an increase of the fuel supplement rate charged to passengers on regularly scheduled cruises prior to the DEPARTURE DATE, then such increase shall not apply to any of CHARTERER's passengers booked as of the date of such increase.

Upon notification of an increase in the fuel supplement rate, CHARTERER will have three (3) business days to submit names of all passengers to be protected at the current fuel supplement rate. Any passengers booked after the effective date of a fuel supplement increase will be subject to the incremental increase between the current fuel supplement rate and the new fuel supplement rate.

In the event OPERATOR discontinues or lowers its fuel supplement rate to passengers on regularly scheduled cruises, there will be no adjustment in the CHARTER HIRE. Payment for any applicable increase is due and payable no later than 30 days prior to the DEPARTURE DATE

Increase in TAXES. The CHARTER HIRE and other amounts payable by CHARTERER to OWNER under this Agreement do not include provision for any income taxes, gross receipts taxes, branch profits taxes, withholding taxes, capital taxes, stamp taxes, luxury or consumption taxes, gross receipts taxes, gross tonnage taxes, sales taxes, value added taxes ("VAT"), goods and services taxes or similar taxes or levies on any sum payable by CHARTERER pursuant to this Agreement imposed by any applicable jurisdiction or any political subdivision thereof.

THM  
7/31/09 ON

CHARTERER agrees to pay OWNER such additional amount as will be sufficient to enable OWNER to pay all such taxes and still retain a net amount equal to what it would have received under the foregoing provisions of this clause had no such taxes or levies existed (the amount(s) to be paid referred to in this Agreement as the "ADDITIONAL TAX AMOUNT"). Promptly upon being notified of a tax or levy that will result in an ADDITIONAL TAX AMOUNT, OWNER shall notify CHARTERER thereof together with the resulting ADDITIONAL TAX AMOUNT. CHARTERER shall remit the ADDITIONAL TAX AMOUNT to OWNER within thirty (30) days after receipt of such notice from OWNER.

Unless an alternate timeframe is expressly stated in this Agreement, for those costs and expenses are subject to being invoiced, CHARTERER shall remit payment for all amounts owed no later than thirty (30) days from the date of OWNER's invoice. If payment is not timely received it shall be subject to a penalty of 5% of the amount owed per month until paid.

1.5% TAM  
7/24/09 CW

INITIALED:



(FOR CARNIVAL)

TAM 7/24/09

(FOR CHARTERER)

CRUISE CHARTER VENTURES  
CARNIVAL IMAGINATION – OCTOBER 29, 2010  
SCHEDULE C – STANDARD TICKET CONTRACT OF PASSAGE

[http://www.carnival.com/CMS/Static\\_Templates/ticket\\_contract.aspx](http://www.carnival.com/CMS/Static_Templates/ticket_contract.aspx)

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INITIALED:

  
\_\_\_\_\_  
(FOR CARNIVAL)

  
\_\_\_\_\_  
(FOR CHARTERER)

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**\$400,000 MAXIMUM  
\$100,000 MINIMUM**

**CRUISE CHARTER  
VENTURES  
TRUST 09**

**CONTRACT CERTIFICATES  
12% DUE MAY 31, 2010**

**PRIVATE PLACEMENT  
MEMORANDUM**

No dealer, salesman or other person has been authorized to give any information or to make any representations other than those contained in this Memorandum and if given or made, such information or representations must not be relied upon as having been authorized. This Memorandum does not constitute an offer to sell or a solicitation of an offer to buy any securities to which it relates. This Memorandum does not constitute an offer to sell or a solicitation of an offer to buy such securities in any jurisdiction to any person to whom it is unlawful to make such an offer or solicitation in such jurisdiction. Neither the delivery of this Memorandum nor any sale hereunder shall, under any circumstances, create any implication that there has been no change in the affairs of the Trust since the date hereof or that the information contained herein is correct as of any time subsequent to its date. However, in the event of any material change, this Memorandum will be amended, supplemented or updated accordingly.

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**September 25, 2009**