

ANNEX F - TRUST INSTRUMENT

THIS AGREEMENT made the ** day of February, 2008.

B E T W E E N

THE BSE CLASS ACTION ASSOCIATION

hereinafter called the **SETTLOR
OF THE FIRST PART**

- and -

ROYAL TRUST CORPORATION OF CANADA

hereinafter called the **TRUSTEE
OF THE SECOND PART**

WHEREAS

Class actions have been commenced in Ontario, Alberta, Saskatchewan and Québec by Bill Sauer, Flying E. Ranch and Clarence Ewasiw, Ivan Murray and Donald Bernèche respectively, being Ontario Superior Court File No. 05-CV-287428 CP (Sauer), Alberta Court of Queen's Bench Court File No. 0501 05326 (Flying E Ranche and Ewasiw), Saskatchewan Queen's Bench Court File No. 0582 of 2005 Judicial Centre of Saskatoon (Murray) and Québec Superior Court File No. 500-06-000284-055 (Bernèche).

AND WHEREAS

Bill Sauer, Flying E. Ranch, Clarence Ewasiw, Ivan Murray and Donald Bernèche have together formed the BSE Class Action Association whose purposes are to guide counsel in advancing these class actions to completion, and to marshal financial resources to assist in the prosecution of the class actions, in the interests of the promotion of:

- a) access to justice;
- b) judicial economy;
- c) behaviour modification of the defendant, Her Majesty the Queen in Right of Canada;

and

- d) payment of full or adequate compensation for damages to the class members.

AND WHEREAS FINALLY

- a) the BSE Class Action Association wishes to create a trust for the purpose of providing financial resources to assist in the prosecution of the class actions; and
- b) the BSE Class Action Association intends to grant to the Trustee, pursuant to the terms of this Trust Instrument the widest possible powers to administer this trust, subject always to any Orders made in respect thereof by the Ontario Superior Court of Justice;

ARTICLE I

Definitions

- 1. In this Trust Instrument:
 - (a) "Act" means the *Income Tax Act of Canada* and regulations.
 - (b) "Administrator" means Crawford Class Action Services.
 - (c) "BSE Class Action Association" means the association formed by Bill Sauer, Donald Bernèche, Ivan Murray, Clarence Ewasiw and Flying E Ranche as described above.
 - (d) "BSE Class Actions" means Ontario Superior Court File No. 05-CV-287428 CP (Sauer), Alberta Court of Queen's Bench Court File No. 0501 05326 (Flying E Ranche and Ewasiw), Saskatchewan Queen's Bench Court File No. 0582 of 2005 Judicial Centre of Saskatoon (Murray) and Québec Superior Court File No. 500-06-000284-055 (Bernèche).
 - (e) "Class Members" means all farmers of cattle resident in Canada as at May 20, 2003.
 - (f) "Counsel" means Cameron Pallett, Adams Gareau, Woods LLP, Docken & Company, Robertson Stromberg Pedersen LLP and such other counsel as may be

added from time to time in the prosecution of the BSE Class Actions.

- (g) “Court” means the Ontario Superior Court of Justice.
- (h) “Final” means the first business day thirty (35) days following the day on which judgment has been granted and entered. If an appeal from the judgment is taken, Final means upon such appeal being finally disposed of.
- (i) “Settlor” means the BSE Class Action Association.
- (j) “Trust” means the trust created by this document and confirmed by Order of the Ontario Superior Court of Justice and the Québec Superior Court.
- (k) “Trustee” means the Royal Trust Corporation of Canada and other persons from time to time appointed as trustees of the Trust Property.
- (l) “Trust Property” means the initial property settled on the Trustee by the Settlor, any property subsequently settled on the Trustee, any investments made by the Trustee, and all accumulated income or capital gains from those investments.

ARTICLE 2

2. Creation of Trust

2.1 **Settlement:** The Settlor has settled on the Trustee, absolutely and irrevocably and under the provisions of this Trust Instrument, the receipt and sufficiency of which is hereby acknowledged by the Trustee, a ten-dollar Canadian bill bearing serial number attached hereto and marked as Schedule A.

2.2 **Additions to the Trust Property:** The Settlor may at any time during the term of this Trust settle or cause to be settled on the Trustee, absolutely and irrevocably, additional property that will become part of the Trust Property and be administered under the provisions of this Trust. The Trustee may, in its discretion, refuse to

accept any additional property if the acceptance of such property would result in adverse tax consequences to the Trust, or if there are any conditions or reservations attached to the property settled that are unacceptable to the Trustee.

- 2.3 **Name of Trust:** The Trust created and evidenced by this Trust Instrument shall be known as the BSE Class Action Fund.
- 2.4 **Consent of Trustees:** The Trustee consents to act as trustee of the Trust Property under the provisions of this Trust Instrument.
- 2.5 **Irrevocable Trust:** The Trust created under this Trust Instrument is irrevocable and the Settlor shall have no power to amend the provisions of this Trust without the approval of the Court.
- 2.6 **Termination of Trust:** The Trust shall continue until the Division Date.
- 2.7 **Amendment:** This Trust Instrument may be amended by instrument in writing with the approval of the Court. An amendment shall be effective from the date the amendment is made.

ARTICLE 3

3. **Powers and Duties of Trustee**

- 3.1 **General:** The Trustee shall have the sole and absolute discretion to administer the Trust pursuant to the provisions of this Trust Instrument, it being the intention of the

Settlor to grant to the Trustee the widest powers possible to administer the Trust, subject at all times to the overarching supervision and direction of the Court.

3.2 **Specific Powers of Trustee:** In addition to all powers vested in the Trustee by law, and not limiting the Settlor's intention that the Trustee have the widest powers possible to administer the Trust, the Trustee shall have the following specific powers which are exercisable in its discretion:

- (a) Investment Discretion: The Trustee shall invest and re-invest the Trust Property in any investment that RBC Dominion Securities Inc. considers advisable.
- (b) Disposition: The Trustee may sell any part of the Trust Property however and whenever RBC Dominion Securities Inc. may consider advisable or postpone converting any part of the Trust Property for so long as RBC Dominion Securities Inc. may consider advisable.
- (c) Title to Trust Property: The Trustee may hold any of the Trust Property in bearer form in the name of the Trustee or in the name of a duly appointed nominee.
- (d) Claims: The Trustee may, in its discretion, initiate, defend and settle any claims by or against the Trust.
- (e) Employment of Professionals: The Trustee may employ, and terminate employment of, any professional person as agent to assist the Trustees in administering the Trust and may pay the fee for any professional person's services out of the Trust Property.
- (f) Reserves: The Trustee may set aside out of the Trust Property a reserve for taxes, insurance, repairs, maintenance, professional fees and for such other purposes that reserves may be established to administer the Trust.
- (g) Other Insurance: The Trustee may insure the insurable Trust Property under a comprehensive (all risks) policy.
- (h) Court Orders: The Trustee may exercise all of its powers under this Trust Instrument without giving prior notice to any person or without first obtaining

an order from a court of competent jurisdiction.

- (i) Filing of Tax Returns: In accordance with its obligation under the *Act* or any other tax statute, the Trustee shall file all tax returns on behalf of the Trust.
- (j) Tax Elections: The Trustee may, pursuant to the *Act* or any other tax statutes, make or not make any elections, determinations and designations on behalf of the Trust regarding transactions or non-transactions between the Trust and any person.

3.3 Administration and Trust Records: So long as The Royal Trust Corporation of Canada should act as a Trustee, the Royal Trust Corporation of Canada shall:

- (a) assume the burden and responsibility for the routine activities (as hereinafter defined) related to the administration of the Trust;
- (b) to the extent possible and subject to any power given to it by this Trust Instrument to do otherwise, keep in its custody all the Trust Property; and
- (c) have charge of all banking, investment and other accounts, subject to the directions of RBC Dominion Securities Inc. with respect to all investment decisions.

For greater certainty but subject to anything else in this Trust Instrument to the contrary, routine activities mean all activities and decisions, including periodic investment decisions involving the purchase or disposition of Trust Property, which do not involve:

- (i) an exercise of discretion to distribute the Trust Property; and
- (ii) the setting of investment objectives for the Trust.

3.4 Review: Counsel may, at any time, upon written request and with the Trustee's consent, examine the Trust accounts.

3.5 Accounting: The Trustee shall prepare and render an accounting and report to the

Administrator every 6 months from the date of creation of the Trust.

- 3.6 **Reporting to the Court:** Upon receipt of the accounting and report from the Trustees referred to in paragraph 3.5, above, the Administrator shall prepare and provide a report to the Ontario Superior Court of Justice, the Québec Superior Court, the BSE Class Action Association and all Counsel.
- 3.7 **Passing of Accounts:** The Trustee shall not be required to pass its accounts in the Court except pursuant to a Court order on the application of Counsel or the Settlor.
- 3.8 **Final Accounting:** When the Trust is finally terminated, the Trustee shall render a final accounting and report to the Administrator. The Trustee shall be entitled to have the Court release them from any liability that may arise as a result of the administering of the Trust in accordance with the fiduciary duties and powers granted by this Trust Instrument.

ARTICLE 4

4. **Liability, Indemnification and Compensation of Trustee**
- 4.1 **Reimbursement for Expenses:** The Trustee shall be reimbursed for all reasonable expenses incurred in carrying out the administration of the Trust out of the Trust Property.
- 4.2 **Indemnification from Claims:** The Trustee shall be indemnified from the Trust

against all claims arising against the Trustee resulting from the administration of the Trust, provided the Trustee acted in good faith.

- 4.3 **No Liability for Loss:** No Trustee is liable for any loss suffered by the Trust if the Trustee was acting within his or its authority granted by this Trust Instrument and in accordance with his or its fiduciary duties when the loss arose.
- 4.4 **Liability of Others:** No Trustee shall be liable for the acts or omissions of the professional persons, and their employers, who are employed by the Trustee to help administer the Trust; provided the Trustee is not negligent in selecting and supervising such professionals.
- 4.5 **Lien on Trust Property:** The Trustee has a first charge on the Trust Property, subject to security granted to persons in the process of administering the Trust, for any amounts owing to them pursuant to this Trust Instrument.
- 4.6 **Indemnities Continue:** All indemnities, protections and liens granted to the Trustee under this Trust Instrument shall continue in favour of any Trustee who is no longer holding office in respect of any claim, loss, expenses or other liability that arose when the former Trustee held his or its office, and shall extend to the personal representatives, heirs, successors and assigns of the Trustee.
- 4.7 **Compensation:** The Royal Trust Corporation of Canada shall be entitled to receive

and shall be paid out of the Trust created by this Trust Instrument as compensation for its acting as the Trustee of and under this Trust Instrument, the fees, reimbursement and other compensation provided for in the Inter Vivos Trust Fee Agreement between Royal Trust Corporation of Canada and the Settlor, which is attached hereto and marked as schedule B. The terms of the said Inter Vivos Trust Fee Agreement shall be valid and binding in all respects to fix the compensation payable to the Royal Trust Corporation of Canada as though the Inter Vivos Trust Fee Agreement was expressly embodied in this Trust Instrument.

- 4.8 **Investment Policy:** The Trustee shall cause the Trust Property to be invested under the direction of RBC Dominion Securities in accordance with the Investment Policy Statement attached hereto and marked as schedule C. RBC Dominion Securities shall be entitled to receive and shall be paid out of the Trust created by this Trust Instrument as compensation for its acting as the investment manager of the Trust an annual fee of .40% of the value of the Trust Property, payable quarterly.

ARTICLE 5

- 5.1 **Royal Trust Corporation of Canada as Trustee:** Notwithstanding anything contained to the contrary in this Trust Instrument, any obligations or benefits created in favour of and/or imposed upon Royal Trust Corporation of Canada as the Trustee herein, including the acceptance of the office of Trustee of the Trust Property by Royal Trust Corporation of Canada, shall not take effect or commence until acceptance by the Royal Trust Corporation of Canada of the office of Trustee of the

Trust Property, as evidenced by the aforementioned instrument in writing. For greater certainty, acceptance of the office of Trustee for the Trust Property by Royal Trust Corporation of Canada shall occur on the date indicated on the instrument in writing appointing Royal Trust Corporation of Canada and signed by those individuals authorized to bind Royal Trust Corporation of Canada, at which time all Trust Property shall vest in Royal Trust Corporation of Canada.

- 5.3 **Vesting of Trust Property:** Title to any Trust Property held in the name of a Trustee who vacates the office of Trustee shall immediately vest in the successor Trustee without further formality. A retiring Trustee shall execute all necessary instruments and do all necessary acts to vest the title to the Trust Property in the successor Trustee.
- 5.4 **Powers of Successor Trustee:** Successor Trustees shall be subject to all the provisions of this Trust Instrument without having to formally execute this Trust Instrument.
- 5.5 **Obligation of the Settlor:** This Trust Instrument creates no obligation or duty of care by the Settlor to any of the parties contemplated herein other than as provided for in paragraph 2.1 hereof.

ARTICLE 6

6. **Distribution of Trust Property**

- 6.1 **Capital and Income Distribution:** In accordance with the avowed purpose of this Trust to provide financial resources to assist in the prosecution of the BSE Class Actions, the Trustee shall pay accounts rendered in accordance with this Article for reasonable time and disbursements expended by Counsel in the prosecution of the BSE Class Actions, whether expended before or after the date of this Trust Instrument. Such accounts may be submitted for payment to the Administrator. Upon approval of the Administrator, such approval to be made in a timely manner and not to be withheld without good reason, the accounts are to be paid by the Trustee from the Trust Property directly to the Counsel who rendered them.
- 6.2 **Disbursements:** Reasonable disbursements that have been incurred by Counsel in the prosecution of the BSE Class Actions shall be reimbursed to Counsel by the Trustee provided only that all disbursement accounts must be submitted for payment to, and approved by, the Administrator and all individual disbursements over \$5,000 must be approved by a simple majority of all Counsel.
- 6.3 **Legal Fees:** The Settlor acknowledges that successful prosecution of the BSE Class Actions has required, and will continue to require, a considerable investment of time and the ongoing assumption of risk by all Counsel. In order to ensure that Counsel shall have the financial wherewithal to continue the vigorous prosecution of the BSE Class Actions to a successful conclusion, Counsel may submit their accounts to the Administrator for payment by the Trust of partial compensation for any and all reasonable billable hours spent in the prosecution of the BSE Class Actions. The rate at which the Trustee shall pay such partial compensation is \$135 per hour for primary Counsel, being Cameron Pallett, Gilles Gareau, Fredy Adams,

James A. Woods, Clint Docken, Melvin Gerspacher and Reynold Robertson and \$100 per hour for all other Counsel.

6.4 **Division Date:** The Division Date shall be the date which is 60 days after the date on which either the BSE Class Actions have been successfully concluded, or the BSE Class Actions have been dismissed against all defendants and all appeals have been exhausted. A successful conclusion of the BSE Class Actions shall be deemed to be either a Final judgment on the common issues in favour of some or all Class Members or a settlement that benefits one or more Class Members, as success is defined in section 33(2) of the Class Proceedings Act, 1992, S.O. 1992 Chapter 6. In any case, the Division Date shall be no later than December 31, 2028.

6.5 **Payment on Division Date:** On the Division Date the remaining capital and income of the Trust shall be divided and distributed as follows:

- (a) Payment in an amount to be determined by the Court shall be made pursuant to the Regulation respecting the percentage withheld by the Fonds d'aide aux recours collectifs, R.S.Q. c. R-2.1, r.3.1.

The balance of the remaining capital and income of the Trust shall then be divided and distributed in equal amounts to:

- (b) The Western College of Veterinary Medicine of the University of Saskatchewan; and
- (c) The Ontario Veterinary College of the University of Guelph; and
- (d) Le Faculté de médecine vétérinaire de l'Université de Montréal; and
- (e) The Faculty of Veterinary Medicine of the University of Calgary; and
- (f) The Atlantic Veterinary College of the University of Prince Edward Island.

- 6.6 **Income Tax Considerations:** At the Division Date the Trustee may consider the impact of taxes on the distribution of the Trust Property and may structure the payments in such a way as to minimize the impact of taxes on the distribution to both the Trust and the veterinary colleges.
- 6.7 **No Personal Benefit:** No part of the capital or income of the Trust shall be payable to, or otherwise available for the personal benefit of, the members of the BSE Class Action Association.

ARTICLE 7

7. **Miscellaneous Provisions**

- 7.1 The provisions of this Trust Instrument are severable from one another and a finding by a court that one provision is not enforceable shall not affect the enforceability of the rest of the Trust Instrument.
- 7.2 This Trust Instrument constitutes the entire agreement between the parties and supersedes and replaces all prior oral or written communications between the parties relating to the subject matter hereof.
- 7.3 This Trust Instrument shall enure to the benefit of and be binding upon the heirs, executors, administrators, successors and assigns of the Settlor and the Trustee.
- 7.4 Headings are inserted for convenience of reference only and shall not affect the construction or interpretation of this Trust Instrument.
- 7.5 Words importing singular number only shall include the plural and vice versa, and

words importing the masculine gender shall include the feminine and neuter genders, and words importing persons shall include corporations, partnerships, syndicates, trusts and any number or aggregate of persons.

7.6 This Trust Instrument shall be construed according to the laws of the Province of Ontario and the laws of Canada.

7.7 This agreement may be executed in counterparts.

Date:

BILL SAUER

per: _____
Bill Sauer

Date:

FLYING E RANCHE LTD.

per: _____
Larry Sears

Date:

CLARENCE EWASIW

per: _____
Clarence Ewasiw

Date:

DONALD BERNÈCHE

per: _____
Donald Bernèche

Date:

IVAN MURRAY

per: _____

Ivan Murray

Date:

ROYAL TRUST CORPORATION OF CANADA

per: _____

Peter Downey

Date:

ROYAL TRUST CORPORATION OF CANADA

per: _____

Arlene McGuire

SCHEDULE A

to Trust Instrument made by
the BSE Class Action Association
and Royal Trust Corporation of Canada
effective as of the ** day of February, 2008

CANADIAN \$10.00 BILL
SERIAL NO. *****