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Province of Ontario  
Province de l'Ontario  
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Ministère des Services gouvernementaux

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## Certificate of Incorporation Certificat de constitution

This is to certify that

Ceci certifie que

**BIRD CONSTRUCTION INC.**

Ontario Corporation No.

Numéro matricule de la personne morale en  
Ontario

**002236145**

is a corporation incorporated,  
under the laws of the Province of Ontario.

est une société constituée aux termes  
des lois de la province de l'Ontario.

These articles of incorporation  
are effective on

Les présents statuts constitutifs  
entrent en vigueur le

**MARCH 05 MARS, 2010**



Director/Directrice

Business Corporations Act/Loi sur les sociétés par actions

Request ID / Demande n°

Ontario Corporation Number  
Numéro de la compagnie en Ontario

12006927

2236145

FORM 1

FORMULE NUMÉRO 1

BUSINESS CORPORATIONS ACT

/

LOI SUR LES SOCIÉTÉS PAR ACTIONS

ARTICLES OF INCORPORATION  
STATUTS CONSTITUTIFS

1. The name of the corporation is: *Dénomination sociale de la compagnie:*

BIRD CONSTRUCTION INC.

2. The address of the registered office is: *Adresse du siège social:*

5403 EGLINTON AVENUE WEST

(Street & Number, or R.R. Number & if Multi-Office Building give Room No.)  
(Rue et numéro, ou numéro de la R.R. et, s'il s'agit édifice à bureau, numéro du bureau)

TORONTO  
CANADA

ONTARIO  
M9C 5K6

(Name of Municipality or Post Office)  
(Nom de la municipalité ou du bureau de poste)

(Postal Code/Code postal)

3. Number (or minimum and maximum number) of directors is:

*Nombre (ou nombres minimal et maximal) d'administrateurs:*

Minimum 1

Maximum 10

4. The first director(s) is/are:

*Premier(s) administrateur(s):*

First name, initials and surname  
*Prénom, initiales et nom de famille*

Resident Canadian State Yes or No  
*Résident Canadien Oui/Non*

Address for service, giving Street & No. or R.R. No., Municipality and Postal Code

*Domicile élu, y compris la rue et le numéro, le numéro de la R.R., ou le nom de la municipalité et le code postal*

\* JENNIFER  
GROSSKLAUS

YES

100 KING STREET WEST Suite 4400

TORONTO ONTARIO  
CANADA M5X 1B1

Request ID / Demande n°

Ontario Corporation Number  
Numéro de la compagnie en Ontario

12006927

2236145

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5. Restrictions, if any, on business the corporation may carry on or on powers the corporation may exercise.  
*Limites, s'il y a lieu, imposées aux activités commerciales ou aux pouvoirs de la compagnie.*

None.

6. The classes and any maximum number of shares that the corporation is authorized to issue:  
*Catégories et nombre maximal, s'il y a lieu, d'actions que la compagnie est autorisée à émettre:*

The Corporation is authorized to issue an unlimited number of preference shares, issuable in series and an unlimited number of common shares.

Request ID / Demande n°

Ontario Corporation Number  
Numéro de la compagnie en Ontario

12006927

2236145

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7. Rights, privileges, restrictions and conditions (if any) attaching to each class of shares and directors authority with respect to any class of shares which may be issued in series: *Droits, privilèges, restrictions et conditions, s'il y a lieu, rattachés à chaque catégorie d'actions et pouvoirs des administrateurs relatifs à chaque catégorie d'actions que peut être émise en série:*
- A. PREFERENCE SHARES
1. Directors' Authority to Issue One or More Series
- 1.1 The board of directors of the Corporation may issue the Preference Shares at any time and from time to time in one or more series. Before the first shares of a particular series are issued, the board of directors of the Corporation may fix the number of shares in such series and shall determine, subject to the limitations set out in the articles, the designation, rights, privileges, restrictions and conditions to attach to the shares of such series including, without limiting the generality of the foregoing, the rate or rates, amount or method or methods of calculation of preferential dividends, whether cumulative or non cumulative or partially cumulative, and whether such rate(s), amount or method(s) of calculation shall be subject to change or adjustment in the future, the currency or currencies of payment, the date or dates and place or places of payment thereof and the date or dates from which such preferential dividends shall accrue, the redemption price and terms and conditions of redemption (if any), the rights of retraction (if any), and the prices and other terms and conditions of any rights of retraction and whether any additional rights of retraction may be vested in such holders in the future, voting rights and conversion or exchange rights (if any) and any sinking fund, purchase fund or other provisions attaching thereto. Before the issue of the first shares of a series, the board of directors of the Corporation shall send to the Director (as defined in the Business Corporations Act) articles of amendment in the prescribed form containing a description of such series including the designation, rights, privileges, restrictions and conditions determined by the directors.
2. Ranking of Preference Shares
- 2.1 No rights, privileges, restrictions or conditions attaching to a series of Preference Shares shall confer upon a series a priority in respect of dividends or return of capital in the event of the liquidation, dissolution or winding-up of the Corporation over any other series of Preference Shares. The Preference Shares of each series shall rank on a parity with the Preference Shares of every other series with respect to priority in the payment of dividends and the return of capital and the distribution of assets of the Corporation in the event of the liquidation, dissolution or winding-up of the Corporation, whether voluntary or involuntary, or any other distribution of the assets of the Corporation among its shareholders for the purpose of winding up its affairs.

Request ID / Demande n°

Ontario Corporation Number  
Numéro de la compagnie en Ontario

12006927

2236145

7. Rights, privileges, restrictions and conditions (if any) attaching to each class of shares and directors authority with respect to any class of shares which may be issued in series: *Droits, privilèges, restrictions et conditions, s'il y a lieu, rattachés à chaque catégorie d'actions et pouvoirs des administrateurs relatifs à chaque catégorie d'actions que peut être émise en série:*

2.2 The Preference Shares shall be entitled to priority over the Common Shares of the Corporation and over any other shares of any other class of the Corporation ranking junior to the Preference Shares with respect to priority in the payment of dividends and the return of capital and the distribution of assets in the event of the liquidation, dissolution or winding-up of the Corporation, whether voluntary or involuntary, or any other distribution of the assets of the Corporation among its shareholders for the purpose of winding up its affairs.

2.3 If any amount of cumulative dividends, whether or not declared, or declared non cumulative dividends or amount payable on a return of capital in the event of the liquidation, dissolution or winding-up of the Corporation in respect of a series of Preference Shares is not paid in full, the Preference Shares of all series shall participate rateably in respect of all accumulated cumulative dividends, whether or not declared, and all declared non cumulative dividends in accordance with the sums that would be payable on such shares if all such dividends were declared and paid in full, and in respect of amounts payable on return of capital in the event of the liquidation, dissolution or winding-up of the Corporation in accordance with the sums that would be payable on such repayment of capital if all sums so payable were paid in full; provided, however, that in the event of there being insufficient assets to satisfy in full all such claims as aforesaid, the claims of the holders of the Preference Shares with respect to amounts payable on return of capital shall first be paid and satisfied and any assets remaining thereafter shall be applied towards the payment and satisfaction of claims in respect of dividends.

2.4 The Preference Shares of any series may also be given such other preferences not inconsistent with the provisions hereof over the Common Shares and over any other shares ranking junior to the Preference Shares as may be determined in the case of such series of Preference Shares.

2.5 In the event of the liquidation, dissolution or winding-up of the Corporation, whether voluntary or involuntary, or any other distribution of the assets of the Corporation among its shareholders for the purpose of winding up its affairs, the holders of each series of Preference Shares shall, before any amount shall be paid to or any property or assets of the Corporation distributed among the holders of the Common Shares of the Corporation or any other shares of the Corporation ranking junior to the Preference Shares, be entitled to receive: (i) an amount equal to the stated capital attributed to each series of Preference Shares, respectively, together with, in the case of a series of Preference Shares entitled to cumulative dividends thereon, all unpaid accumulated cumulative

Request ID / Demande n°

Ontario Corporation Number  
Numéro de la compagnie en Ontario

12006927

2236145

7. Rights, privileges, restrictions and conditions (if any) attaching to each class of shares and directors authority with respect to any class of shares which may be issued in series: *Droits, privilèges, restrictions et conditions, s'il y a lieu, rattachés à chaque catégorie d'actions et pouvoirs des administrateurs relatifs à chaque catégorie d'actions que peut être émise en série:*

dividends, whether or not declared, (which for such purpose shall be calculated as if such cumulative dividends were accruing from day to day for the period from the expiration of the last period for which such cumulative dividends were paid up to but excluding the date of distribution) and, in the case of a series of Preference Shares entitled to non cumulative dividends, all declared and unpaid non cumulative dividends thereon; and (ii) if such liquidation, dissolution, winding-up or distribution shall be voluntary, an additional amount, if any, equal to any premium which would have been payable on the redemption of any series of Preference Shares had they been called for redemption by the Corporation effective the date of distribution and, if any series of Preference Shares could not be redeemed on such date, then an additional amount equal to the greatest premium, if any, which would have been payable on the redemption of any other series of Preference Shares.

3. Restrictions on Dividends and Redemptions, etc.

3.1 No dividends shall at any time be declared or paid on or set apart for payment on the Common Shares or any other shares of the Corporation ranking junior to the Preference Shares unless all dividends up to and including the dividend payable for the last completed period for which such dividends shall be payable on each series of Preference Shares then issued and outstanding shall have been declared and paid or set apart for payment at the date of such declaration or payment or setting apart for payment on the Common Shares or such other shares of the Corporation ranking junior to the Preference Shares; nor shall the Corporation call for redemption, redeem, purchase for cancellation, acquire for value or reduce or otherwise pay off any of the Preference Shares (less than the total amount then outstanding) or any Common Shares or any other shares of the Corporation ranking junior to the Preference Shares unless and until all dividends up to and including the dividends payable for the last completed period for which such dividends shall be payable on each series of the Preference Shares then issued and outstanding shall have been declared and paid or set apart for payment at the date of such call for redemption, purchase, acquisition, reduction or other payment.

4. Voting Rights

4.1 The holders of the Preference Shares shall not be entitled as such (except as hereinafter specifically provided and except as otherwise provided by the Act) to receive notice of or to attend any meeting of the shareholders of the Corporation and shall not be entitled to vote at any such meeting.



Request ID / Demande n°

Ontario Corporation Number  
Numéro de la compagnie en Ontario

12006927

2236145

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7. Rights, privileges, restrictions and conditions (if any) attaching to each class of shares and directors authority with respect to any class of shares which may be issued in series: *Droits, privilèges, restrictions et conditions, s'il y a lieu, rattachés à chaque catégorie d'actions et pouvoirs des administrateurs relatifs à chaque catégorie d'actions que peut être émise en série:*

5. Approval of the Holders of the Preference Shares

5.1 The approval of the holders of the Preference Shares with respect to any and all matters hereinbefore referred to may be given by at least two thirds of the votes cast at a meeting of the holders of the Preference Shares duly called for that purpose and held upon at least 21 days' notice at which the holders of a majority of the outstanding Preference Shares are present or represented by proxy. If at any such meeting the holders of a majority of the outstanding Preference Shares are not present or represented by proxy within one half hour after the time appointed for such meeting, then the meeting shall be adjourned to such date being not less than 30 days later and to such time and place as may be appointed by the chairman and not less than 21 days' notice shall be given of such adjourned meeting. At such adjourned meeting the holders of the Preference Shares present or represented by proxy may transact the business for which the meeting was originally called and a resolution passed thereat by not less than two thirds of the votes cast at such adjourned meeting shall constitute the approval of the holders of the Preference Shares referred to above. The formalities to be observed with respect to the giving of notice of any such meeting or adjourned meeting and the conduct thereof shall be those from time to time prescribed by the Business Corporations Act and the by laws of the Corporation with respect to meetings of shareholders. On every poll taken at every such meeting or adjourned meeting every holder of Preference Shares shall be entitled to one vote in respect of each Preference Share held.

B. COMMON SHARES

1. Dividends

1.1 Subject to the prior rights of the holders of the Preference Shares and any other shares ranking senior to the Common Shares with respect to priority in the payment of dividends, the holders of Common Shares shall be entitled to receive dividends and the Corporation shall pay dividends thereon, as and when declared by the board of directors of the Corporation out of moneys properly applicable to the payment of dividends, in such amount and in such form as the board of directors of the Corporation may from time to time determine, and all dividends which the board of directors of the Corporation may declare on the Common Shares shall be declared and paid in equal amounts per share on all Common Shares at the time outstanding.

Request ID / Demande n°

Ontario Corporation Number  
Numéro de la compagnie en Ontario

12006927

2236145

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7. Rights, privileges, restrictions and conditions (if any) attaching to each class of shares and directors authority with respect to any class of shares which may be issued in series: *Droits, privilèges, restrictions et conditions, s'il y a lieu, rattachés à chaque catégorie d'actions et pouvoirs des administrateurs relatifs à chaque catégorie d'actions que peut être émise en série:*
2. Dissolution
- 2.1 In the event of the dissolution, liquidation or winding up of the Corporation, whether voluntary or involuntary, or any other distribution of assets of the Corporation among its shareholders for the purpose of winding up its affairs, subject to the prior rights of the holders of the Preference Shares and any other shares ranking senior to the Common Shares with respect to priority in the distribution of assets upon dissolution, liquidation, winding up or distribution for the purpose of winding up, the holders of the Common Shares shall be entitled to receive the remaining property and assets of the Corporation.
3. Voting Rights
- 3.1 The holders of the Common Shares shall be entitled to receive notice of and to attend all meetings of the shareholders of the Corporation and shall have one vote for each Common Share held at all meetings of the shareholders of the Corporation, except meetings at which only holders of another specified class or series of shares of the Corporation are entitled to vote separately as a class or series.



Request ID / Demande n°

Ontario Corporation Number  
Numéro de la compagnie en Ontario

12006927

2236145

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8. The issue, transfer or ownership of shares is/is not restricted and the restrictions (if any) are as follows:

*L'émission, le transfert ou la propriété d'actions est/n'est pas restreinte. Les restrictions, s'il y a lieu, sont les suivantes:*

None.

Request ID / Demande n°

12006927

Ontario Corporation Number  
Numéro de la compagnie en Ontario

2236145

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9. Other provisions, (if any, are):  
*Autres dispositions, s'il y a lieu:*

None.

Request ID / Demande n°

Ontario Corporation Number  
Numéro de la compagnie en Ontario

12006927

2236145

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10. The names and addresses of the incorporators are  
*Nom et adresse des fondateurs*

First name, initials and last name  
or corporate name

*Prénom, initiale et nom de  
famille ou dénomination sociale*

Full address for service or address of registered office or of principal place of business  
giving street & No. or R.R. No., municipality and postal code  
*Domicile élu, adresse du siège social au adresse de l'établissement principal, y compris  
la rue et le numéro, le numéro de la R.R., le nom de la municipalité et le code postal*

\* JENNIFER GROSSKLAUS

100 KING STREET WEST Suite 4400

TORONTO ONTARIO  
CANADA M5X 1B1



"The Corporation is authorized to issue an unlimited number of common shares and such number of preference shares, issuable in series, provided that, when issued, the aggregate number of preference shares, issuable in series, shall not exceed 35% of the number of issued and outstanding common shares at the time such preference shares are issued."

(b) by deleting paragraph 7 (A) (1.1) of the Articles of the Corporation in its entirety and replacing it with the following:

"1.1 The board of directors of the Corporation may issue the Preference Shares at any time and from time to time in one or more series. Before the first shares of a particular series are issued, the board of directors of the Corporation may fix the number of shares in such series (subject to the restrictions on the number of Preference Shares in paragraph 6 above) and shall determine, subject to the limitations set out in the articles, the designation, rights, privileges, restrictions and conditions to be attached to the shares of such series including, without limiting the generality of the foregoing, the rate or rates, amount or method or methods of calculation of preferential dividends, whether cumulative or non cumulative or partially cumulative, and whether such rate(s), amount or method(s) of calculation shall be subject to change or adjustment in the future, the currency or currencies of payment, the date or dates and place or places of payment thereof and the date or dates from which such preferential dividends shall accrue, the redemption price and terms and conditions of redemption (if any), the rights of retraction (if any), and the prices and other terms and conditions of any rights of retraction and whether any additional rights of retraction may be vested in such holders in the future, voting rights and conversion or exchange rights (if any) and any sinking fund, purchase fund or other provisions attaching thereto. Before the issue of the first shares of a series, the board of directors of the Corporation shall send to the Director (as defined in the Business Corporations Act) articles of amendment in the prescribed form containing a description of such series including the designation, rights, privileges, restrictions and conditions determined by the directors."

6. The amendment has been duly authorized as required by sections 168 and 170 (as applicable) of the *Business Corporations Act*.  
La modification a été dûment autorisée conformément aux articles 168 et 170 (selon le cas) de la *Loi sur les sociétés par actions*.
7. The resolution authorizing the amendment was approved by the shareholders/directors (as applicable) of the corporation on  
Les actionnaires ou les administrateurs (selon le cas) de la société ont approuvé la résolution autorisant la modification le

2010 June 4

(Year, Month, Day)  
(année, mois, jour)

These articles are signed in duplicate.  
Les présents statuts sont signés en double exemplaire.

BIRD CONSTRUCTION INC.

(Print name of corporation from Article 1 on page 1)  
(Veuillez écrire le nom de la société de l'article un à la page une).

By/  
Par :



(Signature)  
(Signature)

Timothy J. Talbott

Director

(Description of Office)  
(Fonction)





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Government Services

Ministère des  
Services gouvernementaux

Ontario Corporation Number  
Numéro de la société en Ontario

**CERTIFICATE**

This is to certify that these articles  
are effective on

**CERTIFICAT**

Ceci certifie que les présents statuts  
entrent en vigueur le

2236145

JANUARY 01 JANVIER, 2011

Director / Directrice

Business Corporations Act / Loi sur les sociétés par actions

**ARTICLES OF ARRANGEMENT  
STATUTS D'ARRANGEMENT**

Form 8  
Business  
Corporations  
Act

Formule 8  
Loi sur les  
sociétés par  
actions

- 1. The name of the corporation is: (Set out in BLOCK CAPITAL LETTERS)  
Dénomination sociale de la société : (Écrire en LETTRES MAJUSCULES SEULEMENT) :

B	I	R	D	.	C	O	N	S	T	R	U	C	T	I	O	N	.	I	N	C	.

- 2. The new name of the corporation if changed by the arrangement: (Set out in BLOCK CAPITAL LETTERS)  
Nouvelle dénomination sociale de la société si elle est modifiée par suite de l'arrangement : (Écrire en LETTRES MAJUSCULES SEULEMENT)


- 3. Date of incorporation/amalgamation: / Date de la constitution ou de la fusion :

2010-03-05

Year, Month, Day / année, mois, jour

- 4. The arrangement has been approved by the shareholders of the corporation in accordance with section 182 of the Business Corporation Act. / Les actionnaires de la société ont approuvé l'arrangement conformément à l'article 182 de la Loi sur les sociétés par actions.

- 5. A copy of the arrangement is attached to these articles as Exhibit "A" / Une copie de l'arrangement constitue l'annexe «A».

- 6. The arrangement was approved by the court on / La cour a approuvé l'arrangement le

2010, 05, 14

Year, Month, Day / année, mois, jour

and a certified copy of the Order of the court is attached to these articles as Exhibit "B". / Une copie certifiée conforme de l'ordonnance de la cour constitue l'annexe «B».

- 7. The terms and conditions to which the scheme is made subject by the Order have been complied with.  
Les conditions que l'ordonnance impose au projet d'arrangement ont été respectées.

These articles are signed in duplicate. / Les présents statuts sont signés en double exemplaire.

Bird Construction Inc.

Name of Corporation / Dénomination sociale de la société

By/  
Par:

Signature / Signature

President and Chief Executive Officer

Description of Office / Fonctions

**EXHIBIT A**  
**PLAN OF ARRANGEMENT UNDER SECTION 182**  
**OF THE**  
***BUSINESS CORPORATIONS ACT (ONTARIO)***

**ARTICLE 1**  
**INTERPRETATION**

1.1 In this Plan of Arrangement, the following terms have the following meanings:

"**Affiliate**" has the meaning set out in the *Securities Act* (Ontario);

"**Arrangement**", "**herein**", "**hereof**", "**hereto**", "**hereunder**" and similar expressions mean and refer to the arrangement pursuant to section 182 of the OBCA set forth in this Plan of Arrangement as supplemented, modified or amended, and not to any particular article, section or other portion hereof;

"**Arrangement Agreement**" means the arrangement agreement dated March 12, 2010, between New Bird and the Fund pursuant to which such parties have proposed to implement the Arrangement, including any amendments thereto;

"**Arrangement Resolution**" means the special resolution in respect of the Arrangement in substantially the form attached as Appendix A to the Information Circular to be voted upon by Unitholders at the Meeting;

"**Articles of Arrangement**" means the articles of arrangement in respect of the Arrangement required under subsection 183 of the OBCA to be filed with the Director after the Final Order has been made to give effect to the Arrangement;

"**Business Day**" means a day, other than a Saturday, Sunday or day on which Canadian chartered banks are authorized or required by law to be closed at their offices in Toronto, Ontario;

"**Certificate**" means the certificate or certificates or other confirmation of filing to be issued by the Director pursuant to subsection 183 of the OBCA giving effect to the Arrangement;

"**control**" means, with respect to control of a body corporate by a Person, the holding (other than by way of security) by or for the benefit of that Person of securities of that body corporate to which are attached more than 50% of the votes that may be cast to elect directors of the body corporate (whether or not securities of any other class or classes shall or might be entitled to vote upon the happening of any event or contingency) provided that such votes, if exercised, are sufficient to elect a majority of the board of directors of the body corporate;

"**Court**" means the Ontario Superior Court of Justice (Commercial List);

"**Declaration of Trust**" means the amended and restated declaration of trust dated as of February 16, 2006 governing the Fund, as the same may be amended and/or restated from time to time;

"**Director**" means the Director appointed under the OBCA;

"**Effective Date**" means the date the Arrangement is effective under the OBCA;

"**Final Order**" means the order of the Court approving the Arrangement to be applied for following the Meeting and to be granted pursuant to the provisions of subsection 183 of the OBCA, as such order may be affirmed, amended or modified by any court of competent jurisdiction;

"**Fund**" means Bird Construction Income Fund, a trust established under the laws of the Province of Ontario pursuant to the Declaration of Trust;

"**Information Circular**" means the management information circular to be dated on or about March 22, 2010 distributed by the Fund in connection with the Meeting;

"**Interim Order**" means the interim order of the Court to be dated March 19, 2010 under subsection 182 of the OBCA containing declarations and directions with respect to the Arrangement and the Meeting and issued pursuant to the application of the Fund;

"**Meeting**" means the annual and special meeting of Unitholders to be held on May 10, 2010, and any adjournment(s) or postponement(s) thereof, to consider and to vote on the Arrangement Resolution and the other matters set out in the Notice of Meeting;

"**New Bird**" means Bird Construction Inc., a wholly-owned subsidiary of the Fund;

"**New Bird Shares**" means the common shares of New Bird;

"**OBCA**" means the *Business Corporations Act* (Ontario);

"**Person**" means any individual, partnership, association, body corporate, trustee, executor, administrator, legal representative, government, regulatory authority or other entity;

"**Plan of Arrangement**" means this plan of arrangement as amended or supplemented from time to time in accordance with the terms hereof;

"**Record Date**" means the close of business on April 9, 2010;

"**Subsidiary**" means, in relation to any person, any body corporate, partnership, joint venture, association or other entity of which more than 50% of the total voting power of shares or units of ownership or beneficial interest entitled to vote in the election of directors (or members of a comparable governing body) is owned or controlled, directly or indirectly, by such Person;



"Unit" means a unit of the Fund; and

"Unitholders" means the holders of Units from time to time.

1.2 In this Plan of Arrangement, unless otherwise expressly stated or the context otherwise requires:

- (a) references to "herein", "hereby", "hereunder", "hereof" and similar expressions are references to this Plan of Arrangement and not to any particular Section, subsection or Schedule;
- (b) references to an "Article", "Section" or "Schedule" are references to an Article, Section or Schedule of or to this Plan of Arrangement;
- (c) words importing the singular shall include the plural and *vice versa*, words importing gender shall include the masculine, feminine and neuter genders;
- (d) the use of headings is for convenience of reference only and shall not affect the construction or interpretation hereof;
- (e) the word "including", when following any general term or statement, is not to be construed as limiting the general term or statement to the specific items or matters set forth or to similar items or matters, but rather as referring to all other items or matters that could reasonably fall within the broadest possible scope of the general term or statement;
- (f) a reference to a statute or code includes every regulation made pursuant thereto, all amendments to the statute or code or to any such regulation in force from time to time, and any statute, code or regulation which supplements or supersedes such statute, code or regulation; and
- (g) for greater certainty, the trustees of the Fund have entered into this Plan of Arrangement in their capacity as trustees of the Fund under the declaration of trust governing the Fund and this Plan of Arrangement has been executed and delivered on behalf of the trustees of the Fund in such capacity, and, unless otherwise expressly provided herein, where any reference is made in this Plan of Arrangement to the Fund as a party to this Plan of Arrangement or any other agreement or to an act to be performed by or a covenant, representation or warranty given by the Fund, such reference shall be construed and applied for all purposes as if it referred to the trustees of the Fund, in their capacity as trustees of the Fund under the declaration of trust governing the Fund.

1.3 In the event that the date on which any action is required to be taken hereunder by any of the parties is not a Business Day in the place where the action is required to be taken, such action shall be required to be taken on the next succeeding day which is a Business Day in such place.

**ARTICLE 2  
ARRANGEMENT AGREEMENT**

- 2.1 This Plan of Arrangement is made pursuant and subject to the provisions of the Arrangement Agreement.
- 2.2 This Plan of Arrangement, upon the filing of the Articles of Arrangement and the issue of the Certificate, will become effective on, and be binding on and after the Effective Date on: (i) the Unitholders; (ii) New Bird, and; (iii) the Fund.
- 2.3 The Articles of Arrangement and the Certificate shall be filed and issued, respectively, with respect to this Arrangement in its entirety. The Certificate shall be conclusive evidence that the Arrangement has become effective and that each of the provisions of Article 3 has become effective in the sequence and at the times set out therein.

**ARTICLE 3  
ARRANGEMENT**

- 3.1 The following shall occur and be deemed to occur in the order provided below on the Effective Date without further act or formality:
  - (a) the Unitholders will transfer, and will be deemed to have transferred, their Units to New Bird in exchange for New Bird Shares on a one-for-one basis;
  - (b) there will be added to the stated capital account maintained for the New Bird Shares an amount determined by the directors of New Bird in accordance with subsection 24(2) of the OBCA in respect of the New Bird Shares issued under the Arrangement, and New Bird will be authorized to subsequently reduce its stated capital in an amount determined by the directors of New Bird in respect of which no amount is to be distributed to the holders of New Bird Shares, as contemplated by section 34(1)(b)(ii)(B) of the OBCA; and
  - (c) the New Bird Share issued to the Fund in connection with the incorporation of New Bird will be purchased for cancellation by New Bird for \$10 and will be cancelled.
- 3.2 With respect to each Unitholder on the Effective Date:
  - (a) upon the transfer of Units to New Bird in consideration for New Bird Shares pursuant to Section 3.1(a):
    - (i) such former Unitholder shall be added to the register of holders of New Bird Shares and the name of such holder shall be removed from the registers of holders of Units as they relate to the Units so transferred; and
    - (ii) New Bird shall become the holder of the Units so transferred and shall be added to the register of holders of Units.

**ARTICLE 4  
OUTSTANDING CERTIFICATES AND FRACTIONAL SHARES**

- 4.1 From and after the Effective Date, certificates formerly representing Units shall represent only the number of New Bird Shares which the former holder of Units is entitled to receive pursuant to Article 3. Holders of Units will not be entitled to any interest, dividend, premium or other payment on or with respect to the Units.
- 4.2 No certificates representing fractional New Bird Shares shall be issued pursuant to the Plan of Arrangement.

**ARTICLE 5  
AMENDMENTS**

- 5.1 The Parties to the Arrangement Agreement may amend, modify and/or supplement this Plan of Arrangement at any time and from time to time prior to the Effective Date, provided that each such amendment, modification and/or supplement must be: (i) set out in writing; (ii) filed with the Court and, if made following the Meeting, approved by the Court; and (iii) communicated to holders of Units if and as required by the Court.
- 5.2 Any amendment of, modification to or supplement to this Plan of Arrangement may be proposed by Bird Trust at any time prior to or at the Meeting with or without any other prior notice or communication, and if so proposed and accepted by the persons voting at the Meeting (other than as may be required under the Interim Order), shall become part of this Plan of Arrangement for all purposes.
- 5.3 Any amendment, modification or supplement to this Plan of Arrangement may be made following the Effective Date but shall only be effective if it is consented to by each of the Fund and New Bird, provided that it concerns a matter which, in the reasonable opinion of the Fund and New Bird is of an administrative nature required to better give effect to the implementation of this Plan of Arrangement and is not adverse to the financial or economic interests of the Fund and New Bird or any former Unitholder.



IN THE MATTER OF the Business Corporations Act, R.S.O. 1990, c. B.16, as amended,  
Section 182  
AND IN THE MATTER OF Rules 14.05(2) and 14.05(3) of the Rules of Civil Procedure.  
AND IN THE MATTER OF a proposed arrangement involving Bird Construction Income Fund,  
its unitholders and Bird Construction Inc.

Commercial List File No: CV-10-8618-00CL

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(Commercial List)

Proceeding commenced at Toronto

ORDER

Davies Ward Phillips & Vineberg LLP  
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Lawyers for the Applicants, Bird Construction  
Income Fund and Bird Construction Inc.

EXHIBIT B

Commercial List Court File No. CV-10-8618-00CL

THIS IS TO CERTIFY THAT THIS DOCUMENT, EACH PAGE OF WHICH IS STAMPED WITH THE SEAL OF THE SUPERIOR COURT OF JUSTICE AT TORONTO, IS A TRUE COPY OF THE DOCUMENT ON FILE IN THIS OFFICE

LA PRÉSENT ATTESTE QUE CE DOCUMENT, DONT CHACUNE DES PAGES EST REVÊTUE DU SCEAU DE LA COUR SUPÉRIEURE DE JUSTICE À TORONTO, EST UNE COPIE CONFORME DU DOCUMENT CONSERVÉ DANS LE BUREAU

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(Commercial List)

DATED AT TORONTO THIS 7 DAY OF Dec 20 10  
FAIT À TORONTO LE 7 JOUR DE DÉC 20 10

REGISTRAR

THE HONOURABLE JUDGE REGISTRAR

) FRIDAY, THE 14TH DAY

MR. JUSTICE CAMERON

) OF MAY, 2010



IN THE MATTER OF the *Business Corporations Act*, R.S.O. 1990, c. B.16, as amended, Section 182

AND IN THE MATTER OF Rule 14.05(2) and 14.05(3) of the *Rules of Civil Procedure*

AND IN THE MATTER OF a proposed arrangement involving Bird Construction Income Fund, its unitholders and Bird Construction Inc.

**Bird Construction Income Fund and Bird Construction Inc.**

Applicants

ORDER

**THIS APPLICATION**, made by the Applicants, Bird Construction Income Fund and Bird Construction Inc., for an Order approving the Plan of Arrangement as set out in the Notice of Application herein and attached as Schedule "1" to this Order (the "Plan of Arrangement"), was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Notice of Application, the Affidavit of Paul Raboud sworn March 13, 2010, the Supplementary Affidavit of Paul Raboud sworn May 11, 2010, the exhibits thereto and other materials referred to therein, on hearing the submissions of counsel for the Applicants.

UPON BEING SATISFIED that: (i) the annual and special meeting of the holders of units of the Applicant Bird Construction Income Fund (the "Unitholders") was called, held and conducted in accordance with the terms of the Order dated March 19, 2010 (the "Interim Order"); (ii) the Unitholders approved the Plan of Arrangement in accordance with the terms of the Interim Order; and (iii) the terms and conditions of the Plan of Arrangement are fair and reasonable.


1. THIS COURT ORDERS that the Plan of Arrangement be and the same is hereby approved.

2. THIS COURT ORDERS that the Applicants shall be entitled at any time to seek leave to vary this Order, to seek the advice and direction of this Court or to apply for such further order or orders as may be appropriate.



ENTERED AT / INSCRIT A TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO.:

MAY 14 2010

PER / PAR: 



## SCHEDULE "1"

### PLAN OF ARRANGEMENT UNDER SECTION 182 OF THE *BUSINESS CORPORATIONS ACT* (ONTARIO)

#### ARTICLE 1 INTERPRETATION

1.1 In this Plan of Arrangement, the following terms have the following meanings:

"**Affiliate**" has the meaning set out in the *Securities Act* (Ontario);

"**Arrangement**", "herein", "hereof", "hereto", "hereunder" and similar expressions mean and refer to the arrangement pursuant to section 182 of the OBCA set forth in this Plan of Arrangement as supplemented, modified or amended, and not to any particular article, section or other portion hereof;

"**Arrangement Agreement**" means the arrangement agreement dated March 12, 2010, between New Bird and the Fund pursuant to which such parties have proposed to implement the Arrangement, including any amendments thereto;

"**Arrangement Resolution**" means the special resolution in respect of the Arrangement in substantially the form attached as Appendix A to the Information Circular to be voted upon by Unitholders at the Meeting;

"**Articles of Arrangement**" means the articles of arrangement in respect of the Arrangement required under subsection 183 of the OBCA to be filed with the Director after the Final Order has been made to give effect to the Arrangement;

"**Business Day**" means a day, other than a Saturday, Sunday or day on which Canadian chartered banks are authorized or required by law to be closed at their offices in Toronto, Ontario;

"**Certificate**" means the certificate or certificates or other confirmation of filing to be issued by the Director pursuant to subsection 183 of the OBCA giving effect to the Arrangement;

"**control**" means, with respect to control of a body corporate by a Person, the holding (other than by way of security) by or for the benefit of that Person of securities of that body corporate to which are attached more than 50% of the votes that may be cast to elect directors of the body corporate (whether or not securities of any other class or classes shall or might be entitled to vote upon the happening of any event or contingency) provided that such votes, if exercised, are sufficient to elect a majority of the board of directors of the body corporate;

"**Court**" means the Ontario Superior Court of Justice (Commercial List);



**"Declaration of Trust"** means the amended and restated declaration of trust dated as of February 16, 2006 governing the Fund, as the same may be amended and/or restated from time to time;

**"Director"** means the Director appointed under the OBCA;

**"Effective Date"** means the date the Arrangement is effective under the OBCA;

**"Final Order"** means the order of the Court approving the Arrangement to be applied for following the Meeting and to be granted pursuant to the provisions of subsection 183 of the OBCA, as such order may be affirmed, amended or modified by any court of competent jurisdiction;

**"Fund"** means Bird Construction Income Fund, a trust established under the laws of the Province of Ontario pursuant to the Declaration of Trust;

**"Information Circular"** means the management information circular to be dated on or about March 22, 2010 distributed by the Fund in connection with the Meeting;

**"Interim Order"** means the interim order of the Court to be dated March 19, 2010 under subsection 182 of the OBCA containing declarations and directions with respect to the Arrangement and the Meeting and issued pursuant to the application of the Fund;

**"Meeting"** means the annual and special meeting of Unitholders to be held on May 10, 2010, and any adjournment(s) or postponement(s) thereof, to consider and to vote on the Arrangement Resolution and the other matters set out in the Notice of Meeting;

**"New Bird"** means Bird Construction Inc., a wholly-owned subsidiary of the Fund;

**"New Bird Shares"** means the common shares of New Bird;

**"OBCA"** means the *Business Corporations Act* (Ontario);

**"Person"** means any individual, partnership, association, body corporate, trustee, executor, administrator, legal representative, government, regulatory authority or other entity;

**"Plan of Arrangement"** means this plan of arrangement as amended or supplemented from time to time in accordance with the terms hereof;

**"Record Date"** means the close of business on April 9, 2010;

**"Subsidiary"** means, in relation to any person, any body corporate, partnership, joint venture, association or other entity of which more than 50% of the total voting power of shares or units of ownership or beneficial interest entitled to vote in the election of directors (or members of a comparable governing body) is owned or controlled, directly or indirectly, by such Person;



"Unit" means a unit of the Fund; and

"Unitholders" means the holders of Units from time to time.

- 1.2 In this Plan of Arrangement, unless otherwise expressly stated or the context otherwise requires:
- (a) references to "herein", "hereby", "hereunder", "hereof" and similar expressions are references to this Plan of Arrangement and not to any particular Section, subsection or Schedule;
  - (b) references to an "Article", "Section" or "Schedule" are references to an Article, Section or Schedule of or to this Plan of Arrangement;
  - (c) words importing the singular shall include the plural and *vice versa*, words importing gender shall include the masculine, feminine and neuter genders;
  - (d) the use of headings is for convenience of reference only and shall not affect the construction or interpretation hereof;
  - (e) the word "including", when following any general term or statement, is not to be construed as limiting the general term or statement to the specific items or matters set forth or to similar items or matters, but rather as referring to all other items or matters that could reasonably fall within the broadest possible scope of the general term or statement;
  - (f) a reference to a statute or code includes every regulation made pursuant thereto, all amendments to the statute or code or to any such regulation in force from time to time, and any statute, code or regulation which supplements or supersedes such statute, code or regulation; and
  - (g) for greater certainty, the trustees of the Fund have entered into this Plan of Arrangement in their capacity as trustees of the Fund under the declaration of trust governing the Fund and this Plan of Arrangement has been executed and delivered on behalf of the trustees of the Fund in such capacity, and, unless otherwise expressly provided herein, where any reference is made in this Plan of Arrangement to the Fund as a party to this Plan of Arrangement or any other agreement or to an act to be performed by or a covenant, representation or warranty given by the Fund, such reference shall be construed and applied for all purposes as if it referred to the trustees of the Fund, in their capacity as trustees of the Fund under the declaration of trust governing the Fund.
- 1.3 In the event that the date on which any action is required to be taken hereunder by any of the parties is not a Business Day in the place where the action is required to be taken, such action shall be required to be taken on the next succeeding day which is a Business Day in such place.



**ARTICLE 2  
ARRANGEMENT AGREEMENT**

- 2.1 This Plan of Arrangement is made pursuant and subject to the provisions of the Arrangement Agreement.
- 2.2 This Plan of Arrangement, upon the filing of the Articles of Arrangement and the issue of the Certificate, will become effective on, and be binding on and after the Effective Date on: (i) the Unitholders; (ii) New Bird, and; (iii) the Fund.
- 2.3 The Articles of Arrangement and the Certificate shall be filed and issued, respectively, with respect to this Arrangement in its entirety. The Certificate shall be conclusive evidence that the Arrangement has become effective and that each of the provisions of Article 3 has become effective in the sequence and at the times set out therein.

**ARTICLE 3  
ARRANGEMENT**

- 3.1 The following shall occur and be deemed to occur in the order provided below on the Effective Date without further act or formality:
- (a) the Unitholders will transfer, and will be deemed to have transferred, their Units to New Bird in exchange for New Bird Shares on a one-for-one basis;
  - (b) there will be added to the stated capital account maintained for the New Bird Shares an amount determined by the directors of New Bird in accordance with subsection 24(2) of the OBCA in respect of the New Bird Shares issued under the Arrangement, and New Bird will be authorized to subsequently reduce its stated capital in an amount determined by the directors of New Bird in respect of which no amount is to be distributed to the holders of New Bird Shares, as contemplated by section 34(1)(b)(ii)(B) of the OBCA; and
  - (c) the New Bird Share issued to the Fund in connection with the incorporation of New Bird will be purchased for cancellation by New Bird for \$10 and will be cancelled.
- 3.2 With respect to each Unitholder on the Effective Date:
- (a) upon the transfer of Units to New Bird in consideration for New Bird Shares pursuant to Section 3.1(a):
    - (i) such former Unitholder shall be added to the register of holders of New Bird Shares and the name of such holder shall be removed from the registers of holders of Units as they relate to the Units so transferred; and
    - (ii) New Bird shall become the holder of the Units so transferred and shall be added to the register of holders of Units.

**ARTICLE 4**  
**OUTSTANDING CERTIFICATES AND FRACTIONAL SHARES**

- 4.1 From and after the Effective Date, certificates formerly representing Units shall represent only the number of New Bird Shares which the former holder of Units is entitled to receive pursuant to Article 3. Holders of Units will not be entitled to any interest, dividend, premium or other payment on or with respect to the Units.
- 4.2 No certificates representing fractional New Bird Shares shall be issued pursuant to the Plan of Arrangement.

**ARTICLE 5**  
**AMENDMENTS**

- 5.1 The Parties to the Arrangement Agreement may amend, modify and/or supplement this Plan of Arrangement at any time and from time to time prior to the Effective Date, provided that each such amendment, modification and/or supplement must be: (i) set out in writing; (ii) filed with the Court and, if made following the Meeting, approved by the Court; and (iii) communicated to holders of Units if and as required by the Court.
- 5.2 Any amendment of, modification to or supplement to this Plan of Arrangement may be proposed by Bird Trust at any time prior to or at the Meeting with or without any other prior notice or communication, and if so proposed and accepted by the persons voting at the Meeting (other than as may be required under the Interim Order), shall become part of this Plan of Arrangement for all purposes.
- 5.3 Any amendment, modification or supplement to this Plan of Arrangement may be made following the Effective Date but shall only be effective if it is consented to by each of the Fund and New Bird, provided that it concerns a matter which, in the reasonable opinion of the Fund and New Bird is of an administrative nature required to better give effect to the implementation of this Plan of Arrangement and is not adverse to the financial or economic interests of the Fund and New Bird or any former Unitholder.



IN THE MATTER OF the Business Corporations Act, R.S.O. 1990, c. B.16, as amended,  
Section 182  
AND IN THE MATTER OF Rules 14.05(2) and 14.05(3) of the Rules of Civil Procedure  
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Lawyers for the Applicants, Bird Construction  
Income Fund and Bird Construction Inc.



"The Corporation is authorized to issue an unlimited number of common shares and such number of preference shares, issuable in series, provided that, when issued, the aggregate number of preference shares, issuable in series, shall not exceed 35% of the number of issued and outstanding common shares at the time such preference shares are issued."

(b) by deleting paragraph 7 (A) (1.1) of the Articles of the Corporation in its entirety and replacing it with the following:

"1.1 The board of directors of the Corporation may issue the Preference Shares at any time and from time to time in one or more series. Before the first shares of a particular series are issued, the board of directors of the Corporation may fix the number of shares in such series (subject to the restrictions on the number of Preference Shares in paragraph 6 above) and shall determine, subject to the limitations set out in the articles, the designation, rights, privileges, restrictions and conditions to be attached to the shares of such series including, without limiting the generality of the foregoing, the rate or rates, amount or method or methods of calculation of preferential dividends, whether cumulative or non cumulative or partially cumulative, and whether such rate(s), amount or method(s) of calculation shall be subject to change or adjustment in the future, the currency or currencies of payment, the date or dates and place or places of payment thereof and the date or dates from which such preferential dividends shall accrue, the redemption price and terms and conditions of redemption (if any), the rights of retraction (if any), and the prices and other terms and conditions of any rights of retraction and whether any additional rights of retraction may be vested in such holders in the future, voting rights and conversion or exchange rights (if any) and any sinking fund, purchase fund or other provisions attaching thereto. Before the issue of the first shares of a series, the board of directors of the Corporation shall send to the Director (as defined in the Business Corporations Act) articles of amendment in the prescribed form containing a description of such series including the designation, rights, privileges, restrictions and conditions determined by the directors."

6. The amendment has been duly authorized as required by sections 168 and 170 (as applicable) of the *Business Corporations Act*.  
La modification a été dûment autorisée conformément aux articles 168 et 170 (selon le cas) de la *Loi sur les sociétés par actions*.
7. The resolution authorizing the amendment was approved by the shareholders/directors (as applicable) of the corporation on  
Les actionnaires ou les administrateurs (selon le cas) de la société ont approuvé la résolution autorisant la modification le

2010 June 4

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(Year, Month, Day)  
(année, mois, jour)

These articles are signed in duplicate.  
Les présents statuts sont signés en double exemplaire.

**BIRD CONSTRUCTION INC.**

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(Print name of corporation from Article 1 on page 1)  
(Veuillez écrire le nom de la société de l'article un à la page une).

By/  
Par :



(Signature)  
(Signature)

Timothy J. Talbott

Director

---

(Description of Office)  
(Fonction)