

**IN THE MATTER OF THE *SECURITIES ACT*
R.R.O. 1990, c. S.5, AS AMENDED**

- and -

**IN THE MATTER OF PRIMARIS RETAIL REAL ESTATE
INVESTMENT TRUST**

**APPLICATION RECORD OF KS ACQUISITION II LP
(Cease Trade Application)**

December 21, 2012

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APPLICATION

(Section 127 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended)

1. KS Acquisition II LP (“KS Acquisition”) applies pursuant to section 127 of the *Securities Act* (the “*Act*”) for a cease trade order in respect of the unitholder rights plan (the “Rights Plan”) of Primaris Retail Real Estate Investment Trust (“Primaris”). KS Acquisition requests that the Ontario Securities Commission (the “Commission”) schedule a hearing no later than January 15, 2012.
2. KS Acquisition seeks:
 - (a) a permanent order, effective no later than 5:00 p.m. (Toronto time) on January 16, 2013, that trading cease in respect of any securities issued, or to be issued, under or in connection with the Rights Plan, including, without limitation, in respect of the rights issued under the Rights Plan (the “Rights”) and any units of Primaris (“Units”) issuable upon the exercise of the Rights;
 - (b) a permanent order removing any prospectus exemptions in respect of the distribution of the Rights on the occurrence of the Separation Time (as defined in the Rights Plan) and in respect of the exercise of the Rights; and

(c) such further relief as counsel for the applicant may advise.

3. The grounds for this application are as follows:

- (a) KS Acquisition has made an offer for all of the issued and outstanding Units of Primaris at a price of \$26.00 in cash per Unit (the "Offer"). The Offer was publicly announced on December 5, 2012 and formally commenced on December 10, 2012;
- (b) the Offer expires on January 17, 2012 (the "Expiry Date");
- (c) unless the requested cease trade order is granted, KS Acquisition will not be able to take up and pay for Units tendered to the Offer and the unitholders of Primaris will be deprived of the ability to respond to the Offer;
- (d) as at the Expiry Date, sufficient time will have elapsed for Primaris to have solicited an alternative offer or transaction, if one is to be forthcoming;
- (e) the continued operation of the Rights Plan past the Expiry Date would therefore constitute an improper defensive tactic, contrary to *National Policy 62-202*;
- (f) KingSett has no present intention to extend the Offer in the face of the continued operation of the Rights Plan for any significant additional period of time;
- (g) it is in the public interest that the Commission make an order pursuant to section 127 of the *Act* cease trading the Rights Plan prior to the Expiry Date;
- (h) section 127 of the *Act*;
- (i) *National Policy 62-202*; and

(j) Rules 2.4 and 16 of the *Ontario Securities Commission Rules of Procedure*.

4. In support of this application, KS Acquisition intends to rely on the affidavit of Jon Love, sworn December 21, 2012, and the exhibits thereto, and on such further evidence as counsel may advise.

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