



**RETROCOM MID-MARKET REAL ESTATE INVESTMENT TRUST**

**NOTICE OF ANNUAL AND SPECIAL MEETING  
OF UNITHOLDERS**

**AND**

**MANAGEMENT INFORMATION CIRCULAR**

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**ANNUAL AND SPECIAL MEETING OF UNITHOLDERS  
TO BE HELD ON JUNE 27, 2008**

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June 2, 2008

**These materials are important and require your immediate attention. They require unitholders of Retrocom Mid-Market Real Estate Investment Trust to make important decisions. If you are in doubt as to how to make such decisions, please contact your financial, legal or other professional advisors. If you have any questions or require more information with regard to voting your Units, please contact CIBC Mellon Trust Company at (800) 387-0825 (toll free in Canada only) or (416) 643-5500.**



June 2, 2008

Dear Unitholder:

It is my pleasure to extend to you, on behalf of the Board of Trustees (the “**Board**”) of Retrocom Mid-Market Real Estate Investment Trust (the “**REIT**”), an invitation to attend our annual and special meeting (the “**Meeting**”) of holders (“**Unitholders**”) of units (“**Units**”) of the REIT, to be held at The Toronto Board of Trade, West Dining Room, 1 First Canadian Place, 100 King Street West, Toronto, Ontario, Canada, on Friday, June 27, 2008 at 10:00 a.m. (Eastern Daylight Time).

At the Meeting, in addition to receiving the audited financial statements of the REIT for the year ended December 31, 2007, electing trustees and appointing the REIT’s auditor for the current year, you will be asked to consider and, if deemed advisable, approve certain matters relating to a proposed transaction (the “**Transaction**”) involving the REIT, Retrocom Limited Partnership (“**Retrocom LP**”) and a vendor group (the “**Vendor**”) led by Mitchell Goldhar, owner of SmartCentres Inc. and SmartCentres Management Inc., pursuant to which Retrocom LP will acquire four properties for a purchase price of approximately \$55 million. If the Transaction is completed, entities affiliated with Mitchell Goldhar will control an approximate 38% voting interest in the REIT and SmartCentres Management Inc. will become the property manager for substantially all of the REIT’s portfolio of properties at such time and in such a manner as will allow for a smooth and orderly transition between the REIT’s property managers. The purchase price payable pursuant to the Transaction will be satisfied by the assumption by Retrocom LP of existing mortgage debt on the properties and the issuance to the Vendor of:

- (a) approximately 9.2 million units of a newly created class of units of Retrocom LP to be designated “Class B Units” (the “**Class B LP Units**”) at a price of \$5.00 per Class B LP Unit, which will be exchangeable by the Vendor into Units on a one-for-one basis (subject to certain customary anti-dilution adjustments set forth in an Exchange Agreement to be entered into on closing of the Transaction by and among the REIT, Retrocom LP and the Vendor, among others); and
- (b) approximately 9.2 million units of a newly created class of units of the REIT to be designated “Special Voting Units” (the “**Special Voting Units**”), which will entitle the Vendor to one vote for each Special Voting Unit held at any meeting of Unitholders.

Attached as Appendix “A” to the accompanying management information circular is a resolution (the “**Transaction Resolution**”) approving, among other things, the creation and issuance of the Class B LP Units and the Special Voting Units, as well as certain amendments to the REIT’s Declaration of Trust considered necessary or advisable in connection with implementing the Transaction. In order for the Transaction to become effective, the Transaction Resolution must be approved by not less than a majority of the votes cast at the Meeting by Unitholders present in person or represented by proxy and entitled to vote at the Meeting. The Transaction is also subject to certain usual and customary conditions.

**The Board has determined that the Transaction is in the best interests of the REIT and its Unitholders, and recommends that Unitholders vote FOR the Transaction Resolution.** The recommendation of the Board is based on the factors and considerations set out in detail in the accompanying Management Information Circular.

The attached Notice of Annual and Special Meeting and Management Information Circular (collectively, the “**Circular**”) outline the matters to be presented to Unitholders at the Meeting. The Circular contains a detailed description of the Transaction and other information relating thereto. We urge you to consider carefully all of the information in the Circular. If you require assistance, please consult your financial, legal or other professional advisor. You may also obtain further information about the REIT at the website maintained by the Canadian Securities Administrators at [www.sedar.com](http://www.sedar.com).

If you are a registered Unitholder and are unable to be present at the Meeting in person, we encourage you to vote by completing the enclosed form of proxy (printed on pink paper) and returning it in accordance with the instructions

provided in the Circular and in the form of proxy. Voting by proxy will not prevent you from voting in person if you attend the Meeting, but will ensure that your vote will be counted if you are unable to attend. If you are a non-registered holder of Units and have received these materials through your broker or through another intermediary, please complete and return the voting instruction form or other authorization provided to you by your broker or by such other intermediary in accordance with the instructions provided therein. Failure to do so may result in your Units not being eligible to be voted at the Meeting. **This is an important matter affecting your investment in the REIT and your vote is important regardless of the number of Units you own.**

Unitholder registration will occur in advance of the Meeting beginning at 9:00 a.m.

We hope to have the opportunity to welcome you at the Meeting on Friday, June 27, 2008. On behalf of the Board, I would like to thank you for your ongoing support as a Unitholder of the REIT.

(Signed) David Fiume

DAVID FIUME  
Trustee and Chief Executive Officer



## RETROCOM MID-MARKET REAL ESTATE INVESTMENT TRUST NOTICE OF ANNUAL AND SPECIAL MEETING OF UNITHOLDERS

An annual and special meeting (the “**Meeting**”) of the holders (“**Unitholders**”) of units (“**Units**”) of Retrocom Mid-Market Real Estate Investment Trust (the “**REIT**”) will be held at The Toronto Board of Trade, West Dining Room, 1 First Canadian Place, 100 King Street West, Toronto, Ontario on Friday, June 27, 2008 at 10:00 a.m. (Eastern Daylight Time) for the following purposes:

1. **TO CONSIDER** and, if thought advisable, to pass, with or without variation, a resolution (the “**Transaction Resolution**”), the full text of which is set forth in Appendix “A” to the accompanying management information circular (the “**Circular**”), approving the following matters relating to the acquisition by Retrocom Limited Partnership (“**Retrocom LP**”) of four retail properties from MRR Investors Limited Partnership No. 1, MRR Investors Limited Partnership No. 2, MRR Investors Limited Partnership No. 3, MRR Investors Limited Partnership No. 4, MRR Investors Limited Partnership No. 5 and MRR Investors Limited Partnership No. 6 (collectively, the “**Vendor**”), on and subject to the terms and conditions set forth in the purchase and support agreement dated April 30, 2008, as amended on June 2, 2008, among the REIT, Retrocom LP and the Vendor (the “**Purchase and Support Agreement**”):
  - (i) the creation of a new class of units of Retrocom LP to be designated “Class B Units” (the “**Class B LP Units**”) and the issuance to the Vendor of up to 10 million Class B LP Units in accordance with the terms of the Purchase and Support Agreement;
  - (ii) the creation of a new class of units of the REIT to be designated “Special Voting Units” (the “**Special Voting Units**”) and the issuance to the Vendor of up to 10 million Special Voting Units in connection with the issuance to the Vendor of Class B LP Units in accordance with the terms of the Purchase and Support Agreement;
  - (iii) the issuance to SmartCentres Inc. or its designee, in accordance with the terms of the Purchase and Support Agreement, of warrants (the “**Warrants**”) to purchase, at any time and from time to time during the period beginning on the Closing Date (as defined in the Purchase and Support Agreement) and expiring at 5:00 p.m. (Toronto Time) on the date that is the five-year anniversary of the Closing Date, 1.5 million Units at an exercise price of \$5.50 per Unit;
  - (iv) the reservation for issuance of up to 11.5 million Units and the issuance of such Units upon the exchange of the Class B LP Units or the exercise of the Warrants, in accordance with the terms of such Class B LP Units or Warrants, as the case may be; and
  - (v) certain amendments to the Declaration of Trust of the REIT considered necessary or advisable in connection with implementing the transactions contemplated by the Purchase and Support Agreement; all as more particularly described in the Circular;
2. **TO RECEIVE** the audited financial statements of the REIT, together with the report of the auditor thereon, for the year ended December 31, 2007;
3. **TO ELECT** members of the board of trustees of the REIT;
4. **TO APPOINT** the auditor of the REIT and to authorize the trustees to fix the auditor’s remuneration; and
5. **TO TRANSACT** such other business as may properly come before the Meeting or any adjournment thereof.

Unitholders of record at the close of business on June 2, 2008 will be entitled to vote at the Meeting.

Accompanying this Notice of Meeting is the Circular, which contains details of the matters to be dealt with at the Meeting, a form of proxy or voting information form and the audited financial statements of the REIT for the period ended December 31, 2007 and the related Management’s Discussion and Analysis. These materials may also be accessed at [www.sedar.com](http://www.sedar.com).

**The Board of Trustees of the REIT recommends that Unitholders vote FOR the Transaction Resolution.** The Purchase and Support Agreement entered into in respect of the Transaction is summarized in the Circular and is available online at [www.sedar.com](http://www.sedar.com).

Unitholders unable to attend the Meeting in person are requested to complete, sign and return the accompanying form of proxy or voting information form for use at the Meeting to CIBC Mellon Trust Company, P.O. Box 721, Agincourt, Ontario M1S 0A1 (or to such address as may be specified in the voting information form). Should a Unitholder wish to deposit a proxy by hand, the proxy should be delivered to CIBC Mellon Trust Company, 320 Bay Street, Banking Hall Level, Toronto, Ontario. Proxies may also be faxed to CIBC Mellon Trust Company at (416) 368-2502. All proxies, whether delivered by mail, by hand or by fax, must be deposited with CIBC Mellon Trust Company prior to 5:00 p.m. (Eastern Daylight Time) on June 26, 2008 (or if the Meeting is adjourned or postponed, on the last Business Day prior to the date of the adjourned or postponed Meeting) or may be deposited with the Chairman at the Meeting. However, notwithstanding the foregoing, **we urge you to sign, date and return the enclosed form of proxy by 5:00 p.m. (Eastern Daylight Time) on Wednesday, June 25, 2008** in order to assist us in preparing for the Meeting.

**DATED** at Toronto, Ontario, this 2<sup>nd</sup> day of June, 2008.

**BY ORDER OF THE BOARD OF TRUSTEES**

(Signed) David Fiume

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DAVID FIUME  
Trustee and Chief Executive Officer

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## **RETROCOM MID-MARKET REAL ESTATE INVESTMENT TRUST MANAGEMENT INFORMATION CIRCULAR**

**This management information circular (the “Circular”) is furnished in connection with the solicitation of proxies by and on behalf of the management of Retrocom Mid-Market Real Estate Investment Trust (the “REIT”) for use at the annual and special meeting of holders of units of the REIT to be held at The Toronto Board of Trade, West Dining Room, 1 First Canadian Place, 100 King Street West, Toronto, Ontario on Friday, June 27, 2008 at 10:00 a.m. (Eastern Daylight Time) for the purposes set forth in the accompanying Notice of Meeting.**

### **GLOSSARY OF DEFINED TERMS**

The following terms used in this Circular have the meanings set forth below:

**“1224 Dundas Property”** means the 1224 Dundas Property Building and the 1224 Dundas Property Lands;

**“1224 Dundas Property Building”** means the buildings and structures presently situated on the 1224 Dundas Property Lands, consisting of a building containing approximately 202,971 square feet of gross leasable area including all fixtures, parking areas and similar improvements to the 1224 Dundas Property Lands;

**“1224 Dundas Property Lands”** means the property described in Schedule “A2” to the Vendor’s Disclosure Letter, being municipally known as 1224 Dundas Street East, Mississauga, Ontario, comprising the lands on which the 1224 Dundas Property Building is located;

**“1480/1490 Dundas Property”** means the 1480/1490 Dundas Property Building and the 1480/1490 Dundas Property Lands;

**“1480/1490 Dundas Property Building”** means the buildings and structures presently situated on the 1480/1490 Dundas Property Lands, consisting of a building containing approximately 53,991 square feet of gross leasable area including all fixtures, parking areas and similar improvements to the 1480/1490 Dundas Property Lands;

**“1480/1490 Dundas Property Lands”** means the property described in Schedule “A1” to the Vendor’s Disclosure Letter, being municipally known as 1480/1490 Dundas Street, Mississauga, Ontario, comprising the lands on which the 1480/1490 Dundas Property Building is located;

**“Acquisition Proposal”** means any inquiries from or submissions of proposals or offers (whether or not in writing and whether or not delivered to holders of Units) from any person (including from any of its officers, directors or employees), other than from the Vendor, SmartCentres or any affiliated entity thereof, relating to:

- (i) any liquidation or winding-up, dissolution, consolidation, reorganization, recapitalization, merger, take-over bid, amalgamation or arrangement involving the REIT or any of the REIT’s subsidiaries;
- (ii) any acquisition or purchase (or any lease, long-term supply agreement or other arrangement having the same economic effect as a sale) in a single transaction or a series of related transactions of all or a material portion of the assets of, or of more than twenty percent (20%) of any class of voting securities or other equity interests (including Units) in, the REIT or any of the REIT’s subsidiaries;
- (iii) any similar transaction or business combination of, or involving, the REIT or any of the REIT’s subsidiaries;
- (iv) any purchase by the REIT or any of the REIT’s subsidiaries of properties or assets in consideration for the issuance of any class of voting securities or other equity interests (including Units) in the REIT;
- (v) any sale of any interest in any property owned by the REIT or any of the REIT Subsidiaries if such sale would not be in the normal course of REIT’s business; or

- (vi) any proposal or offer (written or oral) to do, or public announcement or other public disclosure of an intention to do, any of the foregoing from any person other than the Vendor, SmartCentres or any affiliated entity thereof;

“**affiliates**” has the meaning ascribed thereto in the *Securities Act* (Ontario);

“**Amending Agreement**” means Amendment No. 1 to the Purchase and Support Agreement dated June 2, 2008 between the REIT, Retrocom LP and the Vendor, a copy of which has been filed with the CSAs and can be accessed at [www.sedar.com](http://www.sedar.com) and may also be obtained free of charge, upon request to the Corporate Secretary of the REIT at 4025 Yonge Street, Suite 214, P.O. Box 204, Toronto, Ontario M2P 2E3 (Telephone: (416) 741-7999);

“**Applicable Law**” means any statute, law, ordinance, rule, regulation, by-law (zoning or otherwise), order, approval, judgment or decree of any Governmental Entity;

“**Arcturus**” means Arcturus Limited Partnership (formerly O&Y Enterprise Limited Partnership);

“**Arcturus Property Management Agreement**” means the property management agreement dated March 1, 2006 between Retrocom LP and Arcturus;

“**Assumed First Mortgages**” means the mortgages to be assumed by Retrocom LP on Closing, as set out in the Vendor’s Disclosure Letter;

“**Beneficial Unitholder**” means a beneficial owner of Units that are registered either in the name of an Intermediary or in the name of a depositary or clearing agency;

“**BFSI**” means Broadridge Financial Solutions, Inc.;

“**Birchmount Property**” means the Birchmount Property Building and the Birchmount Property Lands;

“**Birchmount Property Building**” means the buildings and structures presently situated on the Birchmount Property Lands, consisting of a building containing approximately 66,143 square feet of gross leasable area including all fixtures, parking areas and similar improvements to the Birchmount Property Lands;

“**Birchmount Property Lands**” means the property described in Schedule “A3” to the Vendor’s Disclosure Letter, being municipally known as 750/760 Birchmount Road, Toronto, Ontario, comprising the lands on which the Birchmount Property Building is located;

“**Board**” means the board of trustees of the REIT as the same is constituted from time to time;

“**Bridge Loan**” has the meaning ascribed thereto under the heading “The Transaction — Refinancing of the RioCan Debenture”;

“**Buildings**” means, collectively, the 1480/1490 Dundas Property Building, the 1224 Dundas Property Building, the Birchmount Property Building and the Burnhamthorpe Property Building, and “**Building**” means any one of the foregoing;

“**Burnhamthorpe Property**” means the Burnhamthorpe Property Building and the Burnhamthorpe Property Lands;

“**Burnhamthorpe Property Building**” means the buildings and structures presently situated on the Burnhamthorpe Property Lands, consisting of a building containing approximately 199,810 square feet of gross leasable area including all fixtures, parking areas and similar improvements to the Burnhamthorpe Property Lands;

“**Burnhamthorpe Property Lands**” means the property described in Schedule “A4” to the Vendor’s Disclosure Letter, being municipally known 1100/1140/1170 Burnhamthorpe Road West, Mississauga, Ontario, comprising the lands on which the Burnhamthorpe Property Building is located;

“**Business Day**” means any day, other than a Saturday, a Sunday and a statutory or civic holiday in Toronto, Ontario, Canada;

“**CDS**” means CDS Clearing and Depository Services Inc.;

“**Chattels**” means all chattels and freestanding equipment owned by the Vendor located on or situated in, on or upon or used exclusively in connection with the Buildings, excluding any and all chattels and equipment owned by any persons other than the Vendor, including the Tenants under their respective Leases, and

excluding all computer hardware and software that does not relate to the operation of any systems located in and around the Buildings;

“**CIBC Mellon**” means CIBC Mellon Trust Company, registrar and transfer agent for the Units;

“**Circular**” means this management information circular, including all appendices hereto;

“**Claim**” means any claim permitted to be made by Retrocom LP or the REIT against the Vendor, whether for indemnification or otherwise, pursuant to the terms of the Purchase and Support Agreement;

“**Class A LP Units**” means existing units in the capital of Retrocom LP, which will be redesignated “Class A Units” at or prior to Closing pursuant to the terms of the Second Amended and Restated Partnership Agreement, subject to approval of the Transaction Resolution by Unitholders at the Meeting and the satisfaction or waiver of all other conditions precedent to the Transaction, and will have the attributes that “Units” currently have under the Limited Partnership Agreement;

“**Class B LP Units**” means units of a new class in the capital of Retrocom LP to be created at or prior to Closing pursuant to the terms of the Second Amended and Restated Partnership Agreement, subject to approval of the Transaction Resolution by Unitholders at the Meeting and the satisfaction or waiver of all other conditions precedent to the Transaction, which units will be designated “Class B Units” and will have substantially the attributes set out in Schedule “E” to the Purchase and Support Agreement;

“**Closing**” or “**Closing Date**” means the seventh day after the later of the satisfaction of (i) the Unitholder Approval Condition and (ii) the Credit Facility Condition, or such other date as the parties to the Purchase and Support Agreement may agree upon;

“**Competition Act**” means the *Competition Act* (Canada), as amended from time to time;

“**Confidentiality Agreement**” means the confidentiality agreement dated August 31, 2006 between the REIT and SmartCentres;

“**Contracts**” means the agreements, contracts and other commitments (other than the Leases, property management contracts, asset management contracts or contracts relating to the leasing of premises) relating to the servicing, maintenance, repair or cleaning of the Properties or the Chattels, or the furnishing of supplies or services thereto from time to time existing as of the date of the Purchase and Support Agreement;

“**Credit Facility Condition**” means the condition to completion of the Transaction that each of the parties to the Purchase and Support Agreement shall be satisfied in its sole discretion that The Toronto-Dominion Bank, or one or more other recognized financial institutions, has established in favour of the REIT one or more credit facilities (which, for greater certainty, shall include conventional mortgage refinancings) aggregating not less than \$30 million, which credit facility or facilities shall (i) be of not less than 24 months duration, (ii) be irrevocably available to the REIT to repay or prepay the RioCan Debenture, (iii) be secured by substantially the same assets currently encumbered by the RioCan Debenture (or such other assets as the parties may agree upon, acting reasonably), and (iv) otherwise be on terms and conditions satisfactory to the parties to the Purchase and Support Agreement, acting reasonably;

“**CSAs**” means the Canadian Securities Administrators;

“**Declaration of Trust**” means the Second Amended and Restated Declaration of Trust of the REIT dated as of May 23, 2008;

“**DRIP**” means the Unitholder Distribution Reinvestment Plan of the REIT established in October, 2005;

“**Eastern Initial Properties**” means, collectively, Les Promenades St-Francois in Laval, Quebec, Lansdowne Place in Saint John, New Brunswick, and Staples Plaza in Dartmouth, Nova Scotia;

“**Exchange Agreement**” means the Exchange Agreement to be entered into on Closing of the Transaction between the REIT, Retrocom LP and the Vendor, among others, in the form attached as Schedule “C” to the Purchase and Support Agreement;

“**Fairness Opinion**” means the fairness opinion of TD Securities dated April 30, 2008, a copy of which is attached as Appendix “E” to this Circular.

“**Filed CSA Documents**” means any documents filed with the CSAs under the REIT’s name or under the name of any subsidiary of the REIT on the SEDAR website;

“**Final Decision**” means a decision, order, judgment or decree of a court of competent jurisdiction made in respect of any disputed Claim under the Purchase and Support Agreement, from which no appeal lies or in respect of which all appeal rights have been exhausted and all time periods for appeal have expired without appeals having been taken;

“**Final Settlement**” means any written agreement between the Vendor and Retrocom LP and/or the REIT, as the case may be, pursuant to which the parties agree to the terms of settlement of any disputed Claim;

“**GAAP**” means generally accepted accounting principles in Canada;

“**Governmental Entity**” means any (i) international, multinational, national, federal, provincial, territorial, state, municipal, local or other governmental or public department, central bank, court, commission, commissioner, tribunal, board, bureau, agency or instrumentality, domestic or foreign, (ii) any subdivision or authority of any of the foregoing, or (iii) any quasi-governmental or private body exercising any regulatory, rule-making, expropriation or taxing authority under or for the account of any of the above;

“**Goldhar Appointees**” has the meaning ascribed thereto under the heading “Annual Meeting Matters — Election of Trustees”;

“**G.S.T.**” means Goods and Services Tax;

“**H.S.T.**” means Harmonized Sales Tax;

“**Independent Trustee**” means a Trustee who, in relation to the REIT or any of its related parties, is “independent” within the meaning of Multilateral Instrument 52-110 — *Audit Committees* and is not “related” within the meaning of the Tax Act;

“**Initial Offering**” means the initial public offering of the REIT on March 22, 2004 of 11,069,000 Units at a price of \$10 per Unit for total gross proceeds of approximately \$110 million;

“**Intermediary**” means an intermediary that a Beneficial Unitholder deals with in respect of its Units, including, among others, banks, trust companies, securities dealers or brokers and trustees or administrators of self administered RRSPs, RRIFs, RESPs and similar plans;

“**Investment Canada Act**” means the *Investment Canada Act*, as amended from time to time;

“**KPMG**” means KPMG LLP, Chartered Accountants;

“**Lands**” means, collectively, the 1480/1490 Dundas Property Lands, the 1224 Dundas Property Lands, the Birchmount Property Lands and the Burnhamthorpe Property Lands;

“**Leases**” means all leases, subleases, offers or agreements to lease or sublease, or other occupancy arrangements, in respect of the Properties, any modifications or extensions to such leases or offers or agreements to lease and all assignments in respect of any such leases or offers or agreements to lease, and any and all collateral agreements relating to such leases or offers or agreements to lease referred to in this definition;

“**Leasing Fees**” has the meaning ascribed thereto under the heading “The Property Management Agreement — Fees and Expenses”;

“**Limited Partnership Agreement**” means the Amended and Restated Limited Partnership Agreement governing the affairs of Retrocom LP dated March 22, 2004;

“**Long-Term Incentive Plan**” or “**LTIP**” means the long-term incentive plan of the REIT established on March 22, 2004;

“**LTIP Participants**” has the meaning ascribed thereto under the heading “Information Concerning Trustees and Officers — Statement of Executive Compensation — Long-Term Incentive Plan”;

“**LTIP Units**” has the meaning ascribed thereto under the heading “Information Concerning Trustees and Officers — Statement of Executive Compensation — Long-Term Incentive Plan”;

“**Material Adverse Effect**” means (a) with respect to the Vendor, any fact or state of facts, circumstance, change, effect, occurrence or event which, either individually is or in the aggregate are, or could reasonably be expected to be, material and adverse to any of the Properties or the ability of the Vendor to perform its obligations under the Purchase and Support Agreement or to consummate the Transaction on a timely basis, and (b) with respect to the REIT or any of the REIT’s subsidiaries, any fact or state of facts, circumstance,

change, effect, occurrence or event which, in either case, either individually is or in the aggregate are, or could reasonably be expected to be, material and adverse to the condition (financial or otherwise), properties, affairs, assets, liabilities (contingent or otherwise), obligations (whether absolute, accrued, conditional or otherwise), capitalization, business, operations, results of operations or prospects of the REIT and the REIT's subsidiaries, taken as a whole, or on the ability of the REIT to materially perform its obligations under the Purchase and Support Agreement or to consummate the Transaction; provided, however, in respect of either (a) or (b) above, that effects relating to:

- (i) changes in general economic or political conditions or the capital or securities markets, including changes in international financial or currency exchange markets in general;
- (ii) changes in laws, rules, regulations or orders of any governmental entity or interpretations thereof by any governmental entity or changes in accounting rules;
- (iii) changes affecting generally the mid-market retail property sector in Canada;
- (iv) the announcement of the Transaction;
- (v) the consummation of the Transaction or any actions by the Vendor, Retrocom LP or the REIT taken pursuant to or in light of the Purchase and Support Agreement;
- (vi) any natural disaster or any acts of terrorism, sabotage, military action or war (whether or not declared) or any escalation or worsening thereof;
- (vii) any change in the market price or trading volume of the Units;
- (viii) any failure by the REIT to meet any earnings estimates of equity analysts, for any period;
- (ix) any actual or threatened litigation by any security holder, whether by way of class action, derivative proceeding or otherwise, arising from allegations of breach of fiduciary duty relating to the Purchase and Support Agreement or the Transaction; or
- (x) any matter of which the other party had actual knowledge on April 30, 2008, together with all other matters disclosed in (A) the REIT Information, all of which the Vendor is deemed to have actual knowledge of, and (B) the Vendor's Information, all of which Retrocom LP and the REIT are deemed to have actual knowledge of;

shall be deemed not to constitute a "Material Adverse Effect" and shall not be considered in determining whether a "Material Adverse Effect" has occurred; *provided, however*, that in the case of subparagraphs (vii) and (viii) of this definition, the underlying cause of such change or failure, as the case may be, may itself be considered in determining whether a "Material Adverse Effect" has occurred;

**"Meeting"** means the annual and special meeting of Unitholders of the REIT, including any adjournment or postponement thereof, to be held on June 27, 2008 at 10:00 a.m. (Eastern Daylight Time) at the The Toronto Board of Trade, West Dining Room, 1 First Canadian Place, 100 King Street West, Toronto, Ontario, Canada;

**"Minimum Voting Entitlement"** has the meaning ascribed thereto under the heading "The Transaction — Amendments to the Declaration of Trust";

**"Named Executive Officers"** has the meaning ascribed thereto under the heading "Information Concerning Trustees and Officers — Statement of Executive Compensation";

**"NI 58-101"** means National Instrument 58-101 — *Disclosure of Corporate Governance Practices* of the CSAs;

**"Notice of Meeting"** means the notice of the Meeting dated June 2, 2008 accompanying this Circular;

**"NP 58-201"** means National Policy 58-201 — *Corporate Governance Guidelines* of the CSAs;

**"OSC"** means the Ontario Securities Commission;

**"Parcel Sale"** has the meaning ascribed thereto under the heading "The Property Management Agreement — Fees and Expenses";

**"person"** includes any natural person, body corporate, trust, limited partnership, Governmental Entity or other juridical entity;

**“Plaza Property Management Agreement”** has the meaning ascribed thereto under the heading “Management Contracts — Property Management — Property Management Agreements”;

**“Properties”** means the 1480/1490 Dundas Property, the 1224 Dundas Property, the Birchmount Property and the Burnhamthorpe Property, and **“Property”** means any one of them;

**“Property Management Agreement”** means the property management agreement to be entered into on Closing by Retrocom LP and SmartCentres Management, in the form attached as Schedule “A” to the Purchase and Support Agreement;

**“Property Management Fee”** has the meaning ascribed thereto under the heading “The Property Management Agreement — Fees and Expenses”;

**“Property Operating Statements”** has the meaning ascribed thereto under the heading “The Transaction — Financial Results of the Properties”;

**“Property Portfolio”** has the meaning ascribed thereto under the heading “The Transaction — The REIT’s Property Portfolio Following Completion of the Transaction”;

**“Proposed Nominees”** has the meaning ascribed thereto under the heading “Annual Meeting Matters — Election of Trustees — Nominees for Appointment”;

**“Purchase and Support Agreement”** means the Purchase and Support Agreement dated April 30, 2008 between the REIT, Retrocom LP and the Vendor, including all Schedules attached thereto and the Amending Agreement, providing for the Transaction, a copy of which has been filed with the CSAs and can be accessed at [www.sedar.com](http://www.sedar.com) and may also be obtained free of charge, upon request to the Corporate Secretary of the REIT at 4025 Yonge Street, Suite 214, P.O. Box 204, Toronto, Ontario M2P 2E3 (Telephone: (416) 741-7999);

**“Purchased Assets”** means the Lands, the Buildings, the Leases, the Contracts, the Chattels, the Warranties and the right, title and interest, if any, in any tradename, trademark or other intellectual property associated with each Property, including without limitation any websites associated therewith;

**“Purchase Price”** means \$54,829,533, subject to adjustment as contemplated in the Purchase and Support Agreement;

**“Q.S.T.”** means Québec Sales Tax;

**“Record Date”** means June 2, 2008;

**“Registered Unitholder”** means a registered holder of Units as recorded on the Unitholder register maintained on behalf of the REIT by the Transfer Agent;

**“REIT”** means Retrocom Mid-Market Real Estate Investment Trust;

**“REIT Disclosure Letter”** means the letter dated April 30, 2008, delivered by the REIT to the Vendor disclosing certain information, including qualifications to the representations and warranties set forth in the Purchase and Support Agreement, as the same may be amended and supplemented from time to time prior to the Closing as may be necessary to reflect subsequent changes in facts, so long as no such amendment or supplement, either individually or in the aggregate with all other such amendments or supplements, has a Material Adverse Effect;

**“REIT Exception”** means the exception under the SIFT Rules applicable to certain real estate investment trusts that satisfy certain specified conditions relating to the nature of their income and investments;

**“REIT Information”** means the documents listed in an index annexed to the REIT Disclosure Letter, all Filed CSA Documents, all publicly disseminated press releases and the REIT Disclosure Letter;

**“REIT Properties”** has the meaning ascribed thereto under the heading “The Transaction — The REIT’s Property Portfolio Following Completion of the Transaction”;

**“Retrocom LP”** means Retrocom Limited Partnership;

**“Required Number of Class B LP Units”** means that number of Class B LP Units, rounded down to the nearest whole number, equal to the number obtained by dividing (A) the Purchase Price, less the aggregate amount of Assumed First Mortgages outstanding as of the Closing Date, by (B) \$5.00;

**“Rights Plan”** means the unitholder rights plan agreement dated as of November 14, 2005 between the REIT and CIBC Mellon Trust Company, as rights agent;

**“RIMI”** means Retrocom Investment Management Inc.;

**“RioCan Debenture”** means the 4.50% non-callable convertible debenture in the principal amount of \$30,000,000 issued to RioCan REIT on July 26, 2005 and due on July 26, 2008;

**“RioCan Debenture Repayment Agreement”** has the meaning ascribed thereto under the heading “The Transaction — Management of the Property Portfolio Following Completion of the Transaction”;

**“RioCan Redemption Fee”** has the meaning ascribed thereto under the heading “The Transaction — Management of the Property Portfolio Following Completion of the Transaction”;

**“RioCan Portfolio”** means the portfolio of properties acquired by the REIT on July 26, 2005 from RioCan REIT consisting of seven shopping malls located in Saskatchewan (three), Ontario (three) and Quebec (one);

**“RioCan Property Management Agreement”** means the property management agreement dated July 26, 2005 between Retrocom LP and RPST, pursuant to which RPST provides property management services in respect of the RioCan Portfolio;

**“RioCan REIT”** means RioCan Real Estate Investment Trust;

**“RPST”** means RioCan Property Services Trust;

**“SC/MRR Group”** means the Vendor and companies controlled by Mitchell Goldhar or affiliates of such persons;

**“Second Amended and Restated Limited Partnership Agreement”** means the Second Amended and Restated Limited Partnership Agreement governing the affairs of Retrocom LP to be entered into at Closing, subject to approval of the Transaction Resolution by Unitholders at the Meeting and the satisfaction or waiver of all other conditions precedent to the Transaction, in order to create the Class B LP Units and implement other changes to the Limited Partnership Agreement deemed necessary or advisable in connection with the Transaction;

**“Securities Authorities”** means the OSC and the applicable securities commissions and other securities regulatory authorities in each of the other provinces and territories of Canada;

**“SEDAR”** means the System for Electronic Document Analysis and Retrieval;

**“SIFT”** means a specified investment flow-through trust or partnership for purposes of the Tax Act;

**“SIFT Rules”** means the amendments to the Tax Act enacted on June 22, 2007 to modify the tax treatment of certain publicly traded trusts and partnerships that are SIFTs and their beneficiaries and partners;

**“SmartCentres”** means SmartCentres Inc.;

**“SmartCentres Managed Properties”** means those properties in respect of which SmartCentres Management will provide property management services pursuant to the Property Management Agreement, being all properties owned by Retrocom LP or any affiliate of Retrocom LP or the REIT except for: (i) the City Centre Mall in Thompson, Manitoba and (ii) any property that is co-owned by Retrocom LP with a third party or is otherwise subject to existing property management arrangements;

**“SmartCentres Management”** means SmartCentres Management Inc.;

**“Special Committee”** means the special committee of Independent Trustees of the Board;

**“Special Voting Units”** means units of a new class in the capital of the REIT to be created at or prior to Closing pursuant to the terms of the Third Amended and Restated Declaration of Trust, subject to approval of the Transaction Resolution by Unitholders at the Meeting and the satisfaction or waiver of all other conditions precedent to the Transaction, which units will be designated “Special Voting Units” and will have substantially the attributes set out in Schedule “F” to the Purchase and Support Agreement, including the right of holders thereof to one vote for each Special Voting Unit held at any meeting of Unitholders;

**“Subsidiary Trust”** means Retrocom Mid-Market Subsidiary Trust, the commercial trust created under the laws of Ontario pursuant to a declaration of trust dated February 11, 2004, as amended, the sole beneficiary of which is the REIT;

“**Substituted Property**” has the meaning ascribed thereto under the heading “The Purchase and Support Agreement — Substitution of Properties”;

“**Superior Proposal**” means an unsolicited bona fide written Acquisition Proposal received from an arm’s length third party which is not withdrawn (A) to acquire (including, for greater certainty, by way of amalgamation or merger) not less than 38% of the combined voting and equity interest in the REIT and the REIT’s subsidiaries, considered as a whole, represented by all classes of voting securities or other equity interests (including Units) in the REIT and the REIT’s subsidiaries, considered as a whole, or (B) to acquire all or substantially all of the consolidated assets of the REIT and the REIT’s subsidiaries, in either case that did not otherwise result from a breach of the non-solicitation covenants of the Purchase and Sale Agreement and that: (i) is not subject to any financing condition and in respect of which any required financing to complete such Acquisition Proposal has been demonstrated to the satisfaction of the Board, acting in good faith (after receipt of advice from its financial advisors and its outside legal counsel); (ii) is not subject to any due diligence condition; (iii) the Board has determined in good faith (after consultation with its financial advisors and with its outside legal counsel) (X) is reasonably capable of completion without undue delay taking into account all legal, financial, regulatory and other aspects of such Acquisition Proposal and the party making such Acquisition Proposal and (Y) would, if consummated in accordance with its terms, but without assuming away the risk of non-completion, result in a transaction which is more favourable, from a financial point of view, to the Unitholders than the Transaction;

“**Tax Act**” means the *Income Tax Act* (Canada), as amended from time to time;

“**TD Securities**” means TD Securities Inc.;

“**Tenants**” means the Tenants of the Properties under the Leases, as shown in the Vendor’s Disclosure Letter, and “**Tenant**” means any one of the Tenants;

“**Termination Fee**” means \$2.7 million;

“**Termination Fee Event**” has the meaning ascribed thereto under the heading “The Purchase and Support Agreement — Termination Fee”;

“**Third Amended and Restated Declaration of Trust**” means the Third Amended and Restated Declaration of Trust of the REIT to be entered into at Closing, subject to approval of the Transaction Resolution by Unitholders at the Meeting and the satisfaction or waiver of all other conditions precedent to the Transaction, a compared version of which, showing blacklined changes to the Declaration of Trust necessary to implement the Transaction, is attached as Appendix “B” to this Circular;

“**Transaction**” means the acquisition by Retrocom LP of the Purchased Assets in accordance with the terms and conditions of the Purchase and Support Agreement, together with all other transactions contemplated by the Purchase and Support Agreement;

“**Transaction Resolution**” means the resolution of Unitholders approving the Transaction, in the form attached as Appendix “A” to this Circular;

“**Transfer Agent**” means CIBC Mellon or any successor thereof, transfer agent for the Units;

“**Trustee**” means a member of the Board;

“**TSX**” means the Toronto Stock Exchange;

“**Unit**” means a unit in the capital of the REIT;

“**Unitholder**” means a holder of Units;

“**Unitholder Approval Condition**” means the condition to completion of the Transaction that the REIT shall have obtained the requisite approval of Unitholders for the Transaction Resolution at the Meeting;

“**U.S.**” means the United States of America;

“**Vendor**” means, collectively, MRR Investors Limited Partnership No. 1, MRR Investors Limited Partnership No. 2, MRR Investors Limited Partnership No. 3, MRR Investors Limited Partnership No. 4, MRR Investors Limited Partnership No. 5 and MRR Investors Limited Partnership No. 6;

“**Vendor’s Disclosure Letter**” means the letter dated April 30, 2008 delivered by the Vendor to each of Retrocom LP and the REIT disclosing certain information, including qualifications to the representations and

warranties set forth in the Purchase and Support Agreement, as the same may be amended and supplemented from time to time prior to the Closing as may be necessary to reflect subsequent changes in facts, so long as no such amendment or supplement, either individually or in the aggregate with all other such amendments or supplements, has a Material Adverse Effect;

“**Vendor’s Information**” means the project documents delivered to the REIT pursuant to the Purchase and Support Agreement, together with the other documents listed in an index annexed to the Vendor’s Disclosure Letter and the Vendor’s Disclosure Letter;

“**Voting Units**” has the meaning ascribed thereto under the heading “The Transaction — Amendments to the Declaration of Trust”;

“**Warranties**” means the existing warranties and guarantees, if any, for the construction and the existing operation of the Buildings;

“**Warrants**” means the warrants, to be issued to SmartCentres or its designee on Closing of the Transaction in accordance with the terms of the Purchase and Support Agreement, to purchase, at any time and from time to time during the period beginning on the Closing Date and expiring at 5:00 p.m. (Toronto Time) on the date that is the five-year anniversary of the Closing Date, 1,500,000 Units at an exercise price of \$5.50 per Unit; and

“**Withdrawn Property**” has the meaning ascribed thereto under the heading “The Purchase and Support Agreement — Substitution of Properties”.

## **FORWARD LOOKING STATEMENTS**

Certain statements in this Circular are “forward looking statements” that reflect management’s expectations regarding the REIT’s future growth, results of operations, performance and business prospects and opportunities. In some cases, forward-looking statements can be identified by the use of forward-looking terminology such as “may”, “will,” “expect”, “anticipate”, “estimate”, “continue”, “plan”, “intend”, “believe” or other similar words. Such forward looking statements reflect management’s current beliefs and are based on information currently available to management.

Forward looking statements involve significant risks and uncertainties. A number of factors could cause actual results to differ materially from the results discussed in the forward looking statements, including risks associated with the Transaction (see “Risk Factors — Risks Relating to the Transaction”), the possibility that Unitholders will not approve the Transaction Resolution at the Meeting, real property ownership, availability of cash flow, general uninsured losses, future property acquisitions, environmental matters, tax related matters, debt financing, potential conflicts of interest, potential dilution, and reliance on key personnel. A complete description of the risk factors applicable to the REIT is contained under the heading “Risk Factors” in the REIT’s Annual Information Form for the year ending December 31, 2007, and under the heading “Risks and Uncertainties” in Management’s Discussion and Analysis for the year ending December 31, 2007, which sections of such documents are specifically incorporated by reference into this Circular. Both of these documents were filed on SEDAR on March 31, 2008 and are available at [www.sedar.com](http://www.sedar.com).

Although the forward-looking statements contained in this Circular, including documents incorporated by reference herein, are based upon what management believes to be reasonable assumptions, the REIT cannot assure investors that actual results will be consistent with these forward looking statements. Unitholders should not place undue reliance on these forward-looking statements. These forward looking statements are made as at the date of this Circular, and the REIT assumes no obligation to update or revise them to reflect new events or circumstances except as required by Applicable Law.

## **NOTICE REGARDING INFORMATION CONTAINED IN THIS CIRCULAR**

Information contained in this Circular is given as of June 2, 2008, except as otherwise noted.

No person has been authorized to give information or to make any representations in connection with the Transaction other than those contained in this Circular and, if given or made, any such information or representations should not be relied upon in making a decision as to how to vote on the Transaction Resolution, or be considered to have been authorized by the REIT.

This Circular does not constitute an offer to buy, or a solicitation of an offer to sell, any securities, or the solicitation of a proxy, by any person in any jurisdiction in which such an offer or solicitation is not authorized or in which the person making such an offer or solicitation is not qualified to do so or to any person to whom it is unlawful to make such an offer or solicitation.

Unitholders should not construe the contents of this Circular as legal, tax or financial advice and should consult with their own professional advisors as to the relevant legal, tax, financial or other matters in connection herewith.

All information relating to SmartCentres or the Vendor contained in this Circular has been provided to the REIT by those parties. While the Board has no reason to believe such information is misleading or inaccurate, the Board has relied upon this information without having made independent inquiries as to the accuracy or completeness thereof.

## SUMMARY OF CIRCULAR

*The following is a summary of certain information contained elsewhere in this Circular, including the Appendices hereto. This summary is qualified in its entirety by the more detailed information appearing or referred to elsewhere in this Circular.*

*Certain capitalized terms used in this summary are defined in the Glossary of Defined Terms found on pages 1 to 10 of this Circular.*

### **Purpose of the Meeting**

The purpose of the Meeting is for Unitholders to consider and, if deemed advisable, pass, with or without variation, the Transaction Resolution to approve certain matters relating to the Transaction, as well as to conduct the normal annual meeting business of the REIT of receiving financial statements, electing trustees and appointing the auditor of the REIT and to act upon such other matters as may properly come before the Meeting.

### **Date, Time and Place of Meeting**

The Meeting will be held on Friday, June 27, 2008 at 10:00 a.m. (Eastern Daylight Time) at The Toronto Board of Trade, West Dining Room, 1 First Canadian Place, 100 King Street West, Toronto, Ontario.

### **Unitholder Approval of Transaction Resolution**

To be effective, the Transaction Resolution must be approved, with or without variation, by the affirmative vote of not less than a majority of the votes cast by Unitholders present in person or represented by proxy at the Meeting. Unitholders are entitled to one vote for each Unit held at any meeting of Unitholders. The REIT has fixed June 2, 2008 as the Record Date for determining those Unitholders entitled to receive notice of and vote at the Meeting.

The Transaction Resolution must be approved in order for the REIT to implement the Transaction on the Closing Date. See “The Transaction — Unitholder Approval of Transaction Resolution”.

**In the absence of any instructions to the contrary, the Units represented by proxies received by management will be voted FOR the Transaction Resolution.**

### **The Transaction**

If the Transaction Resolution is approved and all of the other conditions precedent to completion of the Transaction are satisfied or waived, the Transaction is expected to be completed on or about July 4, 2008. Upon completion of the Transaction, Retrocom LP will acquire the Properties for the Purchase Price in accordance with the terms of the Purchase and Support Agreement.

### ***The Purchase Price***

The Purchase Price represents a 9% capitalization rate on estimated 2008 net operating income. The issuance of Class B LP Units at a price of \$5.00 per Class B LP Unit represents a premium of approximately 24% over the 20-day volume weighted average trading price for the Units on the TSX for the period ending on April 30, 2008, the last full trading day prior to the announcement of the Transaction. See “The Transaction — The Purchase Price”.

### ***Change in Effective Control of the REIT***

The Purchase Price will be satisfied by the assumption by Retrocom LP on Closing of the Assumed First Mortgages on the Properties in the amount of approximately \$9.2 million and the issuance to the Vendor of the Required Number of Class B LP Units and a corresponding number of Special Voting Units. It is expected that the Required Number of Class B LP Units, and the corresponding number of Special Voting Units, issuable to the Vendor on Closing of the Transaction will be approximately 9.2 million (which, subject to adjustments to the Purchase Price, may be increased to up to 10 million). Class B LP Units will be exchangeable for Units on a one-for-one basis, subject to certain customary anti-dilution adjustments set forth in the Exchange Agreement. The Class B LP Units are intended to be the economic equivalent of Units, including with respect to receiving distributions from the REIT. The Special Voting Units will entitle the Vendor to one vote for each Special Voting Unit held at any meeting of Unitholders. **As a result of the foregoing, entities affiliated with Mitchell Goldhar will control an approximate 38% voting interest in the REIT.**

In addition, on Closing of the Transaction, the REIT will enter into the Third Amended and Restated Declaration of Trust in order to, among other things, increase the number of Trustees on the Board from six to up to nine (and, in any

event, no fewer than eight, with the precise number of Trustees to be determined (a) during the first six months following Closing, by Mitchell Goldhar, or (b) from time to time thereafter, by a majority decision of the Board) and provide Mitchell Goldhar with the right to appoint (i) three of the Board members while the SC/MRR Group holds in the aggregate at least 25% of the REIT's total aggregate issued and outstanding Units and Special Voting Units, (ii) two of the Board members while the SC/MRR Group holds in the aggregate at least 15% but less than 25% of the Units and Special Voting Units and (iii) one of the Board members while the SC/MRR Group holds in the aggregate at least 5% but less than 15% of the Units and Special Voting Units. The SC/MRR Group will also be granted the Minimum Voting Entitlement, under certain circumstances, to receive additional Special Voting Units in order to maintain its voting interest at a minimum of 25% for a period of five years. The Minimum Voting Entitlement may be extended for a further five-year period under certain circumstances, including in the event that members of the SC/MRR Group sell or originate the sale to the REIT of at least \$300 million of assets (excluding the Purchased Assets). Finally, for so long as the SC/MRR Group otherwise qualifies for the Minimum Voting Entitlement, members of senior management of the REIT will be subject to the approval of Mitchell Goldhar.

See "The Transaction — Change in Effective Control of the REIT" and "The Transaction — Amendments to the Declaration of Trust".

### ***Amendments to the Declaration of Trust***

If the Transaction Resolution is approved and all of the other conditions precedent to completion of the Transaction are satisfied or waived, on Closing of the Transaction, the REIT will enter into the Third Amended and Restated Declaration of Trust. The Third Amended and Restated Declaration of Trust will contain amendments to the Declaration of Trust that the REIT has agreed to make pursuant to the terms of the Purchase and Support Agreement, as well as other amendments considered necessary or advisable in connection with implementing the Transaction, including amendments to create the Special Voting Units and provide Mitchell Goldhar with Board representation on the terms described under the immediately preceding subheading. See "The Transaction — Amendments to the Declaration of Trust".

### ***Structuring Fee and Warrants***

In addition to the Purchase Price payable to the Vendor at Closing, and in consideration of SmartCentres structuring the Transaction, at Closing the REIT will pay to SmartCentres or its designee a one-time structuring fee of \$1.25 million and issue to SmartCentres or its designee Warrants to purchase, at any time during the five-year period after Closing, 1.5 million Units at an exercise price of \$5.50 per Unit. See "The Transaction — Structuring Fee and Warrants".

### ***The Properties***

The Properties, totalling approximately 522,915 square feet of gross leasable area, are strategically located in the major metropolitan market of the Greater Toronto Area. The Properties currently have an occupancy rate of approximately 97% and have a number of high quality tenants. The Properties are located at 1480/1490 Dundas Street East, Mississauga, 1224 Dundas Street East, Mississauga, 750/760 Birchmount Road, Toronto, and 1100/1140/1170 Burnhamthorpe Road West, Mississauga. See "The Transaction — The Properties".

### ***The Property Management Agreement***

If the Transaction Resolution is approved and all of the other conditions precedent to completion of the Transaction are satisfied or waived, on Closing of the Transaction, Retrocom LP and SmartCentres Management will enter into the Property Management Agreement and SmartCentres Management will become the property manager for the SmartCentres Managed Properties, including substantially all of the REIT's portfolio of enclosed community and regional malls and strip centres, at such time and in such a manner as will allow for a smooth and orderly transition between property managers. See "The Transaction — Management of the Property Portfolio Following Completion of the Transaction" and "The Property Management Agreement".

### ***Refinancing of the RioCan Debenture***

Pursuant to the terms of the Purchase and Support Agreement, completion of the Transaction is conditional upon, among other things, the satisfaction of the Credit Facility Condition on or prior to Closing. See "The Purchase and Support Agreement — Conditions Precedent to the Transaction — Mutual Conditions Precedent".

In connection with satisfying the Credit Facility Condition, the REIT has obtained a binding financing commitment letter from The Toronto Dominion Bank, providing for a Bridge Loan of up to \$33.5 million.

The REIT intends to use the Bridge Loan primarily to finance repayment of the RioCan Debenture. Notwithstanding the Bridge Loan, the REIT is also in the process of refinancing the existing mortgages on a number of properties, with the proceeds of such refinancings to be used either to repay the RioCan Debenture directly, or to repay the Bridge Loan if the Bridge Loan has previously been used to repay the RioCan Debenture.

See “The Transaction — Refinancing of the RioCan Debenture”.

### **Recommendation of the Special Committee**

The Board established the Special Committee on November 30, 2005 to review and make recommendations in respect of strategies available to the Board in its efforts to enhance Unitholder value, including a potential restructuring or acquisition transaction. **The Special Committee has determined that the Transaction is in the best interests of the REIT and its Unitholders. Accordingly, the Special Committee has recommended that the Board approve the Purchase and Support Agreement and recommend to Unitholders that they vote FOR the Transaction Resolution.** See “The Transaction — Recommendation of the Special Committee”.

### **Recommendation of the Board**

**The Board, upon receiving the advice of the Special Committee and in consultation with its financial and outside legal advisors, has determined that the Transaction is in the best interests of the REIT and its Unitholders. Accordingly, the Board has approved the Purchase and Support Agreement and recommends that Unitholders vote FOR the Transaction Resolution.** See “The Transaction — Recommendation of the Board”.

### **Reasons for the Board Recommendation**

The Board considered a number of factors in concluding that the Transaction is in the best interests of the REIT and its Unitholders and in making its recommendation that Unitholders vote FOR the Transaction Resolution, including the following:

- the Special Committee received the Fairness Opinion of TD Securities, dated April 30, 2008, to the effect that, subject to the assumptions, limitations and qualifications set forth therein, as of the date of the Fairness Opinion, the consideration to be paid pursuant to the Transaction is fair, from a financial point of view, to the Unitholders other than Mitchell Goldhar, the Vendor and persons controlled by them (in respect of whom TD Securities has expressed no opinion). See “The Transaction — TD Securities Fairness Opinion”;
- the Transaction is the culmination of a strategic review process aimed at enhancing Unitholder value first announced by the REIT in November 2005. As part of that process, the Special Committee carefully considered and pursued a number of strategic alternatives in addition to the Transaction, including a reconstitution of the Board, strengthening the REIT’s executive management team, the internalization of the REIT’s asset management function and selectively repositioning the REIT’s property portfolio. After conducting a thorough market canvass, the Special Committee, in consultation with its financial and outside legal advisors, concluded that a standalone restructuring transaction, involving the transfer of assets to the REIT in exchange for a significant ownership interest in, and long-term commitment to, the REIT, or an acquisition transaction, was in the best interests of Unitholders. The REIT considered and pursued several other potential acquisition or restructuring transactions prior to reaching agreement on the Transaction. See “The Transaction — Background to the Transaction”;
- the Board believes that the Property Management Agreement, to be entered into with SmartCentres Management on Closing pursuant to the terms of the Transaction, significantly enhances the REIT’s future growth prospects by creating a new relationship with the leading developer and manager in Canada and bringing SmartCentres’ innovative management and development expertise to the REIT’s portfolio;
- the Transaction provides the REIT with its first presence in the Greater Toronto Area, allowing for a greater geographic diversification of portfolio assets by way of entry into the largest real estate market in Canada;
- the Transaction will allow the REIT to extend existing debt maturity dates as a result of the refinancing of the RioCan Debenture. See “The Transaction — Refinancing of the RioCan Debenture”;
- the Board believes that the Transaction will strengthen the REIT’s income base and reduce the REIT’s cost of capital;

- the Purchase Price represents a 9% capitalization rate on estimated 2008 net operating income. The issuance of Class B LP Units at a price of \$5.00 per Class B LP Unit represents a premium of approximately 24% over the 20-day volume weighted average trading price for the Units on the TSX for the period ending on April 30, 2008, the last full trading day prior to the announcement of the Transaction;
- historic market prices and trading information with respect to the Units;
- current industry, economic and market conditions and trends;
- the likelihood that the Transaction will be completed, given the limited number of conditions and regulatory approvals necessary to complete the Transaction;
- the Board is of the view that the terms and conditions of the Purchase and Support Agreement, including the amount of the Termination Fee payable by the REIT in certain circumstances, do not prevent an unsolicited third party from proposing or making a Superior Proposal or, provided that the REIT complies with the terms of the Purchase and Support Agreement, preclude the Board from considering and acting on a Superior Proposal;
- the Transaction Resolution must be approved by not less than a majority of the votes cast by Unitholders present in person or represented by proxy at the Meeting and entitled to vote; and
- if an alternative transaction were to be announced prior to the Meeting, Unitholders would be free to consider such a transaction and, if deemed appropriate, support such a transaction and vote against the Transaction Resolution, subject to the REIT's obligation, in certain circumstances, to pay the Termination Fee.

See "The Transaction — Reasons for the Board Recommendation".

### **TD Securities Fairness Opinion**

TD Securities was engaged by the Special Committee to advise and assist the Special Committee in its review of potential value enhancement strategies, including by providing a fairness opinion to the Special Committee. **Subject to the assumptions, limitations and qualifications contained in the Fairness Opinion, TD Securities is of the opinion that, as of the date of the Fairness Opinion, the consideration to be paid pursuant to the Transaction is fair, from a financial point of view, to the Unitholders other than Mitchell Goldhar, the Vendor and persons controlled by them (in respect of whom TD Securities has expressed no opinion).** A copy of the Fairness Opinion is attached as Appendix "E" to this Circular. Unitholders are urged to read the Fairness Opinion in its entirety. See "The Transaction — TD Securities Fairness Opinion".

### **The Purchase and Support Agreement**

The Purchase and Support Agreement provides for the Transaction and matters related thereto. Pursuant to the terms of the Purchase and Support Agreement, the REIT has agreed to call the Meeting to seek approval of Unitholders for the Transaction Resolution. The following describes certain material provisions of the Purchase and Support Agreement, but is not comprehensive and is qualified in its entirety by reference to the full text of the Purchase and Support Agreement, a copy of which (including the Amending Agreement) has been filed with the CSAs and can be accessed at [www.sedar.com](http://www.sedar.com) and may also be obtained free of charge, upon request to the Corporate Secretary of the REIT at 4025 Yonge Street, Suite 214, P.O. Box 204, Toronto, Ontario M2P 2E3 (Telephone: (416) 741-7999). See "The Purchase and Support Agreement".

### ***Covenants of the REIT Regarding Non-Solicitation***

Subject to certain limited exceptions set forth in the Purchase and Support Agreement, the REIT and Retrocom LP have agreed: (a) not to solicit, initiate or knowingly encourage or otherwise facilitate any inquiries, proposals or offers regarding an Acquisition Proposal; (b) to immediately cease and cause to be terminated any existing negotiations with respect to any potential Acquisition Proposal and not to participate in any discussions or negotiations regarding any Acquisition Proposal or otherwise cooperate in any way with any Acquisition Proposal; (c) not to release any third party from or waive any confidentiality, non-solicitation or standstill agreement to which such third party is a party; (d) immediately to cease to provide any other party with access to information concerning the REIT and its subsidiaries and, to the extent it is entitled to do so under the applicable confidentiality agreements, request the return or destruction of all confidential information provided to any third party that has entered into a confidentiality agreement with the REIT relating to any potential Acquisition Proposal; and (e) not to withdraw or modify in a manner adverse to the Vendor the approval of the Board of the Transaction, accept or approve or recommend any Acquisition Proposal or cause the REIT to enter into any agreement related to any Acquisition Proposal.

### *Acquisition Proposals*

Pursuant to the terms of the Purchase and Support Agreement, the REIT and Retrocom LP must immediately notify the Vendor, at first orally and then promptly (and in any event within two Business Days) in writing, of (i) any proposal, inquiry, offer (or amendment thereto) or request relating to or constituting an Acquisition Proposal, (ii) any request for discussions or negotiations or any inquiry that could lead to an Acquisition Proposal, (iii) any request for non-public information relating to the REIT or any of its subsidiaries in connection with an Acquisition Proposal or for access to the properties, books or records of the REIT or any of its subsidiaries by any person of which any of the REIT's or its subsidiaries' directors, officers, Trustees, employees, representatives or agents became aware, or (iv) any amendments to the foregoing. Such notice to the Vendor must be in writing and must indicate the identity of the person making such proposal, inquiry, offer, request or contact, all material terms and conditions thereof and such other details of the proposal, inquiry or contact known to the REIT or any of its subsidiaries and must include copies of any such proposal, inquiry, offer or request or any amendment to any of the foregoing. The REIT and its subsidiaries must also provide such other details of the proposal, inquiry, offer or request, or any amendment to the foregoing, as the Vendor may reasonably request. The REIT and its subsidiaries must keep the Vendor promptly and fully informed of the status, including any change to the material terms, of any such written proposal, inquiry, offer or request, or any amendment to the foregoing, and must respond promptly to all inquiries by the Vendor with respect thereto.

If the REIT (i) receives a request for its written authorization to submit an Acquisition Proposal from a person otherwise prevented by the terms of a confidentiality or standstill agreement from making such a proposal, or (ii) receives a written request for non-public information relating to the REIT and/or its subsidiaries in connection with an Acquisition Proposal or for access to the properties, books or records of the REIT and/or its subsidiaries from a person who has made an Acquisition Proposal and the Board determines in good faith, in either case, after consultation with its financial advisors and outside legal advisors, that the failure to take such action would be inconsistent with the Board's fiduciary duties and that such proposal, if consummated in accordance with its terms, would reasonably be expected to be a Superior Proposal, then:

- (a) subject to notifying the Vendor that the REIT has determined to take such action, the REIT may grant such written authorization as may be required in order to allow a person otherwise prevented by the terms of a confidentiality or standstill agreement from making an Acquisition Proposal to make such a proposal;
- (b) the REIT may, subject to first complying with the notice provisions of the Purchase and Support Agreement in respect of Acquisition Proposals and to entering into a confidentiality agreement containing a standstill provision substantially similar to that contained in the Confidentiality Agreement, provide such person with access to such information and engage in discussions or negotiations with such person at any time prior to the approval of the Transaction Resolution; and
- (c) subject to any restrictions in that regard contained in the Confidentiality Agreement, the Vendor must be provided with a list of or copies of the information and access to similar information as that provided to such person, except to the extent such information was already provided or made available to the Vendor.

### *Change in Recommendation*

The Purchase and Support Agreement provides that if the REIT receives an Acquisition Proposal, the REIT may, prior to the time of the approval of the Transaction Resolution, withdraw or modify in a manner adverse to the Vendor its approval or recommendation of the Transaction and/or accept, approve, recommend or enter into any agreement (subject to first complying with the notice provisions of the Purchase and Support Agreement in respect of Acquisition Proposals) in respect of an Acquisition Proposal, in each case, if the Board determines in good faith (after consultation with its financial advisors and outside legal advisors) that such Acquisition Proposal constitutes a Superior Proposal and if:

- (a) the REIT has given written notice to the Vendor of its intention to do so;
- (b) the REIT has complied with, and is not in default of, its non-solicitation covenants and its obligations with respect to Acquisition Proposals; and
- (c) five Business Days have elapsed from the later of (i) the date the Vendor received the notice referred to in paragraph (a) above, and (ii) the date the Vendor was provided with a copy of such Acquisition Proposal (the "**Response Period**").

***Right to Match***

The Vendor may, but is not required to, during the Response Period, offer in writing to amend the terms of the Purchase and Support Agreement and, if it does so, then the Board must review any such offer in good faith, in consultation with its financial and outside legal advisors, and if the Board:

- (a) determines that the Acquisition Proposal would thereby cease to be a Superior Proposal, it must cause the REIT to enter into an amendment to the Purchase and Support Agreement reflecting the offer by the Vendor to amend the terms of the Purchase and Support Agreement; or
- (b) continues to believe that the Acquisition Proposal would nonetheless remain a Superior Proposal, provided that the REIT has paid to the Vendor the Termination Fee in accordance with the terms of the Purchase and Support Agreement, it may cause the REIT to reject the offer by the Vendor to amend the terms of the Purchase and Support Agreement and terminate the Purchase and Support Agreement.

***Termination Fee***

If the Purchase and Support Agreement is terminated as a result of the occurrence any of the following events prior to the Closing Date, and provided in each case that the Vendor is not in material default in the performance of its obligations under the Purchase and Support Agreement, the REIT has agreed to pay the Termination Fee to SmartCentres or its designee:

- (a) the Board withdraws or modifies in a manner adverse to the Vendor its approval or recommendation of the Transaction and makes a public announcement to that effect other than by reason of the occurrence of an event that would have a Material Adverse Effect in respect of the Vendor;
- (b) the Board recommends any Superior Proposal and makes a public announcement to that effect;
- (c) the Board fails to reaffirm its recommendation of the Transaction (other than by reason of the occurrence of an event that would have a Material Adverse Effect in respect of the Vendor) by press release within a reasonable period of time after the public announcement or commencement of any Acquisition Proposal and within a reasonable period of time of having been requested to do so by the Vendor;
- (d) the Transaction Resolution is not approved by Unitholders at the Meeting in circumstances in which an Acquisition Proposal is publicly announced and not withdrawn prior to the Meeting and an Acquisition Proposal is entered into, agreed to or completed on or prior to the date that is six (6) months from the date of termination of the Purchase and Support Agreement; or
- (e) the Transaction has not been consummated on or prior to August 31, 2008 as a result of any wilful breach of the Purchase and Support Agreement by the REIT or Retrocom LP, or failure by the REIT or Retrocom LP to perform any covenant or obligation required to be performed by the REIT or Retrocom LP under the Purchase and Support Agreement.

The Vendor has agreed that the Termination Fee, if paid to SmartCentres or its designee, is in lieu of any damages or any other payment or remedy to which it may be entitled.

***Risk Factors***

There are certain risk factors relating to the Transaction and to the REIT, all of which should be carefully considered by Unitholders in evaluating whether to approve the Transaction Resolution. See "Risk Factors".

## THE TRANSACTION

If the Transaction Resolution is approved and all of the other conditions precedent to completion of the Transaction are satisfied or waived, the Transaction is expected to be completed on or about July 4, 2008. Upon completion of the Transaction, Retrocom LP will acquire the Properties for the Purchase Price in accordance with the terms of the Purchase and Support Agreement.

### Background to the Transaction

The Purchase and Support Agreement and the Transaction are the culmination of a strategic review process aimed at enhancing Unitholder value first announced by the REIT in November 2005.

On November 30, 2005, the REIT announced that the Board had established the Special Committee, comprised entirely of Independent Trustees, to review and make recommendations in respect of strategies available to the Board in its efforts to enhance Unitholder value. On December 23, 2005, TD Securities was retained as financial advisor to the Special Committee in order to assist the Special Committee in its review of potential value enhancement strategies. In consultation with TD Securities, the Special Committee began to consider a number of strategic alternatives, including a reconstitution of the Board and the REIT's management team, the sale of "non-core" assets in order to provide funding to renovate or redevelop the REIT's existing "core" properties, the internalization of the REIT's asset management function and a possible strategic transaction involving a sale of the REIT or a strategic partnership with a party interested in contributing assets or otherwise making an equity investment in the REIT.

As a result of this review of strategic alternatives, on February 7, 2006, the REIT announced its intention to internalize its asset management functions by way of an orderly transition of staff, office space and related resources that would be required by the REIT. On February 27, 2006, the REIT announced that it had taken further steps to internalize its management functions by terminating, effective February 28, 2006, its asset management and property management agreements with RIMI, in exchange for a one-time cash payment to RIMI in the amount of \$750,000 and certain other limited considerations. The agreements had originally been scheduled to terminate in 2009 but were terminated early in anticipation of savings in excess of \$1.5 million that were expected to be realized by the REIT during what would otherwise have been the remaining term of such agreements. In respect of property management and related functions, the REIT announced that it intended to directly retain the property management firms that had until then been performing such functions for the REIT on a subcontract basis.

Also on February 27, 2006, the REIT announced that the Special Committee and the Board, with the assistance of TD Securities, would commence a process (the "**Process**") to solicit proposals leading to a sale of, or merger involving, the REIT, or to a strategic partnership with a party interested in contributing assets or otherwise making an equity investment in the REIT. The solicitation of such proposals would be in addition to, and carried out in conjunction with, the continuing assessment of other strategic alternatives, including the disposition of "non-core" assets in order to provide funding to renovate or redevelop existing "core" properties.

The Special Committee adopted a multi-stage Process in connection with the solicitation of proposals. Throughout the first stage of the Process, TD Securities undertook a marketing campaign for the REIT's portfolio and provided a fact sheet in respect of the REIT, together with a form of confidentiality agreement, to a large number of potential bidders located in Canada, the United States and Europe. During the spring months of 2006, confidentiality agreements were negotiated and entered into with many of these prospective bidders, each of which was then provided with a confidential information memorandum and a supplemental information package containing certain financial and other information concerning the REIT and its properties.

Ten written non-binding proposals were received by June 28, 2006 on completion of the first stage of the Process. The Special Committee, in consultation with TD Securities, selected the five most attractive of these proposals and invited the bidders who had submitted such proposals to proceed to stage two of the Process. Stage two participants were then provided access to more detailed confidential information concerning the REIT and its properties.

On July 20, 2006 the REIT received a further non-binding term sheet from SmartCentres, outlining the terms of a proposed transaction involving the sale to the REIT by SmartCentres of seven properties, including the Properties. Over the next several weeks, the REIT negotiated a confidentiality agreement in favour of SmartCentres, which was executed on August 3, 2006, and following which the REIT proceeded to conduct due diligence investigations in respect of the seven properties proposed to be sold to the REIT by SmartCentres. During August 2006, while the REIT reviewed confidential information in respect of the seven properties, SmartCentres and the REIT negotiated the non-binding term sheet originally submitted by SmartCentres. By the end of August 2006, the parties had agreed in principle to the proposed

terms of a transaction, substantially similar in structure to the Transaction, involving the sale to the REIT by SmartCentres of the seven properties at a proposed purchase price of approximately \$81 million. The proposed transaction was non-binding and subject to the execution of definitive documentation and the satisfactory completion of due diligence by each of the REIT and SmartCentres. On August 31, 2006, SmartCentres executed a confidentiality agreement in favour of the REIT and was subsequently granted access to detailed confidential information concerning the REIT and its properties.

The REIT and SmartCentres were ultimately unable to reach agreement and on September 20, 2006, SmartCentres informed TD Securities that it was withdrawing its proposal.

Proposals were received from two other stage two participants in the Process following the September 26, 2006 deadline for the submission of such proposals. Following detailed consideration of such proposals, the Board, in consultation with TD Securities, determined that the proposals were not on terms acceptable to the REIT or failed to set out a strategy that seemed likely to enhance Unitholder value. After several weeks of considering, in consultation with TD Securities, other value enhancement alternatives, on November 14, 2006 the REIT announced that it had concluded its review of strategic alternatives and, as a result, would not be further pursuing a possible sale, merger or other strategic transaction involving the REIT.

In the meantime, certain external events had taken place that would impact the development of the REIT's external growth strategy over the ensuing months. On October 31, 2006, the Minister of Finance announced a proposal that led to the SIFT Rules. Certain real estate investment trusts that satisfy the REIT Exception are excluded from the definition of a SIFT and therefore are not subject to the SIFT Rules. Nevertheless, management of the REIT was forced to consider whether the restrictive nature of the requirements under the SIFT Rules to qualify for the REIT Exception would prevent the REIT from structuring itself in a manner that would allow it to compete on a level playing field with other real estate businesses in Canada in certain areas such as acquisitions, scope of activities and management structure. In light of the REIT's strategy for external growth and the Minister of Finance's announcement of the proposal, throughout the latter months of 2006 and the first quarter of 2007, the REIT continued to review the scope of its activities, potential for growth and strategic plan and began to revisit alternatives for enhancing Unitholder value.

As a result, and in response to a number of unsolicited inquiries from third parties, from March 2007 through May 2007, TD Securities, at the direction of the Special Committee, provided information packages to seven potential investors that had expressed interest in a possible strategic transaction following termination of the Process.

Three written non-binding proposals were received from these investors. After reviewing these proposals, the Special Committee, in consultation with its financial and outside legal advisors, determined to pursue negotiations in respect of one of the proposals received from a foreign bidder in respect of a proposed sale to such bidder of all or substantially all of the real estate and related assets of the REIT and the subsequent distribution of the proceeds of such sale to Unitholders.

After several weeks of negotiation, on June 7, 2007, the REIT entered into a non-binding letter of intent with such foreign third-party bidder. Pursuant to that letter of intent, the REIT agreed to negotiate in good faith exclusively with the bidder the terms of a definitive agreement of purchase and sale providing for the acquisition by such bidder of all or substantially all of the real estate and related assets of the REIT, with the purchase price to be satisfied partly in cash and partly by the assumption by such bidder of certain outstanding indebtedness of the REIT. The obligation of the parties to proceed with the proposed transaction was conditional upon, among other things, the settling and execution of definitive documentation, completion to the bidder's satisfaction of due diligence of the REIT and its properties, and receipt by the bidder of a firm commitment letter from the anticipated source of financing for the transaction. While the bidder proceeded diligently with the conduct of its due diligence, negotiations in respect of the definitive agreement of purchase and sale also progressed until, on June 27, 2007, the REIT was advised by such bidder that it was unable to arrange its anticipated financing for the transaction. As a result, no further negotiations or due diligence investigations in respect of the proposed transaction took place.

In October 2007, discussions with SmartCentres were initiated concerning a financing transaction which evolved into a transaction similar in structure to the proposed transaction originally pursued by the parties during the summer of 2006, involving the vend-in of certain assets held by a group of vendors affiliated with SmartCentres. These discussions resulted in the execution by the REIT and SmartCentres on November 19, 2007 of a non-binding term sheet in respect of a proposed acquisition by the REIT from SmartCentres of six properties.

Following the execution of that term sheet, the parties began conducting their respective due diligence and the REIT provided SmartCentres with a preliminary draft of the Purchase and Support Agreement. Negotiations continued intermittently for several months, however, the definitive terms of a transaction could not be agreed upon.

Consequently, in late February 2008, the REIT and SmartCentres began negotiating a revised non-binding term sheet, which was executed on February 29, 2008 and the terms of which formed the basis for the Transaction. Among other things, the revised term sheet contemplated the removal of two properties from the proposed transaction, leaving only the four Properties that are the subject of the Transaction.

Throughout March and most of April 2008, the REIT and SmartCentres completed their due diligence. During that period numerous drafts of the definitive documentation, including the Purchase and Support Agreement, the form of Property Management Agreement, the form of Exchange Agreement, and the form of certificate representing the Warrants, were also exchanged and several face-to-face negotiating sessions took place in an effort to settle such definitive documentation.

On April 28, 2008, the Special Committee and the Board, together with their financial and outside legal advisors, met to consider the terms of the Purchase and Support Agreement and the Transaction. At that meeting, TD Securities reviewed with the Special Committee and the Board its analysis of the financial terms of the Transaction and delivered to the Special Committee an oral fairness opinion. On April 30, 2008, TD Securities provided the Fairness Opinion, which superseded the fairness opinion delivered on April 28, 2008, to the effect that, subject to the assumptions, limitations and qualifications set forth therein, as of the date of the Fairness Opinion, the consideration to be paid pursuant to the Transaction is fair, from a financial point of view, to the Unitholders other than Mitchell Goldhar, the Vendor and persons controlled by them (in respect of whom TD Securities expressed no opinion).

After considering and discussing the various factors referred to under the heading “The Transaction — Reasons for the Board Recommendation” below, the Special Committee resolved to recommend to the Board that it approve the Transaction and that it recommend to Unitholders that they vote in favour of the Transaction Resolution. Following such recommendation, as well as further discussion and consideration of the various factors referred to under the heading “The Transaction — Reasons for the Board Recommendation” below, the Board determined that the Transaction was in the best interests of the REIT and its Unitholders. Accordingly, the Board approved the execution and delivery by the REIT of the draft Purchase and Support Agreement provided to the Board for its review, subject to such changes, deletions or amendments thereto as Mr. David Fiume, on behalf of the REIT, deemed necessary or appropriate, and resolved to recommend that Unitholders vote in favour of the Transaction Resolution.

All remaining outstanding issues in respect of the Purchase and Support Agreement were settled during the course of the day on April 30, 2008 and the REIT announced the Transaction and the entering into of the Purchase and Support Agreement following the close of trading on the TSX on April 30, 2008.

### **The Purchase Price**

The Purchase Price represents a 9% capitalization rate on estimated 2008 net operating income. The issuance of Class B LP Units at a price of \$5.00 per Class B LP Unit represents a premium of approximately 24% over the 20-day volume weighted average trading price for the Units on the TSX for the period ending on April 30, 2008, the last full trading day prior to the announcement of the Transaction.

The Purchase Price is subject to customary adjustments in order to give effect to the Transaction as of the first day of the month in which Closing occurs, with Retrocom LP being entitled to receive all rents and profits and required to bear all expenses in respect of or pertaining to the Purchased Assets from and after that date. Such adjustments will be made in respect of ongoing expenses and other charges usually adjusted for in transactions similar to the Transaction, including realty taxes, water and sewer rates, charges and assessments or deposits on account thereof, local improvement rates and charges, prepaid or unpaid expenses, current rents and recoveries collected from Tenants, security deposits and prepaid rents and interest thereon, principal and interest due under the Assumed First Mortgages together with accounts or deposits related thereto, utilities, fuel, unfunded liability or credits or prepayments in a promotion fund.

No adjustment to the Purchase Price will be made for rental arrears pursuant to any Leases that are in arrears for any period preceding the month in which Closing takes place, nor will there be any adjustment to the Purchase Price for insurance.

In the event that the adjustments described above result in a reduction to the Purchase Price, the amount of such reduction will be reflected by reducing the Required Number of Class B LP Units, and the corresponding number of Special Voting Units, otherwise determined to be issuable to the Vendor (or, in the case of adjustments determined after Closing, by the transfer and assignment by the Vendor to the REIT, free and clear of any liens, of that number of Class B LP Units and Special Voting Units, rounded down to the nearest whole number, obtained by dividing the value of such adjustments by \$5.00).

In the event that the adjustments described above result in an increase to the Purchase Price, the amount of such increase will be reflected by increasing the Required Number of Class B LP Units, and the corresponding Special Voting Units, otherwise determined to be issuable to the Vendor.

### **Change in Effective Control of the REIT**

The Purchase Price will be satisfied by the assumption by Retrocom LP on Closing of the Assumed First Mortgages on the Properties in the amount of approximately \$9 million and the issuance to the Vendor of the Required Number of Class B LP Units and a corresponding number of Special Voting Units. It is expected that the Required Number of Class B LP Units, and the corresponding number of Special Voting Units, issuable to the Vendor on Closing of the Transaction will be approximately 9.2 million (which, subject to adjustments to the Purchase Price, may be increased to up to 10 million).

### ***The Class B LP Units***

The Class B LP Units are intended to be the economic equivalent of Units. The holders of Class B LP Units, which shall initially include only the Vendor, will have the right to receive allocations of net income, net loss, taxable income and tax loss of Retrocom LP, as well as the right to share in returns of capital and to share on a *pro rata* basis in any cash or other distributions made to the limited partners of Retrocom LP.

Distributions made to the holders of Class B LP Units will be economically equivalent to distributions made to Unitholders, and will be paid to the holders of Class B LP Units at such times as distributions are paid to Unitholders. Without limiting the generality of the foregoing, holders of Class B LP Units will be entitled to receive:

- in the case of any cash distribution declared on the Units, an amount in cash for each Class B LP Unit corresponding to the cash distribution declared on each Unit; or
- in the case of a distribution declared on the Units in property (other than a distribution of Units and immediate consolidation thereafter such that the number of outstanding Units both immediately prior to and following such transaction remains the same), a distribution of property for each Class B LP Unit in such type and amount as is the same as, or economically equivalent to (as determined by the Board, in good faith and in its sole discretion), the type and amount of property declared as a distribution on each Unit.

### **As a result of the foregoing, the SC/MRR Group will own an approximate 38% equity interest in the REIT.**

Class B LP Units will be exchangeable for Units on a one-for-one basis, subject to certain customary anti-dilution adjustments set forth in the Exchange Agreement. Class B LP Units will only be exchangeable for Units in those circumstances, and subject to the terms, conditions and restrictions on exchange set forth in the Exchange Agreement. Without limiting the generality of the foregoing, the Class B LP Units issued to the Vendor pursuant to the Transaction will not be exchangeable under any circumstances for a period of 60 days from the Closing Date, following which the Vendor will be entitled to exchange up to 25% of the Class B LP Units issued pursuant to the Transaction during the first year following Closing. The remaining 75% of the Class B LP Units issued to the Vendor pursuant to the Transaction may be exchanged by the Vendor at any time following the one-year anniversary of Closing (or, in the event that the REIT or Retrocom LP has initiated a Claim on or before the one-year anniversary of Closing, at any time following the date of any Final Decision or Final Settlement in respect of such Claim) subject to certain limited exceptions set forth in the Exchange Agreement.

Except as may be set forth in the Second Amended and Restated Limited Partnership Agreement, the holders of Class B LP Units will not be entitled, as such, to receive notice of or attend any meeting of limited partners of Retrocom LP or to vote at any such meeting. Holders of Class A LP Units will have the right to exercise 100% of the votes in respect of all of matters to be decided by the limited partners of Retrocom LP, other than those matters in respect of which a vote is expressly provided to holders of Class B LP Units pursuant to the terms of the Second Amended and Restated Limited Partnership Agreement. Subsidiary Trust will be the initial holder of all of the outstanding Class A LP Units.

### ***The Special Voting Units***

The holders of Class B LP Units will receive one Special Voting Unit for each Class B LP Unit held. Special Voting Units will only be issued in connection with the issuance of Class B LP Units.

Each Special Voting Unit is intended to be the voting equivalent of a Unit. Accordingly, the holders of Special Voting Units, which shall initially include only the Vendor, will be entitled to that number of votes on any ballot vote at a meeting of Unitholders, or in respect of any written resolution of Unitholders, that is equal to the number of votes such holder would have been entitled to if the Class B LP Units to which such Special Voting Units relate had been exchanged for

**Units. As a result of the foregoing, entities affiliated with Mitchell Goldhar will control an approximate 38% voting interest in the REIT.**

However, other than voting rights, the holders of Special Voting Units will have no rights (whether as to distributions or otherwise) in respect of the REIT and Special Voting Units will not represent any claim or interest in, and no holder of Special Voting Units will have or be deemed to have any right of ownership in, any of the assets of the REIT. Special Voting Units will be evidenced only by the certificates representing the Class B LP Units to which they relate and will be non-transferable separately and apart from the Class B LP Units to which they relate. Upon exchange of Class B LP Units for Units, the corresponding Special Voting Units will immediately be cancelled for no consideration without any further action on the part of the REIT, and the former holder of such Special Voting Unit will cease to have any rights with respect thereto.

#### ***Board Representation, Minimum Voting Entitlement and Approval of Senior Management***

In addition, on Closing of the Transaction, the REIT will enter into the Third Amended and Restated Declaration of Trust in order to, among other things, increase the number of Trustees on the Board from six to up to nine (and, in any event, no fewer than eight, with the precise number of Trustees to be determined (a) during the first six months following Closing, by Mitchell Goldhar, or (b) from time to time thereafter, by a majority decision of the Board) and provide Mitchell Goldhar with the right to appoint (i) three of the Board members while the Vendor and its affiliates hold at least 25% of the REIT's total aggregate issued and outstanding Units and Special Voting Units, (ii) two of the Board members while the Vendor and its affiliates hold at least 15% but less than 25% of the Units and Special Voting Units and (iii) one of the Board members while the Vendor and its affiliates hold at least 5% but less than 15% of the Units and Special Voting Units. The Vendor will also be granted the Minimum Voting Entitlement, under certain circumstances, to receive additional Special Voting Units in order to maintain its voting interest at a minimum of 25% for a period of five years. The Minimum Voting Entitlement may be extended for a further five year period under certain circumstances, including in the event that members of the SC/MRR Group sell or originate the sale to the REIT of at least \$300 million of assets (excluding the Purchased Assets). Finally, for so long as the SC/MRR Group otherwise qualifies for the Minimum Voting Entitlement, members of senior management of the REIT will be subject to the approval of Mitchell Goldhar.

See "The Transaction — Amendments to the Declaration of Trust".

#### **Amendments to the Declaration of Trust**

If the Transaction Resolution is approved and all of the other conditions precedent to completion of the Transaction are satisfied or waived, on Closing of the Transaction, the REIT will enter into the Third Amended and Restated Declaration of Trust. The Third Amended and Restated Declaration of Trust will contain amendments to the Declaration of Trust that the REIT has agreed to make pursuant to the terms of the Purchase and Support Agreement, as well as other amendments considered necessary or advisable in connection with implementing the Transaction, including amendments to:

- (a) create and authorize for issuance an unlimited number of Special Voting Units;
- (b) provide the SC/MRR Group representation on the Board as follows:
  - (i) for so long as members of the SC/MRR Group hold in the aggregate at least 25% of the total aggregate issued and outstanding Units and Special Voting Units (including, for greater certainty, by virtue of the application of the Minimum Voting Entitlement), the Board will be comprised of up to nine Trustees (and, in any event, no fewer than eight Trustees, with the precise number to be determined (a) during the first six months following Closing, by Mitchell Goldhar, or (b) from time to time thereafter, by a majority decision of the Board) and Mitchell Goldhar will be entitled to appoint three of the Trustees, two of which will be designated by Mitchell Goldhar to also serve as representatives of each committee of the Board, subject only to satisfying any independence requirements for serving on such committees (with a maximum of five Trustees to serve on each such committee);
  - (ii) for so long as members of the SC/MRR Group hold in the aggregate at least 15% but less than 25% of the total aggregate issued and outstanding Units and Special Voting Units, the Board will be comprised of up to nine Trustees (and, in any event, no fewer than eight Trustees, with the precise number to be determined (a) during the first six months following Closing, by Mitchell Goldhar, or (b) from time to time thereafter, by a majority decision of the Board) and Mitchell Goldhar will be entitled to appoint two of the Trustees, both of which shall also serve as representatives of each committee of the Board, subject only to satisfying any independence requirements for serving on such committees (with a maximum of five Trustees to serve on each such committee);

- (iii) for so long as members of the SC/MRR Group hold in the aggregate at least 5% but less than 15% of the total aggregate issued and outstanding Units and Special Voting Units, the Board will be comprised of up to nine Trustees (and, in any event, no fewer than eight Trustees, with the precise number to be determined (a) during the first six months following Closing, by Mitchell Goldhar, or (b) from time to time thereafter, by a majority decision of the Board) and Mitchell Goldhar will be entitled to appoint one Trustee; and
- (iv) for so long as members of the SC/MRR Group hold in the aggregate less than 5% of the total aggregate issued and outstanding Units and Special Voting Units, the Board will be comprised of up to nine Trustees (and, in any event, no fewer than eight Trustees, with the precise number to be determined (a) during the first six months following Closing, by Mitchell Goldhar, or (b) from time to time thereafter, by a majority decision of the Board) and Mitchell Goldhar will not be entitled to appoint any Trustees;
- (c) provide that if, in any given 365-day period during the five-year period following Closing:
  - (i) the average weighted aggregate number of Special Voting Units and Units (together, the “**Voting Units**”) held or controlled by members of the SC/MRR Group in the aggregate is equal to or greater than the number of Special Voting Units issued to the Vendor on Closing as part of the Purchase Price; and
  - (ii) a nominee of Mitchell Goldhar is a trustee of the REIT;
 

then, provided that members of the SC/MRR Group hold in the aggregate Special Voting Units representing less than 25% of the voting rights attached to all voting securities of the REIT, the REIT will issue to members of the SC/MRR Group such number of Special Voting Units as will entitle members of the SC/MRR Group to cast in the aggregate 25% of the votes at any meeting of Unitholders (the “**Minimum Voting Entitlement**”);
- (d) provide that the SC/MRR Group’s Minimum Voting Entitlement, and the right to be issued such number of Special Voting Units as is necessary to give effect to that entitlement, will extend for an additional five-year period (being ten years in total from the Closing Date) if:
  - (i) members of the SC/MRR Group sell or originate in aggregate at least \$300 million of freehold assets (excluding the Purchased Assets) to the REIT or its affiliates during the initial five-year period from Closing;
  - (ii) the average weighted aggregate number of Voting Units held or controlled by members of the SC/MRR Group in aggregate in any given 365-day period during such initial five-year period from Closing is at least equal to the number of Special Voting Units issued to the Vendor on Closing as part of the Purchase Price, representing no less than 10% of the voting rights attached to all voting securities of the REIT; and
  - (iii) a nominee of Mitchell Goldhar remains a trustee of the Trust; and
- (e) provide that, for so long as the SC/MRR Group otherwise qualifies for the Minimum Voting Entitlement, members of senior management of the REIT will be subject to the approval of Mitchell Goldhar.

If the Transaction Resolution is approved, the Trustees will also be empowered to approve such other amendments to the Declaration of Trust that are not prejudicial to the interests of Unitholders as they determine are necessary or appropriate in order to give effect to the Transaction. The Trustees will also be given the discretion under the Transaction Resolution not to proceed with the amendments in the event that the Transaction is not completed. The full text of the Transaction Resolution is attached to this Circular as Appendix “A”. A compared version of the Third Amended and Restated Declaration of Trust, showing blacklined changes to the Declaration of Trust necessary to implement the Transaction, is attached as Appendix “B” to this Circular. Unitholders are encouraged to carefully review the Transaction Resolution and the compared version of the Third Amended and Restated Declaration of Trust in their entirety.

### **Structuring Fee and Warrants**

In addition to the Purchase Price payable to the Vendor at Closing, and in consideration of SmartCentres structuring the Transaction, at Closing the REIT will pay to SmartCentres or its designee a one-time structuring fee of \$1.25 million and issue to SmartCentres or its designee Warrants to purchase, at any time and from time to time during the five-year period after Closing, 1.5 million Units at an exercise price of \$5.50 per Unit. The Warrants will contain customary anti-dilution provisions and otherwise be subject to customary market terms and conditions, as set forth in the Form of Warrant Certificate attached as Schedule “B” to the Purchase and Support Agreement.

## The Properties

The Properties, totalling approximately 522,915 square feet of gross leasable area, are strategically located in the major metropolitan market of the Greater Toronto Area. The Properties currently have an occupancy rate of approximately 97% and have a number of high quality tenants. The Properties are located at 1480/1490 Dundas Street East, Mississauga, 1224 Dundas Street East, Mississauga, 750/760 Birchmount Road, Toronto, and 1100/1140/1170 Burnhamthorpe Road West, Mississauga.

### Property Summary

The following table summarizes certain information in respect of the Properties to be acquired pursuant to the Transaction:

<u>Property</u>	<u>Location</u>	<u>Ownership Interest</u>	<u>Net Rentable Area</u>	<u>Occupancy</u>	<u>Year Built</u>	<u>Major Retailers</u>
1224 Dundas Property . . . . .	1224 Dundas Street East Mississauga, ON	100%	202,971	100%	1977	Goodwill, Deeper Life, Mobilia
1480/1490 Dundas Property . .	1480/1490 Dundas Street East Mississauga, ON	100%	53,991	100%	1970	Bad Boy, Chesterfield Shop
Birchmount Property . . . . .	750/760 Birchmount Road Toronto, ON	100%	66,143	87.4%	1989	Pillar, Baskits, United Auto Parts
Burnhamthorpe Property . . . .	1100/1140/1170 Burnhamthorpe Road West Mississauga, ON	100%	199,810	96.5%	1985	Premier Fitness, Ontario Realty Corp.
<b>Totals . . . . .</b>			<b>522,915</b>	<b>97.1%</b>		

### Primary Tenants at the Properties

The following table summarizes certain information in respect of the primary tenants at the Properties:

#### 1224 Dundas Property

<u>Main Tenants / Anchors</u>	<u>Gross Leasable Area (sf)</u>	<u>% of Property Gross Leasable Area</u>	<u>% of Property Gross Rents</u>
Goodwill . . . . .	38,756	19.1%	26.7%
Deeper Life . . . . .	48,544	23.9%	19.4%
Mobilia . . . . .	21,602	10.6%	8.0%

The 1224 Dundas Property is currently a 202,971 square foot development that is situated on approximately 9.9 acres at the intersection of Dundas and Dixie in Mississauga, Ontario. A 38,756 square foot Goodwill and a 48,544 square foot Deeper Life anchor the Property. Other tenants include Famous Brand Liquidators, Royal Furniture, and Altaquip.

#### 1480/1490 Dundas Property

<u>Main Tenants / Anchors</u>	<u>Gross Leasable Area (sf)</u>	<u>% of Property Gross Leasable Area</u>	<u>% of Property Gross Rents</u>
Bad Boy . . . . .	26,053	48.3%	40.6%
The Chesterfield Shop . . . . .	11,842	21.9%	23.4%

The 1480/1490 Dundas Property is currently a 53,991 square foot development that is situated on approximately 5.2 acres at the intersection of Dundas and Dixie in Mississauga, Ontario. A 26,053 square foot Bad Boy and an 11,842 square foot Chesterfield Shop anchor the Property. Other tenants include Black & Decker, Enterprise Rent-A-Car, and Bada Sushi.

#### Birchmount Property

<u>Main Tenants / Anchors</u>	<u>Gross Leasable Area (sf)</u>	<u>% of Property Gross Leasable Area</u>	<u>% of Property Gross Rents</u>
Pillar Direct Marketing . . . . .	14,022	21.2%	22.2%
Baskits . . . . .	8,781	13.3%	14.2%
UAP Inc. . . . .	7,258	11.0%	13.3%

The Birchmount Property is currently a 66,143 square foot development that is situated on approximately 3.38 acres at the intersection of Eglinton and Birchmount in Toronto, Ontario. A 14,022 square foot Pillar Direct Marketing and an 8,781 square foot Baskits anchor the Property. Other tenants include UAP Inc., Technograph and Calmar Orthopedics.

#### *Burnhamthorpe Property*

<u>Main Tenants / Anchors</u>	<u>Gross Leasable Area (sf)</u>	<u>% of Property Gross Leasable Area</u>	<u>% of Property Gross Rents</u>
Premier Fitness . . . . .	28,302	14.2%	11.7%
Ontario Realty Corporation. . . . .	16,529	8.3%	9.7%

The Burnhamthorpe Property is currently a 199,810 square foot development that is situated on approximately 11.45 acres at the intersection of Burnhamthorpe Rd. West and Central Parkway West in Mississauga, Ontario. A 28,302 square foot Premier Fitness and a 16,529 square foot Ontario Realty Corporation office anchor the Property. Other tenants include Re/Max, Swiss Chalet, and Sapphire Seafood Chinese Restaurant.

#### **The REIT's Property Portfolio Following Completion of the Transaction**

As at March 31, 2008, the REIT owned 22 retail properties (the “**REIT Properties**”). The REIT Properties comprise a total of 3,912,568 square feet of gross leasable area.

Upon Closing of the Transaction, the Properties and the REIT Properties (collectively, the “**Property Portfolio**”) will consist of 26 properties located in British Columbia (one), Alberta (two), Saskatchewan (six), Manitoba (three), Ontario (ten) and one property in each of Quebec, New Brunswick, Nova Scotia and the Yukon Territory.

The following table summarizes the REIT's interest in the Property Portfolio (assuming completion of the Transaction) as at April 1, 2008.

	<u>Retail</u>
Number of Properties . . . . .	26
Total Leasable Area (square feet) (excluding undeveloped lands) . . . . .	4,435,483
Occupancy . . . . .	91.6%
Average Net Rent in Place. . . . .	\$9.07

The following table summarizes the lease maturities for the Property Portfolio (assuming completion of the Transaction) as at April 1, 2008, relative to the REIT Properties, in terms of their percentage contribution to net rental areas:

<u>Year</u>	<u>With Transaction</u>		<u>Year</u>	<u>Without Transaction</u>	
	<u>Net Rentable Area (Sq. ft.)</u>	<u>Expiry as % of Net Rentable Area</u>		<u>Net Rentable Area (Sq. ft.)</u>	<u>Expiry as % of Net Rentable Area</u>
2008 . . . . .	387,397	8.7%	2008	280,744	7.2%
2009 . . . . .	539,500	12.2%	2009	470,095	12.0%
2010 . . . . .	752,773	17.0%	2010	646,124	16.5%
2011 . . . . .	646,756	14.6%	2011	556,150	14.2%
2012 . . . . .	402,327	9.1%	2012	354,460	9.1%
2013 . . . . .	423,958	9.6%	2013	369,641	9.4%
2014 . . . . .	192,464	4.3%	2014	188,800	4.8%
2015 . . . . .	97,227	2.2%	2015	90,517	2.3%
2016 . . . . .	128,296	2.9%	2016	119,922	3.1%
2017 . . . . .	141,852	3.2%	2017	129,577	3.3%
Beyond . . . . .	349,265	7.9%	Beyond	349,265	8.9%
Vacant . . . . .	373,668	8.4%	Vacant	357,273	9.1%
<b>Total . . . . .</b>	<b><u>4,435,483</u></b>	<b><u>100.0%</u></b>	<b>Total</b>	<b><u>3,912,568</u></b>	<b><u>100.0%</u></b>

The following table summarizes the principal mortgage debt repayments (excluding capital lease obligations, convertible debentures and unsecured debt payable) on the Property Portfolio (assuming debt is not renewed on maturity) as at April 1, 2008 on a *pro forma* basis after giving effect to the Transaction:

	<u>Payments of Principal (\$)</u>	<u>Debt Maturing During Year (\$)</u>	<u>Total (\$)</u>	<u>% of Total</u>	<u>Weighted Average Interest Rate</u>
<b>Term Facilities</b>					
2008 .....	4,410,439	6,909,859	11,320,299	6.58%	6.83%
2009 .....	7,137,514	48,781,523	55,919,036	32.52%	6.37%
2010 .....	3,106,134	6,759,109	9,865,243	5.74%	7.19%
2011 .....	2,929,907	22,245	2,952,152	1.72%	6.17%
2012 .....	2,716,880	13,893,295	16,610,174	9.66%	6.99%
2013 .....	2,408,863	6,244,348	8,653,210	5.03%	7.34%
2014 .....	2,102,947	9,963,429	12,066,376	7.02%	6.08%
2015 .....	1,143,103	34,016,705	35,159,808	20.45%	5.30%
2016 .....	692,871	—	692,871	0.40%	6.02%
2017 .....	672,939	13,277,691	13,950,630	8.12%	6.15%
Beyond .....	<u>1,077,501</u>	<u>3,670,965</u>	<u>4,748,465</u>	<u>2.76%</u>	<u>5.68%</u>
<b>TOTAL .....</b>	<b><u>28,399,098</u></b>	<b><u>143,539,169</u></b>	<b><u>171,938,264</u></b>	<b><u>100%</u></b>	<b><u>6.28%</u></b>

As at the date hereof, the REIT had outstanding the following debentures: (i) the RioCan Debenture, being a \$30 million principal amount 4.50% secured convertible debenture, due on July 26, 2008; and (ii) \$20 million aggregate principal amount of 7.50% convertible unsecured subordinated debentures, due on July 31, 2012.

Debt (including mortgages payable, capital lease obligations and unsecured debt payable but excluding convertible debentures) as a percentage of gross book value upon completion of the Transaction will be 41.0%. Debt (including mortgages payable, capital lease obligations, unsecured debt payable and convertible debentures) as a percentage of gross book value upon completion of the Transaction will be 52.6%.

### Financial Results of the Properties

Attached as Appendix “C” to this Circular are: (i) an audited schedule of combined net operations for the Properties for their most recently completed financial year; (ii) an unaudited schedule of combined net operations for the Properties for their financial year immediately preceding their most recently completed financial year; and (iii) an unaudited interim schedule of combined net operations for the Properties for their most recently completed interim period prior to completion of the Transaction, together with a comparative schedule of combined net operations for the comparative period in the preceding year (collectively, the “Property Operating Statements”).

### Unaudited Pro Forma Consolidated Financial Statements

Attached as Appendix “D” to this Circular are unaudited *pro forma* financial statements of the REIT, giving effect to the Transaction, based on the Property Operating Statements.

### Management of the Property Portfolio Following Completion of the Transaction

If the Transaction Resolution is approved and all of the other conditions precedent to completion of the Transaction are satisfied or waived, on Closing, Retrocom LP and SmartCentres Management will enter into the Property Management Agreement and SmartCentres Management will become the property manager for the SmartCentres Managed Properties, at such time and in such a manner as will allow for a smooth and orderly transition between property managers. The Property Management Agreement includes customary market terms and conditions, including the following.

- (a) Leasing Fees ranging between:
  - (i) \$0.25 to \$3.00 per square foot on new leases entered into with respect to retail properties included in the SmartCentres Managed Properties (with the precise fee depending upon the number of square feet leased, the term of the lease, the property leased and whether or not a broker is engaged in connection with the lease);
  - (ii) \$0.25 to \$1.50 per square foot for lease renewals entered into with respect to retail properties included in the SmartCentres Managed Properties (with the precise fee depending upon the number of square feet

- leased, the term of the lease, the property leased and whether or not a broker is engaged in connection with the lease);
- (iii) 3% of net rent during the first year, and 1.25% of net rent during years two through ten, on new brokered leases entered into with respect to industrial properties included in the SmartCentres Managed Properties;
  - (iv) 6% of net rent during the first year, and 2.5% of net rent during years two through ten, on new unbrokered leases entered into with respect to industrial properties included in the SmartCentres Managed Properties;
  - (v) 3% of net rent during the first year, and 1.5% of net rent during years two through ten, on brokered lease renewals entered into with respect to industrial properties included in the SmartCentres Managed Properties; and
  - (vi) 4% of net rent during the first year, and 2.125% of net rent during years two through ten, on unbrokered lease renewals entered into with respect to industrial properties included in the SmartCentres Managed Properties;
- (b) Property Management Fees equal to 3.25% of gross rental revenues, and
  - (c) a term of five years, subject to an automatic renewal for a further five-year term unless either Retrocom LP or SmartCentres Management terminates the Property Management Agreement upon not less than 180 days notice to the other prior to the fifth anniversary of the Property Management Agreement.

See “The Property Management Agreement”.

In connection with entering into the Property Management Agreement, the REIT intends to terminate its existing property management agreements at such times and in such a manner as will allow for a smooth and orderly transition between property managers.

The Arcturus Property Management Agreement may be terminated by Retrocom LP at any time on 90 days’ prior notice or upon payment in lieu of notice in the amount of approximately \$225,000. It is the REIT’s intention to provide 90 days’ prior notice of the termination of the Arcturus Property Management Agreement at such time and in such a manner as will allow for a smooth and orderly transition between property managers, assuming approval of the Transaction Resolution by Unitholders. Upon termination of the Arcturus Property Management Agreement, the REIT may also be obligated to pay certain severance costs in respect of the employees of Arcturus dedicated to servicing the properties of the REIT managed by Arcturus if such employees are terminated by Arcturus. The amount of severance costs, if any, that Retrocom LP will be obligated to pay upon termination of the Arcturus Property Management Agreement could not be determined as at the date of this Circular.

The RioCan Property Management Agreement is due to terminate, in accordance with its terms, on July 26, 2008. On March 31, 2008, the REIT and Retrocom LP entered into an agreement (the “**RioCan Debenture Repayment Agreement**”) with RioCan REIT and RPST providing for, among other things, repayment of the RioCan Debenture at any time prior to its July 26, 2008 maturity date and termination of the RioCan Property Management Agreement upon such repayment. Pursuant to the terms of the RioCan Debenture Repayment Agreement, Retrocom LP has agreed that, in addition to repayment by the REIT of the outstanding principal amount of the RioCan Debenture and any accrued and unpaid interest thereon as of the date of repayment, Retrocom LP will pay to RPST the sum of \$1.75 million, together with G.S.T., as a financing facilitation fee (the “**RioCan Redemption Fee**”) on account of services provided to Retrocom LP in negotiating a financing arrangement with The Toronto-Dominion Bank or another recognized financial institution in connection with refinancing the RioCan Debenture, including RPST’s agreement to continue to guarantee the first mortgage obligations on certain of the properties that make up the RioCan Portfolio.

The REIT intends to secure third-party management services in respect of the City Centre Mall in Thompson, Manitoba, being the only property currently in the Property Portfolio that will not be included among the SmartCentres Managed Properties.

### **Refinancing of the RioCan Debenture**

Pursuant to the terms of the Purchase and Support Agreement, completion of the Transaction is conditional upon, among other things, the satisfaction of the Credit Facility Condition on or prior to Closing. See “The Purchase and Support Agreement — Conditions Precedent to the Transaction — Mutual Conditions Precedent”.

The Credit Facility Condition requires that each of the parties to the Purchase and Support Agreement be satisfied in its sole discretion that The Toronto-Dominion Bank, or one or more other recognized financial institutions, has established in favour of the REIT one or more credit facilities (including conventional mortgage refinancings) aggregating not less than \$30,000,000, which credit facility or facilities must (i) be of not less than twenty-four (24) months duration, (ii) be irrevocably available to the REIT to repay or prepay the RioCan Debenture, (iii) be secured by substantially the same assets currently encumbered by the RioCan Debenture (or such other assets as the parties to the Purchase and Support Agreement may agree upon, acting reasonably), and (iv) otherwise be on terms and conditions satisfactory to the parties to the Purchase and Support Agreement, acting reasonably.

In connection with satisfying the Credit Facility Condition, the REIT has obtained a binding financing commitment letter from The Toronto Dominion Bank, (the “**Lender**”), providing for a non-revolving bridge facility of up to \$33.5 million (the “**Bridge Loan**”). The Bridge Loan will be secured by five of the seven properties that constitute the RioCan Properties, as well as one other property, and will have a term of 24 months from the date of drawdown, but in any event, will mature no later than July 26, 2010. In addition, the REIT will be required to reduce the principal amount of debt outstanding under the Bridge Loan to \$27 million or less by no later than 6 months after drawdown (which must occur no later than July 26, 2008) and to \$20 million or less by no later than 12 months after drawdown.

The obligation of the Lender to make any advance under the Bridge Loan will be subject to customary conditions, as well as the following additional conditions precedent:

- (a) the Lender being satisfied with the asset and property management arrangements in place for the overall Property Portfolio;
- (b) Closing of the Transaction; and
- (c) confirmation that the RioCan Redemption Fee has been paid.

The REIT intends to use the Bridge Loan primarily to finance repayment of the RioCan Debenture. Notwithstanding the Bridge Loan, the REIT is also in the process of refinancing the existing mortgages on a number of properties, with the proceeds of such refinancings to be used either to repay the RioCan Debenture directly, or to repay the Bridge Loan if the Bridge Loan has previously been used to repay the RioCan Debenture.

### **TD Securities Fairness Opinion**

TD Securities was engaged by the Special Committee to advise and assist the Special Committee in its review of potential value maximization strategies, including by providing a fairness opinion to the Special Committee, if requested. **Subject to the assumptions, limitations and qualifications contained in the Fairness Opinion, TD Securities is of the opinion that, as of the date of the Fairness Opinion, the consideration to be paid pursuant to the Transaction is fair, from a financial point of view, to the Unitholders other than Mitchell Goldhar, the Vendor and persons controlled by them (in respect of whom TD Securities has expressed no opinion).**

The full text of the Fairness Opinion, which sets forth the assumptions made, general procedures followed, matters considered and qualifications and limitations on the review undertaken by TD Securities, is attached as Appendix “E” to this Circular. The Fairness Opinion does not constitute a recommendation to Unitholders concerning their vote with respect to the Transaction Resolution. The summary of the Fairness Opinion described in this Circular is qualified in its entirety by reference to the full text of the Fairness Opinion. Unitholders are encouraged to read the Fairness Opinion in its entirety.

The REIT has agreed to pay TD Securities a fee for providing its Fairness Opinion and for its financial advisory services which is, in part, contingent on the successful completion of the Transaction. The REIT has also agreed to indemnify TD Securities in respect of certain liabilities that may be incurred by TD Securities in connection with the provision of its services.

### **Recommendation of the Special Committee**

The Special Committee has determined that the Transaction is in the best interests of the REIT and its Unitholders. **Accordingly, the Special Committee has recommended that the Board approve the Purchase and Support Agreement and recommend to Unitholders that they vote FOR the Transaction Resolution.**

## Recommendation of the Board

The Board, upon receiving the advice of the Special Committee and in consultation with its financial and outside legal advisors, has determined that the Transaction is in the best interests of the REIT and its Unitholders. **Accordingly, the Board has approved the Purchase and Support Agreement and recommends that Unitholders vote FOR the Transaction Resolution.**

## Reasons for the Board Recommendation

In reaching its conclusion that the Transaction is in the best interests of the REIT and its Unitholders and in making its recommendation that Unitholders vote FOR the Transaction Resolution, the Board carefully reviewed the material features of the Purchase and Support Agreement and considered and relied upon a number of factors, including the following:

- the Special Committee received the Fairness Opinion of TD Securities, dated April 30, 2008, to the effect that, subject to the assumptions, limitations and qualifications set forth therein, as of the date of the Fairness Opinion, the consideration to be paid pursuant to the Transaction is fair, from a financial point of view, to the Unitholders other than Mitchell Goldhar, the Vendor and persons controlled by them (in respect of whom TD Securities has expressed no opinion). See “The Transaction — TD Securities Fairness Opinion”;
- the Transaction is the culmination of a strategic review process aimed at enhancing Unitholder value first announced by the REIT in November 2005. As part of that process, the Special Committee carefully considered and pursued a number of strategic alternatives in addition to the Transaction, including a reconstitution of the Board, strengthening the REIT’s executive management team, the internalization of the REIT’s asset management function and selectively repositioning the REIT’s property portfolio. After conducting a thorough market canvass, the Special Committee, in consultation with its financial and outside legal advisors, concluded that a standalone restructuring transaction, involving the transfer of assets to the REIT in exchange for a significant ownership interest in, and long-term commitment to, the REIT, or an acquisition transaction, was in the best interests of Unitholders. The REIT considered and pursued several other potential acquisition or restructuring transactions prior to reaching agreement on the Transaction. See “The Transaction — Background to the Transaction”;
- the Board believes that the Property Management Agreement, to be entered into with SmartCentres Management on Closing pursuant to the terms of the Transaction, significantly enhances the REIT’s future growth prospects by creating a new relationship with the leading developer and manager in Canada and bringing SmartCentres’ innovative management and development expertise to the REIT’s portfolio;
- the Transaction provides the REIT with its first presence in the Greater Toronto Area, allowing for a greater geographic diversification of portfolio assets by way of entry into the largest real estate market in Canada;
- the Transaction will allow the REIT to extend existing debt maturity dates as a result of the refinancing of the RioCan Debenture. See “The Transaction — Refinancing of the RioCan Debenture”;
- the Board believes that the Transaction will strengthen the REIT’s income base and reduce the REIT’s cost of capital;
- the Purchase Price represents a 9% capitalization rate on estimated 2008 net operating income. The issuance of Class B LP Units at a price of \$5.00 per Class B LP Unit represents a premium of approximately 24% over the 20-day volume weighted average trading price for the Units on the TSX for the period ending on April 30, 2008, the last full trading day prior to the announcement of the Transaction;
- historic market prices and trading information with respect to the Units;
- current industry, economic and market conditions and trends;
- the likelihood that the Transaction will be completed, given the limited number of conditions and regulatory approvals necessary to complete the Transaction;
- the Board is of the view that the terms and conditions of the Purchase and Support Agreement, including the amount of the Termination Fee payable by the REIT in certain circumstances, do not prevent an unsolicited third party from proposing or making a Superior Proposal or, provided that the REIT complies with the terms of the Purchase and Support Agreement, preclude the Board from considering and acting on a Superior Proposal;

- the Transaction Resolution must be approved by not less than a majority of the votes cast by Unitholders present in person or represented by proxy at the Meeting and entitled to vote; and
- if an alternative transaction were to be announced prior to the Meeting, Unitholders would be free to consider such a transaction and, if deemed appropriate, support such a transaction and vote against the Transaction Resolution, subject to the REIT's obligation, in certain circumstances, to pay the Termination Fee.

In view of the variety of factors considered, the Board did not find it practicable to, and did not, quantify or otherwise assign relative weights to the specific factors considered in reaching its determination that the Transaction is in the best interests of the REIT and its Unitholders and its recommendation to Unitholders that they vote FOR the Transaction Resolution. Individual Trustees may have given different weights to different factors. The reasons described above are not intended to be exhaustive but are believed to include all the material factors considered by the Board.

### **Unitholder Approval of Transaction Resolution**

At the Meeting, Unitholders will be asked to vote to approve the Transaction Resolution. To be effective, the Transaction Resolution must be approved, with or without variation, by the affirmative vote of not less than a majority of the votes cast by the Unitholders present in person or represented by proxy at the Meeting.

**In the absence of any instructions to the contrary, the Units represented by proxies received by management will be voted FOR the Transaction Resolution.**

### **Expenses of the Transaction**

The estimated fees, costs and expenses incurred by the REIT in connection with the Transaction, including without limitation, financial advisor's fees, filing fees, legal and accounting fees, printing and mailing costs and the costs of early termination of its existing property management agreements are anticipated to be approximately \$3.5 million.

## **THE PURCHASE AND SUPPORT AGREEMENT**

**The following description of certain material provisions of the Purchase and Support Agreement is a summary only, is not comprehensive and is qualified in its entirety by reference to the full text of the Purchase and Support Agreement, a copy of which (including the Amending Agreement) has been filed with the CSAs and can be accessed at [www.sedar.com](http://www.sedar.com) and may also be obtained free of charge, upon request to the Corporate Secretary of the REIT at 4025 Yonge Street, Suite 214, P.O. Box 204, Toronto, Ontario M2P 2E3 (Telephone: (416) 741-7999).**

### **Conditions Precedent to the Transaction**

#### ***Mutual Conditions Precedent***

The Purchase and Support Agreement provides that the obligation of each of the parties to complete the Transaction is subject to the fulfilment of each of the following conditions on or before the Closing Date (unless otherwise waived by each of the parties in their unfettered discretion):

- the Unitholder Approval Condition;
- the REIT must have obtained the approval of the TSX for the listing of the Units issuable on (i) the conversion of Class B LP Units in accordance with the terms of the Exchange Agreement, and (ii) the exercise of the Warrants;
- if the Transaction is subject to notification under Part IX of the Competition Act, Competition Act approval must have been obtained; and
- the Credit Facility Condition.

#### ***Conditions Precedent to the Obligations of the Vendor***

The Purchase and Support Agreement provides that the obligations of the Vendor to complete the Transaction are also subject to the fulfilment of each of the following conditions on or before the Closing Date (unless otherwise specified, or unless otherwise waived by the Vendor in its sole discretion):

- the representations and warranties of the REIT and Retrocom LP set forth in the Purchase and Support Agreement must be true and correct (in the case of representations and warranties qualified by materiality, in all respects, and in the case of all other representations and warranties, in all material respects) with the same

effect as if made on and as of the Closing Date and each of the REIT and Retrocom LP must deliver to the Vendor a certificate of a senior officer of the REIT or Retrocom LP, as the case may be, dated as of the Closing Date, to that effect;

- (b) all documents required to be executed or delivered to the Vendor by Retrocom LP and/or the REIT must have been executed or delivered;
- (c) all of the terms, covenants and conditions of the Purchase and Support Agreement to be complied with or performed by Retrocom LP and/or the REIT on or prior to the Closing Date must have been complied with or performed, in all material respects, by Retrocom LP and/or the REIT on or prior to the Closing Date;
- (d) the Declaration of Trust and the Limited Partnership Agreement must be amended in the manner described above under the heading “The Transaction — Amendments to the Declaration of Trust” and must otherwise be in form and substance acceptable to the Vendor, acting reasonably;
- (e) the Board and each committee of the Board must be reconstituted to provide for Vendor representation on the Board in the manner described above under the heading “The Transaction — Amendments to the Declaration of Trust”;
- (f) there must not have occurred any event that would constitute a Material Adverse Effect in respect of Retrocom LP or the REIT; and
- (g) SmartCentres or its designee must have received:
  - (i) from Retrocom LP a structuring fee of \$1.25 million; and
  - (ii) from the REIT, the Warrants.

***Conditions Precedent to the Obligations of the REIT and Retrocom LP***

The Purchase and Support Agreement provides that the respective obligations of the REIT and Retrocom LP to complete the Transaction are also subject to the fulfilment of each of the following conditions precedent on or before the Closing Date (unless otherwise waived by the REIT or Retrocom LP, as the case may be, in their sole discretion):

- (a) on Closing, title to the Properties must be free and clear of all encumbrances except for certain permitted encumbrances;
- (b) Tenant confirmation certificates in the form attached as Schedule “D” (collectively, the “**Estoppel Certificates**”) to the Purchase and Support Agreement must have been obtained by the Vendor at its own expense and delivered to Retrocom LP, in each case confirming, in all material respects, the accuracy of the leasing information provided to Retrocom LP in the project documents delivered in connection with the Purchase and Support Agreement, from:
  - (i) those Tenants at each Property identified in Schedule “J” to the Purchase and Support Agreement (collectively, the “**Anchor Tenants**”); and
  - (ii) Tenants in the aggregate representing at least seventy-five percent (75%) of the occupied gross leasable area of the Properties, including the gross leasable area of the Properties occupied by the Anchor Tenants, it being understood that to the extent the Vendor has not received by the Closing Date an Estoppel Certificate from a Tenant, Retrocom LP must complete the Closing based on a certificate of a senior officer of the Vendor, without personal liability, confirming to the best of such officer’s knowledge the tenancy terms of such Tenant which has not provided an Estoppel Certificate;
- (c) the representations and warranties of the Vendor set forth in the Purchase and Support Agreement must be true and correct (in the case of representations and warranties qualified by materiality, in all respects, and in the case of all other representations and warranties, in all material respects) with the same effect as if made on and as of the Closing Date, and the Vendor must have delivered to Retrocom LP and the REIT a certificate of a senior officer of the Vendor dated as of the Closing Date to that effect;
- (d) all documents required to be executed or delivered to Retrocom LP and/or the REIT by the Vendor pursuant to the terms of the Purchase and Support Agreement must have been executed or delivered;
- (e) all of the terms, covenants and conditions of the Purchase and Support Agreement to be complied with or performed by the Vendor on or prior to the Closing Date must have been complied with or performed, in all material respects, by the Vendor on or before the Closing Date;
- (f) on or before Closing, Retrocom LP must be satisfied that there have been no adverse registrations (other than Leases or charges of Leases or the Assumed First Mortgages) against title to the Properties registered after

April 30, 2008. In the event Retrocom LP is aware of any such adverse registrations, Retrocom LP must notify the Vendor and the Vendor must:

- (i) remove such adverse registrations on or before the Date of Closing; or
  - (ii) provide an undertaking to remove such adverse registrations as soon as reasonably possible after the Closing Date, provided that if such registrations are financial in nature, the amounts required to discharge such registrations must be directed by the Vendor to be held back by Retrocom LP from the Closing proceeds or paid into court;
- (g) approvals and assumption statements must have been received for the assumption by Retrocom LP of the Assumed First Mortgages. The Vendor must have used commercially reasonable efforts to secure such approvals. Retrocom LP must provide such information as may be reasonably required by any of the mortgagees to facilitate the approval. Notwithstanding that this condition must be satisfied on or before Closing, in the event that the approval for the assumption of the Assumed First Mortgages is not obtained and no consent has been specifically refused and all other conditions to Closing have been satisfied or waived, the Transaction will be completed and the Vendor must continue to use commercially reasonable efforts to secure such approval. In the event that the Vendor or its predecessors in interest are not released from their respective covenants under any of the Assumed First Mortgages from and after the Closing, Retrocom LP must execute and deliver an indemnity in favour of the Vendor pursuant to which Retrocom LP will indemnify and save harmless the Vendor and any relevant predecessor in interest from and against any amount claimed against them with respect to the period from and after Closing;
- (h) there must not have occurred an action or proceeding, pending or threatened, by any person to restrain or prohibit the purchase and sale of the Properties or prevent or restrict the use or enjoyment of any of the Properties by Retrocom LP; and
- (i) there must not have occurred any event that would constitute a Material Adverse Effect in respect of the Vendor.

## **Representations and Warranties**

The Purchase and Support Agreement contains representations and warranties made by the Vendor to the REIT and Retrocom LP and representations and warranties made by the REIT and Retrocom LP to the Vendor. The assertions embodied in those representations and warranties were made solely for purposes of the Purchase and Support Agreement and may be subject to important qualifications and limitations agreed to by the parties in connection with negotiating its terms. Moreover, some of those representations and warranties are subject to a contractual standard of materiality or Material Adverse Effect different from that generally applicable to public disclosure to Unitholders, or are used for the purpose of allocating risk between the parties to the Purchase and Support Agreement. For the foregoing reasons, reliance should not be placed on the representations and warranties contained in the Purchase and Support Agreement as statements of factual information at the time they were made or otherwise.

### ***Representations and Warranties of the REIT and Retrocom LP***

Each of the REIT and Retrocom LP has, subject to the disclosure contained in the REIT Information, jointly and severally made certain representations and warranties to the Vendor under the Purchase and Support Agreement with respect to, among other matters: (i) its formation, organization, capacity and standing; (ii) its authority relative to the Purchase and Support Agreement; (iii) licenses, consents and approvals; (iv) third party consents; (v) Board support of the Transaction; (vi) its capital structure (vii) its subsidiaries; (viii) the absence of cease trade orders and compliance with Canadian securities legislation; (ix) financial statements; (x) the absence of certain changes or events and undisclosed material liabilities; (xi) title to assets; (xii) litigation; (xiii) compliance with Applicable Law; (xiv) the absence of broker fees; (xv) restrictions on business activities; (xvi) the absence of registration rights; (xvii) the absence of rights of first refusal or rights of participation; (xviii) full disclosure; (xix) insurance; (xx) real property; (xxi) no default; (xxii) expropriation; (xxiii) licences; (xxiv) labour matters; (xxv) employee and related benefits; (xxvi) tax matters; (xxvii) environmental matters; (xxviii) the absence of related party transactions; (xxix) receipt of the Fairness Opinion of TD Securities; and (xxx) the issuance of Units upon conversion of the Class B LP Units pursuant to the terms of the Exchange Agreement.

### ***Representations and Warranties of the Vendor***

The Vendor has, subject to the disclosure contained in the Vendor's Information, made certain representations and warranties to the REIT and Retrocom LP under the Purchase and Support Agreement with respect to, among other matters: (i) its organization, standing and required authority; (ii) its authority relative to the Purchase and Support Agreement and absence of conflict; (iii) consents and approvals; (iv) the absence of collective bargaining agreements; (v) the absence of material default or breach under the Assumed First Mortgages; (vi) the absence of material default under any Leases that would have a Material Adverse Effect; (vii) title to the Properties free and clear of all liens, other than those reported to and acknowledged by the REIT; (viii) its Canadian resident status; (ix) insurance; (x) Competition Act matters; (xi) the accredited investor status of the Vendor and SmartCentres; (xii) the absence of litigation; (xiii) acknowledgement of the acquisition of Warrants, Class B LP Units and Special Voting Units by the Vendor or SmartCentres, as the case may be, pursuant to exemptions from prospectus and registration requirements; (xiv) compliance with environmental laws; (xv) the absence of listing agreements; and (xvi) licences.

### **Covenants of the Vendor**

The Purchase and Support Agreement also contains customary negative and positive covenants on the part of each of the parties.

### ***Covenants Relating to the Properties***

Among other things, under the Purchase and Support Agreement, the Vendor has agreed that, unless the Purchase and Support Agreement is terminated prior to the Closing, during the period prior to Closing it will:

- (a) continue to manage and operate the Properties in the same manner in which the Properties have been managed and operated in the past, as would a prudent owner;
- (b) not further encumber the Properties with the exception of any agreements to lease or leases or subleases or any modifications, revisions, surrenders or terminations of any of the Leases entered into in accordance with paragraph (e) below, or any other requirement of a Governmental Entity or pursuant to Applicable Law;
- (c) not market, advertise, offer for sale, agree to sell or sell the Properties;
- (d) maintain in respect of the Properties "all risk" insurance coverage, including fire, boiler, public liability, property damage and rental insurance;
- (e) subject to compliance with Applicable Laws, not enter into any agreements, obligations, commitments or contracts, including in respect of any capital expenditures that will not be paid in full by the Vendor prior to the first day of the month in which Closing occurs, relating to the Properties or any agreements to lease or leases or subleases or any modifications, revisions, surrenders or terminations of any of the Leases, Contracts or permitted encumbrances (collectively, the "**Specified Agreements**") without first obtaining the prior written approval of Retrocom LP, such approval not to be unreasonably withheld. For the purposes of the foregoing, Retrocom LP's approval will be deemed to have been given unless, within five Business Days immediately following the delivery to Retrocom LP of the Vendor's request for Retrocom LP's consent, the Vendor receives written notice from Retrocom LP that Retrocom LP does not give its approval to any such Specified Agreements. Notwithstanding the foregoing, the Vendor will have the right, without Retrocom LP's prior consent, to enter into (i) contracts which are terminable without penalty on 30 days' notice, (ii) agreements for capital expenditures not in excess of \$100,000 individually, or \$400,000 in the aggregate, (iii) agreements to lease or leases or subleases that (A) are entered into on arm's length market terms, (B) provide for net rent payments of no greater than \$50,000 per year and (C) have terms of no greater than five years, and (iv) any modifications, revisions, surrenders or terminations of any of the Leases in the ordinary course of business on arm's length terms, and each of the foregoing will be deemed approved by Retrocom LP. The Vendor must promptly deliver to Retrocom LP a copy of all agreements, obligations, commitments, leases, offers to lease and other Contracts affecting the Properties as are from time to time proposed to be executed and all correspondence relating thereto, including sufficient financial information relating to any proposed expenditure or proposed tenant to enable Retrocom LP to make an informed consent decision;
- (f) use reasonable commercial efforts to comply promptly with all material requirements which Applicable Laws may impose in respect of the Properties;

- (g) use reasonable efforts to consult on an ongoing basis with Retrocom LP and the REIT in order that the representatives of Retrocom LP and the REIT become more familiar with the Properties as well as with their respective financial affairs, including in relation to any commitments, arrangements or transactions proposed to be entered into that would be out of the ordinary course or outside the current operating plan and that could reasonably be expected to give rise to a material liability or commitment of any kind in respect of such Properties and use reasonable efforts so that such consultations will be effected on a basis that will allow sufficient time for Retrocom LP and the REIT to give reasonable consideration to the same;
- (h) subject to compliance with Applicable Law, not commence or undertake a substantial or unusual expansion of the facilities of any Property or an expansion that is out of the ordinary and regular course consistent with prior practice in light of the current industry and economic conditions;
- (i) except in the ordinary course or as required by Applicable Law, not enter into or modify in any material respect any Contract if it would have a Material Adverse Effect;
- (j) promptly advise Retrocom LP and the REIT orally and in writing if the Vendor or any of its senior officers acquires knowledge of:
  - (i) any event occurring after April 30, 2008 that would render any representation or warranty of the Vendor contained in the Purchase and Support Agreement, if made on or as of the date of such event, untrue, inaccurate or incomplete in any material respect;
  - (ii) the occurrence of any event or change that has, or would reasonably be expected to have, a Material Adverse Effect; and
  - (iii) any breach by the Vendor of any of its covenants contained in the Purchase and Support Agreement;
- (k) if any construction or builder's lien is registered against the title to the Properties after Closing which relates specifically to any work done or services performed by or on behalf of the Vendor, pay the costs of providing such work or performing such services and take all steps as are necessary and appropriate, at its sole cost and expense, to discharge or remove from title to the Properties such construction lien, unless and to the extent that the Vendor is *bona fide* disputing any such claim or construction lien, in which case the Vendor will act expeditiously and, if necessary, at the request of Retrocom LP, pay into court the amount of any such construction lien in dispute and other amounts necessary, or post security in respect thereof, in order to remove from title to the Properties the registration of any such construction lien.

***Covenants Relating to the Class B LP Units***

The Vendor has agreed under the Purchase and Support Agreement that, from and after the Closing Date until the later of (A) the first anniversary of the Closing Date and (B) in the event that Retrocom LP or the REIT initiates a Claim on or before the first anniversary of the Closing Date, the date of any Final Decision or Final Settlement in respect of such Claim, the Vendor will:

- (a) not, directly or indirectly, option, sell, transfer or otherwise convey any of the Class B LP Units (or any Units for which such Class B LP Units may be exchanged) acquired by the Vendor pursuant to the Transaction, or any right or interest therein (legal or equitable), to any person or group or agree to do any of the foregoing;
- (b) not, directly or indirectly, enter into or grant, create, assume or suffer to exist any mortgage, hypothec, lien, charge, hypothecation, restriction, security interest, adverse claim, pledge, encumbrance or demand or right of another person of any nature or kind whatsoever over any Class B LP Units (or any Units for which such Class B LP Units may be exchanged) acquired by the Vendor pursuant to the Transaction;
- (c) not take part in any winding up, dissolution, capital reorganization or similar proceeding or arrangement in respect of the Vendor;
- (d) not acquire (by merger, amalgamation, consolidation or acquisition of shares or assets or otherwise), directly or indirectly, any assets, securities, properties, interests, businesses, corporation, partnership or other business organization or division thereof, or make any investment either by the purchase of securities, contributions of capital, property transfer, or purchase of any other property or assets of any other Person;
- (e) not incur, create, assume or otherwise become liable of, any indebtedness for borrowed money or any other liability or obligation or issue any debt securities or assume, guarantee, endorse or otherwise as an

accommodation become responsible for the obligations of any other person, or make any loans, capital contributions, investments or advances; and

- (f) promptly notify Retrocom LP and the REIT of any actions, suits, claims or proceedings commenced or threatened in writing against or affecting the Vendor before any court or Governmental Entity which could reasonably be expected to have an adverse effect on the Class B LP Units (or any Units for which such Class B LP Units may be exchanged) acquired by the Vendor pursuant to the Transaction, or the interest of the Vendor in such Class B LP Units (or any Units for which such Class B LP Units may be exchanged), including in such notice a description of the action, suit, claim or proceeding.

Notwithstanding the foregoing, from and after the date that is 60 days following the Closing Date, the Vendor will be permitted, subject to the terms of the Second Amended and Restated Limited Partnership Agreement and/or the Third Amended and Restated Declaration of Trust, to engage in the activities otherwise forbidden by subparagraphs (a) and (b) above in respect of up to 25% of the Class B LP Units (or any Units for which such Class B LP Units may be exchanged) acquired by the Vendor pursuant to the Transaction.

## **Covenants of the REIT and Retrocom LP**

### ***Covenants Relating to the Conduct of Business***

Each of Retrocom LP and the REIT has agreed under the Purchase and Support Agreement that, unless the Purchase and Support Agreement is terminated prior to the Closing and except to the extent otherwise contemplated by, or as may be required to comply with the terms of, the Purchase and Support Agreement, prior to Closing, each of Retrocom LP and the REIT will, and will cause the REIT's subsidiaries to, conduct its affairs in the ordinary course consistent with past practice.

### ***Covenants Relating to the Transaction***

Each of Retrocom LP and the REIT has agreed under the Purchase and Support Agreement that, unless the Purchase and Support Agreement is terminated prior to the Closing:

- (a) the REIT will call the Meeting to consider the Transaction Resolution and, in connection therewith, the Board will recommend that Unitholders vote in favour of the Transaction Resolution and, except as permitted by the Purchase and Support Agreement, shall not withdraw such recommendation;
- (b) it will apply for and use commercially reasonable efforts to obtain all required regulatory and other approvals and clearances, and make all necessary or advisable filings and notifications in order to permit the Transaction to proceed together with all consents and other approvals of third parties as may be necessary or desirable for the consummation of such transactions;
- (c) it will seek the approval of the TSX for the listing of the Units issuable on (i) the conversion of Class B LP Units in accordance with the terms of the Exchange Agreement, and (ii) the exercise of the Warrants;
- (d) it will, in co-operation with the Vendor, use all reasonable efforts to defend all lawsuits or other legal, regulatory or other proceedings challenging or affecting the Purchase and Support Agreement or the consummation of the Transaction;
- (e) it will use all commercially reasonable efforts to ensure that the Toronto-Dominion Bank, or one or more other recognized financial institutions, has established in favour of the REIT one or more credit facilities (including conventional mortgage refinancings) aggregating not less than \$30 million, which credit facility or facilities will (i) be of not less than 24 months duration, (ii) be irrevocably available to the REIT to repay or prepay the RioCan Debenture, (iii) be secured by substantially the same assets currently encumbered by the RioCan Debenture (or such other assets as the parties to the Purchase and Support Agreement may agree upon, acting reasonably), and (iv) otherwise be on terms and conditions satisfactory to the parties, acting reasonably;
- (f) it will advise the Vendor in writing promptly after it acquires knowledge of:
  - (i) any event occurring after April 30, 2008 that would render any representation or warranty of Retrocom LP or the REIT contained in the Purchase and Support Agreement, if made on or as of the date of such event, untrue, inaccurate or incomplete in any material respect;
  - (ii) the occurrence of any event that has a Material Adverse Effect; and

- (iii) any breach by Retrocom LP or the REIT of any covenant contained in the Purchase and Support Agreement.

### **Non- Solicitation**

Subject to certain limited exceptions set forth in the Purchase and Support Agreement, the REIT and Retrocom LP have agreed, directly or indirectly, through any officer, Trustee, employee, representative, advisor or agent of the REIT or its subsidiaries: (a) not to solicit, initiate or knowingly encourage or otherwise facilitate any inquiries, proposals or offers regarding an Acquisition Proposal; (b) to immediately cease and cause to be terminated any existing negotiations with respect to any potential Acquisition Proposal and not to participate in any discussions or negotiations regarding any Acquisition Proposal or otherwise cooperate in any way with any Acquisition Proposal; (c) not to release any third party from or waive any confidentiality, non-solicitation or standstill agreement to which such third party is a party; (d) immediately to cease to provide any other party with access to information concerning the REIT and its subsidiaries and, to the extent it is entitled to do so under the applicable confidentiality agreements, request the return or destruction of all confidential information provided to any third party that has entered into a confidentiality agreement with the REIT relating to any potential Acquisition Proposal; and (e) not to withdraw or modify in a manner adverse to the Vendor the approval of the Board of the Transaction, accept or approve or recommend any Acquisition Proposal or cause the REIT to enter into any agreement related to any Acquisition Proposal.

### **Acquisition Proposals**

Pursuant to the terms of the Purchase and Support Agreement, the REIT and Retrocom LP must immediately notify the Vendor, at first orally and then promptly (and in any event within two Business Days) in writing, of (i) any proposal, inquiry, offer (or amendment thereto) or request relating to or constituting an Acquisition Proposal, (ii) any request for discussions or negotiations or any inquiry that could lead to an Acquisition Proposal, (iii) any request for non-public information relating to the REIT or any of its subsidiaries in connection with an Acquisition Proposal or for access to the properties, books or records of the REIT or any of its subsidiaries by any person of which any of the REIT's or its subsidiaries' directors, officers, trustees, employees, representatives or agents became aware, or (iv) any amendments to the foregoing. Such notice to the Vendor must be in writing and must indicate the identity of the person making such proposal, inquiry, offer, request or contact, all material terms and conditions thereof and such other details of the proposal, inquiry or contact known to the REIT or any of its subsidiaries and must include copies of any such proposal, inquiry, offer or request or any amendment to any of the foregoing. The REIT and its subsidiaries must also provide such other details of the proposal, inquiry, offer or request, or any amendment to the foregoing, as the Vendor may reasonably request. The REIT and its subsidiaries must keep the Vendor promptly and fully informed of the status including any change to the material terms of any such written proposal, inquiry, offer or request, or any amendment to the foregoing, and must respond promptly to all inquiries by the Vendor with respect thereto.

If the REIT (i) receives a request for its written authorization to submit an Acquisition Proposal from a person otherwise prevented by the terms of a confidentiality or standstill agreement from making such a proposal, or (ii) receives a written request for non-public information relating to the REIT and/or its subsidiaries in connection with an Acquisition Proposal or for access to the properties, books or records of the REIT and/or its subsidiaries from a person who has made an Acquisition Proposal and the Board determines in good faith, in either case, after consultation with its financial advisors and outside legal advisors, that the failure to take such action would be inconsistent with the Board's fiduciary duties and that such proposal, if consummated in accordance with its terms, would reasonably be expected to be a Superior Proposal, then:

- (a) subject to notifying the Vendor that the REIT has determined to take such action, the REIT may grant such written authorization as may be required in order to allow a person otherwise prevented by the terms of a confidentiality or standstill agreement from making an Acquisition Proposal to make such a proposal;
- (b) the REIT may, subject to first complying with the notice provisions of the Purchase and Support Agreement in respect of Acquisition Proposals and to entering into a confidentiality agreement containing a standstill provision substantially similar to that contained in the Confidentiality Agreement, provide such person with access to such information and engage in discussions or negotiations with such person at any time prior to the approval of the Transaction Resolution; and
- (c) subject to any restrictions in that regard contained in the Confidentiality Agreement, the Vendor must be provided with a list of or copies of the information and access to similar information as that provided to such person, except to the extent such information was already provided or made available to the Vendor.

## **Change in Recommendation**

If the REIT receives an Acquisition Proposal, the REIT may, prior to the time of the approval of the Transaction Resolution, withdraw or modify in a manner adverse to the Vendor its approval or recommendation of the Transaction and/or accept, approve, recommend or enter into any agreement (subject to first complying with the notice provisions of the Purchase and Support Agreement in respect of Acquisition Proposals) in respect of an Acquisition Proposal, in each case, if the Board determines in good faith (after consultation with its financial advisors and outside legal advisors) that such Acquisition Proposal constitutes a Superior Proposal and if:

- (a) the REIT has given written notice to the Vendor of its intention to do so;
- (b) the REIT has complied with, and is not in default of, its non-solicitation covenants and its obligations with respect to Acquisition Proposals; and
- (c) five Business Days have elapsed from the later of (i) the date the Vendor received the notice referred to in paragraph (a) above, and (ii) the date the Vendor was provided with a copy of such Acquisition Proposal (the “**Response Period**”).

## **Right to Match**

The Vendor may, but is not required to, during the Response Period, offer in writing to amend the terms of the Purchase and Support Agreement and, if it does so, then the Board must review any such offer in good faith, in consultation with its financial and outside legal advisors, and if the Board:

- (a) determines that the Acquisition Proposal would thereby cease to be a Superior Proposal, it must cause the REIT to enter into an amendment to the Purchase and Support Agreement reflecting the offer by the Vendor to amend the terms of the Purchase and Support Agreement; or
- (b) continues to believe that the Acquisition Proposal would nonetheless remain a Superior Proposal, provided that the REIT has paid to the Vendor the Termination Fee in accordance with the terms of the Purchase and Support Agreement, it may cause the REIT to reject the offer by the Vendor to amend the terms of the Purchase and Support Agreement and terminate the Purchase and Support Agreement.

## **Termination**

### ***Termination by the REIT and Retrocom LP***

Each of the REIT and Retrocom LP, when not in default in any material respect in the performance of its obligations under the Purchase and Support Agreement or in breach of its representations and warranties contained therein, may, without prejudice to any other rights, terminate its obligations under the Purchase and Support Agreement by written notice to the Vendor if:

- (a) the Transaction has not been consummated on or prior to August 31, 2008, provided that the REIT and Retrocom LP may not terminate the Purchase and Support Agreement in these circumstances if, at the proposed time of such termination, the terms, covenants and conditions of the Purchase and Support Agreement to be complied with or performed by the REIT and/or Retrocom LP on or prior to the Closing Date have not been complied with or performed as a result of the action or inaction of the REIT or Retrocom LP;
- (b) any of the conditions for the benefit of the REIT and Retrocom LP set forth the Purchase and Support Agreement has not been satisfied by the Closing Date;
- (c) the Vendor has breached any of its representations, warranties, covenants or other agreements contained in the Purchase and Support Agreement (for representations, warranties, covenants or other agreements qualified as to materiality, in any respect, and for all other representations, warranties, covenants or other agreements, in any material respect) and such breach is not curable or, if curable, is not cured within 15 days after written notice of the breach has been given to the Vendor by the REIT and/or Retrocom LP, and such breach or breaches, individually or in the aggregate, result in or would result in a Material Adverse Effect;
- (d) the Vendor has been notified in writing by the REIT of its intention to accept, approve, recommend or enter into an agreement in respect of a Superior Proposal in accordance with the terms of the Purchase and Support

Agreement, and the Vendor has not exercised its right to match; provided that no termination in these circumstances will be effective unless and until the REIT has paid the Termination Fee; or

- (e) the Transaction Resolution is not approved by Unitholders at the Meeting.

### ***Termination by The Vendor***

The Vendor, when not in default in any material respect in the performance of its obligations under the Purchase and Support Agreement or in breach of its representations and warranties contained therein, may, without prejudice to any other rights, terminate its obligations under the Purchase and Support Agreement by written notice to the REIT if:

- (a) the Transaction has not been consummated on or prior to August 31, 2008, provided that the Vendor may not terminate the Purchase and Support Agreement in these circumstances, if at the proposed time of such termination, the terms, covenants and conditions of the Purchase and Support Agreement to be complied with or performed by the Vendor on or prior to the Closing Date have not been complied with or performed as a result of the action or inaction of the Vendor;
- (b) a Termination Fee Event has occurred;
- (c) any of the conditions for the benefit of the Vendor set forth in the Purchase and Support Agreement has not have been satisfied by the Closing Date;
- (d) the REIT or Retrocom LP have breached any of their representations, warranties, covenants or other agreements contained in this Agreement (for representations, warranties, covenants or other agreements qualified as to materiality, in any respect, and for all other representations, warranties, covenants or other agreements, in any material respect) and such breach is not curable or, if curable, is not cured within 15 days after written notice of the breach has been given to the REIT and Retrocom LP by the Vendor, and such breach or breaches, individually or in the aggregate, result in or would result in a Material Adverse Effect; or
- (e) the Transaction Resolution is not approved by Unitholders at the Meeting.

### **Termination Fee**

If the Purchase and Support Agreement is terminated as a result of the occurrence any of the following events (each a “**Termination Fee Event**”) prior to the Closing Date, and provided in each case that the Vendor is not in material default in the performance of its obligations under the Purchase and Support Agreement, the REIT has agreed to pay the Termination Fee to SmartCentres or its designee:

- (a) the Board withdraws or modifies in a manner adverse to the Vendor its approval or recommendation of the Transaction and makes a public announcement to that effect other than by reason of the occurrence of an event that would have a Material Adverse Effect in respect of the Vendor;
- (b) the Board recommends any Superior Proposal and makes a public announcement to that effect;
- (c) the Board fails to reaffirm its recommendation of the Transaction (other than by reason of the occurrence of an event that would have a Material Adverse Effect in respect of the Vendor) by press release within a reasonable period of time after the public announcement or commencement of any Acquisition Proposal and within a reasonable period of time of having been requested to do so by the Vendor;
- (d) the Transaction Resolution is not approved by Unitholders at the Meeting in circumstances in which an Acquisition Proposal is publicly announced and not withdrawn prior to the Meeting and an Acquisition Proposal is entered into, agreed to or completed on or prior to the date that is six months from the date of termination of the Purchase and Support Agreement; or
- (e) the Transaction has not been consummated on or prior to August 31, 2008 as a result of any wilful breach of the Purchase and Support Agreement by the REIT or Retrocom LP, or failure by the REIT or Retrocom LP to perform any covenant or obligation required to be performed by the REIT or Retrocom LP under the Purchase and Support Agreement.

The Vendor has agreed that the Termination Fee, if paid to SmartCentres or its designee, is in lieu of any damages or any other payment or remedy to which it may be entitled.

## **Substitution of Properties**

Pursuant to the terms of the Purchase and Support Agreement, in the event that the Vendor concludes that it is necessary to substitute any commercial real property owned by the Vendor (the “**Substituted Property**”) in place of a Property (the “**Withdrawn Property**”) and to sell such Substituted Property, together with all associated chattels and leases, to Retrocom LP in place of the Withdrawn Property, Retrocom LP must enter into good faith negotiations in respect of an amendment to the Purchase and Support Agreement that would give effect to the purchase and sale of such Substituted Property in place of the Withdrawn Property. Nothing in the foregoing requires Retrocom LP to accept any such Substituted Property in place of a Withdrawn Property or creates any obligation on the part of Retrocom LP to enter into any such amendment to the Purchase and Support Agreement. Any substitution of a Substituted Property for a Withdrawn Property will be in the discretion of Retrocom LP, acting reasonably but taking into account Retrocom LP’s typical underwriting criteria. The Vendor will, in addition to its own fees, costs and expenses, be responsible for, and indemnify Retrocom LP and/or the REIT in respect of, 50% of all out-of-pocket due diligence expenses relating to inspection reports or environmental reports prepared by third parties in connection with pursuing or consummating any amendment to the Purchase and Support Agreement that would give effect to the purchase and sale of such Substituted Property in place of the Withdrawn Property.

## **THE PROPERTY MANAGEMENT AGREEMENT**

**The following description of certain material provisions of the Property Management Agreement is a summary only, is not comprehensive and is qualified in its entirety by reference to the full text of the Property Management Agreement, a copy of the form of which is attached as Schedule “A” to the Purchase and Support Agreement, which has been filed with the CSAs and can be accessed at [www.sedar.com](http://www.sedar.com) and may also be obtained free of charge, upon request to the Corporate Secretary of the REIT at 4025 Yonge Street, Suite 214, P.O. Box 204, Toronto, Ontario M2P 2E3 (Telephone: (416) 741-7999).**

If the Transaction Resolution is approved and all of the other conditions precedent to completion of the Transaction are satisfied or waived, on Closing Retrocom LP will enter into the Property Management Agreement with SmartCentres Management, pursuant to which SmartCentres Management will become property manager for the SmartCentres Managed Properties at such time and in such a manner as will allow for a smooth and orderly transition between property managers.

### **Engagement**

Pursuant to the Property Management Agreement, SmartCentres Management will act as agent to Retrocom LP in respect of each of the following matters relating to the SmartCentres Managed Properties: (i) property management; (ii) construction; and (iii) leasing services.

### **Duties of SmartCentres Management**

#### ***Property Management Services***

The Property Management Agreement provides that SmartCentres Management, as agent of Retrocom LP, will provide the following property management services in respect of the SmartCentres Managed Properties:

- (a) overseeing day-to-day operations of the SmartCentres Managed Properties, including maintaining liaison with Retrocom LP;
- (b) negotiating, co-ordinating and managing all third-party contracts pertaining to day-to-day operations of the SmartCentres Managed Properties, subject to the approval of Retrocom LP if the term of any such contract exceeds one year or the value of such contract exceeds \$50,000;
- (c) interacting with the municipality for each of the SmartCentres Managed Properties on behalf of Retrocom LP;
- (d) co-ordinating the advertising and promotion of the SmartCentres Managed Properties;
- (e) developing and implementing plans concerning the installation and removal of tenants for the SmartCentres Managed Properties, as well as supervising and maintaining tenant liaisons, including all notices to tenants;
- (f) co-ordinating compliance with all terms and conditions of contractual, statutory or municipal obligations of the SmartCentres Managed Properties;

- (g) receiving rents and additional rents on behalf and on the account of Retrocom LP for the SmartCentres Managed Properties;
- (h) providing accounting services as required for the satisfactory management of the SmartCentres Managed Properties, including monthly reports, quarterly and annual financial statements;
- (i) confirming appropriate insurance policy coverage for the SmartCentres Managed Properties and paying all premiums on behalf of Retrocom LP from the funds received on account of Retrocom LP from the SmartCentres Managed Properties;
- (j) arranging and supervising all repairs to the SmartCentres Managed Properties and maintaining the SmartCentres Managed Properties in a good state of repair and in compliance with all laws and building regulations;
- (k) arranging for the provision of climate control for the SmartCentres Managed Properties as well as paying all operating expenses associated with the SmartCentres Managed Properties from the rents collected on behalf of Retrocom LP;
- (l) obtaining all necessary licences for the operation of the SmartCentres Managed Properties and providing notice to Retrocom LP of any environmental, health and safety matters that have come to the attention of SmartCentres Management;
- (m) co-operating with Retrocom LP in connection with any valuations; and
- (n) preparing and filing any G.S.T., H.S.T. and Q.S.T. returns relating to the SmartCentres Managed Properties.

#### ***Construction Services***

The Property Management Agreement provides that SmartCentres Management, as agent of Retrocom LP, will provide the following construction services in respect of the SmartCentres Managed Properties:

- (a) constructing projects and acting as construction manager for the SmartCentres Managed Properties at the expense of Retrocom LP, and in accordance with detailed construction budgets for each of the SmartCentres Managed Properties that are prepared by SmartCentres Management and approved by Retrocom LP;
- (b) obtaining all construction permits for the SmartCentres Managed Properties;
- (c) preparing all construction schedules, co-ordinating with consultants and arranging for designs, plans, specifications and drawings for the construction projects;
- (d) arranging and providing security for the construction projects;
- (e) managing the tender process for construction projects, supervising the construction and contracting for all supplies, materials and services;
- (f) discharging all liens on the SmartCentres Managed Properties on behalf of Retrocom LP and instituting all legal proceedings on behalf of and with the approval of Retrocom LP in connection with any construction project; and
- (g) performing reporting and accounting services for all aspects of the construction process.

#### ***Leasing Services***

The Property Management Agreement provides that SmartCentres Management, as agent of Retrocom LP, will provide the following leasing services in respect of the SmartCentres Managed Properties:

- (a) supervising the preparation by legal counsel of the forms of lease, agreements to lease, purchase and sale agreements and all other ancillary documents for use in the leasing of the SmartCentres Managed Properties;
- (b) installing and removing tenants with minimal disruption to the operations of the SmartCentres Managed Properties;
- (c) producing annual operating budgets itemized on a monthly basis for each of the SmartCentres Managed Properties setting forth gross rental revenues and expenses, compared to the current year;
- (d) producing an annual capital expenditure budget on a monthly basis for each of the SmartCentres Managed Properties; and

- (e) developing a leasing plan (to include proposed leasing activity, vacancies, renewals, new leases, leasing fees, proposals on rental rates, tenant inducements, free rent arrangements, landlord's work, floor plans, operating costs, base rents and rent assumptions) for each SmartCentres Managed Property, with each such leasing plan to be approved by Retrocom LP.

### **Fees and Expenses**

Retrocom LP is required to pay SmartCentres Management the following amounts in connection with services provided under the Property Management Agreement:

- (a) a property management fee (the “**Property Management Fee**”) calculated and payable on a monthly basis in arrears on the first day of each month equal to 3.25% of the aggregate amounts payable under all of the leases (excluding taxes and security deposits) of the SmartCentres Managed Properties;
- (b) a construction fee (the “**Construction Fee**”) equal to:
  - (i) 10% on the first \$50,000 of construction costs, 7.5% on the next \$100,000 and 5% on the balance of construction costs, on construction projects with construction costs in an amount equal to or less than \$250,000; or
  - (ii) 3.5% of construction costs, on projects with construction costs in an amount greater than \$250,000; with the Construction Fee to be calculated by Retrocom LP and payable to SmartCentres Management on the 15<sup>th</sup> day of each month, based on the construction costs for the SmartCentres Managed Properties incurred in the prior month; and
- (c) leasing fees (the “**Leasing Fees**”) ranging between:
  - (i) \$0.25 to \$3.00 per square foot on new leases entered into with respect to retail properties included in the SmartCentres Managed Properties (with the precise fee depending upon the number of square feet leased, the term of the lease, the property leased and whether or not a broker is engaged in connection with the lease);
  - (ii) \$0.25 to \$1.50 per square foot for lease renewals entered into with respect to retail properties included in the SmartCentres Managed Properties (with the precise fee depending upon the number of square feet leased, the term of the lease, the property leased and whether or not a broker is engaged in connection with the lease);
  - (iii) 3% of net rent during the first year, and 1.25% of net rent during years two through ten, on new brokered leases entered into with respect to industrial properties included in the SmartCentres Managed Properties;
  - (iv) 6% of net rent during the first year, and 2.5% of net rent during years two through ten, on new unbrokered leases entered into with respect to industrial properties included in the SmartCentres Managed Properties;
  - (v) 3% of net rent during the first year, and 1.5% of net rent during years two through ten, on brokered lease renewals entered into with respect to industrial properties included in the SmartCentres Managed Properties; and
  - (vi) 4% of net rent during the first year, and 2.125% of net rent during years two through ten, on unbrokered lease renewals entered into with respect to industrial properties included in the SmartCentres Managed Properties.

In addition, the Property Management Agreement provides that, in connection with a sale of parcels of land within the SmartCentres Managed Properties (a “**Parcel Sale**”), Retrocom LP will be responsible for an aggregate fee of \$2.00 per square foot of the rentable area of the ground floor of the premises that will be constructed by a third party purchaser on the parcels of land that are the subject of the Parcel Sale. Such fee must be paid on the first Business Day immediately following the closing of the Parcel Sale.

Retrocom LP must also reimburse SmartCentres Management for all *bona fide* out-of-pocket costs and expenses paid by SmartCentres Management in connection with the performance of the services described in the Property Management Agreement.

## **Term**

The Property Management Agreement will have a term of five years, subject to an automatic renewal for a further five-year term unless either Retrocom LP or SmartCentres Management terminates the Property Management Agreement upon not less than 180 days notice to the other prior to the fifth anniversary of the Property Management Agreement.

## **Termination**

### ***Termination upon Sale***

If Retrocom LP sells to a *bona fide* arm's length third party any individual property included in the SmartCentres Managed Properties, the Property Management Agreement will terminate upon 60 days notice with respect to such individual property.

### ***Termination upon Damage***

Retrocom LP will have the right to terminate the Property Management Agreement with respect to any individual property included in the SmartCentres Managed Properties if Retrocom LP determines to cease operating the individual property in the event of damage or destruction to the individual property. Retrocom LP must provide 30 days notice to SmartCentres Management and Retrocom LP must provide for payment of all severance and termination costs relating to employees or consultants incurred by SmartCentres Management as a result of the termination of services for any damaged or destroyed individual properties.

### ***Termination upon an Event of Default in respect of SmartCentres Management***

Under the Property Management Agreement, if an Event of Default (as defined below) occurs in respect of SmartCentres Management, Retrocom LP will have the right to terminate the Property Management Agreement by giving notice to that effect to SmartCentres Management, which notice must provide the reason for the termination in reasonable detail. If SmartCentres Management does not cure the Event of Default within 10 Business Days or does not provide notice that it is disputing such termination within 10 Business Days, then such termination will be effective as of the date specified by Retrocom LP in its termination notice.

For the purposes of the Property Management Agreement, an “**Event of Default**” means any of the following:

- (a) a failure of SmartCentres Management to perform its duties and discharge its obligations under the Property Management Agreement in any material respect;
- (b) any material misrepresentation or misfeasance by SmartCentres Management in performing its services under the Property Management Agreement;
- (c) a breach by SmartCentres Management of any trust or fiduciary duty created by the Property Management Agreement for funds received by SmartCentres Management, or SmartCentres Management's refusal to account for such funds;
- (d) an assignment by SmartCentres Management of its interest under the Property Management Agreement in contravention of the Property Management Agreement; or
- (e) any “Event of Insolvency”, as such term is defined below under the heading “Termination upon an Event of Insolvency in respect of SmartCentres Management”.

### ***Termination upon an Event of Insolvency in respect of SmartCentres Management***

Under the Property Management Agreement, if an Event of Insolvency (as defined below) occurs in respect of SmartCentres Management, Retrocom LP will have the right to terminate the Property Management Agreement by giving notice to that effect to SmartCentres Management. Such termination will be effective as of the date on which SmartCentres Management receives such notice.

For the purposes of the Property Management Agreement, an “**Event of Insolvency**” will occur:

- (a) if SmartCentres Management becomes insolvent or bankrupt or subject to the provisions of the *Winding Up Act* (Canada) or the *Bankruptcy and Insolvency Act* (Canada), or goes into liquidation, either voluntarily or under an order of a court of competent jurisdiction, or makes a general assignment for the benefit of its creditors, or otherwise acknowledges its insolvency or accepts the appointment of a receiver of all or substantially all of its assets; or

- (b) if a liquidator, curator, receiver, receiver and manager, or trustee in bankruptcy is appointed with respect to SmartCentres Management or of any substantial part of its property or of its interest in any Managed Property or any part thereof, with or without the consent or acquiescence of SmartCentres Management and such appointment remains unvacated and unstayed for 30 days after such appointment or such longer period as is reasonable (but not in any event exceeding 120 days) as long as SmartCentres Management is acting, with all due diligence to cure such Event of Insolvency.

#### ***Termination by Retrocom LP***

Retrocom LP has the option to terminate the Property Management Agreement upon providing 180 days prior written notice to SmartCentres Management as long as Retrocom LP is not in default of any of its material obligations under the Property Management Agreement and (i) Retrocom LP owns real estate assets with a gross book value of at least \$750 million and (ii) the purpose of the termination is for Retrocom LP to conduct the property management services on its own behalf without outsourcing the provision of property management services to any third party.

SmartCentres Management will be entitled, upon any such termination, to be reimbursed by Retrocom LP for all unamortized start-up costs, costs of assets and wind-down costs associated with the services provided to Retrocom LP under the Property Management Agreement.

Upon termination of the Property Management Agreement, and provided that SmartCentres Management is in compliance with its obligations under the Property Management Agreement, Retrocom LP must pay to SmartCentres Management all expenses for which it is entitled to reimbursement thereunder, together with any other fees and amounts payable by Retrocom LP under the Property Management Agreement calculated to the date of termination, including any accrued and unpaid Property Management Fee, Construction Fee, Leasing Fee or fee to which SmartCentres Management is entitled in connection with a Parcel Sale.

#### ***Termination by SmartCentres Management***

SmartCentres Management has the right to terminate the Property Management Agreement upon six months prior written notice to Retrocom LP. In the event that SmartCentres Management exercises this right of termination, SmartCentres Management must, on termination, be paid all expenses and fees for which it is entitled to reimbursement under the Property Management Agreement.

### **RISK FACTORS**

*The following risk factors should be carefully considered by Unitholders in evaluating whether or not to approve the Transaction Resolution.*

#### **Risks Relating to the Transaction**

*If the Transaction is completed there will be a change in effective control of the REIT, with entities affiliated with Mitchell Goldhar controlling an approximate 38% voting interest in the REIT. As a result, Mitchell Goldhar and the SC/MRR Group will have the ability to significantly influence the strategic direction and policies of the REIT. The interests of Mitchell Goldhar and the SC/MRR Group may conflict with those of Unitholders.*

If the Transaction is completed, entities affiliated with Mitchell Goldhar will control an approximate 38% voting interest in the REIT as a result of the issuance of the Required Number of Class B LP Units, and a corresponding number of Special Voting Units, in partial satisfaction of the Purchase Price. In addition, on Closing of the Transaction, Mitchell Goldhar will have significant rights of representation on the Board and any committee of the Board. The SC/MRR Group will also be granted the Minimum Voting Entitlement, and, for so long as the SC/MRR Group otherwise qualifies for the Minimum Voting Entitlement, members of senior management of the REIT will be subject to the approval of Mitchell Goldhar. See “The Transaction — Change in Effective Control of the REIT”.

As a result, Mitchell Goldhar and the SC/MRR Group will have the ability to significantly influence the strategic direction and policies of the REIT. The interests of the SC/MRR Group may conflict with those of Unitholders. Among other things, Mitchell Goldhar and the SC/MRR Group will have the ability, through their approximate 38% voting interest in the REIT, (i) to prevent the sale of all or substantially all of the assets of the REIT or certain other strategic transactions involving the REIT if they deem it to be in their interests to do so, even if Unitholders would otherwise have approved such a transaction or (ii) to significantly influence the election of Trustees and the composition of the Board, including in respect of Trustees other than the Goldhar Appointees.

*There can be no certainty that all conditions precedent to the Transaction will be satisfied. Failure to complete the Transaction could negatively impact the market price of the Units or otherwise adversely affect the financial results of the REIT.*

The completion of the Transaction is subject to a number of conditions precedent, certain of which are beyond the control of the REIT. There can be no certainty, nor can the REIT provide any assurance, that these conditions will be satisfied or, if satisfied, when they will be satisfied. If the Transaction is not completed, the market price of the Units may decline to the extent that the market price reflects a market assumption that the Transaction will be completed. If the Transaction Resolution is not approved and the Board decides to seek another strategic acquisition or restructuring transaction, there can be no assurance that it will be able to find a party willing to enter into such a transaction on terms comparable or superior to the Transaction.

In addition, certain fees, costs and expenses incurred by the REIT in connection with the Transaction, including filing fees, legal and accounting fees and printing and mailing costs must be paid by the REIT whether or not the Transaction is completed. Such fees, costs and expenses are significant and could adversely affect the financial results of the REIT if the Transaction is not completed and they are incurred without achieving the corresponding benefits that the REIT expects to realize upon completion of the Transaction. See “The Transaction — Expenses of the Transaction”.

*The Purchase and Support Agreement may be terminated by the Vendor on certain conditions in the event of a change having a Material Adverse Effect.*

The Vendor has the right, in certain circumstances, to terminate the Purchase and Support Agreement in the event of a change having a Material Adverse Effect. Although a Material Adverse Effect excludes certain events that are beyond the control of the REIT, including changes in general economic conditions or changes affecting generally the mid-market retail property sector in Canada, there can be no assurance that a change having a Material Adverse Effect will not occur prior to the Closing Date, in which case the Vendor could elect to terminate the Purchase and Support Agreement and the Transaction would not proceed. See “The Purchase and Support Agreement — Conditions Precedent to the Transaction”.

*Uncertainty surrounding the Transaction, and the right of Mitchell Goldhar to approve senior management of the REIT upon completion of the Transaction, could adversely affect the REIT’s ability to attract or retain key management personnel.*

Because the Transaction is dependent upon the satisfaction of certain conditions, its completion is subject to uncertainty. In addition, even if the Transaction is completed, for so long as the SC/MRR Group otherwise qualifies for the Minimum Voting Entitlement, members of senior management of the REIT will be subject to the approval of Mitchell Goldhar. In response to this, current and prospective employees of the REIT may experience doubt about their future roles with the REIT until Mitchell Goldhar’s intentions with respect to the REIT’s senior management are disclosed and executed. This may adversely affect the REIT’s ability to attract or retain key management personnel.

*The Termination Fee provided for under the Purchase and Support Agreement may discourage other parties from attempting to acquire the REIT.*

Under the Purchase and Support Agreement, the REIT is required to pay a Termination Fee of \$2.7 million in the event that the Purchase and Support Agreement is terminated following the occurrence of a Termination Fee Event. This Termination Fee may discourage other parties from attempting to acquire the Units, even if those parties would otherwise be willing to offer greater value to the REIT and its Unitholders than that offered by the Transaction. See “The Purchase and Support Agreement — Termination Fee”.

*Even if the Purchase and Support Agreement is terminated without payment of the Termination Fee, the REIT may, in the future, be required to pay the Termination Fee in certain circumstances.*

Under the Purchase and Support Agreement, the REIT must pay the Termination Fee to SmartCentres or its designee if the Transaction Resolution is not approved by Unitholders at the Meeting in circumstances in which an Acquisition Proposal is publicly announced and not withdrawn prior to the Meeting and an Acquisition Proposal is entered into, agreed to or completed on or prior to the date that is six months from the date of termination of the Purchase and Support Agreement. Accordingly, if the Transaction Resolution is not approved and the Purchase and Support Agreement is terminated, the REIT may not be able to consummate another Acquisition Proposal that would otherwise provide greater value to the REIT and its Unitholders without paying the Termination Fee. See “The Purchase and Support Agreement — Termination Fee”.

The Properties are proposed to be acquired on a tax-deferred basis, with the result that Retrocom LP's tax costs in the Properties will be less than fair market value and any subsequent disposition of the Properties will require Retrocom LP to recognize a tax gain in excess of that which would be realized if it had acquired the properties at their fair market values for tax purposes.

If the Transaction is completed, Retrocom LP will acquire the Properties on a tax-deferred basis under the Tax Act, with the result that its tax costs in the Properties will be less than their fair market values. Accordingly, if one or more of Properties are ever disposed of, the gain recognized by Retrocom LP will be in excess of that which it would have realized if it had acquired the properties at their fair market values for tax purposes.

*Depending on the identity of the owners of the Vendor going forward, Retrocom LP may be considered to be a SIFT following the implementation of the Transaction. The application of the SIFT Rules to Retrocom LP may reduce the after-tax returns to Unitholders.*

Under the current provisions of the Tax Act it is possible that Retrocom LP may be considered a SIFT on the earlier of January 1, 2011 and the date it exceeds normal growth guidelines issued by the Department of Finance issued on December 15, 2006. Under proposed technical amendments released by the Department of Finance on December 20, 2007, Retrocom LP would not be a SIFT as long as its units are not publicly traded and it is wholly-owned by certain types of entities ("**Qualifying Entities**"). Based on these proposed amendments, prior to the implementation of the Transaction, Retrocom LP would be considered to be wholly-owned by a Qualifying Entity. Depending on the identity of the owners of the Vendor going forward, following the implementation of the Transaction Retrocom LP may not be considered to be wholly-owned by Qualifying Entities and therefore may be subject to the SIFT Rules (commencing the earlier of 2011 or the date on which Retrocom LP exceeds the normal growth guidelines referred to above). If Retrocom LP were a SIFT, it would effectively be taxed at corporate income tax rates under the Tax Act on its income and the after-tax amount of such income would be treated as taxable dividend that is an "eligible dividend." The application of the SIFT Rules to Retrocom LP may reduce the after-tax returns to Unitholders.

### **Risks Relating to the REIT**

Whether or not the Transaction is completed, the REIT will continue to face many of the risks that it currently faces with respect to its business and affairs. A complete description of the risk factors applicable to the REIT is contained under the heading "Risk Factors" in the REIT's Annual Information Form for the year ending December 31, 2007, and under the heading "Risks and Uncertainties" in Management's Discussion and Analysis for the year ending December 31, 2007, which sections of such documents are specifically incorporated by reference into this Circular. Both of these documents were filed on SEDAR on March 31, 2008 and are available at [www.sedar.com](http://www.sedar.com).

### **INFORMATION RELATING TO SMARTCENTRES AND THE VENDOR**

SmartCentres is Canada's largest and most-active retail developer and operator. Its business is focused on the management and development of large-scale, unenclosed shopping centres that are adapted to each market in which SmartCentres is located. SmartCentres is currently managing and developing a national portfolio of over 185 SmartCentres retail centres. These centres are strategically located in every major market across Canada, with the majority anchored by a Wal-Mart store.

SmartCentres is involved in all areas of land development, including acquisitions, zoning and land use planning. SmartCentres' leasing department has a broad range of experience in marketing projects, negotiating and executing leases and fostering relationships with retailers. SmartCentres' construction department manages construction projects both directly through its own people and indirectly through a network of general contractors. With over 80 operations and accounting professionals and support staff, SmartCentres' operations department oversees property maintenance, building repairs, common area maintenance, administration and reporting to SmartCentres' numerous partners.

The Vendor is comprised of six limited partnerships formed for purposes of the Transaction. Mitchell Goldhar, owner of SmartCentres and SmartCentres Management, is also the President of the general partner of each of the six limited partnerships that collectively constitute the Vendor.

## ANNUAL MEETING MATTERS

### Financial Statements

The audited consolidated financial statements of the REIT for the period ended December 31, 2007 and the report of the auditors on those statements will be placed before the Meeting. These audited consolidated financial statements, as well as management's discussion and analysis thereon, have been included in the materials that have been delivered to you and may also be accessed at [www.sedar.com](http://www.sedar.com).

### Election of Trustees

The Declaration of Trust provides that the Board must consist of a minimum of three and a maximum of twelve Trustees. A majority of the Trustees must be Independent Trustees as defined by the requirements of the Declaration of Trust. Currently there are six Trustees, five of whom are Independent Trustees. All six Trustees are standing for re-election. The Trustees have determined that five of the six Trustees standing for election continue to be Independent Trustees, as described below.

The number of Trustees may be changed by the Unitholders or by the Trustees, provided that the Trustees may not, between meetings of Unitholders, appoint an additional Trustee if, after such appointment, the total number of Trustees would be greater than one and one-third times the number of Trustees in office immediately following the last annual meeting of Unitholders. Subject to certain conditions, a vacancy occurring among the Trustees may be filled by resolution of the remaining Trustees so long as they constitute a quorum or by Unitholders at a meeting of the Unitholders.

The Trustees are to be elected by resolution passed by a majority of the votes cast at a meeting of the Unitholders. Trustees elected at an annual meeting will be elected for terms expiring at the next annual meeting and will be eligible for re-election. A Trustee elected to fill a vacancy will be elected for the remaining term of the Trustee he or she is succeeding. Trustees may be removed with or without cause by a majority of the votes cast at a meeting of Unitholders or with cause by two-thirds of the remaining Trustees.

If the Transaction Resolution is approved and all other conditions precedent to completion of the Transaction are satisfied or waived, on Closing Edward Dato, Richard Michaeloff, and Ernest Spraggs (collectively, the "**Goldhar Appointees**"), representatives of Mitchell Goldhar, will be appointed to the Board. See "The Transaction — Change in Effective Control of the REIT" and "The Transaction — Amendments to the Declaration of Trust".

Edward Dato will be considered to be an Independent Trustee under the Declaration of Trust. Richard Michaeloff and Ernest Spraggs will not be considered to be Independent Trustees under the Declaration of Trust.

### *Nominees for Appointment*

The present term of office of each Trustee will expire upon the election of Trustees at the Meeting. It is proposed that each of the persons whose name appears below be elected as a Trustee to serve until the close of the next annual meeting of Unitholders or until his or her successor is elected. Notwithstanding the foregoing, in the event that the Transaction is completed, on Closing the Goldhar Appointees will be appointed to the Board.

It is intended that on any ballot that may be called for the election of Trustees, the Units represented by proxies in favour of the Trustees named therein will be voted in favour of the election of such persons as Trustees, unless a Unitholder has specified in his or her proxy that his or her Units are to be withheld from voting in the election of Trustees.

The following table sets forth management's proposed nominees (the "**Proposed Nominees**") as Trustees of the REIT. All of the Proposed Nominees are currently Trustees of the REIT. **In the absence of any instructions to the contrary, the Units represented by proxies received by management will be voted FOR the election of the Proposed Nominees listed in the following table.** If, prior to the Meeting, any of the listed Proposed Nominees should become unavailable to serve, the persons designated in the form of proxy will have the right to use their discretion in voting for a properly qualified substitute.

For each Proposed Nominee, the following table sets forth: (i) the Proposed Nominee's jurisdiction of residence; (ii) all positions and offices held by such Proposed Nominee with the REIT; (iii) the year in which such Proposed Nominee first became a Trustee of the REIT; (iv) the Proposed Nominee's principal occupations or employment during the past five

years; and (iv) the number of Units (including Units issued pursuant to the Long-Term Incentive Plan) beneficially owned, or over which control or direction is exercised, by such Proposed Nominee.

<u>Name and Municipality of Residence</u>	<u>Position with the REIT</u>	<u>Trustee Since</u>	<u>Principal Occupation</u>	<u>Units Beneficially Owned<sup>(5)</sup></u>
STEPHEN BELLRINGER <sup>(1)(2)(3)(4)</sup> . . . . . Toronto, Ontario	Trustee and Chairman of the Board	2006	Corporate Director	1,087,000
PATRICK J.LAVELLE <sup>(1)(2)(3)(4)</sup> . . . . . Toronto, Ontario	Trustee	2004	Corporate Director	41,500
CHRISTOPHER J. CANN, CGA <sup>(1)(2)(4)</sup> . . . . . Pickering, Ontario	Trustee and Chairman of the Audit Committee	2004	Executive Consultant	56,000
HANI ZAYADI <sup>(1)(3)(4)</sup> . . . . . Toronto, Ontario	Trustee and Chairman of the Governance and Compensation Committee	2006	Retired retail Chief Executive Officer and Corporate Director	10,000
JAMES D. MEEKISON <sup>(1)(4)</sup> . . . . . Toronto, Ontario	Trustee and Chairman of the Investment Committee	2006	Corporate Director	121,288
DAVID FIUME, CA . . . . . Pickering, Ontario	Trustee and Chief Executive Officer	2006	Chief Executive Officer of the REIT	45,000

Notes:

- (1) Independent Trustee.
- (2) Member of the Audit Committee.
- (3) Member of the Governance and Compensation Committee.
- (4) Member of the Investment Committee.
- (5) Includes Units issued pursuant to the Long-Term Incentive Plan. See “Statement of Executive Compensation — Long-Term Incentive Plan”. The REIT announced on February 27, 2006 that, subject to any required regulatory approvals, it intends to cancel the LTIP and return to treasury all units that remain unpaid out of the 807,000 units in aggregate that have been issued thereunder.

### ***Trustees to be Appointed Upon Completion of the Transaction***

The following table sets forth, for each Goldhar Appointee to be appointed by Mitchell Goldhar as a Trustee on Closing in the event that the Transaction is completed: (i) the Goldhar Appointee’s jurisdiction of residence; (ii) the Goldhar Appointee’s principal occupations or employment during the past five years; and (iii) the number of Units beneficially owned, or over which control or direction is exercised, by such Goldhar Appointee.

<u>Name and Municipality of Residence</u>	<u>Principal Occupation</u>	<u>Units Beneficially Owned</u>
EDWARD J. DATO . . . . . Toronto, Ontario	Financial Advisor, Waterfront Toronto	Nil
RICHARD MICHAELOFF . . . . . Toronto, Ontario	Senior Vice President, Finance and Treasury, SmartCentres Inc.	Nil
ERNEST M. SPRAGGS . . . . . Ajax, Ontario	Senior Vice President, Accounting and Administration, SmartCentres Inc.	Nil

### ***Independence***

The principal factor underlying the determination of Trustee “independence” is whether or not a particular Trustee has a “material relationship” with the REIT, which is a relationship that could be reasonably expected to interfere with the exercise of the Trustee’s independent judgment. Notwithstanding the foregoing, NI 58-101 deems certain relationships to be “material relationships”. The following analysis has been based upon the definition of “material relationship” as set out in NI 58-101.

Five of the Proposed Nominees qualify as independent under NI 58-101: Stephen Bellringer, Patrick J. Lavelle, Christopher J. Cann, Hani Zayadi and James D. Meekison.

One of the Proposed Nominees does not qualify as independent under NI 58-101: David Fiume. Mr. Fiume is the Chief Executive Officer of the REIT and is therefore not an Independent Trustee.

Of the Goldhar Appointees, only Edward Dato qualifies as independent under NI 58-101. Richard Michaeloff and Ernest Sprags do not qualify as independent under NI 58-101.

### ***Additional Biographical Information***

Set forth below is additional biographical information regarding the Proposed Nominees and the Goldhar Appointees:

***Stephen Bellringer***, Trustee and Chairman. Mr. Bellringer served as Chairman of Anthem Properties from 2002 until 2004 and President and Chief Executive Officer of Canadian Hotel Income Properties from 1999 to 2002 and Director of Canadian Hotel Income Properties REIT until 2007. During his career, Mr. Bellringer held a number of other senior executive positions including President and Chief Executive Officer of Orca Bay Sports and Entertainment, B.C. Gas (Terasen), Transmountain Pipelines and Union Gas.

***Patrick J. Lavelle***, Trustee. Mr. Lavelle is a Corporate Director and Chairman and Chief Executive Officer of Patrick J. Lavelle & Associates, a strategic management consulting firm. From November 2000 until March 2002, Mr. Lavelle was also the Chairman and Chief Executive Officer of Unique Broadband Systems Inc. From January 1, 1998 until December 2001, he served, by appointment of the Prime Minister of Canada, as Chairman of Export Development Canada and prior thereto was Chairman of Business Development Corporation. His appointments in public service have included Deputy Minister of Industry, Trade and Technology for the Province of Ontario and Agent General for the Government of Ontario in Paris, France. A director of a number of public and private Canadian and United States companies, Mr. Lavelle has recently been appointed to chair a corporate governance program at York University, Toronto, Ontario. Mr. Lavelle was a member of the board of directors of Slater Steel Inc. when it announced, in June 2003, that it and certain of its U.S. and Canadian subsidiaries filed for creditor protection under the Companies' Creditors Arrangement Act (Canada) and the U.S. Bankruptcy Code.

***Christopher J. Cann***, Trustee. Mr. Cann has been the President and Chief Executive Officer of Cann Consult Inc. since 1994. Mr. Cann has over 40 years of experience in the banking industry with an emphasis on mortgage lending. During his career, Mr. Cann has held a number of senior management positions including President and Chief Executive Officer of Maple NHA Mortgage Trust from 2001 to 2002, President and Chief Executive Officer of Prenor Trust Company of Canada from 1987 to 1994, Executive Vice President of Central Trust Company from 1984 to 1987 and President and Chief Executive Officer of Eaton Bay Trust Company from 1981 to 1984. Mr. Cann was appointed in 1972 Vice Chairman of the Trust Companies Association and from 1972 to 1973 served as President of the Trust Companies Institute.

***Hani Zayadi***, Trustee. Mr. Zayadi recently retired from the position of Group Managing Director, Food, Liquor & Fuel Division of Coles Myer Ltd., Australia's largest retailer. Mr. Zayadi has held a number of senior executive positions with leading retail companies including, as Chief Executive Officer of Zellers, Woodwards and Kmart Australia and New Zealand and as senior Vice-President at Wal-Mart and Future Shop in Canada. Mr. Zayadi has also been on numerous corporate and non profit boards.

***James D. Meekison***, Trustee. Mr. Meekison currently is President and Chief Executive Officer of Trimin Capital Corp. During his career, Mr. Meekison has served as Chairman of Trimin Enterprises Inc., Chairman and President of Fusion Capital Limited, a private investment company, and as a Director and Vice-President Corporate Finance for Nesbitt Thomson Limited. From 1971 to 1986, Mr. Meekison was Chairman of Cablecasting Limited, a Canadian cable television company. Throughout his career, Mr. Meekison has held director positions in numerous public and private companies and charitable foundations. Mr. Meekison was an outside director of Fantom Technologies Inc., when it filed for creditor protection under the Companies' Creditors Arrangement Act (Canada) in 2001.

***David Fiume***, Trustee and Chief Executive Officer. Mr. Fiume joined the REIT as its Chief Financial Officer in 2005 and was promoted to Chief Executive Officer in 2006. Mr. Fiume brings to the REIT many years of senior financial experience, most recently as Chief Financial Officer of Telepanel Systems Inc. He was also Chief Financial Officer of Camreal Inc. and Vice President Finance at The Lehndorff Group, later Dundee Realty, which owned and managed real estate and private client investments. After graduating from the University of Toronto with a Bachelors of Commerce

degree, Mr. Fiume began his career at KPMG LLP where he practiced as a Chartered Accountant primarily in the real estate industry.

**Edward Dato.** Mr. Dato has been a financial advisor at Waterfront Toronto since July 2007, where he also served as the Executive Director, District Energy from August 2006 to June 2007 and the Chief Financial Officer from June 2003 to July 2006. Prior to joining Waterfront Toronto, Mr. Dato held various positions including as Vice President Corporate at Canadian Pacific Limited, Chief Financial Officer at Marathon Realty Company Limited and Brookfield Development Corporation and Vice President and Manager at Bank of Montreal. Mr. Dato was a trustee of Sunrise Retirement REIT until it was sold in 2007. Mr. Dato earned his M.B.A. from York University and is a Certified Management Accountant.

**Richard Michaeloff.** Mr. Michaeloff is the Senior Vice President, Finance and Treasury at SmartCentres, responsible for the Finance, Treasury and Corporate Legal Groups. Prior to joining SmartCentres in September 2007, Mr. Michaeloff served as Chief Operating Officer of the El-Ad Group Ltd. Prior to that, Mr. Michaeloff was associate director in the investment banking group at Scotia Capital Inc. from 2001 to 2002. From 1988 until 2001, he served in various capacities at The Cadillac Fairview Corporation Limited, including as Vice President, Corporate Finance, starting in 1996. Mr. Michaeloff earned his Bachelor of Laws at the University of Western Ontario and an M.B.A. from York University. He is a member of the Law Society of Upper Canada.

**Ernest Spraggs.** Mr. Spraggs has been the Senior Vice President, Accounting and Administration of SmartCentres since June 2005. Prior to joining SmartCentres, Mr. Spraggs acted as a consultant to the REIT from January to May 2005 and was the Chief Financial Officer at Meritus Realty Advisors Inc. from November 2003 to December 2004 and the Senior Vice President, Finance at Bentall Capital from June 2002 to November 2003. Mr. Spraggs has over 20 years of senior real estate experience including 13 years as Chief Financial Officer and Senior Vice President, Finance at Beutel Goodman Real Estate Group Inc. and as Senior Vice President, Finance at Bentall Capital. Mr. Spraggs is a Chartered Accountant (Deloitte Touche) and has an Honours Business Administration degree (Ivey) from the University of Western Ontario.

#### **Re-Appointment and Remuneration of Auditor**

KPMG, the current auditor of the REIT, was initially appointed as auditor of the REIT on March 3, 2004. Upon the recommendation of the Audit Committee of the Board, the Board recommends that KPMG be re-appointed as auditor of the REIT to hold office until the close of the next annual meeting of Unitholders and that the Board be authorized to fix KPMG's remuneration. Disclosure of the services provided and fees earned by KPMG can be found in the REIT's annual information form dated March 31, 2008, available on SEDAR at [www.sedar.com](http://www.sedar.com).

**In the absence of any instructions to the contrary, the Units represented by proxies received by management will be voted FOR the re-appointment of KPMG as auditor of the REIT to hold office until the close of the next annual meeting of Unitholders, at a remuneration to be fixed by the Board.**

### **INFORMATION RELATING TO THE REIT**

#### **General Information**

The REIT is an unincorporated open-end real estate investment trust governed by the laws of the Province of Ontario.

The REIT was created on December 15, 2003. On March 22, 2004, the REIT completed its Initial Offering of 11,069,000 Units at a price of \$10 per Unit for total gross proceeds of approximately \$110 million. Contemporaneously with closing the Initial Offering, the REIT closed the acquisition of a portfolio consisting of 26 retail, 1 office and 2 light industrial income producing mid-market commercial properties located in primary and secondary cities across Canada. On April 13, 2004, the REIT issued an additional 1,107,000 Units for gross proceeds of approximately \$11 million pursuant to the exercise of an over-allotment option granted as part of the Initial Offering.

Since the Initial Offering, the REIT has continuously reviewed its business operations and property portfolio, expanded its asset base and reinvested in and selectively repositioned and disposed existing assets in order to position itself for sustainable future growth:

- on October 27, 2004, the REIT acquired six properties and on December 16, 2004 it acquired a seventh property, all located in Kingston, Ontario. The portfolio, acquired by the REIT for an aggregate purchase price of approximately \$16.25 million, consisted of class B office and retail properties totalling 171,200 square feet of gross leasable area. The acquisition was financed with funds raised from the REIT's Initial Offering, the assumption of debt and a draw on the REIT's operating line;

- on July 26, 2005, the REIT completed the acquisition of a portfolio, consisting of seven shopping malls located in Saskatchewan (three), Ontario (three) and Quebec (one). The portfolio was acquired from RioCan REIT for a purchase price of approximately \$182 million, which was satisfied partly in cash, partly by the assumption by the REIT of existing mortgages on the portfolio properties and partly by the issuance to RioCan REIT of the RioCan Debenture. The cash portion of the consideration was funded by the REIT from the proceeds of a public offering that consisted of 6,245,000 Units at a price of \$8.25 per Unit for total gross proceeds of approximately \$51.5 million and \$20 million of 7.5% convertible unsecured subordinated debentures. CIBC World Markets Inc. was engaged by the REIT to provide financial advice in connection with this acquisition, including assisting the REIT's management in developing related financial models and accretion analyses;
- on November 14, 2005, the REIT announced that its Board had approved the adoption of the Rights Plan in order to ensure, to the extent possible, that all Unitholders of the REIT are treated fairly in connection with any take-over bid of the REIT. The Rights Plan is not intended to prevent take-over bids. Those bids that meet certain requirements intended to protect the interests of Unitholders are considered under the Rights Plan to be "Permitted Bids". A Permitted Bid is a take-over bid made by way of a circular for all outstanding Units, which remains open for at least 60 days and satisfies certain other conditions. Unitholders confirmed the Rights Plan at the REIT's annual meeting held on June 27, 2006. Unitholders will be asked to reconfirm the Rights Plan at every third annual meeting of the REIT thereafter;
- on November 30, 2005, the REIT announced that its Board had established the Special Committee, comprised entirely of Independent Trustees, to review and make recommendations in respect of strategies available to the REIT in its efforts to enhance the value of the REIT's Units. The Special Committee subsequently retained TD Securities as its financial advisor to assist it in its review of potential strategies. On February 27, 2006, the REIT announced that the Special Committee and the Board would commence a process to solicit proposals leading to a sale of, or merger with, the REIT, or to a strategic partnership with a party interested in contributing assets or otherwise making an equity investment in the REIT. The solicitation of proposals would be in addition to, and carried out in conjunction with, the assessment of other alternatives, including the disposition of "non-core" assets in order to provide funding to renovate or redevelop existing "core" properties;
- on February 27, 2006, the REIT also announced that it had terminated, effective February 28, 2006, its asset management and property management agreements with RIMI, in exchange for a one-time cash payment to RIMI in the amount of \$750,000 and other limited considerations. The REIT had previously announced on February 7, 2006 its intention to internalize its asset management functions. In respect of property management and related functions, the REIT entered into revised property management agreements directly with the property management firms that had until that time been providing such services to the REIT on a subcontract basis. Also on February 27, 2006, the REIT announced that, subject to any required regulatory approvals, it intends to cancel its Long-Term Incentive Plan and return to treasury all units that remain unpaid out of the 807,000 units in aggregate that have been issued thereunder;
- on November 14, 2006, the REIT announced that, with the assistance of its financial advisor, it had concluded its strategic review process and, as a result, would not be pursuing any sale, merger or other third-party transaction. It was determined by the Special Committee and the Board that the proposals received from interested parties were not on terms acceptable to the REIT or failed to set out a strategy that seemed likely to enhance Unitholder value;
- through 2006, as part of the strategic review process, the REIT completed a reconstitution of its Board and management team, which included the appointment of Mr. Stephen Bellringer as a Trustee and Chairman of the Board and the promotion of Mr. David Fiume to the position of Chief Executive Officer;
- as a result of the conclusion in November 2006 of its strategic review process and the Board's commitment to improving the REIT's performance and enhancing the long-term value of its Units, the REIT has been aggressively moving forward with implementing various strategies, including: (i) repositioning its property portfolio through the disposition of "non-core" assets; (ii) renovating, reformatting and otherwise improving the structure and appearance of targeted properties in its portfolio; (iii) further enhancing leasing and releasing efforts to increase rental rates, improve occupancy rates, lengthen lease maturities and otherwise strengthen the overall tenant base; (iv) developing additional rentable space where opportunities permit; and (v) acquiring over the longer term additional retail assets as part of the external growth strategy;

- on March 2, 2007, the REIT announced the closing of the sale of three of six properties (Cariboo Mall, Terrace Mall, Maple Park Mall, Smithers Mall, Evergreen Mall and Millwoods Mainstreet Mall) to Sunstone Realty Group. The sale of the three remaining properties closed on March 30, 2007. The combined gross proceeds from the sale of these six properties amounted to approximately \$46.7 million and were used by the REIT to discharge mortgages, to invest in the balance of the REIT's property portfolio and to reduce short-term debt;
- on March 2, 2007, the REIT also announced the closing of its purchase of the remaining 50% interests in Lansdowne Plaza, Saint John, NB and Staples Woodlawn Plaza, Dartmouth, Nova Scotia from the co-owner of these properties. The REIT now owns a 100% interest in these properties. The REIT also sold its remaining 50% interest in Les Promenades St-Francois, Laval, QC to the same co-owner, and no longer holds any interest in that property. The REIT paid net consideration of \$10,918,000 (\$4,269,000 in cash and \$6,649,000 through the assumption of debt) for these transactions. The two acquisitions were immediately accretive to the REIT;
- on March 21, 2007, the REIT announced that the TSX had approved the REIT's application to make a normal course issuer bid for the repurchase of its Units. Pursuant to the bid, the REIT was entitled to repurchase up to 1,797,914 of its Units (representing approximately 10% of the REIT's public float of outstanding Units as at March 20, 2007) over the twelve-month period commencing on March 23, 2007. The Trustees of the REIT had concluded that the ongoing purchase by the REIT of certain of its Units, in accordance with the bid, was a sound investment opportunity for the REIT based on the then current market price for the Units and, accordingly, was in the best interests of the REIT and its Unitholders. The REIT also announced that in conjunction with its repurchase of Units, the REIT was suspending until further notice its DRIP, effective immediately. For Unitholders that had been participating in the DRIP, all subsequent distributions made by the REIT have been paid in cash and are no longer used to purchase additional Units of the REIT. The normal course issuer bid expired on March 22, 2008. No repurchases were made by the REIT. Although management continues to believe in the value enhancement of this strategy, the uncertainty in the debt markets has put this strategy on hold;
- on May 29, 2007, the REIT announced the closing of the sale of Woodbine Place. The gross proceeds from this transaction amounted to approximately \$12.3 million, which was used to discharge the mortgage in the amount of approximately \$2.5 million, and the remainder of the net proceeds, approximately \$9.8 million (less costs), was used to reduce short-term debt and to invest in the balance of the portfolio;
- on July 6, 2007, the REIT announced the closing of the sale of Driftwood Mall in Courtenay, British Columbia. The gross proceeds from this transaction amounted to approximately \$20 million, which was used to discharge the mortgage and to reduce short term debt;
- on October 9, 2007, the REIT announced the closing of the sale of six properties in Kingston, Ontario. The gross proceeds from such sale of approximately \$12.5 million were used to discharge mortgages on the properties that were sold and to reduce short-term debt. The REIT also announced on October 9, 2007 the completion of refinancings on Carry Plaza in Medicine Hat, Alberta and City Centre Mall in Thompson, Manitoba with a combined balance of \$17.5 million that was used to pay off the previous mortgages, to fully retire the operating line and to increase working capital; and
- on April 30, 2008, the REIT announced that it had entered into the Purchase and Support Agreement with the Vendor providing for the Transaction. See "The Transaction".

The REIT focuses on owning and acquiring mid-market retail properties in cities across Canada with the objective of producing a geographically diversified portfolio of properties with stable and growing cash flows. The REIT invests primarily in income-producing mid-market retail properties with strong tenant covenants, stable yields, low vacancy levels and strong growth potential. The REIT continually reviews its portfolio and acquires additional properties with these characteristics to provide additional cash flow and further enhance the long-term portfolio value.

The REIT believes that the income-producing mid-market retail property segment represents a more favourable risk/return investment environment with fewer national competitors than other segments of the commercial property market. By concentrating on the mid-market segment, the REIT believes it is afforded greater opportunities to make accretive acquisitions that contribute to achieving attractive yields for Unitholders. The REIT believes that the geographic diversity of its properties, as well as their diverse tenant mix, decreases the likelihood that a single regional economic downturn will have a material adverse impact on the REIT's distributions.

The objectives of the REIT are to: (i) generate stable and growing cash distributions on a tax efficient basis; (ii) enhance the value of the REIT's assets and maximize long-term Unit value through the active management of its assets; and (iii) expand the asset base of the REIT and increase its distributable income through an accretive acquisition program.

The REIT employs both internal and external growth strategies to achieve its objectives.

### **The Units**

The REIT is authorized to issue an unlimited number of a single class of Units, each of which represents a Unitholder's proportionate undivided beneficial interest in the REIT. No Unit has any preference or priority over another. No Unitholder has or is deemed to have any right of ownership of any of the assets of the REIT.

Each Unit confers the right to one vote at any meeting of Unitholders and to participate pro rata in any distributions by the REIT, whether of net income, net realized capital gains or other amounts and, in the event of termination of the REIT, in the net assets of the REIT remaining after satisfaction of all liabilities. Units will be fully paid and non-assessable when issued (unless issued in accordance with the terms of the Long-Term Incentive Plan) and are transferable. Issued and outstanding Units may be subdivided or consolidated from time to time by the trustees without Unitholder approval. Fractional Units, if any, will be issued on any consolidation but fractional Units will not entitle the holders thereof to vote. The Units are not "deposits" within the meaning of the *Canada Deposit Insurance Corporation Act* (Canada) and are not insured under the provisions of such Act or any other legislation. Furthermore, the REIT is not a trust company and accordingly, is not registered under any trust and loan company legislation as it does not carry on or intend to carry on the business of a trust company.

The Units are not shares in the REIT. As holders of Units in the REIT, the Unitholders do not have statutory rights like a shareholder of a corporation incorporated under either the *Business Corporations Act* (Ontario) or the *Canada Business Corporations Act* including, for example, the right to bring "oppression" or "derivative" actions.

### **Meetings of Unitholders**

The Declaration of Trust provides that meetings of Unitholders must be called and held in various circumstances, including for the election or removal of Trustees, the appointment or removal of the auditors of the REIT, the approval of certain amendments to the Declaration of Trust, the sale or transfer of the assets of the REIT as an entirety or substantially as an entirety (other than as part of an internal reorganization of the assets of the REIT as approved by the trustees) and the termination of the REIT. Meetings of Unitholders will be called and held annually for the election of the Trustees and the appointment of the auditors of the REIT. All meetings of Unitholders must be held in Canada.

A meeting of Unitholders may be convened at any time and for any purpose by the Trustees and must be convened, except in certain circumstances, if requisitioned in writing by the holders of not less than 10% of the Units then outstanding. A requisition must state in reasonable detail the business proposed to be transacted at the meeting. Unitholders have the right to obtain a list of Unitholders to the same extent and upon the same conditions as those which apply to shareholders of a corporation governed by the *Business Corporations Act* (Ontario).

Unitholders may attend and vote at all meetings of the Unitholders either in person or by proxy and a proxyholder need not be a Unitholder. Two persons present in person or represented by proxy will constitute a quorum for the transaction of business at all such meetings. At any meeting at which a quorum is not present within one-half hour after the time fixed for the holding of such meeting, the meeting, if convened upon the request of the Unitholders, will be dissolved, but in any other case, the meeting will stand adjourned to a day not less than seven days later and to a place and time as chosen by the chair of the meeting, and if at such adjourned meeting a quorum is not present, the Unitholders present either in person or by proxy will be deemed to constitute a quorum.

## **INFORMATION CONCERNING TRUSTEES AND OFFICERS**

### **Compensation of Members of the Board**

Except as described below, in 2007, each of the Trustees received an annual retainer in the amount of \$25,000 from the REIT, as well as a fee of \$1,500 for each day on which such Trustee attended a Board or committee meeting (or \$1,000 for each day on which the Trustee attended a board and/or committee meeting by phone or a meeting that was for briefing purposes only). Notwithstanding the foregoing, those Trustees employed by the REIT, any person who provides property

management services to Retrocom LP pursuant to a written contract, and their respective related parties did not receive any remuneration from the REIT for serving as a Trustee in 2007 (including as the Chairman of a committee).

In 2007, the Chairman of the Board, who is an Independent Trustee, received an additional annual fee of \$25,000, the Chairman of the Audit Committee received an additional fee of \$6,000 and the Chairman of each other committee received an additional annual fee of \$4,000.

Each Independent Trustee is expected to own at least 3,000 Units within three years of such Trustee's appointment to the Board. In that regard, each Trustee is expected to use at least 50% of his retainer remuneration to purchase Units until such Trustee holds at least 3,000 Units. In all cases, Trustees are also entitled to be reimbursed for reasonable travel and other expenses properly incurred by them in attending meetings of the Board or any committee thereof. The aggregate fees earned by Trustees in 2007 were \$280,000 and the aggregate expenses reimbursed to such Trustees in 2007 were \$24,166.

### Trustee Compensation in 2007

Name	Trustee Annual Retainer (\$)	Board & AGM Meeting Attendance Compensation (\$)	Chair Annual Retainer (\$)	Total compensation in cash (\$)
Stephen Bellringer <sup>(1)</sup>	25,000	27,500	25,000	77,500
Patrick J. Lavelle	25,000	25,500	—	50,500
Christopher J. Cann <sup>(2)</sup>	25,000	26,500	6,000	57,500
Hani Zayadi <sup>(3)</sup>	25,000	16,000	4,000	45,000
James D. Meekison <sup>(4)</sup>	25,000	22,000	4,000	51,000
David Fiume <sup>(5)</sup>	—	—	—	—

(1) Mr. Bellringer is the Chairman of the Board.

(2) Mr. Cann is the Chairman of the Audit Committee.

(3) Mr. Zayadi is the Chairman of the Governance and Compensation Committee.

(4) Mr. Meekison is the Chairman of the Investment Committee.

(5) Mr. Fiume is the Chief Executive Officer.

### Statement of Executive Compensation

The table below sets forth all annual and long-term compensation for services rendered in all capacities to the REIT for the three most recently completed financial years in respect of the Chief Executive Officer, the Chief Financial Officer and the only other person who was serving in the capacity of an executive officer of the REIT at the end of the fiscal year ended December 31, 2007 and whose total salary and bonus exceeds \$150,000 (collectively, the "Named Executive Officers" or "NEOs"):

#### Summary Compensation Table

Name and Principal Position	Fiscal Year	Annual Compensation			Long-Term Compensation
		Salary	Bonus	Other Annual Compensation	LTIP Payouts <sup>(4)</sup>
David Fiume, CA <sup>(1)</sup> Chief Executive Officer	2007	\$260,000	\$78,000	N/A	\$27,000
	2006	\$198,174	\$215,000	N/A	\$36,059
	2005	N/A	N/A	N/A	\$3,074
Sandy Ardern, CA <sup>(2)</sup> Chief Financial Officer	2007	\$45,000	\$36,000	N/A	N/A
	2006	N/A	N/A	N/A	N/A
	2005	N/A	N/A	N/A	N/A
Daniel Kolber <sup>(3)</sup> Vice-President, Asset Management	2007	\$140,000	\$28,000	N/A	\$4,800
	2006	N/A	N/A	N/A	N/A
	2005	N/A	N/A	N/A	N/A

(1) Mr. Fiume was appointed Chief Financial Officer of the REIT effective September 20, 2005 and, effective March 8, 2006, was appointed as a trustee of the REIT, filling a vacancy on the Board. Mr. Fiume was promoted to the position of Chief Executive Officer of the REIT effective November 14, 2006.

(2) Ms. Ardern was appointed as the Chief Financial Officer of the REIT effective October 1, 2007.

- (3) Mr. Kolber was promoted to Vice President, Asset Management effective June 16, 2007.
- (4) LTIP participants are required to apply any distributions received by them in respect of the LTIP Units to make payments of interest and any remaining instalments on the purchase price for the LTIP Units. See “Long-Term Incentive Plan” below.

In February 2006, Mr. Fiume entered into an employment agreement with the REIT. Pursuant to the terms of his employment agreement, Mr. Fiume was appointed as the REIT’s Vice-President Finance and Chief Financial Officer and was entitled as Chief Financial Officer to an annualized salary of \$215,000 and other benefits competitive with industry standards. Mr. Fiume was also entitled to a minimum bonus upon successful completion of any transaction recommended by the special committee pursuant to its mandate. On November 14, 2006, Mr. Fiume was promoted to the position of Chief Executive Officer and his salary was increased to \$250,000. Mr. Fiume’s employment agreement continues until terminated in accordance with its terms and entitles him to receive eighteen month’s salary upon termination for any reason. His employment agreement contains non-competition, non-solicitation and confidentiality covenants consistent with industry standards.

In June 2007, Mr. Daniel Kolber entered into an employment agreement with the REIT in respect of his appointment as the REIT’s Vice-President, Asset Management. Pursuant to the terms of his employment agreement, Mr. Kolber is entitled to an annualized salary of \$140,000 and other benefits competitive with industry standards. Mr. Kolber’s employment agreement continues until terminated in accordance with its terms and entitles him to receive 12 month’s salary upon termination for any reason. His employment agreement contains non-competition, non-solicitation and confidentiality covenants consistent with industry standards.

In October 2007, Ms. Sandy Ardern entered into an employment agreement with the REIT in respect of her appointment as the REIT’s Vice-President Finance and Chief Financial Officer. Pursuant to the terms of her employment agreement, Ms. Ardern is entitled to an annualized salary of \$180,000 and other benefits competitive with industry standards. Ms. Ardern’s employment agreement continues until terminated in accordance with its terms and entitles her to receive 12 month’s salary upon termination for any reason. Her employment agreement contains non-competition, non-solicitation and confidentiality covenants consistent with industry standards.

In January 2007, Ms. Belinda James entered into an employment agreement with the REIT in respect of her appointment as the REIT’s Vice-President and General Counsel. Pursuant to the terms of her employment agreement, Ms. James is entitled to an annualized salary of \$200,000 and other benefits competitive with industry standards. Ms. James is currently required by the REIT, in accordance with the terms of her employment agreement, to work on a half-time basis, with responsibilities equivalent to 50% of the responsibilities that would be applicable to a full-time position and a commensurate 50% reduction in the annualized salary she would otherwise be entitled to under her employment agreement if she were working on a full-time basis. Accordingly, Ms. James does not currently qualify as a Named Executive Officer of the REIT since her total salary and bonus does not exceed \$150,000. Ms. James’s employment agreement continues until terminated in accordance with its terms and entitles her to receive 12 month’s salary upon termination for any reason. Her employment agreement contains non-competition, non-solicitation and confidentiality covenants consistent with industry standards.

The Board has approved a transaction bonus pool, to a maximum of \$750,000, which to date, has not been allocated to the employees of the REIT.

The REIT does not have a key-person employee life insurance policy with respect to any of its executive officers.

### ***Long-Term Incentive Plan***

On March 22, 2004, the REIT established its Long-Term Incentive Plan for the benefit of the Trustees, officers and employees of the REIT and the directors, officers and key employees of the former asset manager of the REIT (collectively, the “**LTIP Participants**”). The Long-Term Incentive Plan was intended to facilitate long-term ownership of Units by LTIP Participants, to provide LTIP Participants with additional incentives by increasing their interest, as owners, in the REIT and to align the interests of LTIP Participants with those of Unitholders generally.

As part of the Board’s strategy to improve the ongoing operations of the REIT and reduce administration costs, the REIT announced on February 27, 2006 that, subject to any required regulatory approvals, it intends to cancel the LTIP and return to treasury all Units that remain unpaid out of the 807,000 Units in aggregate that have been issued thereunder. Cancellation of the LTIP is subject to the approval of LTIP Participants.

Under the Long-Term Incentive Plan, LTIP Participants subscribe for Units of the REIT (“**LTIP Units**”) for a purchase price equal to the “market price” for Units, which purchase price is payable in cash instalments. The “market price” for Units is equal to the volume-weighted average trading price of Units on the TSX for the 20 trading days

immediately preceding their issue. The LTIP prohibits any reduction or other change in the price paid for LTIP Units, except to reflect a consolidation or split of the Units or capital reorganization which affects the number of outstanding Units.

LTIP Participants are required to pay interest to the REIT on the outstanding balance of the remaining instalments at a 12-year fixed annual rate not less than the relevant prescribed rate under the Tax Act applicable at the time the LTIP Units are issued. LTIP Participants may prepay any remaining instalments at their discretion and/or remove any fully paid LTIP Units.

Under the Long-Term Incentive Plan, LTIP Participants are the beneficial owners of the LTIP Units from the date of issue, subject to such participants' obligation to make the remaining instalment payments. Holders of LTIP Units generally have the same rights and privileges, and are subject to the same limitations, as registered holders of Units. In particular, LTIP Participants are entitled to vote their LTIP Units and are entitled to receive any distributions paid on such LTIP Units; provided that they are required to apply any distributions received by them in respect of the LTIP Units to make payments of interest and any remaining instalments on the purchase price for the LTIP Units. If an LTIP Participant fails to pay the interest and/or remaining instalments on the purchase price for the LTIP Units, the REIT may elect to reacquire or sell such LTIP Units in satisfaction of the outstanding amounts. The REIT has no recourse to an LTIP Participant's assets, other than its security interest in the LTIP Units.

An aggregate of 825,000 Units are reserved for issuance pursuant to the Long-Term Incentive Plan, representing approximately 4.3% of the issued and outstanding Units as of June 2, 2008. The Long-Term Incentive Plan is administered by the Governance and Compensation Committee of the Board, which has the power to amend, modify, suspend or terminate the Long-Term Incentive Plan, subject to any necessary regulatory and Unitholder approvals.

807,000 Units, being 97.8% of the Units reserved for issuance pursuant to the Long-Term Incentive Plan, and representing approximately 4.2% of the issued and outstanding Units as of June 2, 2008, have been issued, in the aggregate, to Trustees, senior officers of the REIT and employees of the former asset manager of the REIT.

No Units were awarded under the LTIP in the REIT's most recently completed financial year.

## **Report on Executive Compensation**

In accordance with the terms of the Declaration of Trust, the Governance and Compensation Committee is comprised of three Trustees and is responsible for (i) administering any Unit option or purchase plan of the REIT, including the Long-Term Incentive Plan described above and any other compensation incentive programs; (ii) assessing the performance of the officers and senior management of the REIT; (iii) reviewing and approving the compensation paid by the REIT to any officers and any consultants of the REIT; and (iv) reviewing and making recommendations to the Board concerning the level and nature of the compensation payable to Trustees and officers of the REIT and any change in the number of Trustees of the REIT. See "Statement of Corporate Governance Practices — Committees of the Board — Governance and Compensation Committee".

### ***General***

As set forth above under the heading "Information Concerning Trustees and Officers — Statement of Executive Compensation", each of the Named Executive Officers has entered into an employment agreement with the REIT. In determining the appropriate terms of such employment agreements, the Governance and Compensation Committee of the REIT considered the following objectives:

- (a) attracting and retaining executives critical to the success of the REIT with a view to the enhancement of Unitholder value;
- (b) providing fair and competitive compensation;
- (c) aligning the interests of management and Unitholders; and
- (d) reviewing performance, both on an individual basis and with respect to the business of the REIT in general.

To achieve these objectives, the compensation paid to each of the Named Executive Officers consists of the following primary components:

- (a) base salary; and
- (b) annual bonus incentives.

The base salary and bonus of each Named Executive Officer is determined based upon the Governance and Compensation Committee's assessment such executive's performance, competitive compensation levels in entities similar to the REIT, and the role such executive is expected to play in the performance of the REIT. The Governance and Compensation Committee is currently in the planning stages of providing a long-term incentive to executive officers and certain employees, which will replace the Long-Term Incentive Plan. The objective of such long-term incentive plan will be to encourage executive officers and certain employees to acquire an equity ownership interest in the REIT over a period of time so as to provide a financial incentive for such persons to fulfil their responsibilities with a view to the long-term interests of the REIT and its Unitholders.

#### ***Chief Executive Officer's Compensation***

The Governance and Compensation Committee assesses the overall performance of the Chief Executive Officer of the REIT based upon:

- (a) his success in executing the strategic plan for the REIT;
- (b) his success in meeting the specific financial goals and objectives of the REIT as established at the commencement of each fiscal year and approved by the Corporate Governance and Compensation Committee and the Board; and
- (c) his success in achieving efficient operational management, providing effective leadership, and maintaining sound investor relations standards for the REIT.

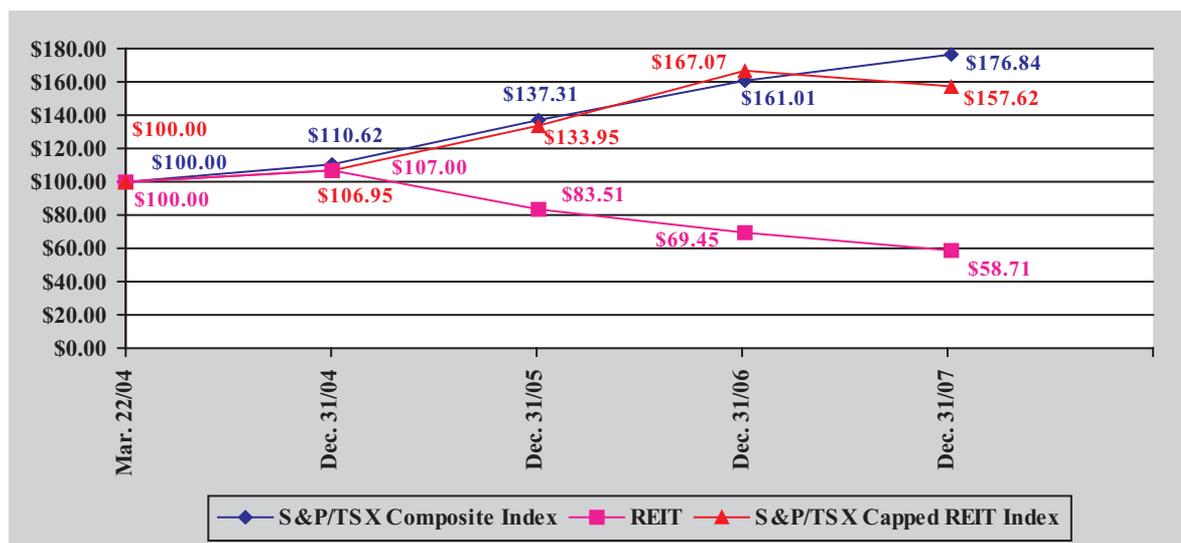
#### ***Chief Executive Officer's Bonus***

Annual cash bonus incentive awards paid to the Chief Executive Officer are based upon meeting certain growth, operational and cash flow targets which are set out at the commencement of each fiscal year. Such targets are set by the Governance and Compensation Committee for the Chief Executive Officer pursuant to the REIT's business model, strategy and objectives. The Governance and Compensation Committee believes that tying bonus incentive awards to meeting such targets establishes a direct link between the Chief Executive Officer's compensation and the REIT's financial and operational performance. In 2007, the maximum cash bonus award available to the Chief Executive Officer was established at 50% of his base salary (being up to \$130,000). The basis for the Chief Executive Officer receiving the 2007 bonus was the achievement of specific financial targets which are consistent with the REIT's annual plan and the achievement of personal targets relating to the effective management and operation of the REIT.

## Performance Graph

The Units began trading on the TSX on March 22, 2004. The following graph compares the cumulative annual total return on the Units to the cumulative annual total return of the S&P/TSX Composite Index and the S&P/TSX Capped REIT Index, assuming in each case an initial investment of \$100 at the opening of trading on March 22, 2004 and the reinvestment of all subsequent dividends and distributions.

**Cumulative Total Return on \$100 Investment**  
**March 22, 2004 — December 31, 2007**



	<u>22-Mar-2004</u>	<u>Cumulative total return 31-Dec-2004</u>	<u>Cumulative total return 31-Dec-2005</u>	<u>Cumulative total return 31-Dec-2006</u>	<u>Cumulative total return 31-Dec-2007</u>
REIT . . . . .	\$100	\$107.00	\$ 83.51	\$ 69.45	\$ 58.71
S&P/TSX Composite Index . . . . .	\$100	\$110.62	\$137.31	\$161.01	\$176.84
S&P/TSX Capped REIT Index . . . . .	\$100	\$106.95	\$133.95	\$167.07	\$157.62

## Equity Compensation Plan Information

The following table sets forth information concerning Units authorized for issuance under the Long-Term Incentive Plan as at the end of the REIT's most recently completed financial year<sup>(1)</sup>:

<u>Plan Category</u>	<u>Number of Units issued</u>	<u>Weighted average issue price of Units</u>	<u>Number of Units remaining available for future issuance (excluding Units reflected in first column)</u>
Equity compensation plans approved by security holders . . . .	807,000	\$8.35	18,000

(1) The REIT announced on February 27, 2006 that, subject to any required regulatory approvals, it intends to cancel the LTIP and return to treasury all Units that remain unpaid out of the 807,000 Units in aggregate that have been issued thereunder. Cancellation of the LTIP is subject to the approval of LTIP Participants.

## Indebtedness of Trustees and Executive Officers

The only indebtedness owing to the REIT by Trustees or executive officers of the REIT or associates of any of the foregoing, as at June 2, 2008, was indebtedness under the LTIP as set forth below:

### Aggregate Indebtedness

<u>Purpose</u>	<u>To the REIT or its Subsidiaries</u>	<u>To Another Entity</u>
Unit Purchases . . . . .	\$809,080 <sup>(1)</sup>	Nil
Other . . . . .	Nil	Nil

(1) An additional \$4,741,899 is owed to the REIT in respect of indebtedness under the LTIP by LTIP Participants that are no longer employed by the REIT or that are officers and key employees of its former asset manager.

### Indebtedness of Trustees and Executive Officers under the LTIP

<u>Name and Principal Position</u>	<u>Involvement of the REIT</u>	<u>Largest Aggregate Amount Outstanding During Year Ending Dec. 31, 2007</u>	<u>Aggregate Amount Outstanding as at June 2, 2008</u>	<u>Financially Assisted Securities Purchases During Year Ending Dec. 31, 2007 (LTIP Units)</u>	<u>Security for indebtedness (LTIP units)</u>	<u>Amount Forgiven During Year Ending Dec. 31, 2007</u>
Stephen Bellringer, <sup>(1)</sup> Trustee . . . . .	N/A	—	—	—	—	—
Christopher J. Cann, <sup>(2)</sup> Trustee . . . . .	Lender	\$259,775	\$246,615	—	36,000	—
Patrick Lavelle, <sup>(3)</sup> Trustee . . . . .	Lender	\$280,855	\$266,181	—	39,500	—
James D. Meekison, <sup>(4)</sup> Trustee . . . . .	N/A	—	—	—	—	—
Hani Zayadi, <sup>(5)</sup> Trustee . . . . .	N/A	—	—	—	—	—
David Fiume, <sup>(6)</sup> Trustee and Officer . . . . .	Lender	\$271,033	\$251,562	—	45,000	—
Sandy Arden, <sup>(7)</sup> Officer . . . . .	N/A	—	—	—	—	—
Belinda James, <sup>(8)</sup> Officer . . . . .	N/A	—	—	—	—	—
Daniel Kolber, <sup>(9)</sup> Officer . . . . .	Lender	\$48,184	\$44,722	—	8,000	—
<b>Total . . . . .</b>		<b>\$859,847</b>	<b>\$809,080<sup>(10)</sup></b>	—	<b>128,500</b>	—

(1) Mr. Bellringer is a Proposed Nominee for election as a Trustee.

(2) Mr. Cann is a Proposed Nominee for election as a Trustee.

(3) Mr. Lavelle is a Proposed Nominee for election as a Trustee.

(4) Mr. Meekison is a Proposed Nominee for election as a Trustee.

(5) Mr. Zayadi is a Proposed Nominee for election as a Trustee.

(6) Mr. Fiume is a Proposed Nominee for election as a Trustee.

(7) Ms. Arden was appointed as the Chief Financial Officer of the REIT effective October 1, 2007.

(8) Ms. James was appointed Vice President and General Counsel of the REIT effective January 16, 2007.

(9) Mr. Kolber was promoted to Vice President, Asset Management of the REIT effective June 16, 2007.

(10) An additional \$4,741,899 was owed to the REIT as at June 2, 2008 in respect of indebtedness under the LTIP by LTIP Participants that are no longer employed by the REIT or that are officers and key employees of its former asset manager.

For further information, see the REIT's financial statements available on SEDAR at [www.sedar.com](http://www.sedar.com).

## Trustees and Officers Liability Insurance

The REIT carries trustees' and officers' liability insurance in the aggregate amount of \$5 million per occurrence. Under this insurance coverage, the REIT is reimbursed for payments made under indemnity provisions on behalf of its Trustees and officers, subject to a deductible for each loss. Individual Trustees and officers are also reimbursed for losses arising during the performance of their duties for which they are not indemnified by the REIT, subject to a deductible, which is paid by the REIT. Excluded from insurance coverage are illegal acts, acts which result in personal profit and certain other acts. The Declaration of Trust provides for the indemnification in certain circumstances of Trustees and officers from and against liability and costs in respect of any action or suit against them in respect of the execution of their duties of office. For the year ended December 31, 2007, the REIT paid out \$70,000 in insurance premiums for Trustees and officers for liability coverage with a limit of up to \$5 million in total.

## STATEMENT OF CORPORATE GOVERNANCE PRACTICES

The Board and members of the REIT's management consider good governance to be central to the effective and efficient operation of the REIT. The CSAs have issued NP 58-201 and have also adopted NI 58-101 which requires Canadian reporting issuers to annually disclose their corporate governance practices. Regulatory changes to governance practices that have occurred, or will occur, are continually monitored by the Board and the Board has taken, or will take, appropriate action as regulatory changes occur.

The governance, investment guidelines and operating policies of the REIT are set out in the Declaration of Trust and overseen by the Board, a majority of which are Independent Trustees.

The REIT's governance structure is designed to protect the primary interests of Unitholders. There is an Audit Committee and a Governance and Compensation Committee, both of which are exclusively comprised of Independent Trustees. The Special Committee that was established in November 30, 2005 in connection with a review of strategic alternatives to enhance Unitholder value is also exclusively comprised of Independent Trustees. Mandates have been developed for each of these committees and approved by the Board.

### The Board

#### *Composition*

As at the date of this Circular, the Board was composed of six Trustees: Stephen Bellringer, Patrick J. Lavelle, Christopher J. Cann, David Fiume, James D. Meekison and Hani Zayadi. Except for David Fiume, Chief Executive Officer of the REIT, all the current Trustees are considered to be independent. If the Transaction Resolution is approved and all of the other conditions precedent to completion of the Transaction are satisfied or waived, on Closing the Goldhar Appointees will be appointed as Trustees of the REIT. See "The Transaction — Change in Effective Control of the REIT" and "The Transaction — Amendments to the Declaration of Trust".

Of the Goldhar Appointees, only Edward Dato is considered to be independent. Richard Michaeloff and Ernest Spraggs are not considered to be independent.

#### *Other Boards on which the Trustees Serve*

The following table sets forth the names of each other reporting issuer, and the exchange upon which the securities of that reporting issuer are listed, for which each of the current Trustees of the REIT and the Goldhar Appointees serve as a trustee or director as at the date hereof.

<u>Name</u>	<u>Name of Reporting Issuer</u>	<u>Exchange</u>
Stephen Bellringer . . . . .	Canadian Hotel Income Properties REIT	TSX
Christopher J. Cann . . . . .	N/A	N/A
James D. Meekison . . . . .	GMP Capital Trust	TSX
Hani Zayadi . . . . .	N/A	N/A
Patrick J. Lavelle . . . . .	SR Telecom Inc.	TSX
	UE Waterheater Income Fund	TSX
	Macquarie Power & Infrastructure Income Fund	TSX
	Arriscraft International Income Fund	TSX
	Algoma Steel Inc.	TSX
	Tahera Diamond REIT	TSX
David Fiume . . . . .	N/A	N/A
Edward Dato . . . . .	N/A	N/A
Richard Michaeloff . . . . .	N/A	N/A
Ernest Spraggs . . . . .	N/A	N/A

#### *Relationship of the Board and Management*

The Board has in place appropriate structures to ensure that it can function independently of management, including as a result of the appointment of a Chairman of the Board who is an Independent Trustee. The responsibilities of the Chairman of the Board include overseeing the Board's discharge of its responsibilities. The current Chairman of the Board is Mr. Stephen Bellringer. The Chairman's role and responsibilities include managing the affairs of the Board and, together with the Governance and Compensation Committee, monitoring the effectiveness of the Board.

Management’s responsibilities are determined by the Board. All major policy decisions relating to the business of the REIT are made by the Board or a committee thereof.

The Board does not hold regularly scheduled Board meetings at which non-Independent Trustees and members of management are not present. However, each Board committee meets independently of management, and the Independent Trustees meet independent of the non-Independent Trustees, as needed and on an ongoing basis.

During some meetings, the Board and its committees may conduct “in camera” sessions, at which no management Trustees or members of management are present. Further, on matters in which a particular Trustee may not be independent, the Board and its committees may conduct “in camera” sessions at which the particular non-Independent Trustee is not present. In matters which require the independence of the Board, only the Board members that are independent with respect to the particular matter take part in the decision-making responsibilities and evaluations.

***Attendance at Board and Committee Meetings Held in 2007***

The following tables set forth the number of meetings of the Board and each of its committees held during 2007 and the number of Board and committee meetings attended by each of the Trustees:

Board . . . . .	18
Investment Committee . . . . .	2
Audit Committee . . . . .	6
Governance and Compensation Committee . . . . .	1
Special Committee . . . . .	1
<b>Total number of meetings held . . . . .</b>	<b>28</b>

<u>Name</u>	<u>Board Meetings Attended</u>	<u>% of Board Meetings Attended</u>	<u>Committee Meetings Attended</u>	<u>% of Committee Meetings Attended</u>
Stephen Bellringer . . . . .	18	100	10	100
Patrick J. Lavelle . . . . .	17	94	10	100
Christopher J. Cann . . . . .	18	100	9	100
Hani Zayadi . . . . .	18	100	4	100
James D. Meekison . . . . .	16	89	3	100
David Fiume . . . . .	18	100	9	100

***Mandate of the Board of Trustees***

The role of the Board is one of stewardship and oversight of the REIT and its business. The Board is responsible for overseeing management and approving major decisions. In fulfilling its mandate, the Board is responsible, among other things, for:

- (i) participating in the development of and approving a strategic plan for the REIT;
- (ii) identifying and managing risk exposure;
- (iii) ensuring the integrity and adequacy of the REIT’s internal controls and management information systems;
- (iv) defining the roles and responsibilities of management;
- (v) reviewing and approving the business and investment objectives to be met by management of the REIT;
- (vi) assessing the performance of management;
- (vii) reviewing the REIT’s debt management strategy;
- (viii) succession planning;
- (ix) ensuring effective and adequate communication with the Unitholders and other stakeholders as well as the public at large; and
- (x) establishing committees of the Board, where required, and defining their mandate.

In addition, the Board has adopted a mandate which expands upon its objectives and responsibilities. The full text of the “Mandate of the Board” is attached as Appendix “F” to this Circular.

### ***Position Descriptions***

The Board has not developed written position descriptions for the chair of each Board committee or the Chief Executive Officer. However, the Board has adopted written mandates for the Board and for each Board committee. The Board as a whole and the members of each Board committee are responsible for taking such steps as may be necessary to ensure that the Board and the committees of the Board fulfill their respective mandates. The day-to-day role and responsibilities of the Chief Executive Officer of the REIT are determined by the Board.

### ***Orientation and Continuing Education***

The Board and management of the REIT have established an informal orientation and education program for new Trustees and new committee members regarding the role of the Board, its committees and the Trustees and the nature and operation of the REIT's business. Existing Trustees have historically provided orientation and education to new members on an ad hoc and informal basis in light of the particular needs of each new Trustee. Further, every Trustee has access to management and relevant business information and management makes regular presentations to the Board on the main areas of the REIT's business. At least annually, the Board reviews the skills, knowledge and effectiveness of the Board, its committees and individual Trustees.

### ***Ethical Business Conduct***

It is the policy of the REIT that all activities be conducted with the highest standards of fairness, honesty and integrity and in compliance with all legal and regulatory requirements.

The code of conduct of the REIT has been endorsed by the Board and applies to the Trustees and officers of the REIT. All Trustees, officers and employees of the REIT must sign an annual statement of compliance with the code. The code emphasizes protection of REIT assets and resources, protection of confidential information, insider trading rules, conflicts of interest, disclosure, compliance with laws, rules and regulations and fair dealing. The Board has responsibility for ensuring that the code of conduct and compliance related policies and management systems are effectively implemented. Monitoring compliance with the code is done through reports, meetings and audits. The code of conduct is available on the REIT's website at [www.rmmreit.com](http://www.rmmreit.com).

The Declaration of Trust contains "conflict of interest" provisions that serve to protect Unitholders without creating undue limitations on the REIT. Given that the Trustees are engaged in a wide range of real estate and other business activities, the Declaration of Trust contains provisions, similar to those contained in the *Canada Business Corporations Act*, that require each Trustee to disclose to the REIT any interest in a material contract or transaction or proposed material contract or transaction with the REIT (including a contract or transaction involving the making or disposition of any investment in real property or a joint venture arrangement) or the fact that such person is a director or officer of or otherwise has a material interest in any person who is a party to a material contract or transaction or proposed material contract or transaction with the REIT. Such disclosure is required to be made at the first meeting at which a proposed contract or transaction is considered. In the event that a material contract or transaction or proposed material contract or transaction is one that in the ordinary course would not require approval by the Trustees, a Trustee is required to disclose in writing to the REIT or request to have entered into the minutes of the meeting the nature and extent of his or her interest forthwith after the Trustee becomes aware of the contract or transaction or proposed contract or transaction. In any case, a Trustee who has made disclosure to the foregoing effect is not entitled to vote on any resolution to approve the contract or transaction unless the contract or transaction is one relating primarily to his or her remuneration as a Trustee, officer, employee or agent of the REIT or one for indemnity under the provisions of the Declaration of Trust or liability insurance.

The Board has advised each of the executive officers of the REIT and its subsidiaries that the terms of their employment require such executive officers to follow the same disclosure procedures and practices outlined above when such executive officers are in a situation that is, or may be considered to be, a "conflict of interest".

### ***Nomination of Trustees***

The Board has appointed the Governance and Compensation Committee which is responsible for, among other items, overseeing the recruitment and selection of candidates as Trustees of the REIT. See "Statement of Corporate Governance Practices — Committees of the Board — Governance and Compensation Committee".

The Board reviews its size and composition from time to time to determine their impact on its effectiveness. The Board believes that a board of six Trustees, or up to nine Trustees (and, in any event, no fewer than eight Trustees) in the event that the Transaction is completed, is an appropriate size for a public entity with a capitalization and business of the

REIT's size. The Board believes that its current Trustees, and the Trustees proposed to constitute the Board upon completion of the Transaction, represent an appropriate mix of individuals with real estate, accounting, financial and general business experience.

### ***Compensation***

The Board, through its Governance and Compensation Committee, periodically reviews the adequacy and form of compensation of Trustees and executive officers. The Committee considers the time, commitment, risks and responsibilities of Trustees and executive officers and takes into account the types of compensation and the amounts paid to directors and/or Trustees and executive officers of comparable publicly traded Canadian companies. "Statement of Corporate Governance Practices — Committees of the Board — Governance and Compensation Committee".

### **Committees of the Board**

Pursuant to the requirements of the Declaration of Trust, the Board has established three committees: the Audit Committee, the Governance and Compensation Committee and the Investment Committee. In connection with a review of strategic alternatives to enhance Unitholder value, including the Transaction, the Board also established the Special Committee on November 30, 2005. All members of the Audit, the Governance and Compensation, the Investment and the Special Committees are Independent Trustees.

### ***Audit Committee***

In accordance with the Declaration of Trust, the REIT has established an Audit Committee, consisting of three Trustees, to review the financial statements of the REIT. One member of the Audit Committee is an accountant and all Trustees on the Audit Committee, as set out below, are financially literate as required by Multilateral Instrument 52-110 — *Audit Committees*. All members of the Audit Committee are Independent Trustees. The written mandate of the Audit Committee is available on the REIT's website at [www.rmmreit.com](http://www.rmmreit.com).

The Audit Committee's responsibilities include:

- (i) reviewing the REIT's procedures for internal control with the REIT's auditors and Chief Financial Officer;
- (ii) reviewing and approving the engagement of the REIT's auditors;
- (iii) reviewing annual and quarterly financial statements as well as all other material continuous disclosure documents, such as the REIT's annual information form and management's discussion and analysis;
- (iv) assessing the REIT's financial and accounting personnel;
- (v) assessing the REIT's accounting policies;
- (vi) reviewing the REIT's risk management procedures; and
- (vii) reviewing any significant transactions outside the REIT's ordinary course of business and any pending litigation involving the REIT.

The Audit Committee has direct communication channels with the Chief Financial Officer of the REIT as well as with the external auditors of the REIT to discuss and review specific issues as appropriate.

In 2007, the Audit Committee was comprised of:

- Christopher J. Cann, Chair of the Committee
- Patrick J. Lavelle
- Stephen Bellringer

If the Transaction Resolution is approved and all of the other conditions precedent to completion of the Transaction are satisfied or waived, on Closing Edward Dato will be appointed to the Audit Committee.

### ***Definition of "Financial Literacy"***

Multilateral Instrument 52-110 — *Audit Committees* of the CSAs defines financial literacy as follows: An individual is financially literate if he or she has the ability to read and understand a set of financial statements that present a breadth and level of complexity of accounting issues that are generally comparable to the breadth and complexity of the issues that can reasonably be expected to be raised by the issuer's financial statements.

Each member of the REIT's Audit Committee is financially literate. See "Election of Trustees — Nominees for Appointment" for a brief summary of the education and experience of each member of the Audit Committee, including

any education or experience that has provided the member with an understanding of the accounting principles used by the REIT to prepare its financial statements.

### ***Governance and Compensation Committee***

In accordance with the Declaration of Trust, the Governance and Compensation Committee is comprised of three Trustees and is charged with reviewing, overseeing and evaluating the governance, human resources and compensation policies of the REIT. In addition, the Governance and Compensation Committee is responsible for:

- (i) assessing the effectiveness of the Board, each of its committees and individual Trustees;
- (ii) considering questions of management succession;
- (iii) overseeing the recruitment and selection of candidates as Trustees of the REIT;
- (iv) organizing an orientation and education program for new Trustees;
- (v) considering and approving proposals by the Trustees of the REIT to engage outside advisers on behalf of the Board as a whole or on behalf of the Independent Trustees of the REIT;
- (vi) administering any unit option or purchase plan of the REIT, including the Long-Term Incentive Plan described above and any other compensation incentive programs;
- (vii) assessing the performance of the officers and senior management of the REIT;
- (viii) reviewing and approving the compensation paid by the REIT, if any, to any officers and any consultants of the REIT; and
- (ix) reviewing and making recommendations to the Board concerning the level and nature of the compensation payable to Trustees and officers of the REIT and any change in the number of Trustees of the REIT.

All members of the Governance and Compensation Committee are Independent Trustees.

In 2007, the Governance and Compensation Committee was comprised of:

- Hani Zayadi, Chair of the Committee
- Patrick J. Lavelle
- Stephen Bellringer

If the Transaction Resolution is approved and all of the other conditions precedent to completion of the Transaction are satisfied or waived, on Closing Edward Dato will be appointed to the Governance and Compensation Committee.

### ***Investment Committee***

The Declaration of Trust provides that the Trustees may from time to time appoint from among their number an Investment Committee consisting of at least three Trustees. Two-thirds of the members of the Investment Committee must have had at least five years' substantial experience in the real estate industry. In addition, a majority of the members of the Investment Committee must be Independent Trustees.

The Investment Committee has the power to approve or reject proposed acquisitions and dispositions of investments by the REIT and its subsidiaries, to authorize proposed transactions on behalf of the REIT and its subsidiaries and to approve all borrowings and the assumption or granting of any mortgage, subject to the overall authority of the Trustees. Investment Committee approval is not required for the renewal, extension or modification of any existing mortgage or other loans to the REIT or its subsidiaries.

In 2007, the Investment Committee was comprised of:

- James D. Meekison, Chair of the Committee
- Stephen Bellringer
- Patrick Lavelle
- Christopher J. Cann
- Hani Zayadi

If the Transaction Resolution is approved and all of the other conditions precedent to completion of the Transaction are satisfied or waived, on Closing two of the current members of the Investment Committee will resign and two of the Goldhar Appointees will be appointed to take their place on the Investment Committee.

### ***Special Committee***

The Declaration of Trust provides that the Trustees may from time to time appoint from among their number a committee of Trustees and may delegate to such committee any of the powers of the Trustees. In connection with a review of strategic alternatives to enhance Unitholder value, including the Transaction, the Board established the Special Committee, comprised entirely of Independent Trustees.

The Special Committee was given all such powers and authorities as might be necessary in order to fulfill its mandate, including the power and authority to establish such rules and procedures as it might deem necessary and advisable in order to perform its mandate and, at the expense of the REIT, to retain professional financial advisors for the purposes of assisting the Special Committee in performing its mandate.

The Special Committee is currently comprised of:

- James Meekison, Chair of the Committee
- Patrick J. Lavelle
- Stephen Bellringer
- Christopher J. Cann
- Hani Zayadi

### **Cease Trade Orders, Bankruptcies, Penalties or Sanctions**

Other than as set forth below, to the best of the knowledge of management, no person or company who is a Proposed Nominee or a Goldhar Appointee:

- (a) is, as at the date of this Circular, or has been, within 10 years before the date of this Circular, a director, chief executive officer or chief financial officer of any company (including the REIT) that,
  - (i) was subject to an order that was issued while the proposed director was acting in the capacity as director, chief executive officer or chief financial officer; or
  - (ii) was subject to an order that was issued after the proposed director ceased to be a director, chief executive officer or chief financial officer and which resulted from an event that occurred while that person was acting in the capacity as director, chief executive officer or chief financial officer; or
- (b) is, as at the date of the Circular, or has been within 10 years before the date of the Circular, a director or executive officer of any company (including the REIT) that, while that person was acting in that capacity, or within a year of that person ceasing to act in that capacity, became bankrupt, made a proposal under any legislation relating to bankruptcy or insolvency or was subject to or instituted any proceedings, arrangement or compromise with creditors or had a receiver, receiver manager or trustee appointed to hold its assets; or
- (c) has, within the 10 years before the date of the Circular, become bankrupt, made a proposal under any legislation relating to bankruptcy or insolvency, or become subject to or instituted any proceedings, arrangement or compromise with creditors, or had a receiver, receiver manager or trustee appointed to hold the assets of the proposed director.

Mr. Lavelle was a member of the board of directors of Slater Steel Inc. when it announced, in June 2003, that it and certain of its U.S. and Canadian subsidiaries filed for creditor protection under the *Companies' Creditors Arrangement Act* (Canada) and the U.S. Bankruptcy Code. Mr. Meekison was a member of the board of directors of Fantom Technologies Inc., when it filed for creditor protection under the *Companies' Creditors Arrangement Act* (Canada) in 2001.

To the best of the knowledge of management, no person who is a Proposed Nominee, or a Goldhar Appointee, has been subject to:

- (a) any penalties or sanctions imposed by a court relating to securities legislation or by a securities regulatory authority or has entered into a settlement agreement with a securities regulatory authority; or

- (b) any other penalties or sanctions imposed by a court or regulatory body that would likely be considered important to a reasonable securityholder in deciding whether to vote for a Proposed Nominee or approve the Transaction Resolution.

## MANAGEMENT CONTRACTS

The role of the Trustees is similar to the role of directors of a corporation. The day-to-day activities of the REIT are directed by its officers.

### Property Management

#### *Property Management Agreements*

On July 26, 2005, the REIT and RPST entered into the RioCan Property Management Agreement pursuant to which RPST provides property management services with respect to the RioCan Portfolio.

Effective February 28, 2006, the REIT terminated its asset management and property management agreements with RIMI. In respect of property management and related functions, in March 2006 the REIT negotiated revised property management agreements directly with Arcturus and Plaza Atlantic Limited (the “**Plaza Property Management Agreement**”), each of which had been providing such services to the REIT on an indirect basis. Arcturus provides property management services in respect of the REIT’s properties located in British Columbia, Alberta, Saskatchewan, Manitoba and Ontario, other than the properties comprising the RioCan Portfolio. Prior to the termination of the Plaza Property Management Agreement in March 2007, Plaza Atlantic Limited provided property management services in respect of the REIT’s Eastern Initial Properties. See “Management Contracts — Property Management — Term and Termination”.

Each property management firm is required to comply with an approved strategic growth plan and provide the REIT with detailed performance reports monthly, quarterly and annually. The duties of each property management firm include: (i) management of the subject properties including inspection of the properties, negotiating contracts, ensuring reasonable security, handling tenant requests and negotiations, arranging for such improvements and repairs as may be required by the REIT and the purchase of all materials and services, and incurring such expenses (with certain exceptions), as the property manager deems necessary in connection therewith, all in accordance with an approved budget, (ii) collection of all rents and other charges and payments of costs and expenses related to the management of the properties, (iii) periodic reporting on the financial condition of the properties and preparing budgets and leasing plans, and (iv) supervision and conduct of all leasing operations, including negotiating and executing leases in accordance with an approved leasing plan.

If the Transaction Resolution is approved and all of the other conditions precedent to completion of the Transaction are satisfied or waived, SmartCentres Management will, pursuant to the Property Management Agreement, become the property manager for the SmartCentres Managed Properties, at such time and in such a manner as will allow for a smooth and orderly transition between property managers. See “The Transaction — Management of the Property Portfolio Following Completion of the Transaction” and “The Property Management Agreement”.

#### *Fees*

In 2007, the REIT paid property management fees in an amount equal to 3.2% of the gross revenue on 27 of the REIT Properties, 4% of the gross revenue on ten of the REIT Properties plus, in each case, the REIT pays leasing fees and the recovery by the property manager of certain of its costs.

For the year ended December 31, 2007, the REIT incurred, in aggregate, \$2,218,000 in property management and \$1,627,278 in leasing fees, of which \$365,308 was included in accounts payable and other liabilities as at December 31, 2007. The REIT has also reimbursed the property managers for certain direct property operating costs.

If the Transaction Resolution is approved and all of the other conditions precedent to completion of the Transaction are satisfied or waived, on Closing Retrocom LP will enter into the Property Management Agreement, pursuant to which the Retrocom LP will pay annual Property Management Fees to SmartCentres Management in an amount equal to 3.25% of the gross revenue on the SmartCentres Managed Properties. In addition, the Retrocom LP will pay certain Leasing Fees, Construction Fees and reimburse SmartCentres Management for certain of its costs. See “The Transaction — Management of the Property Portfolio Following Completion of the Transaction” and “The Property Management Agreement”.

### ***Payments by Property Manager***

Each property manager is responsible for employment expenses of its personnel, rent and other office expenses, and miscellaneous administrative expenses relating to its functions, other than the costs of on-site offices and personnel dedicated to any one or more of the REIT Properties.

If the Transaction Resolution is approved and all of the other conditions precedent to completion of the Transaction are satisfied or waived, on Closing Retrocom LP will enter into the Property Management Agreement. Pursuant to the Property Management Agreement, SmartCentres will be responsible for employment expenses of its personnel, rent and other office expenses, and miscellaneous administrative expenses relating to its functions, other than the costs of on-site offices and personnel dedicated to any one or more of the properties of the Property Portfolio. See “The Transaction — Management of the Property Portfolio Following Completion of the Transaction” and “The Property Management Agreement”.

### ***Term and Termination***

The REIT formerly was a party to the Plaza Property Management Agreement, pursuant to which Plaza Atlantic Limited managed three properties in which the REIT held a 50% interest. In March 2007, the REIT purchased the remaining 50% of two of the properties and sold its 50% ownership in one property. Concurrent with the purchases and sale of those properties, the Plaza Property Management Agreement for the properties was terminated.

The Arcturus Property Management Agreement is due to terminate, in accordance with its terms on March 31, 2009, subject to an automatic renewal for a further one-year period unless the REIT advises Arcturus that the agreement is terminated. The Arcturus Property Management Agreement may be terminated by the REIT at any time upon the occurrence of certain events of default thereunder or at any time on 90 days prior notice or upon payment in lieu of notice. Such agreement may be terminated by Arcturus on not less than 120 days prior notice to the REIT if there is a default by the REIT thereunder. The Arcturus Property Management Agreement may also be terminated by Arcturus, without cause, on six months prior notice to the REIT. Upon any termination or non-renewal of the Arcturus Property Management Agreement (unless such termination is due to the default of Arcturus or Arcturus terminates such agreement without cause), the REIT may be obligated to pay certain severance costs in respect of the employees of Arcturus dedicated to servicing the properties of the REIT managed by Arcturus if such employees are terminated by Arcturus.

The RioCan Property Management Agreement is due to terminate, in accordance with its terms, on July 26, 2008. On March 31, 2008, the REIT and Retrocom LP entered into the RioCan Debenture Repayment Agreement with RioCan REIT and RPST providing for, among other things, repayment of the RioCan Debenture at any time prior to its July 26, 2008 maturity date and termination of the RioCan Property Management Agreement upon such repayment. Pursuant to the terms of the RioCan Debenture Repayment Agreement, Retrocom LP has agreed that, in addition to repayment by the REIT of the outstanding principal amount of the RioCan Debenture and any accrued and unpaid interest thereon as of the date of repayment, Retrocom LP will pay to RPST the RioCan Redemption Fee of \$1.75 million, together with G.S.T., as a financing facilitation fee on account of services provided to Retrocom LP in negotiating a financing arrangement with The Toronto-Dominion Bank or another recognized financial institution in connection with refinancing the RioCan Debenture, including RPST's agreement to continue to guarantee the first mortgage obligations on certain of the properties that make up the RioCan Portfolio.

If the Transaction Resolution is approved and all of the other conditions precedent to completion of the Transaction are satisfied or waived, on Closing Retrocom LP will enter into the Property Management Agreement. In connection therewith, the REIT intends to terminate its existing property management agreements at such times and in such a manner as will allow for a smooth and orderly transition between property managers. See “The Transaction — Management of the Property Portfolio Following Completion of the Transaction”.

## **INTEREST OF INFORMED PERSONS IN MATERIAL TRANSACTIONS**

No Trustee or officer of the REIT, Proposed Nominee, Goldhar Appointee, insider of the REIT or any associate or affiliate of any of the foregoing persons has or had any material interest in any transaction since the date of formation of the REIT or any proposed transaction that has materially affected or will materially affect the REIT or any of its subsidiaries, except as disclosed herein or as previously disclosed in the REIT's annual information form dated March 31, 2008 available on SEDAR at [www.sedar.com](http://www.sedar.com).

## OTHER BUSINESS

Management of the REIT is not aware of any matter to come before the Meeting other than the matters referred to in the Notice of Meeting. However, if any other matter properly comes before the Meeting, the accompanying form of proxy confers discretionary authority to vote with respect to amendments or variations to matters identified in the Notice of Meeting and with respect to other matters that properly may come before the Meeting in the best judgment of the persons voting the proxy. Further, management of the REIT has no knowledge of any material information concerning the REIT or the Units that has not been generally disclosed.

## GENERAL INFORMATION CONCERNING THE MEETING AND PROXIES

### Solicitation of Proxies

**This Circular is being furnished in connection with the solicitation of proxies by or on behalf of the management of the REIT** for use at the Meeting. The solicitation of proxies will be primarily by mail but proxies may also be solicited by telephone, telecopy or personally by the Trustees, officers, employees or agents of the REIT. The cost of solicitation will be borne by the REIT. The REIT will reimburse banks, brokerage firms and other custodians, nominees and fiduciaries for any reasonable expenses incurred in sending proxy material to beneficial owners of Units and requesting authority to execute proxies.

Unitholders unable to attend the Meeting in person are requested to complete, sign and return the accompanying form of proxy or voting information form to CIBC Mellon Trust Company, P.O. Box 721, Agincourt, Ontario M1S 0A1 (or to such address as may be specified in the voting information form). Should a Unitholder wish to deposit a proxy by hand, the proxy should be delivered to CIBC Mellon Trust Company, 320 Bay Street, Banking Hall Level, Toronto, Ontario. Proxies may also be faxed to CIBC Mellon Trust Company at (416) 368-2502. All proxies, whether delivered by mail, by hand or by fax, must be deposited with CIBC Mellon prior to 5:00 p.m. (Eastern Standard Time) on June 26, 2008 (or if the Meeting is adjourned or postponed, on the last Business Day prior to the date of the adjourned or postponed Meeting) or may be deposited with the Chairman at the Meeting.

### Record Date

The Board has fixed June 2, 2008, as the Record Date for the purpose of determining Unitholders entitled to receive the Notice of Meeting and to vote at the Meeting. Each Unitholder is entitled to one vote for each Unit held and shown as registered in such holder's name on the list of Unitholders prepared as of the close of business on the record date.

As at the date of this Circular, CDS & Co., a nominee of CDS, is the only Registered Unitholder. All other Unitholders are Beneficial Unitholders.

### Beneficial Unitholders

All Beneficial Unitholders can expect to receive either:

- (i) a form of proxy that is signed by the investment dealer, other intermediary or clearing agency (typically by a facsimile stamped signature), which sets forth the number of Units beneficially owned by the Beneficial Unitholder, but which is otherwise not completed.

The Beneficial Unitholder may complete the proxy and deposit it with CIBC Mellon as described; or

- (ii) a voting instruction form requesting voting instructions which must be completed and signed, or otherwise dealt with, by the Beneficial Unitholder in accordance with the instructions on the voting instruction form.

The majority of investment dealers, other intermediaries or clearing agencies delegate responsibility for obtaining voting instructions from Beneficial Unitholders to BFSI. BFSI typically mails a voting instruction form to Beneficial Unitholders requesting that the Beneficial Unitholders return the form to BFSI. The BFSI form also allows completion of the voting instruction form by telephone, by internet and by facsimile. BFSI then tabulates the results of all instructions received from Beneficial Unitholders and provides appropriate instructions respecting the voting of Units to the REIT's transfer agent, CIBC Mellon. A Beneficial Unitholder receiving a voting instruction form from BFSI cannot use the form to vote the Units directly at the Meeting. The voting instruction form must be returned to BFSI in advance of the Meeting in order to have the Units to which it relates voted.

## **Voting of Units Represented by Management Proxies**

On any ballot that may be called for, the Units represented by properly executed proxies in favour of the persons named in the printed portion of the enclosed form of proxy will be voted for or withheld from voting in accordance with the instructions of the Unitholder in the proxy on any ballot that may be called for and, if the Unitholder specifies a choice with respect to any matter to be acted upon, the Units represented by such proxy will be voted accordingly.

**If no choice is specified with respect to any matter to be acted upon at the Meeting, the Units represented by such proxy will be voted:**

- **FOR the Transaction Resolution;**
- **FOR the election of the Proposed Nominees as Trustees of the REIT; and**
- **FOR the re-appointment of KPMG as auditor of the REIT at a remuneration to be fixed by the Board.**

The accompanying form of proxy confers discretionary authority upon the persons named therein with respect to amendments to or variations, if any, of matters identified in the Notice of Meeting and with respect to other matters, if any, which may properly come before the Meeting. To the knowledge of the Trustees of the REIT, as at the date of this Circular, there are no such amendments or other matters to come before the Meeting. If any such other matter or if any amendments to or variations of the matters identified in the Notice of Meeting should properly come before the Meeting, proxies received pursuant to this solicitation will be voted on such amendments, variations and other matters in accordance with the best judgment of the person voting the proxy.

## **Appointment and Revocation of Proxies**

The persons named in the form of proxy accompanying this Circular are Trustees and/or officers of the REIT. **A Unitholder may appoint another person or company (who need not be a Unitholder), other than the persons designated in the form of proxy, to represent such Unitholder at the Meeting.** This appointee must attend the Meeting in order for a Unitholder's vote to be cast. To exercise such right, a Unitholder may either strike out the names of the persons named in the enclosed form of proxy or voting instruction form and insert the name of the other person to be appointed in the blank space provided, or complete another acceptable form of proxy and, in either case, deliver the completed form of proxy or voting instruction form to CIBC Mellon (or to any such address as may be specified in the voting information form), at any time up to 5:00 p.m. (Eastern Standard Time) on June 26, 2008 or up to 24 hours prior to any adjournment thereof, or to the Chair of the Meeting at any time prior to the commencement of the Meeting or any adjournment period.

Proxies given by Unitholders for use at the Meeting may be revoked at any time prior to their use. In addition to revocation in any other manner permitted by law, a proxy may be revoked by an instrument in writing executed by the Unitholder, or by such Unitholder's attorney authorized in writing or, if the Unitholder is a corporation, under its corporate seal or by a duly authorized officer or attorney of the corporation, and returned to CIBC Mellon, at any time up to 5:00 p.m. (Eastern Standard Time) on June 26, 2008 or up to 24 hours prior to any adjournment thereof, or to the Chair of the Meeting prior to the commencement of the Meeting or any adjournment period.

## **Ownership of Units**

The REIT is an unincorporated open-end real estate investment trust governed by the laws of the Province of Ontario and created pursuant to the Declaration of Trust. As at June 2, 2008, 19,324,925 Units were outstanding, all of which are registered in the name of CDS & Co.

To the knowledge of the Trustees and executive officers of the REIT, as at June 2, 2008, no person or company beneficially owned or exercised control or direction over Units carrying more than 10% of the voting rights attached to all Units.

## **Frequently Asked Questions**

### ***Who is soliciting my proxy?***

Your proxy is being solicited by management of the REIT. This Circular is furnished in connection with that solicitation. Proxies are to be used at the Meeting to be held on June 27, 2008, at The Toronto Board of Trade, West Dining Room, 1 First Canadian Place, 100 King Street West, Toronto, Ontario at 10:00 a.m. (Eastern Daylight Time) or any adjournment thereof for the purposes set out in the accompanying Notice of Meeting.

The cost of soliciting proxies will be borne by the REIT. While most proxies will be solicited by mail only, some Unitholders may also be contacted by the Trustees, officers, employees or agents of the REIT personally or by telephone. The REIT will provide proxy materials to brokers, custodians, nominees and fiduciaries and request that such materials be promptly forwarded to Beneficial Unitholders.

***Am I entitled to receive notice of the Meeting and attend the Meeting?***

If you were a Unitholder as of the close of business on June 2, 2008, which is the Record Date for the Meeting, you are entitled to receive notice of, attend and be heard at the Meeting.

***Am I entitled to vote and what am I voting on?***

If you were a Unitholder as of the close of business on June 2, 2008, which is the Record Date for the Meeting, you are entitled to one vote per Unit on the resolutions relating to:

1. the approval of the Transaction Resolution;
2. the election of the Proposed Nominees as Trustees of the REIT; and
3. the re-appointment of KPMG as auditor of the REIT at a remuneration to be fixed by the Board.

***How can I vote my Units if I am a Registered Unitholder?***

There are two ways you can vote your Units if you are a Registered Unitholder. You may vote in person at the Meeting or you may sign the enclosed form of proxy or voting instruction form appointing the named persons or some other person you choose, who need not be a Unitholder, to represent you as proxyholder and vote your Units at the Meeting. You must follow the instructions provided to you by the investment dealer, other Intermediary or clearing agency.

If you are a Registered Unitholder and plan to attend the Meeting on June 27, 2008 and wish to vote your Units in person at the Meeting, insert your own name in the space provided on the request for voting instructions or form of proxy and return same by following the instructions provided. Do not otherwise complete the form as your vote will be taken at the Meeting. Please register with the Transfer Agent, CIBC Mellon, upon arrival at the Meeting.

***How can I vote my Units if I am a Beneficial Unitholder?***

There are two ways you can vote your Units held by your Intermediary if you are a Beneficial Unitholder. As required by Canadian securities legislation, you will have received from your Intermediary either a request for voting instructions or a form of proxy for the number of Units you hold.

For your Units to be voted for you, please follow the voting instructions provided by your Intermediary.

Since the REIT has limited access to the names of its Beneficial Unitholders, if you attend the Meeting the REIT may have no record of your Unitholdings or of your entitlement to vote unless your Intermediary has appointed you as a proxyholder. Therefore, if you wish to vote in person at the Meeting, insert your own name in the space provided on the request for voting instructions or form of proxy and return such document by following the instructions provided. Do not otherwise complete the form as your vote will be taken at the Meeting. Please register with the Transfer Agent, CIBC Mellon, upon arrival at the Meeting.

***Who votes my Units?***

Each person named in the proxy to represent Unitholders at the Meeting is a Trustee and/or officer of the REIT. You can appoint someone else to represent you at the Meeting. The person you appoint does not need to be a Unitholder but must attend the Meeting in order for your vote to be cast. You must follow the instructions provided to you by the investment dealer, other Intermediary or clearing agency. See “General Information Concerning the Meeting and Proxies — Appointment and Revocation of Proxies”.

***What if ownership of Units has been transferred after the June 2, 2008 Record Date?***

Pursuant to the Declaration of Trust, only Unitholders registered on the June 2, 2008 Record Date are entitled to vote at the Meeting. See “General Information Concerning the Meeting and Proxies — Record Date”.

***How will the votes be counted?***

Each question brought before the Meeting is determined by at least a majority of votes cast on the question. Typically, votes are taken by a show of hands unless a Unitholder requests a ballot.

***What if I have a question regarding the voting procedures or the Meeting?***

If you have any questions regarding the Meeting, please contact CIBC Mellon.

**By Phone:** (800) 387-0825 (toll-free in Canada only) or (416) 643-5500

**By E-mail:** inquiries@cibcmellon.com

**By Mail:** CIBC Mellon Trust Company  
P.O. Box 7010, Adelaide Street Postal Station  
Toronto, Ontario M5C 2W9

**ADDITIONAL INFORMATION**

Additional information relating to the REIT is on SEDAR at [www.sedar.com](http://www.sedar.com). Unitholders may contact David Fiume, Chief Executive Officer of the REIT, at (416) 741-7999 or (416) 741-7993 (facsimile) to request copies of the REIT's financial statements and management's discussion & analysis thereon. Financial information is provided in the REIT's comparative financial statements and management's discussion & analysis thereon for its most recently completed financial year.

**APPROVAL**

The contents and the sending of this Circular to each Unitholder entitled to receive notice of the Meeting and to the Auditor of the REIT have been approved by the Trustees of the REIT.

**DATED** at Toronto, Ontario, this 2<sup>nd</sup> day of June, 2008.

**RETROCOM MID-MARKET REAL ESTATE  
INVESTMENT TRUST**

(Signed) David Fiume

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DAVID FIUME  
Trustee and Chief Executive Officer

## CONSENT OF KPMG LLP

TO: The Board of Trustees of Retrocom Mid-Market Real Estate Investment Trust

We have read the management information circular of Retrocom Mid-Market Real Estate Investment Trust (the "REIT") dated June 2, 2008 relating to certain annual and special business of the REIT, including the acquisition of 1224 Dundas, 1480/1490 Dundas, 1100/1140/1170 Burnhamthorpe and 750/760 Birchmount (the "Properties") and certain proposed amendments to the declaration of trust of the REIT. We have complied with Canadian generally accepted standards for an auditor's involvement with offering documents.

We hereby consent to the inclusion in the above-mentioned management information circular of our report to the Partners of MRR Investors Limited Partnership No. 1, MRR Investors Limited Partnership No. 2, MRR Investors Limited Partnership No. 3, MRR Investors Limited Partnership No. 4, MRR Investors Limited Partnership No. 5 and MRR Investors Limited Partnership No. 6 on the schedule of combined net operations for the Properties for the year ended December 31, 2007. Our report is dated May 30, 2008.

Toronto, Ontario  
June 2, 2008

(Signed) KPMG LLP  
Chartered Accountants

**APPENDIX “A”  
TRANSACTION RESOLUTION**

**RESOLVED AS AN ORDINARY RESOLUTION THAT:**

1. In connection with the consummation of the transactions contemplated by the purchase and support agreement (the “**Agreement**”) dated April 30, 2008 and entered into by and among Retrocom Mid-Market Real Estate Investment Trust (the “**REIT**”) and Retrocom Limited Partnership (“**Retrocom LP**”) with MRR Investors Limited Partnership No. 1, MRR Investors Limited Partnership No. 2, MRR Investors Limited Partnership No. 3, MRR Investors Limited Partnership No. 4, MRR Investors Limited Partnership No. 5 and MRR Investors Limited Partnership No. 6 (collectively, the “**Vendor**”):
  - (a) the Third Amended and Restated Declaration of Trust of the REIT, having substantially the content of the compared version of the Third Amended and Restated Declaration of Trust attached as Appendix “B” to the management information circular of the REIT dated June 2, 2008 (the “**Circular**”), and the amendments to the Second Amended and Restated Declaration of Trust of the REIT dated May 23, 2008 contained in the Third Amended and Restated Declaration of Trust, all as more particularly described in the Circular, as well as any additional amendments to the Second Amended and Restated Declaration of Trust that the trustees of the REIT determine to be in the best interests of the REIT and not prejudicial to Unitholders of the REIT, are hereby approved, authorized and agreed to and, subject to the closing of the transactions contemplated by the Agreement, the Third Amended and Restated Declaration of Trust is hereby adopted as the Declaration of Trust of the REIT;
  - (b) the REIT is hereby authorized to cause Retrocom LP to create a new class of units of Retrocom LP to be designated “Class B Units” (the “**Class B LP Units**”) and to cause Retrocom LP to issue to the Vendor up to 10 million Class B LP Units upon closing of the transactions contemplated by the Agreement, all as more particularly described in the Circular;
  - (c) the REIT is hereby authorized to create a new class of units of the REIT to be designated “Special Voting Units” (the “**Special Voting Units**”) and to issue to the Vendor up to 10 million Special Voting Units upon closing of the transactions contemplated by the Agreement, all as more particularly described in the Circular;
  - (d) the REIT is hereby authorized to issue to SmartCentres Inc. or its designee, upon closing of the transactions contemplated by the Agreement, warrants (the “**Warrants**”) to purchase, at any time and from time to time during the period beginning on the Closing Date (as defined in the Agreement) and expiring at 5:00 p.m. (Toronto Time) on the date that is the five (5) year anniversary of the Closing Date, 1,500,000 units of the REIT (“**REIT Units**”) at an exercise price of \$5.50 per REIT Unit, all as more particularly described in the Circular; and
  - (e) the REIT is hereby authorized to reserve for issuance up to 11.5 million REIT Units and to issue such REIT Units from time to time upon the exchange of the Class B LP Units or the exercise of the Warrants, in accordance with the terms of such Class B LP Units or Warrants, as the case may be, all as more particularly described in the Circular.
2. Notwithstanding that the foregoing resolution has been duly passed, the board of trustees of the REIT may without further notice to or approval of the holders of units of the REIT, amend, modify or terminate the Agreement or revoke the foregoing resolutions at any time prior to the completion of the transactions contemplated therein.
3. Any one officer or trustee of the REIT is hereby authorized, for and on behalf of the REIT, to execute and deliver any and all other documents and instruments and to do all other things as in the opinion of such officer or trustee may be necessary or desirable to implement the foregoing resolutions and the matters authorized thereby, such determination to be conclusively evidenced by the execution and delivery of any such document or instrument, or the taking of any such action.

**APPENDIX "B"**  
**BLACKLINED COPY OF THIRD AMENDED AND RESTATED**  
**DECLARATION OF TRUST**

**RETROCOM MID-MARKET  
REAL ESTATE INVESTMENT TRUST**

**~~SECOND~~THIRD AMENDED AND RESTATED  
DECLARATION OF TRUST**

**DATED ~~MAY 23~~, ●, 2008**

**FASKEN MARTINEAU DUMOULIN LLP**

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**RETROCOM MID-MARKET  
REAL ESTATE INVESTMENT TRUST**

**~~SECOND~~THIRD AMENDED AND RESTATED DECLARATION OF TRUST**

THIS ~~SECOND~~THIRD AMENDED AND RESTATED DECLARATION OF TRUST made in Toronto, Ontario as of the ~~23<sup>rd</sup>~~     day of ~~May~~    , 2008.

**RECITALS**

WHEREAS the REIT was established pursuant to a Declaration of Trust dated the 15<sup>th</sup> day of December, 2003 (the “**Original Declaration of Trust**”) for the principal purpose of providing persons who may become the holders of Units of the REIT with an opportunity to participate in a portfolio of income-producing real property investments and related assets;

AND WHEREAS the REIT was on that date settled with \$100.00 (the “**Initial Contribution**”) by the Initial Unitholder which the Trustees thereupon held in trust in exchange for issuing to the Initial Unitholder the Initial Trust Units;

AND WHEREAS the Original Declaration of Trust was amended and restated in accordance with its terms and with the approval of the Trustees on March 22, 2004 (the “**First Amended and Restated Declaration of Trust**”) and was further amended by the Trustees on November 30, 2005, on June 27, 2006 upon receipt of approval by the Unitholders at a meeting of Unitholders held on June 27, 2006, and on June 19, 2007 upon receipt of approval by the Unitholders at a meeting of Unitholders held on June 19, 2007;

AND WHEREAS the ~~Trustees desire to further amend and restate the~~ First Amended and Restated Declaration of Trust ~~in the manner provided herein~~ was amended and restated in accordance with its terms and with the approval of the Trustees on May 23, 2008 (the “**Second Amended and Restated Declaration of Trust**”) in order to consolidate the prior amendments and to make minor corrections which ~~are~~were, in the opinion of the Trustees, desirable and not prejudicial to the Unitholders;

AND WHEREAS the ~~Trustees desire to further amend and restate the~~ Second Amended and Restated Declaration of Trust ~~in the manner provided herein~~ as approved by the Unitholders at a meeting of Unitholders held on June 27, 2008;

AND WHEREAS for greater certainty, this ~~Second~~Third Amended and Restated Declaration of Trust shall not be deemed to constitute a termination of the REIT or a resettlement of this Declaration of Trust or the REIT created hereby;

**DECLARATION**

NOW THEREFORE, the Trustees hereby confirm and declare that the Trustees agree to hold in trust as trustees the sum of \$100.00 and any and all other property, real, personal or otherwise, tangible or intangible, which has been at the date hereof or is hereafter transferred, conveyed or paid to or otherwise received by them as such Trustees or to which the REIT is otherwise entitled and all rents, income, profits and gains therefrom for the benefit of the Unitholders hereunder in accordance with and subject to the express provisions of this Declaration of Trust, as follows:

**ARTICLE 1**

**THE REIT AND DEFINITIONS**

**1.1 Definitions and Interpretation**

In this Declaration of Trust, words in the singular number include the plural and words in the plural number include the singular, and the masculine includes the feminine. In this Declaration of Trust, except where the context otherwise requires:

- (a) “**Adjusted Unitholders Equity**” means, at any time, the aggregate of the amount of Unitholders’ equity and the amount of accumulated depreciation and amortization recorded in the books and records of the REIT in respect of its properties calculated in accordance with GAAP;
- (b) “**affiliate**”, when used to indicate a relationship with a person, has the meaning ascribed thereto in subsection 1.2 of OSC Rule 45-501 (Exempt Distributions);

- (c) “**annuitant**” means the annuitant of a registered retirement savings plan or a registered retirement income fund, all as defined in the Tax Act;
- (d) “**Asset Management Agreement**” means any asset management agreement to which the REIT is a party under an agreement with an Asset Manager;
- (e) “**Asset Manager**” means a person who provides asset management services to the REIT pursuant to a written contract;
- (f) “**associate**” has the meaning ascribed thereto in the *Securities Act* (Ontario);
- (g) “**Audit Committee**” means the committee of Trustees established pursuant to Section 10.2;
- (h) “**Auditors**” means the firm of chartered accountants appointed as the auditors of the REIT from time to time in accordance with the provisions hereof and, initially, means KPMG LLP, Chartered Accountants;
- (i) “**Beneficial Owner**” has the meaning given thereto in Section 7.13;
- (j) “**Book Entry System**” means the record-entry securities transfer and pledge system known, as of the date hereof, by such name, which is administered by CDS in accordance with the operating rules and procedures of the Securities Settlement Service of CDS in force from time to time, or any successor system which CDS may offer from time to time;
- (k) “**Business Day**” means any day other than a Saturday, Sunday or statutory holiday in the Province of Ontario;
- (l) “**CDS**” means The Canadian Depository for Securities Limited and its successors;
- (m) “**CDS Participant**” means a broker, dealer, bank, other financial institution or other person who, directly or indirectly, from time to time effects book-based transfers with CDS and pledges of securities deposited with CDS;
- (n) “**Chairman**”, “**President**”, “**Chief Executive Officer**”, “**Chief Financial Officer**”, “**Chief Operating Officer**” and “**Secretary**” mean the person(s) holding the respective office from time to time if so appointed by the Trustees;
- (o) “**closing market price**” has the meaning given thereto in Section 7.14(c)(i);
- (p) “**Declaration of Trust**” means this ~~second~~<sup>third</sup> amended and restated declaration of trust as amended, supplemented or amended and restated from time to time;
- (q) “**dissenting offeree**” means, where a take-over bid is made for all of the Units other than those held by the offeror (its affiliates and associates), a holder of Units who does not accept the take-over bid and includes a subsequent holder of those Units who acquires them from the first mentioned holder;
- (r) “**Distributable Income**” means, for any period, the net income of the REIT and its consolidated subsidiaries, as determined in accordance with GAAP, adjusted as follows: (i) the following items shall be added back: depreciation of buildings, amortization of tenant improvements, amortization of value of tenant rents in in-place lease agreements, amortization of differential between original rent and above market rents, amortization of customer relationships, future income tax expense, losses on dispositions of assets and amortization of any net discount on long-term debt assumed from vendors of properties at rates of interest less than fair value; and (ii) the following shall be deducted: amortization of differential between original rents and below market rents, future income tax credits, gains on dispositions of assets and amortization of any net premium on long-term debt assumed from vendors of properties at rates of interest greater than fair value. Other adjustments may be made to Distributable Income as determined by the Trustees in their discretion. Where appropriate, estimates may be made of Distributable Income by a majority of the Trustees where the actual amount has not been finally determined, which estimates shall be adjusted as of the subsequent Distribution Date when the amount of Distributable Income has been determined;
- (s) “**Distribution Date**” means, in respect of any Distribution Period and subject to Section 11.1, the 15<sup>th</sup> day of the immediately following month and such other dates determined from time to time by the Trustees;
- (t) “**Distribution Period**” means each calendar month in each calendar year from and including the first day thereof and to and including the last day thereof (whether or not such days are Business Days);
- (u) “**Environmental Assessment**” means an environmental assessment conducted by an independent and experienced environmental consultant;

- (v) “Exchangeable Securities” means securities of any trust, limited partnership or corporation other than the REIT that are convertible or exchangeable directly for Units without the payment of additional consideration therefor;
- (w) ~~(v)~~ “Fiscal Year” means each fiscal year of the REIT;
- (x) ~~(w)~~ “generally accepted accounting principles” or “GAAP” means Canadian generally accepted accounting principles determined with reference to the Handbook of the Canadian Institute of Chartered Accountants, as amended from time to time. Except as otherwise specified, all accounting terms used in this Declaration of Trust shall be construed in accordance with GAAP;
- (y) ~~(x)~~ “Global Unit Certificate” has the meaning given thereto in Section 7.13;
- (z) ~~(y)~~ “Governance and Compensation Committee” means the committee of the Trustees established pursuant to Section 10.3;
- (aa) ~~(z)~~ “Gross Book Value” means, at any time, the book value of the assets of the REIT and its consolidated subsidiaries, as shown on its then most recent consolidated balance sheet, plus accumulated depreciation and amortization recorded in the books and records of the REIT in respect of its properties, calculated in accordance with GAAP;
- (bb) ~~(aa)~~ “herein”, “hereof”, “hereby”, “hereunder” and similar expressions refer to this Declaration of Trust and include every instrument supplemental or ancillary to or in implementation of this Declaration of Trust and, except where the context otherwise requires, does not refer to any particular article, section or other portion hereof or thereof;
- (cc) ~~(bb)~~ “including” means “including, without limitation”;
- (dd) ~~(cc)~~ “Independent Trustee” means a Trustee who, in relation to the REIT or any of its related parties, is “independent” (within the meaning of Multilateral Instrument 52-110 *Audit Committees*) and is not “related” within the meaning of the Tax Act;
- (ee) ~~(dd)~~ “Initial Trust Units” means the 10 initial Units issued by the REIT;
- (ff) ~~(ee)~~ “Initial Unitholder” means R. Michael Steplock, the holder of the Initial Trust Units;
- (gg) ~~(ff)~~ “Investment Committee” means the committee of the Trustees which may be established pursuant to Section 10.4;
- (hh) ~~(gg)~~ “joint venture entity” has the meaning given thereto in Section 6.1(d);
- (ii) ~~(hh)~~ “joint venturers” has the meaning given thereto in Section 6.1(d);
- (jj) ~~(ii)~~ “LTIP” means the long-term incentive plan established by the REIT and which has been made available to the LTIP Participants;
- (kk) ~~(jj)~~ “LTIP Participants” means the Trustees, certain officers and employees of the REIT, and certain key employees of any Asset Manager, who will be entitled to the benefits of the LTIP;
- (ll) ~~(kk)~~ “LTIP Units” means the Units of the REIT which the LTIP Participants will be entitled to subscribe for under the LTIP;
- (mm) “Minimum Voting Entitlement” has the meaning given thereto in Section 3.8(e);
- (nn) ~~(ll)~~ “Monthly Limit” has the meaning given thereto in Section 7.14(d);
- (oo) ~~(mm)~~ “mortgage” means any mortgage, charge, hypothec, bond, debenture, note or other evidence of indebtedness, in each case which is directly or indirectly secured by real property;
- (pp) ~~(nn)~~ “net realized capital gains of the REIT” for any period means the amount, if any, by which the amount of the realized capital gains of the REIT for the period exceeds the aggregate of (i) the amount of any realized capital losses of the REIT for the period determined in accordance with the Tax Act and (ii) the amount of any net capital losses of the REIT carried forward from a previous period to the extent not previously deducted from realized capital gains of the REIT determined in accordance with the Tax Act;
- (qq) ~~(oo)~~ “Non-Resident” means a person who is not a Resident;
- (rr) ~~(pp)~~ “Note Indenture” means the trust indenture providing for the issuance of the Subsidiary Trust Notes, dated February 11, 2004, as supplemented by supplement no. 1 thereto dated as of February 29, 2008, and

made between Subsidiary Trust and CIBC Mellon Trust Company or its successors as trustee under the Note Indenture;

- (ss) ~~(qq)~~ “**offeree**” means a person to whom a take-over bid is made;
- (tt) ~~(rr)~~ “**offeror**” means a person, other than an agent, who makes a take-over bid, and includes two or more persons who, directly or indirectly:
- (i) make a take-over bid jointly or in concert; or
  - (ii) intend to exercise jointly or in concert voting rights attached to the Units for which a take-over bid is made;
- (uu) ~~(ss)~~ “**OSC**” means Ontario Securities Commission;
- (vv) ~~(tt)~~ “**person**” means and includes any individual, general partnership, limited partnership, joint venture, syndicate, sole proprietorship, company or corporation with or without share capital, joint stock company, association, trust, trust company, bank, pension fund, trustee, executor, administrator or other legal personal representative, regulatory body or agency, government or governmental agency, authority or other organization or entity, whether or not a legal entity, however designated or constituted;
- (ww) ~~(uu)~~ “**Plans**” means, collectively, trusts governed by registered retirement savings plans, registered retirement income funds, registered disability savings plans, registered education savings plans and deferred profit sharing plans, each as defined in the Tax Act;
- (xx) ~~(vv)~~ “**Property Management Agreement**” means any property management agreement to which Retrocom LP is a party under an agreement with a Property Manager;
- (yy) ~~(ww)~~ “**Property Manager**” means a person who provides property management services to Retrocom LP pursuant to a written contract;
- (zz) ~~(xx)~~ “**Prospectus**” means the final prospectus of the REIT dated March 9, 2004 relating to its initial public offering of Units;
- (aaa) ~~(yy)~~ “**real property**” means property which in law is real property and includes, whether or not the same would in law be real property, leaseholds, mortgages, undivided joint interests in real property (whether by way of tenancy-in-common, joint tenancy, co-ownership, joint venture or otherwise), any interests in any of the foregoing and securities of trusts, corporations, partnerships or other legal entities the sole or principal purpose and activity of which is to invest in, hold and/or deal in real property;
- (bbb) ~~(zz)~~ “**Redemption Date**” has the meaning given thereto in Section 7.14(c);
- (ccc) ~~(aaa)~~ “**Redemption Price**” has the meaning given thereto in Section 7.14(c);
- (ddd) ~~(bbb)~~ “**Register**” has the meaning ascribed thereto in Section 7.18;
- (eee) ~~(ccc)~~ “**REIT**” means Retrocom Mid-Market Real Estate Investment Trust but, for greater certainty, unless otherwise provided, does not include any subsidiaries or affiliates thereof;
- (fff) ~~(ddd)~~ “**related party**” means, with respect to any person, any other person or persons deemed to be related to such person for purposes of the Tax Act;
- (ggg) ~~(eee)~~ “**Resident**” means a person that is not a non-resident of Canada within the meaning of the Tax Act;
- (hhh) ~~(fff)~~ “**Retiring Trustee**” has the meaning given thereto in Section 3.6;
- (iii) ~~(ggg)~~ “**Retrocom LP**” means Retrocom Limited Partnership, a limited partnership formed under the laws of Ontario;
- (jjj) “**SC/MRR Group**” means, collectively, MRR Investors Limited Partnership No. 1, MRR Investors Limited Partnership No. 2, MRR Investors Limited Partnership No. 3, MRR Investors Limited Partnership No. 4, MRR Investors Limited Partnership No. 5, MRR Investors Limited Partnership No. 6, and companies controlled by Mitchell Goldhar or affiliates of any of the foregoing;
- (kkk) ~~(hhh)~~ “**Series 1 Trust Notes**” means the interest-bearing Series 1 unsecured subordinated promissory notes of Subsidiary Trust issued to the REIT pursuant to the Note Indenture;
- (lll) ~~(iii)~~ “**Series 2 Trust Notes**” means the interest-bearing Series 2 unsecured subordinated promissory notes of Subsidiary Trust that may be issued pursuant to the Note Indenture;

- (mmm) ~~(jjj)~~ “**Series 3 Trust Notes**” means the interest-bearing Series 3 unsecured subordinated promissory notes of Subsidiary Trust that may be issued pursuant to the Note Indenture;
- (nnn) ~~(kkk)~~ “**Special Resolution**” has the meaning ascribed thereto in Section 8.16;
- (ooo) “**Special Unitholder**” means a person whose name appears on the Register as a holder of one or more Special Voting Units;
- (ppp) “**Special Voting Unit**” means a non-participating special voting unit of the REIT, other than a Unit, that is more particularly described in Section 7.1 and that has been authorized and issued hereunder;
- (qqq) ~~(hhh)~~ “**subsidiary**” has the meaning ascribed to that term in subsection 1.1 of OSC Rule 45-501;
- (rrr) ~~(mmm)~~ “**Subsidiary Trust**” means Retrocom Mid-Market Subsidiary Trust, a trust established under the laws of the Province of Ontario;
- (sss) ~~(mm)~~ “**Subsidiary Trust Notes**” means, collectively, the Series 1 Trust Notes, Series 2 Trust Notes, Series 3 Trust Notes and any other notes issued pursuant to the Note Indenture;
- (ttt) ~~(ooo)~~ “**Subsidiary Trust Unit**” means a trust unit of Subsidiary Trust, each such unit representing an equal undivided beneficial interest therein;
- (uuu) ~~(ppp)~~ “**take-over bid**” has the meaning ascribed to such term in the *Securities Act* (Ontario), as amended from time to time;
- (vvv) ~~(qqq)~~ “**Tax Act**” means the *Income Tax Act* (Canada) and the regulations thereunder, as amended;
- (www) ~~(rrr)~~ “**Taxation Year**” means the taxation year of the REIT for the purposes of the Tax Act;
- (xxx) ~~(sss)~~ “**Transfer Agent**” means such company as may from time to time be appointed by the Trust to act as registrar and transfer agent of the Trust Units, together with any sub-transfer agent duly appointed by the Transfer Agent;
- (yyy) ~~(ttt)~~ “**Transfer Date**” has the meaning given thereto in Section 7.14(e);
- (zzz) ~~(uuu)~~ “**Trustees**” means the trustee or trustees of the REIT holding office under and in accordance with this Declaration of Trust from time to time and “Trustee” means any one of them;
- (aaaa) ~~(vvv)~~ “**Trustees’ Regulations**” means the regulations adopted by the Trustees pursuant to Section 4.4;
- (bbbb) ~~(www)~~ “**Unit**” means a participating unit of interest in the REIT more particularly described in Section 7.1 issued from time to time in accordance with the provisions hereof and includes a fraction of a ~~Unit~~ participating unit of the REIT;
- (cccc) ~~(xxx)~~ “**Unit Certificate**” means a certificate, in the form stipulated by Article 7, evidencing one or more Units, issued and certified in accordance with the provisions hereof;
- (dddd) ~~(yyy)~~ “**Unitholder**” means a person whose name appears on the Register as a holder of one or more Units; and
- (eeee) ~~(zzz)~~ “**U.S. Qualified Plan**” means (i) an employee benefit plan as defined in Section 3(3) of the United States Employee Retirement Security Act of 1974, as amended, that is subject to Title I of such Act, (ii) a plan as described in Section 4975(e)(1) of the U.S. Internal Revenue Code of 1986, as amended, that is subject to Section 4975 of such Code and (iii) any entity whose assets include assets of a plan described in (i) or (ii) above by reason of such plan’s investment in such entity.

## 1.2 Tax Act

Any reference herein to a particular provision of the Tax Act shall include a reference to that provision as it may be renumbered or amended from time to time. Where there are proposals for amendments to the Tax Act which have not been enacted into law or proclaimed into force on or before the date on which such proposals are to become effective, the Trustees may take such proposals into consideration and apply the provisions hereof as if such proposals had been enacted into law and proclaimed into force.

## 1.3 Day Not a Business Day

Except as expressly specified in this Declaration of Trust, in the event that any day on which any amount is to be determined or any action is required to be taken hereunder is not a Business Day, then such amount shall be determined or

such action shall be required to be taken at or before the requisite time on the next succeeding day that is a Business Day except as otherwise provided herein.

#### **1.4 Time of Essence**

Time shall be of the essence in this Declaration of Trust.

## **ARTICLE 2**

### **DECLARATION OF TRUST**

#### **2.1 Establishment of the Trust**

The Trustees hereby reconfirm the acceptance of the trust constituted by the execution of the Original Declaration of Trust and declare and agree to hold and administer the property, real, personal or otherwise, tangible or intangible, which has been or is hereafter transferred, conveyed or paid to or otherwise received by the REIT or to which the REIT is otherwise entitled, including the Initial Contribution, and all rents, income, profits and gains therefrom in trust for the use and benefit of the Unitholders, their successors, permitted assigns and personal representatives upon the trusts and subject to the terms and conditions hereinafter declared and set forth, such trust to constitute the REIT hereunder.

#### **2.2 Initial Contribution**

The Trustees hereby acknowledge and confirm that the Initial Unitholder has made the Initial Contribution to the Trustees for the purpose of settling the REIT.

#### **2.3 Name**

The name of the REIT is Retrocom Mid-Market Real Estate Investment Trust. As far as practicable and except as otherwise provided in this Declaration of Trust, the Trustees shall conduct the affairs of the REIT, hold property, execute all documents and take all legal proceedings under that name. For greater certainty, where any reference is made in this Declaration of Trust, or any other instrument to which the REIT or the Trustees, as trustees of the REIT, are a party, to an act to be performed by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against, or a covenant, representation or warranty by or with respect to (i) the REIT; or (ii) the Trustees, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding taken by or against, or a covenant, representation or warranty by or with respect to the Trustees as trustees of the REIT.

#### **2.4 Use of Name**

Should the Trustees determine that the use of the name Retrocom Mid-Market Real Estate Investment Trust is not practicable, legal or convenient, they may use such other designation or they may adopt such other name for the REIT as they deem appropriate and the REIT may hold property and conduct its activities under such other designation or name.

#### **2.5 Office**

The principal office and centre of administration of the REIT shall be located at 4025 Yonge Street, Suite 214, P.O. Box 204, Toronto, Ontario unless changed by the Trustees to another location in Canada. The REIT may have such other offices or places for the conduct of its affairs as the Trustees may from time to time determine as necessary or desirable.

#### **2.6 Nature of the REIT**

The REIT is an unincorporated open-end investment trust. The REIT, its Trustees and its property shall be governed by the general law of trusts, except as such general law of trusts has been or is from time to time modified, altered or abridged for investment trusts or for the REIT by:

- (a) applicable laws, regulations or other requirements imposed by applicable securities or other regulatory authorities; and
- (b) the terms, conditions and trusts set forth in this Declaration of Trust.

The beneficial interests and rights generally of a Unitholder in the REIT shall be limited to the right to participate *pro rata* in distributions when and as declared by the Trustees as contemplated by Article 11 and distributions upon the

termination of the REIT as contemplated in Article 15. The REIT is not and is not intended to be, shall not be deemed to be and shall not be treated as, a general partnership, limited partnership, syndicate, association, joint venture, company, corporation or joint stock company nor shall the Trustees or any individual Trustee or the Unitholders or Special Unitholders or any of them or any officers or other employees of the REIT or any one of them for any purpose be, or be deemed to be, treated in any way whatsoever to be, liable or responsible hereunder as partners or joint venturers. Neither the Trustees nor any officer or other employee of the REIT shall be, or be deemed to be, agents of the Unitholders or Special Unitholders. The relationship of the Unitholders to the Trustees, to the REIT and to the property of the REIT shall be solely that of beneficiaries of the REIT and their rights of Unitholders and Special Unitholders shall be limited to those conferred upon them by this Declaration of Trust. In its first tax year, in filing a return of income for the REIT, the REIT shall elect, assuming that the requirements for such election are met, that the REIT shall be deemed to be a “mutual fund trust” for purposes of the Tax Act for the entire year.

## **2.7 Rights of Unitholders and Special Unitholders**

The rights of each Unitholder to call for a distribution or division of assets, monies, funds, income and capital gains held, received or realized by the Trustees are limited to those contained herein and, except as provided herein, no Unitholder shall be entitled to call for any partition or division of the REIT’s property or for a distribution of any particular asset forming part of the REIT’s property or of any particular monies or funds received by the Trustees. The legal ownership of the property of the REIT and the right to conduct the activities of the REIT are vested exclusively in the Trustees, and no Unitholder or Special Unitholder has or is deemed to have any right of ownership in any of the property of the REIT, except as specifically provided herein. Except as specifically provided herein, no Unitholder or Special Unitholder shall be entitled to interfere with or give any direction to the Trustees with respect to the affairs of the REIT or in connection with the exercise of any powers or authorities conferred upon the Trustees under this Declaration of Trust. The Units and Special Voting Units shall be personal property and shall confer upon the holders thereof only the interest and rights specifically set forth in this Declaration of Trust.

## **ARTICLE 3**

### **TRUSTEES AND OFFICERS**

#### **3.1 Number**

There shall be a minimum of three (3) and a maximum of twelve (12) Trustees. ~~The~~ Subject to Section 3.8, the number of Trustees within such minimum and maximum numbers may be changed by Unitholders and Special Unitholders or by the Trustees, provided that the Trustees may not, between meetings of Unitholders and Special Unitholders, other than as may be required in order to give effect to Mitchell Goldhar’s entitlements under Section 3.8, appoint ~~any~~ additional Trustee(s) if, after such appointment(s), the total number of Trustees would be greater than one and one-third times the number of Trustees in office immediately following the last annual meeting of Unitholders and Special Unitholders. In the event of any such increase, the Unitholders and Special Unitholders or Trustees, as the case may be, shall forthwith elect or appoint any such additional Trustee(s).

#### **3.2 Term of Office**

Trustees will serve one year terms. Trustees elected at an annual meeting will be elected for a term expiring at the next annual meeting and will be eligible for re-election. Trustees appointed by the Trustees between meetings of Unitholders and Special Unitholders in accordance with Section 3.1 shall be appointed for a term expiring at the conclusion of the next annual meeting and will be eligible for election or re-election, as the case may be.

#### **3.3 Qualifications of Trustees**

A Trustee shall be an individual at least 18 years of age, who is not of unsound mind or under any other legal disability and has not been found to be of unsound mind or incapable of managing property by a court in Canada or elsewhere, and who does not have the status of bankrupt. A majority of the Trustees must be Independent Trustees provided, however, that if at any time a majority of the Trustees are not Independent Trustees because of the death, resignation, bankruptcy, adjudicated incompetence, removal or change in circumstances of any Trustee who was an Independent Trustee, this requirement shall not be applicable for a period of 60 days thereafter, during which time the remaining Trustees shall appoint a sufficient number of Independent Trustees to comply with this requirement.

### 3.4 Residency of Trustees

A majority of the Trustees and of any committee of the Trustees, must be Residents. If at any time a majority of the Trustees are for any reason not Residents or there are no Trustees who are Residents, the Trustee or Trustees who are Non-Residents shall, immediately before that time, be deemed to have resigned and shall cease to be Trustees with effect from the time of such deemed resignation. If at any time the number of Trustees is less than the number required under this Declaration of Trust and the remaining Trustee or Trustees fail or are unable to act in accordance with Section 3.7 and/or Section ~~3.11~~3.12 to appoint one or more additional Trustees or if, upon the resignation or deemed resignation of one or more Trustees there would be no Trustees, then the Unitholders and Special Unitholders shall appoint one or more Trustees so that following such appointment a majority of the Trustees are Residents and, failing such appointment, any remaining Trustee ~~or, Unitholder, Special Unitholder~~ or officer of the REIT or the Auditors, as the case may be, may apply to the Ontario Superior Court of Justice for an order appointing one or more Trustees so that following such appointment a majority of the Trustees are Residents, to act until the next annual meeting of Unitholders and Special Unitholders or on such other terms as the Court may order. Any Trustee who is a Resident who proposes to become a Non-Resident shall notify the other Trustees thereof as soon as reasonably practicable and shall resign as a Trustee effective upon the day of such notification and shall be replaced with a Trustee who is a Resident.

### 3.5 Election of Trustees

Subject to Section 3.4, Section ~~3.7~~3.7, Section 3.8 and Section ~~3.11~~3.12, the election of the Trustees shall be by the vote of Unitholders and Special Unitholders. The appointment or election of any Trustee (other than an individual who is serving as a Trustee immediately prior to such appointment or election) shall not become effective unless and until such individual shall have in writing accepted such appointment or election and agreed to be bound by the terms of this Declaration of Trust.

### 3.6 Resignations, Removal and Death of Trustees

A Trustee may resign at any time by an instrument in writing signed by him and delivered or mailed to the President or, if there is no President, the Chief Executive Officer. Such resignation shall take effect on the date such notice is given or at any later time specified in the notice. A Trustee may be removed at any time with or without cause by a majority of the votes cast at a meeting of Unitholders and Special Unitholders called for that purpose or with cause by the resolution passed by an affirmative vote of not less than two-thirds of the remaining Trustees. Any removal of a Trustee shall take effect immediately following the aforesaid vote or resolution or at any later time specified in the notice without need for prior accounting, and any Trustee so removed shall be so notified by the Chief Executive Officer or another officer of the REIT following such removal. Upon the resignation or removal of any Trustee, or such Trustee otherwise ceasing to be a Trustee (“**Retiring Trustee**”), such Retiring Trustee shall (i) cease to have the rights, privileges and powers of a Trustee hereunder, (ii) execute and deliver such documents as the remaining Trustees shall reasonably require for the conveyance of any REIT property held in such Retiring Trustee’s name, (iii) account to the remaining Trustees as they may require for all property which he holds as Trustee, and (iv) resign from all representative or other positions held by such Retiring Trustee on behalf of the REIT, including without limitation, as a director or officer (or any similar position) of any corporation or other person in which the REIT owns any securities (directly or indirectly), upon which resignation such Retiring Trustee shall be discharged from any future obligations as Trustee; provided however that notwithstanding any other provision of this Declaration of Trust, each such Retiring Trustee shall always continue to have the protections afforded to Trustees in Article 16. Upon the incapacity or death of any Trustee, such Retiring Trustee’s legal representative shall execute and deliver on such Trustee’s behalf such documents as the remaining Trustees may require as provided in this Section. In the event that a Trustee or his legal representatives, as applicable, are unable or unwilling to execute and deliver such required documents, each of the remaining Trustees is hereby appointed as the attorney of such Trustee for the purpose of executing and delivering such required documents.

### 3.7 Appointment of Trustees

Except as otherwise provided herein, Trustees shall be appointed (including the reappointment of incumbent Trustees) at each annual meeting of Unitholders and Special Unitholders, and may be appointed at a special meeting of Unitholders and Special Unitholders, in each case to hold office, subject to Section ~~3.10~~3.11, for a term expiring at the close of the next annual meeting of Unitholders and Special Unitholders following such an appointment. Any such appointment (other than by the Initial Unitholder) shall be made either by a resolution approved by a majority of the votes

cast at a meeting of Unitholders and Special Unitholders or shall be made by resolution in writing in the manner set out in Section 8.14. Notwithstanding the foregoing:

- (a) if no Trustees are appointed at the annual meeting of Unitholders and Special Unitholders held immediately before the term of office of the existing Trustees expires, such existing Trustees shall continue to hold the office of Trustees under this Declaration of Trust until successors have been appointed or they cease to hold office; and
- (b) the Trustees may, between annual meetings of the Unitholders and Special Unitholders, appoint one or more additional Trustees for a term to expire (subject to further appointment) at the close of the next annual meeting of Unitholders and Special Unitholders, but the number of additional Trustees so appointed shall not at any time exceed one-third of the number of Trustees who held office immediately at the expiration of the immediately preceding annual meeting of Unitholders and Special Unitholders.

### **3.8 SC/MRR Board Representation and Minimum Voting Entitlement**

- (a) For so long as the SC/MRR Group holds in the aggregate at least 25% of the total aggregate issued and outstanding Units and Special Voting Units (including, for greater certainty, by virtue of the application of the Minimum Voting Entitlement), the number of Trustees shall be up to nine (and, in any event, no fewer than eight, with the precise number of Trustees to be determined (i) during the first six months following ● , 2008, by Mitchell Goldhar, or (ii) from time to time thereafter, by a majority decision of the Trustees) and Mitchell Goldhar shall be entitled to appoint a total of three Trustees, two of which shall also serve as representatives of each committee of the Trustees, subject only to satisfying any independence requirements for serving on such committees (with a maximum of 5 Trustees on each such committee).
- (b) For so long as the SC/MRR Group holds in the aggregate at least 15%, but less than 25%, of the total aggregate issued and outstanding Units and Special Voting Units, the number of Trustees shall be up to nine (and, in any event, no fewer than eight, with the precise number of Trustees to be determined (i) during the first six months following ● , 2008, by Mitchell Goldhar, or (ii) from time to time thereafter, by a majority decision of the Trustees) and Mitchell Goldhar shall be entitled to appoint a total of two Trustees, both of which shall also serve as representatives of each committee of the Trustees, subject only to satisfying any independence requirements for serving on such committees (with a maximum of 5 Trustees on each such committee).
- (c) For so long as the SC/MRR Group holds in the aggregate at least 5%, but less than 15%, of the total aggregate issued and outstanding Units and Special Voting Units, the number of Trustees shall be up to nine (and, in any event, no fewer than eight, with the precise number of Trustees to be determined (i) during the first six months following ● , 2008, by Mitchell Goldhar, or (ii) from time to time thereafter, by a majority decision of the Trustees) and Mitchell Goldhar shall be entitled to appoint one Trustee.
- (d) For so long as the SC/MRR Group holds in the aggregate less than 5% of the total aggregate issued and outstanding Units and Special Voting Units, the number of Trustees shall be up to nine (and, in any event, no fewer than eight, with the precise number of Trustees to be determined (i) during the first six months following ● , 2008, by Mitchell Goldhar, or (ii) from time to time thereafter, by a majority decision of the Trustees).
- (e) If in any given 365-day period in the five year period commencing ● , 2008:
  - (i) the average weighted aggregate number of Special Voting Units and Units held or controlled by members of the SC/MRR Group is equal to or greater than ● ;
  - (ii) a nominee of Mitchell Goldhar is a Trustee; and
  - (iii) SC/MRR Group holds Special Voting Units representing less than 25% of the voting rights attached to all voting securities of the REIT;

the REIT shall issue to members of the SC/MRR Group such number of additional Special Voting Units as will entitle members of the SC/MRR Group to cast in the aggregate 25% of the votes at any meeting of Unitholders and Special Unitholders (the “Minimum Voting Entitlement”).

- (f) SC/MRR Group’s Minimum Voting Entitlement shall extend for an additional five-year period (being ten years in total from ● , 2008) provided that:

- (i) members of the SC/MRR Group sell or originate in aggregate at least \$300,000,000 of freehold assets (excluding the assets sold to the REIT on ● , 2008) to the REIT or its affiliates during the initial 5-year period from ● , 2008;
- (ii) the average weighted aggregate number of Units and Special Voting Units held or controlled by members of the SC/MRR Group in aggregate in any given 365-day period during the initial five-year period from ● , 2008 is at least equal to ● Special Voting Units, representing no less than 10% of the voting rights attached to all voting securities of the REIT; and
- (iii) a nominee of Mitchell Goldhar is a Trustee.

**3.9 ~~3.8~~ Consent to Act**

- (a) A person who is appointed a Trustee hereunder shall not become a Trustee until the person has, either before or after such appointment, executed and delivered to the REIT a consent substantially as follows:

“To: Retrocom Mid-Market Real Estate Investment Trust (the “REIT”)

And to: The Trustees thereof

The undersigned hereby certifies that he or she is [is not] a resident of Canada within the meaning of the *Income Tax Act* (Canada) and consents to act as a Trustee of the REIT and hereby agrees, upon the later of the date of this consent and the date of the undersigned’s appointment as a Trustee of the Trust, to thereby become a party, as a Trustee, to the Declaration of Trust made the 15<sup>th</sup> day of December, 2003, as amended from time to time, constituting the Trust.

Dated: \_\_\_\_\_

\_\_\_\_\_  
[Signature]

\_\_\_\_\_  
[Print Name]

- (b) Upon the later of a person being appointed a Trustee hereunder and executing and delivering to the REIT a consent substantially as set forth in Section ~~3.8~~3.9(a), such person shall become a Trustee hereunder and shall be deemed to be a party (as a Trustee) to this Declaration of Trust, as amended from time to time.

**3.10 ~~3.9~~ Failure to Elect Minimum Number of Trustees**

If a meeting of Unitholders and Special Unitholders fails to elect the minimum number of Trustees required by this Declaration of Trust by reason of the disqualification or death of any nominee, the Trustees elected at the meeting may exercise all of the powers of the Trustees if the number of Trustees so elected constitutes a quorum.

**3.11 ~~3.10~~ Ceasing to Hold Office**

- (a) A Trustee ceases to hold office when:
  - (i) he or she dies or resigns;
  - (ii) he or she is removed in accordance with Section 3.6 or Section ~~3.4~~3.12;
  - (iii) he or she ceases to be duly qualified to act as a Trustee as provided under Section 3.3; or
  - (iv) he or she ceases to be a Trustee in accordance with Section 3.4.
- (b) A resignation of a Trustee becomes effective at the time a written resignation is received by the Trust upon 30 days’ written notice, or at the time specified in the resignation, whichever is later, provided that if, upon the resignation becoming effective, the number of remaining Trustees would be less than the number necessary to constitute a quorum for a meeting of Trustees, the resignation is not effective until the resigning Trustee’s successor is duly appointed as a Trustee, except in the case of a deemed resignation under Section 3.4 which shall be effective at the time therein prescribed.
- (c) Upon a Trustee ceasing to hold office as such hereunder, such Trustee shall cease to be a party (as a Trustee) to this Declaration of Trust; provided, however, that such Trustee shall continue to be entitled to be paid any amounts owing by the REIT to the Trustee and to the benefits of the indemnity provided in Section 16.2.

### **3.12 ~~3.11~~ Vacancies**

The term of office of a Trustee shall terminate and a vacancy shall occur in the event of the death, resignation, bankruptcy, adjudicated incompetence or other incapacity to exercise the duties of the office of a Trustee or upon the removal of such Trustee. No such vacancy shall operate to annul this Declaration of Trust or affect the continuity of the REIT. Until vacancies are filled, the remaining Trustee or Trustees (even if less than a quorum) may exercise the powers of the Trustees hereunder. In the case of a vacancy, the Unitholders and Special Unitholders or, so long as they constitute a quorum, a majority of the Trustees continuing in office may fill such vacancy; provided, however, that for so long as Mitchell Goldhar otherwise qualifies for the entitlements set forth in Section 3.8 relating to the appointment of Trustees, he shall have the exclusive right to appoint a Trustee to fill any vacancy resulting from the termination of the term of office, for any reason, of a Trustee previously appointed by him pursuant to Section 3.8. Any Trustee so elected by the or appointed by the Unitholders and Special Unitholders or the Trustees or Mitchell Goldhar shall hold office for the remaining term of the Trustee he is succeeding. A quorum of Trustees may fill a vacancy among the Trustees, except a vacancy resulting from (i) an increase in the number of Trustees other than in accordance with Section 3.7 or from 3.7, (ii) a failure of the Unitholders and Special Unitholders to elect the minimum number of Trustees fixed by or pursuant to this Declaration of Trust; or (iii) for so long as Mitchell Goldhar otherwise qualifies for the entitlements set forth in Section 3.8 relating to the appointment of Trustees, the termination of the term of office, for any reason, of a Trustee previously appointed by Mitchell Goldhar pursuant to Section 3.8. If there is not a quorum of Trustees, or if the vacancy has arisen from an increase in the number of Trustees other than in accordance with Section 3.7 or from a failure by the Unitholders and Special Unitholders to elect the minimum number of Trustees required by or pursuant to this Declaration of Trust, the Trustees then in office shall forthwith call a special meeting of Unitholders and Special Unitholders to fill the vacancy and, if they fail to call a meeting or if there are no Trustees then in office, the meeting may be called by any Unitholder or Special Unitholder. If the vacancy has arisen by virtue of the termination of the term of office, for any reason, of a Trustee previously appointed by Mitchell Goldhar pursuant to Section 3.8, then, provided that Mitchell Goldhar otherwise qualifies for the entitlements set forth in Section 3.8 relating to the appointment of Trustees, Mitchell Goldhar shall forthwith appoint a Trustee to fill the vacancy. A Trustee appointed to fill a vacancy holds office, subject to Section 3.6 and Section ~~3.10~~3.11, until the close of the next annual meeting of the Unitholders and Special Unitholders unless (i) such Trustee is elected at the next annual meeting or (ii) in the case of a Trustee appointed by Mitchell Goldhar to fill a vacancy in accordance with the terms of Section 3.8 and this Section 3.12, such Trustee is appointed by Mitchell Goldhar at the next annual meeting.

### **3.13 ~~3.12~~ Successor and Additional Trustees**

The right, title and interest of the Trustees in and to the property of the REIT shall vest automatically in all persons who may hereafter become Trustees upon their due election or appointment and qualification and acceptance thereof without any further act and they shall thereupon have all the rights, privileges, powers, obligations and immunities of Trustees hereunder. Such right, title and interest shall vest in the Trustees whether or not conveyancing documents have been executed and delivered pursuant to Section 3.6 or otherwise.

### **3.14 ~~3.13~~ Compensation and Other Remuneration**

Only Trustees who are Independent Trustees and who are not employees of and who do not receive a salary from the REIT or its affiliates or from any Asset Manager or Property Manager shall receive such fees and other reasonable compensation (including, without limitation, fees for serving as Chairman of the REIT, for serving as chair of any committee of Trustees and for attendance at each meeting of Trustees and of each committee of Trustees) as the Trustees may determine from time to time, as well as reimbursement of their out-of-pocket expenses incurred in acting as a Trustee. Unless otherwise determined, such compensation shall be an annual retainer initially in the amount of \$25,000 per year plus a fee of \$1,000 for each day on which the Trustee attends a board or committee meeting (or \$750 for each day on which the Trustee attends Board and/or committee meetings by phone or for a meeting that is for briefing purposes only). Unless otherwise determined, and subject to the first sentence of this Section ~~3.13~~3.14, the Chairman of the board of Trustees will receive an additional annual fee of \$15,000 and the Chairman of each committee will receive an additional annual fee of \$4,000. Each of the Trustees, either directly or indirectly, shall also be entitled to receive remuneration for services rendered to the REIT in any other capacity. Such services may include, without limitation, services as an officer of the REIT, legal, accounting or other professional services or services as a broker, transfer agent or underwriter, whether performed by a Trustee or any Person affiliated with a Trustee. Trustees who are employees of and who receive salary from the REIT or its affiliates or who are employees of any Asset Manager or the Property Manager shall not be entitled to receive any remuneration for their services as Trustees but shall be entitled to reimbursement from the REIT of their

out-of-pocket expenses incurred in acting as a Trustee. The Trustees shall be eligible to participate in any incentive plan for employees and/or officers adopted by the REIT. Each Independent Trustee will be expected to own at least 3,000 Units within three years of appointment. Trustees will be expected to use at least 50% of their retainer remuneration to purchase Units until such Trustee holds at least 3,000 Units.

### **3.15 ~~3.14~~ Validity of Acts**

Any act of a Trustee is valid notwithstanding any irregularity in the appointment of the Trustees or a defect in the qualifications of the Trustees.

### **3.16 ~~3.15~~ Independent Trustees**

Unless otherwise specified herein, a majority of the Trustees or of any committee of the Trustees must be Independent Trustees provided, however, that if at any time a majority of the Trustees are not Independent Trustees because of the death, resignation, bankruptcy, adjudicated incompetence, removal or change in circumstance of any Trustee who was an Independent Trustee, this requirement shall not be applicable for a period of 60 days thereafter, during which time the remaining Trustees shall appoint a sufficient number of Independent Trustees to comply with the requirement.

## **ARTICLE 4**

### **TRUSTEES' POWERS AND DUTIES**

#### **4.1 General Powers**

The Trustees, subject only to the terms and conditions contained in this Declaration of Trust, including without limitation Section 6.1 and Section 6.2, shall have, without further or other authorization and free from any control or direction on the part of the Unitholders or Special Unitholders, full, absolute and exclusive power, control and authority over the assets of the REIT and over the affairs of the REIT to the same extent as if the Trustees were the sole owners of such assets in their own right, to do all such acts and things as in their sole judgment and discretion are necessary or incidental to, or desirable for, the carrying out of any of the purposes of the REIT or the conducting of the affairs of the REIT. In construing the provisions of this Declaration of Trust, there shall be a presumption in favour of the power and authority having been granted to the Trustees. The enumeration of any specific power or authority herein shall not be construed as limiting the general powers or authority or any other specified power or authority conferred herein on the Trustees. Except as specifically required by such laws, the Trustees shall in carrying out investment activities not be in any way restricted by the provisions of the laws of any jurisdiction limiting or purporting to limit investments which may be made by trustees. Without limiting the generality of the foregoing, the Trustees may make any investments without being required to adhere to all of, or any particular portion of the investment criteria or diversification requirements set forth in the *Trustee Act* (Ontario), as amended from time to time, including, without limitation, investments in mutual funds, common trust funds, unit trusts and similar types of investment vehicles, to alter or vary such investments from time to time in a like manner, to retain such investments for such length of time as the Trustees, in their discretion determine and to delegate management and authority to discretionary managers of investment funds as the Trustees in their discretion determine appropriate.

#### **4.2 Independent Trustee Matters**

Notwithstanding anything herein to the contrary, the following matters shall require the prior approval of a majority of the Independent Trustees holding office as such at the time (given by vote at a meeting of Trustees) or by a written resolution signed by all of the Independent Trustees, in order to become effective:

- (a) an acquisition or disposition of a property or an investment in a property, whether by co-investment or otherwise, in which any Asset Manager, the Property Manager or any of their respective related parties has any direct or indirect interest;
- (b) an acquisition of a property from, or disposition of a property to, or assumption of a mortgage from or granting of a mortgage to any person for which any Asset Manager provides services as asset or property manager;
- (c) a material change to the Asset Management Agreement, the Property Management Agreement or any renewal, extension or termination thereof or any increase in the fees payable thereunder (including transaction fees, if any);

- (d) the entering into, waiver of or exercise or enforcement of any rights or remedies under any agreement entered into by the REIT, or the making, directly or indirectly, of any co-investment, with (i) any Trustee who is not an Independent Trustee, (ii) any Asset Manager, (iii) the Property Manager or (iv) any of their respective related parties;
- (e) the refinancing or renewal of any indebtedness owing to any Trustee who is not an Independent Trustee, or by or to any Asset Manager, the Property Manager or any of their respective related parties;
- (f) the grant of options or issuing of Units under any option or purchase plan, or any amendment thereto, provided to any Trustee, any officer and/or others;
- (g) subject to Section 3.8, any change in the number of Trustees of the REIT and the appointment of Trustees to fill any vacancies created by any increase in the number of Trustees;
- (h) decisions relating to compensation of Trustees; and
- (i) decisions relating to any claim by or against any vendor of properties to the REIT, any Asset Manager or the Property Manager or any of their respective related parties.

### 4.3 Specific Powers and Authorities

Subject only to the terms and conditions contained in this Declaration of Trust including, without limitation in Section 6.1 and Section 6.2, and in addition to any powers and authorities conferred by this Declaration of Trust or which the Trustees may have by virtue of any present or future statute or rule of law, the Trustees, without any action or consent by the Unitholders or Special Unitholders, shall have and may exercise, on behalf of the REIT or otherwise, at any time and from time to time the following powers and authorities which may or may not be exercised by them in their sole judgment and discretion and in such manner and upon such terms and conditions as they may from time to time deem proper:

- (a) To retain, invest and re-invest the capital or other funds of the REIT in real or personal property of any kind, all without regard to whether any such properties are authorized by law for the investment of trust funds, and to possess and exercise all the rights, powers and privileges appertaining to the ownership of the property of the REIT and to increase the capital of the REIT at any time by the issuance of additional Units for such consideration as they deem appropriate.
- (b) For such consideration as they deem proper, to invest in, purchase or otherwise acquire for cash or other property or through the issuance of Units or through the issuance of notes, debentures, bonds or other obligations or securities of the REIT and hold for investment the entire or any participating interest in any mortgages. In connection with any such investment, purchase or acquisition, the Trustees shall have the power to acquire a share of rents, lease payments or other gross income from or a share of the profits from or a share in the equity or ownership of real property.
- (c) To sell, rent, lease, hire, exchange, release, partition, assign, mortgage, pledge, hypothecate, grant security interests in, encumber, negotiate, convey, transfer or otherwise dispose of any or all of the property of the REIT by deeds, trust deeds, assignments, bills of sale, transfers, leases, mortgages, financing statements, security agreements and other instruments for any of such purposes executed and delivered for and on behalf of the REIT by one or more of the Trustees or by a duly authorized officer, employee, agent or any nominee of the REIT.
- (d) To enter into leases, contracts, obligations and other agreements for a term extending beyond the term of office of the Trustees and beyond the possible termination of the REIT or for a lesser term.
- (e) To borrow money from or incur indebtedness to any person; to guarantee, indemnify or act as surety with respect to payment or performance of obligations of third parties; to enter into other obligations on behalf of the REIT; and to assign, convey, transfer, mortgage, subordinate, pledge, grant security interests in, encumber or hypothecate the property of the REIT to secure any of the foregoing.
- (f) Without limit as to amount, to issue any type of debt securities or convertible debt securities and to borrow money or incur any other form of indebtedness for the purpose of carrying out the purposes of the REIT or for other expenses incurred in connection with the REIT and for such purposes may draw, make, execute and issue promissory notes and other negotiable and non-negotiable instruments or securities and evidences of indebtedness, secure the payment of sums so borrowed or indebtedness incurred and mortgage, pledge, assign or grant a security interest in any money owing to the REIT or its property or engage in any other means of financing the REIT.
- (g) To lend money or other property of the REIT, whether secured or unsecured.

- (h) To incur and pay out of the property of the REIT any charges or expenses and disburse any funds of the REIT, which charges, expenses or disbursements are, in the opinion of the Trustees, necessary or incidental to or desirable for the carrying out of any of the purposes of the REIT or conducting the affairs of the REIT including, without limitation, taxes or other governmental levies, charges and assessments of whatever kind or nature, imposed upon or against the Trustees in connection with the REIT or the property of the REIT or upon or against the property of the REIT or any part thereof and for any of the purposes herein.
- (i) To deposit funds of the REIT in banks, trust companies and other depositories, whether or not such deposits will earn interest, the same to be subject to withdrawal on such terms and in such manner and by such person or persons (including, without limitation, any one or more Trustees, officers, agents or representatives) as the Trustees may determine.
- (j) To possess and exercise all the rights, powers and privileges appertaining to the ownership of or interest in all or any mortgages or securities, issued or created by, or interest in, any person, forming part of the assets of the REIT, to the same extent that an individual might and, without limiting the generality of the foregoing, to vote or give any consent, request or notice, or waive any notice, either in person or by proxy or power of attorney, with or without power of substitution, to one or more persons, which proxies and powers of attorney may be for meetings or action generally or for any particular meeting or action and may include the exercise of discretionary power.
- (k) To exercise any conversion privilege, subscription right, warrant or other right or option available in connection with any property of the REIT at any time held by it and to make payments incidental thereto; to consent, or otherwise participate in or dissent from, the reorganization, consolidation, amalgamation, merger or readjustment of the finances of any person (other than the REIT), any of the securities of which may at any time be held by the REIT or to the sale, mortgage or lease of the property of any such person; and to do any act with reference thereto, including (without limitation) the delegation of discretionary powers, the exercise of options, the making of agreements or subscriptions and the payment of expenses, assessments or subscriptions which it may consider necessary or advisable in connection therewith;
- (l) ~~To~~ Subject to Section 5.1, to elect, appoint, engage or employ officers for the REIT (including, without limitation, the Chairman of Trustees, Vice-Chairman, President, Chief Executive Officer, Chief Operating Officer, Chief Financial Officer, Secretary, Treasurer and such vice-presidents and other officers as the Trustees may determine), who may be removed or discharged at the discretion of the Trustees, such officers to have such powers and duties, and to serve such terms as may be prescribed by the Trustees or by the Trustees' Regulations; to engage, appoint, employ or contract with any persons as agents, representatives, employees or independent contractors or otherwise (including, without limitation, real estate advisors, investment advisors, registrars, underwriters, accountants, lawyers, real estate agents, property managers, appraisers, brokers, architects, engineers, construction managers, general contractors or otherwise) in one or more capacities, and to pay compensation from the REIT for services in as many capacities as such persons may be so engaged or employed; and, except as prohibited by law, to delegate any of the powers and duties of the Trustees (including, without limitation, the power of delegation) to any one or more Trustees, agents, representatives, officers, employees, independent contractors or other persons without regard to whether such power, authority or duty is normally granted or delegated by Trustees;
- (m) To collect, sue for and receive sums of money coming due to the REIT, and to engage in, intervene in, prosecute, join, defend, compromise, abandon or adjust, by arbitration or otherwise, any actions, suits, proceedings, disputes, claims, demands or other litigation relating to the REIT, the assets of the REIT or the REIT's affairs, to enter into agreements therefor whether or not any suit is commenced or claim accrued or asserted and, in advance of any controversy, to enter into agreements regarding the arbitration, adjudication or settlement thereof.
- (n) To renew, modify, release, compromise, extend, consolidate or cancel, in whole or in part, any obligation to or of the REIT.
- (o) To purchase and pay for, out of the assets of the REIT, insurance contracts and policies insuring the assets of the REIT against any and all risks and insuring the REIT and/or any or all of the Trustees, the Unitholders, Special Unitholders or officers of the REIT against any and all claims and liabilities of any nature asserted by any person arising by reason of any action alleged to have been taken or omitted by the REIT or by the Trustees, the Unitholders, Special Unitholders or the officers of the REIT.

- (p) To cause legal title to any of the assets of the REIT to be held by and/or in the name of the Trustees, or by and/or in the name of the REIT or one or more of the Trustees or any other person, on such terms, in such manner with such powers in such person as the Trustees may determine and with or without disclosure that the REIT or Trustees are interested therein provided, however, that should legal title to any of the assets of the REIT be held by and/or in the name of any person or persons other than the REIT, the Trustees shall require such person or persons to execute a declaration of trust acknowledging that legal title to such assets is held in trust for the benefit of the REIT.
- (q) To determine conclusively the allocation to capital, income or other appropriate accounts for all receipts, expenses, disbursements and property of the REIT.
- (r) To prepare, sign and file or cause to be prepared, signed and filed any prospectus, offering memorandum or similar document, and any amendment thereto and all agreements contemplated therein or ancillary thereto or relating to or resulting from any offering of the Units or other securities issued or held by the REIT and to pay the cost thereof and related thereto out of the property of the REIT whether or not such offering is or was of direct benefit to the REIT or those persons (if any) who were Unitholders or holders of Exchangeable Securities immediately prior to such offering.
- (s) To make or cause to be made application for the listing on any stock exchange of any Units or other securities of the REIT, and to do all things which in the opinion of the Trustees may be necessary or desirable to effect or maintain such listing or listings.
- (t) To issue ~~Trust~~Units or Special Voting Units for such consideration as the Trustees may deem appropriate in their sole discretion, such issuance to be subject to the terms and conditions of this Declaration of Trust;
- (u) In addition to the mandatory indemnification provided for in Section 16.2 to the extent permitted by law to indemnify, or enter into agreements with respect to the indemnification of, any person with whom the REIT has dealings including, without limitation, the Trustees, the Depository, the Transfer Agent or any escrow agent, to such extent as the Trustees shall determine;
- (v) To determine conclusively the value of any or all of the property of the REIT from time to time and, in determining such value, to consider such information and advice as the Trustees, in their sole judgment, may deem material and reliable.
- (w) To do all such acts and things and to exercise such powers as may be delegated to the Trustees by any person who co-owns real property with the REIT.
- (x) To do all such other acts and things as are incidental to the foregoing, and to exercise all powers that are necessary or useful to carry on the business of the REIT, to promote any of the purposes for which the REIT is formed and to carry out the provisions of this Declaration of Trust.

#### **4.4 Further Powers of the Trustees**

The Trustees shall have the power to prescribe any form provided for or contemplated by this Declaration of Trust. The Trustees may make, adopt, amend, or repeal regulations containing provisions relating to the REIT, the conduct of its affairs, the rights or powers of the Trustees and the rights or powers of the Unitholders, Special Unitholders or officers, provided that such regulations shall not be inconsistent with law or with this Declaration of Trust and not, in the opinion of the Trustees, prejudicial to Unitholders or Special Unitholders. The Trustees shall also be entitled to make any reasonable decisions, designations or determinations not inconsistent with law or with this Declaration of Trust which they may determine are necessary or desirable in interpreting, applying or administering this Declaration of Trust or in administering, managing or operating the REIT. To the extent of any inconsistency between this Declaration of Trust and any regulation, decision, designation or determination made by the Trustees, this Declaration of Trust shall prevail and such regulation, decision, designation or determination shall be deemed to be modified to eliminate such inconsistency. Any regulations, decisions, designations or determinations made in accordance with this Section shall be conclusive and binding upon all persons affected thereby.

Subject to any agreement between the REIT and any Trustee and subject as otherwise herein provided, the Trustees may from time to time in their discretion appoint, employ, invest in, contract or deal with any person including, without limitation, any affiliate of any of them and any person in which any one or more of them may be directly or indirectly interested and, without limiting the generality of the foregoing, any Trustee may purchase, hold, sell, invest in or otherwise deal with real property or other property of the same class and nature as may be held by the Trustees as property of the REIT, whether for the Trustee's own account or for the account of another (in a fiduciary capacity or otherwise), without being liable to account therefor and without being in breach of his duties and responsibilities hereunder.

#### **4.5 Banking**

The banking activities of the REIT, or any part thereof, including, but without restricting the generality of the foregoing, the operation of the REIT's accounts; the making, signing, drawing, accepting, endorsing, negotiation, lodging, depositing or transferring of any cheques, promissory notes, drafts, acceptances, bills of exchange and orders for the payment of money; the giving of receipts for orders relating to any property of the REIT; the execution of any agreement relating to any property of the REIT; the execution of any agreement relating to any such banking activities and defining the rights and powers of the parties thereto; and the authorizing of any officer of such bank to do any act or thing on the REIT's behalf to facilitate such banking activities, shall be transacted with such bank, trust company, or other firm or corporation carrying on a banking business as the Trustees may designate, appoint or authorize from time to time and shall be transacted on the REIT's behalf by one or more officers of the REIT as the Trustees may designate, appoint or authorize from time to time.

#### **4.6 Standard of Care**

The exclusive standard of care required of the Trustees in exercising their powers and carrying out their functions hereunder shall be that they exercise their powers and discharge their duties hereunder as Trustees honestly, in good faith with a view to the best interests of the REIT, the Unitholders and the Special Unitholders and in connection therewith, that they exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. Unless otherwise required by law, no Trustee shall be required to give bond, surety or security in any jurisdiction for the performance of any duties or obligations hereunder. The Trustees in their capacity as Trustees shall not be required to devote their entire time to the investments, business or affairs of the REIT.

No Trustee shall be liable in carrying out his or her duties under this Declaration of Trust except in cases where the Trustee fails to act honestly and in good faith with a view to the best interests of the Trust or to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. The duties and standard of care of the Trustees provided as aforesaid are intended to be similar to, and not to be any greater than, those imposed on a director of a corporation governed by the *Canada Business Corporations Act*.

#### **4.7 Fees and Expenses**

As part of the expenses of the REIT, the Trustees may pay or cause to be paid out of the REIT's property, reasonable fees, costs and expenses incurred in connection with the administration and management of the REIT, including (without limitation) real property and brokerage commissions in respect of investments and dispositions of real property made by the REIT, fees of auditors, accountants, lawyers, engineers, appraisers and other agents, consultants and professional advisors employed by or on behalf of the REIT, fees of stock exchanges and the cost of reporting or giving notices to Unitholders and Special Unitholders. All costs, charges and expenses properly incurred by the Trustees on behalf of the REIT shall be payable out of the REIT's property.

#### **4.8 Reliance Upon Trustees**

Any person dealing with the REIT in respect of any matters pertaining to the assets of the REIT and any right, title or interest therein or to securities of the REIT shall be entitled to rely on a certificate or statutory declaration (including, without limiting the foregoing, a certificate or statutory declaration as to the passing of a resolution of the Trustees) executed by any single Trustee or officer of the REIT or, without limiting the foregoing, such other person as may be authorized by the Trustees as to the capacity, power and authority of the Trustees or any such other person to act for and on behalf and in the name of the REIT. No person dealing with the Trustees or officers of the REIT shall be bound to see to the application of any funds or property passing into the hands or control of the Trustees. The receipt by or on behalf of the Trustees or officers of the REIT for monies or other consideration shall be binding upon the REIT.

#### **4.9 Determinations of Trustees Binding**

All determinations of the Trustees which are made in good faith with respect to any matters relating to the REIT, including, without limitation, whether any particular investment or disposition meets the requirements of this Declaration of Trust, shall be final and conclusive and shall be binding upon the REIT and all Unitholders and Special Unitholders (and, where the Unitholder is a registered retirement savings plan, registered retirement income fund, deferred profit sharing plan, registered education savings plan, or registered pension fund or plan as defined in the Tax Act, or other similar fund or plan registered under the Tax Act, upon plan beneficiaries and plan holders past, present and future) and

Units and Special Voting Units of the REIT shall be issued and sold on the condition and understanding that any and all such determinations shall be binding as aforesaid.

#### 4.10 Limitations on Liability of Trustees

- (a) Subject to the standard of care set forth in Section 4.6, none of the Trustees nor any officers, employees or agents of the REIT shall be liable to any Unitholder, Special Unitholder or any other person in tort, contract or otherwise for any action taken or not taken in good faith in reliance on any documents that are, *prima facie*, properly executed; for any depreciation of, or loss to, the REIT incurred by reason of the sale of any security; for the loss or disposition of monies or securities; for any action or failure to act by any person to whom the Trustees are permitted to delegate and have delegated any of their duties hereunder; or for any other action or failure to act including, without limitation, the failure to compel in any way any former Trustee to redress any breach of trust or any failure by any person to perform obligations or pay monies owed to the REIT, unless such liabilities arise out of a breach of the standard of care, diligence and skill as set out in Section 4.6. If the Trustees have retained an appropriate expert, advisor or legal counsel with respect to any matter connected with their duties under this Declaration of Trust, the Trustees may act or refuse to act based on the advice of such expert, advisor or legal counsel and, notwithstanding any provision of this Declaration of Trust, including, without limitation, the standard of care, diligence and skill set out in Section 4.6 hereof, the Trustees shall not be liable for and shall be fully protected from any action or refusal to act based on the advice of any such expert, advisor or legal counsel which it is reasonable to conclude is within the expertise of such expert or advisor to give.
- (b) The Trustees shall not be subject to any personal liability for any debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses against or with respect to the REIT arising out of anything done or permitted or omitted to be done in respect of the execution of the duties of the office of Trustees for or in respect to the affairs of the REIT unless such Trustee shall have failed to meet the standard of care set out in Section 4.6. No property or assets of the Trustees, owned in their personal capacity or otherwise, will be subject to any levy, execution or other enforcement procedure with regard to any obligations under this Declaration of Trust or under any other related agreements unless such Trustee shall have failed to meet the standard of care set out in Section 4.6. No recourse may be had or taken, directly or indirectly, against the Trustees in their personal capacity or against any incorporator, shareholder, director, officer, employee or agent of the Trustees or any successor of the Trustees unless such Trustee shall have failed to meet the standard of care set out in Section 4.6. The REIT shall be solely liable therefor and resort shall be had solely to the REIT's property for payment or performance thereof unless such Trustee shall have failed to meet the standard of care set out in Section 4.6.

In the exercise of the powers, authorities or discretion conferred upon the Trustees under this Declaration of Trust, the Trustees are and shall be conclusively deemed to be acting as trustees of the REIT's property.

#### 4.11 Conflict of Interest

If a Trustee or officer of the REIT:

- (a) is a party to a material contract or transaction or proposed material contract or transaction with the REIT (or an affiliate thereof); or
- (b) is a director or officer of, or otherwise has a material interest in, any person who is a party to a material contract or transaction or proposed material contract or transaction with the REIT (or an affiliate thereof),

such Trustee or officer of the REIT shall disclose in writing to the Trustees or request to have entered into the minutes of meetings of the Trustees or the Investment Committee, as the case may be, the nature and extent of such interest as follows:

- (c) The disclosure required in the case of a Trustee shall be made:
  - (i) at the meeting of Trustees or the Investment Committee, as the case may be, at which a proposed contract or transaction is first considered;
  - (ii) if the Trustee was not then interested in a proposed contract or transaction, at the first such meeting after he becomes so interested;

- (iii) if the Trustee becomes interested after a contract is made or a transaction is entered into, at the first meeting after he becomes so interested; or
  - (iv) if a person who is interested in a contract or transaction later becomes a Trustee, at the first such meeting after he becomes a Trustee.
- (d) The disclosure required in the case of an officer of the REIT who is not a Trustee shall be made:
  - (i) forthwith after such person becomes aware that the contract or transaction or proposed contract or transaction is to be considered or has been considered at a meeting of the Trustees or the Investment Committee;
  - (ii) if such person becomes interested after a contract is made or transaction is entered into, forthwith after such person becomes aware that he has become so interested; or
  - (iii) if a person who is interested in a contract or a transaction later becomes an officer of the REIT, forthwith after he becomes an officer of the REIT.
- (e) Notwithstanding subsections (c) and (d), where this Section applies to any person in respect of a material contract or transaction or proposed material contract or transaction that, in the ordinary course of the affairs of the REIT, would not require approval by the Trustees or the Unitholders and Special Unitholders, such person shall disclose in writing to the Trustees or request to have entered into the minutes of meetings of the Trustees the nature and extent of such person's interest forthwith after such person becomes aware of the contract or transaction or proposed contract or transaction.
- (f) A Trustee referred to in this Section shall not vote on any resolution to approve the said contract or transaction unless the contract or transaction is:
  - (i) an arrangement by way of security for money lent to or obligations undertaken by the Trustee for the benefit of the REIT or an Affiliate;
  - (ii) one relating primarily to such Trustee's remuneration as a Trustee, officer, employee or agent of the REIT;
  - (iii) one for indemnity of such Trustee under Section 16.1 hereof or the purchase of liability insurance; or
  - (iv) one with an Affiliate, provided, however, that the presence of such Trustee at the relevant meeting or the written recognition by such Trustee of any resolution in writing shall be counted toward any quorum requirement or requirement that at least a minimum number of Trustees or Independent Trustees act.
- (g) For the purposes hereof, a general notice to the Trustees by a Trustee or an officer of the REIT disclosing that such person is a director or officer of or has a material interest in a person and is to be regarded as interested in any contract made or any transaction entered into with that person, is a sufficient disclosure of interest in relation to any contract so made or transaction so entered into. In the event that a meeting of Unitholders and Special Unitholders is called to confirm or approve a contract or transaction which is the subject of a general notice to the Trustees, the notice and extent of the interest in the contract or transaction of the person giving such general notice shall be disclosed in reasonable detail in the notice calling the said meeting of Unitholders and Special Unitholders or in any information circular to be provided by this Declaration of Trust or by law.
- (h) Where a material contract is made or a material transaction is entered into between the REIT and a Trustee or an officer of the REIT, or between the REIT and another person in which a Trustee or an officer of the REIT is a director or officer or in which he has a material interest:
  - (i) such person is not accountable to the REIT or to the Unitholders and Special Unitholders for any profit or gain realized from the contract or transaction; and
  - (ii) the contract or transaction is neither void nor voidable,  
by reason only of that relationship or by reason only that such person is present at or is counted to determine the presence of a quorum at the meeting of the Trustees or Investment Committee that authorized the contract or transaction, if such person disclosed such person's interest in accordance with this Section 4.10, and the contract or transaction was reasonable and fair to the REIT at the time it was so approved.
- (i) Notwithstanding anything in this Section, but without limiting the effect of subsection (i) hereof, a Trustee or an officer of the REIT, acting honestly and in good faith, is not accountable to the REIT or to the Unitholders

and Special Unitholders for any profit or gain realized from any such contract or transaction by reason only of such person holding such office or position, and the contract or transaction, if it was reasonable and fair to the REIT at the time it was approved, is not by reason only of such person's interest therein void or voidable, where:

- (i) the contract or transaction is confirmed or approved at a meeting of Unitholders and Special Unitholders duly called for that purpose; and
  - (ii) the nature and extent of such person's interest in the contract or transaction are disclosed in reasonable detail in the notice calling the meeting or in any information circular to be provided by this Declaration of Trust or by law.
- (j) Subject to subsections (i) and (j) hereof, where a Trustee or an officer of the REIT fails to disclose such person's interest in a material contract or transaction in accordance with this Declaration of Trust or otherwise fails to comply with this Section, the Trustees, any Unitholder or any Special Unitholder, in addition to exercising any other rights or remedies in connection with such failure exercisable at law or in equity, may apply to a court for an order setting aside the contract or transaction and directing that such person account to the REIT for any profit or gain realized.

#### 4.12 Related Party Transactions

- (a) Notwithstanding anything contained elsewhere in this Declaration of Trust to the contrary, the provisions of this Section shall apply at all times:
  - (i) to any person who is a "related party" of the REIT within the meaning of Multilateral Instrument 61-101 *Protection of Minority Security Holders in Special Transactions* (as such may be amended or replaced from time to time) ("**MI 61-101**"); and
  - (ii) to any person who is:
    - (A) the Asset Manager or any of its affiliates;
    - (B) a Trustee or an associate of a Trustee;
    - (C) a substantial security holder of the REIT or any affiliate of such substantial security holder (where the term "substantial security holder" shall have the meaning ascribed thereto in Part XXI of the *Securities Act* (Ontario));
    - (D) an officer, director or employee of the REIT or of any of its subsidiaries or affiliates (such person being referred to herein as a "**related party**").
- (b) In the event of any proposed purchase or sale of real property from or to a related party, the REIT shall comply with the provisions of MI 61-101 requiring the preparation of and provision of an independent valuation.
- (c) Without limitation, and in addition to the requirement, if any, under MI 61-101 or this Declaration of Trust to obtain the approval of Unitholders and Special Unitholders, or to obtain minority approval within the meaning of MI 61-101, for any related party transaction within the meaning of MI 61-101, the REIT shall not carry out a proposed purchase or sale of real property from or to a related party, or otherwise effect a related party transaction unless such transaction is determined to be on commercially reasonable terms and is approved by a majority of the Trustees who are not parties to such transaction, or who are not directors, officers or employees of, or who do not have a material interest in, any person (other than the REIT) who is a party to such transaction.

#### 4.13 Conditions Precedent

The obligation of the Trustees to commence or continue any act, action, suit or proceeding or to represent the REIT in any action, suit or proceeding shall be conditional upon sufficient funds being available to the Trustees from the REIT's property to commence or continue such act, action, suit or proceeding or to represent the REIT in any action, suit or proceeding and an indemnity reasonably satisfactory to the Trustees to protect and hold harmless the Trustees against the costs, charges and expenses and liabilities to be incurred therein and any loss and damage it may suffer by reason thereof. None of the provisions contained in this Declaration of Trust shall require the Trustees to expend or risk their own funds or otherwise incur financial liability in the performance of their duties or in the exercise of any of their rights or powers unless they are given an indemnity and funding satisfactory to the Trustees, acting reasonably.

## ARTICLE 5

### OFFICERS OF THE REIT

#### 5.1 General

The REIT shall have a Chairman of Trustees, and may have one or more other officers as the Trustees may appoint from time to time. Any officer of the REIT, other than the Chairman of Trustees, may, but need not, be a Trustee. One person may hold two or more offices. Officers of the REIT may be appointed and discharged, and their powers, responsibilities and remuneration determined, by the Trustees and, in the absence of such determination, their responsibilities shall be those usually applicable to the office held. All officers so appointed shall be Residents. Notwithstanding anything contained in this Declaration of Trust to the contrary, for so long as SC/MRR Group qualifies for the Minimum Voting Entitlement pursuant to Section 3.8(e), members of senior management of the REIT shall be subject to the approval of Mitchell Goldhar.

#### 5.2 Chairman of Trustees

The Chairman of Trustees shall be appointed from among the Trustees provided that the Chairman of Trustees must be an Independent Trustee. When present, the Chairman of Trustees shall be chairman of meetings of Trustees and Unitholders and Special Unitholders and shall have such other powers and duties as the Trustees may determine from time to time.

#### 5.3 Term of Office

The Chairman and any officer appointed by the Trustees shall hold office until his successor is elected or appointed, provided that, without prejudice to rights under any employment contract, the Trustees may at any time remove an officer from office at any time in their sole discretion.

#### 5.4 Independent Contractors

Any office of the REIT appointed by the Trustees may be held by an individual who is not an employee of the REIT but has been retained by the REIT to hold such office pursuant to an independent service agreement entered into between the REIT and that individual or that individual's employer.

## ARTICLE 6

### INVESTMENT GUIDELINES AND OPERATING POLICIES

#### 6.1 Investment Guidelines

The assets of the REIT may be invested only with the approval of the Trustees and only in accordance with the following guidelines:

- (a) notwithstanding anything in Section 6.1(b) to Section 6.1(k) hereof, and in Section 6.2 hereof, the REIT shall not make any investment, take any action or omit to take any action that would result in Units not being units of a "mutual fund trust" within the meaning of the Tax Act, that would result in Units not being qualified investments for Plans or that would result in the REIT paying a tax under Part X.2 of the Tax Act;
- (b) the REIT may only invest, directly or indirectly, in:
  - (i) interests (including fee ownership and leasehold interest) in income-producing real property located primarily in Canada;
  - (ii) corporations, trusts, partnerships or other persons which solely have, directly or indirectly, interests (including the ownership of leasehold interests) in income-producing property located primarily in Canada (or activities relating or ancillary thereto); and
  - (iii) such other activities as are consistent with the other investment guidelines of the REIT and are approved by a majority of Trustees, from time to time;
- (c) the REIT will not invest in any interest in a single real property if, after giving effect to the proposed investment, the cost of investment to the REIT (net of the amount of debt incurred or assumed in connection with such investment) will exceed 20% of the Adjusted Unitholders' Equity at the time the investment is made;

- (d) the REIT may, directly or indirectly, invest in a joint venture arrangement for the purposes of owning interests or investments otherwise permitted to be held by the REIT; provided that such joint venture arrangement contains terms and conditions which, in the opinion of the Trustees, are commercially reasonable, including without limitation such terms and conditions which, in the opinion of the Trustees, are commercially reasonable, including without limitation such terms and conditions relating to restrictions on transfer and the acquisition and sale of the REIT's and any joint venturer's interest in the joint venture arrangement, provisions to provide liquidity to the REIT, such as buy-sell mechanisms, provisions to limit the liability of the REIT to third parties, and provisions to provide for the participation of the REIT in the management of the joint venture arrangement. For purposes hereof, a joint venture arrangement is an arrangement between the REIT and one or more other persons ("**joint venturers**") pursuant to which the REIT, directly or indirectly, conducts an undertaking for one or more of the purposes set out above and in respect of which the REIT may hold its interest jointly or in common or in another manner with others either directly or through the ownership of securities of a corporation or other entity (a "**joint venture entity**"), including without limitation a general partnership, limited partnership or limited liability company;
- (e) except for temporary investments held in cash, deposits with a Canadian chartered bank or trust company registered under the laws of Canada or of a province of Canada, short-term government debt securities, or receivables under instalment receipt agreements or money market instruments of, or guaranteed by, a Schedule I Canadian bank maturing prior to one year from the date of issue or except as permitted pursuant to Sections 6.1(b), (d), (g), (i) and (j) and Section 6.2(a), the REIT may not hold securities other than (i) securities of any issuer referred to in Section 6.1(b), (ii) securities of a joint venture entity; or (iii) securities of an entity wholly-owned, directly or indirectly, by the REIT formed and operated solely for the purpose of holding, directly or indirectly, a particular real property or real properties and provided further that, notwithstanding anything contained in the Declaration of Trust to the contrary, the REIT may acquire securities of other real estate investment trusts;
- (f) the REIT shall not invest in rights to or interests in mineral or other natural resources, including oil or gas, except as incidental to an investment in real property;
- (g) the REIT will not invest, directly or indirectly:
  - (i) in operating businesses unless such investment is an indirect investment and is incidental to a transaction:
    - (A) where revenue will be derived, directly or indirectly, principally from real property; or
    - (B) which principally involves the ownership, maintenance, improvement, leasing or management, directly or indirectly, of real property (in each case as determined by the Trustees); or
  - (ii) in predominantly special purpose properties, such as hotels, nursing homes or resort properties;
- (h) provided that the REIT will maintain its status as a mutual fund trust within the meaning of the Tax Act, the REIT may invest in raw land for development and ownership or for other development projects for the purpose of (i) renovating or expanding existing properties or facilities on adjacent properties, or (ii) developing new properties which will, upon completion, be income producing provided that the aggregate value of the investments of the REIT in raw land, after giving effect to the proposed investment, will not exceed 5% of the Gross Book Value;
- (i) the REIT may invest in mortgages and mortgage bonds (including participating or convertible mortgages) and similar instruments where:
  - (i) the mortgage or mortgage bond is issued by a subsidiary;
    - (A) the real property which is security therefor is income-producing real property which otherwise meets the other investment guidelines of the REIT adopted from time to time in accordance with this Declaration of Trust and the guidelines set out herein;
    - (B) the amount of the mortgage loan is not in excess of 75% of the market value of the property securing the mortgage and the mortgage has at least 1.2X debt service coverage;
    - (C) the mortgage is a first ranking mortgage registered on title to the real property which is security therefor; and

- (D) the aggregate book value of the investments of the REIT in mortgages, after giving effect to the proposed investment, will not exceed 20% of Adjusted Unitholders' Equity;
- (j) notwithstanding any of the provisions hereof, the REIT may invest in any mortgage which is not a first ranking mortgage for purposes of providing, directly or indirectly, financing in connection with a transaction in which the REIT is the vendor or with the intention of using such mortgage as part of a method for subsequently acquiring an interest in or control of a property or a portfolio of properties; provided that the aggregate value of the investments of the REIT in mortgages, after giving effect to the proposed investment, will not exceed 20% of the Adjusted Unitholders' Equity; and
- (k) the REIT may invest an amount (which, in the case of an amount invested to acquire real property, is the purchase price less the amount of any indebtedness assumed or incurred by the REIT) up to 15% of the Adjusted Unitholders' Equity of the REIT in investments which do not comply with one or more of Section 6.1(b), (d), (e), (i) and (j) or Section 6.2(c) and (e).

For the purpose of the foregoing guidelines, the assets, liabilities and transactions of a corporation or other entity wholly or partially owned by the REIT will be deemed to be those of the REIT on a proportionate consolidation basis. In addition, any references in the foregoing to investment in real property will be deemed to include an investment in a joint venture arrangement that invests in real property.

## 6.2 Operating Policies

The operations and affairs of the REIT shall be conducted in accordance with the following policies:

- (a) the REIT shall not purchase, sell, market or trade in currency or interest rate futures contracts otherwise than for hedging purposes where, for the purposes hereof, the term "**hedging**" shall have the meaning ascribed thereto by National Instrument 81-102 adopted by the Canadian Securities Administrators, as amended from time to time;
- (b) (i) any written instrument creating an obligation which is or includes the granting by the REIT of a mortgage; and (ii) to the extent management of the REIT determines to be practicable, any written instrument which is, in the judgment of management of the REIT, a material obligation, shall contain a provision or be subject to an acknowledgement to the effect that the obligation being created is not personally binding upon, and that resort shall not be had to, nor shall recourse or satisfaction be sought from, the private property of any of the Trustees, Unitholders, Special Unitholders, annuitants under a plan of which a Unitholder acts as a trustee or carrier, or officers, employees or agents of the REIT, but that only property of the REIT or a specific portion thereof shall be bound; the REIT, however, is not required, but shall use all reasonable efforts, to comply with this requirement in respect of obligations assumed by the REIT upon the acquisition of real property;
- (c) the REIT will not lease or sublease to any person any real property, premises or space where that person and its affiliates would, after the contemplated lease or sublease, be leasing or subleasing real property, premises or space having a fair market value net of encumbrances in excess of 20% of Adjusted Unitholders' Equity;
- (d) the limitation contained in Section 6.2(c) will not apply to the renewal of a lease or sublease and will not apply where the lessee or sub lessee is, or where the lease or sublease is guaranteed by: (i) the Government of Canada, the Government of the United States, any province or territory of Canada, any state of the United States, any municipality or city in Canada, or any agency or crown corporation thereof; (ii) any entity, of which any of the bonds, debentures or other evidences of indebtedness of, or guaranteed by such entity, or any of the other securities such entity, have received and continue to hold, an investment grade rating from a recognized credit rating agency, in each case at the time the lease or sublease is entered into, or at the time other satisfactory leasing or pre-leasing arrangements (as determined by the Trustees in their discretion) were entered into; or (iii) a Canadian chartered bank or a trust company or insurance company registered or licensed federally or under the laws of a province of Canada;
- (e) in addition to the provisions of Section 6.1(h), the REIT may engage in activities in order to maintain its real properties in good repair or to improve the income-producing potential of properties in which the REIT has an interest;
- (f) title to each real property shall be held by and registered in the name of the REIT, the Trustees or a corporation or other entity owned, directly or indirectly, by the REIT or jointly-owned, directly or indirectly, by the REIT,

with joint venturers or a corporation which is a nominee, directly or indirectly, of the REIT which holds registered title to such real property pursuant to a nominee agreement with the REIT;

- (g) the REIT will not incur any new indebtedness (otherwise than by the assumption of existing indebtedness) or renew or refinance any indebtedness under a mortgage on any of the real property of the REIT where (i) in the case of an individual property, the total amount of indebtedness secured by mortgages on such property exceeds 75% of the market value of such individual property, other than the property located in Kindersley, Saskatchewan; or (ii) in the case of more than one property or a pool or portfolio of properties, the total amount of indebtedness secured by mortgages on such properties exceeds 75% of the market value of such properties on an aggregate basis;
- (h) the REIT will not incur or assume any indebtedness if, after giving effect to such indebtedness, the total indebtedness of the REIT would be more than 70% of the Gross Book Value, including convertible debentures of the REIT from time to time outstanding. For the purposes of this paragraph, the term “**indebtedness**” means any obligation of the REIT for borrowed money provided that (A) an obligation will constitute indebtedness only to the extent that it would appear as a liability on the consolidated balance sheet of the REIT in accordance with GAAP; and (B) indebtedness excludes trade accounts payable, distributions payable to Unitholders and accrued liabilities arising in the ordinary course of business;
- (i) at no time will the REIT incur indebtedness aggregating more than 15% of its Gross Book Value (excluding trade account payables, accrued liabilities arising in the ordinary course of business, debt with an original maturity of one year or more falling due in the next 12 months or variable rate debt for which the REIT has entered into interest rate swap agreements to fix the interest rate for a one year period or more and distributions payable to Unitholders) at floating interest rates or having maturities of less than one year;
- (j) the REIT will not directly or indirectly guarantee any indebtedness or liabilities of any kind of a third party, except indebtedness or liabilities assumed or incurred by an entity in which the REIT holds an interest, directly or indirectly, or by an entity jointly-owned by the REIT with joint venturers and operated solely for the purpose of holding a particular property or properties where such indebtedness, if granted by the REIT directly, would not cause the REIT to otherwise contravene the guidelines and policies set out under Section 6.1 or this Section 6.2. The REIT is not required but shall use its reasonable best efforts to comply with this requirement (i) in respect of obligations assumed by the REIT pursuant to the acquisition of real property or (ii) if doing so is necessary or desirable in order to further the initiatives of the REIT permitted under this Declaration of Trust;
- (k) no acquisition may be made nor any development undertaken unless and until the officers of the REIT have prepared and presented to the Investment Committee or the Trustees a written report containing their recommendation that the REIT make the investment together with a financial analysis of the estimated cost and projected return from the investment and such supplementary information and data (including, without limitation, underlying assumptions, proposed financial arrangements, leasing and economic and market data) as is reasonably necessary to the investment decision;
- (l) the REIT shall obtain and maintain at all times property insurance coverage in respect of potential liabilities of the REIT from risks, in amounts, with such insurers, and on such terms as the Trustees consider appropriate, taking into account all relevant factors including the practices of owners of comparable properties; and
- (m) the REIT shall obtain a building condition report and a Phase I environmental assessment (“**ESA**”) of each real property to be acquired by it and, if the Phase I ESA report recommends a Phase II ESA be conducted, the REIT shall conduct a Phase II ESA, in each case by an independent and experienced environmental consultant; as a condition to any acquisition, any such ESA shall be satisfactory to the Trustees within their sole discretion.

For the purpose of the foregoing policies, the assets, liabilities and transactions of a corporation or other entity wholly or partially owned by the REIT will be deemed to be those of the REIT on a proportionate consolidated basis. In addition, any references in the foregoing investment guidelines and operating policies to investment in real property will be deemed to include an investment in a joint venture that invests in real property.

### **6.3 Amendments to Investment Guidelines and Operating Policies**

The investment guidelines set out under Section 6.1 and the operating policies contained in Section 6.2(b), (e), (g), (h), (i), (l) and (m) may be amended only by Special Resolution pursuant to Section 8.16. The remaining operating

policies may be amended with the approval of a majority of the votes cast by Unitholders and Special Unitholders at a meeting called for such purpose.

#### **6.4 Application of Investment Guidelines and Operating Policies**

With respect to the investment guidelines and operating policies contained in Section 6.1 and Section 6.2, where any maximum or minimum percentage limitation is specified in any of the guidelines and policies therein contained, such guidelines and policies shall be applied on the basis of the relevant amounts calculated immediately after the making of such investment or the taking of such action. Any subsequent change relative to any percentage limitation which results from a subsequent change in the Gross Book Value or Adjusted Unitholders' Equity will not require divestiture of any investment.

#### **6.5 Regulatory Matters**

If at any time a government or regulatory authority having jurisdiction over the REIT or any property of the REIT shall enact any law, regulation or requirement which is in conflict with any investment guideline of the REIT then in force (other than Section 6.1(a)), such guideline in conflict shall, if the Trustees on the advice of legal counsel to the REIT so resolve, be deemed to have been amended to the extent necessary to resolve any such conflict and, notwithstanding anything to the contrary herein contained, any such resolution of the Trustees shall not require the prior approval of Unitholders or Special Unitholders.

### **ARTICLE 7**

#### **UNITS AND SPECIAL VOTING UNITS**

##### **7.1 Units and Special Voting Units**

- (a) The beneficial interests in the REIT shall be divided into ~~a single class of Units~~ interests of two classes, described and designated as "Units" and "Special Voting Units", which shall be entitled to the rights and subject to the limitations, restrictions and conditions set out herein. ~~The number of Units which the REIT may issue is unlimited. Each Unit when issued shall vest indefeasibly in the holder thereof. The, and the interest of each Unitholder and Special Unitholder shall be determined by the number of Units and/or Special Voting Units registered in the name of the Unitholder or Special Unitholder. The number of Units and Special Voting Units which the REIT may issue is unlimited.~~ The issued and outstanding Units and Special Voting Units may be subdivided or consolidated from time to time by the Trustees without notice to the Unitholders and Special Unitholders; *provided, however*, that no subdivision or consolidation to the Units shall be made unless a corresponding subdivision or consolidation is made to the Special Voting Units, and that no subdivision or consolidation to the Special Voting Units shall be made unless a corresponding subdivision or consolidation is made to the Units.
- (b) No Special Voting Unit shall be entitled to any legal or beneficial interest or share in the distributions or net assets of the REIT. Special Voting Units shall only be issued concurrently with or in relation to the issuance of Exchangeable Securities, on such terms and conditions as may be determined by the Trustees. Special Voting Units shall be automatically cancelled, without any further action of the Trustees or the REIT, and the former holder of such Special Voting Unit will cease to have any rights with respect thereto concurrently with the issuance of Units on the exchange of the related Exchangeable Securities. Subject to Section 8.8, each Special Voting Unit shall entitle the holder of record thereof to a number of votes at all meetings of Unitholders and Special Unitholders or in respect of any written resolution of Unitholders and Special Unitholders equal to the number of Units into which the Exchangeable Securities to which such Special Voting Units relate are exchangeable.
- (c) Concurrently with the issuance of any Exchangeable Securities and related Special Voting Units, the REIT shall enter into such agreements, including voting and exchange trust agreements and Exchangeable Security support agreements, as may be necessary or desirable to properly provide for the terms of the Exchangeable Securities, including to provide for voting of such Special Voting Units.

## 7.2 Ranking of Units

Each Unit shall represent an equal undivided beneficial interest in the REIT with all outstanding Units. All Units outstanding from time to time shall participate *pro rata* in any distributions by the REIT and, in the event of termination or winding up of the REIT, in the net assets of the REIT remaining after satisfaction of all liabilities and no Unit shall have any preference or priority over any other. Units shall rank among themselves equally and rateably without discrimination, preference or priority.

## 7.3 Consideration for Units and Special Voting Units

No Units shall be issued other than as fully paid and non-assessable, unless issued on an instalment basis in accordance with the terms of the LTIP. A Unit shall not be fully paid until the consideration therefor has been received in full by or on behalf of the REIT. The consideration for any Unit shall be paid in money or in property or in past services that are not less in value than the fair equivalent of the money that the REIT would have received if the Unit had been issued for money. In determining whether property or past services are the fair equivalent of consideration paid in money, the Trustees may take into account reasonable charges and expenses of organization and reorganization and payments for property and past services reasonably expected to benefit the REIT. Special Voting Units shall only be issued in connection with the issuance of Exchangeable Securities or pursuant to the operation of the Minimum Voting Entitlement.

## 7.4 Re-Purchase of Initial Units by REIT

The REIT has re-purchased the Initial Trust Units from the Initial Unitholder, and the Initial Unitholder has sold the Initial Trust Units to the REIT, for a purchase price of \$100.00 and, upon the completion of such purchase and sale, the Initial Trust Units were cancelled and were no longer outstanding for any purpose of this Declaration of Trust.

## 7.5 No Pre-Emptive Rights

No person shall be entitled, as a matter of right, to subscribe for or purchase any Units of the REIT.

There are no pre-emptive rights attaching to the Units.

## 7.6 Fractional Units and Special Voting Units

If as a result of any act of the Trustees hereunder any person becomes entitled to a fraction of a Unit, such person shall not be entitled to receive a certificate therefor. Fractional Units and Special Voting Units shall not, except to the extent that they may represent in the aggregate one or more whole Units or Special Voting Units, entitle the holders thereof to notice of or to attend or to vote at, meetings of Unitholders and Special Unitholders. Subject to the foregoing, such fractional Units and Special Voting Units shall have attached thereto the rights, restrictions, conditions and limitations attaching to whole Units or Special Voting Units in the proportion that they bear to a whole Unit or Special Voting Unit, as the case may be.

## 7.7 Allotment and Issue

The Trustees may allot and issue Units and Special Voting Units at such time or times and in such manner (including, without limitation, pursuant to any plan from time to time in effect relating to reinvestment by Unitholders of their distributions of the REIT in Units), and for such consideration and to such person, persons or class of persons as the Trustees in their sole discretion shall determine excepting only that Special Voting Units shall only be issued in connection with the issuance of Exchangeable Securities or pursuant to the operation of the Minimum Voting Entitlement. In the event that Units or Special Voting Units are issued in whole or in part for a consideration other than money, the resolution of the Trustees allotting and issuing such Units or Special Voting Units shall express the fair equivalent in money of the other consideration received. ~~The price or value of the consideration for which Units may be issued will be determined by the Trustees in their sole discretion, generally in consultation with investment dealers or brokers who may act as underwriters in connection with offerings of Units.~~

## 7.8 Rights, Warrants and Options

The REIT may create and issue rights, warrants or options or other instruments or securities to subscribe for fully paid Units which rights, warrants, options, instruments or securities may be exercisable at such subscription price or prices and at such time or times as the Trustees may determine. The rights, warrants, options, instruments or securities so created may be issued for such consideration or for no consideration, all as the Trustees may determine. A right, warrant, option, instrument or security shall not be a Unit and a holder thereof shall not be a Unitholder. Upon the approval by the

Independent Trustees of any unit option plan for the Trustees, officers and/or employees of the REIT or any subsidiary of the REIT and/or their personal holding companies or family trusts and/or persons who provide services to the REIT (including pursuant to any Asset Management Agreement), the Governance and Compensation Committee may, upon receiving authority from the Trustees, recommend to the Trustees the granting of options upon the terms and subject to the conditions set forth in such plan.

Subject to the provisions of Article 6 hereof, the Trustees may create and issue indebtedness of the REIT in respect of which interest, premium or principal payable thereon may be paid, at the option of the REIT or the holder, in fully paid Units, or which indebtedness, by its terms, may be convertible into Units at such time and for such prices as the Trustees may determine. Any indebtedness so created shall not be a Unit and a holder thereof shall not be a Unitholder unless and until fully paid Units are issued in accordance with the terms of such indebtedness.

## 7.9 Commissions and Discounts

The Trustees may provide for the payment of commissions or may allow discounts to persons in consideration of their subscribing or agreeing to subscribe, whether absolutely or conditionally, for Units or other securities issued by the REIT or of their agreeing to procure subscriptions therefor, whether absolute or conditional.

## 7.10 Transferability and Stock Exchange Listings

- (a) The Units are freely transferable and, except as stipulated in Section 7.11 and Section 7.12, the Trustees shall not impose any restriction on the transfer of Units by any Unitholder except with the consent of such Unitholder. The Trustees shall use all reasonable efforts to obtain and maintain a listing for the Units on one or more stock exchanges in Canada.
- (b) Special Voting Units shall not be transferable separately and apart from the Exchangeable Securities to which they are attached, and in any event shall be subject to such restrictions on transfer as are stipulated in Section 7.11 and Section 7.12 hereof and/or in any agreement, document or other instrument providing for the creation, issuance and terms of the Exchangeable Securities to which such Special Voting Units are attached. Special Voting Units shall not be listed on any stock exchange.

## 7.11 Transfer of Units and Special Voting Units

- (a) Subject to the provisions of this Article 7, the Units shall be, for all purposes of the REIT and this Declaration of Trust, personal and moveable property, and the Units shall be fully transferable without charge as between persons.
- (b) ~~(a) Subject to the provisions of this Article 7, the Units shall be, for all purposes of the REIT and this Declaration of Trust, personal and moveable property, and the Units shall be fully transferable without charge as between persons, but no~~ No transfer of Units or Special Voting Units shall be effective as against the Trustees or shall be in any way binding upon the Trustees until the transfer has been recorded on the Register or one of the branch transfer registers maintained by the Trustees, the REIT or the Transfer Agent. No transfer of a Unit or a Special Voting Unit shall be recognized unless such transfer is of a whole Unit or Special Voting Unit, as the case may be.
- (c) ~~(b)~~ Subject to the provisions of this Article 7, Units and Special Voting Units shall be transferable on the Register or one of the branch transfer registers only by the holders of record thereof or their executors, administrators or other legal representatives or by their agents or attorneys duly authorized in writing, and, in the case of Units, only upon delivery to the REIT or to the Transfer Agent of the certificate therefor, properly endorsed or accompanied by a duly executed instrument of transfer or power of attorney and accompanied by all necessary transfer or other taxes imposed by law, together with such evidence of the genuineness of such endorsement, execution and authorization and other matters that may reasonably be required by the Trustees or the Transfer Agent. Upon ~~such delivery~~ compliance with the foregoing requirements, the transfer shall be recorded on the Register or branch transfer registers and, in the case of Units, a new Unit Certificate for the Units shall be issued to the transferee and a new Unit Certificate for the balance of Units not transferred shall be issued to the transferor.
- (d) ~~(c)~~ Unit Certificates representing any number of Units may be exchanged without charge for Unit Certificates representing an equivalent number of Units in the aggregate. Any exchange of Unit Certificates may be made at the offices of the Trust or the Transfer Agent where registers are maintained for Unit Certificates pursuant to

the provisions of this Article 7. Any Unit Certificates tendered for exchange shall be surrendered to the Trustees or appropriate Transfer Agent and then shall be cancelled.

### 7.12 Non-Resident Ownership Constraint

- (a) At no time may Non-Residents be the beneficial owners, directly or indirectly, of more than 49% of the Units then outstanding or Special Voting Units, on a basic or fully-diluted basis (including, for greater certainty, Units issuable upon the exchange or conversion of Exchangeable Securities), and the Trustees shall inform the Transfer Agent of this restriction. The Trustees may require ~~declarations~~ a registered holder of Units and/or Special Voting Units to provide the Trustees with a declaration as to the jurisdictions in which beneficial owners of Units are resident the Units or Special Voting Units registered in such Unitholder's or Special Unitholder's name, as the case may be, are resident and as to whether such beneficial owners are Non-Residents (or in the case of a partnership, whether the partnership is a Non-Resident). If the Trustees become aware, as a result of ~~requiring~~ acquiring such declarations as to beneficial ownership or otherwise as a result of any other investigations, that the beneficial owners of 49% of the Units then outstanding or Special Voting Units on a basic or fully-diluted basis (including, for greater certainty, Units issuable upon the exchange or conversion of Exchangeable Securities) are, or may be, Non-Residents or that such a situation is imminent, the Trustees may make a public announcement thereof and shall not accept a subscription for Units from or issue or register a transfer of Units or Special Voting Units to a person unless the person provides a declaration in form and content satisfactory to the Trustees; that the person is not a Non-Resident and does not hold such Units or Special Voting Units for the benefit of Non-Residents. If, notwithstanding the foregoing, the Trustees determine that more than 49% of the Units or Special Voting Units on a basic or fully-diluted basis, (including, for greater certainty, Units issuable upon the exchange or conversion of Exchangeable Securities) are held by Non-Residents, the Trustees ~~shall~~ may send a notice to such Non-Resident holders of the Units or Special Voting Units, as the case may be, chosen in inverse order to the order of acquisition or registration or in such other manner as the Trustees may consider equitable and practicable, requiring ~~them~~ such holders to sell their Units or Special Voting Units (including the Exchangeable Securities to which such Special Voting Units are attached) or a portion thereof within a specified period of not ~~less~~ more than 60 days on a basis that does not result in a contravention of this Section 7.12. The notice shall also require such Non-Resident to notify the REIT of the sale when completed. If the Unitholders 30 days. If the holders of Units or Special Voting Units receiving such notice have not sold the specified number of Units or Special Voting Units (including the Exchangeable Securities to which such Special Voting Units are attached) or provided the Trustees with satisfactory evidence that they are not Non-Residents within such period, the Trustees may, on behalf of such Unitholders, holders sell such Units without further notice or Special Voting Units (including the Exchangeable Securities to which such Special Voting Units are attached) and, in the interim, shall suspend the voting and rights attached to such Units or Special Voting Units and the distribution rights attached to such Units. For all purposes of such sale, the Trustees and any Transfer Agent shall be deemed to be the agents and lawful attorneys of such Non-Resident. Upon such sale (other than the right to receive the net proceeds from the sale). Upon such sale or conversion, the affected holders shall cease to be holders of Units the relevant Units or Special Voting Units (including the Exchangeable Securities to which such Special Voting Units are attached) and their rights shall be limited to receiving the net proceeds of sale upon surrender of the Unit Certificates representing such Units, subject to the right to receive payment of any distribution declared by the Trustees which is unpaid and owing to such Unitholders. The Trustees shall have no liability for the amount received provided that they act in good faith certificates, if any, representing such securities. The REIT may direct the Transfer Agent to do any of the foregoing.

For greater certainty, the ~~Trust~~ REIT may sell ~~Units~~ securities in accordance with the terms hereof despite the fact that the ~~Trust~~ REIT does not possess the ~~Unit Certificate or Unit Certificates~~ certificates, if any, representing the ~~Units~~ securities at the time of the sale. Where, in accordance with this Section 7.12, ~~units~~ securities are sold by the ~~Trust~~ REIT without possession of the ~~Unit Certificate or Unit Certificates~~ certificates, if any, representing the same and, after the sale, a person establishes that it is a *bona fide*

purchaser without notice of the Units securities from the Unit holder thereof, then, subject to applicable law:

- (i) ~~(a)~~ the Trust REIT shall be entitled to treat the Units securities so purchased by the *bona fide* purchaser as validly issued and outstanding Units securities in addition to the Units securities sold by the Trust REIT; and
- (ii) ~~(b)~~ notwithstanding any other provisions of this Declaration of Trust, the Trust REIT is entitled to the deposit made with respect to such sale and shall add the amount of the deposit to the capital account maintained by the Trust REIT in respect of outstanding Units securities.

The Trustees shall have the sole right and authority to make any determination required or contemplated under this Section 7.12. The Trustees shall make all determinations necessary for the administration of the provisions of this Section 7.12 and, without limiting the generality of the foregoing, if the Trustees consider that there are reasonable grounds for believing that a contravention of the non-resident ownership restriction has occurred or will occur, the Trustees shall make a determination with respect to the matter. Any such determination shall be conclusive, final and binding except to the extent modified by any subsequent determination by the Trustees. Notwithstanding the foregoing, the Trustees may delegate, in whole or in part, their power to make a determination to any officer of the Trust REIT.

No U.S. Qualified Plan shall be permitted to be a beneficial owner of any Units or Special Voting Units (including the Exchangeable Securities to which such Special Voting Units are attached) irrespective of whether such beneficial interest be acquired through a subscription for Units or the transfer of Units or Special Voting Units (including the Exchangeable Securities to which such Special Voting Units are attached) or otherwise, and any acquisition of such an interest, on the part of a U.S. Qualified Plan, shall be and be deemed to be null and void ab initio. The ~~Trustee~~ Trustees or the Transfer Agent shall have the right to require a declaration from any person who is, or is desiring to become, a Unit holder of Units or Special Voting Units (including the Exchangeable Securities to which such Special Voting Units are attached) which states that such person is not a U.S. Qualified Plan.

The transfer of Units and Special Voting Units (including the Exchangeable Securities to which such Special Voting Units are attached) shall be restricted such that the Units and Special Voting Units (including the Exchangeable Securities to which such Special Voting Units are attached) shall not be transferred except as permitted under U.S. federal and state securities laws, and no Unit or Special Voting Units (including the Exchangeable Securities to which such Special Voting Units are attached) shall be subject to registration under the United States Securities Act of 1933, as amended (the “**U.S. Securities Act**”). The REIT shall not be subject to registration as an “investment company” under the United States Investment Company Act of 1940, as amended (the “U.S. Investment Company Act”). Each Unit certificate representing a Unit or Exchangeable Security will bear a legend referring to these restrictions. Without the prior written consent of the REIT, no transfer of Units ~~for~~ Special Voting Units (including the Exchangeable Securities to which such Special Voting Units are attached), or any interest therein, shall be permitted (i) within the United States unless the transfer is made in accordance with U.S. federal and state securities laws and the transferee is a “Qualified Purchaser” (within the meaning of Section 2(a)(51) of the U.S. Investment Company Act) or (ii) outside the United States to a “U.S. Person” (within the meaning of Regulation S under the U.S. Securities Act) or a “U.S. resident” (within the meaning of the U.S. Investment Company Act) unless the transfer is made in accordance with U.S. federal and state securities laws and such transfer will not result in the REIT being required to register as an “investment company” under the U.S. Investment Company Act.

At no time may a Unit holder of Units or Special Voting Units (including the Exchangeable Securities to which such Special Voting Units are attached) (i) within the United States be a person other than a “Qualified Purchaser” (within the meaning of Section 2(a)(51) of the U.S. Investment Company Act) or (ii) outside the United States be a “U.S. Person” (within the meaning of Regulation S under the U.S. Securities Act) or a “U.S. resident” (within the meaning of the U.S. Investment Company Act), if this would result in the REIT being required to register as an “investment company” under the U.S. Investment Company Act, and the Trustees shall inform the Transfer Agent of this restriction. The Trustees shall be authorized to require declarations as to whether any beneficial owner of Units or Special Voting Units (including the Exchangeable Securities to which such Special Voting Units are attached) is a “U.S. Person” (within the meaning of Regulation S under the U.S. Securities Act) or a “U.S. resident” (within the meaning of the U.S. Investment Company Act) and

such person's status relative to the above described restrictions. If the Trustees become aware, as a result of requiring such declarations as to beneficial ownership or otherwise, that ~~holder of the Units~~ a holder of Units or Special Voting Units (including the Exchangeable Securities to which such Special Voting Units are attached) (A) within the United States is not, or may not be, a "Qualified Purchaser" (within the meaning of Section 2(a)(51) of the U.S. Investment Company Act) or (B) outside the United States is, or may be, a "U.S. Person" (within the meaning of Regulation S under the U.S. Securities Act) or a "U.S. resident" (within the meaning of the U.S. Investment Company Act) and, in each case, if this would result in the REIT being required to register as an "investment company" under the U.S. Investment Company Act, or that such a situation is imminent, the Trustees may make a public announcement thereof and the Transfer Agent shall not accept a subscription for Units from or issue or register a transfer of Units or Special Voting Units (including the Exchangeable Securities to which such Special Voting Units are attached) to a person unless such person provides a declaration, in form and content satisfactory to the Trustees, that the transfer would not result in the REIT being required to register as an "investment company" under the U.S. Investment Company Act. If, notwithstanding the foregoing, the Trustees determine that the transfer would result in the REIT being required to register as an "investment company" under the U.S. Investment Company Act, the Trustees shall send a notice to the holders of Units and Special Voting Units proposing such transfers, requiring them to sell their Units and Special Voting Units (including the Exchangeable Securities to which such Special Voting Units are attached) or a portion thereof within a specified period of not less than ~~60~~30 days on a basis that does not result in a contravention of this Section 7.12. The notice shall also require such ~~Unitholder~~ holder of Units or Special Voting Units to notify the REIT of the transfer when completed. If the ~~Unitholder~~ holder receiving such notice has not provided the Trustees with satisfactory evidence that the transfer would not result in the REIT being required to register as an "investment company" under the U.S. Investment Company Act, the Trustees may, on behalf of such ~~Unitholder~~ holder, sell such Units or Special Voting Units (including the Exchangeable Securities to which such Special Voting Units are attached) without further notice and, in the interim, shall suspend the voting and rights attached to such Units or Special Voting Units and/or distribution rights attached to such Units. For all purposes of such sale, the Trustees and any Transfer Agent shall be deemed to be the agents and lawful attorneys of ~~such Unitholder~~ the affected holder. Upon such sale, the affected holder shall cease to be a holder of Units and Special Voting Units (including the Exchangeable Securities to which such Special Voting Units are attached) and its rights shall be limited to receiving the net proceeds of sale upon surrender of the ~~Unit Certificates~~ certificates representing such Units and Exchangeable Securities, subject to the right to receive payment of any distribution on Units declared by the Trustees which is unpaid and owing to such ~~Unitholder~~ holder. The Trustees shall have no liability for the amount received provided that they act in good faith.

- (b) No liability shall accrue to the REIT or the Trustees if the Units or Special Voting Units (including the Exchangeable Securities to which such Special Voting Units are attached) of a Non-Resident holder are sold at a loss to such holder. Unless and until the Trustees shall have been required to do so under the terms hereof, the Trustees shall not be bound to do or take any proceeding or action with respect to this Section 7.12 by virtue of the powers conferred on them hereby. The Trustees shall use reasonable commercial efforts to actively monitor the ownership of Units and Special Voting Units (including the Exchangeable Securities to which such Special Voting Units are attached) by Non-Residents. It is acknowledged that the Trustees cannot definitively monitor the ownership of Units by Non-Residents if the Units are registered in the name of CDS. The Trustees shall not be liable for any violation of the Non-Resident ownership restriction which may occur during the term of the REIT.

### **7.13 Book-Based System**

The provisions of this Section shall not in any way alter the nature of Units or the relationships of a Unitholder to the Trustees and of one Unitholder to another but are intended only to facilitate the issuance of certificates evidencing the ownership of Units, if desirable to issue them to Unitholders, and the recording of all transactions in respect of Units and Unit Certificates whether by the Trust, securities dealers, stock exchanges, transfer agents, registrars or other persons.

Except as otherwise provided below, the Units will be represented in the form of one or more fully registered global unit certificates (each a "Global Unit Certificate") held by, or on behalf of, CDS, as depository of the Global Unit Certificates for the participants of CDS, registered in the name of CDS or its nominee, and registration of ownership and transfers of the Units will be effected only through the book-based system administered by CDS.

Except as described below, no purchaser of a Unit will be entitled to a certificate or other instrument from the REIT evidencing that purchaser's ownership thereof, and no holder of a beneficial interest in a Unit (a "**Beneficial Owner**") will be shown on the records maintained by CDS except through book-entry accounts of a participant of CDS acting on behalf of the Beneficial Owners. CDS will be responsible for establishing and maintaining book-entry accounts for its participants having interests in the Global Unit Certificates. Sales of interests in the Global Unit Certificates can only be completed through participants in the depository services of CDS.

Units will be issued in fully registered form to holders or their nominees, if any, who purchase the Units pursuant to the private placement of Units made in reliance upon Rule 144A adopted under the United States *Securities Act of 1933*, and to transferees thereof in the United States who purchase such Units in reliance upon such Rule. Likewise, any Units transferred to a transferee within the United States or outside the United States to a "U.S. Person" (within the meaning of Regulation S) or a "U.S. resident" (within the meaning of the U.S. Investment Company Act) will be evidenced in definitive certificates representing any such Units unless the REIT otherwise agrees that such Units need not be evidenced in definitive securities. If any such Units represented by definitive certificates are subsequently traded into Canada or otherwise outside the United States to a person other than a "U.S. Person" (within the meaning of Regulation S) or a "U.S. resident" (within the meaning of the U.S. Investment Company Act), the Transfer Agent will deliver a certificate registered in the name of CDS or its nominee representing such Units and, thereafter, registration of ownership and transfers of such Units will be made through the book-based system administered by CDS. Without the prior written consent of the REIT, no Units may be transferred within the United States unless the transferee is a "Qualified Purchaser" (within the meaning of Section 2(a)(51) of the U.S. Investment Company Act) and the transfer is in compliance with U.S. federal and state securities laws. Without the prior written consent of the REIT, no Units may be transferred outside the United States (A) to a "U.S. Person" (within the meaning of Regulation S under the U.S. Securities Act) or a "U.S. resident" (within the meaning of the U.S. Investment Company Act), in each case of clause (A) or (B) above if such transfer would result in the REIT being required to register as an "investment company" under the U.S. Investment Company Act and (B) unless in accordance with Regulation S under the U.S. Securities Act.

Except in the case of United States purchasers purchasing Units under Rule 144A or purchasers outside the United States who are either a "U.S. Person" (within the meaning of Regulation S) or a "U.S. resident" (within the meaning of the U.S. Investment Company Act), Units will be issued in fully registered form to holders or their nominees, other than CDS or its nominee, only if: (i) the REIT is required to do so by applicable law; (ii) the depository system of CDS ceases to exist; (iii) the REIT determines that CDS is no longer willing or able or qualified to discharge properly its responsibility as depository and the REIT is unable to locate a qualified successor; or (iv) the REIT at its option elects to terminate the book-entry system in respect of the Units through CDS.

All references herein to actions by, notices given or payments made to Unitholders shall, where such Units are held through CDS, refer to actions taken by, or notices given or payments made to, CDS upon instruction from the CDS Participants in accordance with CDS's rules and procedures. For the purposes of any provision hereof requiring or permitting actions with the consent of or at the direction of Unitholders evidencing a specified percentage of the aggregate Units outstanding, such direction or consent may be given by Unitholders acting through CDS and the CDS Participants owning Units evidencing the requisite percentage of the Units. The rights of a Unitholder whose Units are held through CDS shall be exercised only through CDS and the CDS Participants and shall be limited to those established by law and agreements between such Unitholders and CDS and/or the CDS Participants or upon instruction from the CDS Participants. Each of the Transfer Agent and the Trustees may deal with CDS for all purposes (including the making of payments) as the authorized representative of the respective Unitholders and such dealing with CDS shall constitute satisfaction or performance, as applicable, towards their respective obligations hereunder.

For so long as Units are held through CDS, if any notice or other communication is required to be given to Unitholders, the Trustees and the Transfer Agent will give all such notices and communications to CDS.

If CDS resigns or is removed from its responsibilities as depository and the Trustees are unable or do not wish to locate a qualified successor, CDS shall surrender the Global Unit Certificate to the Transfer Agent with instructions from CDS for registration of Units in the name and in the amounts specified by CDS and the REIT shall issue and the Trustee and Transfer Agent shall execute and deliver the aggregate number of Units then outstanding in the form of definitive Unit Certificates representing such Units.

## 7.14 Redemption of Units

- (a) Each Unitholder shall be entitled to require the REIT to redeem at any time or from time to time at the demand of the Unitholder all or any part of the Units registered in the name of the Unitholder at the prices determined and payable in accordance with the conditions hereinafter provided.
- (b)
  - (i) To exercise a Unitholder's right to require redemption under this Section 7.14, a duly completed and properly executed notice requiring the REIT to redeem Units, in a form approved by the Trustees, shall be sent to the REIT at the head office of the REIT. No form or manner of completion or execution shall be sufficient unless the same is in all respects satisfactory to the Trustees and is accompanied by any further evidence that the Trustees may reasonably require with respect to the identity, capacity or authority of the person giving such notice.
  - (ii) Upon receipt by the REIT of the notice to redeem Units, the Unitholder shall thereafter cease to have any rights with respect to the Units tendered for redemption (other than to receive the redemption payment therefor) including the right to receive any distributions thereon which are declared payable to the Unitholders of record on a date which is subsequent to the day of receipt by the REIT of such notice. Units shall be considered to be tendered for redemption on the date that the REIT has, to the satisfaction of the Trustees, received the notice and other required documents or evidence as aforesaid.
- (c)
  - (i) Upon receipt by the REIT of the notice to redeem Units in accordance with this Section 7.14, the holder of the Units tendered for redemption shall be entitled to receive a price per Unit (the "**Redemption Price**") equal to the lesser of:
    - (A) 90% of the "**market price**" of the Units on the principal market on which the Units are listed for trading during the ten (10) trading day period commencing immediately following the date (the "**Redemption Date**") on which the Units were surrendered for redemption; and
    - (B) 100% of the "**closing market price**" on the principal market on which the Units are listed for trading, on the Redemption Date;

For the purposes of this calculation, "**market price**" will be the amount equal to the weighted average of the trading prices of the Units on the applicable market or exchange for each of the trading days on which there was a trade during the specified trading day period; and provided that if there was trading on the applicable exchange or market for fewer than five (5) of the trading days during the specified trading day period, the "**market price**" will be the average of the following prices established for each of the trading days during the specified trading period: the average of the last bid and last asking prices of the Units for each day on which there was no trading and the weighted average trading prices of the Units for each day that there was trading. The "**closing market price**" will be (i) an amount equal to the closing price of the Units on the applicable market or exchange if there was a trade on the specified date and the applicable exchange or market provides a closing price; (ii) an amount equal to the average of the highest and lowest prices of the Units on the applicable market or exchange if there was trading on the specified date and the exchange or other market provides only the highest and lowest prices of Units traded on a particular day; or (iii) the average of the last bid and last asking prices of the Units if there was no trading on the specified date. In the event that such Units are not listed and quoted for trading in a public market, the Redemption Price shall be the fair market value of such Units, which shall be determined by the Trustees in their sole discretion.

- (ii) Subject to Section 7.14(d) and Section 7.14(e), the Redemption Price payable in respect of the Units tendered for redemption during any calendar month shall be paid by cheque, drawn on a Canadian chartered bank or a trust company in lawful money of Canada, payable at par to or to the order of the Unitholder who exercised the right of redemption within thirty (30) days after the end of the calendar month in which the Units were tendered for redemption. Payments made by the REIT of the Redemption Price are conclusively deemed to have been made upon the mailing of a cheque in a postage prepaid envelope addressed to the former Unitholder unless such cheque is dishonoured upon presentment. Upon such payment, the REIT shall be discharged from all liability to the former Unitholder in respect of the Units so redeemed.

- (d) Section 7.14(c)(ii) shall not be applicable to Units tendered for redemption by a Unitholder, if:
- (i) the total amount payable by the REIT pursuant to Section 7.14(c) in respect of such Units and all other Units tendered for redemption in the same calendar month exceeds \$50,000 (the “**Monthly Limit**”); provided that the Trustees may, in their sole discretion, waive such limitation in respect of all Units tendered for redemption in any calendar month and, in the absence of such a waiver, Units tendered for redemption in any calendar month in which the total amount payable by the REIT pursuant to Section 7.14(c)(ii) exceeds the Monthly Limit will be redeemed for cash pursuant to Section 7.14(c)(ii) and, subject to any applicable regulatory approvals, by a distribution *in specie* of assets held by the REIT on a *pro rata* basis;
  - (ii) at the time the Units are tendered for redemption, the outstanding Units are not listed for trading or quoted on any stock exchange or market which the Trustees consider, in their sole discretion, provides representative fair market value prices for the Units; or
  - (iii) the normal trading of the outstanding Units is suspended or halted on any stock exchange on which the Units are listed for trading or, if not so listed, on any market on which the Units are quoted for trading, on the Redemption Date for such Units or for more than five (5) trading days during the ten (10) trading day period commencing immediately after the Redemption Date for such Units.
- (e) To the extent that Section 7.14(c)(ii) is not applicable to all of the Units tendered for redemption by a Unitholder pursuant to Section 7.14(d), the balance of the Redemption Price per Unit specified in Section 7.14(c) shall, subject to receipt of all necessary regulatory approvals (which the REIT shall use reasonable commercial efforts to obtain forthwith), be paid and satisfied by way of a distribution *in specie* to such Unitholder of assets held by the REIT. To that extent, the REIT shall redeem that number of Subsidiary Trust Units and Series 1 Trust Notes, respectively, equal to the product of (i) the number of Units tendered for redemption divided by the total number of Units outstanding on the date on which the Units were tendered for redemption, and (ii) the number of Subsidiary Trust Units and Series 1 Trust Notes (in the principal amount of \$100.00), respectively, held by the REIT on the date the Units were tendered for redemption, for redemption proceeds consisting of Series 2 Trust Notes and Series 3 Trust Notes, respectively. The balance of the Redemption Price payable pursuant to this Section 7.14 in respect of Units tendered for redemption during any month shall, subject to receipt of all necessary regulatory approvals, be paid by the transfer, to or to the order of the holder of Units who exercised the right of redemption, within 30 days (the “**Transfer Date**”) after the end of the calendar month in which the Units were tendered for redemption, of the number of Series 2 Trust Notes and Series 3 Trust Notes determined as aforesaid. Payments by the REIT of the balance of the Redemption Price are conclusively deemed to have been made upon the mailing of certificates representing the Series 2 Trust Notes and Series 3 Trust Notes by registered mail in a postage prepaid envelope addressed to the former holder of Units and/or any party having a security interest. Upon such payment, together with any cash payable to the Unitholder pursuant to Section 7.14(c)(ii), the REIT shall be discharged from all liability to such former Unitholder and any party having a security interest in respect of the Units so redeemed. No Series 2 Trust Notes or Series 3 Trust Notes in integral multiples of less than \$100 will be distributed and, where notes to be received by a Unitholder includes a multiple less than that number, the number of notes shall be rounded to the next lowest integral multiple of \$100. The REIT shall be entitled to all interest paid on the Subsidiary Trust Notes, if any, and distributions paid on the Subsidiary Trust Units on or before the date of distribution *in specie*. Where the Trust makes a distribution *in specie* of a *pro rata* number of securities of Subsidiary Trust on a redemption of Units pursuant to this Section, the Trustees may, in their sole discretion, designate and treat as having been paid to the redeeming Unitholders any amount of the capital gains or income realized by the REIT on or in connection with the distribution of such securities to the Unitholder.
- (f) All Units which are redeemed under this Section 7.14 shall be cancelled and such Units shall no longer be outstanding and shall not be reissued.

### 7.15 Certificate Fee

The Trustees may establish a reasonable fee to be charged for every certificate issued.

## 7.16 Form of Certificate

- (a) The form of certificate representing Units and the instrument of transfer, if any, on the reverse side thereof shall be in such form as is from time to time authorized by the Trustees.
- (b) If issued, Unit Certificates are issuable only in fully registered form.
- (c) The definitive form of the Unit Certificates shall:
  - (i) be in the English language or in the English language and French language;
  - (ii) be dated as of the date of issue thereof;
  - (iii) contain the CUSIP number for the Units; and
  - (iv) contain such distinguishing letters and numbers as the Trustees shall prescribe.
- (d) In the event that the Unit Certificate is translated into the French language and any provision of the Unit Certificate in the French language shall be susceptible of an interpretation different from the equivalent provision in the English language, the interpretation of such provision in the English language shall be determinative.
- (e) Each Unit Certificate shall be signed on behalf of the Trustees and certified by the Transfer Agent of the REIT. The signature of the Trustees required to appear on such certificate may be printed, lithographed or otherwise mechanically reproduced thereon and, in such event, certificates so signed are as valid as if they had been signed manually. If a Unit Certificate contains the printed or mechanically reproduced signature of a person, then the REIT may issue the Unit Certificate even though such person has ceased to be a Trustee or an authorized representative thereof and such Unit Certificate is a valid as if such person continued to be a Trustee or an authorized representative thereof at the date of its issue.
- (f) Special Voting Units will be evidenced only by the certificate(s) representing the Exchangeable Securities to which they are attached.

## 7.17 Contents of Unit Certificates

- (a) Until otherwise determined by the Trustees, each Unit Certificate shall legibly set forth on the face thereof, inter alia, the following:
  - (i) the name of the REIT and the words “A trust governed under the laws of the Province of Ontario created by a Declaration of Trust made the 15<sup>th</sup> day of December, 2003, as amended from time to time” or words of like effect;
  - (ii) the name of the person to whom the Unit Certificate is issued as Unitholder;
  - (iii) the number of Units represented thereby and whether or not the Units represented thereby are fully paid;
  - (iv) that the Units represented thereby are transferable;
  - (v) “The Units represented by this certificate are issued upon the terms and subject to the conditions of the Declaration of Trust, which Declaration of Trust is binding upon all holders of Units and, by acceptance of this certificate, the holder assents to the terms and conditions of the Declaration of Trust. A copy of the Declaration of Trust, pursuant to which this certificate and the Units represented thereby are issued may be obtained by a Unitholder on demand and without fee from the head office of the REIT” or words of like effect; and
  - (vi) “For information as to personal liability of a Unitholder, see the reverse side of this certificate” or words of like effect.
- (b) Until otherwise determined by the Trustees, each such certificate shall legibly set forth on the reverse side thereof, inter alia, the following:
  - (i) “The Declaration of Trust provides that no Unitholder shall be subject to any personal liability whatsoever, in tort, contract or otherwise, to any person in connection with the assets of the Trust or the obligations or the affairs of the Trust and all such persons shall look solely to the assets of the Trust for satisfaction of claims of any nature arising out of or in connection therewith and the assets of the REIT only shall be subject to levy or execution”, or words of like effect; and

- (ii) appropriate forms of notice of exercise of the right of redemption and of powers of attorney for transferring Units.

The Unit Certificates may be engraved, printed or lithographed, or partly in one form and partly in another, as the Trustees may determine.

### **7.18 Register of Unitholders and Special Unitholders**

A register (the “**Register**”) shall be kept at the principal stock transfer office in Toronto, Ontario of the Transfer Agent, which Register shall contain the names and addresses of the Unitholders and Special Unitholders, the respective numbers of Units and/or Special Voting Units held by them, the certificate numbers of certificates representing such Units and/or the Exchangeable Securities to which such Special Voting Units are attached, and a record of all transfers and redemptions thereof. Branch transfer registers shall be maintained at such other offices of the Transfer Agent as the Trustees may from time to time designate. Only Unitholders whose certificates are so recorded shall be entitled to receive distributions or to exercise or enjoy the rights of Unitholders hereunder. The Trustees shall have the right to treat the person registered as a Unitholder or Special Unitholder on the Register as the owner of such Units or Special Voting Units for all purposes, including, without limitation, payment of any distribution (in the case of Units only), giving notice to Unitholders and Special Unitholders and determining the right to attend and vote at meetings of Unitholders and Special Unitholders.

### **7.19 Successors in Interest to Unitholders or Special Unitholders**

Any person ~~purporting to become~~ becoming entitled to any Units or Special Voting Units, as the case may be, as a consequence of the death, bankruptcy or incapacity of any Unitholder or Special Unitholder or otherwise by operation of law; shall be recorded in the Register as the holder of such Units or Special Voting Units and, in the case of Units, shall receive a new certificate therefor upon production of evidence thereof satisfactory to the Trustees and delivery of the existing certificate to the Trustees or the Transfer Agent of the REIT, but until such record is made, the Unitholder or Special Unitholder of record shall continue to be and ~~shall~~ be deemed to be the holder of such Units or Special Voting Units for all purposes whether or not the REIT, the Trustees or the Transfer Agent or registrar of the REIT shall have actual or other notice of such death, bankruptcy, incapacity or other event and any person becoming entitled to such Units shall be bound by every notice or other document in respect of the Units which shall have been duly given to the person from whom such person derives title to such Units. Once such record is made, the Trustees shall deal with the new holder of such units as Unitholder from thereon and shall have no liability to any other person purporting to have been entitled to the Units prior to the making of such record.

### **7.20 Units Held Jointly or in Fiduciary Capacity**

The REIT may treat two or more persons holding any Unit as joint tenants of the entire interest therein unless the ownership is expressly otherwise recorded in the Register, but no entry shall be made that any person is in any other manner entitled to any future, limited or contingent interest in any Unit; provided, however, that any person recorded in the Register as a Unitholder may, subject to the provisions herein contained, be described in the Register as a fiduciary of any kind and any customary words may be added to the description of the holder to identify the nature of such fiduciary relationship.

### **7.21 Performance of Trusts**

None of the Trustees, officers of the REIT, Unitholders, ~~the Transfer Agent~~ Special Unitholders or any transfer agent, registrar or other agent of the REIT or the Trustees shall have a duty to inquire into any claim that a transfer of a Unit, Special Voting Unit or other security of the REIT was or would be wrongful or that a particular adverse person is the owner of or has an interest in the Unit, Special Voting Unit or other security or any other adverse claim, or be bound to see to the performance of any trust, express, implied or constructive, or of any charge, pledge or equity to which any of the Units, Special Voting Units or other securities or any interest therein are or may be subject, or to ascertain or inquire whether any sale or transfer of any such Units, Special Voting Units or other securities or interest therein by any such Unitholder, Special Unitholder or holder of such security or his personal representatives is authorized by such trust, charge, pledge or equity, or to recognize any person as having any interest therein, except for the person recorded as Unitholder or Special Unitholder of such security.

## 7.22 Lost Certificates

In the event that any certificate for Units is lost, stolen, destroyed or mutilated, the Trustees may authorize the issuance of a new certificate for the same number of Units in lieu thereof. The Trustees may in their discretion, before the issuance of such new certificate, require the owner of the lost, stolen, destroyed or mutilated certificate, or the legal representative of the owner, to make such affidavit or statutory declaration, setting forth such facts as to the loss, theft, destruction or mutilation as the Trustees ~~or any officers of the REIT~~ deem necessary and may require the applicant to ~~surrender any mutilated certificate and to require the applicant to supply to the REIT a "lost certificate bond"~~ or similar bond in such reasonable amount as the Trustees direct indemnifying the Trustees ~~or any officers of the REIT~~, the ~~Transfer Agent~~ transfer agents and Registrar registrars for so doing. The Trustees ~~or any officers of the REIT~~ shall have the power to acquire from an insurer or insurers a blanket lost security bond or bonds in respect of the replacement of lost, stolen, destroyed or mutilated certificates. The REIT shall pay all premiums and other sums of money payable for such purpose out of the property of the REIT with such contribution, if any, by those insured as may be determined by the Trustees ~~or any officers of the REIT~~. If such blanket lost security bond is acquired, the Trustees ~~or any officers of the REIT~~ may authorize and direct (upon such terms and conditions as they from time to time impose) any registrar, transfer agent, trustee or others to whom the indemnity of such bond extends to take such action to replace such lost, stolen, destroyed or mutilated certificates without further action or approval by the Trustees ~~or any officers of the REIT~~.

## 7.23 Death of Unitholders or Special Unitholders

The death of a Unitholder or Special Unitholder during the continuance of the REIT shall not terminate the REIT or give the personal representatives or the heirs of the estate of the deceased Unitholder or Special Unitholder a right to an accounting or to take any action in the courts or otherwise against other Unitholders, Special Unitholders or the Trustees, officers of the REIT or the property of the REIT, but shall only entitle the personal representatives or the heirs of the estate or succession of the deceased Unitholder ~~to~~ or Special Unit holder to demand, pursuant to the provisions of Section 7.19, to be recorded in the Register as the holder of the Units or Special Voting Units formerly held by the deceased Unitholder or Special Unitholder (and, in the case of Units, the right to demand and receive, pursuant to the provisions of Section 7.19, a new certificate in place of the certificate held by the deceased Unitholder), and upon compliance with the foregoing such personal representatives or the heirs of the estate or succession of the deceased Unitholder or Special Unitholder shall succeed to all rights of the deceased Unitholder or Special Unitholder under this Declaration of Trust.

## 7.24 Unclaimed Payments

In the event that the Trustees hold any amounts to be paid to Unitholders under Article 11 or otherwise because such amounts are unclaimed or cannot be paid for any reason, neither the Trustees nor any distribution disbursing agent shall be under any obligation to invest or reinvest the same and shall only be obligated to hold the same in a current or other non-interest bearing account with a chartered bank or trust company, pending payment to the person or persons entitled thereto. The Trustees shall, as and when required by law, and may at any time prior to such required time, pay all or part of such amounts so held to a court in the province where the REIT has its principal office or to the Public Guardian and Trustee (or other similar government official or agency) in the province where the REIT has its principal office whose receipt shall be a good and sufficient discharge of the obligations of the Trustees.

## 7.25 Repurchase of Units

The REIT shall be entitled to purchase for cancellation at any time the whole or from time to time any part of the outstanding Units, at a price per Unit and on a basis determined by the Trustees in compliance with all applicable securities laws, regulations, rules or policies or the rules or policies of any applicable stock exchange.

## 7.26 Take-Over Bids

- (a) If within 120 days after the date of a take-over bid the bid is accepted by the holders of not less than 90% of the Units outstanding at the date of the take-over bid, other than Units held at the date of the take-over bid by or on behalf of the offeror or an affiliate or associate of the offeror, the offeror is entitled, on complying with this Section, to acquire the Units held by the dissenting offerees.

- (b) An offeror may acquire Units held by a dissenting offeree by sending by registered mail within 60 days after the date of termination of the take-over bid and in any event within 180 days after the date of the take-over bid, an offeror's notice to each dissenting offeree stating that:
  - (i) the offerees holding more than 90% of the Units outstanding at the date of the take-over bid accepted the take-over bid;
  - (ii) the offeror is bound to take up and pay for or has taken up and paid for the Units of the offerees who accepted the take-over bid;
  - (iii) a dissenting offeree is required to elect:
    - (A) to transfer his Units to the offeror on the terms on which the offeror acquired the Units of the offerees who accepted the take-over bid, or
    - (B) to demand payment of the fair value of his Units in accordance with subsections (h) to (q) by notifying the offeror within 20 days after he receives the offeror's notice;
  - (iv) a dissenting offeree who does not notify the offeror in accordance with subparagraph Section 7.26(b)(iii)(B) is deemed to have elected to transfer his Units to the offeror on the same terms that the offeror acquired the Units from the offerees who accepted the take-over bid; and
  - (v) a dissenting offeree must send his Units to which the take-over bid relates to the REIT within 20 days after he receives the offeror's notice.
- (c) Concurrently with sending the offeror's notice under subsection (b), the offeror shall send to the REIT a notice of adverse claim disclosing the name and address of the offeror and the name of the dissenting offeree with respect to each Unit held by a dissenting offeree.
- (d) A dissenting offeree to whom an offeror's notice is sent under subsection (b) shall, within 20 days after he receives that notice, send his Unit Certificates to the REIT.
- (e) Within 20 days after the offeror sends an offeror's notice under subsection (b), the offeror shall pay or transfer to the REIT the amount of money or other consideration that the offeror would have had to pay or transfer to a dissenting offeree if the dissenting offeree had elected to accept the take-over bid under subparagraph Section 7.26(b)(iii)(A).
- (f) The REIT is deemed to hold in trust for the dissenting offeree the money or other consideration it receives under subsection (e), and the REIT shall deposit the money in a separate account in a bank or other body corporate any deposits of which are insured by the Canada Deposit Insurance Corporation or guaranteed by the Quebec Deposit Insurance Board, and shall place the other consideration in the custody of a bank or such other body corporate.
- (g) Within 30 days after the offeror sends an offeror's notice under subsection (b), the REIT shall:
  - (i) issue to the offeror a Unit Certificate in respect of the Units that were held by dissenting offerees;
  - (ii) give to each dissenting offeree who elects to accept the take-over bid terms under subparagraph Section 7.26(b)(iii)(A) and who sends his Unit Certificates as required under subsection (d), the money or other consideration to which he is entitled, disregarding fractional Units, if any, which may be paid for in money; and
  - (iii) send to each dissenting offeree who has not sent his Unit Certificates as required under subsection (d) a notice stating that:
    - (A) his Units have been cancelled,
    - (B) the REIT or some designated person holds in trust for him the money or other consideration to which he is entitled as payment for or in exchange for his Units, and
    - (C) the REIT will, subject to subsections (h) to (q), send that money or other consideration to him forthwith after receiving his Units.
- (h) If a dissenting offeree has elected to demand payment of the fair value of his Units under subparagraph Section 7.26(b)(iii)(B), the offeror may, within 20 days after it has paid the money or transferred the other consideration under subsection (e), apply to a court to fix the fair value of the Units of that dissenting offeree.

- (i) If an offeror fails to apply to a court under subsection (h), a dissenting offeree may apply to a court for the same purpose within a further period of 20 days.
- (j) Where no application is made to a court under subsection (i) within the period set out in that subsection, a dissenting offeree is deemed to have elected to transfer his Units to the offeror on the same terms that the offeror acquired the Units from the offerees who accepted the take-over bid.
- (k) An application under subsection (h) or (i) shall be made to a court having jurisdiction in the place where the REIT has its registered office.
- (l) A dissenting offeree is not required to give security for costs in an application made under subsection (h) or (i).
- (m) On an application under subsection (h) or (i):
  - (i) all dissenting offerees referred to in subparagraph Section 7.26(b)(iii)(B) whose Units have not been acquired by the offeror shall be joined as parties and shall be bound by the decision of the court; and
  - (ii) the offeror shall notify each affected dissenting offeree of the date, place and consequences of the application and of his right to appear and be heard in person or by counsel.
- (n) On an application to a court under subsection (h) or (i) the court may determine whether any other person is a dissenting offeree who should be joined as a party, and the court shall then fix a fair value for the Units of all dissenting offerees.
- (o) A court may in its discretion appoint one or more appraisers to assist the court to fix a fair value for the Units of a dissenting offeree.
- (p) The final order of the court shall be made against the offeror in favour of each dissenting offeree and for the amount for his Units as fixed by the court.
- (q) In connection with proceedings under this Section, a court may make any order it thinks fit and, without limiting the generality of the foregoing, it may:
  - (i) fix the amount of money or other consideration that is required to be held in trust under subsection (f);
  - (ii) order that money or other consideration be held in trust by a person other than the REIT; and
  - (iii) allow a reasonable rate of interest on the amount payable to each dissenting offeree from the date he sends or delivers his Unit Certificates under subsection (d) until the date of payment.

## ARTICLE 8

### MEETINGS OF UNITHOLDERS AND SPECIAL UNITHOLDERS

#### 8.1 Annual Meeting

There shall be an annual meeting of the Unitholders and Special Unitholders at such time and place in Canada as the Trustees shall prescribe for the purpose of electing Trustees, appointing or removing the Auditors of the REIT and transacting such other business as the Trustees may determine or as may properly be brought before the meeting. The annual meeting of Unitholders and Special Unitholders shall be held after delivery to the Unitholders and Special Unitholders of the annual report referred to in Section 17.8 and, in any event, within 180 days after the end of each Fiscal Year of the REIT.

#### 8.2 Other Meetings

The Trustees shall have power at any time to call special meetings of the Unitholders and Special Unitholders at such time and place as the Trustees may determine. Unitholders and Special Unitholders holding in the aggregate not less than 10% of the combined outstanding Units and Special Voting Units of the REIT may requisition the Trustees in writing to call a special meeting of the Unitholders and Special Unitholders for the purposes stated in the requisition. If there shall be no Trustees, the officers of the REIT shall promptly call a special meeting of the Unitholders and Special Unitholders for the election of successor Trustees. The requisition shall state in reasonable detail the business proposed to be transacted at the meeting and shall be sent to each of the Trustees at the principal office of the REIT. Upon receiving the requisition, the

Trustees shall call a meeting of Unitholders and Special Unitholders to transact the business referred to in the requisition, unless:

- (a) a record date for a meeting of the Unitholders and Special Unitholders has been fixed and notice thereof has been given to each stock exchange in Canada on which the Units are listed for trading;
- (b) the Trustees have called a meeting of the Unitholders and Special Unitholders and have given notice thereof pursuant to Section 8.3; or
- (c) in connection with the business as stated in the requisition:
  - (i) it clearly appears to the Trustees, acting reasonably, that the matter covered by the requisition is submitted by the Unitholder or Special Unitholder primarily for the purpose of enforcing a personal claim or redressing a personal grievance against the REIT, the Trustees, the officers of the REIT or its security holders, or primarily for the purpose of promoting general economic, political, racial, religious, social or similar causes;
  - (ii) the REIT, at the Unitholder's or Special Unitholder's request, included a matter covered by a requisition in an information circular relating to a meeting of Unitholders and Special Unitholders held within two years preceding the receipt of such request, and the Unitholder or Special Unitholder failed to present the matter, in person or by proxy, at the meeting;
  - (iii) substantially the same matter covered by the requisition was submitted to Unitholders and Special Unitholders in an information circular (including a dissident's information circular) relating to a meeting of Unitholders and Special Unitholders held within two years preceding the receipt of the Unitholder's or Special Unitholder's request and the matter covered by the requisition was defeated; or
  - (iv) the rights conferred by this Section 8.2 are being abused to secure publicity.

Subject to the foregoing, if the Trustees do not within 21 days after receiving the requisition call a meeting, any Unitholder or Special Unitholder who signed the requisition may call the meeting in accordance with the provisions of Section 8.3 and Section 8.8 and the Trustees' Regulations, *mutatis mutandis*. If there shall be no Trustees, the officers of the REIT shall promptly call a special meeting of the Unitholders and Special Unitholders for the election of successor Trustees. The phrase "**meeting of the Unitholders and Special Unitholders**" wherever it appears in this Declaration of Trust shall mean and include both an annual meeting and any other meeting of Unitholders and Special Unitholders.

### **8.3 Notice of Meeting of Unitholders and Special Unitholders**

Notice of all meetings of the Unitholders and Special Unitholders shall be mailed or delivered by the Trustees to CDS, to each Trustee and to the Auditors of the Trust not less than 21 nor more than 50 days (or within such other number of days as required by law or relevant stock exchange) before the meeting. Such notice shall specify the time when, and the place where, such meeting is to be held and shall state briefly the general nature of the business to be transacted at such meeting and shall otherwise include such information as would be provided to shareholders of a corporation governed by the *Business Corporations Act* (Ontario) in connection with a meeting of shareholders. Any adjourned meeting, other than a meeting adjourned for lack of a quorum under Section 8.16, may be held as adjourned without further notice. Notwithstanding the foregoing, a meeting of Unitholders and Special Unitholders may be held at any time without notice if all the Unitholders and Special Unitholders are present or represented thereat or those not so present or represented have waived notice. Any Unitholder or Special Unitholder (or a duly appointed proxy of a Unitholder or Special Unitholder) may waive any notice required to be given under the provisions of this Section, and such waiver, whether given before or after the meeting, shall cure any default in the giving of such notice. At any meeting at which a quorum is not present within one-half hour after the time fixed for the holding of such meeting, the meeting, if convened upon the request of the Unitholders or Special Unitholders, shall be dissolved, but in any other case, the meeting will stand adjourned to a day not less than seven days later and to a place and time as chosen by the chair of the meeting, and if at such adjourned meeting a quorum is not present, the Unitholders and Special Unitholders present either in person or by proxy shall be deemed to constitute a quorum. Attendance at a meeting of Unitholders and Special Unitholders shall constitute a waiver of notice unless the Unitholder, Special Unitholder or other person attends the meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not properly called.

#### 8.4 Chairperson

The chairperson of any annual or special meeting shall be the Chairman of the Trustees or any other Trustee specified by resolutions of the Trustees or, in the absence of any Trustee, any person appointed as chairperson of the meeting by the Unitholders and Special Unitholders present.

#### 8.5 Quorum

A quorum for any meeting of Unitholders and Special Unitholders shall be individuals present in person or represented by proxy not being less than two in number provided that if the REIT has only one Unitholder ~~the~~ and Special Unitholder, the Unitholder or Special Unitholder present in person or by proxy constitutes a meeting and a quorum for such meeting. If a quorum is present at the opening of a meeting, the Unitholders and Special Unitholders may proceed with the business of the meeting, notwithstanding that a quorum is not present throughout the meeting. The Chairman of any meeting at which a quorum of Unitholders and Special Unitholders is present may, with the consent of the majority of the Unitholders and Special Unitholders present in person or by proxy, adjourn at such meeting and no notice of any such adjournment need be given. In the event of such quorum not being present at the appointed place on the date for which the meeting is called within 30 minutes after the time fixed for the holding of such meeting, the meeting, if called by request of Unitholders or Special Unitholders, shall be terminated and, if otherwise called, shall stand adjourned to such day being not less than 14 days later and to such place and time as may be appointed by the chairperson of the meeting. If at such adjourned meeting a quorum as above defined is not present, the Unitholders and Special Unitholders present either personally or by proxy shall form a quorum, and any business may be brought before or dealt with at such an adjourned meeting which might have been brought before or dealt with at the original meeting in accordance with the notice calling the same.

#### 8.6 Voting

Holders of Units and Special Voting Units may attend and vote at all meetings of the Unitholders and Special Unitholders either in person or by proxy. Each Unit and Special Voting Unit shall entitle the holder of record thereof to one vote at all meetings of the Unitholders and Special Unitholders. Any action to be taken by the Unitholders and Special Unitholders shall, except as otherwise required by this Declaration of Trust or by law, be authorized when approved by a majority of the votes cast at a meeting of the Unitholders and Special Unitholders. The Chairman of any such meeting shall not have second or casting vote. Every question submitted to a meeting, other than a Special Resolution, shall, unless a poll vote is demanded, be decided by a show of hands, on which every person present and entitled to vote shall be entitled to one vote.

At any such meeting, unless a poll is demanded, a declaration by the Chairman that a resolution has been carried or carried unanimously or by a particular majority, or lost or not carried by a particular majority, shall be conclusive evidence of that fact. If a poll is demanded concerning the election of a chairman or an adjournment, it shall be taken immediately upon request and, in any other case, it shall be taken at such time as the Chairman may direct. The demand for a poll shall not prevent the continuation of a meeting for the transaction of any business other than the question on which the poll has been demanded.

At any meeting of Unitholders and Special Unitholders, on a show of hands every person who is present and entitled to vote, whether as a Unitholder, Special Unitholder or as a proxy, shall have one vote. At any meeting of Unitholders and Special Unitholders on a poll, each Unitholder and Special Unitholder present in person or represented by a duly appointed proxy shall have one vote for each Unit or Special Voting Unit held on the applicable Record Date, except as otherwise set forth herein.

#### 8.7 Matters on which Unitholders and Special Unitholders Shall Vote

None of the following shall occur unless the same has been duly approved by the Unitholders and Special Unitholders at a meeting duly called and held:

- (a) except as provided in Section ~~3.4~~3.5, Section 3.7 or Section ~~3.7~~3.8, the appointment, election or removal of Trustees;
- (b) except as provided in Section 17.6, the appointment or removal of Auditors;
- (c) any amendment to the Declaration of Trust (except as provided in Section ~~6.5~~, ~~Section 13.1~~ or ~~Section 13.36.5~~ and subject to Section 13.1, Section 13.3 and Section 13.4 including, for greater certainty, the provisions thereof providing that Unitholders shall not be entitled to vote on any amendment which directly or indirectly

amends any of the rights, privileges, restrictions and conditions in respect of the Special Voting Units without the approval of Special Unitholders holding, in the aggregate, at least 66<sup>2</sup>/<sub>3</sub>% of the outstanding Special Voting Units);

- (d) the sale of the assets of the REIT as an entirety or substantially as an entirety (other than as a part of an internal reorganization of the assets of the REIT as approved by the Trustees);
- (e) the termination of the REIT; or
- (f) any decision under Section 6.3 or Section 8.7(c), (d), (e) or (f) of the Declaration of Trust of Subsidiary Trust.

Nothing in this Section, however, shall prevent the Trustees from submitting to a vote of Unitholders and Special Unitholders any matter which they deem appropriate. Except with respect to the matters specified in this Section, 8.7, Section 13.2, Section 13.3 and Section 15.2 or matters submitted to a vote of the Unitholders and Special Unitholders by the Trustees, no vote of the Unitholders and Special Unitholders shall in any way bind the Trustees.

## 8.8 Record Dates

For the purpose of determining the Unitholders and Special Unitholders who are entitled to receive notice of and vote at any meeting or any adjournment thereof or for the purpose of any other action, the Trustees may from time to time, without notice to the Unitholders or Special Unitholders, close the transfer books for such period, not exceeding 35 days, as the Trustees may determine; or without closing the transfer books the Trustees may fix a date not more than 60 days prior to the date of any meeting of the Unitholders and Special Unitholders or other action as a record date for the determination of Unitholders and Special Unitholders entitled to receive notice of and to vote at such meeting or any adjournment thereof or to be treated as Unitholders and/or Special Unitholders of record for purposes of such other action, and any Unitholder or Special Unitholder who was a Unitholder or Special Unitholder at the time so fixed shall be entitled to receive notice of and vote at such meeting or any adjournment thereof, even though he has since that date disposed of his Units or Special Voting Units, and no Unitholder or Special Unitholder becoming such after that date shall be entitled to receive notice of and vote at such meeting or any adjournment thereof or to be treated as a Unitholder or Special Unitholder of record for purposes of such other action. If, in the case of any meeting of Unitholders and Special Unitholders, no record date with respect to voting has been fixed by the Trustees, the record date for voting shall be 5:00 p.m. on the last business day before the meeting.

## 8.9 Proxies

Whenever the vote or consent of Unitholders and Special Unitholders is required or permitted under this Declaration of Trust, such vote or consent may be given either directly by the Unitholder or Special Unitholder or by a proxy in such form as the Trustees may prescribe from time to time or, in the case of a Unitholder or Special Unitholder who is a body corporate or association, by an individual authorized by the board of directors or governing body of the body corporate or association to represent it at a meeting of the Unitholders and Special Unitholders. A proxy need not be a Unitholder or a Special Unitholder. The Trustees may solicit such proxies from the Unitholders, Special Unitholders or any of them in any matter requiring or permitting the Unitholders' vote, approval or consent.

The Trustees may adopt, amend or repeal such rules relating to the appointment of proxyholders and the solicitation, execution, validity, revocation and deposit of proxies, as they in their discretion from time to time determine.

An instrument of proxy executed in compliance with the foregoing shall be valid unless challenged at the time of or prior to its exercise and the person challenging the instrument shall have the burden of proving, to the satisfaction of the chairman of the meeting at which the instrument is proposed to be used, that the instrument of proxy is invalid. Any decision of the chairman of the meeting in respect of the validity of an instrument of proxy shall be final and binding upon all persons. An instrument of proxy shall be valid only at the meeting with respect to which it was solicited or any adjournment thereof.

A vote cast in accordance with any proxy shall be valid notwithstanding the death, incapacity, insolvency or bankruptcy of the Unitholder or Special Unitholder giving the proxy or the revocation of the proxy unless written notice of the death, incapacity, insolvency, bankruptcy or revocation of the proxy has been received by the chairman of the meeting prior to the time the vote is cast.

## 8.10 Personal Representatives

If a Unitholder or Special Unitholder is deceased, his personal representative, upon filing with the secretary of the meeting such proof of his appointment as the secretary considers sufficient, shall be entitled to exercise the same voting

rights at any meeting of Unitholders and Special Unitholders as the Unitholder or Special Unitholder would have been entitled to exercise if he were living and for the purpose of the meeting shall be considered to be a Unitholder or Special Unitholder. Subject to the provisions of the will of a deceased Unitholder, if there is more than one personal representative, the provisions of Section 7.20 relating to joint holders shall apply. When any Unit is held jointly by several persons, any one of them may vote at any meeting in person or by proxy in respect of such Unit, but if more than one of them shall be present at such meeting in person or by proxy, and such joint owners or their proxies so present disagree as to any vote to be cast, such vote purporting to be executed by or on behalf of a Unitholder shall be deemed valid unless challenged at or prior to its exercise, and the burden of proving invalidity shall rest on the challenger.

### **8.11 Attendance by Others**

Any Trustee, officer of the REIT, officer, director or employee of any Asset Manager, representative of the auditors of the REIT or other individual approved by the Trustees may attend and speak at any meeting of Unitholders and Special Unitholders.

### **8.12 Conduct of Meetings**

To the extent that the rules and procedures for the conduct of a meeting of Unitholders and Special Unitholders are not prescribed herein, the rules and procedures shall be such reasonable rules and procedures as are determined by the chairman of the meeting and such rules and procedures shall be binding upon all parties participating in the meeting.

### **8.13 Binding Effect of Resolutions**

Every resolution passed at a meeting in accordance with the provisions of this Article 8 shall be binding upon all Unitholders and Special Unitholders, whether present at or absent from the meeting. Subject to Section 8.7, no action taken by Unitholders and Special Unitholders at any meeting of Unitholders and Special Unitholders shall in any way bind the REIT or the Trustees without approval of the Trustees.

### **8.14 Resolution in Lieu of Meeting**

A resolution signed in writing by all of the Unitholders and Special Unitholders entitled to vote on that resolution at a meeting of Unitholders and Special Unitholders is as valid as if it had been passed at a meeting of Unitholders and Special Unitholders. Notwithstanding any other provision of this Declaration of Trust, a resolution in writing executed by Unitholders and Special Unitholders holding a proportion of the outstanding Units and Special Voting Units equal to the proportion required to vote in favour thereof at a meeting of Unitholders and Special Unitholders to approve that resolution is valid as if it had been passed at a meeting of Unitholders and Special Unitholders.

### **8.15 Actions by Unitholders and Special Unitholders**

Any action, change, approval, decision or determination required or permitted to be taken or made by the Unitholders and Special Unitholders hereunder shall be effected by a resolution passed by the Unitholders and Special Unitholders at a duly constituted meeting (or a Special Resolution in lieu thereof) in accordance with this Article 8.

### **8.16 Meaning of “Special Resolution”**

- (a) The expression “**Special Resolution**” when used in this Declaration of Trust means, subject to this Article 8, a resolution proposed to be passed as a special resolution at a meeting of Unitholders and Special Unitholders (including an adjourned meeting) duly convened for that purpose and held in accordance with the provisions of this Section at which two or more individuals present in person or represented by proxy and passed by the affirmative votes of the holders of more than 66 $\frac{2}{3}$ % of the Units and Special Voting Units represented at the meeting and voted on a poll upon such resolution.
- (b) Notwithstanding Section 8.16(a), if at any meeting of Unitholders and Special Unitholders at which a Special Resolution is proposed to be passed two individuals are not present in person or by proxy within 30 minutes after the time appointed for the meeting, then the meeting, if convened by or on the requisition of Unitholders or Special Unitholders, shall be dissolved, but in any other case it shall stand adjourned to such date, being not less than 21 nor more than 60 days later and to such place and time as may be appointed by the chairperson of the meeting. Not less than 10 days’ prior notice shall be given of the time and place of such adjourned meeting in the manner provided in Section 8.3. Such notice shall state that at the adjourned meeting the Unitholders and Special Unitholders present in person or by proxy shall form a quorum but it shall not be necessary to set forth the purposes for which the meeting was originally called or any other particulars. At the adjourned

meeting, the Unitholders and Special Unitholders present in person or by proxy shall form a quorum and may transact the business for which the meeting was originally convened and a resolution proposed at such adjourned meeting and passed by the requisite vote as provided in Section 8.16(a) shall be a Special Resolution within the meaning of this Declaration of Trust.

- (c) Votes on a Special Resolution shall always be given on a poll and no demand for a poll on a Special Resolution shall be necessary.

### **8.17 Meaning of “Outstanding”**

Every Unit and Special Voting Unit issued, certified and delivered hereunder shall be deemed to be outstanding until it shall be cancelled or delivered to the Trustees or Transfer Agent for cancellation provided that:

- (a) when a new certificate has been issued in substitution for a Unit Certificate which has been lost, stolen, mutilated or destroyed, only one of such Unit Certificates shall be counted for the purposes of determining the number of Units outstanding; and
- (b) for the purpose of any provision of this Declaration of Trust entitling holders of outstanding Units and Special Voting Units to vote, sign consents, requisitions or other instruments or take any action under this Declaration of Trust, Units and Special Voting Units owned directly or indirectly, legally or equitably, by the REIT or any Affiliate thereof shall be disregarded, except that:
  - (i) for the purpose of determining whether the Trustees shall be protected in relying on any such vote, consent, requisition or other instrument or action only the Units and Special Voting Units which the Trustees know are so owned shall be so disregarded; and
  - (ii) Units and Special Voting Units so owned which have been pledged in good faith other than to the Trust or an affiliate thereof shall not be so disregarded if the pledgee shall establish to the satisfaction of the Trustees the pledgee’s right to vote such Units or Special Voting Units in his or her discretion free from the control of the REIT or any affiliate thereof.

## **ARTICLE 9**

### **MEETINGS OF THE TRUSTEES**

#### **9.1 Trustees May Act Without Meeting**

The Trustees may act with or without a meeting. Any action of the Trustees or any committee of the Trustees may be taken at a meeting by vote, or without a meeting by written consent signed by all of the Trustees or the members of the applicable committee, as the case may be.

#### **9.2 Notice of Meeting**

Meetings of the Trustees may be held from time to time upon the giving of notice by any Trustee.

Regular meetings of the Trustees may be held without call or notice at a time and place fixed in accordance with the Trustees’ Regulations. Notice of the time and place of any other meetings shall be mailed or otherwise verbally, by telephone or by other means of communication given not less than 48 hours before the meeting but may be waived in writing by any Trustee either before or after such meeting. Notice of a meeting of Trustees need not specify the purpose of or the business to be transacted at the meeting. If a quorum of Trustees is present, the Trustees may without notice hold a meeting immediately following an annual meeting of Unitholders and Special Unitholders. The attendance of a Trustee at a meeting, in person or by telephone shall constitute a waiver of notice of such meeting except where a Trustee attends a meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting has not been lawfully called or convened. Each committee of Trustees appointed by the Trustees may adopt its own rules or procedures for the calling, conduct, adjournment and regulation of the meetings of such committees as it sees fit and may amend or repeal such rules or procedures from time to time; provided, however, that the Trustees’ Regulations and any such rules or procedures shall not be inconsistent with this Declaration of Trust.

#### **9.3 Place of Meeting**

Meetings of the Trustees may be held at any place in Canada. A Trustee who attends a meeting of Trustees, in person or by telephone, is deemed to have consented to the location of the meeting except when he or she attends the meeting for

the express purpose of objecting to the transaction of any business on the grounds that the meeting has not lawfully called or convened.

#### **9.4 Chairman**

The chairman of any meeting of the Trustees shall be the Trustee present at the meeting who holds the office of Chairman of the Trustees or if such person is not present, the Trustees present shall choose one of their number to be chairman. The Chairman of the Trustees and the chairman of any meeting of Trustees shall be both a Resident and an Independent Trustee.

#### **9.5 Quorum**

A quorum for all meetings of the Trustees or any committee thereof shall be a majority of the Trustees then holding office or of the Trustees on such committee, provided that a majority of the Trustees comprising the quorum must be Residents. Notwithstanding any vacancy among the number of Trustees, a quorum of Trustees may exercise all of the powers of the Trustees. In addition, in order to transact any matter set out in Section 4.2, a majority of the Independent Trustees or of the Independent Trustees on such committee, as the case may be, must be present at the meeting of the Trustees or of the committee.

#### **9.6 Adjourned Meeting**

Any meeting of Trustees may be adjourned from time to time by the chairman of the meeting with the consent of the meeting to a fixed time and place. Further notice of the adjourned meeting need not be given. The adjourned meeting shall be duly constituted if a quorum is present and if it is held in accordance with the terms of the adjournment. If there is not a quorum present at the adjourned meeting, the original meeting shall be deemed to have terminated upon its adjournment.

#### **9.7 Voting at Meetings**

- (a) Questions arising at any meeting of the Trustees or of a committee of Trustees shall, unless otherwise specified herein, be decided by a majority of the votes cast, provided however that the approval required with respect to any matter set out in Section 4.2 shall be only that of a majority of the Independent Trustees who have no interest in such matter.
- (b) In the case of an equality of votes at any meeting of Trustees or of a committee of Trustees, the chairman of the meeting shall not have a second or casting vote in addition to his original vote, if any. The powers of the Trustees may be exercised by resolution passed at a meeting at which a quorum is present or by resolution in writing signed by all Trustees. Resolutions in writing may be signed in counterparts each of which shall be deemed to be an original and all originals together shall be deemed to be one and the same instrument.

#### **9.8 Meeting by Telephone**

Any Trustee may participate in a meeting of the Trustees or any committee thereof by means of a conference telephone or other communication facilities by means of which all persons participating in the meeting can hear each other and a Trustee so participating shall be considered for the purposes of this Declaration of Trust to be present in person at that meeting.

### **ARTICLE 10**

#### **COMMITTEES OF TRUSTEES**

##### **10.1 General**

Except as prohibited by law, and subject to Section 3.8, the Trustees may appoint from among their number a committee of Trustees and may delegate to such committee any of the powers of the Trustees, provided that a majority of the Trustees, appointed to any committee, shall be Residents. The Trustees shall have the power to appoint, employ or contract with any person for any matter relating to the REIT or its assets or affairs. For greater certainty, the Trustees may delegate to any person (including, without limitation any one or more officers of the REIT) the power to execute any document or enter into any agreement on behalf of the REIT or exercise any discretion or make any amendment in relation thereto. The Trustees may grant or delegate such authority to an advisor or to a committee of Trustees as the Trustees may in their sole discretion deem necessary or desirable without regard to whether such authority is normally granted or

delegated by trustees. The Trustees shall have the power to determine the term and compensation of an advisor or any other person whom they may employ or with whom they may contract. The Trustees shall have the power to grant powers of attorney as required in connection with any financing or security relating thereto.

## 10.2 Audit Committee

~~The~~ Subject to Section 3.8, the Trustees shall appoint an audit committee (the “**Audit Committee**”) to consist of at least three Trustees, ~~all of whom~~ and no more than five Trustees. All Trustees appointed to the Audit Committee shall be Independent Trustees capable of reading and understanding a set of financial statements that present a breadth and level of complexity of accounting issues that are generally comparable to the breadth and complexity of the issues that can reasonably be expected to be raised by the financial statements of the REIT, and at least one ~~of whom~~ shall be an accountant. The Audit Committee shall:

- (a) review and approve the engagement of the auditors;
- (b) review the REIT’s procedures for internal control with the auditors and Chief Financial Officer of the REIT;
- (c) review and recommend to the Trustees for their approval annual and quarterly financial statements as well as all other material continuous disclosure documents, such as the REIT’s annual information form and management’s discussion and analysis;
- (d) assess the REIT’s financial and accounting personnel;
- (e) assess the REIT’s accounting policies;
- (f) review the REIT’s risk management procedures; and
- (g) review any significant transactions outside the REIT’s ordinary course of business and all pending litigation involving the REIT.

The Auditors are entitled to receive notice of every meeting of the Audit Committee and, at the expense of the REIT, to attend and be heard thereat and, if so requested by a member of the Audit Committee, shall attend any meeting of the Audit Committee held during the term of office of the Auditors. Questions arising at any meeting of the Audit Committee shall be decided by a majority of the votes cast. Decisions may be taken by written consent signed by all of the members of the Audit Committee. The Auditors or a member of the Audit Committee may call a meeting of the Audit Committee on not less than 48 hours’ notice.

## 10.3 Governance and Compensation Committee

~~The~~ Subject to Section 3.8, the Trustees shall appoint a governance and compensation committee (the “**Governance and Compensation Committee**”) to consist of at least three Trustees, ~~all of whom~~ and no more than five Trustees. All Trustees appointed to the Governance and Compensation Committee shall be Independent Trustees. The duties of the Governance and Compensation Committee will be to review, oversee and evaluate the governance, human resources and compensation policies of the REIT. In addition, the Governance and Compensation Committee will:

- (a) assess the effectiveness of the Trustees, each of its committees and individual Trustees;
- (b) consider questions of management succession;
- (c) oversee the recruitment and selection of candidates as Trustees;
- (d) organize an orientation and education program for new Trustees;
- (e) consider and approve proposals by the Trustees to engage outside advisors on behalf of the Trustees as a whole or on behalf of the Independent Trustees;
- (f) administer any unit option plan or purchase plan of the REIT, including the LTIP and any other compensation incentive programs;
- (g) assess the performance of any Asset Manager, the Property Manager, officers and senior management of the REIT;
- (h) review and approve the compensation paid by the REIT, if any, to any officers and any consultants of the REIT; and
- (i) review and make recommendations to the Trustees concerning the level and nature of the compensation payable to the Trustees and officers of the REIT and any change in the number of Trustees of the REIT.

Any member of the Governance and Compensation Committee may call a meeting of the Governance and Compensation Committee upon not less than 48 hours' notice. Where for any reason a member of the Governance and Compensation Committee is disqualified from voting on or participating in a decision, any other independent and disinterested Trustee not already a member of the Governance and Compensation Committee may be designated by the Trustees to act as an alternate. Notwithstanding the appointment of the Governance and Compensation Committee, the Trustees may consider and approve any matter that the Governance and Compensation Committee has the authority to consider or approve.

#### **10.4 Investment Committee**

~~The~~ Subject to Section 3.8, the Trustees may appoint an investment committee (the "**Investment Committee**") to consist of at least three Trustees, ~~a~~ and no more than five Trustees. The majority of ~~whom~~ Trustees appointed to the Investment Committee shall be Independent Trustees and two-thirds of ~~whom~~ must have had at least five years of substantial experience in the real estate industry. The Investment Committee may approve or reject proposed acquisitions and dispositions of investments by the REIT, authorize proposed transactions on behalf of the REIT and approve all borrowings and the assumption or granting of any mortgage, subject to the overall authority of the Trustees. Investment Committee approval is not required for the renewal, extension or modification of any existing mortgage or other loans to the REIT, which can be approved by the Asset Manager, if any, if so delegated by the Trustees.

Any member of the Investment Committee may call a meeting of the Investment Committee upon not less than 48 hours' notice. Where for any reason a member of the Investment Committee is disqualified from voting on or participating in a decision, any other independent and disinterested Trustee not already a member of the Investment Committee may be designated by the Trustees to act as an alternate. Notwithstanding the appointment of the Investment Committee, the Trustees may consider and approve any matter that the Investment Committee has the authority to consider or approve.

#### **10.5 Additional Committees**

~~The~~ Subject to Section 3.8, the Trustees may create such additional committees as they, in their discretion, determine to be necessary or desirable for the purposes of properly governing the affairs of the REIT; provided that the Trustees may not delegate to any committee any powers or authority in respect of which a board of directors of a corporation governed by the *Business Corporations Act* (Ontario) may not so delegate.

#### **10.6 Asset Manager**

The Trustees may exercise broad discretion in allowing any manager to manage the assets of the REIT, including, without limitation, providing key personnel and administrative services and to act as agent for the REIT in respect thereof and to execute documents on behalf of the Trustees in respect thereof, all subject to the overriding authority of the Trustees over the management and affairs generally of the REIT.

#### **10.7 Property Manager**

The Trustees may exercise broad discretion in allowing any manager to manage the real properties of the REIT, including, without limitation, operating, maintaining, leasing and marketing the said properties, to act as agent for the REIT in respect thereof and to execute documents on behalf of the Trustees in respect thereof, all subject to the overriding authority of the Trustees over the management and affairs generally of the REIT.

#### **10.8 Procedure**

Unless otherwise determined by the Trustees, a quorum for meetings of any committee shall be a majority of its members provided that a majority of the Trustees comprising such quorum must be Residents. Each committee shall have the power to appoint its chairman who must be a Resident and the rules for calling, holding, conducting and adjourning meetings of the committee shall be the same as those governing meetings of the Trustees. Each member of a committee shall serve during the pleasure of the Trustees and, in any event, only so long as he or she shall be a Trustee. The Trustees may fill vacancies in a committee by appointment from among their members. Provided that a quorum is maintained, the committee may continue to exercise its powers notwithstanding any vacancy among its members.

## ARTICLE 11

### DISTRIBUTIONS

#### 11.1 Distributions

The REIT may distribute to Unitholders on each Distribution Date such percentage of the Distributable Income of the REIT for the calendar month immediately preceding the month in which the Distribution Date falls, as the Trustees determine in their discretion. Notwithstanding the foregoing, the REIT shall distribute in each year an amount equal to its taxable income calculated prior to such distributions, in accordance with the next succeeding paragraph hereof.

On the last day of each Taxation Year, an amount equal to the net income of the REIT for such Taxation Year, determined in accordance with the provisions of the Tax Act other than paragraph 82(1)(b) and subsection 104(6) thereof and excluding net realized capital gains of the REIT, not previously made payable to Unitholders in the Taxation Year, less the amount of any non-capital losses as defined in the Tax Act of the REIT carried forward, shall be automatically payable to Unitholders of record at the close of business on such day (whether or not such day is a Business Day).

On the last day of each Taxation Year, an additional distribution equal to the net realized capital gains of the REIT for such Taxation Year not previously made payable to Unitholders in the Taxation Year shall be automatically payable to Unitholders of record at the close of business on such day (whether or not such day is a Business Day) except to the extent that:

- (a) the distributions previously made payable to Unitholders in the Taxation Year exceed the aggregate of (A) the net income of the REIT for such Taxation Year, determined in accordance with the provisions of the Tax Act other than paragraph 82(1)(b) and subsection 104(6) thereof and excluding net realized capital gains of the REIT, and (B) any net realized capital gains of the REIT previously made payable to Unitholder in the Taxation Year (such excess is hereinafter referred to as an “**Excess Distribution**”);
- (b) net realized capital gains of the REIT retained by the REIT would not be subject to tax in the REIT by reason of the deduction of the net loss of the REIT for the Taxation Year determined in accordance with the provisions of the Tax Act other than paragraph 82(1)(b) and subsection 104(6) thereof or the carry forward of “net capital losses” as defined in the Tax Act;
- (c) net realized capital gains of the REIT retained by the REIT would not be subject to tax in the REIT by reason of the carry forward of “non-capital losses” as defined in the Tax Act, provided that the Trustees exercise their discretion to so apply such loss carry forwards against such net realized capital gains of the REIT before the end of the Taxation Year; and
- (d) net realized capital gains of the REIT for the Taxation Year in respect of which the REIT is entitled to a capital gains refund under the Tax Act as determined by the Trustees in their sole discretion.

To the extent that an additional distribution of net realized capital gains of the REIT is not made by reason of paragraph (a), the distributions of Distributable Income made pursuant to the first paragraph of this Section 11.1 shall be deemed to have included payment of an amount of net realized capital gains of the REIT equal to the lesser of the net realized capital gains of the REIT for the Taxation Year and the Excess Distribution.

The Trustees may designate and make payable any income or capital gains realized by the REIT as a result of the redemption of Units (including any income or capital gains realized by the Trust on the redemption of Units *in specie*) pursuant to Section 7.14 to the redeeming Unitholders in accordance with Section 7.14(e).

Distributions payable to Unitholders pursuant to this Article 11 shall be deemed to be distributions of income of the REIT (including dividends), net realized taxable capital gains of the REIT, REIT capital or other items in such amounts as the Trustees, in their absolute discretion determine and shall be allocated to the Unitholder in the same proportions as distributions received by the Unitholder, subject to the discretion of the Trustees to adopt an allocation method which the Trustees consider to be more reasonable in the circumstances, including in accordance with Section 7.14(e). For greater certainty it is hereby declared that any distribution of net realized capital gains of the REIT shall include the non-taxable portion of the capital gains of the REIT which are included in such distribution.

Any distribution shall be made on a Distribution Date proportionately to persons who are Unitholders as of the close of business on the record date for such distribution which shall be the last Business Day of the calendar month immediately preceding the month in which the Distribution Date falls (except for the month of December where the record date shall be December 31), or such other date, if any, as is fixed by the Trustees in accordance with Section 8.8.

Each year the REIT shall deduct such amounts as are paid or payable to Unitholders for the year as is necessary to ensure that the REIT is not liable for income tax under Part I of the Tax Act in the related taxation year.

For greater certainty, it is hereby expressly declared that a Unitholder shall have the legal right to enforce payment of any amount which is stated to be payable to a Unitholder hereunder at the time such amount is made payable.

## **11.2 Allocation**

Subject to Section 7.14(e), unless the Trustees otherwise determine, the (i) net income of the REIT for a Taxation Year, determined in accordance with the provisions of the Tax Act other than paragraph 82(1)(b) and subsection 104(6) and (ii) net realized capital gains of the REIT payable to Unitholders shall be allocated to the Unitholders for the purposes of the Tax Act in the same proportion as the total distributions made to Unitholders in the Taxation Year under Section 11.1. The Trustees shall in each year make such other designations for tax purposes in respect of Distributable Income and other distributions that the Trustees consider to be reasonable in all of the circumstances.

## **11.3 Payment of Distributions**

Distributions shall be made by cheque payable to or to the order of the Unitholder or by electronic fund transfer or by such other manner of payment approved by the Trustees from time to time. The payment, if made by cheque, shall be conclusively deemed to have been made upon hand-delivery of a cheque to the Unitholder or to his agent duly authorized in writing or upon the mailing of a cheque by prepaid first-class mail addressed to the Unitholder at his address as it appears on the Register unless the cheque is not paid on presentation. The Trustees may issue a replacement cheque if they are satisfied that the original cheque has not been received or has been lost or destroyed upon being furnished with such evidence of loss, indemnity or other document in connection therewith that they may in their discretion consider necessary.

The Trustees shall deduct or withhold from distributions payable to any Unitholder all amounts required by law to be withheld from such distribution and the REIT shall remit such taxes to the appropriate governmental authority within the times prescribed by law. Unitholders who are Non-Residents will be required to pay all withholding taxes payable in respect of any distributions of income by the REIT, whether such distributions are in the form of cash or additional Units.

If the Trustees determine that the REIT does not have cash in an amount sufficient to make payment of the full amount of any distribution, the payment may include the issuance of additional Units having a value equal to the difference between the amount of such distribution and the amount of cash which has been determined by the Trustees to be available for the payment of such distribution. Immediately after a *pro rata* distribution of Units to all Unitholders in satisfaction of any non-cash distribution, the number of outstanding Units will be consolidated so that each Unitholder will hold after the consolidation the same number of Units as the Unitholder held before the non-cash distribution. Each Unit Certificate representing a number of Units prior to the non-cash distribution is deemed to represent the same number of Units after the non-cash distribution and the consolidation.

Notwithstanding the foregoing, where tax is required to be withheld from a Unitholder's share of the distribution and such amount is not paid by the Unitholder to the REIT, the consolidation will result in such Unitholder holding that number of Units equal to (i) the number of Units held by such Unitholder prior to the distribution plus the number of Units received by such Unitholder in connection with the distribution (net of the number of whole and part Units withheld on account of withholding taxes) multiplied by (ii) the fraction obtained by dividing the aggregate number of Units outstanding prior to the distribution by the aggregate number of Units that would be outstanding following the distribution and before the consolidation if no withholding were required in respect of any part of the distribution payable to any Unitholder. Such Unitholder will be required to surrender the Unit Certificates, if any, representing such Unitholder's original Units, in exchange for a Unit Certificate representing such Unitholders' post-consolidation Units.

## **11.4 Income Tax Matters**

In computing the net income of the REIT for income tax purposes for any year, the REIT shall claim the maximum amount available to it as deductions under the relevant law, unless the Trustees determine otherwise.

## **11.5 Designations**

The Trustees shall make such designations, determinations and allocations for income tax purposes in respect of amounts paid or payable to Unitholders for such amounts that the Trustees consider to be reasonable, including, without limitation, designations relating to taxable dividends received by the REIT in the year on shares of taxable Canadian corporations, net taxable capital gains of the REIT in the year and foreign source income of the REIT for the year. Where

permitted by the Tax Act, the Trustees will make designations under the Tax Act so that the amount distributed to a Unitholder but not deducted by the REIT would not be included in the Unitholder's income for the purposes of the Tax Act.

### **11.6 Distribution Reinvestment and Unit Option Plan**

The Trustees may, subject to receipt of all regulatory approvals, in their sole discretion establish one or more distribution reinvestment plans or Unit purchase plans or unit option plans at any time providing for the voluntary investment by Unitholders of Distributable Income. Such plan may entitle those Unitholders that elect to participate to a bonus distribution as a reduction of capital of the REIT.

### **11.7 Definitions**

Unless otherwise specified or the context otherwise requires, any term in this Section which is defined in the Tax Act shall have for the purposes of this Article 11 the meaning that it has in the Tax Act.

## **ARTICLE 12**

### **FEES AND EXPENSES**

#### **12.1 Expenses**

The REIT shall pay all expenses incurred in connection with the administration and management of the REIT and its investments out of the property of the REIT, including without limitation:

- (a) interest and other costs of borrowed money;
- (b) fees and expenses of lawyers, accountants, auditors, appraisers and other agents or consultants employed by or on behalf of the REIT or the Trustees;
- (c) fees and expenses of the Trustees;
- (d) fees and expenses connected with the acquisition, disposition and ownership of real property interests or mortgage loans or other property;
- (e) insurance as considered necessary by the Trustees;
- (f) expenses in connection with payments of distributions of Units of the REIT;
- (g) expenses in connection with communications to Unitholders and Special Unitholders and the other bookkeeping and clerical work necessary in maintaining relations with Unitholders and Special Unitholders;
- (h) expenses of changing or terminating the REIT;
- (i) fees and charges of stock exchanges, transfer agents, registrars, indenture trustees and other trustees and custodians;
- (j) all fees, expenses, taxes and other costs incurred in connection with the issuance, distribution, transfer and qualification for distribution to the public of Units and other required governmental filings; and
- (k) all costs and expenses in connection with the incorporation or establishment, organization and maintenance of corporations and other entities formed to hold real property or other property of the REIT.

#### **12.2 Payment of Real Property and Brokerage Commissions**

The REIT may pay real property and brokerage commissions at commercial rates in respect of the acquisition and disposition of any investment acquired or disposed of by it.

#### **12.3 Asset Management, Property Management, Leasing and Financing Fees**

The REIT may pay asset management fees, property management fees, leasing fees and financing fees in respect of any real property owned by it.

## ARTICLE 13

### AMENDMENTS TO THE DECLARATION OF TRUST

#### 13.1 Amendments by the Trustees

The Trustees may make the following amendments to this Declaration of Trust in their sole discretion and without the approval of Unitholders and Special Unitholders:

- (a) amendments aimed at ensuring continuing compliance with applicable laws, regulations, requirements or policies of any governmental authority having jurisdiction over: (i) the Trustees or over the REIT; (ii) the status of the REIT as a “mutual fund trust”; or (iii) the distribution of Units;
- (b) amendments which, in the opinion of the Trustees, provide additional protection for Unitholders and Special Unitholders;
- (c) amendments to remove any conflicts or inconsistencies in the Declaration of Trust or to make minor corrections which are, in the opinion of the Trustees, necessary or desirable and not prejudicial to the Unitholders and Special Unitholders;
- (d) amendments which, in the opinion of the Trustees, are necessary or desirable to remove conflicts or inconsistencies between the disclosure in the Prospectus and the Declaration of Trust;
- (e) amendments of a minor or clerical nature or to correct typographical mistakes, ambiguities or manifest omissions or errors, which amendments, in the opinion of the Trustees, are necessary or desirable and not prejudicial to the Unitholders and Special Unitholders;
- (f) amendments which, in the opinion of the Trustees, are necessary or desirable as a result of changes in taxation or other laws;
- (g) amendments which in the opinion of the Trustees, are necessary or desirable to enable the REIT to implement a Unit option or purchase plan or issue Units for which the purchase price is payable on an instalment basis;
- (h) amendments to create one or more additional classes of ~~Units~~units solely to provide voting rights to holders of shares, units or other securities that are exchangeable for Units entitling the holder thereof to a number of votes not exceeding the number of Units into which the exchangeable shares, units or other securities are exchangeable or convertible but that do not otherwise entitle the holder thereof to any rights with respect to the REIT’s property or income other than a return of capital; and
- (i) amendments for any purpose (except one in respect of which a Unitholder vote is specifically otherwise required) which, in the opinion of the Trustees, are not prejudicial to Unitholders and Special Unitholders and are necessary or desirable.

But notwithstanding the foregoing, no such amendment shall (A) modify the right to vote attached to any Unit or Special Voting without the consent of the holder of such Unit or Special Voting Unit (B) reduce the equal undivided interest in the property of the REIT or the entitlement to distributions from the REIT provided hereunder (including those provided for in Article 11 and Article 15) represented by any Unit without the consent of the holder of such Unit, or (C) amend any attributes of the Special Voting Units without the approval of Special Unitholders holding, in the aggregate, at least 66<sup>2</sup>/<sub>3</sub>% of the outstanding Special Voting Units.

#### 13.2 Amendments by Unitholders and Special Unitholders

Subject to Section 8.7, Section ~~13.1~~13.1, Section 13.3 and Section ~~13.3~~13.4, this Declaration of Trust may be amended by the vote of a majority of the votes cast at a meeting of Unitholders and Special Unitholders called for that purpose.

#### 13.3 Two-Thirds Unitholder and Special Unitholder Vote

None of the following shall occur unless the same has been duly approved by Special Resolution:

- (a) any amendment to this Section 13.3;
- (b) an exchange, reclassification or cancellation of all or part of the Units;

- (c) the addition, change or removal of the rights, privileges, restrictions or conditions attached to the Units, including:
  - (i) the removal or change of rights to distributions;
  - (ii) the addition or removal of or change to conversion privileges, options, voting, transfer or pre-emptive rights; or
  - (iii) the reduction or removal of a distribution preference or liquidation preference;
- (d) any constraint of the issue, transfer or ownership of Units or the change or removal of such constraint, except as provided herein;
- (e) any sale or transfer of the assets of the REIT as an entirety or substantially as an entirety (other than as part of an internal reorganization of the assets of the REIT as approved by the Trustees);
- (f) the termination of the REIT;
- (g) any amendment to Section 6.1 or Section 6.2, except for any amendment contemplated by Section 13.1(i) or as set out in Section 6.3; or
- (h) any matter required to be passed by a “**Special Resolution**” under the Declaration of Trust of Subsidiary Trust.

#### **13.4 Amendments Requiring Approval of Special Unitholders**

- (a) During the term of any exchange agreement governing the terms and conditions upon which Exchangeable Securities may be converted into or exchanged for Special Voting Units, no amendment to any attributes of the Special Voting Units in question shall be made without the approval of Special Unitholders holding, in the aggregate, at least 66⅔% of the outstanding Special Voting Units in question.
- (b) For so long as the SC/MRR Group otherwise qualifies for the entitlements set forth in Section 3.8, no amendment shall be made to Section 3.8 without the written consent of Mitchell Goldhar, on behalf of the SC/MRR Group.

#### **13.5 ~~13.4~~ No Termination**

No amendment to or amendment and restatement of this Declaration of Trust, whether pursuant to this Article 13 or otherwise, shall be construed as a termination of the REIT and the settlement or establishment of a new trust.

#### **13.6 ~~13.5~~ Trustees to Sign Amendment**

When a vote of the Unitholders and Special Unitholders approves an amendment to this Declaration of Trust or when the Trustees may amend this Declaration of Trust alone as provided herein, then the Trustees shall sign such documents as may be necessary to effect such amendment.

## **ARTICLE 14**

### **SUPPLEMENTAL INDENTURES**

#### **14.1 Provision for Supplemental Indentures for Certain Purposes**

The Trustees may, without approval of the Unitholders and Special Unitholders and subject to the provisions hereof, and shall, when so directed in accordance with the provisions hereof, execute and deliver indentures or instruments supplemental hereto which thereafter shall form part hereof, for any one or more or all of the following purposes:

- (a) modifying or amending any provisions of this Declaration of Trust in the circumstances set forth in Section 13.1 where the Trustees may do so without the consent, approval or ratification of the Unitholders, Special Unitholders or any other person; and
- (b) modifying or amending any provisions of this Declaration of Trust where the modification or amendment has been approved by resolution of a majority of votes cast at a meeting, a Special Resolution or, if required, with the consent of the holders of all, or any requisite two-thirds majority, of the Units and/or Special Voting Units.

## ARTICLE 15

### TERMINATION OF REIT

#### 15.1 Duration of the REIT

Unless the REIT is sooner terminated as otherwise provided herein, the REIT shall continue in full force and effect so long as any property of the REIT is held by the Trustees, and the Trustees shall have all the powers and discretions, expressed and implied, conferred upon them by law or by this Declaration of Trust.

#### 15.2 Termination by Unitholders and Special Unitholders

The REIT shall terminate at the time specified in a decision to terminate the REIT by a Special Resolution passed at a meeting of Unitholders and Special Unitholders called for that purpose.

#### 15.3 Effect of Termination

Upon the termination of the REIT, the liabilities of the REIT shall be discharged with due speed and the net assets of the REIT shall be liquidated and the proceeds distributed proportionately to the Unitholders. Such distribution may be made in cash or in kind or partly in each, all as the Trustees in their sole discretion may determine.

#### 15.4 Procedure Upon Termination

Forthwith upon being required to commence to wind up the affairs of the REIT, the Trustees shall give notice thereof to the Unitholders and Special Unitholders, which notice shall designate the time or times at which Unitholders may surrender their Units for cancellation and the date at which the Registers shall be closed.

#### 15.5 Powers of the Trustees Upon Termination

After the date on which the Trustees are required to commence to wind up the affairs of the REIT, the Trustees shall undertake no activities except for the purpose of winding-up the affairs of the REIT as hereinafter provided and, for this purpose, the Trustees shall continue to be vested with and may exercise all or any of the powers conferred upon the Trustees under this Declaration of Trust.

#### 15.6 Further Notice to Unitholders

In the event that less than all of the Unitholders have surrendered their Units for cancellation within six months after the time specified in the notice referred to in Section 15.4, the Trustees shall give further notice to the remaining Unitholders to surrender their Units for cancellation and if, within one year after the further notice, all the Units shall not have been surrendered for cancellation, such remaining Units shall be deemed to be cancelled without prejudice to the rights of the holders of such Units to receive their *pro rata* share of the remaining property of the REIT, and the Trustees may either take appropriate steps, or appoint an agent to take appropriate steps, to contact such Unitholders (deducting all expenses thereby incurred from the amounts to which such Unitholders are entitled as aforesaid) or, in the discretion of the Trustees, may pay such amounts into court.

#### 15.7 Responsibility of the Trustees after Sale and Conversion

The Trustees shall be under no obligation to invest the proceeds of any sale of investments or other assets or cash forming part of the REIT's property after the date referred to in Section 15.4 and, after such sale, the sole obligation of the Trustees under this Declaration of Trust shall be to hold such proceeds or assets in trust for distribution under Section 15.3.

## ARTICLE 16

### LIABILITIES OF THE TRUSTEES AND OTHERS

#### 16.1 Liability and Indemnification of the Trustees

The Trustees shall at all times including, for the purposes of this Article 16, the time after they have ceased to be a Trustee, be indemnified and saved harmless out of the property of the REIT from and against all liabilities, damages, losses, debts and claims whatsoever, including costs, charges and expenses in connection therewith, sustained, incurred, brought, commenced or prosecuted against them for or in respect of any act, deed, matter or thing whatsoever made, done,

acquiesced in or omitted in or about or in relation to the execution of their duties as Trustees and also from and against all other liabilities, damages, losses, debts, claims, costs, charges, and expenses (including, without limitation, legal fees and disbursements on a solicitor and client basis) which they sustain or incur in or about or in relation to the affairs of the REIT including, without limitation, any and all liability (whether accrued, actual, contingent or otherwise), claims, costs, charges or expenses arising out of or in connection with the presence, release, discharge or disposal of any hazardous substance or any adverse environmental conditions at, on, under or near any real property or any investigation, remediation or clean up action required to be undertaken in connection with any real property. Further, the Trustees shall not be liable to the REIT or to any Unitholder, Special Unitholder or annuitant for any loss or damages relating to any matter regarding the REIT, including, without limitation, any loss or diminution in the value of the REIT or its assets. The foregoing provisions of this Section 16.1 in favour of any Trustee do not apply unless:

- (a) the Trustee has acted honestly and in good faith with a view to the best interests of the REIT, the Unitholders and the Special Unitholders; and
- (b) in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, the Trustee had reasonable grounds for believing his conduct was lawful.

For greater certainty, the Trustees will have no liability to reimburse any person for transfer or other taxes or fees payable on the transfer of Units or Special Voting Units, fees relating to any distribution reinvestment plan or any income or other taxes assessed against any person by reason of the ownership or disposition of Units or Special Voting Units. Trustees shall not at any time be indemnified or saved harmless by any Unitholder or Special Unitholder.

### **16.2 Indemnification of Trustees**

Each Trustee, each former Trustee, each officer of the REIT and each former officer of the REIT shall be entitled to be and shall be indemnified and reimbursed out of the REIT's property in respect of any and all taxes, penalties or interest in respect of unpaid taxes or other governmental charges imposed upon the Trustee or former Trustee or officer or former officer in consequence of its performance of its duties hereunder and in respect of any and all costs, charges and expenses, including amounts paid to settle an action or satisfy a judgment, reasonably incurred in respect of any civil, criminal or administrative action or proceeding to which the Trustee, former Trustee, officer or former officer is made a party by reason of being or having been a Trustee or officer of the REIT or, at the request of the REIT, a trustee or officer or any subsidiary or affiliate thereof, provided that a Trustee, former Trustee, officer or former officer shall not be indemnified out of the REIT's property in respect of unpaid taxes or other governmental charges or in respect of such costs, charges and expenses that arise out of or as a result or in the course of a breach of the standard of care, diligence and skill set out in Section 4.6. A Trustee, former Trustee, officer or former officer shall not be entitled to satisfy any right of indemnity or reimbursement granted herein, or otherwise existing under law, except out of the REIT's property, and no Unitholder, Special Unitholder or other Trustee or officer shall be personally liable to any person with respect to any claim for such indemnity or reimbursement as aforesaid.

### **16.3 Contractual Obligations of the REIT**

The omission of the statement described in Section 6.2(b) from any document or instrument shall not render the Trustees, the Unitholders or the Special Unitholders liable to any person, nor shall the Trustees, the Unitholders or the Special Unitholders be liable for such omission. If the Trustees, any Unitholder or any Special Unitholder shall be held liable to any person by reason of the omission of such statement from any such agreement, undertaking or obligation such Trustee, Unitholder or Special Unitholder shall be entitled to indemnity and reimbursement out of the REIT's property to the full extent of such liability.

### **16.4 Liability of the Trustees**

The Trustees shall not be liable to the REIT or to any Unitholder, Special Unitholder, annuitant or any other person for the acts, omissions, receipts, neglects or defaults of any person, firm or corporation employed or engaged by it as permitted hereunder, or for joining in any receipt or act of conformity or for any loss, damage or expense caused to the REIT through the insufficiency or deficiency of any security in or upon which any of the monies of or belonging to the REIT shall be paid out or invested, or for any loss or damage arising from the bankruptcy, insolvency or tortious act of any person, firm or corporation with whom or which any monies, securities or property of the REIT shall be lodged or deposited, or for any loss occasioned by error in judgment or oversight on the part of the Trustees, or for any other loss, damage or misfortune which may happen in the execution by the Trustees of their duties hereunder, except to the extent the Trustees have not acted in accordance with Section 6.1(a) and Section 6.1(b).

## 16.5 Reliance Upon Advice

The Trustees may rely and act upon any statement, report or opinion prepared by or any advice received from the auditors, lawyers or other professional advisors of the REIT and shall not be responsible or held liable for any loss or damage resulting from so relying or acting.

## 16.6 Liability of Unitholders, Special Unitholders and Others

No Unitholder, Special Unitholder or annuitant or any officer, employee or agent of the REIT shall be held to have any personal liability as such, and no resort shall be had to his private property (including, without limitation, any property consisting of or arising from a distribution of any kind or nature by the REIT) for satisfaction of any obligation or claim arising out of or in connection with any contract or obligation of the REIT or of the Trustees or any obligation which a Unitholder, Special Unitholder or annuitant would otherwise have to indemnify a Trustee for any personal liability incurred by the Trustee as such, but rather the assets of the REIT only are intended to be liable and subject to levy or execution for such satisfaction. Any written instrument creating an obligation which is or includes the granting by the REIT of a lease, sublease or mortgage or which is, in the judgement of the Trustees, a material obligation, shall contain a provision to the effect that the obligation being created is not personally binding upon, and that resort shall not be had to, nor shall recourse or satisfaction be sought from, the private property (including, without limitation, any property consisting of or arising from a distribution of any kind or nature by the REIT) of any of the Unitholders ~~or annuitant,~~ Special Unitholders, annuitants or officers, employees and agents of the REIT, but the property of the REIT or a specific portion thereof only shall be bound. If the REIT acquires any real property investment subject to existing contractual obligations, the Trustees shall use their reasonable efforts to have any such obligations under material contracts (including mortgages), other than leases, modified so as to achieve the aforesaid disavowal of contractual liability. Further, the Trustees shall cause the operations of the REIT to be conducted in such a way and in such jurisdictions as to avoid, as far as reasonably possible, any material risk of liability on the Unitholders, Special Unitholders or annuitant for claims against the REIT, and shall, to the extent which they determine to be possible and reasonable, including in the cost or premiums, to cause the REIT to carry insurance for the benefit of such persons in such amounts as they consider adequate to cover any foreseeable non-contractual or non-excluded contractual liability. Any potential liability of the Trustees with respect to their foregoing obligations or their failure to perform the same shall be governed by the provisions of Section 16.1, Section 16.4 and Section 16.5. Nothing in this Declaration of Trust will preclude the Trustees from exercising any rights granted to them under the Tax Act or any other applicable taxation legislation to withhold from amounts payable to Unitholders or otherwise recover from Unitholders any taxes that the Trustees have paid on behalf of Unitholders.

## ARTICLE 17

### GENERAL

#### 17.1 Execution of Instruments

The Trustees shall have power from time to time to appoint any Trustee or Trustees or any person or persons on behalf of the REIT either to sign instruments in writing generally or to sign specific instruments in writing. Provisions respecting the foregoing may be contained in the Trustees' Regulations.

#### 17.2 Manner of Giving Notice

- (a) Any notice or other document required or permitted by the provisions of this Declaration of Trust to be given to a Unitholder, a Special Unitholder, a Trustee or the Auditors shall be deemed conclusively to have been given if given either by delivery or by prepaid first-class mail addressed to the Unitholder at his address shown on the book-based system administered by CDS, to the Special Unitholder at his address shown on the Register maintained in respect of the Special Voting Units, to the Trustee at the last address provided by such Trustee to the President of the REIT, or to the auditors of the Trust at the last address provided by such auditors to the President of the REIT, as the case may be provided that if there is a general discontinuance of postal service due to strike, lockout or otherwise, such notice may be given by publication twice in the Report on Business Section of the National Edition of The Globe and Mail or similar Section of any other newspaper having national circulation in Canada; provided further that if there is no newspaper having national circulation, then by publishing twice in the business Section of a newspaper in each city where the register or a branch register is maintained. Any notice so given shall be deemed to have been given on the day following that on which the

letter or circular was posted or, in the case of notice being given by publication, after publishing such notice twice in the designated newspaper or newspapers. In proving notice was posted, it shall be sufficient to prove that such letter or circular was properly addressed, stamped and posted.

- (b) Any written notice or written communication given to the Trustees shall be addressed to the Trustees at the head office of the REIT, and shall be deemed to have been given on the date of delivery or date sent by facsimile or other means of prepaid, transmitted or recorded communications or, if mailed, five days from the date of mailing. If any such notice or communication shall have been mailed and if regular mail service shall be interrupted by strikes or other irregularities, such notice or communication shall be deemed to have been received 48 hours after 12:01 a.m. on the day following the resumption of normal mail service, provided that during the period that regular mail service shall be interrupted any notice or other communication shall be given by personal delivery or by facsimile or other means of prepaid, transmitted or recorded communication.

### **17.3 Failure to Give Notice**

The failure by the Trustees, by accident or omission or otherwise unintentionally, to give any Unitholder, ~~any~~ Special Unitholder, Trustee or the Auditors any notice provided for herein shall not affect the validity, effect, taking effect or time of taking effect of any action referred to in such notice, and the Trustees shall not be liable to any Unitholder or Special Unitholder for any such failure.

### **17.4 Joint Holders**

Service of a notice or document on any one of several joint holders of Units shall be deemed effective service on the other joint holders.

### **17.5 Service of Notice**

Any notice or document sent by post to or left at the address of a Unitholder or Special Unitholder pursuant to this Section shall, notwithstanding the death or bankruptcy of such Unitholder or Special Unitholder, and whether or not the Trustees have notice of such death or bankruptcy, be deemed to have been fully served and such service shall be deemed sufficient service on all persons having an interest in the Units or Special Voting Units concerned.

### **17.6 REIT Auditors**

The Auditors shall be appointed at each annual meeting, save that, until the first such annual meeting, such Auditors shall be appointed by the Trustees. If at any time a vacancy occurs in the position of auditors of the REIT, the Trustees may appoint a firm of chartered accountants qualified to practice in all provinces of Canada to act as the Auditors the next annual meeting of Unitholders and Special Unitholders. The Auditors shall report to the Trustees, the Unitholders and the Special Unitholders on the annual financial statements of the REIT and shall fulfil such other responsibilities as they may properly be called upon by the Trustees to assume. The Auditors shall have access to all records relating to the affairs of the REIT.

### **17.7 Fiscal Year**

The fiscal year of the REIT shall end on December 31 in each year.

### **17.8 Reports to Unitholders and Special Unitholders**

The REIT will furnish to Unitholders and Special Unitholders such financial statements (including quarterly and annual financial statements) and other reports as are from time to time required by this Declaration of Trust and by applicable law. Prior to a meeting of Unitholders and Special Unitholders, the Trustees will provide the Unitholders and Special Unitholders (along with notice of such meeting) information similar to that required to be provided to shareholders of a public corporation governed by the *Business Corporations Act* (Ontario) and as required by applicable tax and securities laws.

### **17.9 REIT Property to be Kept Separate**

The Trustees shall maintain the property of the REIT separate from all other property in their possession.

### **17.10 Electronic Documents**

Any requirement under this Declaration of Trust, the *Securities Act* (Ontario) or any other applicable law that a notice, statement, document or other information be created or provided is satisfied by the creation or provision of an electronic document to the extent permitted by law.

### **17.11 Trustees May Hold Units or Special Voting Units**

Any Trustee or associate of a Trustee may be a Unitholder or Special Unitholder or may be an annuitant.

### **17.12 REIT Records**

The REIT shall prepare and maintain, at its principal office or at any other place in Canada designated by the Trustees, records containing (i) the Declaration of Trust; and (ii) minutes of meetings and resolutions of Unitholders and Special Unitholders. The REIT shall also prepare and maintain adequate accounting records and records containing minutes of meetings and resolutions of the Trustees and any committee thereof. Such records shall be kept at the principal office of the REIT or at such other place as the Trustees think fit and shall at all reasonable times be open to inspection by the Trustees.

### **17.13 Right to Inspect Documents**

A Unitholder, Special Unitholder and any agent, consultant or creditor of the REIT shall have the right to examine the Declaration of Trust, the Trustees' Regulations, the minutes of meetings and resolutions of Unitholders and Special Unitholders, and any other documents or records which the Trustees determine should be available for inspection by such Persons, during normal business hours at the principal office of the REIT. Unitholders, Special Unitholders and creditors of the REIT shall have the right to obtain or make or cause to be made a list of all or any of the registered holders of Units, to the same extent and upon the same conditions as those which apply to shareholders and creditors of a corporation governed by the *Business Corporations Act* (Ontario), as amended from time to time.

### **17.14 Taxation Information**

On or before March 30 in each year or such earlier date as is required by applicable law or regulation, the REIT will provide to Unitholders who received distributions from the REIT in the prior calendar year, such information required by Canadian law to be submitted to Unitholders for income tax purposes to enable Unitholders to complete their tax returns in respect of such distributions. In particular, each Unitholder shall be informed each year of the composition of the amounts payable by the REIT to such Unitholder in terms of net income, taxable dividends, net taxable gains, foreign source income and return of capital, and will be informed of the portion of such net income that has been designated as taxable dividends on shares of taxable Canadian corporations and taxable capital gains and of the amount of any foreign taxes paid by the REIT in respect of which the Unitholder may claim a credit for tax purposes to the extent permitted by the Tax Act, where those items are applicable.

### **17.15 Consolidations**

Any one or more Trustees may prepare consolidated copies of the Declaration of Trust as it may from time to time be amended or amended and restated and may certify the same to be a true consolidated copy of the Declaration of Trust, as amended or amended and restated.

### **17.16 Counterparts**

This Declaration of Trust may be executed in several counterparts, each of which when so executed shall be deemed to be an original and such counterparts together shall constitute one and the same instrument, which shall be sufficiently evidenced by any such original counterpart.

### **17.17 Severability**

The provisions of this Declaration of Trust are severable. If any provision of this Declaration of Trust shall be held invalid or unenforceable in any jurisdiction, such invalidity or unenforceability shall attach only to such provision in such jurisdiction and shall not in any manner affect or render invalid or unenforceable such provision in any other jurisdiction or any other provision of this Declaration of Trust in any jurisdiction.

**17.18 Headings for Reference Only**

The headings preceding the articles and sections hereof have been inserted for convenience and reference only and shall not be construed to affect the meaning, construction, interpretation or effect of this Declaration of Trust.

**17.19 Governing Law**

This Declaration of Trust and the Unit Certificates shall be interpreted and governed by and take effect exclusively in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and shall be treated in all respects as Ontario contracts. Any and all disputes arising under this Declaration of Trust, whether as to interpretation, performance or otherwise, shall be subject to the exclusive jurisdiction of the courts of the Province of Ontario and each of the Trustees hereby irrevocably attorns, and each Unitholder shall be deemed to hereby irrevocably attorn, to the exclusive jurisdiction of the courts of such province.

IN WITNESS WHEREOF the Trustees have caused these presents to be signed and sealed as of the date first above written.

**David Fiume**

Per: \_\_\_\_\_

Name: DAVID FIUME

Title: Trustee

David Fiume, on my own behalf and on behalf of Stephen Bellringer, Christopher J. Cann, Patrick J. Lavelle, James Meekison and Hani Zayadi.

I have authority to bind these individuals.

## SCHEDULE A

### RETROCOM MID-MARKET REAL ESTATE INVESTMENT TRUST TRUSTEES' REGULATIONS

#### INTERPRETATION

**1. Interpretation.** In these Trustees' Regulations, unless the context otherwise specifies or requires:

- (a) all terms used in these Trustees' Regulations not otherwise defined herein shall have the meanings given to such terms in the Declaration of Trust;
- (b) words importing the singular number only shall include the plural and vice versa and words importing a specific gender shall include the other gender; and
- (c) the headings used in these Trustees' Regulations are inserted for reference purposes only and are not to be considered or taken into account in construing the terms or provisions thereof or to be deemed in any way to clarify, modify or explain the effect of any such terms or provisions.

#### MEETINGS OF TRUSTEES

**2. Place and Time of Meeting.** Unless consented to in writing by a majority of the Trustees, all meetings of the Trustees called by the giving of notice shall be held at a place in the City of Toronto on a business day which place and time shall be specified in the notice.

**3. Notice.** The notice of any meeting may but need not specify the purpose of or the business to be transacted at the meeting.

**4. Adjournment.** Any meeting of Trustees may be adjourned from time to time by the chairman of the meeting, with the consent of the meeting, to another business day at a fixed time and place. Notice of any adjourned meeting of Trustees is not required to be given if the time and place of the adjourned meeting is announced at the original meeting, but notice of the adjourned meeting shall be given to the Trustees not present at such original meeting by delivering (not mailing) the same not less than one day (exclusive of the day on which the notice is delivered but inclusive of the day for which notice is given) before the adjourned meeting. Any adjourned meeting shall be duly constituted if held in accordance with the terms of the adjournment and a quorum is present thereat. The Trustees who formed a quorum at the original meeting are not required to form the quorum at the adjourned meeting. If there is no quorum present at the adjourned meeting, the original meeting shall be deemed to have terminated forthwith after its adjournment. Any business may be brought before or dealt with at any adjourned meeting which might have been brought before or dealt with at the original meeting in accordance with the notice calling the same.

**5. Minutes of Meetings.** The Chairman shall appoint a secretary to act as secretary of each meeting of the Trustees and of the Unitholders and Special Unitholders. Written records and minutes of all meetings of Trustees, the Investment Committee, the Governance and Compensation Committee and the Audit Committee shall be maintained by the secretary of each meeting and shall be placed in the minute book of the REIT. Any written records and minutes of meetings of any other committee of Trustees maintained by the secretary of such meeting may but need not be placed in the minute book of the REIT. There shall be inserted or entered into the records and minutes of the meetings of Trustees or the Investment Committee, as the case may be, all written disclosures or requests made to have entered into the minutes of the meeting, of the nature and extent of a Person's interest in a material contract or transaction or proposed material contract or transaction with the REIT made pursuant to Section 4.11 of the Declaration of Trust.

#### FOR THE PROTECTION OF TRUSTEES AND OFFICERS

**6. For the Protection of Trustees and Officers.** The provisions of Article 16 of the Declaration of Trust pertaining to the liability and indemnification of Trustees shall apply *mutatis mutandis* to the officers of the REIT, former Trustees or officers of the REIT, or Persons who act or acted at the REIT's request as a director or officer of a body corporate of which the REIT is or was a shareholder or creditor, and his heirs and legal representatives.

The REIT shall also indemnify any such Person in such other circumstances as the Declaration of Trust or law permits, subject to the Declaration of Trust, or requires. Nothing in these Trustees' Regulations shall limit the right of any Person entitled to indemnity to claim indemnity apart from the provisions of these Trustees' Regulations to the extent permitted by the Declaration of Trust or law.

## OFFICERS

**7. Appointment and Removal.** ~~The~~ Subject to Section 5.1 of the Declaration of Trust, the Trustees may annually or more often appoint the officers of the REIT who may or may not be Trustees. Notwithstanding the foregoing, each incumbent officer of the REIT shall continue in office until the earliest of (a) his resignation, which resignation shall be effective at the time a written resignation is received by the REIT or at the time specified in the resignation, whichever is later, (b) the appointment of his successor, (c) his removal and (d) his death. The Trustees may from time to time and subject to the provisions of the Declaration of Trust, prescribe, vary, add to or limit the duties and powers of any officer.

All officers, in the absence of agreement to the contrary, shall be subject to removal by resolution of the Trustees at any time, with or without cause.

**8. Chairman.** The Chairman of Trustees shall be an Independent Trustee appointed from among the Trustees. The Chairman or, in his absence, the Vice-Chairman, shall preside as chairman at all meetings of the Trustees and at all meetings of the Unitholders and Special Unitholders, unless a Trustee who is not the Chairman is selected to do so by the Trustees in accordance with Section 8.4 of the Declaration of Trust.

**9. Powers and Duties.** Subject to the provisions of the Declaration of Trust, all officers of the REIT shall sign such contracts, documents or instruments in writing as require their respective signatures and shall respectively have and perform all powers and duties incident to their respective offices and such other powers and duties respectively as may from time to time be assigned to them by the Trustees.

**10. Duties May be Delegated.** Subject to the provisions of the Declaration of Trust, in case of the absence or inability to act of any officer of the REIT or for any other reason that the Trustees may deem sufficient, the Trustees may delegate all or any of the powers of such officer to any other officer or to any Trustee for the time being.

**11. Vacancies.** If the office of any officer of the REIT shall be or become vacant by reason of death, resignation, removal or otherwise, the Trustees may, subject to Section 5.1 of the Declaration of Trust, appoint a Person to fill such vacancy.

## MEETINGS OF THE UNITHOLDERS' MEETINGS AND SPECIAL UNITHOLDERS

**12. Place and Time of Meetings.** Each meeting of the Unitholders and Special Unitholders shall be held at a place in the City of Toronto on a Business Day which place and time shall be specified in the notice calling the meeting.

**13. Notice.** A printed, written or typewritten notice stating the day, hour and place of any meeting of the Unitholders and Special Unitholders shall be given by serving such notice on each Unitholder and Special Unitholder entitled to vote at such meeting, on each Trustee and on the auditor of the REIT in the manner provided for in the Declaration of Trust and in these Trustees' Regulations. A meeting of the Unitholders and Special Unitholders may be held for any purpose on any day and at any time without notice if all of the Unitholders and Special Unitholders and all other Persons entitled to attend such meeting are present in Person or, where appropriate, represented by proxy at the meeting (except where a Unitholder, Special Unitholder or other Person attends the meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully called) or if all of the Unitholders and Special Unitholders and all other Persons entitled to attend such meeting who are not present in Person or, where appropriate, represented by proxy thereat waive notice before or after the date of such meeting.

**14. Waiver of Notice.** A Unitholder, Special Unitholder and any other Person entitled to attend a meeting of the Unitholders and Special Unitholders may in any manner waive notice of a meeting of the Unitholders and Special Unitholders and attendance of any such Person at a meeting of the Unitholders and Special Unitholders shall constitute a waiver of notice of the meeting except where such Person attends a meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully called.

**15. Votes.** Every question submitted to any meeting of the Unitholders and Special Unitholders shall be decided in the first instance by a show of hands unless a Person entitled to vote at the meeting has demanded a ballot.

A ballot may be demanded either before or after any vote by show of hands by any Person entitled to vote at the meeting. If at any meeting a ballot is demanded on the election of a chairman or on the question of adjournment it shall be taken forthwith without adjournment. If at any meeting a ballot is demanded on any other question or as to the election of Trustees, the vote shall be taken by ballot in such manner and either at once, later in the meeting or after adjournment as the chairman of the meeting directs. The result of a ballot shall be deemed to be the resolution of the meeting at which the ballot was demanded. A demand for a ballot may be withdrawn.

Where two or more Persons hold the same Unit or Units jointly, one of those holders present at a meeting of the Unitholders may, in the absence of the other or others, vote the Unit or Units but if two or more of those Persons who are present, in Person or by proxy vote, they shall vote as one on the Unit or Units jointly held by them.

At any meeting of the Unitholders and Special Unitholders unless a ballot is demanded, a declaration by the chairman of the meeting that a resolution has been carried or carried unanimously or by a particular majority or lost or not carried by a particular majority shall be conclusive evidence of the fact.

**16. Proxies.** At every meeting at which he is entitled to vote, every Unitholder, Special Unitholder and/or Person appointed by proxy and/or individual so authorized to represent a Unitholder or Special Unitholder who is present in Person shall have one vote on a show of hands. Upon a ballot at which he is entitled to vote, every Unitholder and Special Unitholder present in Person or represented by proxy or by an individual so authorized shall (subject to the provisions, if any, of the Declaration of Trust) have one vote for every Unit and/or Special Voting Unit held by him.

A proxy shall be executed by the Unitholder, Special Unitholder or his attorney authorized in writing or, if the Unitholder or Special Unitholder is a body corporate or association, by an officer or attorney thereof duly authorized. If the Units are publicly traded, a proxy appointing a proxyholder ceases to be valid one year from its date.

A proxy may be in the following form:

The undersigned [Unitholder/Special Unitholder] of Retrocom Mid-Market Real Estate Investment Trust hereby appoints ● of ● or failing him, ● of ● as the nominee of the undersigned to attend and act for the undersigned and on behalf of the undersigned at the said meeting of the Unitholders and Special Unitholders of the said REIT to be held on the day of and at any adjournment thereof in the same manner, to the same extent and with the same power as if the undersigned were present at the said meeting or such adjournment thereof. This proxy is [not] solicited by or on behalf of management of the REIT.

DATED this day of

---

Signature of [Unitholder / Special Unitholder]

The Trustees may from time to time institute procedures regarding the lodging of proxies at some place or places other than the place at which a meeting or adjourned meeting of the Unitholders and Special Unitholders is to be held and for particulars of such proxies to be sent by telecopier or in writing before the meeting or adjourned meeting to the REIT or any agent of the REIT for the purpose of receiving such particulars and providing that proxies so lodged may be voted upon as though the proxies themselves were produced at the meeting or adjourned meeting and votes given in accordance with such procedures shall be valid and shall be counted. The chairman of any meeting of the Unitholders and Special Unitholders may, in his discretion, accept telecopier or written communication as to the authority of any Person claiming to vote on behalf of and to represent a Unitholder or Special Unitholder notwithstanding that no proxy conferring such authority has been lodged with the REIT, and any votes given in accordance with such telecopier or written communication accepted by the chairman of the meeting shall be valid and shall be counted.

**17. Adjournment.** The chairman of any meeting of the Unitholders and Special Unitholders may with the consent of the meeting adjourn the same from time to time to another Business Day at a fixed time and place and no notice of such adjournment need be given to the Unitholders or Special Unitholders unless the meeting is adjourned by one or more adjournments for an aggregate of thirty days or more in which case notice of the adjourned meeting shall be given as for an original meeting. Any business may be brought before or dealt with at any adjourned meeting for which no notice is required which might have been brought before or dealt with at the original meeting in accordance with the notice calling the same.

Any adjourned meeting shall be duly constituted if held in accordance with the terms of the adjournment and a quorum is present thereat. The Persons who formed a quorum at the original meeting are not required to form the quorum at the adjourned meeting. If there is no quorum present at the adjourned meeting, the original meeting shall be deemed to have terminated forthwith after its adjournment.

**18. Quorum.** No business shall be transacted at any meeting of the Unitholders and Special Unitholders unless the requisite quorum be present at the time of the transaction of such business. If a quorum is not present at the time appointed for a meeting of the Unitholders and Special Unitholders or within such reasonable time thereafter as the Unitholders and Special Unitholders present may determine, the Persons present and entitled to vote may adjourn the meeting to another

business day at a fixed time and place but may not transact any other business and the provisions of paragraph 17 with regard to notice shall apply to such adjournment.

**19. Minutes of Meetings.** Written records and minutes of each meeting of the Unitholders and Special Unitholders shall be maintained by the secretary of each meeting and shall be placed in the minute book of the REIT.

## **CERTIFICATES**

**20. Certificates.** Certificates representing Units shall be signed manually by at least one Trustee or officer of the REIT holding office at the time of signing and by or on behalf of a registrar, transfer agent, branch transfer agent or issuing or other authenticating agent of the REIT and any additional signatures required on a certificate representing Units may be printed or otherwise mechanically reproduced thereon.

A certificate representing Units containing the signature of a Person which is printed, engraved, lithographed or otherwise mechanically reproduced thereon may be issued notwithstanding that the Person has ceased to be a Trustee or an officer, as the case may be, of the REIT and shall be as valid as if he were a Trustee or an officer, as the case may be, at the date of its issue.

## **TRANSFER OF UNITS**

**21. Register.** The Register shall be kept as provided for in the Declaration of Trust and a branch register or registers of transfers may be kept at such office or such other place or places, either within or outside Ontario, as may from time to time be designated by the Trustees.

## **VOTING SHARES AND SECURITIES IN BODIES CORPORATE**

**22. Voting Shares and Securities in Bodies Corporate.** All of the shares or other securities carrying voting rights of any body corporate held from time to time by the REIT may be voted at any and all meetings of shareholders or holders of other securities (as the case may be) of such body corporate and in such manner and by such Person or Persons as the Trustees shall from time to time determine. The duly authorized signing officers of the REIT may also from time to time execute and deliver for and on behalf of the REIT proxies and/or arrange for the issuance of voting certificates and/or other evidence of the right to vote in such names as they may determine without the necessity of a resolution or other action by the Trustees.

## **INFORMATION AVAILABLE TO UNITHOLDERS AND SPECIAL UNITHOLDERS**

**23. Confidential Information Not Available to Unitholders.** Except as provided by the Declaration of Trust or as required by law, no Unitholder or Special Unitholder shall be entitled to discovery of any information respecting any details or conduct of the REIT's affairs which in the opinion of the Trustees it would be inexpedient in the interests of the REIT to communicate to the public.

## **NOTICES**

**24. Service.** If a notice or document is sent to a Unitholder or Special Unitholder by prepaid first-class mail in accordance with the provisions of the Declaration of Trust and the notice or document is returned on three consecutive occasions because the Unitholder or Special Unitholder cannot be found, it shall not be necessary to send any further notices or documents to the Unitholder ~~until~~ or Special Unitholder until such Unitholder or Special Unitholder informs the REIT in writing of his such Unitholder's or Special Unitholder's new address.

**25. Units Registered in More Than One Name.** All notices or other documents with respect to any Units registered in more than one name shall be given to whichever of such Persons is named first in the records of the REIT and any notice or other document so given shall be sufficiently given to all of the holders of such Units.

**26. Deceased Unitholders and Special Unitholders.** Any notice or other document delivered or sent in a manner contemplated in the Declaration of Trust to the address of any Unitholder or Special Unitholder as the same appears in the records of the REIT shall, notwithstanding that such Unitholder or Special Unitholder be then deceased, and whether or not the REIT has notice of his death, be deemed to have been duly served in respect of the Units or Special Voting Units held by such Unitholder or Special Unitholder (whether held solely or with any other Person or Persons) until some other Person be entered in his stead in the records of the REIT as the holder or one of the holders thereof and such service shall for all purposes be deemed a sufficient service of such notice or document on his heirs, executors or administrators and on all Persons, if any, interested through him or with him in such Units or Special Voting Units.

**27. Signature to Notices.** The signature of any Trustee or officer of the REIT to any notice or document to be given by the REIT may be written, stamped, typewritten or printed or partly written, stamped, typewritten or printed.

**28. Computation of Time.** Where a given number of days' notice or notice extending over a period is required to be given under any provisions of the Declaration of Trust or these Trustees' Regulations, the day of service or posting of the notice or document shall not, unless it is otherwise provided, be counted in such number of days or other period, but the day of receipt of the notice or document shall, unless it is otherwise provided, be counted in such number of days or other period.

**29. Proof of Service.** With respect to every notice or other document sent by post it shall be sufficient to prove that the envelope or wrapper containing the notice or other document was properly addressed as provided in the Declaration of Trust and in these Trustees' Regulations and put into a post office or into a letter box. A certificate of an officer of the REIT in office at the time of the making of the certificate or of a transfer officer of any transfer agent or branch transfer agent of Units of the REIT as to facts in relation to the sending or delivery of any notice or other document to any Unitholder, Special Unitholder, Trustee, officer or auditor of the REIT or publication of any notice or other document shall be conclusive evidence thereof and shall be binding on every Unitholder, Special Unitholder, Trustee, officer or auditor of the REIT, as the case may be.

### **CHEQUES, DRAFTS AND NOTES**

**30. Cheques, Drafts and Notes.** All cheques, drafts or orders for the payment of money and all notes and acceptances and bills of exchange shall be signed by such officer or officers of the REIT or Person or Persons, whether or not officers of the REIT, and in such manner as the Trustees may from time to time designate.

### **CUSTODY OF SECURITIES**

**31. Custody of Securities.** All shares and other securities owned by the REIT shall be lodged (in the name of the REIT) with a chartered bank or a trust company, in a safety deposit box or with a law firm acting on behalf of the REIT or, if so authorized by resolution of the Trustees, with such other depositories or in such other manner as may be determined from time to time by the Trustees.

All shares and other securities belonging to the REIT may be issued or held in the name of a nominee or nominees of the REIT (and if issued or held in the names of more than one nominee shall be held in the names of the nominees jointly with right of survivorship) and any shares or other securities so issued or held shall be endorsed in blank with endorsement guaranteed in order to enable transfer to be completed and registration to be effected.

### **EXECUTION OF INSTRUMENTS**

**32. Execution of Instruments.** All contracts, documents or instruments in writing requiring the signature of the REIT may be signed by any officer or Trustee of the REIT and all contracts, documents and instruments in writing so signed shall be binding upon the REIT without any further authorization or formality. The Trustees shall have power from time to time to appoint any officer or officers, or any Person or Persons, on behalf of the REIT either to sign contracts, documents and instruments in writing generally or to sign specific contracts, documents or instruments in writing.

The term "**contracts, documents or instruments in writing**" as used in these Trustees' Regulations shall include (without limitation) security certificates, deeds, mortgages, hypothecs, charges, conveyances, transfers and assignments of property real or personal, immovable or movable, agreements, releases, receipts and discharges for the payment of money or other obligations and conveyances, transfers and assignments of shares, share warrants, stocks, bonds, debentures or other securities and all paper writings.

Without limiting the foregoing, any officer or Trustee of the REIT shall have authority to sell, assign, transfer, exchange, convert or convey any and all shares, stocks, bonds, debentures, rights, warrants or other securities owned by or registered in the name of the REIT and to sign and execute all assignments, transfers, conveyances, powers of attorney and other instruments that may be necessary for the purpose of selling, assigning, transferring, exchanging, converting or conveying any such shares, stocks, bonds, debentures, rights, warrants or other securities.

The signature or signatures of the officers and Trustees of the REIT and/or of any other Person or Persons appointed as aforesaid by the Trustees may, if specifically authorized by the Trustees, be printed, engraved, lithographed or otherwise mechanically reproduced upon any contracts, documents or instruments in writing or bonds, debentures or other securities of the REIT executed or issued by or on behalf of the REIT and all contracts, documents or instruments in writing or bonds, debentures or other securities of the REIT on which the signature or signatures of any one or more of the

foregoing officers or Trustees or the officers or Persons authorized as aforesaid shall be so reproduced pursuant to such authorization by the Trustees shall be deemed to have been manually signed by each such officer, Trustee or Person whose signature is so reproduced and shall be as valid to all intents and purposes as if they had been signed manually and notwithstanding that any such officer, Trustee or Person whose signature is so reproduced may have ceased to hold office at the date of the delivery or issue of such contracts, documents or instruments in writing or bonds, debentures or other securities of the REIT.

**APPENDIX "C"**

**SCHEDULES OF COMBINED NET OPERATIONS OF THE PROPERTIES**

Schedule of Combined Net Operations of

**1224 DUNDAS, 1480/1490 DUNDAS,  
1100/1140/1170 BURNAMTHORPE  
AND 750/760 BIRCHMOUNT**  
(the "Properties")

Three months ended March 31, 2008 (unaudited) and  
year ended December 31, 2007



**KPMG LLP**  
**Chartered Accountants**  
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Toronto ON M5L 1B2  
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## AUDITORS' REPORT

To the Partners of:

MRR Investors Limited Partnership No. 1  
MRR Investors Limited Partnership No. 2  
MRR Investors Limited Partnership No. 3  
MRR Investors Limited Partnership No. 4  
MRR Investors Limited Partnership No. 5  
MRR Investors Limited Partnership No. 6

We have audited the schedule of combined net operations, as defined in note 2(a), of the Properties for the year ended December 31, 2007. This financial information is the responsibility of the Properties' management. Our responsibility is to express an opinion on this financial information based on our audit.

We conducted our audit in accordance with Canadian generally accepted auditing standards. Those standards require that we plan and perform an audit to obtain reasonable assurance whether the financial information is free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial information. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the financial information.

In our opinion, this schedule of combined net operations present fairly, in all material respects, the results of the combined net operations of the Properties for the year ended December 31, 2007 in accordance with Canadian generally accepted accounting principles.

We have not audited the combined net operations of the Properties for the year ended December 31, 2006 and for the three months ended March 31, 2008 and 2007, and accordingly, we do not express an opinion on them.

(Signed) KPMG LLP

Chartered Accountants, Licensed Public Accountants

Toronto, Canada

May 30, 2008

# THE PROPERTIES

## Schedule of Combined Net Operations

	Three months ended March 31,		Years ended December 31,	
	2008	2007	2007	2006
	(Unaudited)		(Unaudited)	
Rental revenue from income properties:				
Net rentals	\$ 1,303,272	\$ 1,341,057	\$ 5,023,763	\$ 4,981,582
Recoveries from tenants	704,899	606,220	2,545,833	2,704,246
Sundry income	7,021	78,877	96,587	18,744
	<u>2,015,192</u>	<u>2,026,154</u>	<u>7,666,183</u>	<u>7,704,572</u>
Expenses:				
Property operating costs	823,557	755,565	3,051,036	2,890,403
Amortization of deferred costs	27,433	23,247	88,322	91,401
	<u>850,990</u>	<u>778,812</u>	<u>3,139,358</u>	<u>2,981,804</u>
<b>Net operations</b>	<b>\$ 1,164,202</b>	<b>\$ 1,247,342</b>	<b>\$ 4,526,825</b>	<b>\$ 4,722,768</b>

See accompanying notes to schedule of combined net operations.

# THE PROPERTIES

Notes to Schedule of Combined Net Operations

Three months ended March 31, 2008 (unaudited) and year ended December 31, 2007

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## 1. Basis of presentation:

This schedule of combined net operations (the "schedule") is a financial schedule prepared for inclusion in a management information circular for a proposed acquisition that includes a 100% freehold interest in four shopping centres, 1224 Dundas, 1480/1490 Dundas, 1100/1140/1170 Burnhamthorpe and 750/760 Birchmount (the "Properties"), by Retrocom Mid-Market REIT ("Retrocom") from a vendor group being the partners of MRR Investors Limited Partnership No. 1, MRR Investors Limited Partnership No. 2, MRR Investors Limited Partnership No. 3, MRR Investors Limited Partnership No. 4, MRR Investors Limited Partnership No. 5 and MRR Investors Limited Partnership No. 6 (the "Partnerships") led by Mitchell Goldhar, owner of SmartCentres Inc. ("SmartCentres").

The schedule combines the net operations, as defined in note 2(a), of the Properties that Retrocom anticipates purchasing from the Partnerships. The Properties are not legal entities and the information used to prepare the schedule has been derived from records specific to the Properties to be sold to Retrocom. The schedule may not necessarily reflect the net operations in future periods, nor do they necessarily reflect the net operations that would have been realized had the Properties been stand-alone entities during the periods presented.

## 2. Significant accounting policies:

### (a) General:

The schedule has been prepared in accordance with Canadian generally accepted accounting principles. The schedule presents the combined net operations prior to amortization of income-producing properties, general and administrative expenses, capital taxes, interest expense and income taxes.

Rental revenue from income-producing properties includes base rent, operating cost and tax recoveries and sundry income.

# THE PROPERTIES

Notes to Schedule of Combined Net Operations (continued)

Three months ended March 31, 2008 (unaudited) and year ended December 31, 2007

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## 2. Significant accounting policies (continued):

Property operating costs include property taxes, utilities, insurance, repairs and maintenance, property management fees and other expenses directly related to the operation of Properties.

### (b) Revenue recognition:

Rentals from income properties are recognized as revenue over the term of the related lease agreements. All rent steps in lease agreements are accounted for on a straight-line basis over the term of the respective leases. Recoveries from tenants for property taxes, utilities, insurance and other operating costs are recognized as revenue in the period the applicable costs are incurred.

### (c) Deferred costs:

Deferred tenant inducements and leasing expenses are amortized on a straight-line basis over the term of the related lease agreements.

### (d) Use of estimates:

The preparation of the schedule requires management to make estimates and assumptions that affect the reported amounts of revenue and expenses during the periods. Actual amounts could differ from those estimates.

## 3. Related party transactions:

SmartCentres acts as property manager to the Properties. Property operating costs include management fees paid to SmartCentres for property management services which were recorded at amounts specified in the management agreement. In addition, SmartCentres earned fees for leasing which were recorded at the exchange amount and amortized over the lease term. The Partnerships expensed \$39,205 and capitalized \$65,329 of the leasing fees paid to SmartCentres for the year ended December 31, 2007. For the three months ended March 31, 2008, the Partnerships expensed \$9,929 (unaudited) and capitalized \$40,196 (unaudited) of leasing costs paid to SmartCentres.

# THE PROPERTIES

Notes to Schedule of Combined Net Operations (continued)

Three months ended March 31, 2008 (unaudited) and year ended December 31, 2007

### 3. Related party transactions (continued):

	Three months ended March 31, 2008 (Unaudited)	Year ended December 31, 2007
Management fees	\$ 85,466	\$ 330,426
Leasing fees	50,125	104,534

### 4. Subsequent events:

The Partnerships have entered into a definitive purchase and support agreement with Retrocom Mid-Market Real Estate Investment Trust (the "Purchaser"), whereby the Purchaser will acquire a 100% freehold interest in the Properties for a purchase price of approximately \$55,000,000. The purchase price will be satisfied by the assumption of existing mortgage debt of approximately \$9,200,000 and the issuance of Class B units of Retrocom Limited Partnership, an indirect subsidiary of the Purchaser, at a price of \$5.00 per unit. SmartCentres or its designee will also receive a one-time structuring fee of \$1,250,000 and warrants to purchase at any time during the five-year period after closing, 1.5 million units of the Purchaser at an exercise price of \$5.50 per unit.

Closing of the transaction is conditional on the Purchaser having available, or having in place adequate arrangements for sufficient funds to repay or prepay its existing \$30,000,000 debenture on or prior to the maturity date of July 26, 2008.

The acquisition is expected to close in early July 2008, unless extended by mutual agreement of the parties, and remains subject to closing conditions, including obtaining approval of the Purchaser's unitholders, the receipt of regulatory approvals and certain third party consents and other conditions customary for real estate transactions. The agreement allows for customary "fiduciary out" provisions and a termination fee of approximately \$2,700,000 payable by the Purchaser in certain circumstances.

**APPENDIX “D”**

**UNAUDITED PRO FORMA CONSOLIDATED FINANCIAL STATEMENTS**

Unaudited Pro Forma Consolidated Financial Statements of

**RETROCOM MID-MARKET REAL  
ESTATE INVESTMENT TRUST**

Three months ended March 31, 2008  
and year ended December 31, 2007

# RETROCOM MID-MARKET REAL ESTATE INVESTMENT TRUST

Unaudited Pro Forma Consolidated Balance Sheet  
(In thousands of dollars)

March 31, 2008

	Trust	The Properties	Pro forma adjustments	Notes	Total
<b>Assets</b>					
Income-producing properties	\$ 244,305	\$ 52,414	\$ —	2	\$ 296,719
Deferred costs	17,244	2,047	—	2	19,291
Intangible assets	25,363	5,738	—	2	31,101
Amounts receivable	5,782	—	—		5,782
Investments	2,274	—	—		2,274
Other assets	3,051	—	—		3,051
Cash	13,130	(4,750)	(1,750)	2, 3(i)	6,630
Discontinued operations	1,497	—	—		1,497
	<u>\$ 312,646</u>	<u>\$ 55,449</u>	<u>\$ (1,750)</u>		<u>\$ 366,345</u>

## Liabilities and Unitholders' Equity

<b>Liabilities:</b>					
Mortgages payable	\$ 163,467	\$ 9,181	\$ —	2	\$ 172,648
Convertible debentures	19,046	—	—		19,046
Secured convertible debentures	29,976	—	(29,976)	3(i)	—
Bridge loan	—	—	30,000	3(i)	30,000
Intangible liabilities	909	711	—	2	1,620
Accounts payable and other liabilities	9,091	—	—		9,091
Deferred tax liability	—	2,167	—	2	2,167
Distributions payable	2,777	—	—		2,777
Discontinued operations	518	—	—		518
	<u>225,784</u>	<u>12,059</u>	<u>24</u>		<u>237,867</u>
Non-controlling interest	—	43,289	—	2	43,289
Unitholders' equity	86,862	101	(1,774)	2, 3(i)	85,189
	<u>\$ 312,646</u>	<u>\$ 55,449</u>	<u>\$ (1,750)</u>		<u>\$ 366,345</u>

See accompanying notes to unaudited pro forma consolidated financial statements.

On behalf of the Trustee:

"Stephen Bellringer" \_\_\_\_\_ Trustee

"Christopher J. Cann" \_\_\_\_\_ Trustee

# RETROCOM MID-MARKET REAL ESTATE INVESTMENT TRUST

Unaudited Pro Forma Consolidated Statement of Income  
(In thousands of dollars, except per unit amounts)

Three months ended March 31, 2008

	Trust	The Properties	Subtotal	Pro forma adjustments	Notes	Total
<b>Rental revenue:</b>						
Minimum rent	\$ 8,656	\$ 1,303	\$ 9,959	\$ 9	3(b)	\$ 9,968
Recoveries from tenants and other	5,252	712	5,964	—		5,964
	13,908	2,015	15,923	9		15,932
<b>Expenses:</b>						
Operating	7,180	824	8,004	(50)	3(c)	7,954
<b>Interest:</b>						
Long-term debt	2,518	—	2,518	142	3(d)	2,660
Other	833	—	833	381	3(i)	1,214
Depreciation	1,240	—	1,240	227	3(e)	1,467
Amortization	3,305	27	3,332	391	3(f)	3,723
Trust	854	—	854	25	3(g)	879
	15,930	851	16,781	1,116		17,897
Income (loss) from operations	(2,022)	1,164	(858)	(1,107)		(1,965)
Other income and interest	138	—	138	—		138
Income (loss) before non-controlling interest and discontinued operations	(1,884)	1,164	(720)	(1,107)		(1,827)
Non-controlling interest	—	—	—	(603)	3(h)	(603)
Income (loss) before discontinued operations	(1,884)	1,164	(720)	(504)		(1,224)
Gain from discontinued operations	397	—	397	(131)	3(h)	266
<b>Net income (loss)</b>	<b>\$ (1,487)</b>	<b>\$ 1,164</b>	<b>\$ (323)</b>	<b>\$ (635)</b>		<b>\$ (958)</b>
<b>Basic and diluted loss per unit:</b>						
Before discontinued operations	\$ (0.10)					\$ (0.07)
After discontinued operations	(0.08)					(0.05)
Weighted average number of units outstanding	18,517,927					18,517,927

See accompanying notes to unaudited pro forma consolidated financial statements.

# RETROCOM MID-MARKET REAL ESTATE INVESTMENT TRUST

Unaudited Pro Forma Consolidated Statement of Income  
(In thousands of dollars, except per unit amounts)

Year ended December 31, 2007

	Trust	The Properties	Subtotal	Pro forma adjustments	Notes	Total
<b>Rental revenue:</b>						
Minimum rent	\$ 34,296	\$ 5,024	\$ 39,320	\$ 37	3(a)	\$ 39,357
Recoveries from tenants and other	20,305	2,642	22,947	—		22,947
	54,601	7,666	62,267	37		62,304
<b>Expenses:</b>						
Operating	27,110	3,051	30,161	(209)	3(c)	29,952
<b>Interest:</b>						
Long-term debt	9,023	—	9,023	588	3(d)	9,611
Other	4,622	—	4,622	1,270	3(i)	5,892
Depreciation	4,899	—	4,899	907	3(e)	5,806
Amortization	13,774	88	13,862	1,587	3(f)	15,449
Trust	3,557	—	3,557	848	3(g)	4,405
	62,985	3,139	66,124	4,991		71,115
Income (loss) from operations	(8,384)	4,527	(3,857)	(4,954)		(8,811)
Other income and interest	425	—	425	—		425
Income (loss) before non-controlling interest and discontinued operations	(7,959)	4,527	(3,432)	(4,954)		(8,386)
Non-controlling interest	—	—	—	(2,768)	3(h)	(2,768)
Income (loss) before discontinued operations	(7,959)	4,527	(3,432)	(2,186)		(5,618)
Gain from discontinued operations	24,694	—	24,694	(8,149)	3(h)	16,545
<b>Net income</b>	<b>\$ 16,735</b>	<b>\$ 4,527</b>	<b>\$ 21,262</b>	<b>\$ (10,335)</b>		<b>\$ 10,927</b>
<b>Basic and diluted income (loss) per unit:</b>						
Before discontinued operations	\$ (0.43)					\$ (0.30)
After discontinued operations	0.90					0.59
Weighted average number of units outstanding	18,517,927					18,517,927

See accompanying notes to unaudited pro forma consolidated financial statements.

# RETROCOM MID-MARKET REAL ESTATE INVESTMENT TRUST

Notes to Unaudited Pro Forma Consolidated Financial Statements  
(In thousands of dollars, except per unit amounts)

Three months ended March 31, 2008 and  
year ended December 31, 2007

## 1. Basis of presentation:

These unaudited pro forma consolidated financial statements give effect to the acquisition of four income-producing properties (the "Properties") from a vendor group (the "Vendor") as defined in the purchase and support agreement dated April 30, 2008. This transaction is expected to close in July 2008.

The unaudited pro forma consolidated financial statements have been prepared from the following financial statements as at and for the three months ended March 31, 2008 and for the year ended December 31, 2007:

	Three months ended March 31, 2008	Year ended December 31, 2007
Retrocom Mid-Market Real Estate Investment Trust (the "Trust")	Unaudited	Audited
The Properties:		
Balance sheet	Purchase equation on acquisition (unaudited)	Not applicable
Statement of income	Unaudited schedule of combined net operations of the Properties	Audited schedule of combined net operations of the Properties

These unaudited pro forma consolidated financial statements include all material adjustments necessary for the fair presentation of the proposed transaction in accordance with Canadian generally accepted accounting principles.

The unaudited pro forma consolidated balance sheet gives effect to the transactions in notes 2 and 3 as if they had occurred on March 31, 2008. The unaudited pro forma consolidated statements of income give effect to the transactions in note 3 as if they had occurred on January 1, 2007 unless otherwise noted.

# RETROCOM MID-MARKET REAL ESTATE INVESTMENT TRUST

Notes to Unaudited Pro Forma Consolidated Financial Statements (continued)  
(In thousands of dollars, except per unit amounts)

Three months ended March 31, 2008 and  
year ended December 31, 2007

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## 1. Basis of presentation (continued):

The unaudited pro forma consolidated financial statements are not necessarily indicative of the results that would have actually occurred had the transactions been consummated at the dates indicated, nor are they necessarily indicative of future operating results or the financial position of the Trust.

The accounting policies used in the preparation of these unaudited pro forma consolidated financial statements are consistent with those used in the unaudited interim consolidated financial statements of Trust as of March 31, 2008.

## 2. Acquisition of properties:

On April 30, 2008, the Trust announced that it had entered into a definitive Purchase and Support Agreement with the Vendor, led by the owner of SmartCentres Inc., pursuant to which the Trust will acquire four properties for a purchase price of \$54,830 plus normal closing adjustments (the "Transaction"). The purchase price will be satisfied by the assumption of existing mortgage debt of approximately \$9,063 and the issuance to the Vendor of approximately 9.2 million Class B units of Retrocom Limited Partnership ("Retrocom LP"), an indirect subsidiary of the Trust at a price of \$5.00 per unit. The Trust will also pay to SmartCentres Inc. or its designee a one-time structuring fee of \$1,250 and issue to SmartCentres Inc. or its designee warrants to purchase, at any time during the five-year period after closing, 1.5 million Trust Units at an exercise price of \$5.50 per unit. On closing, the Trust will increase the number of trustees and amend its Declaration of Trust to provide a representative of the Vendor with the right to appoint three of the Board members of the Trust.

In addition, on closing of the Transaction, SmartCentres Inc. will become the property manager for substantially all of the Trust's portfolio of enclosed community and regional malls and strip centres pursuant to a long-term property management contract.

Closing of the Transaction is conditional on the Trust having available, or having in place adequate arrangements for sufficient funds to repay or prepay its existing \$30,000 secured convertible debenture on or prior to the maturity date of July 26, 2008.

# RETROCOM MID-MARKET REAL ESTATE INVESTMENT TRUST

Notes to Unaudited Pro Forma Consolidated Financial Statements (continued)  
(In thousands of dollars, except per unit amounts)

Three months ended March 31, 2008 and  
year ended December 31, 2007

## 2. Acquisition of properties (continued):

The acquisition is expected to close in early July 2008, unless extended by mutual agreement of the parties, and remains subject to closing conditions, including obtaining approval of the Trust's unitholders, the receipt of regulatory approvals and certain third party consents and other conditions customary for real estate transactions. The agreement allows for customary "fiduciary out" provisions and a termination fee of approximately \$2,700 payable by the Trust in certain circumstances. The Trust expects to incur approximately \$3,500 for land transfer taxes, advisory fees, legal and audit fees and other expenses.

The acquisition will be accounted for using the purchase method. The following table summarizes the assets acquired and liabilities assumed or incurred resulting from the transaction. The net purchase price, including expenses related to the acquisition has been preliminarily allocated to the assets and liabilities at March 31, 2008 as follows:

Land	\$ 16,267
Building	36,147
Deferred recoverables	783
Tenant inducements	919
Commissions	345
Acquired in-place leases	5,262
Above-market in-place leases	476
Below-market in-place leases	(711)
Deferred tax liability	(2,167)
Mortgages assumed	(9,063)
Mark-to-market adjustment to mortgage	(118)
	<hr/>
	\$ 48,140
Non-controlling interest, net of issue costs	\$ 43,289
Warrants issued to vendor	101
Transaction costs	4,750
	<hr/>
	\$ 48,140

The actual calculation and allocation of the purchase price will be based on the estimated fair value of the assets acquired and liabilities assumed at the effective date of the acquisition. Accordingly, the purchase price will be adjusted subsequently upon completion of the transaction and the final purchase price allocation process; variations may be material.

# RETROCOM MID-MARKET REAL ESTATE INVESTMENT TRUST

Notes to Unaudited Pro Forma Consolidated Financial Statements (continued)  
(In thousands of dollars, except per unit amounts)

Three months ended March 31, 2008 and  
year ended December 31, 2007

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## 2. Acquisition of properties (continued):

Income taxes:

The Trust uses the asset and liability method of accounting for income taxes. Future income taxes are recognized for the temporary differences between the financial statement carrying amounts of assets and liabilities and their respective tax bases. Future income tax assets and liabilities are measured using substantively enacted tax rates and laws that are expected to apply to taxable income in the periods in which those temporary differences are expected to be recovered or settled. The Trust has estimated future income taxes payable in the amount of \$2,167 after giving affect to the Transaction.

## 3. Unaudited pro forma adjustments:

The unaudited pro forma adjustments to the unaudited pro forma consolidated financial statements have been prepared to account for the impact of the Transaction contemplated by the offering documents, as described below:

### (a) Purchase of properties:

The unaudited pro forma consolidated financial statements assume that the Trust will purchase four income-producing properties and account for the properties using the purchase method. The purchase price is disclosed in note 2, and the preliminary purchase allocations have been reflected in the March 31, 2008 pro forma consolidated balance sheet which reflects the impact of the purchase as if it closed on March 31, 2008. The consideration for the purchase includes issuance of Class B Units of Retrocom LP ("Class B Units"), which will have substantially the same economic benefits as the Trust Units, including a right to vote as a result of the issuance of a special class of Trust Units. The Class B Units, under certain circumstances, may be transferable. As a result of the ability to transfer these Class B Units, in certain circumstances, and as a result of not yet finalizing the Retrocom LP agreement, the Trust cannot confirm that the limitations of the transfer of these Class B Units and, as such, the Trust has determined that for the purposes of these pro forma consolidated financial statements, the Class B Units will be accounted for as a non-controlling interest. These Class B Units under the Purchase and Support Agreement are intended to have the same attributes as the Trust Units, however, under Emerging Issues Committee Abstract 151, the Trust is required to treat this equity as a non-controlling interest if the Class B Units can be transferred without being converted into Trust Units.

# RETROCOM MID-MARKET REAL ESTATE INVESTMENT TRUST

Notes to Unaudited Pro Forma Consolidated Financial Statements (continued)  
(In thousands of dollars, except per unit amounts)

Three months ended March 31, 2008 and  
year ended December 31, 2007

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### 3. Unaudited pro forma adjustments (continued):

#### (b) Amortization of above- and below-market rents:

The purchase equation includes the valuation of above- and below-market rents. These amounts are amortized to revenue over the remaining term of the leases. For the three months ended March 31, 2008 and year ended December 31, 2007, \$9 and \$37, respectively, have been amortized.

#### (c) Operating costs:

Upon completion of the Transaction, the properties will be managed by SmartCentres Inc. These pro forma consolidated financial statements assume that the change in management will be effective January 1, 2007. The change will be effective after the Transaction closes. The timing may be subject to among other things, a notification period for the current managers and customary planning and preparation by the new manager to accommodate the management of the portfolio. As a result of the change, management fees will be 3.25% of revenue, as defined in the management agreement. The impact on these pro forma consolidated financial statements, if the change in management occurred on January 1, 2007, would be a decrease in fees of \$50 and \$209 for the three months ended March 31, 2008 and year ended December 31, 2007, respectively.

#### (d) Mortgages payable:

The Trust is expected to assume three existing mortgages on three income-producing properties with outstanding principal balances totalling \$9,181, including a mark-to-market adjustment of \$118. Interest expense on mortgages payable has been adjusted by \$142 for the three months ended March 31, 2008 and \$588 for the year ended December 31, 2007. This adjustment reflects interest expense, calculated using a weighted average interest rate of approximately 6.0%, and net of amortization on the mark-to-market adjustment.

# RETROCOM MID-MARKET REAL ESTATE INVESTMENT TRUST

Notes to Unaudited Pro Forma Consolidated Financial Statements (continued)  
(In thousands of dollars, except per unit amounts)

Three months ended March 31, 2008 and  
year ended December 31, 2007

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### 3. Unaudited pro forma adjustments (continued):

(e) Depreciation:

Income-producing properties are depreciated over their remaining useful life at acquisition of 40 years. Depreciation expense of \$227 for the three months ended March 31, 2008 and \$907 for the year ended December 31, 2007 has been recorded in the unaudited pro forma consolidated statements of income.

(f) Amortization:

Amortization expense has been adjusted to remove the expense recorded by the Acquisition Properties and to record the amortization expense expected to be incurred by the Trust based on the allocation of the purchase price of the Acquisition Properties to tenant improvements and in-place leases. The amortization expense has been adjusted by \$391 for the three months ended March 31, 2008 and \$1,587 for the year ended December 31, 2007.

(g) Trust expenses:

Trust expenses have been increased to include fees for two additional Trustees pursuant to the Purchase and Support Agreement. Fees are estimated to be \$25 for the three months ended March 31, 2008 and \$98 for the year ended December 31, 2007. In addition, Trust expenses for the year ended December 31, 2007 have been adjusted to include one-time internal costs resulting from the completion of the Transaction of approximately \$750.

(h) Non-controlling interest:

The Trust will issue Class B Units to the Vendor which will be accounted for as approximately 33% non-controlling interest in the Trust.

# RETROCOM MID-MARKET REAL ESTATE INVESTMENT TRUST

Notes to Unaudited Pro Forma Consolidated Financial Statements (continued)  
(In thousands of dollars, except per unit amounts)

Three months ended March 31, 2008 and  
year ended December 31, 2007

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### 3. Unaudited pro forma adjustments (continued):

The unaudited pro forma consolidated statements are presented with the income attributed to the non-controlling interest before gains and losses from the discontinued operations as a deduction from the income or loss of the Trust. For the three months ended March 31, 2008 and year ended December 31, 2007, the amounts were a loss of \$603 and \$2,768, respectively. The gain from discontinued operations has been adjusted for the amounts attributed to the non-controlling interest in the amount of \$131 and \$8,149 for the three months ended March 31, 2008 and year ended December 31, 2007, respectively.

(i) Secured convertible debenture:

Closing of the Transaction is conditional on the Trust having available, or having in place, adequate arrangements for sufficient funds to repay or prepay its existing \$30,000 secured convertible debenture on or prior to the maturity date of July 26, 2008. The unaudited pro forma consolidated financial statements assume that the Trust refinanced the secured convertible debenture with a bridge loan bearing interest at 7.9%. An interest adjustment of \$381 and \$1,270 has been included in the unaudited pro forma consolidated statements of income for the three months ended March 31, 2008 and year ended December 31, 2007, respectively. A fee of \$1,750 is payable to the secured convertible debenture holder on or before maturity to release the related security and cross collateralization of the security on the majority of the properties, securing the secured convertible debenture which will be facilitated by the refinancing of these assets. The unaudited pro forma consolidated balance sheet at March 31, 2008 includes the fee as a use of cash and equity and the fee will be expensed by the Trust when paid.

**APPENDIX “E”**

**FAIRNESS OPINION OF TD SECURITIES INC.**



**TD Securities Inc.**

TD Tower  
66 Wellington Street West, 8<sup>th</sup> Floor  
Toronto, Ontario M5K 1A2

April 30, 2008

The Special Committee of the Board of Trustees  
Retrocom Mid-Market Real Estate Investment Trust  
4025 Yonge St, Suite 214  
Toronto, Ontario  
M2P 2E3

To the Special Committee:

TD Securities Inc. (“TD Securities”) understands that Retrocom Mid-Market Real Estate Investment Trust (“Retrocom” or the “REIT”) has entered into an agreement (the “Purchase and Support Agreement”) dated April 30, 2008, with a group of vendors (the “Vendor Group”) led by Mitchell Goldhar, owner of SmartCentres Inc. (“SmartCentres”), pursuant to which Retrocom Limited Partnership (“Retrocom LP”) will acquire four properties located in the Greater Toronto Area for a purchase price of approximately \$55 million (the “Purchase Price”), as may be adjusted pursuant to the Purchase and Support Agreement. The four properties, totaling approximately 522,915 square feet of gross leasable area, are located at 1480/1490 Dundas Street East, Mississauga, 1224 Dundas Street East, Mississauga, 750/760 Birchmount Road, Toronto, and 1100/1140/1170 Burnhamthorpe Road West, Mississauga (collectively, the “Purchased Assets”, and the purchase by Retrocom LP thereof, the “Transaction”). The Purchase Price will be satisfied by the assumption of an approximately \$9.2 million of property specific mortgages and the issuance to the Vendor Group of approximately 9.1 million Class B units<sup>1</sup> of Retrocom LP at a price of \$5.00 per unit and an equivalent number of Special Voting Units of Retrocom. As a result of the foregoing, entities affiliated with Mitchell Goldhar will control an approximate 38% voting interest in the REIT. In addition to the Purchase Price, the aggregate consideration payable pursuant to the Transaction (the “Consideration”) will include the issuance to SmartCentres or its designee of warrants to purchase up to 1.5 million units of Retrocom (“Units”) at any time and from time to time until the fifth anniversary of closing of the Transaction at an exercise price of \$5.50 per Unit and the payment to SmartCentres or its designee of a one-time structuring fee of \$1.25 million. On closing of the Transaction, SmartCentres will become the property manager for substantially all of the REIT’s portfolio pursuant to a five year property management agreement. The above description is summary in nature. The specific terms and conditions of the Transaction will be more fully described in the management information circular (the “Management Information Circular”) which will be mailed to unitholders of Retrocom (“Unitholders”) in connection with the Transaction.

TD Securities also understands that a special committee (the “Special Committee”) of the board of trustees (the “Board of Trustees”) of Retrocom has been constituted to, among other things, consider the Transaction and to make recommendations thereon to the Board of Trustees. The Special Committee has retained TD Securities to provide advice and assistance to it in, among other things, evaluating the Transaction, including the preparation and delivery to the Special Committee of TD Securities’ opinion (the “Fairness Opinion”) as to the fairness of the Consideration to be paid, from a financial point of view, to the Unitholders of Retrocom other than Mitchell Goldhar, the Vendor Group and persons controlled by Mitchell Goldhar and the Vendor Group. TD Securities has not prepared a valuation of the Purchased Assets, Retrocom or any of its securities or assets and the Fairness Opinion should not be construed as such.

**ENGAGEMENT OF TD SECURITIES BY THE SPECIAL COMMITTEE**

TD Securities was first contacted in December 2005 in connection with Retrocom’s initiation of a process (the “Strategic Process”) to review strategies available to the REIT in its efforts to enhance value to the Unitholders, and was engaged by the Special Committee pursuant to an original engagement agreement dated March 31, 2006 (made effective

<sup>1</sup> Subject to potential adjustments at closing pursuant to the Purchase and Support Agreement, up to 10 million Class B units of Retrocom LP and an equivalent number of Special Voting Units of Retrocom may be issued to the Vendor Group.

as of December 22, 2005) and an extension engagement agreement dated April 28, 2008 (collectively, the “Engagement Agreement”). The terms of the Engagement Agreement provide that TD Securities will receive a fee for its services, a portion of which is conditional on completion of the Transaction, and is to be reimbursed for its reasonable out-of-pocket expenses. In addition, Retrocom has agreed to indemnify TD Securities, in certain circumstances, against certain expenses, losses, claims, actions, damages and liabilities incurred in connection with the provision of its services.

Pursuant to the Engagement Agreement, on April 28, 2008, at the request of the Special Committee, TD Securities orally delivered a fairness opinion to the Special Committee based on substantially similar scope of review set out herein and subject to certain assumptions and limitations. On April 30, 2008, TD Securities provided an updated fairness opinion that superseded the fairness opinion delivered on April 28, 2008. This Fairness Opinion provides the same opinion as the April 30, 2008 opinion, in writing, as of April 30, 2008. Subject to the terms of the Engagement Agreement, TD Securities consents to the inclusion of the Fairness Opinion, as well as a summary thereof acceptable in form to TD Securities, in the Management Information Circular, and to the filing thereof by Retrocom REIT with the applicable Canadian securities regulatory authorities.

#### **CREDENTIALS OF TD SECURITIES**

TD Securities is a Canadian investment banking firm with operations in a broad range of investment banking activities, including corporate and government finance, mergers and acquisitions, equity and fixed income sales and trading, investment management and investment research. TD Securities has participated in a significant number of transactions involving public and private companies and has extensive experience in preparing valuations and fairness opinions.

The Fairness Opinion is the opinion of TD Securities and its form and content have been approved by a committee of senior investment banking professionals of TD Securities, each of whom is experienced in merger, acquisition, divestiture, valuation and fairness opinion matters.

#### **RELATIONSHIP WITH INTERESTED PARTIES**

Neither TD Securities, nor any of its affiliates is an insider, associate or affiliate (as those terms are defined in the *Securities Act* (Ontario) (the “Securities Act”)) of Retrocom, Mitchell Goldhar, SmartCentres or any member of the Vendor Group, or any of their respective associates or affiliates (collectively, the “Interested Parties”). Neither TD Securities nor any of its affiliates is an advisor to any Interested Party with respect to the Transaction other than to the Special Committee pursuant to the Engagement Agreement.

TD Securities and its affiliates have not been engaged to provide any financial advisory services, have not acted as lead or co-lead manager on any offering of securities of Retrocom or any other Interested Party, and have not had a material financial interest in any transaction involving Retrocom or any other Interested Party during the term of the Engagement Agreement or any time during the 24 months preceding the Engagement Agreement other than as described herein. On March 31, 2006, TD Securities provided an operating line of credit to Retrocom initially in the amount of \$35 million, on a one year revolving term basis, which subsequently decreased to a current amount of \$5 million on a demand loan basis. In April 2008, The Toronto-Dominion Bank (“TD Bank”), the parent company of TD Securities, provided to Retrocom an uncommitted term sheet for a \$33.5 million 24 months credit facility, subject to the completion of the Transaction, required to be used in part to finance the repayment of the \$30 million principal amount of secured, convertible, subordinated debentures issued to RioCan Real Estate Investment Trust on July 26, 2005 and maturing on July 26, 2008 (“RioCan Debentures”). In March 2008, TD Bank provided Retrocom with an uncommitted term sheet for a \$30 million six-month credit facility to be used in part to finance the repayment of the RioCan Debentures in the event the Transaction is not completed. In July 2005, TD Securities acted as part of a syndicate of underwriters in connection with the issuance of \$51.5 million of Units and \$20 million of Retrocom convertible unsecured subordinated debentures. In March 2004, TD Securities acted as part of a syndicate of the underwriters in connection with the \$119 million (including over-allotment option) initial public offering of Units. In addition, TD Securities is currently in discussion with SmartCentres regarding a new credit facility. TD Securities currently provides a credit facility to an associate of Mitchell Goldhar, and has in the past acted as part of a syndicate of underwriters in connection with various equity offerings of an associate of Mitchell Goldhar. Furthermore, TD Securities acted as lead or co-lead manager on the following offerings of an associate of Mitchell Goldhar: a \$40 million private placement of units in November 2004, a \$100.5 million public offering of units in May 2004, a \$55 million public offering of convertible unsecured subordinated debentures in May 2004, and a \$145.5 million public offering of units in February 2004.

There are no understandings or agreements between TD Securities and Retrocom or any other Interested Party with respect to future financial advisory or investment banking business. TD Securities may in the future, in the ordinary course of its business, perform financial advisory or investment banking services for Retrocom or any other Interested Party. TD Bank provides banking services and credit facilities to entities related to Retrocom and certain of the Interested Parties in the normal course of its business, and TD Bank may in the future provide banking services and credit facilities to Retrocom or any other Interested Party.

TD Securities acts as a trader and dealer, both as principal and agent, in major financial markets and, as such, may have and may in the future have positions in the securities of any Interested Party and, from time to time, may have executed or may execute transactions on behalf of any Interested Party or other clients for which it may have received or may receive compensation. As an investment dealer, TD Securities conducts research on securities and may, in the ordinary course of its business, provide research reports and investment advice to its clients on investment matters, including matters with respect to the Transaction, Retrocom, or any other Interested Party.

#### **SCOPE OF REVIEW**

In connection with the Fairness Opinion, TD Securities reviewed and relied upon (without attempting to verify independently the completeness or accuracy of) or carried out, among other things, the following:

##### **Pertaining to Retrocom**

1. the Purchase and Support Agreement dated April 30, 2008, including Trust Disclosure Letter and Vendor's Disclosure Letter, and a draft thereof dated April 28, 2008;
2. audited annual financial statements and management's discussion and analysis of Retrocom as at and for the years ended December 31, 2005, 2006, and 2007;
3. unaudited interim financial statements and management's discussion and analysis of Retrocom as at and for the interim periods ended March 31, 2005, June 30, 2005, September 30, 2005, March 31, 2006, June 30, 2006, September 30, 2006, March 31, 2007, June 30, 2007, and September 30, 2007;
4. annual information forms of Retrocom for the years ended December 31, 2005, 2006, and 2007;
5. notices of annual meetings and management information circulars of Retrocom for 2005, 2006, and 2007;
6. key legal documents including the declaration of trust and property management agreements;
7. Retrocom's management's operating forecast dated February 19, 2008, including review of due diligence information provided;
8. selected mortgage loan agreements;
9. documentation related to secured, convertible, subordinated debentures and associated security and indemnity;
10. property tours of various Retrocom's properties completed in the past 24 months;
11. review of certain third party reports, including independent appraisals, environmental and property condition reports for selected properties;
12. property level operating models, debt summaries, cash flow forecasts as well as discussions with the management of Retrocom regarding all such models;
13. discussions with senior officers of Retrocom, including discussions regarding the tax attributes of the REIT and Retrocom LP;
14. discussions with legal counsel to Retrocom;
15. discussions with senior management of Retrocom and the Special Committee of Retrocom with respect to the information referred to above and other issues deemed relevant; and
16. representations contained in a certificate dated as of the date hereof from a senior officer of Retrocom.

##### **Pertaining to the Purchased Assets**

17. property information including property operating statements, property budgets, rent rolls, mortgage summaries, lease agreements and summaries of recent leasing activity;

18. detailed ARGUS financial models;
19. review of various third party reports, including environmental and property condition reports;
20. property tours of the Purchased Assets;
21. review of an independent appraisal of a property located at 1100/1140/1170 Burnhamthorpe Road West, Mississauga, prepared by Altus Group and dated March 1, 2007;
22. discussions with the management of SmartCentres;
23. tax basis of Purchased Assets and other relevant tax information; and
24. representations contained in a certificate dated as of the date hereof from a senior officer of SmartCentres.

**Other**

25. review of the form of certain documents to be entered into upon closing of the Transaction, including the Exchange Agreement, the Warrant Certificate and the Property Management Agreement;
26. review of the refinancing agreement between Retrocom and RioCan Real Estate Investment Trust on March 31, 2008;
27. review of certain information relating to the business operations financial performance and stock trading history of Retrocom and other selected public real estate companies and real estate investment trusts considered relevant;
28. other relevant information relating to the comparable precedent transactions; and
29. such other real estate industry and financial market information, investigations and analyses as TD Securities considered necessary or appropriate in the circumstances.

TD Securities has not, to the best of its knowledge, been denied access by Retrocom to any information requested by TD Securities. Although TD Securities reviewed all independent appraisals received from Retrocom and SmartCentres, TD Securities did not rely on these appraisals for the Fairness Opinion.

**ASSUMPTIONS AND LIMITATIONS**

With the Special Committee's acknowledgement and agreement as provided for in the Engagement Agreement, TD Securities has relied upon the accuracy, completeness and fair presentation of all data and other information obtained by it from public sources, provided to it by or on behalf of Retrocom, provided to it by or on behalf of SmartCentres, or otherwise obtained by TD Securities (collectively, the "Information"). The Fairness Opinion is conditional upon such accuracy, completeness and fair presentation. Subject to the exercise of professional judgment, and except as expressly described herein, TD Securities has not attempted to verify independently the accuracy, completeness or fair presentation of any of the Information.

With respect to the budgets, forecasts, projections or estimates provided to TD Securities and used in its analyses, TD Securities notes that projecting future results is inherently subject to uncertainty. TD Securities has assumed, however, that such budgets, forecasts, projections and estimates were prepared using the assumptions identified therein which TD Securities has been advised are (or were at the time of preparation and continue to be), in the opinion of Retrocom and SmartCentres, correspondingly, reasonable in the circumstances. TD Securities expresses no independent view as to the reasonableness of such budgets, forecasts, projections and estimates or the assumptions on which they are based.

A senior officer of Retrocom has, on behalf of Retrocom, represented to TD Securities in a certificate dated the date hereof, among other things, that to the best of his knowledge, information and belief after due inquiry (i) Retrocom has no information or knowledge of any fact, public or otherwise, not specifically provided to TD Securities relating to Retrocom or its subsidiaries or the Purchased Assets which would reasonably be expected to affect materially the Fairness Opinion to be given by TD Securities; (ii) with the exception of forecasts, projections or estimates referred to in subparagraph (iv) below, the information, data and other material provided to TD Securities by or on behalf of Retrocom in respect of Retrocom and its subsidiaries in connection with the Strategic Process or the Transaction is, or in the case of historical information, data and other material was, at the date as of which it was provided, true, complete and accurate and did not and does not contain any untrue statement of a material fact and did not and does not omit to state a material fact necessary to make the information, data and other material not misleading in the light of circumstances in which it was presented; (iii) to the extent that any of the information, data and other material identified in subparagraph (ii) above is historical, there have been no changes in any material facts or new material facts since the respective dates thereof which have not

been disclosed to TD Securities by Retrocom; (iv) any portion of the information and data provided to TD Securities which constitute forecasts, projections or estimates was prepared using the assumptions identified therein, which, in the reasonable opinion of Retrocom, are (or were at the time of preparation and continue to be, unless superseded by a subsequent version of the same) reasonable in the circumstances; (v) there have been no valuations or appraisals of Retrocom and its affiliates made in the preceding 24 months and in the possession or control of Retrocom other than those which have been provided to TD Securities; (vi) there have been no oral or written offers for or bona fide negotiations or transactions involving Retrocom or its affiliates made in the preceding 24 months which have not been disclosed to TD Securities; (vii) there are no agreements, undertakings, commitments or understandings relating to the Transaction, except as disclosed in complete detail to TD Securities.

A senior officer of SmartCentres has, on behalf of SmartCentres, represented to TD Securities in a certificate dated the date hereof, among other things, that to the best of his knowledge, information and belief after due inquiry (i) with the exception of forecasts, projections or estimates referred to in subparagraph (iii) below, the information, data and other material provided to TD Securities by or on behalf of SmartCentres in respect of SmartCentres, the assets being sold to Retrocom LP and the Vendor Group is, or in the case of historical information, data and other material was, at the date as of which it was provided, true, complete and accurate and did not and does not contain any untrue statement of a material fact and did not and does not omit to state a material fact necessary to make the information, data and other material not misleading in the light of circumstances in which it was presented; (ii) to the extent that any of the information, data and other material identified in subparagraph (i) above is historical, there have been no changes in any material facts since the respective dates thereof which have not been disclosed to TD Securities; (iii) any portion of the information and data provided to TD Securities which constitute forecasts, projections or estimates was prepared using the assumptions identified therein, which, in the reasonable opinion of SmartCentres, are (or were at the time of preparation and continue to be, unless superseded by a subsequent version of the same) reasonable in the circumstances; (iv) there have been no valuations or appraisals of the assets being acquired in the proposed Transaction made in the preceding 24 months and in the possession or control of SmartCentres other than those which have been provided to TD Securities.

In preparing the Fairness Opinion, TD Securities has made several assumptions, including that all final or executed versions of documents will conform in all material respects to the drafts provided to TD Securities, conditions precedent to the completion of the Transaction can be satisfied in due course, all consents, permissions, exemptions or orders of relevant regulatory authorities or third parties will be obtained, without adverse condition or qualification, the procedures being followed to implement the Transaction are valid and effective, the Management Information Circular will be distributed to the Unitholders of Retrocom in accordance with all applicable laws, the disclosure in the Management Information Circular will be accurate, in all material respects, and will comply, in all material respects, with the requirements of all applicable laws. The Fairness Opinion only pertains to the Transaction as it relates to the Purchased Assets and does not take into account or otherwise address the possible substitution of other properties in place of the four Purchased Assets as permitted by the Purchase and Support Agreement. In addition, TD Securities assumed that no land transfer taxes would be paid by Retrocom beyond the amount that would be payable on a 100% cash purchase transaction in respect of the Purchased Assets. In its analysis in connection with the preparation of the Fairness Opinion, TD Securities made numerous assumptions with respect to industry performance, general business and economic conditions, and other matters, many of which are beyond the control of TD Securities, Retrocom, Mitchell Goldhar, the Vendor Group, SmartCentres or their respective affiliates. Among other things, TD Securities has assumed the accuracy, completeness and fair representation of and has relied upon the Information.

The Fairness Opinion has been provided for the use of the Special Committee and is not intended to be, and does not constitute, a recommendation that any Unitholder of Retrocom vote in favour of the Transaction. The Fairness Opinion may not be used by any other person or relied upon by any other person other than the Board of Trustees and the Special Committee without the express prior written consent of TD Securities. The Fairness Opinion does not address the relative merits of the Transaction as compared to other transactions or business strategies that might be available to Retrocom, nor does it address the underlying business decision to implement the Transaction. In considering fairness, from a financial point of view, TD Securities considered the Transaction from the perspective of Unitholders of Retrocom generally and did not consider the specific circumstances of any particular Unitholder, including with regard to income tax considerations. The Fairness Opinion is rendered as of April 30, 2008, on the basis of securities markets, economic and general business and financial conditions prevailing on that date and the condition and prospects, financial and otherwise, of the Purchased Assets and of Retrocom, and its subsidiaries and affiliates as they were reflected in the Information provided or otherwise available to TD Securities. Any changes therein may affect the Fairness Opinion and, although TD Securities reserves the right to change or withdraw the Fairness Opinion in such event, it disclaims any

undertaking or obligation to advise any person of any such change that may come to its attention, or update the Fairness Opinion after such date.

The preparation of a fairness opinion is a complex process and is not necessarily amenable to partial analysis or summary description. TD Securities believes that its analyses must be considered as a whole and that selecting portions of the analyses or the factors considered by it, without considering all factors and analyses together, could create an incomplete view of the process underlying the Fairness Opinion. Accordingly, this Fairness Opinion should be read in its entirety.

**FAIRNESS CONCLUSION**

Based upon and subject to the foregoing, TD Securities is of the opinion that, as of April 30, 2008, the Consideration to be paid pursuant to the Transaction is fair, from a financial point of view, to Unitholders of Retrocom other than Mitchell Goldhar and the Vendor Group and persons controlled by Mitchell Goldhar and the Vendor Group.

Yours very truly,

(Signed) TD SECURITIES INC.

TD SECURITIES INC.

## APPENDIX “F”

### MANDATE OF THE BOARD

Adopted as of May, 2006

The board of trustees (the “Board”) of Retrocom Mid-Market Real Estate Investment Trust (the “REIT”) has determined that it would be appropriate for the Board to adopt a written mandate describing its responsibilities and duties in relation to oversight of the business and affairs of the REIT and committees of the Board.

The Board has adopted this Mandate which reflects the REIT’s commitment to high standards of corporate governance, to assist the Board in supervising the management of the business and affairs of the REIT as required under the REIT’s Declaration of Trust.

#### A. PROCEDURAL MATTERS

1. Members of the Board shall serve at the pleasure of the unitholders of the REIT and the unitholders of the REIT shall elect the Board annually.
2. The Board may appoint such committees from time to time as it considers appropriate in compliance with the REIT’s Declaration of Trust to act on behalf of the Board or make recommendations to the Board with respect to matters to be decided by the Board. If such committees are intended as permanent committees, they shall have a mandate document that defines their responsibilities in relation to the Board and the extent of delegated powers to such committees. The functions of the Board, subject to applicable laws and the Declaration of Trust of the REIT, may be delegated to its committees except where provided otherwise in the Declaration of Trust.
3. At least a majority in number of the trustees shall be independent. The Governance and Compensation committee of the Board shall make recommendations from time to time to the Board as to an appropriate determination of what constitutes an Independent Trustee and the Board shall annually determine the independence status of each trustee.
4. The Board shall choose a trustee annually to act as Chair of the Board who shall qualify as an Independent Trustee.
5. Members of the Board shall be entitled to receive such remuneration for acting as members of the Board as may be determined from time to time by the Board on the recommendations of the Governance and Compensation Committee of the Board.
6. The Board shall, from time to time, evaluate its effectiveness and the effectiveness of its committees with respect to its (and their) contribution to the REIT and the Board’s representation of the REIT’s unitholders. The Board shall meet *in camera* on a regular basis for such purpose and related purposes.
7. The Board shall consider from time to time its resources including the adequacy of the information provided to it with respect to oversight of the management of the REIT and shall confer with management with respect to its findings.
8. The functions referred to in sections B.1(a), (b), (d), (e), (g), (j), B.2 and B.4(a) and (b) shall not be delegated.

#### B. FUNCTIONS

1. *General Responsibilities*
  - (a) The Board shall exercise general stewardship responsibilities with respect to the REIT. Without limitation, stewardship shall include the specific responsibilities and duties outlined in this Mandate.
  - (b) The Board shall oversee the management of the REIT. In doing so, the Board shall establish a productive working relationship with the Chief Executive Officer, other officers of the REIT and the REIT’s property managers.
  - (c) The officers of the REIT, headed by the Chief Executive Officer, shall be responsible for general day to day management of the REIT and for making recommendations to the Board with respect to long term strategic, financial, organizational and related objectives.
  - (d) The roles and responsibilities of the Board are intended to primarily focus on the formulation of long term strategic, financial and organizational goals for the REIT and on the monitoring of management

- performance. Without limitation, the Board shall at least on an annual basis (i) oversee a management-driven strategic planning process and approve the REIT's strategic plan which takes into account, among other things, the opportunities and risks of the business, (ii) assess the principal risks of the REIT's business and ensure appropriate systems are in place to manage such risks, (iii) taking account of advice from the Governance and Compensation Committee, select, monitor and evaluate the Chief Executive Officer and other members of senior management for the REIT and oversee succession planning (including appointing and monitoring) at the senior management level and at the property manager level, (iv) oversee the communications policies of the REIT and (v) monitor the effectiveness of the REIT's internal control and management information systems to safeguard the REIT assets.
- (e) The Board shall review and approve the REIT's financial objectives, short and long-term business plans for the REIT's businesses and monitor performance in accordance with such plans. The Board shall also review and approve, without limitation to its obligations and duties as set out in the Declaration of Trust:
    - (i) significant capital allocations and expenditures;
    - (ii) all material transactions;
    - (iii) all matters that would be expected to have a major impact on unitholders, creditors or employees;
    - (iv) on advice from the Governance and Compensation Committee, the appointment any person who is to hold an officer position of the REIT;
    - (v) the REIT's strategic plan, and
    - (vi) any proposed changes in compensation to be paid to members of the Board on the recommendation of the Governance and Compensation Committee.
  - (f) The Board has established a Governance and Compensation Committee which establishes the Board's approach to corporate governance, including developing a set of principles and guidelines applicable to the REIT.
  - (g) The Board will oversee ethical behaviour and compliance with laws and regulations (which includes overseeing the choice of critical accounting principles on recommendations from the Audit Committee of the Board).
  - (h) With respect to significant risks and opportunities affecting the REIT, the Board may impose such limits on the business activity of the REIT as may be in the interests of the REIT and its unitholders.
  - (i) The Board shall annually consider what additional skills and competencies would be helpful to the Board. The identification of specific candidates for consideration shall be the responsibility of the Governance and Compensation Committee which shall be guided by the findings of the Board in relation to competencies and skills.
  - (j) The Board will adopt prudent financial standards with respect to the affairs of the REIT.
  - (k) The Board shall perform such other functions as are prescribed by law, as are assigned to the Board in the REIT's Declaration of Trust and as it may from time to time determine in accordance with the plenary powers of the Board.
  - (l) The Board shall receive the following reports on a regular basis:
    - (i) periodic reports from its committees following committee meetings and, annually, a report from each committee as to the work undertaken by the committee and the committee's recommendations, if any, for change with respect to its responsibilities and effectiveness; and
    - (ii) regular reports from the Chief Executive Officer and Chief Financial Officer on the REIT's financial and operating performance.

## 2. *Relationship with Committees*

- (a) The Board shall annually assess the mandates of its committees.
- (b) The Board shall annually appoint a member of each committee to act as Chair of the committee on the advice of the Chair of the Board and Governance and Compensation Committee.

3. *Senior Management*
  - (a) The Board will review with the Governance and Compensation Committee and approve the objectives set for the Chief Executive Officer and performance in relation to such objectives.
  - (b) The Board appoints and supervises the Chief Executive Officer and other members of senior management, approves their compensation and, as permitted by the Declaration of Trust and applicable law, delegates to senior management responsibility for the day-to-day operations of the REIT.
  - (c) The Board will, to the extent feasible, satisfy itself as to the integrity of the Chief Executive Officer and the other members of senior management and that the Chief Executive Officer and other members of senior management create a culture of integrity throughout the REIT.
4. *Financial Statements and Significant Disclosure Documents*
  - (a) The Board shall review and verify the integrity of the REIT's internal controls and management information systems.
  - (b) The Board will review on an ongoing basis the financial and underlying operational performance of the REIT.
  - (c) The Board will review and approve the REIT's annual information form as well as its annual report and related financial statements and annual management discussion and analysis disclosure. In doing so, the Board will consider the quality and usefulness of the information from the perspective of its unitholders.
  - (d) The Board has responsibility for reviewing and approving for release quarterly financial statements and related disclosure.
  - (e) The Board will periodically review the means by which unitholders can communicate with the REIT, including the opportunity to do so at the annual meeting, communications interfaces through the REIT's website and the adequacy of resources available within the REIT to respond to unitholders.

### **C. RESOURCES, MEETINGS AND REPORTS**

1. The Board shall have adequate resources to discharge its responsibilities. The Chair shall be empowered to engage advisers as may be appropriate from time to time to advise the Chair or the Board with respect to duties and responsibilities.
2. The Board shall meet not less than four times per year.
3. The meetings of the Board shall ordinarily include the Chief Executive Officer (if not a trustee) and the Chief Financial Officer (if not a trustee) and shall periodically include other senior officers as may be appropriate and as may be desirable to enable the Board to become familiar with the REIT's management team.
4. The Secretary shall keep minutes of its meetings in which shall be recorded all actions taken by the Board. Such minutes shall be made available to Board members at their request and all such minutes shall be approved by the Board for entry in the records of the REIT.
5. Each trustee is expected to be diligent in preparing for attending meetings of the Board and any committee of which he is a member. Preparation for meetings includes advance review of the meeting materials. In addition, each trustee is expected to attend each annual meeting of unitholders. A trustee who is unable to attend a Board or committee meeting may participate by teleconference.
6. Members of the Board shall have the right, for the purposes of discharging their respective powers and responsibilities, to inspect any relevant records of the REIT and its subsidiaries.
7. Members of the Board, subject to approval of the Chair of the Governance and Compensation Committee, may retain separate counsel to deal with issues relating to their responsibilities as members of the Board.

### **D. GENERAL**

The Board may perform any other activities consistent with this mandate, the Declaration of the Trust and all amendments thereto and any other governing laws as the Board determines necessary or appropriate.

