

ENBRIDGE INCOME FUND

**AMENDED AND RESTATED
TRUST INDENTURE**

**Amended and Restated as of
December 17, 2010**

TABLE OF CONTENTS

ARTICLE 1 INTERPRETATION	2
1.1 Definitions	2
1.2 References to Acts Performed by the Fund.....	8
1.3 Interpretation.....	8
1.4 Headings for Reference Only.....	9
1.5 Day Not a Business Day	9
1.6 Time of the Essence.....	9
1.7 Governing Law.....	9
1.8 Schedules	9
ARTICLE 2 DECLARATION OF TRUST.....	9
2.1 Settlement of Fund	9
2.2 Declaration of Trust.....	10
2.3 Initial Unitholder	10
2.4 Name of Fund.....	10
2.5 Head Office.....	11
2.6 Nature of the Fund.....	11
2.7 Rights of Unitholders and Ownership of Assets of the Fund.....	11
2.8 Rights of Holders of Voting Exchangeable Securities	11
2.9 Unitholders Bound	13
ARTICLE 3 CREATION, ISSUE AND SALE OF UNITS.....	13
3.1 Nature of Units.....	13
3.2 Authorized Number of Units.....	14
3.3 Issue of Units	14
3.4 Pre-Emptive Right.....	15
3.5 Consolidation of Units.....	16
3.6 Non-Resident and Tax-Exempt Ownership Constraint	16
3.7 Unit Certificates	17
3.8 Execution of Unit Certificates.....	17
3.9 Certificate Fee.....	17
3.10 Form of Unit Certificate	17
3.11 Fractional Units.....	17
3.12 Unit Register and Transfer Ledgers to be Maintained.....	18
3.13 Entry on Register.....	18
3.14 Transfer of Units	18
3.15 Successors in Interest to Unitholders.....	19
3.16 Units Held Jointly or in Fiduciary Capacity	19
3.17 Performance of Trusts	19
3.18 Lost Unit Certificates.....	19
3.19 Death of Unitholders	20
3.20 Unclaimed Payments	20
3.21 Repurchase of Units	20
3.22 Power of Attorney	21
3.23 SIFT Tax Matters	22
ARTICLE 4 PURPOSE AND INVESTMENTS OF FUND.....	22
4.1 Purpose of the Fund.....	22
4.2 Investments	23
4.3 Investment Restrictions	23

ARTICLE 5 DISTRIBUTIONS.....	23
5.1 Computation of Distributable Cash Flow of the Fund.....	23
5.2 Computation of Income and Net Realized Capital Gains	24
5.3 Distributions.....	25
5.4 Other Distributions	25
5.5 Character of Distribution	26
5.6 Enforceability of Right to Receive Distributions	27
5.7 Designation of Taxable Capital Gains and Other Amounts.....	27
5.8 Method of Payment of Distributions	27
5.9 Withholding Taxes	27
5.10 Unit Plans.....	27
ARTICLE 6 REDEMPTION.....	28
6.1 Right of Redemption by Holders of Units	28
6.2 Exercise of Redemption Right	28
6.3 Cash Redemption Price.....	28
6.4 Payment of Cash Redemption Price	30
6.5 No Cash Redemption in Certain Circumstances	30
6.6 In Specie Redemption.....	30
6.7 Cancellation of Certificates for all Redeemed Units	31
ARTICLE 7 TRUSTEE	31
7.1 Number and Term	31
7.2 Qualifications of the Trustee.....	31
7.3 Election of the Trustee.....	32
7.4 Resignation and Removal of the Trustee	33
7.5 Vacancies	34
7.6 Successor and Additional Trustee	34
7.7 Compensation and Other Remuneration.....	34
ARTICLE 8 TRUSTEE’S POWERS AND DUTIES	35
8.1 General Powers	35
8.2 Specific Powers and Authorities	35
8.3 Further Powers of the Trustee.....	39
8.4 Standard of Care.....	40
8.5 Reliance Upon the Trustee.....	40
8.6 Determinations Binding.....	40
8.7 Restrictions on the Trustee’s Powers and their Exercise	41
8.8 Banking.....	42
8.9 Fees and Expenses	42
8.10 Payments to Unitholders.....	42
ARTICLE 9 AMENDMENTS TO THE TRUST INDENTURE	43
9.1 Amendment.....	43
9.2 Amendment without Approval.....	43
9.3 Further Restrictions on Amendments	44
9.4 Notification of Amendment	44
9.5 Further Acts Regarding Amendment.....	44
ARTICLE 10 MEETINGS OF UNITHOLDERS	45
10.1 Annual Meeting.....	45
10.2 Other Meetings.....	45

10.3	Notice of Meeting of Unitholders.....	47
10.4	Quorum; Chairman.....	47
10.5	Voting.....	47
10.6	Record Dates.....	48
10.7	Proxies.....	48
10.8	Resolution in Lieu of Meeting.....	48
10.9	Materials Sent to Unitholders.....	49
10.10	Meetings of ECT Unitholders.....	49
10.11	Voting of Units by Administrator.....	49
10.12	Resolutions Binding the Trustee.....	49
ARTICLE 11 TERMINATION.....		50
11.1	Term of the Fund.....	50
11.2	Termination with the Approval of Unitholders.....	50
11.3	Procedure Upon Termination.....	50
11.4	Powers of the Trustee Upon Termination.....	50
11.5	Sale of Investments.....	51
11.6	Distribution of Proceeds.....	51
11.7	Further Notice to Unitholders.....	51
11.8	Responsibility of the Trustee after Sale and Conversion.....	51
ARTICLE 12 LIABILITY OF TRUSTEE, ADMINISTRATOR AND UNITHOLDERS AND OTHER MATTERS.....		52
12.1	General Limitation of Liability and Indemnification.....	52
12.2	Indemnification of Trustee.....	54
12.3	Execution of Instruments and Apparent Authority.....	54
12.4	Reliance.....	55
12.5	Conditions Precedent to Trustee's Obligations to Act.....	55
ARTICLE 13 DELEGATION AND MATTERS PERTAINING TO THE ADMINISTRATOR.....		56
13.1	Delegation Permitted to the Administrator and ECT.....	56
13.2	Discretion.....	56
13.3	Sub-Delegation.....	56
13.4	Liability of Trustee in respect of Delegation.....	57
13.5	Grant of Power and Authority to Administrator.....	57
13.6	Terms and Conditions Pertaining to Performance of Duties.....	58
13.7	No Partnership or Joint Venture.....	58
13.8	Affiliate Activities.....	59
13.9	Assignment.....	60
13.10	Termination of Administrator's Duties.....	60
13.11	Lack of Administrator.....	61
ARTICLE 14 SUPPLEMENTAL INDENTURES.....		61
14.1	Provision for Supplemental Indentures.....	61
ARTICLE 15 GENERAL.....		61
15.1	Notices to Unitholders.....	61
15.2	Notice to the Trustee.....	62
15.3	Failure to Give Notice.....	63
15.4	Joint Holders.....	63
15.5	Service of Notice.....	63

15.6	Trust Records	63
15.7	Information Available to Unitholders.....	64
15.8	Fiscal Year	64
15.9	Financial Disclosure	64
15.10	Unitholder Meeting Information	65
15.11	Taxation Information	65
15.12	Income Tax: Obligations of the Trustee	65
15.13	Qualification of Auditors	65
15.14	Appointment of Auditors	65
15.15	Change of Auditors.....	65
15.16	Fund Property to be Kept Separate.....	66
15.17	Trustee May Not Hold Units.....	66
15.18	Execution and Effect of Restated Trust Indenture.....	66
15.19	Consolidations.....	66
15.20	Severability	66
15.21	Successors and Assigns	66
15.22	Counterparts.....	67

SCHEDULES

Schedule A	-	Matters Requiring Approval of Unitholders by Ordinary Resolution
Schedule B	-	Matters Requiring Approval of Unitholders by Special Resolution
Schedule C	-	Form of Trust Unit Certificate – Ordinary Units

ENBRIDGE INCOME FUND

THIS AMENDED AND RESTATED TRUST INDENTURE is made as of December 17, 2010.

AMONG:

CIBC MELLON TRUST COMPANY, a trust company existing under the laws of Canada, having an office in Calgary, Alberta, which is the first trustee (hereinafter called the “**Initial Trustee**”) of the trust constituted by this Trust Indenture (the “**Fund**”) and each person who after the date hereof becomes a trustee of the Fund as herein provided (each person, while a trustee of the Fund as herein provided, is hereinafter called a “**Trustee**”)

- and -

ENBRIDGE MANAGEMENT SERVICES INC., a corporation incorporated under the laws of Canada and having a registered office in Calgary, Alberta (hereinafter called the “**Settlor**” or “**Administrator**”, as the context requires), and each person who, after the date hereof, becomes a holder of Units (as hereinafter defined) of the Fund as herein provided (at any time, each person who is at that time a holder of a Unit as herein provided, hereinafter called a “**Unitholder**” and such persons are collectively called the “**Unitholders**”)

RECITALS

WHEREAS the Settlor created and settled the Fund pursuant to the terms of the Original Indenture for the purposes set forth in Section 4.1 of the Original Indenture, including for the purpose of acquiring and holding certain investments including trust units and notes of an Alberta trust called Enbridge Commercial Trust that will acquire direct or indirect interests, or make other investments, in various energy distribution and transportation infrastructure assets;

AND WHEREAS the beneficiaries of the Fund shall be holders of Units on the terms as hereinafter set forth;

AND WHEREAS the Trustee has agreed to hold and use all amounts and assets received thereby, under and in connection with this Trust Indenture, upon the trusts and in accordance with the provisions hereinafter set forth;

AND WHEREAS the Fund shall qualify as a “unit trust” pursuant to paragraph 108(2)(a) of the Income Tax Act (as hereinafter defined);

AND WHEREAS the Trustee, in accordance with the terms of the Original Indenture, amended and restated the Original Indenture as of June 30, 2003, further amended and restated

such indenture as of August 18, 2003 (the “**2003 Indenture**”), and further amended and restated as of May 1, 2006 (the “**2006 Indenture**”);

AND WHEREAS the Arrangement (as defined below) has been approved by Special Resolution of the Unitholders;

AND WHEREAS the Administrator considers it desirable to amend certain provisions of the 2006 Indenture to provide for any and all amendments as may be necessary or desirable in connection with or to facilitate the Arrangement (the “**Arrangement Amendments**”);

AND WHEREAS the Arrangement Amendments have been approved by Special Resolution of the Unitholders;

AND WHEREAS the Administrator considers it advisable to amend Section 9.2 in order to permit the Administrator and the ECT Trustees to make amendments hereto that are necessary or desirable as a result of changes in accounting rules and standards over time (the “**Accounting Amendment**”);

AND WHEREAS the Accounting Amendment has been approved by Special Resolution of the Unitholders;

NOW THEREFORE THIS INDENTURE WITNESSETH THAT, in consideration of the premises and the mutual and respective covenants and agreements contained herein, the Trustee declares, and covenants and agrees with the Unitholders and the Administrator, and the Unitholders and the Administrator covenant and agree with the Trustee as follows:

ARTICLE 1 INTERPRETATION

1.1 Definitions

In this Trust Indenture and in the Unit Certificates, unless the context otherwise requires, the following shall have the following meanings:

- (a) “**Administration Agreement**” means the administrative services agreement dated June 27, 2003, as amended on May 1, 2006 and as amended and restated on December 17, 2010 among the Administrator, the Trustee, the Fund and ECT, pursuant to which the Administrator provides general administrative services to the Fund, as amended, supplemented or amended and restated from time to time;
- (b) “**Administrative Services**” has the meaning ascribed thereto in the Administration Agreement;
- (c) “**Administrator**” means Enbridge Management Services Inc., a corporation incorporated under the laws of Canada, and all successors and permitted assigns thereof;
- (d) “**affiliate**” has the meaning ascribed thereto in the *Securities Act* (Alberta), as amended from time to time;

- (e) “**Allotment Notice**” has the meaning ascribed thereto in subsection 3.4(a);
- (f) “**annuitant**” means the annuitant, subscriber or beneficiary under a registered retirement savings plan, a registered retirement income fund, a registered education savings plan or a deferred profit sharing plan, all as defined in the Income Tax Act, or any other plan of which a Unitholder acts as trustee or carrier;
- (g) “**Arrangement**” means the Plan of Arrangement involving the Fund, ECT, Enbridge, the Administrator, the Unitholders and EIFH pursuant to the *Business Corporations Act* (Alberta), R.S.A. 2000, c. B-9, approved by order of the Court of Queen’s Bench of Alberta on May 6, 2010;
- (h) “**associate**” has the meaning ascribed thereto in the *Securities Act* (Alberta), as amended from time to time;
- (i) “**Auditors**” means the firm of chartered accountants appointed as the auditors of the Fund from time to time in accordance with the provisions hereof and, initially, means PricewaterhouseCoopers LLP, Chartered Accountants;
- (j) “**Business Day**” means a day other than a Saturday, Sunday or a day on which the principal chartered banks located at Calgary, Alberta are not open for business;
- (k) “**Calendar Quarter**” means the three (3) month periods ended March 31, June 30, September 30 and December 31; and
- (l) “**Cash Redemption Price**” has the meaning ascribed thereto in Section 6.3;
- (m) “**Counsel**” means a barrister and solicitor or firm of barristers and solicitors or other lawyers in an appropriate jurisdiction retained by the Fund;
- (n) “**Distributable Cash Flow**” has the meaning ascribed thereto in Section 5.1;
- (o) “**Distribution Payment Date**” means the 15th day of the month which immediately follows a Distribution Period and such other dates as may be determined from time to time by the Trustee or the Administrator;
- (p) “**Distribution Period**” means:
 - (i) until and including December 31, 2010, any of the calendar months in each calendar year, as the context requires;
 - (ii) commencing on January 1, 2011, any Calendar Quarter, as the context requires;or such other periods as may be hereafter determined from time to time by the Trustee or the Administrator, provided that any such period shall be no longer in duration than three (3) calendar months nor any shorter in duration than one (1) calendar month;

- (q) “**Distribution Priority**” means the priority in distribution of cash flow that expired on July 1, 2008;
- (r) “**Distribution Record Date**” means the last Business Day in each Distribution Period and such other dates as may be determined from time to time by the Trustee or the Administrator provided that the Distribution Record Date for the Distribution Period ending on December 31, 2010 shall be December 14, 2010;
- (s) “**Divestiture Notice**” has the meaning ascribed thereto in Section 3.6;
- (t) “**ECT**” means Enbridge Commercial Trust, a trust constituted by the ECT Trust Indenture;
- (u) “**ECT Common Units**” means the Units of ECT designated as Common Units in the ECT Trust Indenture;
- (v) “**ECT Independent Trustee**” means an Independent Trustee as defined in the ECT Trust Indenture;
- (w) “**ECT Meeting**” has the meaning ascribed thereto in Section 10.12;
- (x) “**ECT Notes**” means the notes, Series 1, Series 2 or Series 3, issued from time to time by ECT pursuant to a note indenture made as of June 30, 2003, as amended and restated as of August 18, 2003, as further amended by a First Supplemental Indenture dated December 20, 2004 and as further amended or restated from time to time;
- (y) “**ECT Preferred Units**” means the Units of ECT designated as “Preferred Units” under the ECT Trust Indenture;
- (z) “**ECT Trust Indenture**” means the trust indenture dated December 20, 2002 entered into among J. Richard Bird, as initial trustee, 201202 Income Fund, as settlor and initial unitholder, and Enbridge Management Services Inc., as manager of ECT, as amended and restated as of June 30, 2003 and August 18, 2003, as amended as of May 4, 2004 and July 1, 2005, as amended and restated May 1, 2006, as amended on November 5, 2007 and as amended and restated on December 17, 2010, as the same may be amended, restated or modified from time to time;
- (aa) “**ECT Trustees**” means the trustees from time to time of ECT;
- (bb) “**ECT Units**” includes both Common Units and Preferred Units of ECT (as each such term is defined in the ECT Trust Indenture), and “**ECT Unit**” means a Common Unit or Preferred Unit of ECT, as the case may be and the context so requires;
- (cc) “**EIFH**” means Enbridge Income Fund Holdings Inc., a corporation incorporated pursuant to the laws of Alberta;
- (dd) “**EIFH Shares**” means the common shares of EIFH;

- (ee) “**Enbridge**” means Enbridge Inc., a corporation existing under the laws of Canada;
- (ff) “**Enbridge ECT Unitholders**” has the meaning ascribed thereto in the ECT Trust Indenture;
- (gg) “**Enbridge Parties**” has the meaning ascribed thereto in subsection 13.8(a);
- (hh) “**Exchangeable Security**” means a unit, share or other security, whether or not issued by the Fund, which is convertible into, exchangeable for, or carries the right of the holder to purchase or otherwise acquire (or of the issuer of such security to cause the purchase or acquisition of) Unit(s) or unit(s), share(s) or other security(ies), whether or not issued by the Fund, which are convertible into, exchangeable for, or carry the right of the holder to purchase or otherwise acquire (or of the issuer of such security to cause the purchase or acquisition of) Unit(s), including the ECT Preferred Units;
- (ii) “**Exchange Right**” has the meaning ascribed thereto in the ECT Trust Indenture;
- (jj) “**Experts**” has the meaning ascribed thereto in Section 12.4(a);
- (kk) “**Fund**” means the trust constituted by this Trust Indenture;
- (ll) “**Fund Delegation Agreement**” means the fund delegation agreement dated June 30, 2003 as amended and restated as of December 17, 2010, among ECT, the Trustee and the Fund, and pursuant to which ECT has been delegated responsibility to provide certain services to the Fund, for and on behalf of the Trustee, as amended or supplemented from time to time;
- (mm) “**Fund Property**”, at any time, means all of the money, properties and other assets of any nature or kind whatsoever as are, at such time, held by the Fund or by the Trustee on behalf of the Fund;
- (nn) “**Governing Authority**” means any stock exchange or any court or governmental department, regulatory body, commission, board, bureau, agency, or instrumentality of Canada, or of any state, province, territory, county, municipality, city, town or other political jurisdiction whether domestic or foreign and whether now or in the future constituted or existing;
- (oo) “**Income of the Fund**” has the meaning ascribed thereto in subsection 5.2(a);
- (pp) “**Income Tax Act**” means the *Income Tax Act* (Canada) and the regulations thereunder as amended from time to time;
- (qq) “**Indenture Conferred Duties**” means all rights, powers and duties conferred upon and granted to the Administrator pursuant to the terms of this Trust Indenture;
- (rr) “**Initial Trustee**” means CIBC Mellon Trust Company, a trust company existing under the laws of Canada;

- (ss) “**Initial Unit**” means the one Unit issued to the Initial Unitholder;
- (tt) “**Initial Unitholder**” means IPL Holdings Inc., a corporation incorporated under the laws of Canada;
- (uu) “**in Specie Redemption Price**” has the meaning ascribed thereto in Section 6.6;
- (vv) “**meeting of Unitholders**” shall mean and include, as the circumstances require, both an annual meeting of Unitholders and any other meeting of Unitholders;
- (ww) “**Net Asset Value per Unit**” has the meaning ascribed thereto in Section 6.3;
- (xx) “**Net Realized Capital Gains**” has the meaning ascribed thereto in subsection 5.2(b);
- (yy) “**Ordinary Resolution**” means:
 - (i) a resolution passed by more than 50% of the votes cast by those Unitholders entitled to vote on such resolution, whether cast in person or by proxy, at a meeting of Unitholders, at which a quorum was present, called (at least in part) for the purpose of approving such resolution, or
 - (ii) a resolution approved in writing, in one or more counterparts, by holders of more than 50% of the votes represented by those Units entitled to be voted on such resolution;
- (zz) “**Original Indenture**” means the Trust Indenture originally constituting Enbridge Income Fund, made as of May 22, 2003 among CIBC Mellon Trust Company, Enbridge Management Services Inc. and IPL Holdings Inc., prior to any amendment thereto or restatement thereof;
- (aaa) “**Other Fund Securities**” has the meaning ascribed thereto in Section 8.2(s);
- (bbb) “**Permitted Activities**” has the meaning ascribed thereto in Section 13.8(a);
- (ccc) “**Permitted Transferee**” has the meaning ascribed thereto in the Unitholders’ Agreement;
- (ddd) “**person**” means and includes individuals, corporations, limited partnerships, general partnerships, joint stock companies, limited liability companies, joint ventures, associations, companies, trusts, banks, trust companies, pension funds, business trusts and other organizations, whether or not legal entities and governments and agencies and political subdivisions thereof;
- (eee) “**Prohibited Person**” has the meaning ascribed thereto in section 3.6;
- (fff) “**Registers**” has the meaning ascribed thereto in Section 3.12;
- (ggg) “**Reserve Amount**” has the meaning ascribed thereto in subsection 5.1(g);

- (hhh) “**security**”, as applicable in the particular context, has the meaning ascribed thereto in the *Securities Act* (Alberta), as amended from time to time, and “**securities**” has a corresponding meaning;
- (iii) “**Special Resolution**” means:
- (i) a resolution passed by more than 66 $\frac{2}{3}$ % of the votes cast by those Unitholders entitled to vote on such resolution, whether cast in person or by proxy, at a meeting of Unitholders, at which a quorum was present, called (at least in part) for the purpose of approving such resolution, or
 - (ii) a resolution approved in writing, in one or more counterparts, by holders of more than 66 $\frac{2}{3}$ % of the votes represented by those Units entitled to be voted on such resolution;
- (jjj) “**take-over bid**” has the meaning ascribed to such term in Multilateral Instrument 62-104 – Takeover Bids and Issuer Bids, as amended from time to time;
- (kkk) “**this Trust Indenture**”, “**this Indenture**”, “**hereto**”, “**herein**”, “**hereof**”, “**hereby**”, “**hereunder**” and similar expressions refer to this Amended and Restated Trust Indenture, including the Schedules hereto, originally made as of May 22, 2003 as amended and restated as of June 30, 2003 and as further amended and restated as of August 18, 2003, again as of May 1, 2006 and again as of December 17, 2010, as the same may be further amended, restated or modified from time to time, and includes every instrument supplemental or ancillary to or in implementation of this Trust Indenture and, except where the context otherwise requires, does not refer to any particular Article, Section or other portion hereof or thereof;
- (lll) “**Transfer Agent**” means the Administrator and such other person or persons as may from time to time be appointed by the Fund to act as registrar and transfer agent of the Units, together with any sub-transfer agent appointed by the Transfer Agent;
- (mmm) “**Trustee**” means at any time, a person who is, in accordance with the provisions hereof, a trustee of the Fund at that time including, without limitation, so long as it remains a trustee, the Initial Trustee;
- (nnn) “**Trustee’s Regulations**” has the meaning ascribed thereto in Section 8.3;
- (ooo) “**Unissued Units**” has the meaning ascribed thereto in subsection 3.4(a);
- (ppp) “**Unit Certificate**” means a certificate, in the form approved by the Trustee, evidencing one or more Units, issued and certified in accordance with the provisions hereof;
- (qqq) “**Unitholder**” or “holder of Units” means, at any time, a holder at that time of one or more Units, as shown on any of the Registers, and shall also be deemed to include, for the purposes and in the circumstances set forth in subsection 2.8(a), a holder of Voting Exchangeable Securities;

- (rrr) **“Unitholders’ Agreement”** means the Unitholders’ Agreement dated December 17, 2010 among Enbridge, EIFH, the Fund and the Administrator;
- (sss) **“Units”** means the class of trust units of the Fund created and designated as “ordinary units” pursuant to subsection 3.1(a) hereof, having the rights, privileges, restrictions and conditions as provided for in this Indenture and “Unit” means a Unit;
- (ttt) **“Valuation Date”** means the last day of each month;
- (uuu) **“Voting Exchangeable Securities”** means, collectively, each of those Exchangeable Securities which, in accordance with the rights and attributes attaching or attributable thereto, provide (among other things) the holder of such particular Exchangeable Security the right to vote at all meetings of Unitholders; and
- (vvv) any reference to **“property”** or **“property of the Fund”** or **“assets”** or **“assets of the Fund”** includes, in each case, the Fund Property.

1.2 References to Acts Performed by the Fund

For greater certainty, where any reference is made in this Trust Indenture to:

- (a) an act to be performed by the Fund or to rights of the Fund, such reference shall be construed and applied for all purposes to refer to (i) an act to be performed by the Trustee on behalf of the Fund or by some other person duly authorized to do so by the Trustee or pursuant to the provisions hereof, or to (ii) rights of the Trustee, in its capacity as Trustee of the Fund, as the case may be; and
- (b) actions, rights or obligations of the Trustee, such reference shall be construed and applied for all purposes to refer to actions, rights or obligations of the Trustee in its capacity as Trustee of the Fund, and not in its other capacities, unless the context clearly requires otherwise.

1.3 Interpretation

In this Trust Indenture, unless herein otherwise expressly provided or unless the context otherwise requires, words importing the singular number include the plural, and vice-versa and words importing a gender shall include the feminine, masculine and neuter genders. Where the word “including” or “includes” is used in this Trust Indenture it means “including without limitation” or “includes without limitation”, respectively. Any reference to any document shall include a reference to any schedule, amendment or supplement thereto or any agreement in replacement thereof, all as permitted under such document.

A reference herein to any statute includes every regulation (and other similar ancillary instrument having the force of law) made pursuant thereto, all amendments to the statute or to any such regulation (or other similar ancillary instrument) in force from time to time, and any statute or regulation (or other similar ancillary instrument) which supplements or supersedes such statute or regulation (or other similar ancillary instrument); and a reference to any section or provision of a statute includes all amendments to such section or provision, as made from time to

time, and all sections or provisions which supplement or supersede such section or provision referred to herein.

1.4 Headings for Reference Only

The division of this Trust Indenture into Articles, Sections and Schedules, the provision of a Table of Contents and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Trust Indenture. Unless something in the subject matter or context is inconsistent therewith, references herein to Articles and Sections are to Articles and Sections of this Trust Indenture.

1.5 Day Not a Business Day

Except as otherwise set out herein, in the event that any day on which any amount is to be determined or any other determination is to be made or any action is required to be taken hereunder is not a Business Day, then such amount shall be determined, or such other determination shall be made, 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. This Section is not applicable to Sections 5.1, 5.2, 5.3, 5.4 and 5.8 and to defined terms used in such Sections (except with respect to the definition of, and action to be taken on, any Distribution Payment Date in Section 5.3 and subsection 5.4(c)).

1.6 Time of the Essence

Time shall be of the essence in this Trust Indenture.

1.7 Governing Law

This Trust Indenture and the Unit Certificates shall be construed in accordance with the laws of the Province of Alberta and the laws of Canada applicable therein. The parties hereto hereby irrevocably submit and attorn to the jurisdiction of the courts of the Province of Alberta.

1.8 Schedules

The Schedules attached hereto are incorporated by reference herein and form an integral part of this Trust Indenture.

ARTICLE 2 DECLARATION OF TRUST

2.1 Settlement of Fund

The Settlor has deposited, with the Trustee, a silver coin for the purpose of creating and settling the Fund. Receipt of such coin has been acknowledged by the Trustee.

2.2 Declaration of Trust

The Trustee hereby agrees to own legal title to, hold, use and administer the Fund Property in trust for the benefit of the Unitholders, their permitted assigns and personal representatives in accordance with and subject to the terms and conditions hereinafter declared and set forth, such trust to constitute the Fund hereunder.

2.3 Initial Unitholder

Upon settlement of the Fund, the Initial Unitholder paid \$10 to the Trustee and in consideration therefor the Initial Unitholder was issued the Initial Unit.

2.4 Name of Fund

The Fund shall be known and designated as “Enbridge Income Fund” and, whenever lawful and convenient, the property of the Fund shall be held and the affairs of the Fund shall be conducted and transacted under that name. The Fund, with the consent of the Administrator, may use such other designation or may adopt such other name as the Trustee deems appropriate, and the Fund may hold property and conduct and transact its affairs under such other designation or name.

Once neither Enbridge Management Services Inc. nor any of its affiliates is any longer the administrator of the Fund pursuant to the Administration Agreement, Enbridge Management Services Inc. has the right, at any time, to make a request to the Fund, in writing, requiring that any reference to “Enbridge” in the name of the Fund and each of its affiliates and associates, be removed, and the Fund hereby covenants that upon receipt of such notice:

- (a) the Fund shall promptly proceed to take, or cause to be taken, all necessary steps as may be required to remove any reference to “Enbridge” in the name of the Fund and in the name of each of its affiliates and associates; and
- (b) the Fund shall promptly, or cause each of its affiliates and associates to promptly:
 - (i) cease, for all purposes, to use the name “Enbridge” or any words similar thereto;
 - (ii) amend this Indenture, file such articles of amendment, modify or amend such partnership agreements and modify or amend all such other constating documents of any person as shall be required in order to change the name of the Fund and the name of any of its affiliates and associates, to a name which does not include the name “Enbridge” or any similar words thereto; and
 - (iii) execute and deliver all instruments necessary to change the name in each public registry where the name of the Fund and each of its affiliates and associates shall have been registered and to disclaim any right, title or interest in or to the name “Enbridge”,

provided, in any event, that all of the foregoing steps shall be taken and completed within three months of the aforementioned request by Enbridge Management Services Inc.

2.5 Head Office

The head office of the Fund shall be located at Calgary, Alberta, or such other place or places in Canada as the Trustee may from time to time designate and will initially be located at 3000, 425 – 1st Street S.W., Calgary, Alberta, T2P 3L8.

2.6 Nature of the Fund

The Fund is a trust that is an unincorporated open-ended trust, established for the purpose specified in Section 4.1. The Fund is not, 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; further, neither the Trustee, nor the Administrator, nor the Unitholders, nor any of them, shall be, or be deemed to be, treated in any way whatsoever as liable or responsible hereunder as partners or joint venturers. Neither the Trustee nor the Administrator shall be, or be deemed to be, agent of the Unitholders. The relationship of the Unitholders to the Trustee shall be solely that of beneficiaries of the Fund, and their rights shall be limited to those expressly conferred upon them by this Trust Indenture. In its first tax year, in filing a return of income for the Fund, the Fund elected to be deemed to be a “mutual fund trust” for purposes of the Income Tax Act for the entire year.

2.7 Rights of Unitholders and Ownership of Assets of the Fund

- (a) Except as otherwise expressly provided for herein, no Unitholder shall be entitled to interfere with, or give any direction to, the Trustee or the Administrator with respect to the affairs of the Fund or in connection with the exercise of any powers or authorities conferred upon the Trustee or the Administrator under this Trust Indenture.
- (b) The legal ownership of the Fund Property and the right to conduct the affairs of the Fund are vested exclusively in the Trustee, or such other persons as the Trustee may determine or as are permitted in accordance with the terms hereof, and the Unitholders shall have no interest therein other than the interest specifically set forth in this Trust Indenture and they shall have no right to compel or call for any redemption of Units or any partition, division, dividend or distribution of the Fund Property, except as specifically provided herein.
- (c) Units shall be personal property and shall confer upon the holders thereof only the interest and rights attributable to such particular Units, as specifically set forth in this Trust Indenture.

2.8 Rights of Holders of Voting Exchangeable Securities

- (a) For the purposes of any and all provisions of this Trust Indenture which entitle Unitholders to (i) vote in respect of a matter, whether at a meeting of Unitholders or by written resolution of Unitholders, or (ii) exercise rights in connection with voting at meetings of Unitholders (including, attending meetings, requisitioning meetings and submitting proposals), any use of the defined term “Unitholders” as used within such a provision (including all uses of the term within Article 10) shall, for purposes of construing the meaning of such defined term, be deemed to include, and shall be

construed as including, holders of Voting Exchangeable Securities in addition to holders of Units. Each holder of Voting Exchangeable Securities, subject to the terms of the instrument creating the particular Voting Exchangeable Securities, shall be entitled to that number of votes equal to the number of votes attached to the number of Units for which the Voting Exchangeable Securities held by such holder are exchangeable, exercisable or convertible.

- (b) The Administrator shall be responsible to prepare, for each meeting of Unitholders, a list showing, as of the record date for a meeting of Unitholders, those persons who are holders of Voting Exchangeable Securities together with the number of votes which each such holder is entitled to exercise at such meeting, and the Trustee is entitled to rely on such list for purposes of determining the holders of Voting Exchangeable Securities entitled to attend and vote at meetings of Unitholders (and to exercise other rights in connection with voting at meetings of Unitholders, such as requisitioning meetings and submitting proposals). In preparing such list of holders of Voting Exchangeable Securities the Administrator shall use and rely on the information appearing in the books and records of the Fund, and where information pertaining to one or more holders of Voting Exchangeable Securities is known by the Administrator to not be contained in the books and records of the Fund, then the Administrator shall use commercially reasonable efforts to ascertain the required information pertaining to such holder(s), provided that the Administrator shall have no liability whatsoever to the Fund, the Trustee, Unitholders or any holder of Voting Exchangeable Securities for the completeness or accuracy of such list of holders of Voting Exchangeable Securities which is compiled in accordance with the foregoing.
- (c) All notices, communications or other documentation required to be given or otherwise sent to holders of Units under this Trust Indenture or by law, shall be concurrently given or sent to each holder of Voting Exchangeable Securities in the same manner as is provided pursuant to Section 15.1 for the sending of any notices, communications or other documentation to holders of Units; provided that for addressing purposes, where an address or facsimile number is required by the Fund in light of the method of communication undertaken by the Fund, the Fund shall use the address or facsimile number for such holder last appearing in the books and records of the Fund and where the holder does not appear in any of the books and records maintained for the Fund then the Fund shall use the address or facsimile number last known to the Fund or contained on the records of, or last known to, the affiliates of the Fund, failing which the Fund shall exercise such other commercially reasonable efforts to bring the notice, communication or other documentation to the attention of the holder.
- (d) Notwithstanding anything herein contained, no holder of Voting Exchangeable Securities, solely in the capacity as such, shall be entitled to any interest or share in any distribution from the Fund (whether of net income, net realized capital gains or other amounts, including additional Units) or to any net assets of the Fund in the event of termination or winding-up of the Fund. Further, no Voting Exchangeable Security shall constitute, or be construed as constituting, a Unit.

- (e) With respect to the rights conferred upon holders of Voting Exchangeable Securities under this Trust Indenture, in particular the rights contained in this Section 2.8, all parties hereto acknowledge and agree that the Administrator is acting as agent and trustee for and on behalf of each such holder of Voting Exchangeable Securities and that such rights of a holder of Voting Exchangeable Securities, as herein contained, are not only intended to be exercisable and enforceable directly by each such holder of a Voting Exchangeable Security but it is agreed that the rights of a holder of a Voting Exchangeable Security shall be exercisable and enforceable by the Administrator, upon direction from such holder, for the benefit of the holder.

2.9 Unitholders Bound

This Trust Indenture shall be binding upon all persons who become Unitholders from time to time. By acceptance of a Unit Certificate representing any Units or, during use of the Book-Entry System for any of the Units, upon completion of a purchase of any such Units, the Unitholder thereof shall be deemed to agree to be bound, and shall be so bound, by this Trust Indenture.

ARTICLE 3 CREATION, ISSUE AND SALE OF UNITS

3.1 Nature of Units

- (a) The beneficial interests in the Fund shall be represented and constituted by a class of units designated as “ordinary units” and described herein as Units. Each holder of Units shall be entitled to the rights and be subject to the limitations, restrictions and conditions pertaining to the Units as set out in this Trust Indenture, including those set forth in Section 3.1(b) below. In accordance with the terms of the 2003 Indenture, those Units of the Fund designated therein as “subordinated units” previously issued to Enbridge are for all purposes designated herein and elsewhere as “ordinary units” and described herein as Units as a consequence of the termination of the Distribution Priority on July 1, 2008.
- (b) The rights, privileges, restrictions and conditions pertaining to the Units as set forth below and elsewhere throughout this Trust Indenture, are equal in all respects, without discrimination, preference or priority.
 - (i) *Parity:* The rights as between all holders of Units are equal in all respects, without discrimination, preference or priority among them.
 - (ii) *Voting Rights:* The holders of Units are each entitled to receive notice of and to attend and vote at all annual and special meetings of Unitholders. Each Unit entitles the holder of record thereof to one (1) vote at all meetings of Unitholders.
 - (iii) *Distributions:* Unitholders are each entitled to concurrently receive non-cumulative distributions in respect of each Distribution Period if, as and when declared by the Trustee in accordance with the provisions of Article 5 of this Trust Indenture.

- (iv) *Participation upon Liquidation, Dissolution or Winding Up:* In the event of the liquidation, dissolution or winding up of the Fund or other distribution of the Fund Property among its Unitholders for the purpose of winding up its affairs, the Unitholders shall, without discrimination, preference or priority, participate equally and rateably in the distribution. Such distribution shall be made in equal amounts per Unit on all the Units at the time outstanding without preference or distinction.
 - (v) *Rights of Redemption:* The rights, privileges, restrictions and conditions pertaining to the rights of a Unitholder to require the Fund to redeem all or any part of the Units registered in the name of such Unitholder are set forth in Article 6 of this Trust Indenture.
 - (vi) *Repurchase of Units by Fund:* The Fund shall be entitled to offer, and upon acceptance of such offer, to purchase for cancellation, at any time, the whole or from time to time any part of the outstanding Units in respect of which the offer was accepted, at a price per Unit as determined by the Trustee in compliance with all applicable laws, rules and regulations governing same.
- (c) Concurrent with the issuance of any Exchangeable Securities, the Fund shall enter into such agreements, including exchange agreements and exchangeable security support agreements, as may be necessary or desirable to properly provide for the terms of the Exchangeable Securities, including voting rights at meetings of Unitholders, coattail provisions for the Units in the event of a non-exempt take-over bid for the Exchangeable Securities and the conversion, exercise, redemption or exchange of such Exchangeable Securities for Units.
- (d) The issued and outstanding Units may be subdivided or consolidated from time to time, as determined in the discretion of the Trustee.

3.2 Authorized Number of Units

The aggregate number of Units which are authorized and may be issued hereunder is unlimited.

3.3 Issue of Units

- (a) Any Units or other securities of the Fund may be issued at the times, to the persons, for the consideration and on the terms and conditions that the Trustee determines, including pursuant to Unitholder rights plans, distribution reinvestment plans, Unit purchase plans or incentive option or other compensation plans and, without limiting the generality of the foregoing, the Trustee may authorize the Fund to pay a reasonable commission to any person in consideration of such person purchasing, or agreeing to purchase, Units or other securities of the Fund from the Fund or from any other person, or procuring or agreeing to procure purchasers for Units or other securities of the Fund.
- (b) Units are only to be issued as fully paid and are not to be subject to future calls or assessments; provided however that any Units may be issued for a consideration payable

in instalments and that the Fund may take security over any Units so issued as security for unpaid instalments and assign the benefit of all or part of such security.

- (c) The consideration for any Unit issued by the Fund 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 Fund would have received if the Unit had been issued for money.

3.4 Pre-Emptive Right

- (a) At any time when the Trustee determines that additional Units are to be issued from treasury other than pursuant to the exercise of the Exchange Right, the Fund will first offer such Units to Enbridge and any Permitted Transferee that owns Units (the “**Enbridge Unitholders**”) and EIFH by written notice (an “**Allotment Notice**”) of the Fund’s intention to issue additional Units (the “**Unissued Units**”) and the number and class thereof to be so issued and the terms and conditions upon which the Unissued Units are being offered. Subject to written agreement otherwise by the Fund, the Enbridge Unitholders and EIFH at the relevant time, the terms and conditions of the Fund’s offering of Unissued Units shall provide for a closing date of the issuance that is no earlier than 20 Business Days after the date of the Allotment Notice provided that such closing date may be extended by mutual agreement of the Enbridge Unitholders and EIFH, each acting reasonably.
- (b) Each of the Enbridge Unitholders and EIFH will, subject to the provisions of this Section 3.4, have the right to subscribe for such quantity of Unissued Units as it may select, up to the maximum number proposed to be issued pursuant to the Allotment Notice, upon the terms and conditions specified in the Allotment Notice. Only those subscriptions for Unissued Units received within 5 Business Days of the date of the Allotment Notice will be effective provided that such 5 Business Day period may be extended by mutual agreement of the Enbridge Unitholders and EIFH, each acting reasonably.
- (c) If the aggregate number of Unissued Units that are subscribed for by the Enbridge Unitholders and EIFH within the applicable timeframe exceeds the number of Unissued Units proposed to be issued in the Allotment Notice, then the number of Unissued Units to be issued will be allotted among the Enbridge Unitholders and EIFH if they have subscribed for Unissued Units in proportion to their then current holdings of Units, which in the case of the Enbridge Unitholders shall include the number of ECT Preferred Units then owned by them or any one of them, (unless and to the extent without duplication, that ECT will issue that number of ECT Preferred Units to the Enbridge ECT Unitholders pursuant to Section 3.4 of the ECT Trust Indenture that will enable such Enbridge ECT Unitholders to maintain their proportionate interest in ECT, after the issuance of any new Units by ECT, to satisfy the funding requirement that is the basis for the Allotment Notice), up to a maximum of the number of Units specified in the relevant subscription for Unissued Units.
- (d) If after the foregoing allotment, or after the default by any of the Enbridge Unitholders or EIFH in respect of all or a part of its subscription, there remains any balance of unallotted

Unissued Units, and any non-defaulting subscriptions remain partly unfilled, the remaining part of the unfilled non-defaulting subscription(s) shall be filled from the unallotted balance of Unissued Units. If the remaining balance of unfilled non-defaulting subscriptions exceeds the unallotted balance of Unissued Units, then the remaining part of the non-defaulting subscriptions will be allocated in proportion to the amount remaining unfilled in each non-defaulting subscription.

- (e) Each subscription delivered pursuant to this Section 3.4 will, subject to the allotment procedures described herein, constitute a binding commitment to take up and pay for the number of Unissued Units specified in the subscription, subject to the terms and conditions specified in the Trustee's notice. If any of the Enbridge Unitholders or EIFH fails to deliver a subscription within the 5 Business Day time limit provided for in subsection 3.4(b) (or any extension thereof pursuant to subsection 3.4(b)) then any and all rights that such party may have to subscribe for Unissued Units described in the Allotment Notice shall be extinguished. If, after the 5 Business Day time limit provided for in subsection 3.4(b) (or any extension thereof pursuant to subsection 3.4(b)) any Unissued Units described in the Allotment Notice remain unallotted, then the Trustee may, subject to subsection 3.4(c), issue those remaining unallotted Unissued Units to any other person, who need not already be a Unitholder, on the same terms and conditions as those specified in the Allotment Notice. Notwithstanding any other provision of this Trust Indenture or any other agreement, the pre-emptive right described in this Section 3.4 shall not apply to any person's exercise of the Exchange Right.

3.5 Consolidation of Units

Immediately after any *pro rata* distribution of additional Units, of a particular class, to Unitholders pursuant to subsection 5.8(a), the number of the outstanding Units of that class will be consolidated without further act of the Trustee or Unitholders such that each Unitholder will hold after the consolidation the same number of Units of that class as the Unitholder held before the distribution of such additional Units of that class. In this case, each Unit Certificate representing a number of Units of that particular class prior to the distribution of additional Units of such class is deemed to represent the same number of Units of such class after the distribution of such additional Units and the consolidation.

3.6 Non-Resident and Tax-Exempt Ownership Constraint

Unless expressly consented to by the Administrator, at no time may the beneficial owners of any Units be a "designated beneficiary" as defined in Part XII.2 of the Income Tax Act (a "**Prohibited Person**").

Notwithstanding the foregoing, if the Administrator determines that a Prohibited Person is the beneficial owner of any Units, the Trustee, on the direction of the Administrator, may deliver to the Prohibited Person a written notice (the "**Divestiture Notice**") requiring that the Prohibited Person sell such Units within a specified period, to be determined solely by the Administrator, and in the interim, the Prohibited Person shall have no right to vote or receive distributions on such Units. Upon such sale, the Prohibited Person thereby affected shall be deemed to cease to be a holder of such Units and its rights in respect of such Units shall be

limited to receiving the net proceeds of sale of such Units and to receiving any distributions in respect of such Units that the Prohibited Person is entitled to receive where such distributions have been declared payable to holders of Units as of a record date which is prior to the date on which the Trustee delivered the Divestiture Notice to the Prohibited Person.

3.7 Unit Certificates

Each Unitholder or its duly authorized agent shall be entitled to a Unit Certificate bearing an identifying serial number in respect of the Units of such class which are held by such Unitholder, signed in the manner hereinafter prescribed. The Fund is not bound to issue more than one Unit Certificate in respect of any Unit held jointly or in common by two or more persons, and delivery of a Unit Certificate to one of them shall be sufficient delivery to all.

3.8 Execution of Unit Certificates

Unit Certificates shall be signed by or on behalf of the Trustee. The signature of the Trustee required on Unit Certificates may be printed or otherwise mechanically reproduced thereon and Unit Certificates so signed are, subject to Section 12.3, as valid as if they had been signed manually. If a Unit Certificate contains a printed or mechanically reproduced signature of a person, then the Fund may issue the Unit Certificate even though the person has ceased to be an authorized representative of the Trustee or Administrator and such Unit Certificate is as valid as if the person continued to be an authorized representative of the Trustee or Administrator at the date of its issue.

3.9 Certificate Fee

The Trustee may establish a reasonable fee to be charged for every Unit Certificate issued.

3.10 Form of Unit Certificate

Unit Certificates shall be in such form as is from time to time authorized by the Trustee. The definitive form(s) of the Unit Certificates for each class of Units may be in English only or, in the discretion of the Trustee, in the English and French languages. Unit Certificates may be engraved, printed or lithographed, or partly in one form and partly in another, as the Trustee may determine.

Until another form of Unit Certificate for the Units is authorized by the Trustee, the form of Unit Certificate set forth in Schedule C annexed hereto and incorporated herein by reference is hereby approved as the Unit Certificate for the Units issued hereunder.

3.11 Fractional Units

If as a result of any act of the Trustee hereunder any person becomes entitled to a fraction of a Unit, such person shall not be entitled to receive a Unit Certificate therefor. Fractional Units shall not, except to the extent that they may represent in the aggregate one or more whole Units held by the same holder, entitle the holders thereof to notice of, or to attend or to vote at, meetings of Unitholders. Subject to the foregoing, such fractional Units shall have attached

thereto the rights, restrictions, conditions and limitations attaching to whole Units in the proportion that they bear to a whole Unit.

3.12 Unit Register and Transfer Ledgers to be Maintained

- (a) The Administrator is hereby appointed to act as transfer agent and registrar for each class of Units and the Administrator hereby accepts such appointment. A register (the “**Register**” and where more than one, the “**Registers**”) shall be kept by, or on behalf and under the direction of, the Trustee in respect of each of the classes of Units, and each Register shall contain the names and addresses of Unitholders of the particular class to which the Register pertains, the respective numbers of Units held by such Unitholders, the certificate numbers of the Unit Certificates held by them, and a record of all transfers thereof. In lieu of the Administrator, the Trustees may appoint one or more persons who may, but need not be, chartered banks or trust companies, to act as transfer agents and to act as registrars for Units and may provide for the transfer of Units in one or more places in Canada.
- (b) The Transfer Agent shall keep all necessary registers and other books (which may be kept in a bound or loose-leaf book or may be entered or recorded by any system of mechanical or electronic data processing or any other information storage device) for recording original issues and registering and transferring Units. No Unit Certificates representing Units shall be valid unless executed in accordance with Section 3.8. Subject to the further provisions of this Trust Indenture concerning record dates and otherwise, only persons whose Units are recorded on the Registers shall be entitled to vote or to receive distributions or otherwise exercise or enjoy the rights of Unitholders.

3.13 Entry on Register

Upon any issue of Units, the name of the subscriber or other person entitled to such Units shall be promptly entered on the appropriate Register as the owner of the number of Units issued to such subscriber or other person, or if the subscriber is already a Unitholder, the Register(s) shall be amended to include such subscriber’s additional Units.

3.14 Transfer of Units

Subject to Sections 3.6 and 3.23, Units shall be transferable at any time and from time to time by the Unitholder by endorsement and delivery of the Unit Certificates representing such Units, subject to such Unitholder receiving approval of such transfer by the Trustee and to compliance by such Unitholder with all applicable laws pertaining to such transfer. No such transfer shall be recorded on the Registers unless the transferor has executed the instrument of transfer as reproduced in the Unit Certificate and the transferee has delivered to the Transfer Agent (if one has been appointed) a Unit Certificate representing the Units so transferred and, if requested by the Trustee, a declaration as to resident status under the Income Tax Act and status as a Prohibited Person. Subject to the foregoing, such transfers shall be recorded on the Register and a new Unit Certificate for the Units so transferred shall be issued to the transferee and, in case of a transfer of only part of the Units represented by any Unit Certificate, a new Unit Certificate for the remaining Units shall be issued to the transferor.

3.15 Successors in Interest to Unitholders

Upon a person becoming entitled to any Units as a consequence of the death, bankruptcy or incapacity of any Unitholder or otherwise by operation of law, and upon production by such person of such documentation as the Trustee may reasonably require in order to evidence such entitlement of such person, such person shall be recorded in the Registers as the holder of such Units and shall receive a new Unit Certificate therefor upon production of evidence of such entitlement satisfactory to the Transfer Agent (or, if no Transfer Agent, then to the Trustee) and delivery of the existing Unit Certificate to the Transfer Agent (or if no Transfer Agent, then to the Trustee), but until such record is made, the Unitholder of record shall continue to be and be deemed to be the holder of such Units for all purposes whether or not the Fund, the Trustee, the Administrator or the Transfer Agent shall have actual or other notice of such death, bankruptcy, incapacity or other event.

3.16 Units Held Jointly or in Fiduciary Capacity

The Fund may treat two or more persons holding any Unit as joint owners of the entire interest therein unless the ownership is expressly otherwise recorded on the Register, but no entry shall be made in the Register or on any Unit Certificate 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 or on any Unit Certificate 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; provided further that none of the Fund, the Trustee, the Administrator or the Transfer Agent shall be required to recognise a person as having any interest in the Unit, other than the person recorded in the Register as the holder of such Unit.

3.17 Performance of Trusts

None of the Trustee, the Administrator, the Unitholders, the Transfer Agent or other agent of the Fund shall have a duty to inquire into any claim that a transfer of a Unit was or would be wrongful or that a particular adverse person is the owner of or has an interest in the Unit or any other adverse claim, or be bound to see to the performance of any trust, express or implied or of any charge, pledge or equity to which any of the Units or any interest therein are or may be subject, or to ascertain or inquire whether any sale or transfer of any such Units or interest therein by any Unitholder or their 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 of such Unit.

3.18 Lost Unit Certificates

In the event that any Unit Certificate is lost, stolen, destroyed or mutilated, the Transfer Agent (or if no Transfer Agent has been appointed, then the Trustee) may authorize the issuance of a new Unit Certificate for the same number of Units in lieu thereof and the Transfer Agent (or if no Transfer Agent has been appointed, then the Trustee) may in its discretion, before the issuance of such new Unit Certificate, require the owner of the lost, stolen, destroyed or mutilated Unit 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 Transfer Agent (or if no Transfer Agent has been appointed, then the Trustee) deems necessary and may require the applicant to supply to the Fund a “lost certificate” or similar bond in such reasonable amount as the Transfer Agent (or if no Transfer Agent has been appointed, then the Trustee) directs indemnifying the Transfer Agent and the Trustee for so doing. The Transfer Agent (or if no Transfer Agent has been appointed, then the Trustee) shall have the power to acquire from an insurer or insurers a blanket lost certificate security bond or bonds in respect of the replacement of lost, stolen, destroyed or mutilated Unit Certificates. The Fund shall pay all premiums and other sums of money payable for such purpose out of the property of the Fund with such contribution, if any, by those insured as may be determined by the Transfer Agent (or if no Transfer Agent has been appointed, then the Trustee). If such blanket lost certificate security bond is acquired, the Transfer Agent (or if no Transfer Agent has been appointed, then the Trustee) may authorize and direct (upon such terms and conditions as it may from time to time impose) the Transfer Agent, the Trustee, or others to whom the indemnity of such bond extends, to take such action to replace such lost, stolen, destroyed or mutilated Unit Certificates without further action or approval by the Transfer Agent (or if no Transfer Agent has been appointed, then the Trustee).

3.19 Death of Unitholders

The death of a Unitholder during the continuance of the Fund shall not terminate the Fund or give the personal representatives or the heirs of the estate of the deceased Unitholder a right to an accounting or to take any action in the courts or otherwise against other Unitholders or the Trustee, the Administrator or the property of the Fund, but shall only entitle the personal representatives or the heirs of the estate or succession of the deceased Unitholder, in accordance and upon compliance with the provisions of Section 3.15, to succeed to all rights of the deceased Unitholder under this Trust Indenture.

3.20 Unclaimed Payments

In the event that the Trustee holds any amounts to be paid to Unitholders under Section 3.21, Article 5, Article 6, Article 11, or otherwise, because such amounts are unclaimed or cannot be paid for any reason, subject to applicable law neither the Trustee nor any distribution disbursing agent shall be under any obligation to invest or reinvest the same and they shall only be obligated to hold the same in a current or other non-interest bearing account with a Canadian chartered bank or trust company, pending payment to the person or persons entitled thereto. The Trustee 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 Fund has its head office (or to such other suitable government official or agency in the province where the Fund has its head office) whose receipt shall be a good release, acquittance and discharge of the obligations of the Trustee with respect thereto.

3.21 Repurchase of Units

The Fund shall be entitled to offer, and upon acceptance of such offer, to purchase for cancellation, at any time, the whole or from time to time any part of the outstanding Units of any class in respect of which the offer was accepted, at a price per Unit and on a basis as determined

by the Trustee in its discretion but in compliance with all applicable laws, rules, regulations or policies governing same.

3.22 Power of Attorney

Each Unitholder hereby grants to the Trustee, its successors and assigns, a power of attorney constituting the Trustee, with full power of substitution, as his true and lawful attorney to act on his behalf, with full power and authority in his name, place and stead, to execute, under seal or otherwise, swear to, acknowledge, deliver, make, file or record (and to take all requisite actions in connection with such matters), when, as and where required:

- (a) this Trust Indenture and any other instrument required or desirable to qualify, continue and keep in good standing the Fund as a mutual fund trust in all jurisdictions that the Trustee deems appropriate;
- (b) any instrument, deed, agreement or document in connection with carrying on the affairs of the Fund as authorized in this Trust Indenture, including all conveyances, transfers and other documents required in connection with any disposition of Units required under Section 3.6;
- (c) all conveyances, transfers and other documents required in connection with the dissolution, liquidation or termination of the Fund in accordance with the terms of this Trust Indenture;
- (d) any and all elections, determinations or designations whether jointly with third parties or otherwise, under the Income Tax Act or any other taxation or other legislation or similar laws of Canada or of any other jurisdiction in respect of the affairs of the Fund or of a Unitholder's interest in the Fund; and
- (e) any instrument, certificate and other documents necessary or appropriate to reflect and give effect to any amendment to this Trust Indenture which is authorized from time to time as contemplated by Article 9.

The power of attorney granted herein is, to the extent permitted by applicable law, irrevocable, is a power coupled with an interest, and shall survive the death, mental incompetence, disability and any subsequent legal incapacity of the Unitholder and shall survive the assignment by the Unitholder of all or part of the Unitholder's interest in the Fund and will extend to and bind the heirs, executors, administrators and other legal representatives and successors and assigns of the Unitholder. This power of attorney may be exercised by the Trustee on behalf of each Unitholder in executing any instrument by a facsimile signature or by listing all of the Unitholders and executing such instrument with a single signature as attorney and agent for all of them. Each Unitholder agrees to be bound by any representations or actions made or taken by the Trustee pursuant to this power of attorney and hereby waives any and all defences which may be available to contest, negate or disaffirm any actions taken by the Trustee in good faith under this power of attorney. The Trustee may require, in connection with the subscription for, or any transfer of, Units, that the subscription form or transfer form be accompanied by a certificate of legal advice signed by a lawyer or that the execution of the subscription form or transfer form be witnessed as required by *The Powers of Attorney and*

Mental Health Amendment Act (Manitoba). This power of attorney shall continue in respect of the Initial Trustee so long as it is the Trustee of the Fund, and shall also continue in respect of a new Trustee as if the new Trustee was the Initial Trustee hereunder.

3.23 SIFT Tax Matters

Notwithstanding any other provision of this Trust Indenture, the Administrator, in its sole discretion, may prohibit a person from becoming a Unitholder, if, in the opinion of the Administrator, the acquisition of Units by such person will result in the Fund constituting a “SIFT trust” within the meaning of the Income Tax Act.

ARTICLE 4 PURPOSE AND INVESTMENTS OF FUND

4.1 Purpose of the Fund

The Fund is a limited purpose trust and its activities are restricted to:

- (a) acquiring, holding, transferring, disposing of, investing in, and otherwise dealing with assets, securities (whether debt or equity) and other interests or properties of whatever nature or kind of, or issued by, ECT or any associate or affiliate thereof, or any other business entity in which ECT has an interest, direct or indirect;
- (b) acquiring, holding, transferring, disposing of, investing in, and otherwise dealing with assets, securities (whether debt or equity) and other interests or properties of whatever nature or kind of, or issued by, other corporations, partnerships, trusts or other persons involved, directly or indirectly, in the business of, or in activities pertaining directly or indirectly to, energy infrastructure and/or other related businesses;
- (c) borrowing funds at any time and from time to time, or otherwise incurring any indebtedness, for any of the purposes set forth in subsections 4.1(a) and 4.1(b) above;
- (d) the guaranteeing of any debts or liabilities, present or future, direct or indirect, absolute or contingent, matured or not of any affiliate, associate or other person for any of the purposes set forth in subsections 4.1(a) and 4.1(b) above;
- (e) temporarily holding cash and other short term investments in connection with and for the purposes of the Fund’s activities, including paying administration and trust expenses, paying any amounts required in connection with the redemption of Units and making distributions to Unitholders;
- (f) issuing Units, instalment receipts, and other securities (whether debt or equity) of the Fund (including securities convertible into or exchangeable for Units or other securities of the Fund, or warrants, options or other rights to acquire Units or other securities of the Fund), for the purposes of:
 - (i) obtaining funds to conduct the activities described in subsections 4.1(a) and 4.1(b) above, including raising funds for further acquisitions;

- (ii) repayment of any indebtedness or borrowings of the Fund or any affiliate thereof, including the indebtedness evidenced by the Preferred Units (as such term is defined in the ECT Trust Indenture);
 - (iii) establishing and implementing Unitholder rights plans, distribution reinvestment plans, Unit purchase plans, and incentive option and other compensation plans of the Fund, if any;
 - (iv) satisfying obligations to deliver securities of the Fund, including Units, pursuant to the terms of securities convertible into or exchangeable for such securities of the Fund, whether or not such convertible or exchangeable securities have been issued by the Fund; and
 - (v) making non-cash distributions to Unitholders as contemplated by this Trust Indenture including *in specie* redemptions pursuant to Article 6, and distributions pursuant to distribution reinvestment plans, if any, established by the Fund;
- (g) repurchasing or redeeming Units or other securities of the Fund, subject to the provisions of this Trust Indenture and applicable law; and
- (h) engaging in all activities ancillary or incidental to any of those activities set forth in subsections (a) through (g) above.

4.2 Investments

Money or other property received by the Fund or the Trustee on behalf of the Fund, including any Reserve Amount, may be used, at any time and from time to time, for any purpose not inconsistent with this Trust Indenture and the purposes of the Fund set out in Section 4.1, including, without limitation, acquiring additional ECT Units or ECT Notes, making acquisitions and investments, or making distributions and redemptions under Article 5 and Article 6, respectively, hereof.

4.3 Investment Restrictions

The Administrator shall exercise commercially reasonable efforts to ensure that the Fund complies at all times with the requirements of paragraph 108(2)(a) of the Income Tax Act.

ARTICLE 5 DISTRIBUTIONS

5.1 Computation of Distributable Cash Flow of the Fund

The “**Distributable Cash Flow**” for, or in respect of, a Distribution Period shall be equal to:

- (a) all cash amounts which are received by the Fund for, or in respect of, such Distribution Period, including amounts on account of interest, income, dividends, returns of capital, amounts paid on the ECT Units, proceeds of debt or equity financings (including

refinancings), and the proportionate share of the Principal Payment Amount (as defined in the ECT Trust Indenture) paid on the ECT Notes held by the Fund (if any), plus

- (b) any amounts allocated, in the discretion of the Administrator, from the Reserve Amount for use by the Fund in respect of such Distribution Period;

less:

- (c) all liabilities of the Fund which, in the opinion of the Administrator, may reasonably be considered to have accrued and become owing in respect of, or which relate to, such Distribution Period or a prior Distribution Period if not accrued in such prior period including, without limitation, any interest payable by the Fund on any indebtedness of the Fund;
- (d) the aggregate of all cash amounts used, or to be used, in respect of the redemption or repurchase of Units during such Distribution Period;
- (e) all amounts which relate to the repayment of the principal amount of any indebtedness of the Fund during such Distribution Period;
- (f) any amount, in addition to those amounts set forth in subsections 5.1(c), (d) and (e), which the Administrator may reasonably consider to be necessary to provide for the payment of any liabilities which have been or will be incurred by the Fund, including any tax liability of the Fund; and
- (g) any amount, as determined in the discretion of the Administrator, for reasonable reserves to be maintained by the Fund in connection with pursuing any purpose or activity of the Fund, as has been determined by the Administrator, and which is not inconsistent with this Trust Indenture and the purposes of the Trust set out in Section 4.1 (herein referred to as the “**Reserve Amount**”).

5.2 Computation of Income and Net Realized Capital Gains

- (a) The “**Income of the Fund**” for any year shall be the income of the Fund for the year computed in accordance with the provisions of the Income Tax Act; provided, however, that capital gains and capital losses shall be excluded and provided further that:
 - (i) the portion of the Fund’s income comprised of taxable dividends received from corporations resident in Canada shall be calculated on the basis that the amount included in the Fund’s income is the actual amount of the dividend received, which excludes the gross-up adjustment provided in paragraph 82(1)(b) of the Income Tax Act;
 - (ii) no amount shall be deducted in respect of amounts paid or payable to Unitholders; and
 - (iii) the Fund shall deduct the maximum amount available to it as deductions under the relevant law, unless the Administrator determines otherwise.

- (b) The “**Net Realized Capital Gains**” of the Fund for any year shall be determined as the amount, if any, by which the aggregate of the capital gains of the Fund in the year exceeds the aggregate of the capital losses of the Fund in the year and the amount of any net capital losses for prior years which the Fund is permitted by the Income Tax Act to deduct in computing the taxable income of the Fund for the year.

5.3 Distributions

- (a) Unitholders shall be entitled to receive non-cumulative distributions if, as and when declared by the Trustee in accordance with the provisions of this Section 5.3.
- (b) With respect to distributions on Units:
 - (i) the Trustee, on behalf of the Fund, shall, in respect of each Distribution Period, declare payable to Unitholders of record as at the close of business on the Distribution Record Date for such Distribution Period, all of the Distributable Cash Flow for such Distribution Period;
 - (ii) each Unit issued and outstanding on the Distribution Record Date for a particular Distribution Period shall be entitled, without preference or priority, to an equal proportionate share of the amount of the Distributable Cash Flow which is declared payable to Unitholders pursuant to Section 5.3(b)(i) above for such particular Distribution Period, which share shall be determined by dividing the amount of such Distributable Cash Flow by the number of issued and outstanding Units on such Distribution Record Date (the “**Distribution Per Unit**”); and
 - (iii) the share of such Distributable Cash Flow distributable to a particular Unitholder shall be an amount equal to the Distribution Per Unit multiplied by the number of Units owned of record by such Unitholder on such Distribution Record Date.
- (c) Subject to Section 5.8, any distributions which have been declared to be payable to Unitholders in respect of a Distribution Period shall be paid in cash on the Distribution Payment Date which immediately follows the Distribution Record Date for such Distribution Period.

5.4 Other Distributions

- (a) In addition to the distributions which are payable to Unitholders pursuant to Section 5.3, the Trustee may, in its discretion, in respect of a Distribution Period, declare a distribution to be payable, to Unitholders of record as at the close of business on the Distribution Record Date for such Distribution Period, out of Income of the Fund, Net Realized Capital Gains, the capital of the Fund or otherwise, in any year, in such amount or amounts, and on such dates as the Trustee may determine, provided, for further certainty, that any distributions declared payable pursuant to this subsection 5.4(a) shall be declared payable and paid, *pari passu*, on all Units (both Ordinary Units and Subordinated Units) in the same currency, amount per Unit, and nature (cash or in-kind).

- (b) So as to ensure the allocation and distribution, to Unitholders, of all of the Income of the Fund, Net Realized Capital Gains and any other applicable amounts so that the Fund will not have any liability for tax under the Income Tax Act in any year, the amount, if any, by which the Income of the Fund and Net Realized Capital Gains exceed the aggregate of:
- (i) such part of the taxable capital gains of the Fund for the calendar year required to be retained by the Fund to maximize its capital gains refund for such year, unless the Administrator has given written notice to the Trustee that this clause 5.4(b)(i) is not to apply to the Fund for that year by the end of the year; and
 - (ii) any amount that became payable by the Trustee during the calendar year to Unitholders in respect of their Units (other than amounts that became payable to Unitholders on the redemption of their Units),

shall, without any further actions on the part of the Trustee, be payable to Unitholders of record as of the close of business on the last Distribution Record Date in such year provided, for further certainty, that any distributions payable pursuant to this subsection 5.4(b) shall be payable and paid, *pari passu*, on all Units in the same currency, amount per Unit, and nature (cash or in-kind).

- (c) Each Unit's proportionate share of the amount of any distribution made pursuant to either or both of Sections 5.4(a) or (b) shall be determined by dividing the amount of such distribution by the number of issued and outstanding Units as at the close of business on the applicable Distribution Record Date in respect of a distribution pursuant to subsection 5.4(a) and as at the close of business on the last Distribution Record Date in the year in respect of a distribution pursuant to subsection 5.4(b). The share of the amount of any such distribution distributable to a particular Unitholder shall be an amount equal to each Unit's proportionate share of such amount multiplied by the number of Units owned of record by such particular Unitholder on such applicable Distribution Record Date. Subject to Section 5.8, amounts which have been declared to be payable to Unitholders pursuant to either or both of subsections 5.4(a) or (b) shall be paid in cash on the Distribution Payment Date which immediately follows the applicable Distribution Record Date in respect of a distribution pursuant to subsection 5.4(a) or subsection 5.4(b).

5.5 Character of Distribution

Distributions or amounts paid or payable to Unitholders pursuant to this Article 5 or Article 6 shall be deemed to be distributions out of Income of the Fund, Net Realized Capital Gains, trust capital or other items, in such amounts as the Trustee shall determine, provided that the allocation of the amounts available for allocation with respect to Income of the Fund, Net Realized Capital Gains, trust capital or other items shall be allocated proportionately to the Ordinary Units and the Subordinated Units based upon the total distributions actually paid or payable on the Ordinary Units and the Subordinated Units. For greater certainty, it is hereby declared that any distribution of Net Realized Capital Gains shall include the non-taxable portion of the capital gains of the Fund which are comprised in such distribution.

5.6 Enforceability of Right to Receive Distributions

For greater certainty, it is hereby declared that each Unitholder shall have the legal right to enforce payment of any amount payable to such Unitholder as a result of any distribution or amount which becomes payable to such Unitholder pursuant to this Article 5 or pursuant to Article 6.

5.7 Designation of Taxable Capital Gains and Other Amounts

In accordance with and to the extent permitted by the Income Tax Act, the Trustee in each year shall make designations in respect of the amounts paid or payable to Unitholders in such amounts that the Trustee shall, in its discretion, consider to be reasonable and equitable in all of the circumstances, including, without limitation, taxable capital gains realized by the Fund in the year and taxable dividends received by the Fund on shares of taxable Canadian corporations.

5.8 Method of Payment of Distributions

- (a) The Fund shall make payment, in cash, of distributions which have been declared to be payable pursuant to this Article, provided that where the Administrator determines that the Fund does not have cash in an amount sufficient to make payment of the full amount of any distribution which has been declared to be payable pursuant to this Article on the due date for such payment, the payment may, at the option of the Administrator, include the issuance of additional Units, or fractions of Units, if necessary. In each case, such Units so issued shall have an aggregate value equal to the difference between the amount of the distribution in question and the amount of cash which has been determined by the Administrator to be available for the payment of such distribution.
- (b) The value of each Unit which is issued pursuant to subsection 5.8(a) shall be deemed to be the Net Asset Value per Unit (as defined in Section 6.3) of a Unit on the applicable Distribution Record Date in respect of a distribution pursuant to Section 5.3, subsection 5.4(a) or subsection 5.4(b), provided that if the particular date is not a Valuation Date then the Net Asset Value per Unit (as defined in Section 6.3) shall be determined on the last Valuation Date which precedes such particular date.

5.9 Withholding Taxes

The Trustee shall deduct or withhold from distributions otherwise payable to any Unitholder all amounts required by law to be withheld by the Trustee or the Fund from such distributions, and shall remit to the applicable taxation authority, in a timely manner and as required, the amount so deducted or withheld.

5.10 Unit Plans

Subject to any required regulatory approvals, the Trustee may, in its discretion and at any time and from time to time, establish and implement Unitholder rights plans, distribution reinvestment plans, Unit purchase plans, and incentive option and other compensation plans.

ARTICLE 6 REDEMPTION

6.1 Right of Redemption by Holders of Units

Each Unitholder shall be entitled to require the Fund to redeem at any time or from time to time at the demand of the holder all or any part of the Units registered in the name of the holder at the price, with respect to each Unit so redeemed, as determined and payable in accordance with the conditions hereinafter provided in this Article 6.

6.2 Exercise of Redemption Right

To exercise a Unitholder's right to require redemption under this Article 6, a duly completed and properly executed notice requiring the Fund to redeem Units, in a form reasonably acceptable to the Trustee, shall be sent to the Fund at the head office of the Fund or any of the principal offices of the Transfer Agent at which it has agreed to act as registrar for the Units, together with any Unit Certificate or Unit Certificates, if any, representing the Units to be redeemed and written instructions as to the number of Units to be redeemed. No form or manner of completion or execution shall be sufficient unless the same is in all respects satisfactory to the Trustee and is accompanied by any further evidence that the Trustee may reasonably require with respect to the identity, capacity or authority of the person giving such notice.

Upon the tender of Units of a holder for redemption, the holder shall cease to have any rights with respect to the Units tendered for redemption (including no right to receive distributions in respect of Units where such distributions are declared payable to Unitholders of record on a date which is on or subsequent to the date upon which the Units of the Unitholder have been tendered for redemption), other than to receive the Cash Redemption Price or in Specie Redemption Price therefor, as the case may be, and the right to receive any distributions thereon which have been declared payable to Unitholders of record on a date which is prior to the date upon which the Units of the Unitholder have been tendered for redemption. Units shall be considered to be tendered for redemption on the date the Fund has, to the satisfaction of the Trustee, received the notice, Unit Certificates, if any, the written instructions as to the number of Units to be redeemed and all other required documents or evidence as aforesaid.

6.3 Cash Redemption Price

Subject to Section 6.5, upon the tendering for redemption of Units in accordance with Section 6.2, the holder of the Units tendered for redemption shall be entitled to receive a price per Unit equal to the Net Asset Value per Unit (the "**Cash Redemption Price**") determined on the Valuation Date preceding the receipt of the redemption notice.

The "**Net Asset Value per Unit**" on a Valuation Date shall be equal to the amount determined in accordance with the following formula:

$$\frac{(A \times B) + C}{D}$$

where:

- A = the lesser of: (a) 90% of the “market price” of the EIFH Shares on the date on which the Units were tendered for redemption; and (b) the “closing market price” of the EIFH Shares on the date on which the Units were tendered for redemption;
- B = the aggregate number of EIFH Shares outstanding as of the close of business on the Valuation Date;
- C = the result of subtracting the non-consolidated assets of EIFH from the non-consolidated liabilities of EIFH; and
- D = the aggregate number of Units held by EIFH on the Valuation Date.

For the purposes of this section 6.3, the “**market price**” of the EIFH Shares shall be an amount equal to the volume weighted average trading price of EIFH Shares traded on the principal exchange on which EIFH Shares are listed (or, if the EIFH Shares are not listed on any exchange, on the principal market on which the EIFH Shares are quoted for trading) during the period of the last ten trading days occurring immediately prior to the date on which the Units were tendered for redemption, and during which, on each such trading day, at least a board lot of EIFH Shares were traded on such exchange or market.

For the purposes of this section 6.3, “**closing market price**” shall be: (i) an amount equal to the closing price of the EIFH Shares on the principal exchange on which EIFH Shares are listed (or, if the EIFH Shares are not listed on any exchange, on the principal market on which the EIFH Shares are quoted for trading) if there was a trade on the date on which the Units were tendered for redemption, and the exchange or market provides a closing price; (ii) an amount equal to the average of the highest and lowest prices of EIFH Shares on the principal exchange on which EIFH Shares are listed (or, if the EIFH Shares are not listed on any exchange, on the principal market on which the EIFH Shares are quoted for trading) if there was trading on the date on which the Units were tendered for redemption and the exchange or other market provides only the highest and lowest trading prices of EIFH Shares traded on a particular day; or (iii) the average of the last bid and last ask prices on the principal exchange on which EIFH Shares are listed (or, if the EIFH Shares are not listed on any exchange, on the principal market on which the EIFH Shares are quoted for trading) if there was no trading on the date on which the Units were tendered for redemption.

For the purposes of this section 6.3, the principal exchange or principal market on which EIFH Shares are listed or quoted for trading shall be the exchange or market on which the greatest volume of EIFH Shares were traded during the relevant period or, if such is not determinable, the exchange or market designated by the Administrator in its absolute discretion. If the principal exchange or market on which the EIFH Shares are listed or quoted for trading was not open for trading on the date on which the Units were tendered for redemption, then the reference date shall be the last day on which such principal exchange or market was open for trading.

For the purposes of this section 6.3, the “**non-consolidated assets of EIFH**” are the assets of EIFH that are not assets of any EIFH affiliate (for greater certainty, are not assets on the affiliate’s financial statements) and does not include any Units held by EIFH and the “**non-consolidated liabilities of EIFH**” are the liabilities of EIFH that are not liabilities of any

EIFH affiliate (for greater certainty, are not liabilities on the affiliate's financial statements) and include any external third party indebtedness of EIFH, all as determined by an independent business valuator selected by the Administrator.

Notwithstanding this section 6.3, if the Administrator determines that the valuation rule applicable to the property referred to therein does not result in the fair value of such property, the Administrator may apply such other principle as it determines in order to determine fair value.

6.4 Payment of Cash Redemption Price

The Cash Redemption Price payable in respect of the Units tendered for redemption during any month shall be paid by cheque, drawn on a Canadian chartered bank or trust company in lawful money of Canada, payable to or to the order of the Unitholder who exercised the right of redemption within five Business Days after the end of the calendar month in which the Units were tendered for redemption. Payments made by the Fund of the Cash 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 at its last address appearing on the Registers unless such cheque is dishonoured upon presentment. Upon such payment, the Fund shall be discharged from all liability to the former Unitholder in respect of the Units so redeemed, except with respect to any outstanding payments in respect of such Units pertaining to distributions declared payable thereon to such former Unitholders of record on a date which was prior to the date upon which such Units were tendered for redemption.

6.5 No Cash Redemption in Certain Circumstances

Section 6.4 shall not be applicable to Units ("**Subject Units**") tendered for redemption by a Unitholder if:

- (a) the aggregate Cash Redemption Price in respect of the Subject Units, when added together with the aggregate Cash Redemption Price which the Fund is obligated to pay pursuant to Section 6.4 in respect of all other Units tendered for redemption prior to the Subject Units in the same calendar month, exceeds \$100,000; provided that the Trustee may, in its sole discretion, waive such limitation in respect of any calendar month; or
- (b) ECT or any affiliate thereof is, or after such redemption would be, in default under any credit facility or facilities and agreements entered into by the Fund or any of its affiliates, from time to time, which set forth the terms and conditions of any debt financing obtained by the Fund, or by any one of its affiliates (as the case may be), from any person or persons not affiliated with the Fund, and, for further certainty, including all agreements pertaining to issuances of debentures or other debt securities to the public.

6.6 In Specie Redemption

If, pursuant to Section 6.5, Section 6.4 is not applicable to Units tendered for redemption by a Unitholder, then such Unitholder shall, instead of the Cash Redemption Price per Unit specified in Section 6.3, be entitled to receive a price per Unit (hereinafter called the "**in Specie Redemption Price**") equal to the Cash Redemption Price, and the in Specie Redemption Price shall, subject to all necessary regulatory approvals, be paid and satisfied by way of a distribution

in specie of Fund Property which may include ECT Notes – Series 2 or other Fund Property (other than ECT Units), as determined in the discretion of the Administrator. In the event of distributions of ECT Notes, each ECT Note so distributed to the redeeming Unitholder shall be in the principal amount of \$100. No fractional ECT Notes shall be distributed and where the number of ECT Notes to be received upon redemption by a Unitholder would otherwise include a fraction, that number shall be rounded to the next lowest whole number.

The *in Specie* Redemption Price payable in respect of Units tendered for redemption during any month shall be paid by the transfer, to or to the order of the Unitholder who exercised the right of redemption, within five Business Days after the end of the calendar month in which the Units were tendered for redemption, of Fund Property determined as aforesaid. In respect of any Fund Property being transferred in payment of the *in Specie* Redemption Price, the Fund shall be entitled to all interest paid or accrued and unpaid in respect of such Fund Property (including on ECT Notes and any other instruments on which interest is accruing), to and including the date of transfer thereof. Payments by the Fund of the *in Specie* Redemption Price are conclusively deemed to have been made upon the mailing of the documents evidencing ownership of the property so distributed by registered mail in a postage prepaid envelope addressed to the former Unitholder at its last address appearing on the Registers. Upon such payment, the Fund shall be discharged from all liability to the former Unitholder in respect of the Units so redeemed.

6.7 Cancellation of Certificates for all Redeemed Units

All Unit Certificates representing Units which are redeemed under this Article 6 shall be cancelled and such Units shall no longer be outstanding.

ARTICLE 7 TRUSTEE

7.1 Number and Term

There shall be one (1) Trustee of the Fund. It is hereby acknowledged and confirmed that the Initial Trustee was appointed as the Trustee hereunder effective May 22, 2003 pursuant to the terms of the Original Indenture. The term of office of any person holding office as the Trustee hereunder commences from the date on which its election or appointment becomes effective and shall continue until the earlier of the date of the termination of the Fund, the effective date of the Trustee's resignation in accordance with Section 7.4, the effective date of the removal of the Trustee by the Unitholders in accordance with Section 7.4, or the effective date of the removal of the Trustee by the Administrator in accordance with Section 7.4.

7.2 Qualifications of the Trustee

The Trustee shall be a body corporate which shall at all times during which it is the Trustee:

- (a) be incorporated under the laws of Canada or of a province thereof;
- (b) be resident in Canada for the purposes of the Income Tax Act;

- (c) be authorized and registered under the laws of the Province of Alberta to carry on the business of a trust company; and
- (d) have reported on its audited consolidated financial statements for its then most recently completed financial year shareholders' equity of at least \$50 million, which audited financial statements shall be dated not more than 140 days after the end of such financial year.

7.3 Election of the Trustee

The Trustee shall be elected by Ordinary Resolution (other than the appointment of the Initial Trustee as Trustee upon the execution of this Trust Indenture who shall remain the Trustee unless removed in accordance with Section 7.4 hereof). The election or appointment of a Trustee (other than the appointment of the Initial Trustee as Trustee upon the execution of this Trust Indenture) shall not become effective unless and until such person has, either before or after such election or appointment, executed and delivered to the Fund an acceptance substantially as follows:

“To: Enbridge Income Fund (the “Fund”)

And to: The Administrator of the Fund

The undersigned hereby accepts its election or appointment as the Trustee of the Fund and hereby agrees, upon the later of the date of this acceptance and the date of the undersigned's election or appointment as the Trustee of the Fund, to thereby become a party, as the Trustee, to the Amended and Restated Trust Indenture made as of May 1, 2006, as the same may be amended from time to time, governing the Fund (the “Trust Indenture”), and the undersigned further agrees to act as Trustee of the Fund in accordance with the terms of the Trust Indenture.

Dated: _____,
Name of Company

[Print Name]

[Signature]

Upon the later of a person being elected or appointed as the Trustee hereunder and executing and delivering to the Fund an acceptance substantially as set forth above, such person shall become the Trustee hereunder and shall be deemed to be a party (as the Trustee) to this Trust Indenture, as amended from time to time.

An act of the Trustee is valid notwithstanding an irregularity in the election or appointment of the Trustee or a defect in the qualifications thereof.

7.4 Resignation and Removal of the Trustee

- (a) The Trustee may resign its trust hereunder by giving to the Administrator not less than 90 days' prior written notice of such resignation.
- (b) The Trustee may be removed at any time with or without cause by Ordinary Resolution passed in favour of the removal of the Trustee. The Trustee may also be removed at any time by the Administrator by notice in writing to the Trustee if, at any time:
 - (i) the Trustee shall no longer satisfy all the requirements of Section 7.2;
 - (ii) the Trustee shall be declared bankrupt or insolvent or shall enter into liquidation, whether compulsory or voluntary, to wind up its affairs;
 - (iii) all of the assets of the Trustee, or a substantial part thereof, shall become subject to seizure or confiscation; or
 - (iv) the Trustee shall otherwise become incapable of performing its responsibilities under this Trust Indenture.
- (c) Any resignation or removal pursuant to subsections 7.4(a) and (b) shall take effect on the earlier of: (i) 90 days after the date notice of such resignation is duly given, such Ordinary Resolution is approved, or such notice of the Administrator is given, as the case may be, and (ii) the date a successor Trustee is appointed or elected.
- (d) If no successor Trustee has been appointed or elected within 60 days of (i) the Trustee's notice of resignation (whether deemed notice or otherwise) under subsection 7.4(a) or (b), (ii) the approval of the Ordinary Resolution referred to in subsection 7.4(b) or (iii) the giving of notice by the Administrator to remove the Trustee under subsection 7.4(b), as the case may be, any Unitholder, the Trustee, the Administrator or any other interested person may apply to a court of competent jurisdiction for the appointment of a successor trustee.
- (e) Upon the taking effect of any resignation or removal of the Trustee under the terms of this Section 7.4, the Trustee shall cease to be a party to the Administration Agreement and the Fund Delegation Agreement and shall execute and deliver all such documents and instruments and do all such acts and things as the Administrator may reasonably request in order to effectively remove the Trustee as a party to each of the Administration Agreement and the Fund Delegation Agreement and to assign its right, title and interest in each such agreement to such successor trustee as may be appointed or elected.
- (f) Upon the resignation or removal of the Trustee, or the Trustee otherwise ceasing to be the Trustee, the Trustee shall:
 - (i) cease to have rights, privileges, powers and authorities of a Trustee hereunder;
 - (ii) execute and deliver such documents as the Administrator shall reasonably require for the conveyance, to a successor Trustee, of any Fund Property held in the

Trustee's name, and provide for or facilitate the transition of the Fund's activities and affairs to such successor Trustee; and

- (iii) account to the Administrator as the Administrator may require for all property, including the Fund Property, which the Trustee held or then holds as Trustee.
- (g) Upon the Trustee ceasing to hold office as such hereunder, the Trustee shall cease to be a party (as a Trustee) to this Trust Indenture provided, however, that such Trustee shall continue to be entitled to payment of any amounts owing by the Fund to the Trustee which accrued prior to its vacating of the office of Trustee; and provided further that such Trustee and each of its directors, officers, employees and agents shall continue to be entitled, in respect to all liabilities relating to the period of time when the Trustee held office as trustee hereunder, to the benefit of any indemnity and limitation of liability provisions which are expressly set out herein and by their terms are for the benefit of the Trustee and its directors, officers, employees and agents (as the case may be).
- (h) The resignation or removal of the Trustee, or the Trustee otherwise ceasing to be the Trustee, shall not affect any liabilities of the Trustee in respect of or in any way arising under or out of the Trust Indenture which have accrued prior to such resignation, removal or termination.

7.5 Vacancies

No vacancy of the office of the Trustee shall operate to annul this Trust Indenture or affect the continuity of the Fund.

7.6 Successor and Additional Trustee

The rights of the Trustee, subject to the terms hereof, to control and exclusively administer the Fund and to have the title to the Fund Property drawn up in its name and all other rights of the Trustee at law shall vest automatically in any person who may hereafter become the Trustee upon its due election or appointment and qualification, in accordance with the terms hereof, without any further act and it shall thereupon have all the rights, privileges, powers, authorities, obligations and immunities of the Trustee hereunder. Such rights shall vest in the Trustee whether or not conveyancing or transfer documents have been executed and delivered pursuant to Section 7.4 or otherwise.

7.7 Compensation and Other Remuneration

The Trustee shall be entitled to receive for its services as Trustee:

- (a) such reasonable compensation as shall be negotiated between the Administrator on behalf of the Fund and the Trustee;
- (b) reimbursement of the Trustee's reasonable out-of-pocket expenses incurred in acting as the Trustee; and

- (c) fair and reasonable remuneration for services rendered to the Fund in any other capacity, which services may include, without limitation, services as the Transfer Agent.

The Trustee shall, in respect of amounts payable or reimbursable to the Trustee pursuant to this Section 7.7, Section 8.9 or Section 12.2, have a priority over distributions to Unitholders pursuant to Article 5 or Section 11.6.

ARTICLE 8 TRUSTEE'S POWERS AND DUTIES

8.1 General Powers

The Trustee, subject only to the specific limitations and grant of powers to the Administrator contained in this Trust Indenture, shall have, without further or other action or consent, and free from any power of control on the part of the Unitholders, full, absolute and exclusive power, control and authority over the Fund Property and over the affairs of the Fund to the same extent as if the Trustee were the sole and absolute beneficial owner of the Fund Property in its own right, to do all such acts and things as in its sole judgement and discretion are necessary or incidental to, or desirable for, carrying out the trust created hereunder.

In construing the provisions of this Trust Indenture, presumption shall be in favour of the granted powers and authority to the Trustee. The enumeration of any specific power or authority herein (including pursuant to Section 8.2) shall not be construed as limiting the general powers or authority or any other specified power or authority conferred herein on the Trustee.

To the maximum extent permitted by law the Trustee 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.

The Trustee acknowledges that the Fund is to obtain and continuously maintain status as a "unit trust" under and pursuant to the provisions of the Income Tax Act. Accordingly, the Trustee shall, upon the direction of the Administrator, take such action or refrain from taking such action (as applicable) as may be directed by the Administrator so as to ensure that the status of the Fund as a "unit trust" is not terminated or materially adversely affected.

8.2 Specific Powers and Authorities

In addition to any and all other power and authority conferred on the Trustee by this Trust Indenture, or which the Trustee may have by virtue of any present or future law, or which may be authorized by Ordinary Resolution or Special Resolution from time to time, but subject to Section 8.7, any other express limitations contained in this Trust Indenture, and to the grant of powers to the Administrator pursuant to Section 13.5, the Trustee without any action or consent by the Unitholders shall have and may exercise at any time and from time to time the following powers and authorities which may be exercised by it in its sole judgement and discretion and in such manner and upon such terms and conditions as it may from time to time deem proper:

- (a) to open, operate and close accounts and other similar credit, deposit and banking arrangements and to negotiate and sign banking and financing contracts and agreements;

- (b) to borrow money and request the issuance of letters of credit upon the credit of the Fund and the Fund Property;
- (c) to temporarily hold cash and other short term investments in connection with and for the purposes of the Fund's activities, including paying management, administration and other expenses of the Fund, paying any amounts required in connection with the redemption of Units and making distributions to Unitholders;
- (d) to issue, reissue, sell or pledge debt obligations of the Fund and to make, accept, endorse, negotiate or otherwise deal with bonds, debentures, cheques, drafts, notes, orders for the payment of money, bills of exchange, bills of lading, acceptances and other similar instruments and obligations as may be necessary or useful to carry out the purpose of the Fund;
- (e) to give a guarantee on behalf of the Fund to secure performance of an obligation of another person;
- (f) to mortgage, hypothecate, pledge or otherwise create a security interest in all or any movable or immovable, personal or real or other property of the Fund, owned or subsequently acquired, to secure any obligation of the Fund;
- (g) to obtain security, including encumbrances on assets, to secure the full payment of money owed to the Fund and the performance of obligations in favour of the Fund, and to exercise all of the rights of the Fund, and to perform all of the obligations of the Fund, under such security;
- (h) to renew or extend or participate in the renewal or extension of any security, upon such terms as may be deemed advisable, and to agree to an increase or reduction in the rate of interest (or to agree to a waiver of interest) on any security or to any other modification or change in the terms of any security or of any guarantee pertaining thereto, in any manner and to any extent that it may deem advisable; and to waive any default whether in performance of any covenant or condition of any security, or in the performance of any guarantee or to enforce the rights in respect of any such default in such manner and to such extent that it may deem advisable;
- (i) to exercise and enforce any and all rights of foreclosure, to bid on property on sale or foreclosure, to take a conveyance *in lieu* of foreclosure with or without paying a consideration therefor and in connection therewith to revive the obligation on the covenants secured by such security and to exercise and enforce in any action, suit or proceeding at law or in equity any rights or remedies with respect to any such security or guarantee;
- (j) to obtain or render services for or on behalf of the Fund necessary or useful to carry out the purposes of the Fund;
- (k) to obtain, prepare, compose, design, print, publish, issue and distribute marketing and public relations materials in connection with the Fund;

- (l) to establish places of business of the Fund;
- (m) to manage the Fund Property;
- (n) to invest, hold shares, trust units, beneficial interests, partnership interests, joint venture interests or other interests in any person necessary or useful to carry out the purpose of the Fund;
- (o) to cause legal title to any of the Fund Property to be held in the name of the Trustee or to be drawn up in the name of the Trustee or, to the extent permitted by applicable law, in the name of the Fund;
- (p) to determine conclusively the allocation to capital, income or other appropriate accounts of all receipts, expenses and disbursements of the Fund;
- (q) to determine, among other things, the amount of Distributable Cash Flow, Income of the Fund and Net Realized Capital Gains for the purposes of distributions hereunder and to arrange for distributions to Unitholders pursuant to Article 5 and for redemptions of Units pursuant to Article 6;
- (r) to enter into any agreement or instrument to create or provide for the issue of Units (including any firm or best efforts underwriting agreement), to cause such Units to be issued for such consideration (in cash or property in kind) as the Trustee, in its discretion, may deem appropriate and to do such things and prepare and sign such documents, including any prospectus and any registration rights agreement, to qualify such Units for sale in whatever jurisdictions they will be sold or offered for sale;
- (s) to enter into any agreement or instrument (including any firm or best efforts underwriting agreement, warrant agreement or other similar document) to create or provide for the issue of securities convertible into or exchangeable for any Units or other securities of the Fund, or warrants, options or other rights to acquire any Units or other securities of the Fund ("**Other Fund Securities**"), and such agreements or instruments may provide for any matter determined by the Trustee to be necessary or useful including provisions pertaining to securities certificates (form, manner of execution, and certification), maintenance of registers, use of book-based versus certificated system, repurchases, redemptions and transfers;
- (t) to cause Other Fund Securities to be issued for such consideration as the Trustee, in its sole discretion, may deem appropriate and to do such things and prepare and sign such documents, including any prospectus and any registration rights agreement, to qualify such Other Fund Securities for sale in whatever jurisdictions they are to be sold or offered for sale;
- (u) to issue or provide for the issuance of Units on terms and conditions and at such time or times as the Trustee may determine, including issuances in accordance with Section 5.8 and issuances in connection with Unitholder rights plans, incentive plans, and other plans established under Section 5.10;

- (v) to redeem or repurchase Units in accordance with the terms set forth in this Indenture;
- (w) to make or cause to be made application for the listing or quotation on any stock exchange or market of any Units or other securities of the Fund, and to do all things which in the opinion of the Trustee may be necessary or desirable to effect or maintain such listing or listings or quotation;
- (x) to determine conclusively the value of any or all of the Fund Property from time to time and, in determining such value, to consider such information and advice as the Trustee in its sole judgement, may deem material and reliable;
- (y) to possess and exercise all the rights, powers and privileges pertaining to the ownership of ECT Units and ECT Notes to the same extent that an individual might, unless otherwise limited herein (including pursuant to Section 8.7) 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 with respect to voting ECT Units and ECT Notes held by the Fund, which proxies and powers of attorney may be for meetings or actions generally or for any particular meeting or action and may include the exercise of discretionary power;
- (z) to pay, out of the Fund Property, all reasonable fees, costs and expenses incurred, from time to time, in the management and administration of the Fund, including those in connection with the Offering;
- (aa) where reasonably required, to engage or employ on behalf of the Fund any persons as administrators, managers, agents, advisors, representatives, employees, independent contractors or subcontractors (including, without limitation, the Administrator, investment advisors, registrars, underwriters, accountants, lawyers, appraisers, brokers or otherwise) in one or more capacities;
- (bb) to the extent not prohibited by law, to delegate any of the powers and duties of the Trustee to any one or more agents, representatives, officers, employees, independent contractors, subcontractors or other persons without liability to the Trustee except as provided in this Trust Indenture;
- (cc) to appear and respond to all orders issued by a Governing Authority or claims made by another person, to make all affidavits, sworn declarations and solemn affirmations with respect to such matters, to put in default, sue for and receive all sums of money or obligations due to the Fund, and to engage in, intervene in, prosecute, join, defend, compromise, abandon or adjust, by arbitration or otherwise, any actions, suits, disputes, claims, demands or other litigation or proceedings, regulatory or judicial, relating to the Fund, the Fund Property or the Fund's affairs, to enter into agreements therefor, whether or not any suit or proceeding is commenced or claim asserted and to enter into agreements regarding the arbitration, adjudication or settlement thereof;
- (dd) to arrange for insurance contracts and policies insuring the Fund, the Fund Property, and/or the Trustee or the Unitholders, including 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 Fund or by the Trustee or Unitholders or otherwise, and to perform all of the obligations of the Fund under such insurance policies and contracts, the whole to the extent permitted by law;

- (ee) to do all such things and take all such action, and to negotiate, make, execute, acknowledge and deliver any and all deeds, instruments, contracts, waivers, releases or other documents, necessary or useful for the exercise or accomplishment of: (i) any of the powers herein granted to the Trustee, (ii) the purposes of the Fund as set forth in Section 4.1, and (iii) all of the rights and obligations of the Trustee hereunder; including, without limitation, the negotiation and execution of the Administration Agreement and agreements in connection with the Fund's acquisition of ECT Units and ECT Notes, the administration of the Fund, the Offering and future offerings of securities and the issuance of Units;
- (ff) to postpone and subordinate, in right of payment, all present and future indebtedness, liabilities and obligations of a person owed to the Fund to payment in full of all present and future indebtedness, liabilities and obligations of such person to lenders and other creditors of such person, and to enter into any agreement or instrument to create or provide for such postponement and subordination in favour of such lenders and creditors;
- (gg) to indemnify, out of the Fund Property, any person against any and all liabilities, claims, actions, causes of action, judgments, orders, damages (including foreseeable consequential damages), costs, expenses, fines, penalties and losses (including sums paid by such person in settlement of claims and all reasonable consultant, expert and legal fees and expenses) or any resulting damages, harm or injuries to such person or property of any third parties arising from the business carried on by the Fund;
- (hh) to provide or cause to be provided to any bank, creditor, financial institution or any other person such guarantees, indemnities, postponements and subordinations, acknowledgements, assurances or other credit support, in any form whatsoever, as the Trustee, in its sole discretion, deems necessary, useful or desirable in connection with the establishment or arrangement of any and all debt or equity financings of affiliates and associates of the Fund, including any extensions, renewals, refinancings or replacements thereof, and to enter into any agreement, indenture, instrument or other document on such terms and conditions as the Trustee, in its sole discretion, may deem appropriate in the circumstances in connection with such financings; and
- (ii) to do all such other acts and things as are necessary, useful, incidental or ancillary to the foregoing and to exercise all powers and authorities which are necessary, useful, incidental or ancillary to carry on the affairs of the Fund, to promote the purpose for which the Fund is formed and to carry out the provisions of this Trust Indenture.

8.3 Further Powers of the Trustee

The Trustee shall have the power to prescribe any form of document or other instrument provided for or contemplated by this Trust Indenture and the Trustee may make, adopt, amend,

or repeal regulations containing provisions relating to the conduct of the affairs of the Fund not inconsistent with law or with this Trust Indenture (the “**Trustee’s Regulations**”). The Trustee shall also be entitled to make any reasonable decisions, designations or determinations not contrary to this Trust Indenture which it may determine are necessary or desirable in interpreting, applying or administering this Trust Indenture or in administering, managing or operating the Fund. Any Trustee’s Regulations, decisions, designations or determinations made pursuant to this Section shall be conclusive and binding upon all persons affected thereby. The Trustee shall also have such additional powers as may be approved by the Unitholders by Ordinary Resolution.

8.4 Standard of Care

The standard of care required of the Trustee in exercising its powers and carrying out its functions under this Trust Indenture shall be that it exercise its powers and carry out its functions hereunder as Trustee honestly, in good faith with a view to the best interests of the Fund and the Unitholders and that in connection therewith it exercise that degree of care, diligence and skill that a reasonably prudent person with similar experience to that of the Trustee would exercise in comparable circumstances. Unless otherwise required by law, the Trustee shall not be required to give bond, surety or security in any jurisdiction for the performance of any duties or obligations hereunder. The Trustee in its capacity as Trustee shall not be required to devote its entire time to the affairs of the Fund.

8.5 Reliance Upon the Trustee

Any person dealing with the Fund in respect of any matters pertaining to the Fund, the Fund Property or securities of the Fund shall be entitled to rely on a certificate or statutory declaration (including, without limitation, a certificate or statutory declaration as to the passing of a resolution of the Trustee) executed by the Trustee or the Administrator or, without limitation, such other person as may be authorized by the Trustee as to the capacity, power and authority of the Trustee, the Administrator, or any other person, to act for and on behalf and in the name of the Fund. No person dealing with the Trustee shall be bound to see to the application of any money or property passing into the hands or control of the Trustee. The receipt by or on behalf of the Trustee of money or other consideration shall constitute receipt by the Fund and be binding thereon.

8.6 Determinations Binding

All determinations of the Trustee and any agent to whom the Trustee has delegated duties (including the Administrator), whether delegated hereunder or pursuant to any other agreement (including the Administration Agreement), where such determinations are made in good faith with respect to any matters relating to the Fund, including, without limitation, whether any particular investment or disposition meets the requirements of this Trust Indenture, shall be final and conclusive and shall be binding upon the Fund and all Unitholders (and, where the Unitholder is a “registered retirement savings plan”, “registered retirement income fund”, “registered education savings plan”, “deferred profit sharing plan” (all within the meaning of the Income Tax Act), or such other fund or plan registered under the Income Tax Act, upon past, present or future fund or plan beneficiaries and fund or plan holders), and Units shall be issued

and sold on the condition and understanding that any and all such determinations shall be final, conclusive and binding as aforesaid.

8.7 Restrictions on the Trustee's Powers and their Exercise

In addition to any other provisions set forth herein requiring the approval of Unitholders in respect to certain matters, or as a condition precedent to taking certain actions, it is agreed that:

- (a) the Trustee shall not, without the approval of the Unitholders by Ordinary Resolution, take any of the actions set forth in Schedule A annexed hereto and incorporated herein by reference;
- (b) the Trustee shall not, without the approval of the Unitholders by Special Resolution, take any of the actions set forth in Schedule B annexed hereto and incorporated herein by reference;
- (c) the following matters, in order to become effective, must be approved by a majority of the ECT Independent Trustees (in addition to any further approvals required by subsection 8.7(b) or otherwise), acting reasonably:
 - (i) a material change to the Administration Agreement, or any extension thereof, which includes, for greater certainty, any increase in fees or other amounts payable by the Fund or any of its affiliates thereunder;
 - (ii) the terms of any agreement entered into by the Fund, or any of its affiliates, with an ECT Trustee who is not an ECT Independent Trustee, the Administrator or any affiliate thereof;
 - (iii) the disposition of any material assets or equipment which are used in operating the Business, other than in the ordinary course of business;
 - (iv) those matters described in items 2, 3, 4 and 5 of Schedule B annexed hereto provided that the approval of the ECT Independent Trustees will not be required by this subsection 8.7(c)(iv) at any time when EIFH holds less than 20% of the outstanding Units; and
 - (v) the approval of, amendment to or any material deviation from the current distribution policy of the Fund.
- (d) the Trustee shall not undertake any of the matters set forth in subsections 2(g)(i) or 2(g)(ii) of Schedule E to the ECT Trust Indenture without first fully complying the terms and conditions set forth in subsection 2(g) of Schedule E to the ECT Trust Indenture, which may require approval of the holders of Preferred Units (as such term is defined in the ECT Trust Indenture) prior to undertaking any of the aforesaid matters;

and the Trustee or the Administrator shall seek such approval, as required, in connection with any such matter or proposed matter.

8.8 Banking

The banking activities of the Fund, or any part thereof, shall be transacted with such bank, trust company, or other firm or corporation carrying on a banking business as the Trustee may designate, appoint or authorize from time to time and all such banking activities, or any part thereof, shall be transacted on behalf of the Fund by the Trustee, the Administrator or such other persons as the Trustee may designate, appoint or authorize from time to time, including, without limitation, the following activities:

- (a) the operation of the accounts of the Fund;
- (b) 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;
- (c) the giving of receipts for orders relating to any property of the Fund;
- (d) the execution of any agreement or instrument relating to any property of the Fund; and
- (e) 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 banker to do any act or thing on the Fund's behalf to facilitate such banking activities.

8.9 Fees and Expenses

As part of the expenses of the Fund, the Trustee may pay or cause to be paid reasonable fees, costs and expenses incurred in connection with the administration and management of the Fund and in connection with the discharge of any of the Trustee's duties herein, including, without limitation, fees, costs and expenses of auditors, accountants, lawyers, appraisers and other professional advisors employed by or on behalf of the Fund (including the Administrator) and the cost of reporting to and giving notices to Unitholders. All costs, charges and expenses properly incurred by the Trustee on behalf of the Fund shall be payable out of the Fund Property.

8.10 Payments to Unitholders

Except as may be otherwise provided herein, any cash payment required under the terms of this Trust Indenture to be made to a Unitholder shall be paid in Canadian dollars, unless otherwise determined by the Trustee or the Administrator, with such payment to be by cheque or bank draft to the order of the registered Unitholder and may be mailed by ordinary mail to the last address appearing on the books of the Fund in respect of such Unitholder but may also be paid in such other manner as such Unitholder has designated to the Trustee and the Trustee has accepted. In the case of joint registered Unitholders, any cash payment required hereunder to be made to a Unitholder shall be deemed to be required to be made to such Unitholders jointly and shall be paid by cheque or bank draft but may also be paid in such other manner as the joint registered Unitholders or any one of the joint registered Unitholders has designated to the Trustee and the Trustee has accepted. For greater certainty, a Unitholder or any one of the joint Unitholders may designate and the Trustee may accept that any payment required to be made hereunder shall be made by deposit to an account of such Unitholder or to a joint account of such

Unitholder and any other person or in the case of joint registered Unitholders to an account of joint registered Unitholders or to an account of any one of the joint registered Unitholders. A cheque or bank draft shall, unless the joint registered Unitholders otherwise direct, be made payable to the order of all of the said joint registered Unitholders, and if more than one address appears on the books of the Fund in respect of such joint unitholding, the cheque or bank draft or payment in other acceptable manner as aforesaid may be sent to the address of any one of the joint registered Unitholders whose name and address appears on the books of the Fund. All payments made in the aforesaid manner shall satisfy and be a valid and binding discharge of all liability of the Trustee or the Fund for the amount so required to be paid unless the cheque or bank draft is not paid at par on presentation at Calgary, Alberta, or at any other place where it is by its terms payable. In the event of non-receipt of any such cheque or bank draft by the person to whom it was mailed, the Trustee on proof of the non-receipt and upon satisfactory indemnity being given to it and to the Fund, shall issue to the person a replacement cheque or bank draft for a like amount.

The receipt, by the registered Unitholder, of any payment not mailed or paid in accordance with this Section 8.10 shall nonetheless be a valid and binding discharge to the Fund and to the Trustee for any payment made in respect of the registered Units, and if several persons are registered as joint registered Unitholders or, in consequence of the death, bankruptcy or incapacity of a Unitholder, one or several persons are entitled so to be registered in accordance with Sections 3.16 and 3.15, respectively, receipt of payment by any one of them shall be a valid and binding discharge to the Fund and to the Trustee for any such payment.

ARTICLE 9 AMENDMENTS TO THE TRUST INDENTURE

9.1 Amendment

The provisions of this Trust Indenture may only be amended by Special Resolution except where specifically otherwise provided herein, including pursuant to Sections 9.2 and 9.3.

9.2 Amendment without Approval

Notwithstanding anything herein contained (but subject to Section 9.3), the provisions of this Trust Indenture may be amended by the Trustee at any time and from time to time, without the consent, approval or ratification of the Unitholders or any other person at any time for the purpose of:

- (a) ensuring continuing compliance, by the Fund, with applicable laws, regulations, requirements or policies of any Governing Authority having jurisdiction over the Trustee or the Fund;
- (b) providing, in the opinion of the Trustee, additional protection for the Unitholders or to preserve or clarify the provision of desirable tax treatment to Unitholders;
- (c) making minor corrections, or removing or curing any conflicts or inconsistencies between the provisions of this Trust Indenture or any supplemental indenture and the provisions of the ECT Trust Indenture, or any agreement to which the Fund is a party, or any

applicable law or regulation of any jurisdiction, or any prospectus filed with any Governing Authority with respect to the Fund, provided that, in the opinion of the Trustee in each case, the rights of the Unitholders are not materially prejudiced thereby;

- (d) making amendments hereto which, in the opinion of the Trustee, are necessary or desirable in the interests of the Unitholders as a result of changes in taxation laws or accounting standards (including, without limitation, changes arising from the implementation of International Financial Reporting Standards, or IFRS), or in their respective interpretation or administration;
- (e) making amendments hereto which, in the opinion of the Trustee, do not materially prejudice either the rights of the Trustee or the rights of the Unitholders; and
- (f) making amendments hereto which, in the opinion of the Trustee, are necessary or appropriate in order to provide Unitholders with the benefit of any legislation limiting their liability, including, if appropriate, amendments to effect a change in the *situs* of the Fund or the laws governing the Fund.

9.3 Further Restrictions on Amendments

No amendment shall be made to this Trust Indenture:

- (a) to modify the voting rights attributable to any Unit or reduce the fractional undivided beneficial interest in the Fund Property represented by any Unit without the consent of the holder of such Unit; and
- (b) to amend this Section 9.3, unless the consent of all Unitholders is obtained.

9.4 Notification of Amendment

Following the making of any amendment pursuant to Section 9.2, the Administrator shall provide written notification of the substance of such amendment to each Unitholder and such notification shall be delivered concurrent with the next succeeding mailing of financial statements of the Fund (whether quarterly or annual financial statements), pursuant to Section 15.9.

9.5 Further Acts Regarding Amendment

When a vote of the Unitholders approves an amendment to this Trust Indenture, then the Trustee and the Administrator (as applicable) shall sign such documents, on behalf of the Fund, as may be necessary to effect such amendment, provided that nothing herein contained shall be construed so as to:

- (a) obligate the Trustee to give effect to any amendment to this Trust Indenture which has an effect on any of the Trustee's rights, protections and obligations hereunder which is adverse to the Trustee; or

- (b) obligate the Administrator, acting on its own behalf and for its own account, to agree to any amendment to this Trust Indenture which has an effect on any of the Administrator's rights, protections and obligations hereunder or under the Administration Agreement which is adverse to the Administrator.

ARTICLE 10 MEETINGS OF UNITHOLDERS

10.1 Annual Meeting

There shall be an annual meeting of Unitholders immediately prior to, and at the same place as, each annual meeting of holders of ECT Units for the purpose of:

- (a) directing and instructing the Trustee as to the manner in which the Trustee shall vote the ECT Units held by the Fund in respect of (i) the election of the ECT Independent Trustees, who are to be elected at the annual meeting of the holders of ECT Units which is to immediately follow the meeting of Unitholders, and (ii) any other relevant matters described in Schedule A or Schedule B hereto which may be properly brought before such annual meeting of holders of ECT Units;
- (b) appointing the auditors of the Fund for the ensuing year; and
- (c) transacting such other business as the Trustee may determine or as may properly be brought before the meeting.

The annual meeting of Unitholders shall be held after delivery to the Unitholders of the annual financial statements referred to in subsection 15.9(a) and, in any event, within 180 days after the end of each fiscal year of the Fund, commencing with the first annual meeting of the Fund which shall be held following completion of the 2003 fiscal year.

10.2 Other Meetings

- (a) *Called by the Trustee:* The Trustee shall have the power, at any time and for any purpose, to call special meetings of the Unitholders at such time and place as the Trustee may determine or the Administrator may request (and, for greater certainty, the Trustee shall call a special meeting of Unitholders upon request of the Administrator).
- (b) *Requisition by Unitholders:* Unitholders holding in the aggregate not less than 5% of all votes entitled to be voted at a meeting of Unitholders may requisition the Trustee to call a special meeting of Unitholders for the purposes stated in the requisition. The requisition shall (A) be in writing, (B) set forth the name and address of, and number of Units and Voting Exchangeable Securities (and votes attached thereto which, in the aggregate, must not be less than 5% of all votes entitled to be voted at a meeting of Unitholders) held by, each person who is supporting the requisition, and (C) shall state in reasonable detail the business to be transacted at the meeting and shall be sent to the Trustee at the Trustee's principal place of business in Alberta. Upon receiving a requisition complying with the foregoing, the Trustee shall call a meeting of Unitholders to transact the business referred to in the requisition, unless:

- (i) a record date for a meeting of Unitholders has been fixed; or
- (ii) the Trustee has called a meeting of Unitholders and has given notice thereof pursuant to Section 10.3; or
- (iii) in connection with the business as stated in the requisition:
 - (1) it clearly appears that a matter covered by the requisition is submitted by the Unitholder primarily for the purpose of enforcing a personal claim or redressing a personal grievance against the Fund, the Trustee, the Administrator (or any associate or affiliate of the Administrator), the Unitholders, ECT or any affiliate of ECT, or primarily for the purpose of promoting general economic, political, religious, social or similar causes or primarily for a purpose that does not relate in a significant way to the business or affairs of the Fund;
 - (2) the Fund, at the Unitholder's request, had previously included a matter substantially the same as a matter covered by the requisition in an information circular relating to a meeting of Unitholders held within 30 months preceding the receipt of such requisition and the Unitholder failed to present the matter, in person or by proxy, at the meeting;
 - (3) substantially the same matter covered by the requisition was submitted to Unitholders in an information circular relating to a meeting of Unitholders held within 30 months preceding the receipt of such requisition and the matter covered by the requisition was defeated; or
 - (4) the rights conferred by this Section 10.2 are being abused to secure publicity.
- (c) *Requisition by ECT Trustees:* While the Fund holds any ECT Units, the Trustee shall call a special meeting of Unitholders upon receipt of a requisition from the ECT Trustees for the purposes set forth in such requisition, including, without limitation, seeking the required approvals from the Unitholders to vote the ECT Units held by the Fund in respect of the matters set forth in Schedule A and Schedule B hereto. At any time that the Fund holds less than 50% of the issued and outstanding ECT Units, any meeting of the Fund held at the request of the ECT Trustees shall be held at the sole cost and expense of ECT.
- (d) *Failure to Call Meeting:* If there shall be no Trustee or if the Trustee does not, within 21 days after receiving the requisition, call a meeting (except where the grounds for not calling the meeting are one or more of those set forth in subsection 10.2(b) above), any Unitholder who signed the requisition, the ECT Trustees or the Administrator, as the case may be, may call the meeting in accordance with the provisions of Article 10, *mutatis mutandis*.

10.3 Notice of Meeting of Unitholders

Notice of all meetings of the Unitholders shall be given or sent by the Trustee to:

- (a) each holder of Units at the address for such holder appearing in the applicable Register, provide such notice is given in a manner permitted by Section 15.1;
- (b) each holder of Voting Exchangeable Securities in a manner permitted by subsection 2.8(c); and
- (c) the Trustee, the Administrator, the Auditors and any others required by applicable law to be sent such notice,

provided that such notice, in each case, is given in a manner permitted by Canadian securities legislation and given not less than 21 nor more than 50 days before the meeting (or within such other time periods as required or permitted by applicable securities laws). The attendance of a Unitholder at a meeting (whether in person or by proxy) shall constitute a waiver of notice, or defect therein, with respect to such meeting except where a Unitholder 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. Notice of any meeting of Unitholders shall state the purposes of the meeting.

10.4 Quorum; Chairman

A quorum for any meeting of Unitholders shall be one or more persons present in person and being Unitholders or representing, by proxy, Unitholders, and who hold in the aggregate not less than 5% of all votes entitled to be voted at the meeting. 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, shall be terminated and, if otherwise called, shall stand adjourned to a day not less than 14 days later and to such place and time as may be determined by the chairman of the meeting. If at such adjourned meeting a quorum as above defined is not present, the Unitholders entitled to vote at such meeting and 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. The Chairman of the ECT Trustees, or such other individual as may be appointed by the Trustee on the advice of the Administrator, shall be the chairman of any meeting of Unitholders.

10.5 Voting

- (a) Unitholders and holders of Voting Exchangeable Securities may attend and vote at all meetings of the Unitholders either in person or by proxy.
- (b) Every question submitted to a meeting shall, unless a poll vote is demanded or if the chairman of the meeting determines that a poll is otherwise advisable, be decided by a show of hands on which every person present and entitled to vote shall be entitled to one vote. On a poll vote at any meeting of Unitholders, each Unit shall be entitled to the

number of votes set out in Section 3.1 and each Voting Exchangeable Security shall be entitled to that number of votes equal to the number of votes attached to the number of Units into which such Voting Exchangeable Security is exchangeable, exercisable or convertible.

- (c) The chairman of any meeting of Unitholders shall not have a second or casting vote.

10.6 Record Dates

For the purpose of determining the Unitholders who are entitled to receive notice of and vote at any meeting or any adjournment thereof, or who are entitled to receive any distribution, or for the purpose of any other action, the Trustee may from time to time, without notice to Unitholders, close the transfer books for such period, not exceeding 30 days, as the Trustee may determine. Alternatively, with or without closing the transfer books, the Trustee may fix a date not more than 60 days prior to the date of any meeting of Unitholders or any distribution or any other action to be taken by the Fund, as a record date for the determination of Unitholders entitled to receive notice of and to vote at such meeting or any adjournment thereof or to receive such distribution or to be treated as Unitholders of record for purposes of such other action, as the case may be. Any Unitholder who was a Unitholder at the record date so fixed shall be entitled to receive notice of and vote at such meeting or any adjournment thereof, or to receive such distribution, or to be treated as a Unitholder of record for purposes of such other action, even though he has since that date disposed of his Units or Voting Exchangeable Securities, and no person who becomes a Unitholder after that date shall be entitled to receive notice of and vote at such meeting or any adjournment thereof, or to receive such distribution, or to be treated as a Unitholder of record for purposes of such other action.

10.7 Proxies

Whenever the vote or consent of Unitholders is required or permitted under this Trust Indenture, such vote or consent may be given either directly by the Unitholder or by a proxy in written form, electronic or other technologically enhanced form, or such other form as is acceptable to the Trustee acting reasonably. A proxy holder need not be a Unitholder. The Trustee may solicit such proxies from the Unitholders or any of them in respect of any matter requiring or permitting the Unitholders' vote, approval or consent in such manner as may be required or permitted by applicable law.

Provided not contrary to applicable law, the Trustee may adopt, amend or repeal such rules relating to proxies, including pertaining to the appointment of proxy holders and the solicitation, execution, validity, revocation and deposit of proxies, as it in its discretion from time to time determines and such rules may be contained in the Trustee's Regulations.

10.8 Resolution in Lieu of Meeting

A resolution signed in writing by Unitholders holding a proportion of all the outstanding votes entitled to be voted at a meeting of Unitholders, where such proportion is equal to or greater than the proportion of votes required to be voted in favour of such resolution at a meeting of Unitholders to approve that resolution, is as valid as if it had been passed at a meeting of Unitholders duly called and convened for the purpose of approving that resolution.

10.9 Materials Sent to Unitholders

At any time that the Fund holds more than 50% of the issued and outstanding ECT Common Units, the Trustee shall include in the materials sent to Unitholders in respect of meetings thereof all materials, if any, requested to be sent to Unitholders by the ECT Trustees, acting reasonably, which shall, at a minimum, include any notice and information circular provided to the Fund in connection with a meeting of holders of ECT Units. Notwithstanding the foregoing, the Trustee, with respect to any meeting of Unitholders at which the Trustee will seek the approval of the Unitholders as to the manner in which the Trustee should vote ECT Units held by the Fund with respect to the election of the ECT Independent Trustees, shall include with the materials being sent to the Unitholders in respect of such meeting, any Manager Trustee Proposal (as defined in the ECT Trust Indenture) permitted under the ECT Trust Indenture. The inclusion of such Manager Trustee Proposal shall be in lieu of any Trustee or management solicitation proposals as to the manner in which the Trustee should vote the ECT Units held by the Fund with respect to the election of the ECT Independent Trustees.

10.10 Meetings of ECT Unitholders

Meetings of Unitholders may be held immediately prior to, after or simultaneously with meetings of the holders of ECT Units, provided, however, that the annual meeting of Unitholders shall be held immediately prior to that of the holders of ECT Units.

10.11 Voting of Units by Administrator

In addition to the right of the Administrator to exercise voting rights for and on behalf of holders of Voting Exchangeable Securities and at their direction, as provided in subsection 2.8(e), nothing herein contained shall prevent or diminish the right of the Administrator or its affiliates or associates to vote any Units or Voting Exchangeable Securities which may be beneficially owned by it or them in its or their absolute discretion.

10.12 Resolutions Binding the Trustee

Unitholders shall be entitled to pass resolutions that will bind the Trustee only with respect to the following matters:

- (a) the election, appointment or removal of the Trustee or an ECT Independent Trustee;
- (b) the appointment or removal of Auditors as provided in Sections 15.14 and 15.15;
- (c) amendments of this Trust Indenture as provided in Article 9;
- (d) the termination of the Fund as provided in Section 11.2; and
- (e) any other matter referred to in Schedule A or Schedule B.

For greater certainty, any resolution passed by Unitholders pertaining to the manner in which ECT Units held by the Fund are to be voted by the Trustee in respect of a particular matter which is to be put forth to the holders of ECT Units for vote at a contemplated meeting

(including by written resolution) of holders of ECT Units (“**ECT Meeting**”), shall be deemed to be a direction to the Trustee in respect of the ECT Units held by the Fund to, as applicable, either vote such ECT Units in favour of or in opposition to, or to vote or with-hold from voting in respect of, such matter in equal proportions to the votes cast by Unitholders in respect of the matter, and the Trustee is hereby obligated to vote, in respect of such matter if put forth to holders of ECT Units at the ECT Meeting, the ECT Units held by the Fund in accordance with such direction.

Except with respect to the above matters set out in this Section 10.12, no action taken by the Unitholders or any resolution of the Unitholders at any meeting shall in any way bind the Trustee. Any action taken or resolution passed in respect of any matter at a meeting of Unitholders shall be by Ordinary Resolution, unless the contrary is otherwise expressly provided under any specific provision of this Trust Indenture.

ARTICLE 11 TERMINATION

11.1 Term of the Fund

The term of the Fund commenced on May 22, 2003 and shall continue in full force and effect for a period which shall end twenty-one (21) years after the date of death of the last surviving issue of Her Majesty, Queen Elizabeth II, who was alive on May 22, 2003. The Trustee shall have throughout such term all the powers and discretion, expressed and implied, as conferred upon it by law and by this Trust Indenture.

11.2 Termination with the Approval of Unitholders

The Fund shall be wound-up or terminated if the Unitholders pass a Special Resolution, authorizing such wind-up or termination, at a meeting of Unitholders duly called for the purpose of considering the wind-up or termination of the Fund. Following the passage of such Special Resolution and subject to any exercise of the rights of the Trustee under Section 12.5, the Trustee shall commence to wind-up or terminate (as the case may be) the affairs of the Fund. Such Special Resolution may contain such directions to the Trustee as the Unitholders determine, including a direction to distribute ECT Units or ECT Notes, or any of them, *in specie*.

11.3 Procedure Upon Termination

Forthwith upon being required to commence to wind-up or terminate the affairs of the Fund, the Trustee shall give notice of such wind-up or termination to the 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 of Units of the Fund shall be closed.

11.4 Powers of the Trustee Upon Termination

After the date on which the Trustee is required to commence to wind-up or terminate the affairs of the Fund, the Trustee shall carry on no activities except for the purpose of winding-up or terminating (as the case may be) the affairs of the Fund as hereinafter provided and, for this

purpose, the Trustee shall continue to be vested with and may exercise all or any of the powers conferred upon the Trustee under this Trust Indenture.

11.5 Sale of Investments

After the date referred to in Section 11.4, the Trustee shall proceed to wind-up or terminate, as the case may be, the affairs of the Fund as soon as may be reasonably practicable and for such purpose shall, subject to any direction to the contrary in respect of a wind-up or termination authorized under Section 11.2, sell and convert into money the Fund Property and do all other acts appropriate to liquidate the Fund, and shall in all respects act in accordance with the directions, if any, of the Unitholders (in respect of a wind-up or termination authorized under Section 11.2). If the Trustee is unable to sell all or any of the Fund Property or other assets which comprise part of the Fund by the date set for wind-up or termination, the Trustee may distribute undivided interests in the remaining Fund Property or other assets directly to the Unitholders on a pro rata basis in accordance with their respective interest in the Fund as determined by the number of Units held by each such respective Unitholder.

11.6 Distribution of Proceeds

After paying, retiring or discharging or making provision for the payment, retirement or discharge of all known liabilities and obligations of the Fund and providing for an indemnity against any other outstanding liabilities and obligations, the Trustee shall distribute the remaining part of the proceeds of the sale of the Fund Property pro rata among the Unitholders in accordance with their respective interest in the Fund as determined by the number of Units held by each such respective Unitholder.

11.7 Further Notice to Unitholders

In the event that less than all of the Unitholders have surrendered their Units for cancellation within six (6) months after the time specified in the notice referred to in Section 11.3, the Trustee shall give further notice to the remaining Unitholders to surrender their Units for cancellation and if, within one (1) 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 Fund Property, and the Trustee 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 Trustee, the Trustee may pay such amounts into court in the province where the Fund has its head office (or to such other suitable government official or agency in the province where the Fund has its head office) whose receipt shall be a good release, acquittance and discharge of the obligations of the Trustee with respect to such amounts.

11.8 Responsibility of the Trustee after Sale and Conversion

The Trustee shall be under no obligation to invest the proceeds of any sale of investments or other assets or cash forming part of the Fund Property after the date referred to in Section 11.4 and, after such sale, the sole obligation of the Trustee under this Trust Indenture shall be to collect, distribute and hold such proceeds in trust for distribution under this Article 11.

ARTICLE 12
LIABILITY OF TRUSTEE, ADMINISTRATOR
AND UNITHOLDERS AND OTHER MATTERS

12.1 General Limitation of Liability and Indemnification

- (a) The Trustee, the Administrator and consultants and agents of the Fund, in incurring any debts, liabilities or obligations, or taking or omitting any other actions for or in connection with the affairs of the Fund are, and shall be conclusively deemed to be, acting for and on behalf of the Fund, and not in their own personal capacities.
- (b) No Unitholder, in its capacity as such, or annuitant, shall incur or be subject to any liability in contract or in tort or of any other kind whatsoever to any person in connection with the Fund Property or the obligations or the affairs of the Fund or with respect to any act performed by the Trustee or by any other person pursuant to this Trust Indenture or with respect to any act or omission of the Trustee or any other person in the performance or exercise, or purported performance or exercise, of any obligation, power, discretion or authority conferred upon the Trustee or such other person hereunder or with respect to any transaction entered into by the Trustee or by any other person pursuant to this Trust Indenture. No Unitholder or annuitant shall be liable to indemnify the Trustee or any other person with respect to any such liability or liabilities incurred by the Trustee or by any such other person or persons or with respect to any taxes payable by the Fund or the Trustee or any other person on behalf of or in connection with the Fund; provided, however, to the extent that, notwithstanding the foregoing, any such liabilities are determined by a court of competent jurisdiction to be liabilities of the Unitholders and annuitants, such liabilities shall only be enforceable against, and shall be satisfied only out of, the Fund Property.
- (c) All reasonable efforts shall be made to ensure that every contract entered into by or on behalf of the Fund, whether by the Trustee, the Administrator or otherwise, shall (except as the Trustee or Administrator may otherwise expressly agree in writing with respect to personal liability of the Trustee or Administrator, as applicable) include a provision substantially to the following effect:

The parties hereto acknowledge that the Trustee or the Administrator, as applicable, is entering into this agreement solely in its capacity as Trustee or as agent, as the case may be, on behalf of the Fund and the obligations of the Fund hereunder shall not be personally binding upon the Trustee, the Administrator or any of the Unitholders of the Fund or any annuitant, subscriber or beneficiary under a plan of which a Unitholder is a trustee or carrier (an “annuitant”) and that any recourse against the Fund, the Trustee, the Administrator or any Unitholder or annuitant in any manner in respect of any indebtedness, obligation or liability of the Fund arising hereunder or arising in connection herewith or from the matters to which this agreement relates, if any, including without limitation claims based on negligence or otherwise tortious

behaviour, shall be limited to, and satisfied only out of, the Fund Property as defined in the Trust Indenture amended and restated as of December 17, 2010, as the same may be further amended.

The rights conferred by any such provision shall be held in trust and enforced by the Trustee for the benefit of the Trustee, the Administrator, the Unitholders and annuitants, as applicable. The omission of such a provision from any such written agreement shall not operate to impose personal liability on the Trustee, the Administrator or any Unitholder or annuitant.

- (d) If, contrary to the provisions of subsection 12.1(b), any Unitholder or annuitant shall be held personally liable as such to any other person in respect of any debt, liability or obligation incurred by or on behalf of the Fund, or any action taken on behalf of the Fund, such Unitholder or annuitant shall be entitled to indemnity and reimbursement out of the Fund Property to the full extent of such liability and to the costs of any litigation or other proceedings in which such liability shall have been determined, including, without limitation, the reasonable fees and disbursements of counsel. The rights accruing to a Unitholder or annuitant under this subsection 12.1(d) shall not exclude any other rights to which such Unitholder or annuitant may be lawfully entitled, nor shall anything herein contained restrict the right of the Trustee to indemnify or reimburse a Unitholder or annuitant out of the Fund Property in any appropriate situation even though not specifically provided herein, but, for greater certainty, the Trustee shall have no liability to reimburse Unitholders or annuitants for taxes assessed against them by reason of their ownership of Units, nor for any losses suffered by reason of changes in the market value of investments forming part of the Fund Property.
- (e) The Trustee, its directors, officers, employees and agents shall not be liable to any Unitholder or annuitant for any action taken in good faith in reliance on any documents that are, *prima facie*, properly executed, for any depreciation of, or loss to, the Fund incurred by reason of the retention or sale of any property, for any inaccuracy or omission in any evaluation provided by the Administrator or any other appropriately qualified person, for relying on any such evaluation, for any action or failure to act of the Administrator or ECT, 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, the failure by the Administrator to perform its duties under this Trust Indenture or any material contract, or the act of delegating any powers and duties to the Administrator or ECT in accordance with the terms of this Indenture), unless such liabilities arise from a breach of the Trustee's standard of care as set out in Section 8.4 or the Trustee's or such director's, officer's, employee's or agent's gross negligence, wilful default or fraud (provided, for greater certainty, that for purposes of this provision neither the Administrator, ECT nor any sub-delegate thereof shall be considered an agent of the Trustee).

The Trustee shall be fully protected in acting or failing to act, in good faith, in relation to any matter arising from or relating to this Trust Indenture or any material contract where such action or failure to act is based upon the opinion or advice of or information

obtained from any Expert, provided that the Trustee has satisfied its standard of care in Section 8.4 in selecting such Expert.

12.2 Indemnification of Trustee

The Fund (to the extent of the assets of the Fund) is liable to, and shall indemnify and save harmless the Trustee, its directors, officers, employees and agents, and all of their successors and assigns in respect of:

- (a) any liability and all costs, charges and expenses sustained or incurred in respect of any action, suit or proceeding that is proposed or commenced against the Trustee or against such director, officer, employee or agent, as the case may be, for or in respect of anything done or permitted to be done in respect of the Fund and the execution of all duties, responsibilities, powers and authorities pertaining thereto;
- (b) all other costs, charges, taxes, penalties and interest in respect of unpaid taxes and all other expenses and liabilities sustained or incurred by the Trustee in respect of the administration or termination of the Fund (excluding, however, any and all taxes on any income of the Trustee); and
- (c) any loss, expense, claim, liability or asserted liability (including strict liability and including costs and expenses of abatement and remediation of spills or releases of contaminants and including liabilities of indemnified parties to third parties in respect of bodily injuries, property damage, damage to or impairment of the environment) incurred as a result of the administration of the trust created hereby, or the exercise by the Trustee of any of the rights under this Trust Indenture including, without limitation, those which result from or relate, directly or indirectly, to the presence or release of any contaminants on property which ECT or any affiliate thereof has an interest in or is responsible for, any contaminant present or released from any property contiguous to the property which ECT or any affiliate thereof has an interest in or is responsible for; or the breach or alleged breach of any environmental laws by ECT or an affiliate thereof,

unless any of the foregoing arises from a breach of the Trustee's standard of care as set out in Section 8.4 or the Trustee's or such director's, officer's, employee's or agent's gross negligence, wilful default or fraud, in which case the provisions of this Section 12.2 shall not apply (provided, for greater certainty, that for purposes of this provision neither the Administrator, ECT nor any sub-delegate thereof shall be considered an agent of the Trustee). These indemnities shall survive the termination of the Fund and the resignation or removal of the Trustee.

12.3 Execution of Instruments and Apparent Authority

- (a) Any instrument executed in the name of the Fund or on behalf of the Fund by the Administrator shall constitute and shall be deemed to constitute a valid obligation of the Fund enforceable in accordance with its terms as if executed by the Trustee.
- (b) No purchaser, transfer agent or other person dealing with the Trustee or with any director, officer, employee or agent of the Trustee shall be bound to make any enquiry concerning

the validity of any transaction purporting to be made by the Trustee or by such director, officer, employee or agent or make enquiry concerning, or be liable for, money or property paid, lent or delivered to or on the order of the Trustee or such director, officer, employee or agent. Any person dealing with the Fund in respect of any matters pertaining to the Fund Property and any right, title or interest therein, or pertaining to the Fund or to the Units shall be entitled to rely on a certificate, statutory declaration or resolution executed or certified by the Trustee as to the capacity, power and authority of the Trustee, Administrator, consultant or agent or any other person to act for and on behalf and in the name of the Fund. No person dealing with the Trustee, Administrator, or any consultant or agent of the Fund, shall be bound to see to the application of any funds or property passing into the hands or control of such Trustee, Administrator, consultant or agent of the Fund. The receipt of the Trustee, Administrator, or of authorized consultants or agents of the Fund, for moneys or other consideration, shall be binding upon the Fund.

12.4 Reliance

- (a) The Trustee shall be entitled to rely on statements from, the opinion or advice of, or information from the Auditor, Counsel, valuator, engineer, surveyor, appraiser or other expert whose profession gives authority to a statement made by them on the subject in question (herein “**Experts**”), provided that, with respect to Experts other than the Auditor and Counsel, the Trustee has satisfied its standard of care in Section 8.4 in selecting such Expert.
- (b) The Trustee shall be fully protected from liability in relying in good faith, and where appropriate to do so, upon statements or information from, the opinion or advice of, or instruments or directions given by (i) an officer, director, employee or agent of the Administrator, (ii) a Unitholder, (iii) ECT or any of the ECT Trustees, or (iv) such other parties as may be authorized to give instructions or directions to the Trustee. If required by the Trustee, the Administrator and ECT shall file with the Trustee a certificate of incumbency setting forth the names and titles of parties authorized on behalf of the Administrator and ECT, as applicable, to give instructions or directions to the Trustee, together with specimen signatures of such persons and the Trustee shall be entitled to rely on the latest of such certificates of incumbency filed with it by the Administrator and ECT. The Trustee, the Administrator and ECT shall each be fully protected from liability in acting upon any instrument, certificate or paper believed by it to be genuine and signed or presented by the proper person or persons. For greater certainty, in discharging any duties ascribed to it hereunder, the Trustee shall be entitled to rely upon the statements, advice or opinions referred to in subsection 12.1(e).

12.5 Conditions Precedent to Trustee’s Obligations to Act

The obligation of the Trustee to (i) commence to wind up the affairs of the Trust pursuant to Section 11.2, (ii) commence or continue any act, action or proceeding for the purpose of enforcing the rights of the Trustee, the Fund and of the Unitholders, or (iii) undertake any of those matters referred to in subsection 8.2(cc), shall be conditional upon the Administrator or Unitholders furnishing, when required by notice in writing by the Trustee, sufficient funds to

commence or continue such act, action or proceeding and an indemnity (to the extent sufficient funds for such purpose are not available, or might reasonably be expected not to be available, in the Fund) satisfactory to the Trustee, acting reasonably, to protect and hold harmless the Trustee against the costs, charges and expenses and liabilities to be incurred therein and any loss and damage the Trustee may suffer by reason thereof. None of the provisions contained in this Trust Indenture shall require the Trustee to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties or in the exercise of any of its rights or powers (including, without limitation, those set forth in subsections 8.2(aa), (dd), (ee) and (ff)) unless indemnified as aforesaid.

ARTICLE 13

DELEGATION AND MATTERS PERTAINING TO THE ADMINISTRATOR

13.1 Delegation Permitted to the Administrator and ECT

- (a) Except as expressly prohibited by law, the Trustee may grant or delegate separately to the Administrator and ECT such authority and such powers (including any of those set forth in Section 8.2) as the Trustee may in its sole discretion deem necessary or desirable to carry out and effect the actual administration of the duties of the Trustee under this Trust Indenture, without regard to whether such authority is normally granted or delegated by trustees.
- (b) The Trustee may enter into the Administration Agreement and, subject to Section 8.7, any other contract with the Administrator relating to the Trustees' delegation of its duties hereunder to the Administrator, and pertaining to the Administrator's authority, term of appointment, compensation and any other matters deemed desirable by the Trustee. For further certainty, the Trustee may grant broad discretion to the Administrator to administer and manage the day-to-day operations of the Fund, to act as independent contractor or agent for the Fund, to execute documents on behalf of the Fund and to make executive decisions for and on behalf of the Fund.
- (c) The Trustee may enter into the Fund Delegation Agreement and any other contract with ECT relating to the Trustee's delegation of its duties hereunder to ECT.

13.2 Discretion

Notwithstanding anything contained herein or in any other agreement, and without in any way limiting the authority or obligations of the Administrator herein provided for or as provided for in the Administration Agreement, the discretion of the Trustee to be exercised in Sections 5.4(a), 5.5, 5.7, 5.10, 6.5(a), 6.6 and 9.2(b), (c), (d), (e) and (f) shall be exercised by the Administrator, and any determination as to the necessity for an amendment to this Indenture for the purpose set forth in subsection 9.2(a) shall be made by the Administrator.

13.3 Sub-Delegation

In respect of any delegation by the Trustee of any of its powers and authorities, as permitted hereunder, to any person whomsoever, the Trustee, in its absolute discretion, shall be permitted to authorize a delegate to further sub-delegate any such powers and authorities.

13.4 Liability of Trustee in respect of Delegation

Notwithstanding anything herein contained (including subsection 12.1(e)), the Trustee shall have no liability or responsibility to the Fund, any Unitholder or other person for:

- (a) any act or omission of the Administrator (or sub-delegate thereof), whether hereunder or under the Administration Agreement; and
- (b) any act or omission of ECT (or sub-delegate thereof) under the Fund Delegation Agreement;

and the Trustee, in delegating to and relying upon the Administrator and ECT, or any sub-delegate of either (as the case may be), shall be deemed to have complied with its obligations under Section 8.4 hereof.

13.5 Grant of Power and Authority to Administrator

- (a) The Administrator is hereby granted full and absolute right, power and authority to undertake, perform and provide, for and on behalf of the Fund, all of the Indenture Conferred Duties and to take and do, for and on behalf of the Fund, in connection with the provision of all such Indenture Conferred Duties, all such actions and all such things which the Administrator deems appropriate, in its sole discretion, including the right, power and authority to retain and instruct such appropriate experts or advisors to perform those duties and obligations granted to the Administrator which it is not qualified to perform, to execute and deliver contracts, leases, licenses, and other documents, instruments and agreements, to make all applications and filings with Governing Authorities, and to take such other actions as the Administrator considers appropriate, in the name of and on behalf of the Fund.
- (b) In addition to, and without limiting the generality of, the foregoing, the Administrator is hereby granted or, as applicable, delegated by the Trustee full and absolute right, power and authority and responsibility to act for and behalf of the Fund, to execute documents on behalf of the Fund, and to make executive decisions, subject always to compliance (as applicable) with subsection 8.7(c), for and on behalf of the Fund in connection with the matters referred to in subsections 8.2(ff) and 8.2(gg) hereof.
- (c) In carrying out the duties, responsibilities and services to be provided by the Administrator hereunder, the Administrator may execute, for and on behalf of the Fund, any instrument or document which the Administrator considers appropriate, in its sole discretion. Any such instrument or document shall be executed in accordance with, or substantially in accordance with, the following:

- (i) ENBRIDGE INCOME FUND
By its Administrator, ENBRIDGE MANAGEMENT SERVICES INC.

Per: _____
Authorized Signatory

and

- (ii) in the case of any document required to be executed on behalf of the Fund in connection with a prospectus as follows:

ENBRIDGE INCOME FUND

By: Enbridge Management Services Inc., Administrator of the
Fund

and provide for such signatures as may be required by applicable laws.

13.6 Terms and Conditions Pertaining to Performance of Duties

The term, conditions and limitations applicable in respect to the exercise and performance, by the Administrator, of the Indenture Conferred Duties are set forth in the Administration Agreement and are hereby incorporated herein by reference (which the parties acknowledge shall be effective notwithstanding an execution date for the Administration Agreement which is subsequent to the date of this Indenture) and the parties hereto agree that such terms, conditions and limitations shall apply in all respects to the Administrator in the exercise and performance of the Indenture Conferred Duties as fully as if such rights, restrictions and limitations were set forth herein. The terms, conditions and limitations as contained in this Indenture pertaining to the exercise and performance, by the Administrator, of the Indenture Conferred Duties shall be construed, as far as possible, so as not to conflict with the terms, conditions and limitations contained in the Administration Agreement, however in the case of conflict the terms, conditions and limitations contained in the Administration Agreement shall govern.

13.7 No Partnership or Joint Venture

Neither the Fund, Trustee nor Unitholders are and they shall be deemed not to be partners or joint venturers with the Administrator and nothing herein shall be construed so as to impose any liability as such on the Administrator. The parties agree that the Administrator shall perform the Indenture Conferred Duties as an independent contractor for and on behalf of the Fund (with its duties and obligations in respect thereto as expressly provided for herein and in the Administration Agreement), and it is acknowledged and agreed that only where the Administrator undertakes execution of contracts or other instruments for and on behalf of the Fund may the Administrator then be acting as an agent of the Fund. In no circumstances shall the Administrator be, or be deemed to be, a fiduciary or trustee for any person, whether or not a

party hereto, in connection with the discharge by the Administrator of such Indenture Conferred Duties.

13.8 Affiliate Activities

The Trustee, the Fund and each of the Unitholders hereby acknowledge and agree that:

- (a) Enbridge Inc. and its affiliates and associates, other than the Administrator (collectively, the “**Enbridge Parties**”), may be engaged in, or hereafter become engaged in, any business or activities whatsoever (the “**Permitted Activities**”), and such Permitted Activities may be in competition or conflict with the business carried on by, or the interests of, the Fund or its affiliates and associates and, for further certainty, may involve (A) the provision of services, to any persons whomsoever, which are the same as or similar to those provided to the Fund by the Administrator hereunder or pursuant to the terms of the Administration Agreement, (B) engaging in the business of, or activities pertaining directly or indirectly to, and/or the direct and indirect ownership, management, operation and lease of assets and property in connection with, energy infrastructure (and all activities related thereto), (C) acquiring and otherwise dealing with investments and other direct or indirect rights in persons involved in the business of, or activities pertaining directly or indirectly to, energy infrastructure (and all activities related thereto), and (D) engaging in all activities ancillary or incidental to any of the foregoing; and the Fund hereby expressly consents to the conduct of any and all such Permitted Activities by the Enbridge Parties and agrees that, subject as hereinafter provided in this Section 13.8, nothing herein shall prevent any of the Enbridge Parties, or any of their respective officers, directors, or employees from having business interests or from engaging in any business activities whatsoever even though such business interests or activities may be similar to or competitive with the interests or activities of the Fund or its affiliates or associates, or from rendering services to any other person even though such person may have investment or business interests similar to, or competitive with, those of the Fund or its affiliates or associates;
- (b) In the event that the interests of the Enbridge Parties come into material conflict with those of the Fund or its affiliates or associates with respect to any matter or transaction, the Administrator shall give written notice to the Fund briefly setting forth particulars of such conflict and thereafter, subject to compliance with subsection 8.7(c), ECT, pursuant to the Fund Delegation Agreement, shall be responsible to take all such actions and make all such decisions relating to the matters giving rise to the conflict of interest; and
- (c) Unless otherwise expressly agreed between any of the Enbridge Parties or the Administrator, on the one hand, and the Fund or any of its affiliates or associates, on the other hand, neither the Enbridge Parties nor the Administrator shall be obligated to offer any business opportunities to the Fund or its affiliates or associates.

Notwithstanding the provisions of subsection 13.8(a) above, the Enbridge Parties may not hereafter become engaged in any Permitted Activities if such activities, when objectively viewed (and acting reasonably) as at the time at which such activities are proposed to be engaged in, would constitute, or would be reasonably likely to give rise to, a material adverse change in the

financial affairs of the Fund unless the Fund declined to pursue such activities and they have been, or are reasonably likely to be, undertaken by third parties; provided, however, that nothing in this Section 13.8 or in any other provision herein contained shall prohibit or restrain, or be construed as prohibiting or restraining, any of the Enbridge Parties from continuing to carry-on, be engaged in, and develop any business or activity whatsoever where same is being carried on, engaged in, or developed by any of the Enbridge Parties as at June 23, 2003, irrespective of whether or not such business or activity may be viewed as materially adverse to the business or financial affairs of the Fund.

13.9 Assignment

Concurrent with any assignment by the Administrator of its right, title and interest under the Administration Agreement, the Administrator is hereby required and is authorized to take all requisite action to assign all of its right, title and interest hereunder to the same person to whom the Administrator assigns its rights under the Administration Agreement. Unless otherwise agreed, such assignment shall take place on the same terms and conditions as the assignment of the Administrator's rights under the Administration Agreement, including with respect to the terms of any release of the Administrator with respect to its duties and obligations from and after the date of such assignment. Other than the foregoing, the Administrator shall not sell or assign its interest in this Indenture to a third party without the prior written consent of the Fund, which consent shall not be unreasonably withheld; provided that the Administrator may, without the consent of the Fund, assign or sell its interest in this Indenture to an affiliate.

13.10 Termination of Administrator's Duties

- (a) The Administrator shall continue as a party hereto for the purposes of providing the Indenture Conferred Duties until the earlier of the date of termination of the Fund and such time as the Administrator ceases, in accordance with the terms of the Administration Agreement, to be a party to the Administration Agreement, including through assignment or termination of such agreement, at which time and without any further action required whatsoever on the part of the Fund, the Trustee, the Unitholders or the Administrator, (i) the Administrator shall immediately and unconditionally be deemed to have ceased to be a party hereto (as administrator hereunder) for all purposes and (ii) all obligations and duties of the Administrator hereunder shall immediately and unconditionally terminate and the Administrator shall be deemed to be released from all obligations and duties hereunder from and after such time (except in the case of an assignment to an affiliate of the Administrator, unless otherwise agreed to by the ECT Independent Trustees); provided however that such Administrator shall continue to be entitled to (1) payment of any amounts owing by the Fund to the Administrator which accrued prior to ceasing to be a party hereto, and (2) the benefit of any indemnity and limitation of liability provisions, and other provisions which by their nature continue to have effect or application, whether set out herein or in the Administration Agreement; and further provided that each of the Fund and the Trustee, at the Administrator's cost, shall execute and deliver such further documents and instruments and do all such acts and things as the Administrator may reasonably request in order to effectively carry out, better evidence, give effect to or perfect the intent of this subsection 13.10(a).

- (b) From and after the date upon which the Administrator ceases to be a party hereto (as administrator hereunder), in accordance with the terms of subsection 13.10(a) above, the Fund shall use its best efforts to cause ECT to become obligated and liable in all respects for the exercise and performance of the Administrative Services until such time as the duties are assumed by and transferred to a third party as successor administrator hereunder; and for such purposes, the Fund shall use its best efforts to cause ECT to (i) become a party to and be bound by this Trust Indenture on the same terms and conditions as the Administrator had been so bound, immediately prior to ceasing to be a party hereto, for the purposes of obligating ECT to provide the Indenture Conferred Duties, and (ii) become a party to and be bound by an agreement on the same terms and conditions, in all material respects, as the Administration Agreement. In furtherance of the foregoing, the Fund and the Administrator acknowledge that ECT has agreed to provide, pursuant to the terms of the Administration Agreement, a covenant to fulfil the terms of subsections (i) and (ii) above.

13.11 Lack of Administrator

If there is no administrator, or the Administrator is unable or unwilling to perform its obligations under this Indenture or the Administration Agreement, the Trustee shall be entitled to engage another person that is duly qualified to perform such obligations.

ARTICLE 14 SUPPLEMENTAL INDENTURES

14.1 Provision for Supplemental Indentures

The Trustee may, subject to the provisions hereof, and it 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 Trust Indenture in the circumstances set forth in Article 9 where the Trustee may do so without the consent, approval or ratification of the Unitholders or any other person; and
- (b) modifying or amending any provisions of this Trust Indenture where the modification or amendment has been consented to, approved or ratified by some or all of the Unitholders (as the case may be) to the extent required in accordance with the provisions of this Trust Indenture.

ARTICLE 15 GENERAL

15.1 Notices to Unitholders

- (a) Any notice, communication or other document required to be given or sent to Unitholders under this Trust Indenture or by law, shall be given or sent by personal service or through ordinary post addressed to each registered holder at his or her last address appearing on

the Registers or in any other manner from time to time permitted by applicable law (including Canadian securities legislation), including, without limitation, internet based or other electronic communications; provided that if any such notice or communication shall have been mailed and either prior to or subsequent to such mailing (but prior to delivery of such notice or communication) regular mail service shall have been interrupted by reason of a strike, lockout or other work stoppage, actual or threatened, involving postal employees, 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 further that during the period that regular mail service shall be interrupted, notice may be given by personal service, or by internet based or other electronic communication (provided done so in accordance with all requirements of applicable law, including Canadian securities law), or 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 such notice may be given by publishing twice in the business section of a newspaper in each city where the Register(s) or a branch register is maintained.

- (b) For the avoidance of doubt, in connection with any notice, communication or other documents permitted by applicable law (including Canadian securities law) to be given or sent by internet based or other electronic communication, the requirements of such applicable law (including Canadian securities law) in respect of such delivery shall be complied with in all respects, including where required, receipt by the Fund of the prior consent of the recipient to the delivery of such notice, communication or other document in electronic or other technologically enhanced format.
- (c) Any notice given in the manner provided in subsection 15.1(a) shall be deemed to have been given and delivered (i) in the case of notice given by mail, on the day following that on which the letter or other document was mailed, or (ii) in the case of notice given by publication, after publication of such notice twice in the designated newspaper or newspapers, or (iii) in the case of notice given by internet based or other electronic communication, on the later of (A) the Business Day on which such notice is given and (B) the earliest day and at the earliest time (as applicable) as is permissible in accordance with the law permitting the giving of notice via such internet based or other electronic communication. In proving notice was posted, it shall be sufficient to prove that such letter or other document was properly addressed, stamped and posted.

15.2 Notice to the Trustee

Any notice or other document or written communication to be given to the Trustee shall be addressed to the Trustee and sent to:

CIBC Mellon Trust Company
600, 333 – 7th Avenue S.W.
Calgary, Alberta
T2P 2Z1

Attention: Manager
Facsimile: (403) 264-2100

and shall be deemed to have been given on the date of delivery or, if mailed, five (5) days from the date of mailing or, if sent by facsimile transmission, shall be deemed to have been given on the first Business Day thereafter. If any such notice or communication shall have been mailed and if regular mail service shall be interrupted by reason of a strike, lockout or other work stoppage, actual or threatened, involving postal employees, 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 delivered or given by personal delivery, telegram, telex, facsimile transmission or other means of prepaid, transmitted or recorded communication.

15.3 Failure to Give Notice

The failure by the Trustee, by accident or omission or otherwise unintentionally, to give any Unitholder any notice provided for herein shall not affect the validity, effect or taking effect of any action referred to in such notice, and the Trustee shall not be liable to any Unitholder for any such failure.

15.4 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.

15.5 Service of Notice

Any notice or document delivered to a Unitholder pursuant to this Article shall, notwithstanding the death or bankruptcy of such Unitholder, and whether or not the Trustee has 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 concerned.

15.6 Trust Records

The Trustee shall prepare and maintain or cause to be prepared and maintained records containing (a) this Trust Indenture; (b) minutes of meetings and resolutions of Unitholders; (c) minutes of meetings and resolutions of the Trustee; and (d) the Registers. The Fund shall also prepare and maintain adequate accounting records. All such records shall be kept at the head office of the Fund or at such other place as the Trustee thinks fit and shall at all reasonable times be open to inspection by the Trustee.

15.7 Information Available to Unitholders

- (a) Each Unitholder and, subject to subsection 15.7(c), such holder's respective legal representatives, has the right to obtain, on demand and on payment of reasonable reproduction costs, from the head office of the Fund:
 - (i) a copy of this Trust Indenture and any amendments thereto; and
 - (ii) the minutes of the meetings of Unitholders and any written resolutions of Unitholders passed in lieu of holding a meeting of Unitholders.
- (b) Each Unitholder and, subject to subsection 15.7(c), such holder's respective legal representatives, shall be entitled to inspect and, on payment of a reasonable fee therefor, obtain a list of the Unitholders for purposes connected with the Fund to the same extent and upon the same conditions as those which apply to shareholders of a corporation, governed by the *Canada Business Corporations Act*, who are seeking to examine or obtain a list of shareholders of that corporation.
- (c) The Trustee shall confer with the Administrator prior to releasing or disclosing, to a Unitholder's legal representatives, any of the information or documentation referred to in subsections 15.7(a) and (b) above, and the Administrator, upon its request to such Unitholder's legal representatives, shall be provided with evidence satisfactory to the Administrator (acting reasonably) as to the status of the person desiring to receive or review such information or documentation as a legal representative of such Unitholder.

15.8 Fiscal Year

The fiscal year of the Fund shall end on December 31 of each year.

15.9 Financial Disclosure

The Fund will send to Unitholders:

- (a) within 140 days after the end of each fiscal year and at least 21 days prior to the date of each annual meeting of Unitholders (or within such shorter time as may be required by applicable securities law), the audited annual financial statements of the Fund for the fiscal year ended immediately prior to such annual meeting, together with comparative audited financial statements for the preceding fiscal year, if any, and the report of the Auditors thereon; and
- (b) within 60 days after the end of each fiscal quarter of the Fund (or within such shorter time as may be required by applicable securities law), unaudited quarterly financial statements of the Fund for such fiscal quarter, together with comparative financial statements for the same fiscal quarter in the preceding fiscal year, if any.

Such financial statements shall be prepared in accordance with generally accepted accounting principles in Canada as recommended from time to time in the Handbook of the Canadian Institute of Chartered Accountants; provided that such statements may vary from such

principles to the extent required to comply with applicable securities laws or securities regulatory requirements or to the extent permitted by applicable securities regulatory authorities. The financial statements shall be signed by the Administrator on behalf of the Fund.

15.10 Unitholder Meeting Information

Prior to each meeting of Unitholders, the Trustee will provide to each Unitholder, together with the notice of the meeting:

- (a) a form of proxy which can be used by a Unitholder to appoint a proxy, who need not be a Unitholder, to attend and vote at the meeting on behalf of the Unitholder, in the manner and to the extent authorized by the proxy; and
- (b) all other information required by applicable law.

15.11 Taxation Information

On or before March 31 in each year, or such other date as may be required under applicable law, the Administrator shall cause the Fund to provide to Unitholders who received distributions from the Fund in the prior calendar year, such information and forms as may be needed by such Unitholders in order to complete any tax returns required to be filed by them in respect of the prior calendar year under Section 150 of the Income Tax Act and equivalent provincial and territorial legislation in Canada.

15.12 Income Tax: Obligations of the Trustee

The Trustee shall satisfy, perform and discharge all obligations and responsibilities of the Trustee under the Income Tax Act and neither the Fund nor the Trustee shall be accountable or liable to any Unitholder by reason of any act or acts of the Trustee consistent, or carried out in intended compliance, with any such obligations or responsibilities.

15.13 Qualification of Auditors

The Auditors shall be an independent recognized firm of chartered accountants which has an office in Canada and which are qualified to practice in all provinces and territories of Canada.

15.14 Appointment of Auditors

PricewaterhouseCoopers LLP, Chartered Accountants, are hereby appointed as the initial auditors of the Fund to hold such office until the first annual meeting of Unitholders. The Auditors will be elected at each succeeding annual meeting of Unitholders. The Auditors will receive such remuneration as may be approved by the Trustee.

15.15 Change of Auditors

The Auditors may at any time voluntarily resign or may be removed by the Trustee with the approval of Unitholders by way of Ordinary Resolution at a meeting of Unitholders duly called for the purpose and, upon the resignation or the removal of the Auditors as aforesaid, new

auditors may be appointed by the Trustee in the event of a voluntary resignation and by Ordinary Resolution otherwise.

15.16 Fund Property to be Kept Separate

The Trustee shall maintain the Fund Property separate from all other property in its possession and not commingled, and to the extent that all or part of the Fund Property is placed in the possession of the Administrator or any other person on behalf of the Fund, the Trustee shall take such reasonable steps to ensure that such persons shall also keep such Fund Property separate from all other property of such persons and not commingled.

15.17 Trustee May Not Hold Units

The Trustee may not be a Unitholder, provided, however, that the Trustee may hold Units for the account of its clients generally. For greater certainty and notwithstanding the foregoing, affiliates of the Trustee may be Unitholders.

15.18 Execution and Effect of Restated Trust Indenture

A restated Trust Indenture, setting forth the terms of this Trust Indenture, as amended to the time of execution, may be executed at any time or from time to time by the Trustee and such restated Trust Indenture as so executed shall thereafter be effective and may thereafter be referred to *in lieu* of the original Trust Indenture as so amended; provided, however, that no such execution of a restated Trust Indenture shall be deemed to constitute a termination of the Fund or this Trust Indenture.

15.19 Consolidations

The Trustee may prepare consolidated copies of the Trust Indenture 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 Trust Indenture, as amended or amended and restated.

15.20 Severability

The provisions of this Trust Indenture are severable and if any provisions are in conflict with any applicable law, the conflicting provisions shall be deemed never to have constituted a part of this Trust Indenture and shall not affect or impair any of the remaining provisions thereof. If any provision of this Trust Indenture 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 Trust Indenture in any jurisdiction.

15.21 Successors and Assigns

The provisions of this Trust Indenture shall enure to the benefit of, and be binding upon, the parties and their respective successors and assigns.

15.22 Counterparts

This Trust Indenture 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.

[Rest of Page Left Intentionally Blank]

IN WITNESS WHEREOF this Trust Indenture is executed effective the 17th day of December, 2010.

CIBC MELLON TRUST COMPANY

Per: (signed) "Sandra Evans"
Name: Sandra Evans
Title: Associate Director, Relationship
Management

Per: (signed) "Amanda Jones"
Name: Amanda Jones
Title: Associate Director, Relationship
Management

ENBRIDGE MANAGEMENT SERVICES INC.

Per: (signed) "John K. Whelen"
Name: John K. Whelen
Title: President

Per: (signed) "James E.R. Lord"
Name: James E.R. Lord
Title: Corporate Secretary

SCHEDULE A

To the Trust Indenture of Enbridge Income Fund among CIBC Mellon Trust Company, as trustee, Enbridge Management Services Inc., as settlor and administrator, and each person who is a holder of a Unit, as amended and restated as of December 17, 2010, as the same may be further amended, restated or modified from time to time.

CERTAIN MATTERS REQUIRING THE PRIOR APPROVAL OF THE UNITHOLDERS BY ORDINARY RESOLUTION

The Trustee shall not, without the approval of the Unitholders by Ordinary Resolution, take any of the following actions:

1. Vote the ECT Units with respect to any matter which under the ECT Trust Indenture requires or permits the approval of ECT Units by Ordinary Resolution (as defined therein).
2. Except in the event of a voluntary resignation by the Auditors, appoint or change the Auditors.

SCHEDULE B

To the Trust Indenture of Enbridge Income Fund among CIBC Mellon Trust Company, as trustee, Enbridge Management Services Inc., as settlor and administrator, and each person who is a holder of a Unit, as amended and restated as of December 17, 2010, as the same may be further amended, restated or modified from time to time.

CERTAIN MATTERS REQUIRING THE PRIOR APPROVAL OF THE UNITHOLDERS BY SPECIAL RESOLUTION

The Trustee shall not, without the approval of the Unitholders by Special Resolution, take any of the following actions:

1. Vote the ECT Units with respect to any matter which under the ECT Trust Indenture requires or permits the approval of ECT Units by Special Resolution (as defined therein).
2. Amend this Trust Indenture except as permitted in Article 9.
3. Sell, lease or exchange all or substantially all of the property of the Fund, other than (i) in the ordinary course of business, (ii) *in specie* redemptions permitted hereunder, or (iii) in order to acquire the ECT Units and ECT Notes in connection with pursuing the purposes of the Fund.
4. Authorize the termination, liquidation or winding up of the Fund, other than in the circumstances set forth in Section 11.1.
5. Authorize the combination or merger or similar transaction between the Fund and any other person that is not an affiliate or associate of the Fund if, following such transaction, the holders (or affiliates thereof) of equity interests in such other person (such holders being determined immediately prior to the entering into of such combination, merger or similar transaction) hold, directly or indirectly, more than 50% of the outstanding voting rights attributable to securities of the issuer which results from such combination, merger or other transaction.

SCHEDULE C

To the Trust Indenture of Enbridge Income Fund among CIBC Mellon Trust Company, as trustee, Enbridge Management Services Inc., as settlor and administrator, and each person who is a holder of a Unit, as amended and restated as of December 17, 2010, as the same may be further amended, restated or modified from time to time.

[FORM OF TRUST UNIT CERTIFICATE]

ORDINARY UNITS

ENBRIDGE INCOME FUND

(an unincorporated trust created under the laws of the Province of Alberta by a trust indenture dated as of May 22, 2003 as amended and restated as of June 30, 2003, as further amended and restated as of August 18, 2003, again as of May 1, 2006 and again as of December 17, 2010 as the same may be further amended)

No. TU-●

●
Ordinary Units

THIS CERTIFIES THAT

●

is the registered holder of ● fully paid ordinary units (“Ordinary Units”) issued by Enbridge Income Fund (the “Fund”).

The Ordinary Units represented by this unit certificate (“Unit Certificate”) are issued upon the terms and subject to the conditions of a trust indenture amended and restated as of December 17, 2010, as the same may be further amended (which indenture together with all other instruments supplemental or ancillary thereto is herein referred to as the “Trust Indenture”), made among CIBC Mellon Trust Company (the “Trustee”), Enbridge Management Services Inc. (the “Administrator”) and each person who is a holder of a Unit, which Trust Indenture is binding upon all holders of Ordinary Units (“Unitholders”) from time to time and, by acceptance of this Unit Certificate, the holder agrees to the terms and conditions of the Trust Indenture. Terms defined in the Trust Indenture shall have the same meaning when used herein.

A copy of the Trust Indenture pursuant to which this Unit Certificate and the Ordinary Units represented hereby is issued may be obtained by any Unitholder on demand and on payment of reasonable reproduction costs from the head office of the Administrator.

This Unit Certificate may only be transferred, upon compliance with the conditions prescribed in the Trust Indenture, on the registers to be kept at the office of the Trustee in the City of Calgary and at such other place or places, if any, as the Trustee may request and the Transfer Agent has offices, and only by the registered holder thereof or his executors or administrators or other legal representatives or his or their attorney duly appointed by an instrument in writing in form and execution satisfactory to the Trustee, and upon compliance with such reasonable requirements as the Trustee may prescribe.

The Trust Indenture provides that unless expressly consented to by the Administrator, at no time may a “designated beneficiary” (within the meaning of Part XII.2 of the Income Tax Act (Canada)) (a “Prohibited Person”) be the beneficial owner of any Units. If the Administrator determines that the beneficial owners of any Units is a Prohibited Person, the Trustee on the direction of the Administrator may deliver to the Prohibited Person a written notice (the “Divestiture Notice”) requiring that the Prohibited Person sell such Units within a specified period, to be determined solely by the Administrator, and in the interim, the Prohibited Person shall have no right to vote or receive distributions on such Units. Upon such sale, the Prohibited Person thereby affected shall be deemed to cease to be a holder of such Units and its rights in respect of such Units shall be limited to receiving the net proceeds of sale of such Units and to receiving any distributions in respect of such Units that the Prohibited Person is entitled to receive where such distributions have been declared payable to holders of Units as of a record date which is prior to the date on which the Trustee delivered the Divestiture Notice to the Prohibited Person.

The Trust Indenture contains provisions for the holding of meetings of Unitholders and the approval of written resolutions by Unitholders in lieu of meetings.

The Trust Indenture provides that no Unitholder, or annuitant, subscriber or beneficiary under a plan of which a Unitholder acts as trustee or carrier, shall incur or be subject to any liability in contract or in tort or of any other kind whatsoever to any person in connection with the Fund Property or the obligations or the affairs of the Fund or with respect to any act performed by the Trustee or by any other person pursuant to the Trust Indenture or with respect to any act or omission of the Trustee or any other person in the performance or exercise, or purported performance or exercise, of any obligation, power, discretion or authority conferred upon the Trustee or such other person under the Trust Indenture or with respect to any transaction entered into by the Trustee or by any other person pursuant to the Trust Indenture.

The Trust Indenture provides that Ordinary Units shall be issued only as fully paid and are not to be subject to future calls or assessments, except that Ordinary Units under any offering may be issued for a consideration payable in instalments and the Fund may take security over any Ordinary Unit issued under such offering as security for unpaid instalments.

This Unit Certificate shall not be valid for any purpose until it shall have been executed by or on behalf of the Trustee and certified by the Transfer Agent under the Trust Indenture.

Executed and delivered

●, 20●

ENBRIDGE INCOME FUND, by its administrator, Enbridge Management Services Inc., on behalf of the Trustee

Per: _____
Name:
Title:

This Unit Certificate is one of the Unit Certificates referred to in the Trust Indenture within mentioned and is certified by CIBC Mellon Trust Company, as Transfer Agent.

CIBC MELLON TRUST COMPANY

Per: _____
Authorized Signatory

TRANSFER FORM

For Value Received the undersigned sells, assigns and transfers unto

(please print or typewrite name and address of assignee)

_____ Ordinary Units of Enbridge Income Fund represented by this Unit Certificate and hereby irrevocably constitutes and appoints the Trustee as its attorney to transfer the said Ordinary Units on the registers of the Trustee for the said purpose, with full power of substitution in the premises.

Dated _____

The signature of the registered holder must be guaranteed by an authorized officer of a Canadian chartered bank or of a major Canadian trust company, or by a medallion signature guarantee from a member of a recognized Medallion Signature Guarantee Program.

(Signature of Transferor)