

## LINCLUDEN RETIREMENT INCOME FUND DECLARATION OF TRUST

CIBC Mellon Trust Company (the “Trustee”), a trust company incorporated under the laws of Canada, hereby agrees to act as trustee for a Lincluden Retirement Income Fund established by the annuitant (the “Annuitant”) named in the application form on the reverse hereof (the “Application”) and promoted by Lincluden Management Limited (“Lincluden”), in accordance with the terms hereof and with the terms of the Application which together shall constitute and hereafter be referred to as the “Fund”, on the following terms and conditions:

**1. REGISTRATION:** The Trustee will apply to register the Fund under the provisions of the *Income Tax Act* (Canada) (“Tax Act”) and, if applicable, the income tax legislation of the province indicated in the Annuitant’s address on the Application (collectively, the “Applicable Tax Legislation”).

**2. COMPLIANCE:** The provisions of the Fund shall at all times comply with registration requirements under the Applicable Tax Legislation with respect to retirement income funds.

**3. TRUST PROPERTY:** All amounts transferred or otherwise paid into the Fund, together with all income and capital gains earned or realized in respect thereof, shall be held by the Trustee in trust and invested and reinvested in accordance with the terms hereof. All such amounts from time to time shall together comprise “the assets of the Fund” at such time for the purposes hereof. For greater certainty, the arrangement created by the Fund shall be a trust for purposes of the Applicable Tax Legislation.

**4. ACCEPTANCE OF PROPERTY IN THE FUND:** Amounts may be transferred to the Fund in such manner and from such sources as are permitted from time to time under the Applicable Tax Legislation. Except as otherwise permitted under the Applicable Tax Legislation, the Trustee shall not accept property as consideration under the Fund unless the property is transferred from:

- a) a “registered retirement savings plan” under which the Annuitant is the “annuitant”, as such terms are defined in the Applicable Tax Legislation;
- b) another “registered retirement income fund” under which the Annuitant is the “annuitant”, as such terms are defined in the Applicable Tax Legislation;
- c) the Annuitant to the extent only that the amount of the consideration was an amount described in subparagraph 60(1)(v) of the Tax Act or the applicable successor provisions thereof;
- d) a “registered retirement savings plan” or “registered retirement income fund” of the Spouse or former Spouse under a decree, order or judgment of a competent tribunal or under a written separation agreement, relating to a division of property between the Spouse or former Spouse and the Annuitant in settlement of rights arising out of, or on the breakdown of, their marriage or relationship; or
- e) a registered pension plan or other pension plan in the circumstances permitted by subparagraphs 146.3(2)(f)(v), (vi) and (vii) under the Tax Act.

**5. INVESTMENTS:** The Trustee shall invest and reinvest the assets of the Fund in any investments which are available for investment to the Lincluden Retirement Income Fund, as designated by the Annuitant in the Application or as otherwise instructed by the Annuitant to the Trustee in a manner (whether verbally, by electronic means or otherwise) acceptable to the Trustee. In the absence of such

designation or receipt by the Trustee of such instructions, the Trustee may invest uninvested assets (including cash) of the Fund in such deposit accounts or investments (which may, but need not, be interest-bearing and which may include an account with the Trustee) in proportion to the investments then held in the Fund. For greater certainty, the Annuitant acknowledges that the Trustee will have no obligation whatsoever to invest uninvested assets of the Fund together with uninvested assets of any other plans or funds.

The Trustee may retain any cash balances in the Fund in its deposit department or in the deposit department of one of the Trustee’s Affiliates; but the Trustee and its Affiliates shall not be liable to account for any profit to any person other than at a rate, if any, established from time to time by the Trustee or its Affiliates. The rate of interest is 0%, unless otherwise notified. For the purposes of this Section 5, “Affiliate” means affiliated companies within the meaning of the *Business Corporations Act* (Ontario) (“OBCA”); and includes Canadian Imperial Bank of Commerce, CIBC Mellon Global Securities Services Company and The Bank of New York Mellon and each of their affiliates within the meaning of the OBCA.

With respect to investments in units of any investment fund held in the Fund, in the absence of instructions from the Annuitant to the contrary, the Trustee shall invest amounts distributed by such investment fund in respect of such units in additional units of the same type or class of such investment fund.

Notwithstanding anything herein to the contrary, the Annuitant alone shall be responsible for ensuring that investments made by the Fund are “qualified investments” for registered retirement income funds for tax purposes. The Trustee’s obligation relating to the investment of the assets in the Fund shall be limited to registering the investments of such assets in its own name, in the name of a custodian or a nominee, in bearer form or in such other name or manner as the Trustee may determine, and generally exercising all powers or rights of an owner with respect thereof, and to pay any assessment, taxes or charges in connection therewith or the income or gains derived therefrom.

**6. ANNUITANT’S ACCOUNT:** An account or accounts will be maintained by the Trustee in the name of the Annuitant which will record information regarding all transactions of the Fund, including expenses and other amounts charged to the Fund. The Trustee shall provide to the Annuitant at least annually a statement of such account or accounts showing, for such year, the assets, earnings and expenses of the Fund, the value of assets of the Fund and such other information as the Trustee, in its sole discretion, may determine.

**7. INCOME TAX INFORMATION:** In each year, the Trustee shall furnish the Annuitant with such information regarding amounts transferred to or paid from the Fund and other transactions of the Fund as is required to be provided under the Applicable Tax Legislation to enable the Annuitant and, where applicable, the Spouse to complete their respective income tax returns.

**8. RETIREMENT INCOME:** In consideration of the transfer to the Trustee, in trust, of property pursuant to Section 4, the Trustee undertakes to pay to the Annuitant and, where the Annuitant so elects, to the Spouse after the death of the Annuitant in each year that begins not later than the first calendar year after the year in which the Fund was established, one or more amounts the total of which is not less than the “minimum amount” under the Fund for the year (as hereinafter defined) and not greater than such maximum amounts as

may apply to payments out of the Fund under applicable laws, but the amount of any such payment shall not exceed the value of the assets of the Fund immediately before the time of payment.

The "minimum amount" under the Fund for the year in which the Fund is established is nil. Except as otherwise provided under the Applicable Tax Legislation, for each subsequent year, the minimum amount under the Fund means the product obtained when the value of the assets of the Fund at the beginning of the year is multiplied by the applicable "prescribed amount" under the Tax Act.

The amount and frequency of the payment or payments to be made by the Trustee under this Section 8 in respect of any calendar year shall be specified in writing by the Annuitant on the Application or on such other form as the Trustee may provide for this purpose from time to time. The Annuitant may change the amount and frequency of such payment or payments or request additional payments by instructing the Trustee to this effect in writing on such form as the Trustee may provide for this purpose from time to time. If the Annuitant does not specify the payment or payments to be made in a year, or if the payment or payments specified by the Annuitant for a year are less than the minimum amount under the Fund for the year, the Trustee shall make such payment or payments to the Annuitant as it deems necessary so that the minimum amount for the year is paid from the Fund for the year. If the payment or payments specified for the Annuitant are greater than the maximum amount permitted to be paid out of the Fund under Applicable Tax Legislation in the year, the Trustee shall make such payment or payments to the Annuitant as it deems necessary so that the maximum amount so permitted is paid from the Fund for the year.

The Trustee will notify the Annuitant in writing, at such time or times and in such form as the Trustee deems appropriate, of the approximate value of the Fund and of the approximate amount of monies required to make any such payment or payments in accordance with this Section 8 so that the Annuitant may instruct the Trustee as to which assets of the Fund the Annuitant wishes to dispose of in order that such payment or payments may be made by the Trustee. If the Annuitant fails to so instruct the Trustee within thirty (30) days after the Trustee has provided such written notice to the Annuitant, the Trustee shall dispose of such properties held in the Fund in proportion to the investments in the Fund.

An election by the Annuitant to base the "minimum amount" on the age of the Spouse cannot be changed, revoked or amended once a payment is made to the Annuitant out of the Fund, even if the Spouse dies or the Annuitant and the Spouse are separated or cease to be married or relationship.

The Trustee shall not borrow or obtain otherwise than from cash or securities of the Fund the funds necessary to make such payments. Except as the Trustee may otherwise permit, payments from the Fund shall be made in cash only. Each payment from the Fund shall be deemed to have been made by the Trustee to the Annuitant when the Trustee mails a cheque payable to the Annuitant or otherwise makes the payment by notice thereof in a postage prepaid envelope addressed to the Annuitant at the address indicated in the Application or at such other address as may be furnished by the Annuitant to the Trustee in writing or when the Trustee electronically transfers the amount of the payments to the credit of the Annuitant's bank account designated by the Annuitant on the Application or otherwise in writing in the form required by the Trustee.

**9. FUND TRANSFERS:** At the written direction of the Annuitant in a form satisfactory to the Trustee, the Trustee shall, in the form and manner prescribed by the Applicable Tax Legislation, transfer all or part of the assets of the Fund or an amount equal to the value thereof at the time of such direction, less (i) any fees or charges applicable or outstanding hereunder; and (ii) an amount sufficient to ensure that the "minimum amount" under the Fund for the year in which the

transfer is made is paid to the Annuitant by the Trustee in the year; together with all information necessary for the continuance of the Fund, to any person who has agreed to be a carrier of another registered retirement income fund of the Annuitant. Such transfer shall take effect in accordance with applicable laws and within a reasonable time after all forms required by law and by the Trustee to be completed in respect of such transfer have been completed and forwarded to the Trustee. Upon such transfer, the Trustee shall be subject to no further liability or duty to the Annuitant with respect to the value of the Fund, or the portion thereof, so transferred, as the case may be.

If only a portion of the assets of the Fund is transferred in accordance with the foregoing paragraph, the Annuitant may specify in the aforementioned written direction which assets the Annuitant wishes to so transfer, or which assets the Annuitant wishes to dispose of in order to effect such transfer, failing which the Trustee shall transfer or dispose of such assets of the Fund in proportion to the investments in the Fund.

The Trustee shall transfer from the Fund to a registered retirement income fund or registered retirement savings plan of the Spouse or former Spouse an amount under a decree, order or judgment of a competent tribunal, or under a written separate agreement relating to a division of property between the Annuitant and the Spouse or former Spouse in settlement of rights arising out of, or on the breakdown of, their marriage or relationship.

**10.DEATH OF ANNUITANT:** Upon receiving evidence satisfactory to the Trustee of the death of the Annuitant, the Trustee shall, upon receipt of such documentation as it may reasonably require and subject to the requirements of the Applicable Tax Legislation, continue payment of retirement income to the successor Annuitant designated by the Annuitant in accordance with Section 11, or, if there is no successor Annuitant (or if the successor Annuitant predeceases the Annuitant), shall forthwith realize the assets of the Fund and pay over the proceeds of such realization (net of any applicable costs and charges, including any applicable taxes) in a lump sum to the beneficiary designated by the Annuitant in accordance with Section 11 or, if no such beneficiary has been designated or the designated beneficiary has predeceased the Annuitant, to the Annuitant's personal representatives. In either case, no such payment shall be made by the Trustee hereunder until the Trustee has been furnished with such releases and other documents as may be required by the Trustee.

**11.DESIGNATION OF SUCCESSOR ANNUITANT OR BENEFICIARY:** Subject to applicable law, the Annuitant may at any time and from time to time designate the Spouse to be the successor Annuitant under the Fund in accordance with the Applicable Tax Legislation. Alternatively, the Annuitant may at any time and from time to time designate one or more beneficiaries to receive the assets payable under the Fund in the event of the Annuitant's death subject to applicable laws. Subject to applicable law, each such designation may only be made, changed or revoked by a written instrument in form reasonably acceptable to the Trustee (including a will or codicil) which adequately identifies the Fund and has been signed by the Annuitant. The instrument or evidence thereof acceptable to the Trustee shall not be effective prior to the time it is filed with the Trustee at the office of the Trustee from time to time specified by it prior to the payment of any benefits under the Fund. If more than one such instrument has been so filed with the Trustee, the Trustee shall make payment only in accordance with the instrument bearing the latest execution date. The Annuitant is solely responsible for ensuring that any designation of beneficiary is effective under Applicable Tax Legislation.

**12. OWNERSHIP AND VOTING RIGHTS:** Title to all assets of the Fund shall at all times be vested solely in the Trustee in trust to be held in accordance with the terms hereof., The Annuitant may, by written notice received by the Trustee at least forty-eight (48) hours prior to any securityholders' meeting, request the Trustee to authorize the Annuitant to act as the Trustee's representative for the purpose of exercising the voting rights attached to any securities in the Fund registered in the name of the Trustee, at any meeting of securityholders, whereupon the Trustee shall give such authorization to the Annuitant. In the absence of such written direction, the securities in the Fund shall not be voted.

**13. DELEGATION BY THE TRUSTEE:** The Trustee shall be ultimately responsible for the administration of the Fund. The Annuitant expressly authorizes the Trustee to delegate to **Lincluden Management Limited**, its successors and assigns, (the "Agent") as agent of the Trustee (with power to delegate any of its powers, authorities or duties) such powers, authorities and duties under the Fund as the Trustee may determine from time to time. Without limiting the generality of the foregoing, the Trustee may delegate to the Agent the performance of the following:

- a) receiving, investing, reinvesting and disposing of the assets of the Fund in accordance with the terms hereof;
- b) determining the form of instructions or elections to be provided or made by the Annuitant hereunder, including as regards the investment, reinvestment and disposition of assets of the Fund and receiving and implementing such instructions and elections;
- c) maintaining the Fund records and accounting properly to the Annuitant for all assets of the Fund;
- d) preparing any forms required by the Applicable Tax Legislation;
- e) determining the amount and manner of payment of fees and charges payable hereunder from time to time and receiving, collecting and disbursing all such fees and charges;
- f) making payments to the Annuitant in accordance with the terms hereof;
- g) performing valuations of the assets of the Fund from time to time in accordance with the terms hereof; and
- h) such other duties under the Fund as the Trustee in its sole discretion may determine.

The Agent is not the Trustee's agent with respect to any other matters, and in particular, is not the Trustee's agent with respect to the investment or reinvestment of the assets of the Fund. The Trustee reserves the right to revoke the appointment of the Agent as its agent hereunder at any time and will notify the Annuitant of any such revocation. The Trustee shall not be liable for the acts or omissions of any of its agents or advisors. The Agent may be compensated for its services hereunder out of the fees and charges payable pursuant to Section 14.

**14. FEES:** The Trustee shall be entitled to such reasonable compensation and administrative charges for its services hereunder as may be established by it from time to time and to reimbursement for all disbursements and expenses (including taxes) reasonably incurred by it or by the Agent in the performance of its duties hereunder chargeable at March 1 annually. The Trustee shall also be entitled to a reasonable fee (established by it from time to time) for any exceptional services performed by it (including the exercise of any discretion required to be exercised) hereunder, commensurate with the time and responsibility involved.

All compensation, charges and reimbursements of the Trustee applicable hereunder shall be charged against and deducted by the Trustee from the assets of the Fund and the Trustee may realize any assets of the Fund in proportion to the investments in the Fund for the purpose of paying such amounts. Alternatively, the Trustee may permit the Annuitant to pay such amounts personally in such

circumstances as the Trustee may determine from time to time. The Annuitant authorizes the Trustee to, and the Trustee may pay the Agent all or a portion of the fees, charges and reimbursements paid by the Annuitant to the Trustee under the Fund.

If these fees apply to the Annuitant, the Annuitant shall be provided with a notice of these fees and shall be given at least thirty (30) days' prior written notice of a change, from time to time, in the amount of these fees.

**15. AMENDMENTS:** The Trustee may from time to time at its discretion, with the written consent of the Agent, such consent not to be unreasonably withheld or delayed, amend the Fund with, if required, the concurrence of the authorities administering the Applicable Tax Legislation and, except as otherwise provided herein, by giving sixty (60) days' notice in writing to the Annuitant; provided, however, that any such amendments shall not have the effect of disqualifying the Fund as a "registered retirement income fund" within the meaning of the Applicable Tax Legislation, unless such amendment or revision is necessary for the Fund to be in compliance with the Applicable Tax Legislation.

**16. NOTICE:** Any notice to be given to the Trustee hereunder shall be given to the Agent, unless the Trustee has notified the Annuitant of the revocation of the appointment of the Agent, and any such notice shall be sufficiently given if delivered personally or mailed, postage prepaid, addressed to the office of the Agent, where the Fund is administered or at such other address as the Trustee may specify from time to time in writing and shall be deemed to have been given on the day that such notice is in fact received by the Agent. When corresponding with the Trustee, the Annuitant must put the name of the investment fund and his name on all correspondence. Any notice, statement or receipt given by the Trustee to the Annuitant or the Spouse shall be sufficiently given if delivered personally or mailed, postage prepaid, and addressed to such Annuitant or the Spouse at the address of the Annuitant set out in the Application unless the Annuitant has notified the Trustee of a new address, in which case notice shall be addressed to the Annuitant at the last address for such purpose so known to the Trustee, and such notice shall be deemed to have been given at the earlier of the time of delivery or on the day of mailing.

**17. LIABILITY OF THE TRUSTEE:** Any amounts payable under the Fund to the Annuitant or to any beneficiary under the Fund shall be payable only from the assets held in the Fund and the Trustee shall have no other liability or obligation with respect to the payment of such amounts. Notwithstanding any other provisions hereof, the Trustee (including, for greater certainty, the Agent) will not be liable in its personal capacity for or in respect of:

- a) any taxes, interest or penalties which may be imposed on the Trustee in respect of the Fund under the Applicable Tax Legislation (whether by way of assessment, reassessment or otherwise) or for any other charges levied or imposed by any governmental authority upon or in respect of the Fund, as a result of the purchase, sale or retention of any investment including, without limiting the generality of the foregoing, non-qualified investments and the Trustee may reimburse itself for, or may pay, any such taxes, interest, penalties or other charges out of the capital or the income, or partly out of the capital and partly out of the income, of the Fund as it in its absolute discretion deems expedient (and, for greater certainty, the Trustee may realize upon such assets of the Fund as it may determine in its sole discretion for purposes of paying any such amounts); or
- b) any loss suffered or incurred by the Fund, the Annuitant, any beneficiary under the Fund or other person having an interest in the assets of the Fund, caused by or resulting from: (i) any

purchase, sale or retention of any investment or any payment made from the Fund, (ii) the Trustee acting or declining to act upon instructions given to it, whether by the Annuitant, a person designated by the Annuitant as described in Section 22 or any person purporting to be the Annuitant or such designated person or (iii) any thing done or omitted to be done by the Trustee unless caused by or as a result of the Trustee's dishonesty, bad faith, wilful misconduct, gross negligence or reckless disregard.

The Annuitant, his legal personal representatives and each beneficiary under the Fund will at all times indemnify and save harmless the Trustee and the Agent in respect of any taxes, interest, penalties or other governmental charges which may be levied or imposed on the Trustee in respect of the Fund or any losses incurred by the Fund (other than losses for which the Trustee (including, for greater certainty, the Agent) is liable in accordance herewith) as a result of the acquisition, retention, disposition or transfer of any investment or as a result of payments or distributions out of the Fund made in accordance with these terms and conditions or as a result of the Trustee acting or declining to act upon any instructions given to it, whether by the Annuitant, a person designated by the Annuitant as described in Section 22 or any person purporting to be the Annuitant or such designated person.

**18.PROOF OF AGE:** The statement of the Annuitant's date of birth and Social Insurance Number and, where applicable, of the date of birth and Social Insurance Number of the Spouse, on the Application shall constitute a certification by the Annuitant and an undertaking to furnish such further evidence of proof of age as may be required for the provision of a retirement income as outlined in Section 8.

**19.VALUATION:** The assets of the Fund shall be valued by the Trustee from time to time in accordance with applicable industry practices and such valuation shall conclusively establish the value thereof at the time at which such valuation is made and shall be binding upon all parties interested in the Fund.

**20.PROHIBITIONS:** Except as otherwise permitted under the Applicable Tax Legislation from time to time:

- a) no benefit or loan that is conditional in any way on the existence of the Fund may be extended to the Annuitant or to a person with whom the Annuitant is not dealing at arm's length, other than benefits or loans which may be permitted from time to time under the Applicable Tax Legislation;
- b) the Trustee will not make any payments hereunder except those described in Sections 8, 9 and 10; and
- c) the payments from the Fund may not be assigned in whole or in part.

**21.REPLACEMENT OF TRUSTEE:** The Trustee, upon giving the Agent at least ninety (90) days' written notice, may resign and the Agent, upon giving the Trustee at least ninety (90) days' written notice or such shorter period of notice as the Trustee may accept or immediately if the Trustee is for any reason incapable of acting as trustee hereunder, may remove the Trustee as the Trustee of the Fund, provided that a successor trustee has been appointed in writing. The Trustee will appoint the successor trustee designated by the Agent but, if the Agent fails to designate a successor trustee within sixty (60) days after it has received notice of the Trustee's intended resignation, the Trustee may designate its successor trustee. Such successor trustee shall within ninety (90) days of its appointment, give written notice of its appointment to the Annuitant. A successor trustee shall have the same power, rights and obligations as the Trustee. The Trustee shall execute and deliver to the successor trustee all conveyances, transfers and further assurances as may be necessary or desirable to give effect to the appointment of the

successor trustee provided, however, that no assets of the Fund shall be transferred to the successor trustee until the Fund has been amended for the appointment of the successor trustee and, the Fund, as amended, complies with Applicable Tax Legislation. Any successor trustee shall be a corporation resident in Canada and authorized under the laws of the province of residence of the Annuitant indicated in the Application of the Annuitant to carry out its duties and responsibilities as trustee under the Fund.

**22.INSTRUCTIONS:** The Trustee shall be entitled to rely upon instructions received by it from the Annuitant, any other person designated by the Annuitant in writing to the Trustee and any person purporting to be the Annuitant or such designated person. The Annuitant hereby so designates the registered sales representative named on the Application and any registered sales representative whose name is recorded on a fund account, for so long as the name of the representative is so recorded. The Trustee may decline to act upon any verbal or electronically transmitted instruction if it has any doubt that such instruction has been properly authorized or accurately transmitted.

**23.ENTIRE AGREEMENT:** The Application and the terms and conditions of this Declaration of Trust and, if applicable, the Addendum shall constitute the entire agreement between the Annuitant and the Trustee with respect to the Fund.

**24.PRIVACY AND COMPLAINTS:** The Trustee will collect, use and disclose personal information to establish and service the Fund, as required or permitted by law and as disclosed in the Trustee's Privacy Policy. The Trustee may, from time to time, disclose or transfer personal information given to it by the Annuitant to the Agent. By applying for the Fund, the Annuitant is consenting to these collections, uses and disclosures. The Trustee's Privacy Policy is available on request from any of the Trustee's office.

If the Annuitant has a concern or complaint, please refer to the Contact Us section of the Trustee's website (which is [www.cibcmellon.com](http://www.cibcmellon.com)) for a list of departments that can assist the Annuitant.

**25.GOVERNING LAW:** The Fund shall be governed by and interpreted in accordance with the laws of the Province of Ontario, the Tax Act and any other laws of Canada applicable therein and all provisions hereof shall be administered according to such laws. The term "Spouse" as used in this Declaration of Trust and the Application means the Annuitant's spouse and has the same meaning as provided in the Tax Act and shall include common-law partner as defined under subsection 248(1) of the Tax Act.

**26.ENGLISH LANGUAGE:** The parties hereto have requested that the Fund be established in English - les parties on demandé que le fonds soit rédigé en anglais.

**CIBC MELLON TRUST COMPANY**

Per: 

Revised: October 2, 2009