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Headnote

Mutual Reliance Review System for Exemptive Relief Application – relief granted from continuous disclosure requirements for an exchangeable share issuer whose securities are exchangeable for units of a REIT

Applicable British Columbia Provisions

Securities Act, R.S.B.C.1996, c. 418, ss. 85(1), 91, 117 and 119

Securities Rules, B.C. Reg. 194/97, ss. 144, 145, 149 and 184

National Instrument 51-102 *Continuous Disclosure Obligations*, s. 13.1

IN THE MATTER OF THE SECURITIES LEGISLATION OF ALBERTA, BRITISH COLUMBIA, SASKATCHEWAN, AND NEW BRUNSWICK

AND

IN THE MATTER OF THE MUTUAL RELIANCE REVIEW SYSTEM FOR EXEMPTIVE RELIEF APPLICATIONS

AND

IN THE MATTER OF BOARDWALK REAL ESTATE INVESTMENT TRUST AND BOARDWALK REIT LIMITED PARTNERSHIP

MRRS DECISION DOCUMENT

1. WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of Alberta, British Columbia, Saskatchewan, and New Brunswick (the “Jurisdictions”) has received an application from Boardwalk Real Estate Investment Trust (“Boardwalk REIT”) and Boardwalk REIT Limited Partnership (the “Partnership” and collectively, the “Applicants”) for a decision under the securities legislation of the Jurisdictions (the “Legislation”) that the requirements contained in the Legislation for a reporting issuer or the equivalent to issue a press release and file a report with the Decision Makers upon the occurrence of a material change (the “Material Change Reporting Requirements”), file and deliver an annual report, where applicable, interim and annual financial statements and management’s discussion and analysis of financial conditions and results of operations, information circulars, file annual information forms and otherwise comply with the provisions of National Instrument 51-102 (“NI 51-102”) (collectively, the “Continuous Disclosure Requirements”) and to prepare and file a certification of annual filings and interim filings pursuant to Multilateral Instrument 52-109 (the “Certification Requirement”), shall not apply to the

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Partnership in Alberta, British Columbia (excluding the Certification Requirement), Saskatchewan, and New Brunswick;

2. AND WHEREAS pursuant to the Mutual Reliance Review System for Exemptive Relief Applications (the “System”) the Alberta Securities Commission is the principal regulator for this application;
3. AND WHEREAS, unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101 Definitions;
4. AND WHEREAS the Applicants have represented to the Decision Makers that:
 - 4.1 BPCC Holdings Inc. (“Boardwalk”) is a corporation existing under the laws of the Province of Alberta.
 - 4.2 Boardwalk was, until completion of a Plan of Arrangement (the “Plan of Arrangement”) pursuant to Section 193 of the *Business Corporations Act* (Alberta) (the “ABCA”) on May 3, 2004 (the “Effective Date”), a customer-oriented real estate company specializing in the acquisition, refurbishment, management and ownership of multi-family residential communities within Canada.
 - 4.3 Boardwalk is authorized to issue an unlimited number of common shares (“Common Shares”) and an unlimited number of preferred shares (“Preferred Shares”).
 - 4.4 The Common Shares were, until the completion of the Plan of Arrangement, listed on the Toronto Stock Exchange (the “TSX”) and the New York Stock Exchange (the “NYSE”) under the symbol “BEI”. Concurrently with the completion of the Plan of Arrangement the Common Shares were delisted from the TSX and the trust units (“REIT Units”) of Boardwalk REIT substitutionally listed on the TSX in their place. The Common Shares were delisted from the NYSE on February 23, 2004.
 - 4.5 Boardwalk was, prior to the Plan of Arrangement, and remains, a reporting issuer or the equivalent under the laws of all of the provinces of Canada and is not in default of the securities laws of such provinces except in respect of the period subsequent to the completion of the Plan of Arrangement. Boardwalk has made application to the securities regulatory authorities in all of the provinces of Canada to cease to be a reporting issuer.

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- 4.6 Boardwalk REIT is an unincorporated, open-ended real estate investment trust created by a declaration of trust dated January 9, 2004, as amended and restated on May 3, 2004 (the “Declaration of Trust”), and governed by the laws of the Province of Alberta. The head office of Boardwalk REIT is in Calgary, Alberta.
- 4.7 Boardwalk REIT became a reporting issuer in each of the provinces of Canada where such a concept exists upon completion of the Plan of Arrangement, both pursuant to applicable legislation and, where such legislation did not so provide, pursuant to applications for a declaration as to such status. Boardwalk REIT is not in default of the applicable securities legislation in all of the provinces of Canada.
- 4.8 The Declaration of Trust authorizes Boardwalk REIT to issue an unlimited number of two classes of units of Boardwalk REIT: REIT Units and special voting units (“Special Voting Units”).
- 4.9 Each REIT Unit represents an undivided beneficial interest in Boardwalk REIT and in distributions made by Boardwalk REIT, whether of net income, net realized capital gains or other amounts and, in the event of liquidation, winding-up or other termination of Boardwalk REIT, in the net assets of Boardwalk REIT remaining after the satisfaction of all liabilities. No REIT Unit has preference or priority over any other. REIT Units will be issued as fully paid and non-assessable and will be freely transferable, subject to applicable securities regulatory requirements. Each REIT Unit entitles the holder thereof to one vote for each whole REIT Unit held at all meetings of unitholders. In general, the REIT Units have no conversion, retraction, redemption or pre-emptive rights.
- 4.10 The Declaration of Trust provides for the issuance of an unlimited number of Special Voting Units that will be used to provide voting rights with respect to Boardwalk REIT to persons holding class B limited partnership units of the Partnership (“LP Class B Units”) or other securities that are, directly or indirectly, exchangeable for a REIT Unit. Pursuant to the Plan of Arrangement, one Special Voting Unit was issued by Boardwalk REIT to Boardwalk in conjunction with its subscription for LP Class B Units. The Special Voting Units are not transferable separately from the LP Class B Units to which they relate. The Special Voting Units will automatically be transferred upon a transfer of the corresponding LP Class B Units. In addition, as LP Class B Units are surrendered for REIT Units and are no longer outstanding, the

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corresponding Special Voting Units will be automatically redeemed by Boardwalk REIT for \$0.0000001 per Special Voting Unit cancelled and shall no longer be outstanding. Each Special Voting Unit will entitle the registered holder thereof to cast the number of votes at any meeting of unitholders or in respect of any written resolution of unitholders that is equal to the number of REIT Units that may be obtained upon the surrender of the LP Class B Unit to which the Special Voting Unit relates. The Special Voting Units will not entitle or give any rights to the holders thereof to receive distributions or any amount upon liquidation, dissolution or winding-up of Boardwalk REIT.

- 4.11 The Partnership is a limited partnership formed under the laws of the Province of British Columbia. Boardwalk Real Estate Management Ltd. (the “General Partner”) is a corporation incorporated pursuant to the laws of the Province of Alberta. The General Partner is the sole general partner of the Partnership. The registered office of the Partnership is in Vancouver, British Columbia and its principal place of business is in Calgary, Alberta.
- 4.12 The Partnership is authorized to issue an unlimited number of units of partnership interest in the Partnership designated as “LP Class A Units”, an unlimited number of LP Class B Units, an unlimited number of units of partnership interest in the Partnership designated as “LP Class C Units” and such other classes of partnership interests as the General Partner may decide from time to time.
- 4.13 Following completion of the Plan of Arrangement, the LP Class A Units are held solely by Top Hat Operating Trust (the “Operating Trust”), formed under the laws of the Province of British Columbia, all of the units of which are and will remain owned by Boardwalk REIT, the LP Class C Units are solely held by Boardwalk and the LP Class B Units are solely held by 1103891 Alberta Ltd. (“Boardwalk Subco”) (a wholly-owned subsidiary of Boardwalk).
- 4.14 The LP Class B Units, together with the accompanying Special Voting Units, generally have economic and voting rights equivalent in all material respects to the REIT Units. In particular, subject to certain limitations contained in the Limited Partnership Agreement and the exchange and support agreement (the “Exchange and Support Agreement”) entered into by Boardwalk REIT, the Operating Trust, the Partnership and Boardwalk on the Effective Date of the Plan of Arrangement, each LP Class B Unit entitles the holder thereof to receive a distribution on each LP Class B Unit equal to the amount of a

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distribution declared by Boardwalk REIT on each REIT Unit on the date of such distribution's declaration.

- 4.15 The LP Class A Units have terms similar to those attached to the LP Class B Units, except that the holders of LP Class A Units:
- 4.15.1 are not entitled to receive REIT Units in the event of a full or partial surrender of the LP Class A Units or upon the liquidation, dissolution or winding up of the Partnership;
 - 4.15.2 are entitled to receive a distribution of the LP Class A Units in an amount sufficient to allow Boardwalk REIT and the Operating Trust to pay their expenses but will not be entitled to receive a distribution equal to the distribution on REIT Units; and
 - 4.15.3 are entitled to receive notice of, to attend and vote at all meetings of the partners of the Partnership, but will not be entitled to receive notice of, to attend or vote at meetings of the REIT Unitholders.
- 4.16 The LP Class C Units are entitled to a preferred partnership distribution in amounts sufficient to permit Boardwalk, as the holder of such units, to meet its obligations to make all payments due and payable by Boardwalk on indebtedness (the "Retained Debt") of Boardwalk that relates to real property that Boardwalk transferred to the Partnership as part of the Contributed Assets, but whose associated indebtedness was not assumed by the Partnership upon the transfer of the real property but remained the indebtedness of Boardwalk.
- 4.17 In the event of the liquidation, dissolution or winding-up of the Partnership or any other distribution of the assets of the Partnership among the holders of the units of partnership interest in the Partnership for the purpose of winding up its affairs, a holder of LP Class C Units will be entitled, subject to applicable law, and in priority to any distribution to the holders of LP Class A Units or LP Class B Units, to receive in respect of each LP Class C Unit held by such holder on the effective date of such liquidation, dissolution or winding-up, an amount equal to the "LP Class C Preferred Liquidation Entitlement" divided by the outstanding LP Class C Units. For purposes of this paragraph the "LP Class C Preferred Liquidation Entitlement" means the aggregate of each amount that is (i) the principal amount of the Retained Debt that is outstanding on the liquidation date, all accrued and unpaid interest on such principal amount up to and including the liquidation date and any

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other amount outstanding in respect of the Retained Debt on the liquidation date, (ii) an amount of either tax that is due and payable under Part I.3 of the *Income Tax Act* (Canada) (the “Tax Act”) or any relevant provincial legislation that is reasonably attributable to the Retained Debt, and any interest or penalties thereon, and (iii) in respect of the amount of tax that is due and payable under the Tax Act or any similar provincial or territorial statute that is reasonably attributable to the foregoing distributions and any disposition whether by redemption or otherwise of any LP Class C Unit, and any interest or penalties thereon, and for greater certainty each amount under (i), (ii) and (iii) above shall be determined without duplication.

- 4.18 The holders of LP Class C Units are entitled to receive notice of, to attend and to vote (on the basis of one vote for every 1,000 LP Class C Units held) at all meetings of holders of units of partnership interest in the Partnership.
- 4.19 The Partnership became, by virtue of the Plan of Arrangement, a reporting issuer or the equivalent in the Jurisdictions and is not in default of the Legislation.
- 4.20 Boardwalk Properties Company Limited (“BPCL”) is a corporation existing under the laws of the Province of Alberta.
- 4.21 1098369 Alberta Ltd. (“Newco”) was incorporated as a wholly-owned subsidiary of BPCL immediately prior to the effective time on the Effective Date under the laws of Province of Alberta.
- 4.22 BPCL owns all of the issued and outstanding shares of Newco and Newco owns all of the issued and outstanding Common Shares.
- 4.23 Pursuant to the Plan of Arrangement, Boardwalk REIT indirectly acquired, through the Partnership, all of Boardwalk’s assets, including Boardwalk’s revenue-producing properties, beneficial interests in certain trusts and various real property and shares of affiliates of Boardwalk that hold the revenue producing properties transferred to the Partnership (collectively, the “Contributed Assets”) which carry on the business previously carried on by Boardwalk.
- 4.24 The Plan of Arrangement broadly effected the transfer and contribution of the Contributed Assets to Boardwalk REIT, and the indirect acquisition of Boardwalk by BPCL through the exchange by holders of Common Shares of Boardwalk, other than BPCL and its affiliates (the

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“Public Shareholders”), of all of their Common Shares, and BPCL and its affiliates of approximately two thirds of their Common Shares, for REIT Units on a one-for-one basis.

4.25 Following the completion of the Plan of Arrangement:

4.25.1 BPCL, through Newco, owns all of the issued and outstanding Common Shares;

4.25.2 the Public Shareholders and BPCL collectively own REIT Units representing an equity interest in Boardwalk REIT of approximately 92% (after the preferred distributions and entitlements on the LP Class C Units);

4.25.3 BPCL indirectly owns LP Class B Units, which effectively represent an approximately 8% interest in Boardwalk REIT (after the preferred distributions and entitlements on the LP Class C Units that it owns);

4.25.4 Boardwalk REIT directly or indirectly owns the General Partner and Operating Trust;

4.25.5 Boardwalk REIT indirectly owns all of the issued and outstanding LP Class A Units, representing an approximately 92% interest in the Partnership (after the preferred distributions and entitlements on the LP Class C Units);

4.25.6 Boardwalk remains liable for the Retained Debt and directly and indirectly, through Boardwalk Subco, owns all of the LP Class B Units (and the associated Special Voting Units), representing an approximately 8% equity interest in the Partnership (after the preferred distributions and entitlements on the LP Class C Units that it owns);

4.25.7 The Partnership directly and indirectly holds the Contributed Assets; and

4.25.8 The LP Class B Units may be issued in respect of other transactions involving the Partnership from time to time;

5. AND WHEREAS under the System, this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the “Decision”);

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6. AND WHEREAS each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the Decision has been met;
7. The Decision of the Decision Makers pursuant to the Legislation in British Columbia, Alberta, Saskatchewan, and New Brunswick is that the Continuous Disclosure Requirements shall not apply to the Partnership and the Decision of the Decision Makers pursuant to the Legislation in Alberta, Saskatchewan and New Brunswick is that the Certification Requirement shall not apply, so long as in each case:
 - 7.1 Boardwalk REIT is a reporting issuer in at least one of the jurisdictions listed in Appendix B of Multilateral Instrument 45-102 and is an electronic filer under National Instrument 13-101;
 - 7.2 Boardwalk REIT sends concurrently to all holders of LP Class B Units all disclosure material furnished to holders of REIT Units, including, without limitation, copies of its proxy solicitation materials and its annual financial statements;
 - 7.3 Boardwalk REIT files with each Decision Maker copies of all documents required to be filed by it pursuant to NI 51-102;
 - 7.4 Boardwalk REIT complies with the requirements of the TSX, or such other market or exchange on which the REIT Units may be quoted or listed, in respect of making public disclosure of material information on a timely basis;
 - 7.5 the Partnership complies with the material change reporting requirements in respect of material changes in the affairs of the Partnership that would not also be material changes in the affairs of the Trust;
 - 7.6 Boardwalk REIT includes in all future mailings of proxy solicitation materials (if any) to holders of LP Class B Units a clear and concise statement explaining the reason for the mailed material being solely in relation to Boardwalk REIT and not in relation to the Partnership, such statement to include a reference to the economic equivalency between the LP Class B Units and the REIT Units and the right to direct voting at Boardwalk REIT's unitholders' meetings pursuant to the Exchange and Support Agreement (without taking into account tax effects);

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- 7.7 Boardwalk REIT remains the direct or indirect beneficial owner of the LP Class A Units of the Partnership and BPCL remains the direct or indirect beneficial owner of the LP Class C Units of the Partnership; and
- 7.8 the Partnership does not issue any securities other than LP Class B Units or debt obligations other than debt obligations issued to its affiliates or to banks, loan corporations, trust corporations, treasury branches, credit unions, insurance companies or other financial institutions.

DATED this 9th day of August, 2004.

Glenda A. Campbell, Q.C., Vice-Chair

Stephen R. Murison, Vice-Chair