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Headnote

Mutual Reliance Review System for Exemptive Relief Application – real estate investment trust exempt from prospectus and registration requirements in connection with issuance of units to existing unit holders pursuant to distribution reinvestment plan whereby distributions are reinvested in additional units of the trust, subject to certain conditions - first trade in additional units deemed a distribution unless made in compliance with MI 45-102

Applicable British Columbia Provisions

Securities Act, R.S.B.C.1996, c. 418, ss. 48 and 76

Multilateral Instrument 45-102 *Resale of Securities*

**IN THE MATTER OF THE SECURITIES LEGISLATION OF BRITISH
COLUMBIA, ALBERTA, SASKATCHEWAN, MANITOBA, ONTARIO,
QUEBEC, NOVA SCOTIA, NEW BRUNSWICK, PRINCE EDWARD
ISLAND AND NEWFOUNDLAND AND LABRADOR**

AND

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

AND

**IN THE MATTER OF CHARTWELL SENIORS HOUSING REAL
ESTATE INVESTMENT TRUST**

MRRS DECISION DOCUMENT

WHEREAS the Canadian securities regulatory authority or regulator (the Decision Maker) in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, Nova Scotia, New Brunswick, Prince Edward Island and Newfoundland and Labrador (the Jurisdictions) has received an application from Chartwell Seniors Housing Real Estate Investment Trust (the REIT) for a decision pursuant to the securities legislation of the Jurisdictions (the Legislation) that the requirements contained in the Legislation to be registered to trade in a security and to file and obtain a receipt for a preliminary prospectus and a final prospectus (the Registration and Prospectus Requirements) shall not apply to the distribution and resale of units of the REIT (Units) pursuant to a distribution reinvestment plan to be implemented by the REIT (the DRIP);

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AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (the System), the Ontario Securities Commission is the principal regulator for this application;

AND WHEREAS, unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101 Definitions or in Québec Commission Notice 14-101;

AND WHEREAS the REIT has represented to the Decision Makers that:

1. The REIT is an unincorporated, open-ended investment trust established under the laws of the Province of Ontario by a declaration of trust.
2. The beneficial interests in the REIT are divided into Units and the REIT is authorized to issue an unlimited number of Units.
3. Each Unit represents a proportionate undivided beneficial interest in the REIT and entitles holders of Units (Unitholders) to one vote at any meeting of Unitholders and to participate *pro rata* in any distributions by the REIT and, in the event of termination of the REIT, in the net assets of the REIT remaining after satisfaction of all liabilities.
4. The Units are listed and posted for trading on the Toronto Stock Exchange (the TSX).
5. The REIT filed a prospectus dated October 31, 2003 with the securities regulatory authority in each of the Jurisdictions to qualify the distribution of Units to the public in the Jurisdictions. A MRRS Decision document in respect of the prospectus was issued on October 31, 2003. The REIT is now a reporting issuer under the Legislation.
6. The REIT has been formed to directly or indirectly own, operate and manage seniors housing facilities, primarily in Canada. A portfolio of 44 seniors housing facilities will be acquired by the REIT on completion of the offering and related transactions.
7. The specific objectives of the REIT are: (i) to generate stable and growing cash distributions on a tax efficient basis; (ii) to enhance the value of the REIT's assets and maximize long-term Unit value through the management of its assets; and (iii) to expand the asset base of the REIT and increase its distributable income.

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8. The REIT currently intends to make cash distributions to Unitholders monthly equal to, on an annual basis, approximately 87% of its distributable income on a basic basis, or approximately 90% of its distributable income accounting for Units granted under the LTIP.
9. The REIT intends to establish the DRIP pursuant to which Unitholders may, at their option, invest cash distributions paid on their Units in additional Units (Additional Units). The DRIP will be available to Unitholders who are Canadian residents and who hold at least 1000 Units.
10. Distributions due to participants in the DRIP (DRIP Participants) will be paid to Computershare Trust Company of Canada in its capacity as agent under the DRIP (in such capacity, the DRIP Agent) and applied to purchase Additional Units. All Additional Units purchased under the DRIP will be purchased by the DRIP Agent directly from the REIT.
11. The price of Additional Units purchased with distributions due to DRIP Participants will be the volume weighted average of the closing price of the Units on the TSX for the five trading days immediately preceding the relevant distribution date.
12. DRIP Participants will receive a further distribution, payable in Units, equal in value to 3% of each cash distribution that is reinvested under the DRIP.
13. No commissions, service charges or brokerage fees will be payable by DRIP Participants in connection with the DRIP and all administrative costs will be borne by the REIT.
14. DRIP Participants may terminate their participation in the DRIP at any time by providing prior written notice to their broker. Such notice, if actually received at least five business days prior to a distribution record date, will have effect in respect of the next distribution date. If a DRIP Participant elects to terminate his or her participation in the DRIP, he or she will receive all further distributions in cash.
15. The REIT may amend, suspend or terminate the DRIP at any time, provided that such action shall not have a retroactive effect which would prejudice the interests of the DRIP Participants. All DRIP Participants will be sent written notice of any such amendment, suspension or termination.
16. The distribution of the Additional Units by the REIT pursuant to the DRIP cannot be made in reliance on registration and prospectus exemptions contained in the Legislation as the DRIP involves the reinvestment of

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Distributable Income distributed by the REIT and not the reinvestment of distributions of dividends, interest, capital gains or earnings or surplus of the REIT.

17. The distribution of the Additional Units by the REIT pursuant to the DRIP cannot be made in reliance on registration and prospectus exemptions contained in the Legislation for distribution reinvestment plans of mutual funds, as the REIT is not a “mutual fund” as defined in the Legislation because the Unitholders are not entitled to receive on demand an amount computed by reference to the value of a proportionate interest in the whole or in part of the net assets of the REIT as contemplated in the definition of “mutual fund” in the Legislation.

AND WHEREAS under the System, this MRRS Decision Document evidences the decision of each of the Decision Makers (collectively, the Decision);

AND WHEREAS each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Makers with the jurisdiction to make the Decision has been met;

THE DECISION of the Decision Makers pursuant to the Legislation is that the trades of Additional Units shall not be subject to the Registration and Prospectus Requirements of the Legislation provided that:

- (a) at the time of the trade the REIT is a reporting issuer or the equivalent under the Legislation and is not in default of any requirements of the Legislation;
- (b) no sales charge is payable in respect of the trade;
- (c) the REIT has caused to be sent to the person or company to whom the Additional Units are traded, not more than 12 months before the trade, a statement describing:
 - (i) their right to withdraw from the DRIP and to make an election to receive cash instead of Units on the making of a distribution of income by the REIT; and
 - (ii) instructions on how to exercise the right referred to in (i);
- (d) except in Québec, the first trade in Additional Units acquired pursuant to this Decision in a Jurisdiction shall be deemed a distribution or primary distribution to the public under the Legislation of such Jurisdiction unless

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the conditions in paragraphs 2 through 5 of subsections 2.6(3) of Multilateral Instrument 45-102 *Resale of Securities* are satisfied; and

- (e) in Québec, the first trade (alienation) in Additional Units acquired pursuant to this Decision shall be deemed a distribution or primary distribution to the public unless:
- (i) at the time of the first trade, the REIT is a reporting issuer in Québec and is not in default of any requirement of the Legislation of Québec;
 - (ii) no unusual effort is made to prepare the market or to create a demand for the Additional Units;
 - (iii) no extraordinary commission or consideration is paid to a person or company in respect of the trade; and
 - (iv) if the seller of the Additional Units is an insider of the REIT, the seller has reasonable grounds to believe that REIT is not in default of any requirement of the Legislation of Québec.

Dated this 23rd day of December, 2003.

H. Lorne Morphy

Suresh Thakrar