ADMINISTRATION AGREEMENT

BIRD CONSTRUCTION INCOME FUND

- and -

BIRD CONSTRUCTION COMPANY LIMITED

February 27, 2006

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ADMINISTRATION AGREEMENT

This Agreement is made as of the 27th day of February, 2006.

BETWEEN:

BIRD CONSTRUCTION INCOME FUND, an open-ended limited purpose trust established under the laws of the Province of Ontario (the "**Fund**")

-and-

BIRD CONSTRUCTION COMPANY LIMITED , a corporation existing under the laws of the Province of Saskatchewan (the "**Administrator**").

WHEREAS the Fund wishes to retain the Administrator to provide certain administrative and advisory services in connection with the Fund and the Units (as defined herein);

AND WHEREAS the Administrator is willing to provide such administrative and advisory services on the terms and conditions hereinafter set forth;

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the mutual covenants and agreements herein contained and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the parties hereto covenant, agree and declare as follows:

ARTICLE 1
INTERPRETATION

1.1 Definitions

For the purposes of this Agreement, unless the context otherwise requires, the following terms will have the respective meanings set out below and grammatical variations of such terms shall have corresponding meanings:

"**Administrator**" means Bird Construction Company Limited, a corporation existing under the laws of the Province of Saskatchewan and the successor by amalgamation to Bird Construction Company Limited and Bird Construction Acquisitionco Inc.;

"**Applicable Law**" means any applicable federal, state, provincial, regional, local, municipal, foreign or other law, treaty, constitution, statute, regulation, by-law, common law, principle of common law, code, ordinance, policy, circular, guideline, rule, order or any other instrument, declaration or statement of a Governmental Entity provided that if the same does not have the force of law, it is generally expected to be complied with by those to whom it is addressed by the authority enacting or responsible for implementing the same;

"**affiliate**" means an "**Affiliate**" within the meaning of Section 1.2 of Ontario Securities Commission Rule 45-501 promulgated under the *Securities Act* (Ontario) as in effect on the date hereof;

"**associate**" has the meaning set out in the *Securities Act* (Ontario);

"**Business Day**" means any day other than: (a) a Saturday or Sunday and (b) a day on which chartered banks in Toronto, Ontario are authorized or required to close;

"**Declaration of Trust**" means the Declaration of Trust dated January 1, 2006 pursuant to which the Fund is governed, as the same may be amended, supplemented or restated from time to time;

"**Fund**" means Bird Construction Income Fund, an open-ended limited purpose trust established under the laws of the Province of Ontario pursuant to the Declaration of Trust;

"**Fund Assets**" has the meaning given to such term in the Declaration of Trust;

"**Fund Expenses**" means all reasonable expenses incurred by the Administrator in connection with carrying out its duties and obligations hereunder, including GST to the extent the Administrator is not entitled to receive an input tax credit or rebate or refund therefor;

"**GAAP**" means accounting principles generally accepted in Canada;

"**Governmental Entity**" means (a) any multinational, federal, provincial, state, municipal, local or other governmental or public department, central bank, court, commission, board, bureau, agency or instrumentality, domestic or foreign, (b) any subdivision or authority of any of the foregoing, or (c) any quasi-governmental, self-regulatory organization or private body exercising any regulatory, expropriation or taxing authority under or for the account of its members or any of the above;

"**GST**" has the meaning given to such term in Section 4.2;

"**Non-Resident**" has the meaning given to such term in the Declaration of Trust;

"**Offering**" has the meaning given to such term in the Declaration of Trust;

"**person**" means and includes any individual, general partnership, limited partnership, joint venture, syndicate, sole proprietorship, company or corporation with or without share capital, joint stock company, limited liability corporation, association, trust, trust company, bank, pension fund, trustee, executor, administrator or other legal personal representative, regulatory body or agency, government or governmental agency, authority or other organization or entity, whether or not a legal entity, however designated or constituted;

"**Prospectus**" has the meaning given to such term in the Declaration of Trust;

"**Tax Act**" means the *Income Tax Act*, R.S.C. 1985 (5th Supp.) c. 1, as amended, and the regulations thereunder;

"**Transfer Agent**" means the transfer agent from time to time for the Units, which as at the date of this Agreement is Computershare Trust Company of Canada;

"**Trustees**" means the trustees of the Fund appointed pursuant to the Declaration of Trust;

"**Unitholders**" means the holders of Units of the Fund; and

"**Units**" means the trust units of the Fund.

1.2 Additional Definitions

Unless the context otherwise requires, capitalized terms used in this Agreement without definition shall have the meaning ascribed thereto in the Declaration of Trust.

1.3 Interpretation

In this Agreement, except as otherwise expressly provided:

(a) "this Agreement" means this agreement, as the same may be amended, supplemented or replaced from time to time;

(b) any reference in this Agreement to a designated "Article", "Section", "subsection", "schedule" or other subdivision is a reference to the designated Article, Section, subsection, schedule or other subdivision of this Agreement;

(c) the recitals hereto are incorporated into and form part of this Agreement;

(d) the words "herein", "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section, subsection, schedule or other subdivision of this Agreement;

(e) the division of this Agreement into Articles, Sections, subsections, schedules and other subdivisions and the provision of headings are for convenience of reference only and shall not affect the interpretation of the provisions to which they relate or of any other provisions hereof;

(f) words importing the singular number only shall include the plural and *vice versa* and words importing the use of any gender shall include any other gender, the word "or" is not exclusive and the word "including" is not limiting whether or not non-limiting language (such as "without limitation" or "but not limited to" or words of similar import) is used with reference thereto;

(g) all dollar amounts are stated and are to be paid in lawful currency of Canada;

(h) any reference to GAAP in this Agreement, is a reference to the recommendations at the relevant time of the Canadian Institute of Chartered Accountants, or any successor institute, applicable on a consolidated basis (unless specifically provided or contemplated herein to be applicable on a unconsolidated basis) as at the date on which such calculation is made or required to be made in accordance with GAAP;

(i) where the time for doing an act falls or expires on a day which is not a Business Day, the time for doing such act is extended to the next Business Day;

(j) unless otherwise provided herein, any reference to a statute includes and is a reference to such statute and to the regulations made pursuant thereto in effect on the date of this Agreement unless otherwise specifically provided; and

(k) for greater certainty, the Trustees have entered into this Agreement in their capacity as trustees of the Fund under the Declaration of Trust, and this Agreement has been executed and delivered on behalf of the Trustees in such capacity, and, unless otherwise expressly provided herein, where any reference is made in this Agreement to the Fund as a party to this Agreement or any other agreement or to an act to be performed by or a covenant, representation or warranty given by the Fund, such reference shall be construed and applied for all purposes as if it referred to the Trustees, in their capacity as trustees of the Fund under the Declaration of Trust.

1.4 <u>Governing Law</u>

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable in that province.

1.5 <u>Tax Act</u>

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

1.6 <u>Liability of Trustees and Unitholders</u>

The parties hereto acknowledge that the Trustees are entering into this Agreement solely in their capacity as Trustees, on behalf of the Fund, and the obligations of the Fund hereunder shall not be personally binding upon the Trustees or any of the Unitholders of the Fund or any annuitant under a plan of which a Unitholder is a trustee or carrier (an "annuitant") and that any recourse against the Fund, the Trustees 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 Assets.

ARTICLE 2
APPOINTMENT

2.1 Appointment

The Trustees hereby appoint the Administrator to provide the administrative and advisory services set forth herein, and the Administrator hereby agrees to carry out such services on the terms and conditions set forth herein and in the Declaration of Trust.

ARTICLE 3
THE ADMINISTRATOR

3.1 Administration of Fund Affairs

Subject to and in accordance with the terms, conditions and limitations of the Declaration of Trust, the Trustees hereby delegate to the Administrator and the Administrator hereby agrees to be responsible for the administration and management of all general and administrative affairs of the Fund in accordance with the provisions hereof (other than the issue, certification, countersigning, transfer and cancellation of certificates representing Units and the maintenance of a register of Unitholders) and specifically including such matters as are set out herein and as may be requested by the Trustees from time to time.

3.2 Administrative and Advisory Services

It is acknowledged and agreed that in furtherance of its obligations under Section 3.1 to administer and manage the general and administrative affairs of the Fund, and not in limitation thereof, the Administrator will, subject to the direction of the Trustees:

(a) keep and maintain at its offices in Toronto, Ontario at all times proper books, records and accounts which shall contain particulars of operations, receipts, disbursements and investments relating to the Fund Assets and such books, records and accounts shall be kept pursuant to normal commercial practices that will permit the preparation of financial statements in accordance with GAAP and in each case shall also be in accordance with those required to be kept by a reporting issuer under applicable securities legislation in Canada and those required of the Fund under the Tax Act applicable with respect thereto and all other Applicable Laws, all as amended from time to time;

(b) administer all of the records and documents relating to the Fund Assets;

(c) provide investor relations services to the Fund;

(d) provide, for performing its obligations hereunder, office space, equipment and personnel including all accounting, clerical, secretarial, corporate and administrative services as may be reasonably necessary to perform its obligations hereunder;

(e) provide or cause to be provided such audit, accounting, legal, insurance and other professional services as are reasonably required or desirable for the purposes of the Fund from time to time and provide or cause to be provided such legal, financial and other advice and analysis as the Trustees may require or desire to permit any of them to make informed decisions in connection with the discharge by them of their responsibilities as Trustees, to the extent such advice and analysis can be reasonably provided or arranged by the Administrator;

(f) submit all income tax returns and filings to the Trustees in sufficient time prior to the dates upon which they must be filed so that the Trustees have a reasonable opportunity to review them, approve them, execute them and return them to the Administrator and arrange for their filing within the time required by applicable tax law;

(g) provide advice with respect to the Fund's obligations as a reporting issuer and arrange for compliance by the Fund with continuous disclosure obligations under applicable securities legislation including the preparation and filing of reports and other documents with all applicable regulatory authorities;

(h) promptly notify the Trustees of any event that might reasonably be expected to have a material adverse effect on the affairs of the Fund;

(i) prepare and approve on behalf of the Fund any circular or other disclosure document required under applicable securities legislation in response to an offer to purchase Units;

(j) prepare and provide or cause to be provided to Unitholders on a timely basis all information to which Unitholders are entitled under the Declaration of Trust and under applicable laws and stock exchange requirements, including monthly and annual reports, notices, financial reports and tax information relating to the Fund;

(k) assist the Trustees in computing distributions to Unitholders pursuant to Article 5 (Distributions) of the Declaration of Trust;

(l) determine all rights and amounts required to be determined pursuant to Article 6 (Redemption of Units) of the Declaration of Trust, including the exercise of the redemption right and the determination of the cash or *in specie* redemption amount and attend to all administrative and other matters in connection with any redemption of Units;

(m) open and operate accounts on behalf of the Fund;

(n) call and hold all annual and/or special meetings of Unitholders pursuant to Article 12 (Meetings of Unitholders) of the Declaration of Trust, prepare all materials (including notices of meetings and information circulars) in respect thereof and submit all such materials to the Trustees in sufficient time prior to the dates upon which they must be mailed, filed or otherwise relied upon so that the Trustees have a reasonable opportunity to review them, approve them, execute them and return them to the Administrator for filing or mailing or otherwise use them;

(o) provide assistance in negotiating the terms of any financing required by the Fund or otherwise in connection with the Fund Assets and provide administrative services with respect to any such financings;

(p) provide or cause to be provided to the Trustees any services reasonably necessary for the Trustees to be able to consider any future acquisitions or divestitures by the Trustees of Fund Assets;

(q) approve on behalf of the Fund all matters relating to the Offering and take such other actions as the Administrator considers necessary or desirable for the purpose of completing the Offering, including, without limitation, approving, executing and delivering, on behalf of the Fund, such agreements or documents as the Administrator considers necessary or desirable for the purpose of completing the Offering;

(r) provide advice to the Trustees with respect to determining the timing and terms of future offerings of Units, if any, and prepare and approve any prospectus or comparable document of the Fund in connection with such offerings, if any;

(s) provide advice and, at the request and under the direction of the Trustees, direction to the Transfer Agent;

(t) provide advice and assistance to the Trustees with respect to the performance of the obligations of the Fund and the enforcement of the rights of the Fund under all agreements entered into by the Fund;

(u) ensure that the Fund elects in the prescribed manner and within the prescribed time under subsection 132(6.1) of the Tax Act to be a "mutual fund trust" within the meaning of the Tax Act since inception, assuming the requirements for such election are met, monitor the Fund's status as such a mutual fund trust and provide the Trustees with written notice when the Fund ceases or is at risk of ceasing to be such a mutual fund trust;

(v) monitor the Fund's compliance with the Non-Resident ownership restrictions contained in the Declaration of Trust;

(w) undertake any matters required by the terms of the Declaration of Trust to be performed by the Trustees, which are not otherwise delegated therein or herein; and

(x) provide such additional administrative, support and advisory services pertaining to the Fund, the Fund Assets and the Units and matters incidental thereto as may be reasonably requested by the Trustees from time to time.

The Fund hereby ratifies any actions taken by the Administrator on behalf of the Trustees or the Fund prior to the date hereof to the extent that they are inconsistent with the terms of this Agreement.

3.3 <u>Covenants of the Administrator</u>

The Administrator covenants and agrees that it shall:

(a) perform all services hereunder at all times in compliance with Applicable Laws and the Declaration of Trust;

(b) comply with all instructions of the Trustees in relation to the performance of its services hereunder with respect to the Fund; and

(c) observe and perform or cause to be observed and performed, in every material respect, on behalf of each of the Fund, the Administrator and its subsidiaries the provisions of (i) the agreements from time to time entered into in connection with the activities of the Fund, the Administrator or its subsidiaries (as applicable) and (ii) all Applicable Laws.

3.4 <u>Administrator's Acknowledgement</u>

The Administrator acknowledges that it has received a copy of the Declaration of Trust and is familiar with and understands the duties of the respective parties thereto, including those duties of the Trustees (i) which are being delegated to the Administrator under this Agreement and (ii) under Section 2.7(d) thereof.

3.5 <u>Power and Authorities of the Administrator</u>

Subject to the provisions of this Agreement and to the Declaration of Trust, the Administrator shall have all requisite powers and authorities during the term hereof, to provide the services contemplated herein and to do and refrain from doing all such things as are necessary or appropriate in order to discharge its duties hereunder. In particular, and without limiting the generality of the foregoing, the Administrator shall have full right, power and authority to execute and deliver all contracts, leases, licences and other documents and agreements, to make applications and filings with governmental and regulatory authorities and to take such other actions as the Administrator considers appropriate in connection with the Fund in the name of and on behalf of the Fund and no person shall be required to determine the authority of the Administrator to give any undertaking or enter into any commitment on behalf of the Fund, provided that the Administrator shall not have the authority to commit to any transaction or take any other action which would require the approval of the Unitholders or Trustees in accordance with the Declaration of Trust without such approval having been given.

3.6 Restrictions on the Administrator's Powers and Authorities

In the exercise of its powers and authority and in the performance of its obligations, covenants and responsibilities hereunder, the Administrator shall not, without first obtaining the written approval of the Trustees, charge or receive fees from the Fund other than the expense reimbursement pursuant to Section 4.1.

3.7 Distributions to Unitholders

In connection with determining the amounts payable from time to time to Unitholders and arranging for any distribution to them, it is understood and agreed that the Administrator shall determine from time to time the amounts available for distribution to Unitholders of the Fund and provide a written statement thereof to the Trustees in sufficient time prior to the date on which such distribution must be made, so that the Trustees have a reasonable opportunity to review the statement, and shall cause such amount to be paid by the Transfer Agent on behalf of the Fund following the declaration by the Trustees that such amounts are due and payable by the Fund pursuant to Article 5 of the Declaration of Trust; provided however that the Administrator shall not be obligated to make any such payment unless the Administrator has monies of the Fund available to make such distribution.

3.8 Non-Resident Holders of Trust Units

The Administrator shall use reasonable efforts to monitor the resident status of Unitholders. If, at any time, the Administrator is of the opinion that the Trustees should require declarations as to the residence status of Unitholders under Section 13.5 of the Declaration of Trust, the Administrator shall so advise the Trustees and provide the form of the declaration therefor to the Trustees. If, in the reasonable opinion of the Administrator, the beneficial owners of 40% or more of the Units then outstanding (as such terms are used in the Declaration of Trust) are or may be Non-Residents or that such a situation is imminent, the Administrator shall so advise the Trustees and provide the Trustees with an announcement thereof in a form suitable for use by the Trustees pursuant to Section 13.5 of the Declaration of Trust. If the Administrator reasonably believes that more than 40% of the Units then outstanding are held by Non-Residents, it shall prepare and furnish to the Trustees notices to such holders of Units, requiring them to sell their Units or a specified portion thereof within a specified period of time of not less than 60 days, in accordance with Section 13.5 of the Declaration of Trust. The Trustees shall provide the Administrator with such information regarding the residence status of Unitholders and the order of acquisition or registration thereof as the Administrator may reasonably request, from time to time, and the Trustees may have in their possession in order to assist the Administrator in fulfilling its obligations under this Section.

3.9 Withholding Taxes

The Administrator shall use reasonable efforts to monitor and ensure compliance with Section 5.8 of the Declaration of Trust regarding withholding taxes.

3.10 <u>Execution of Documents</u>

(a) The Administrator may execute any document required to be executed on behalf of the Fund as follows:

BIRD CONSTRUCTION INCOME FUND
by its Administrator,
BIRD CONSTRUCTION COMPANY LIMITED

Per: ______________________________________
Authorized Signatory

(b) The Administrator may execute any document required to be executed on behalf of the Fund in connection with a prospectus as follows:

BIRD CONSTRUCTION INCOME FUND
by BIRD CONSTRUCTION COMPANY
LIMITED as Administrator

Per: ______________________________________
Authorized Signatory

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

All reasonable efforts shall be made to ensure that every contract entered into on behalf of the Fund by the Administrator shall (except as the Administrator otherwise may expressly agree in writing with respect to personal liability of the Administrator) include a provision substantially to the following effect:

> "The parties hereto acknowledge that the Administrator is entering into this agreement solely on behalf of Bird Construction Income Fund (the "Fund") and the obligations of the Fund hereunder shall not be personally binding upon any of the Trustees, the Administrator, any registered or beneficial holder of trust units of the Fund or any beneficiary under a plan of which a holder of such trust units acts as a trustee or carrier, and that resort shall not be had to, nor shall recourse be sought from, any of the foregoing or the private property of any of the foregoing 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, and recourse shall be limited to, and satisfied only out of, the Fund Assets as defined in the Declaration of Trust dated as of the 1st day of January, 2006, as amended or restated from time to time."

This provision shall be held in trust and enforced by the Administrator for the benefit of the Unitholders and beneficiaries. The omission of such a provision from any such written agreement shall not operate to impose personal liability on the Trustees, the Administrator, any Unitholder or any beneficiary.

ARTICLE 4
PAYMENT OF EXPENSES

4.1 Expense Reimbursement

The Administrator shall pay all Fund Expenses on behalf of the Fund. The Administrator shall be reimbursed for all Fund Expenses incurred by the Administrator in carrying out its obligations or duties under this Agreement. The Administrator shall calculate the Fund Expenses for each month and by the 15th day of the month following the end of such month shall invoice the Fund in respect thereof by setting out the details of the services provided by the Administrator and the Fund Expenses. All such amounts shall be payable by the Fund not later than 30 days after receipt of such invoice.

4.2 Payment of GST

Unless otherwise provided herein, all amounts payable to the Administrator pursuant to this Agreement shall be exclusive of any goods and services tax and all comparable tax required to be paid thereon pursuant to the *Excise Tax Act* (Canada) or otherwise (collectively, the "**GST**") and the Administrator shall be paid, in addition to such amounts, all amounts of GST collectible by the Administrator with respect thereto and such amounts shall be included by the Administrator in the invoice described in Section 4.1.

4.3 Failure to Pay When Due

Any amount payable to the Administrator hereunder and which is not remitted to the Administrator when so due shall remain due (whether on demand or otherwise) and interest will accrue on such overdue amounts (both before and after judgment), at a rate per annum equal to the prime rate charged by the Fund's principal banker plus 1% per annum from the date payment is due until the date payment is made.

4.4 No Fee

Subject to Section 3.6, in the exercise of its powers and authority and in the performance of its obligations, covenants and responsibilities hereunder, the Administrator shall not be entitled to receive the payment of a fee from the Fund other than the reimbursement of Fund Expenses pursuant to Section 4.1 to be paid by the Fund to the Administrator as authorized hereunder.

4.5 Remuneration and Expenses of the Trustees

The Administrator shall pay the remuneration and expenses of the Trustees from the Fund Assets as provided in Section 7.9 of the Declaration of Trust.

ARTICLE 5
RECORDS

5.1 Examination of Records

The Administrator shall make available to the Trustees and their authorized representatives at any time during normal business hours on a Business Day all records, documents or information related to the activities of the Fund wherever maintained. The Administrator shall permit the Trustees and their authorized representatives at any time during normal business hours on a Business Day to examine the books, records, drawings, computer-stored data, correspondence, accounting procedures and practices, cost analyses and any other supporting financial data, including invoices, payments or claims and receipts pertaining to the activities of the Fund maintained by the Administrator at its head office. Any examination at the Administrator's head office shall be conducted in a manner which will not unduly interfere with the conduct of the Administrator's business in the ordinary course. The Administrator shall furnish to the Trustees or their authorized representatives such financial and operating data and other information with respect to the activities of the Fund as they shall from time to time reasonably request.

5.2 Retention of Records

The Administrator shall retain or cause to be retained all books and records related to it and its obligations hereunder for a period of two years following termination of this Agreement, or such longer periods as required in accordance with Applicable Laws, during which period the Fund shall continue to have the access thereto described above.

5.3 Compliance

The Administrator shall deliver to the Trustees within 120 days after the end of each fiscal year a certificate signed on behalf of the Administrator by the chief executive officer and the chief financial officer of the Administrator stating that a review of the activities of the Administrator and the Fund during the preceding fiscal year has been made under the supervision of such officers and that, based on that review and their best knowledge, the Administrator has fulfilled all of its obligations under, and complied with all of the terms of, this Agreement in all material respects and that no default hereunder (or event which, with notice or lapse of time or both, could become a default hereunder) occurred during such fiscal year.

ARTICLE 6
CONDUCT OF THE ADMINISTRATOR

6.1 Standard of Care and Delegation

(a) In exercising its powers and discharging its duties under this Agreement, the Administrator shall act honestly and in good faith with a view to the best interests of the Fund and exercise the degree of care, diligence and skill that a reasonably prudent administrator would exercise in comparable circumstances.

(b) The Administrator may delegate specific aspects of its obligations hereunder to any person, including any of its affiliates or associates and including the Transfer Agent, provided that:

(i) the Administrator shall not, without the prior approval of the Trustees, delegate any of its material obligations under this Agreement;

(ii) delegation thereof shall not relieve the Administrator of any of its obligations under this Agreement;

(iii) the Administrator shall not in any manner, directly or indirectly, be liable or held to account for the activities or inactivities of any person to which any such obligations may have been delegated provided that in making such specific delegation, the Administrator acted in accordance with Section 6.1(a); and

(iv) where possible, the Administrator will structure any delegation in a manner that will permit the Trustees on behalf of the Fund (in addition to the Administrator) to bring action directly against the delegatee.

6.2 <u>No Liability for Advice</u>

The Administrator shall not be liable, answerable or accountable to the Fund, the Trustee or any Unitholder for:

(a) any loss or damage resulting from, incidental to or relating to the provision of the services provided for hereunder, including any exercise or refusal to exercise a discretion, any mistake or error of judgment or any act or omission believed by the Administrator, acting reasonably, to be within the scope of authority conferred on it by this Agreement, unless such loss or damage resulted from fraud, wilful default or negligence of the Administrator in performing its obligations hereunder; or

(b) any reasonable reliance by the Administrator in performing its obligations hereunder on:

(i) statements of fact of other persons (any of which may be persons with which the Administrator is affiliated or associated) who are considered by the Administrator, acting reasonably, to be knowledgeable of such facts; and

(ii) the opinion or advice of or information obtained from any solicitor, auditor, valuer, engineer, surveyor, appraiser or other expert who is considered by the Administrator, acting reasonably, to be a person on whom reliance should be had under the circumstances;

provided that in obtaining such statements of fact, opinions, advice or information, the Administrator acted in accordance with Section 6.1(a).

6.3 Additional Information

The Fund acknowledges that the conduct by the Administrator of the activities contemplated herein may have the incidental effect of providing additional information with respect to or augmenting the value of properties in which the Administrator, its affiliates or associates have an interest and the Fund agrees that neither the Administrator, its affiliates nor its associates shall be liable to account to the Fund with respect to such activities or results; provided however, that the Administrator shall not, in making any use of any such information, do so in any manner that the Administrator knew or ought reasonably to have known, would cause or result in a breach of any confidentiality provision or agreement to which the Fund is a party or is bound.

6.4 Confidentiality

Subject to Section 6.3, the Administrator shall not, and shall ensure that no officer, director, employee or agent thereof shall, without the prior written consent of the Fund, disclose to any third party any information about the Fund acquired or developed pursuant to the performance of services under this Agreement except that consent shall not be required to the following disclosure:

(a) information disclosed as required by law or the regulations, rules or policies of any stock exchange on which any Units are listed or as may be required by the regulations or policies of any securities commission or other securities regulatory agency, governmental agency or other authority of competent jurisdiction and the requirements of any court;

(b) information disclosed as necessary for the purposes of any debt or equity financing undertaken by the Fund; or

(c) information disclosed that the Administrator acting reasonably deems to be necessary to be disclosed on a confidential basis for the proper performance of its duties and obligations under this Agreement, including without limitation, disclosure of information to consultants and other third parties engaged by or assisting the Administrator in accordance with the terms of this Agreement in order to carry out the purposes of this Agreement.

The provisions of this Section 6.4 shall survive the termination of this Agreement.

6.5 Indemnification of the Administrator

The Administrator and any person who, at the request of the Administrator, is serving or shall have served as a director, officer, employee of the Administrator shall be indemnified and saved harmless by the Fund against all losses (other than loss of profit), claims, damages, liabilities, obligations, costs and expenses (including judgments, fines, penalties, amounts paid in settlement and counsel and accountants' fees) of whatsoever kind or nature incurred by, borne by or asserted against any of such indemnified parties in any way arising from and related in any manner to the provision of services and the performance of obligations by the Administrator pursuant to this Agreement. The foregoing provisions of this Section 6.5 do not apply to the extent that there has been fraud, wilful default or negligence of the Administrator in performing its duties hereunder. In addition, the foregoing right of indemnification shall not be exclusive of any other rights to which the Administrator or any person referred to in this Section 6.5 may be entitled as a matter of law or equity or which may be lawfully granted to him.

6.6 Indemnification of the Fund and the Trustees

The Fund, the Trustees and any person who, at the request of the Trustees, is serving or shall have served as an officer or employee of the Trustees in respect of the Fund shall be indemnified and saved harmless by the Administrator against all losses (other than loss of profit), claims, damages, liabilities, obligations, costs and expenses (including judgments, fines, penalties, amounts paid in settlement and counsel and accountants' fees) of whatsoever kind or nature incurred by, borne by or asserted against any of such indemnified parties in any way arising from or related in any manner to the fraud, wilful default, or negligence of the Administrator in the provision of services or the performance of its obligations hereunder, unless such losses, claims, damages, liabilities, obligations, costs and expenses (including judgments, fines, penalties, amounts paid in settlement, and counsel and accountants fees) arise from the fraud, wilful default, or negligence by such indemnified party. The foregoing right of indemnification shall not be exclusive of any rights to which the Fund, the Trustees or any person referred to in this Section 6.6 may be entitled as a matter of law or equity or which may be lawfully granted to him.

ARTICLE 7
TERM AND TERMINATION

7.1 Term

Subject to Section 7.4, this Agreement shall continue in force for a period of 10 years from the date of this Agreement unless terminated earlier by either the Fund or the Administrator, in their respective sole discretion, by notice in writing to the Administrator or the Fund given at least 90 days prior to the effective date of termination which shall be stated in such notice and upon payment to the Administrator of any amounts required to be paid to it as provided for in Section 7.5.

7.2 Automatic Renewal

Subject to Section 7.4 and any earlier termination pursuant to Section 7.1, upon the expiry of the 10 year initial term of this Agreement provided pursuant to Section 7.1, the term of this Agreement shall be automatically renewed for up to two further terms of three years subject to the rights of termination on the basis provided in Sections 7.1 and 7.4.

7.3 Effect of Termination

Upon the effective date of termination of this Agreement, the Administrator shall:

(a) forthwith pay to the Fund, or to the order of the Fund, at the expense of the Fund, all monies collected and held for the Fund pursuant to this Agreement;

(b) so soon thereafter as is reasonably practicable, deliver to the Fund, or to the order of the Fund, a complete auditor's report including a statement showing all payments collected by it and a statement of all monies held by it during the period following the date of the last audited financial statement furnished to the Fund; and

(c) forthwith, to the extent that it is able, subject to any applicable legal and contractual restrictions, deliver to and, where applicable, transfer into the custody of the Trustees all property and documents of the Fund then in the custody of the Administrator.

7.4 <u>Default</u>

This Agreement shall be immediately terminable by written notice from the Administrator or the Trustees to the other, as the case may be, in the event that:

(a) the Fund terminates or a decision of its Unitholders is made to terminate or wind-up the Fund;

(b) the Administrator or the Fund;

(i) institutes proceedings for it to be adjudicated a voluntary bankrupt, or consents to the filing of a bankruptcy proceeding against it;

(ii) files a petition or answer or consent seeking reorganization, readjustment, arrangement, composition or similar relief under any bankruptcy law;

(iii) consents to the appointment of a receiver, liquidator, trustee or assignee in bankruptcy; or

(iv) makes an assignment for the benefit of its creditors generally;

(c) a court having jurisdiction enters a decree or order adjudging the Administrator or the Fund a bankrupt or insolvent or for the appointment of a receiver, trustee or assignee in bankruptcy;

(d) any proceeding with respect to the Administrator or the Fund is commenced under the *Bankruptcy and Insolvency Act* (Canada) or the *Companies' Creditors' Arrangement Act* (Canada) or similar legislation relating to a compromise or arrangement with creditors or claimants; or

(e) either party breaches or fails to observe or perform any of its material obligations, covenants or responsibilities under this Agreement and, within 30 days after notice from the non-defaulting party specifying the nature of such breach or failure, the defaulting party fails to cure such breach or failure or to provide satisfactory evidence that such breach will be cured or remedied within a reasonable period of time or after providing such satisfactory evidence thereafter fails to diligently pursue such cure or remedy.

7.5 Payment

Upon a written notice to the Administrator being given by the Fund pursuant to Section 7.1 or 7.4, the Fund shall either pay to the Administrator, before or at the time of the termination of this Agreement, all costs and expenses incurred or required to be incurred by the Administrator in terminating contracts the Administrator has entered into with approval of the Fund in the performance by the Administrator of its duties under this Agreement (less any amount owing by the Administrator to the Fund, if any) or, at the election of the Fund, the Fund shall in respect of contracts entered into by the Administrator on behalf of the Fund assume the obligations of the Administrator under such contracts or any of them.

7.6 Continuing Obligations

Notwithstanding termination of this Agreement but subject to the terms and conditions hereof, the parties hereto shall not be relieved from any obligations or liabilities arising prior to such termination.

ARTICLE 8
OBLIGATIONS AND COVENANTS OF THE FUND

8.1 Obligations and Covenants of the Fund

The Fund shall:

(a) grant access, or cause access to be granted to the Administrator, to the information necessary in order for the Administrator to perform its obligations, covenants and responsibilities pursuant to the terms hereof; and

(b) provide, or cause to be provided, all information as may be reasonably requested by the Administrator, and promptly notify the Administrator of any material facts or information of which it is aware, in relation to and which may affect the performance of the obligations, covenants or responsibilities of the Administrator pursuant to this Agreement, including any known pending or threatened suits, actions, claims, proceedings or orders by or against the Fund or any of its affiliates before any court or administrative tribunal.

ARTICLE 9
GENERAL

9.1 No Partnership, Joint Venture, Agency or Trust

The parties hereto are not and shall not be deemed to be partners or joint venturers with one another and nothing herein shall be construed so as to impose any liability as such on any of them. The parties hereto agree that the Administrator shall perform its obligations under this Agreement as an independent contractor and shall not be, and shall not be deemed to be, a trustee for any person, whether or not a party to this Agreement, in connection with the discharge by the Administrator of such obligations.

9.2 Amendments

This Agreement shall not be amended or varied in its terms by oral agreement or by representations or otherwise except by instrument in writing executed by the duly authorized representatives of the parties hereto or their respective successors or assigns.

9.3 Assignment

This Agreement shall not be assigned by either party hereto without the prior written consent of the other party, which consent shall not be unreasonably withheld or refused.

9.4 Severability

The provisions of this Agreement are severable. In the event of the unenforceability or invalidity of any one or more of the provisions of this Agreement under applicable law, such unenforceability or invalidity shall not render any of the other terms, covenants, conditions or provisions hereof unenforceable or invalid.

9.5 Notice

Any notice, direction or other communication given under this Agreement shall be in writing and given by delivering it or sending it by facsimile addressed to:

Bird Construction Income Fund
5405 Eglinton Avenue West, Suite 206
Toronto, Ontario
M9C 5K6

Attention: Trustees
Facsimile: (416) 620-1516

Bird Construction Company Limited
5405 Eglinton Avenue West, Suite 206
Toronto, Ontario
M9C 5K6

Attention: President
Facsimile: (416) 620-1516

Any such communication shall be deemed to have been validly and effectively given (a) if personally delivered, on the date of such delivery if such date is a Business Day and such delivery was made prior to 4:00 p.m. (Toronto time) and otherwise on the next Business Day, or (b) if transmitted by facsimile, on the Business Day following the date of transmission. Any party may change its address for service from time to time by notice given in accordance with the foregoing and any subsequent notice shall be sent to such party at its changed address.

9.6 ***Force Majeure***

Delays in or failure of performance by a party hereto of a term or provision of this Agreement caused, in whole or in part, by *force majeure*, shall not constitute a default hereunder, and the obligations of a party shall be suspended during the time of such *force majeure*.

For the purposes of this Agreement events of *force majeure* include strikes, lock-outs, industrial disturbance, storm, fire, flood, landslide, snowslide, earthquake, explosion, lightning, tempest, action of elements, interruption or delay in transportation including, without limitation, highway or railway closures, cessation or interruption of power supplies, acts of God, laws, rules and regulations of any government or any governmental or regulatory authority, unavoidable accidents, inability to obtain or delay in obtaining necessary permits or approvals from government or any governmental or regulatory authority, inability to obtain or delay in obtaining necessary materials, facilities and equipment in the open market, or any other cause whether similar or dissimilar to those specifically enumerated, to the extent that such cause and the effects thereof are beyond the reasonable control of the party, provided that a party's own lack of funds shall not be considered an event beyond a party's reasonable control.

9.7 **Further Assurances**

Each party hereto agrees to execute any and all documents and to perform such other acts as may be necessary or expedient to carry out the purposes of this Agreement and the transactions contemplated hereby.

9.8 **Time of Essence**

Time is of the essence in respect of this Agreement.

9.9 **Entire Agreement**

This Agreement constitutes the entire agreement between the parties hereto, and supersedes all prior agreements, in respect of the subject matter hereof.

9.10 **Enurement**

This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors (including additional or successor Trustees appointed pursuant to the Declaration of Trust) and permitted assigns.

9.11 **Counterparts**

This Agreement may be executed in several counterparts, each of which when executed by any of the parties shall be deemed to be an original, and such counterparts shall together constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

BIRD CONSTRUCTION INCOME FUND

by (signed) *Paul A. Charette*
Paul A. Charette,
Trustee

BIRD CONSTRUCTION COMPANY LIMITED

by (signed) *Paul R. Raboud*
Paul R. Raboud,
Executive Vice President