CSH TRUST

THIRD
AMENDED AND RESTATED
DECLARATION OF TRUST

As of November 6, 2006

BORDEN LADNER GERVAIS LLP

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CSH TRUST

THIRD AMENDED AND RESTATED DECLARATION OF TRUST

THIS DECLARATION OF TRUST made the 8th day of September, 2003, as amended and restated the 14th day of November, 2003, as further amended and restated on July 1, 2005, and as further amended and restated on November 6, 2006.

RECITALS

WHEREAS the Trust was established for the principal purpose of investing, directly or indirectly, in a portfolio of income-producing seniors housing facilities and projects and in seniors housing operations and development management businesses, in Canada;

AND WHEREAS on September 8th, 2003 20 Trust Units were issued to Gordon Raman (the "Initial Unitholder") in consideration for $200.00 in the lawful money of Canada (the "Initial Contribution") as sole Unitholder;

AND WHEREAS W. Brent Binions was appointed the trustee (the "Initial Trustee") of the Trust by written instrument of the Initial Unitholder;

AND WHEREAS the Trustee wishes to amend and restate this Declaration of Trust in the manner herein provided and has received the approval of the Initial Unitholder to do so;

AND WHEREAS, for greater certainty, the restatement of this Declaration of Trust shall not constitute a termination of the Trust or a resettlement of this Declaration of Trust or the Trust created hereby;

DECLARATION

NOW THEREFORE, the undersigned, being the sole Trustee, hereby confirms and declares that he agrees to hold in trust as trustee the Initial Contribution and any and all other property, real, personal or otherwise, tangible or intangible, which has been at the date hereof or is hereafter transferred, conveyed or paid to or otherwise received by him as such trustee or to which the Trust is otherwise entitled and all rents, income, profits and gains therefrom for the benefit of the Unitholders hereunder in accordance with and subject to the expressed provisions of this Declaration of Trust, to wit:

ARTICLE 1
INTERPRETATION

1.1 Definitions

In this Declaration of Trust including the recitals hereto, unless the context otherwise requires, the following terms shall have the following meanings:

(a) **"Adjusted Gross Book Value"** means, at any time, the consolidated book value of the assets of the Fund, the Trust and the Operator, as shown on the Fund's then most recent consolidated balance sheet (or if approved by a majority of the Independent Directors of the General Partner at any time, the appraised value thereof), plus the amount of accumulated depreciation and amortization shown thereon or in the notes thereto.

(b) "**affiliate**", when used to indicate a relationship with a person or company, has the same meaning as set forth in Ontario Securities Commission Rule 45-501.

(c) "**Annuitant**" means the annuitant or beneficiary of a Deferred Income Plan or any other plan of which a Unitholder acts as trustee or carrier.

(d) "**associate**", when used to indicate a relationship with a person or company, has the same meaning as in the *Securities Act* (Ontario).

(e) "**Auditors**" means the firm of chartered accountants appointed as the auditors of the Trust from time to time in accordance with the provisions hereof and, initially, means KPMG LLP, Chartered Accountants.

(f) "**Benco**" means Chartwell Benco Inc., a corporation governed by the laws of the Province of Ontario.

(g) "**Business Day**" means a day which is not a Saturday, Sunday or legal holiday in the Province of Ontario.

(h) "**CCC**" means Chartwell Care Corporation, a corporation governed by the laws of the Province of Ontario.

(i) "**Class A Master LP Units**" means the Class A limited partnership units of Master LP.

(j) "**Class B Master LP Units**" means the Class B limited partnership units of Master LP.

(k) "**Closing**" means the completion of the issue of Fund Units to the public pursuant to the Offering and the other transactions contemplated by the Prospectus.

(l) "**Deferred Income Plan**" means any trust governed by a registered retirement savings plan, a registered retirement income fund, a registered education savings plan or a deferred profit sharing plan, each as defined in the Tax Act.

(m) **"Devco"** means Spectrum Seniors Housing Development LP, a limited partnership formed under the laws of the Province of Manitoba, together with its affiliates.

(n) "**Development Agreement**" means the agreement between Devco, and the Operator with respect to the development of seniors housing facilities and projects by Devco and the rights of the Operator to finance and acquire such seniors housing facilities from Devco.

(o) **"Directors of the General Partner"** means the members of the board of directors of the sole trustee, Trustee Corp., of the General Partner.

(p) "**Distributable Income**" has the meaning ascribed thereto in Section 5.1.

(q) "**Distribution Date**" means, in respect of a Distribution Period and subject to Sections 5.3 and 5.4, the 14th day of the immediately following month but in any case by noon at least one Business Day prior to the Distribution Date as defined in the Fund Declaration of Trust.

(r) "**Distribution Period**" means initially the period from and including the date of Closing to and including December 31, 2003 and thereafter means each and every calendar month in each and every calendar year from and including the first day thereof and to and including the last day thereof.

(s) "**Distribution Record Date**" means, until otherwise determined by the Trustees, the last Business Day of each month of each year, except for the month of December where the Distribution Record Date shall be December 31.

(t) "**Excess Distribution**" has the meaning ascribed thereto in Section 5.4.

(u) "**Exchange Agreement**" means the agreement among the Fund, Trust, Master LP and holders of Class B Master LP Units providing for the indirect exchange of Class B Master LP Units for Fund Units.

(v) "**Exchangeable Security**" or "**Exchangeable Securities**" means a unit or units, a share or shares or other security or securities issued by the Fund or an affiliate of the Fund and which are convertible into or exchangeable for Fund Units or other Exchangeable Securities without the payment of additional consideration therefor.

(w) "**Fund**" means the Chartwell Seniors Housing Real Estate Investment Trust, the trust established by the Fund Declaration of Trust.

(x) “**Fund Declaration of Trust**” means the third amended and restated declaration of trust in respect of the Fund dated as of November 6, 2006 as may be amended and restated from time to time.

(y) “**Fund Unitholders**” means at any time the persons whose names appear on the Register as holders of one or more Fund Units.

(z) “**Fund Units**” means units of the Fund (other than Special Voting Units of the Fund).

(aa) “**Fund Voting Unitholders**” means the holders of record of Fund Units and Special Voting Units.

(bb) “**generally accepted accounting principles**” means Canadian generally accepted accounting principles determined with reference to The Handbook of The Canadian Institute of Chartered Accountants, as amended from time to time.

(cc) **“General Partner”** means GP M Trust, the General Partner of Master LP, as represented by and acting through its sole trustee, Trustee Corp.

(dd) “**GP M Trust**” means GP M Trust, a trust established under the laws of the Province of Ontario pursuant to the GP M Trust Declaration.

(ee) “**GP M Trust Declaration**” means the Declaration of Trust of GP M Trust dated November 14, 2003, as amended and restated from time to time.

(ff) **“Independent Directors of the General Partner”** means the Directors of the General Partner who are “unrelated” (as defined in the Toronto Stock Exchange Guidelines on Corporate Governance) to the Fund, Master LP and Devco and who deal at arm’s length with the Fund, Master LP and Devco within the meaning that term has for purposes of the Tax Act.

(gg) “**Independent Trustee**” means a Trustee who is both “unrelated” (as defined in the Toronto Stock Exchange Guidelines on Corporate Governance) to the Fund and Devco and who deals at arm’s length with the Fund and Devco within the meaning that term has for the purposes of the Tax Act.

(hh) “**Independent Trustee Matter**” means any one or more of the following matters occurring at any time or from time to time after Closing:

   (i) the acquisition or disposition of real property, the assumption or grant of any mortgage or the making of any co-investment, by the Trust or the Operator or any of their respective subsidiaries and affiliates to, from or in favour of any Trustee (who is not an Independent Trustee), any officer of the Trust or any director, officer or shareholder of Trustee Corp. and of the general partner of Devco or any limited partner of Devco;

(ii) any transaction, matter or claim involving Devco or any of its affiliates, including any material change to the Development Agreement;

(iii) any material change to the Note Indenture;

(iv) any matter on which the holders of the Class A Master LP Units are entitled to vote under the Limited Partnership Agreement;

(v) entering into, waiver of or exercise of any rights or remedies under any agreement or transaction in which any Related Party has a material interest or making a material change to any such agreement or transaction;

(vi) refinancing or renewing any indebtedness owing to or by any Related Party;

(vii) making, directly or indirectly, any co-investment with any Related Party;

(viii) any claim by or against any Related Party;

(ix) any claim in which the interests of a Related Party differ from the interests of the Trust;

(x) permitting Master LP to acquire any real or other property in which a Related Party has an interest or to sell any interest in any real or other property to a Related Party;

(xi) providing a guarantee in respect of the indebtedness of any person other than the Fund or a wholly-owned subsidiary of the Trust;

(xii) approving or enforcing any agreement entered into by the Trust or its subsidiaries with a Trustee who is not an Independent Trustee or an associate thereof or with a Related Party;

(xiii) recommending to the Unitholders to increase the number of Trustees serving on the board of Trustees or authorizing the Trustees to change the number of Trustees from time to time and the appointment of individuals to fill any such vacancies; and

(xiv) a change to the compensation of any officer or employee of the Trust; and

in each case, only in respect of which the Trust is a party to the transaction or agreement or when Trustee approval of the transaction or agreement is required under this Declaration of Trust or otherwise in accordance with applicable law.

(ii) "**Initial Contribution**" means the amount of $200 paid by the Initial Unitholder to the Trust on the 8th day of September, 2003 for the purpose of settling the trust constituted by this Declaration of Trust.

(jj) "**Initial Trust Units**" means the Trust Units issued to the Initial Unitholder by the Trust on the 8^{th} day of September, 2003.

(kk) "**Initial Unitholder**" means Gordon Raman.

(ll) "**LTIP**" means the long term incentive plan of the Fund as described in the Prospectus.

(mm) "**Master LP**" means Chartwell Master Care Limited Partnership, a limited partnership formed under the laws of the Province of Manitoba pursuant to the Master LP Limited Partnership Agreement.

(nn) "**Master LP Partnership Agreement**" means the third amended and restated limited partnership agreement in respect of Master LP dated November 6, 2006, as amended and restated from time to time, among GP M Trust, as general partner, and the limited partners from time to time including CCC and the Trust.

(oo) "**mortgage**" means any mortgage, charge, hypothec, bond, debenture, note or other evidence of indebtedness directly or indirectly secured by real property.

(pp) **"Net Income"** means, with respect to any period, the gross revenue of the Trust from all sources, interest and other income for the period (including any gain or loss derived or sustained by the Trust from any disposition of capital property of the Trust) less all administrative and other expenses (including reasonable reserves for such expenses) properly incurred, less any amounts in respect of any debt service obligations (principal and interest) and less any amounts payable in connection with any cash redemptions or repurchases of Trust Units and Series 1 Trust Notes.

(qq) "**Net Income of the Trust**" or "**Net Loss of the Trust**" for any taxation year of the Trust means the net income or loss for such year determined pursuant to the provisions of the Tax Act having regard to the provisions thereof which relate to the calculation of taxable income of a trust, without reference to paragraph 82(1)(b) (dividend gross up) and subsection 104(6) (deduction for payments out of the Trust) of the Tax Act (including any income realized by the Trust on the redemption of Trust Units and Trust Notes *in specie* and designated by the Trust as income payable to the redeeming Unitholders) and taking into account such other adjustments as may be determined in the discretion of the Trustees (provided that the Trustees exercise their discretion in this regard before the end of the Taxation Year); provided, however, that capital gains and capital losses shall be excluded from the computation of net income; and provided further that, if such calculation results in income there shall be deducted the amount of any non-capital losses (as defined in the Tax Act) of the Trust for any preceding years; and Net Income of the Trust or Net Loss of the Trust for any period means the income or loss of the Trust for such period computed in accordance with the foregoing as if that period were the taxation year of the Trust.

(rr) "**Net Realized Capital Gains**" means, for any taxation year, the amount, if any, by which the amount of the capital gains of the Trust for the year exceeds the aggregate of (i) the amount of any capital losses of the Trust for the year determined in accordance with the Tax Act; (ii) the amount determined by the Trustees of any net capital losses of the Trust carried forward from a previous year to the extent not previously deducted from realized capital gains of the Trust; and (iii) if the Trustees so determine, any Net Loss of the Trust for the year and any unapplied non-capital losses (as defined in the Tax Act) of the Trust for preceding years of the Trust, in each case multiplied by the reciprocal of the applicable fraction in paragraph 38(a) of the Tax Act, provided that the Trustees shall first apply, to the maximum extent possible, the Net Loss for the year and the unapplied non-capital losses of the Trust for preceding years to reduce the Net Income and provided further that, at the discretion of the Trustees, the Net Realized Capital Gains of the Trust for a year may be calculated without subtracting the full amount of the net capital losses for the year and/or without subtracting the full amount of the net capital losses of the Trust carried forward from previous years and/or without subtracting any or all of the Net Loss for the year and unapplied non-capital losses of the Trust for preceding years (provided that the Trustees exercise their discretion in this regard before the end of the Taxation Year); and Net Realized Capital Gains of the Trust for any period means the net realized capital gains of the Trust for such period computed in accordance with the foregoing as if that period were the taxation year of the Trust.

(ss) "**Non-Resident**" means a non-resident of Canada within the meaning of the Tax Act.

(tt) "**Note Indenture**" means the Trust Indenture to be entered into on Closing between the Trust and the Note Trustee providing for the issuance of the Trust Notes.

(uu) **"Note Trustee"** means the trustee under the Note Indenture.

(vv) "**Offering**" means the initial offering by the Fund of Fund Units to the public in Canada pursuant to the Prospectus.

(ww) **"Operator"** means, collectively, Master LP, the General Partner and Master LP's subsidiaries.

(xx) "**person**" means and includes any individual, general partnership, limited partnership, joint venture, syndicate, sole proprietorship, company or corporation with our without share capital, joint stock company, association, trust, trust company, bank, pension fund, fund, investment fund, investment vehicle, 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.

(yy) "**Prospectus**" means the (final) prospectus of the Fund dated October 31, 2003 relating to the Offering.

(zz) "**real property**" means property which in law is real property and includes, whether or not the same would in law be real property, leaseholds, mortgages, undivided joint interests in real property (whether by way of tenancy in common, joint tenancy, co-ownership, joint venture or otherwise), any interests in any of the foregoing and securities of corporations, trusts or partnerships whose sole or principal purpose and activity is to invest in, hold and/or deal in real property.

(aaa) "**Redemption Date**" has the meaning ascribed thereto in Section 6.2(b).

(bbb) "**Redemption Price**" has the meaning ascribed thereto in Section 6.3(a).

(ccc) "**Register**" has the meaning ascribed thereto in Section 13.2.

(ddd) "**Related Party**" means, with respect to any person, a person who is a "related party" as that term is defined in Ontario Securities Commission Rule 61-501, as amended from time to time (including any successor rule or policy thereto) and, for greater certainty, a person who is a Related Party to any one of the Trust, Fund or Master LP is a Related Party to each of them provided that the Trust and Master LP are affiliates of the Fund.

(eee) "**Resident**" means a resident of Canada within the meaning of the Tax Act.

(fff) "**Series 1 Trust Notes**" means the interest-bearing unsecured subordinated demand promissory notes, series 1, of the Trust to be issued to the Trust at Closing pursuant to the Note Indenture.

(ggg) "**Series 2 Trust Notes"** means the interest-bearing unsecured subordinated promissory notes, series 2, of the Trust issuable pursuant to the Note Indenture.

(hhh) "**Series 3 Trust Notes**" means the interest-bearing unsecured subordinated promissory notes, series 3, of the Trust issuable pursuant to the Note Indenture.

(iii) "**Special Resolution**" has the meaning ascribed thereto in Section 12.6(a).

(jjj) "**subsidiary**" includes, with respect to any person, company, partnership, limited partnership, trust or other entity, any company, partnership, limited partnership, trust or other entity, controlled, directly or indirectly, by such person, company or entity and, in the case of the Trust, includes Master LP and its subsidiaries and affiliates.

(kkk) "**Tax Act**" means the *Income Tax Act*, R.S.C. 1985 (5^{th} Supp.) c. 1 and the regulations thereunder as amended from time to time.

(lll) "**Taxation Year**" means the Taxation Year of the Trust for the purposes of the Tax Act.

(mmm) "**this Declaration of Trust**", "**this Declaration**", "**hereto**", "**herein**", "**hereof**", "**hereby**", "**hereunder**" and similar expressions refer to this instrument and not to any particular Section or portion hereof, and include any and every instrument supplemental or ancillary hereto.

(nnn) "**Time of Closing**" means the time at which Closing is completed.

(ooo) "**Transfer Agent**" means such company as may from time to time be appointed by the Trust to act as registrar and transfer agent of the Trust Units.

(ppp) "**Trust**" means CSH Trust, an open ended, limited purpose trust established under the laws of Ontario pursuant to the Trust Declaration.

(qqq) "**Trust Declaration**" means the Declaration of Trust of CSH Trust dated September 8, 2003, as amended and restated on the 14th day of November, 2003, as amended and restated on July 1, 2005 and as further amended and restated on November 6, 2006, as may be supplemented, amended and restated from time to time.

(rrr) "**Trust Notes**" means, collectively, the Series 1 Trust Notes, Series 2 Trust Notes and Series 3 Trust Notes.

(sss) "**Trust Liabilities**" has the meaning ascribed thereto in Section 2.7(a).

(ttt) "**Trust Units**" means the Trust Units of the Trust referred to in Section 3.1(a).

(uuu) "**Trustee**", means at any time, the individual who is, in accordance with the provisions hereof, a trustee of the Trust at that time and "Trustees" means, at any time, all of the individuals each of whom is at that time a Trustee.

(vvv) "**Trustee Corp.**" means Chartwell Master Care Corporation, a corporation governed by the laws of the Province of Ontario.

(www) "**Trustees' Regulations**" has the meaning ascribed thereto in Section 9.3.

(xxx) "**Unit Certificate**" means a certificate, in the form stipulated by Article 13, evidencing one or more Trust Units, issued and certified in accordance with the provisions hereof.

(yyy) "**Unitholders**" means at any time the person whose names appear on the Register as holders of one or more Trust Units.

1.2 References to Acts Performed by the Trust

For greater certainty, where any reference is made in this Declaration of Trust to an act to be performed by the Trust, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by the Trustees on behalf of the Trust or by some other person duly authorized to do so by the Trustees or pursuant to the provisions hereof, and where any reference is made in this Declaration of Trust to actions, rights or obligations of the Trustees, such reference shall be construed and applied for all purposes to refer to actions, rights or obligations of the Trustees in their capacity as Trustees of the Trust, and not in their other capacities, unless the context otherwise requires.

1.3 Tax Act

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. Where there are proposals for amendments to the Tax Act which 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.

1.4 Number and Gender

In this Declaration of Trust, unless herein otherwise expressly provided or unless the context otherwise requires, words importing the singular number include the plural, and vice versa; words importing a gender shall include the feminine, masculine and neuter genders; and words importing persons include an individual, partnership, association, body corporate, trustee, executor, administrator or legal representative.

1.5 Headings for Reference Only

The division of this Declaration of Trust into Sections, the provision of a Table of Contents and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Declaration of Trust.

1.6 Day Not a Business Day

In the event that any day on which any amount is to be determined or any action is required to be taken hereunder is not a Business Day, then such amount shall be determined or such action shall be required to be taken at or before the requisite time on the next succeeding day that is a Business Day except as otherwise provided herein.

1.7 Time of the Essence

Time shall be of the essence in this Declaration of Trust.

1.8 Governing Law

This Declaration of Trust and the Unit Certificates shall be construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein. Any and all disputes arising under this Declaration of Trust, whether as to interpretation performance or otherwise, shall be subject to the exclusive jurisdiction of the courts of the Province of Ontario and the Trustees hereby irrevocably attorn, and each Unitholder shall be deemed to hereby irrevocably attorn, to the exclusive jurisdiction of the courts of such province.

1.9 Currency

Unless otherwise specified, all references to money amounts are to lawful currency of Canada.

ARTICLE 2
DECLARATION OF TRUST

2.1 Establishment of the Trust

The Trustees declare and agree to hold and administer the property, real, personal or otherwise, tangible or intangible, which has been at the date hereof or is hereafter transferred, conveyed or paid to or otherwise received by the Trust or to which the Trust is otherwise entitled and all rents, income, profits and gains therefrom in trust for the use and benefit of the Unitholders, their successors, permitted assigns and personal representatives upon the trusts and subject to the terms and conditions hereinafter declared and set forth, such trust to constitute the Trust hereunder.

2.2 Initial Contribution

The Trustees hereby acknowledge and confirm that concurrent with the execution of the Declaration of Trust dated September 8, 2003 the Initial Unitholder made the Initial Contribution in the aggregate amount of $200.00 to the Trustees for the purpose of settling the Trust and the Trustees acknowledge receipt of the Initial Contribution and the Initial Unitholder acknowledges receipt from the Trust of the Initial Trust Units in consideration therefor.

2.3 Name of the Trust

(a) The Trust shall be known and designated as "CSH TRUST" and, whenever practicable, lawful and convenient, the property of the Trust shall be held and the affairs of the Trust shall be conducted and transacted under that name.

(b) If the Trustees determine that the use of such name is not practicable, legal or convenient, the Trust may use such other designation or may adopt such other name as the Trustees deem appropriate, and the Trust may hold property and conduct and transact its affairs under such other designation or name.

2.4 Head Office

The head office of the Trust hereby created shall be located at 100 Milverton Drive, Suite 700, Mississauga, Ontario L5R 4H1 or such other place or places in Canada as the Trustees may from time to time designate. The Trust may have such other offices or places in Canada for the conduct of its affairs as the Trustees may from time to time determine as necessary or desirable.

2.5 Nature of the Trust

The Trust is an unincorporated open-ended limited purpose investment trust. The Trust, its Trustees, the Trust Units and its property shall be governed by the general law of trusts, except as such general law of trusts has been or is from time to time modified, altered or abridged for investment trusts or for this Trust by:

(a) applicable laws, regulations or other requirements imposed by applicable securities or regulatory authorities; and

(b) the terms, conditions and trusts set forth in this Declaration of Trust.

And without limiting the generality of the foregoing and insofar as possible, the terms of this Declaration of Trust insofar as they are inconsistent with the provisions of the *Trustee Act* (Ontario) shall prevail.

The beneficial interests and rights of a holder of any Trust Unit shall be limited to the right to participate pro rata in distributions payable to Unitholders when and as declared by the Trustees as contemplated by Article 5 and distributions payable to Unitholders upon the termination of the Trust as contemplated in Article 14 and to the right of redemption as contemplated in Article 6. The Trust is not, is not intended to be, shall not be deemed to be and shall not be treated as, a general partnership, limited partnership, syndicate, association, joint venture, company, corporation or joint stock company nor shall the Trustees or the Unitholders or Annuitants or any of them or any officers or other employees of the Trust or any one of them or any person for any purpose be, or be deemed to be, treated in any way whatsoever as liable or responsible hereunder as partners or joint venturers. Neither the Trustees nor any officer or other employee of the Trust shall be, or be deemed to be, agents of the Unitholders. The relationship of the Unitholders to the Trustees, to the Trust and to the property of the Trust shall be solely that of beneficiaries of the Trust and their rights shall be limited to those conferred upon them by this Declaration of Trust.

2.6 Rights of Unitholders

The rights of each Unitholder to call for a redemption, distribution or division of assets, monies, funds, income and capital gains held, received or realized by the Trustees are limited to those contained herein and, except as provided herein, no Unitholder shall be entitled to call for any partition or division of the Trust’s property or for a distribution of any particular asset forming part of the Trust’s property or of any particular monies or funds received by the Trustees. The legal ownership of the property of the Trust and the right to conduct the activities of the Trust are vested exclusively in the Trustees, and no Unitholder has or is deemed to have any right of ownership in any of the property of the Trust, except as specifically provided herein. Except as specifically provided herein, no Unitholder shall be entitled to interfere with or give any direction to the Trustees with respect to the affairs of the Trust or in connection with the exercise of any powers or authorities conferred upon the Trustees under this Declaration of Trust. The Trust Units shall be personal property and shall confer upon the holders thereof only the interest and rights specifically set forth in this Declaration of Trust.

2.7 Liability of Unitholders

(a) No Unitholder or Annuitant, in its capacity as such, shall incur or be subject to any personal liability, direct or indirect, absolute or contingent, in contract or in tort or of any other kind to any person and no resort shall be had to, nor shall recourse or satisfaction be sought from the private property of any Unitholder or Annuitant for any liability whatsoever in connection with: (i) the property and assets of the Trust or the ownership, use, operation, acquisition or disposition thereof or exercise or enjoyment of the rights, privileges, conditions or benefits attached thereto, associated therewith or derived therefrom; (ii) the obligations or the activities or affairs of the Trust; (iii) any actual or alleged act or omission of the Trustees or by any other person in respect of the activities or affairs of the Trust (whether or not authorized by or pursuant to this Declaration of Trust); (iv) any act or omission of the Trustees or by any other person in the performance or exercise, or purported or attempted performance or exercise, of any obligation, power, discretion or authority conferred upon the Trustees or such other person in respect of the activities or affairs of the Trust (whether or not authorized by or pursuant to this Declaration of Trust); (v) any transaction entered into by the Trustees or by any other person in respect of the activities or affairs of the Trust (whether or not authorized by or pursuant to this Declaration of Trust); or (vi) except as provided in Section 5.6, any taxes, levies, imposts or charges or fines, penalties or interest in respect thereof payable by the Trust or by the Trustees or by any other person (except the Unitholders to the extent required by applicable tax laws) on behalf of or in connection with the activities or affairs of the Trust (collectively "Trust Liabilities") but rather the assets of the Trust are intended to be subject to levy or execution for satisfaction of such liabilities.

(b) No Unitholder or Annuitant in its capacity as such shall be liable to indemnify the Trustees or any other person with respect to any Trust Liabilities.

(c) To the extent that, notwithstanding the provisions of this Section 2.7 any Unitholder or Annuitant, in its capacity as such may be determined by a judgment of a court of competent jurisdiction to be subject to or liable in respect of any Trust Liabilities, such Unitholder or Annuitant is entitled to be reimbursed out of the assets of the Trust for any payment of Trust Liabilities made by such Unitholder or Annuitant.

(d) If any asset of the Trust should be distributed or declared to be distributable to Unitholders contrary to the provisions of any subordination agreement between the Trust and the persons entitled to enforce any of the indebtedness of the Master LP other than the Trust or contrary to the terms of the Trust Notes or the subordination provisions of the Note Indenture under which the same are issued, then the persons entitled to enforce such subordination agreements or provisions shall be entitled to pursue whatever remedies may be available to them to enforce such subordination agreements or provisions and the limitations in Section 2.7(c) shall not apply to any judgment in respect of (and to the extent only based on) such contrary distribution and no Unitholder shall have the right to enforce any distribution contrary to such subordination agreements or provisions.

(e) The Trustees shall cause the operations of the Trust to be conducted in such a way and in such jurisdictions as to avoid, to the extent which they determine to be practicable and consistent with their fiduciary duty to act in the best interests of the Unitholders, any material risk of liability on the Unitholders or Annuitants for claims against the Trust, and shall, to the extent available on terms which they determine to be practicable, including the cost of premiums, cause the Trust to carry insurance for the benefit of the Unitholders and Annuitants, in their capacity as such, in such amounts as they consider adequate to cover any foreseeable non-contractual or non-excluded contractual liability. Any potential liability of the Trustees with respect to their foregoing obligations or their failure to perform the same shall be governed by the provisions of sections 9.6, 9.10 and 9.11.

ARTICLE 3
ISSUE AND SALE OF TRUST UNITS

3.1 Nature of Trust Units

(a) The beneficial interests in the Trust shall be divided into "Trust Units", which shall be entitled to the rights and subject to the limitations, restrictions and conditions set out herein. The interest of each Unitholder shall be determined by the number of Trust Units registered in the name of the Unitholder.

(b) The issued and outstanding Trust Units may be, respectively, subdivided or consolidated from time to time by the Trustees without notice to the Unitholders.

(c) Each Trust Unit represents an equal undivided beneficial interest in any distribution payable to Unitholders from the Trust, whether of net income, net realized capital gains or other amounts, and in any of the net assets of the Trust remaining after satisfaction of all liabilities payable to Unitholders in the event of termination or winding up of the Trust. Trust Units shall rank among themselves equally and rateably without discrimination, preference or priority.

(d) Each Trust Unit shall entitle the holder of record thereof to one vote at all meetings of Unitholders.

3.2 Authorized Number of Trust Units

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

3.3 Trust Units Non-Assessable

No Trust Units shall be issued other than as fully paid and non-assessable. A Trust Unit shall not be fully paid until the consideration therefor has been received in full by or on behalf of the Trust. The consideration for any Trust Unit shall be paid in money or in property or in past services that are not less in value than the fair equivalent of the money that the Trust would have received if the Trust Unit had been issued for money as determined by the Trustees, in their discretion. In determining whether property or past services are the fair equivalent of a money consideration, the Trustees may take into account reasonable charges and expenses of organization and reorganization and payments for property and past services reasonably expected to benefit the Trust. Notwithstanding the foregoing, Trust Units may be issued and sold on an installment receipt basis, in which event beneficial ownership of such Trust Units may be represented by the installment receipts, but shall otherwise be non-assessable.

3.4 Fractional Units

If as a result of any act of the Trustees hereunder or otherwise any person becomes entitled to a fraction of a Trust Unit, such person is not entitled to receive a certificate therefor. Fractional Trust Units shall not, except to the extent that they may represent in the aggregate one or more whole Trust Units, entitle the holders thereof to notice of, or to attend or to vote at, meetings of Unitholders. Subject to the foregoing, such fractional Trust Units shall have attached thereto the rights, restrictions, conditions and limitations attaching to whole Trust Units in the proportion that they bear to a whole Trust Unit.

3.5 Re-Purchase of Trust Units by the Trust

Immediately after the Closing, the Trust will purchase the Initial Trust Units from the Initial Unitholder, and the Initial Unitholder shall sell the Initial Trust Units to the Trust, for a purchase price of $200.00 and, upon the completion of such purchase and sale, the Initial Trust Units shall be cancelled and shall no longer be outstanding for any of the purposes of this Declaration of Trust. The Trust shall be entitled to purchase for cancellation at any time the whole or from time to time any part of the outstanding Trust Units, at a price per Trust Unit and on a basis to be determined by the Trustees in compliance with all applicable securities regulatory laws, regulations or policies or the policies of any applicable stock exchange.

3.6 Consolidation of Trust Units

Unless the Trustees determine otherwise, immediately after any *pro rata* distribution of additional Trust Units to all Unitholders pursuant to Section 5.5(b), the number of the outstanding Trust Units will automatically be consolidated such that each Unitholder will hold after the consolidation the same number of Trust Units as the Unitholder held before the distribution of additional Trust Units. In this case, each Unit Certificate representing a number of Trust Units prior to the distribution of additional Trust Units is deemed to represent the same number of Trust Units after the non-cash distribution of additional Trust Units and the consolidation.

Notwithstanding the foregoing, where tax is required to be withheld from a Unitholder's share of the distribution, the consolidation will result in such Unitholder holding that number of Trust Units equal to (i) the number of Trust Units held by such Unitholder prior to the distribution plus the number of Trust Units received by such Unitholder in connection with the distribution (net of the number of whole and part Trust Units withheld on account of withholding taxes) multiplied by (ii) the fraction obtained by dividing the aggregate number of

Trust Units outstanding prior to the distribution by the aggregate number of Trust Units that would be outstanding following the distribution and before the consolidation if no withholding were required in respect of any part of the distribution payable to any Trust Unitholder. Such Unitholder will be required to surrender the Unit Certificates, if any, representing such Unitholder's original Trust Units, in exchange for a Unit Certificate representing such Unitholder's post consolidation Trust Units.

3.7 Allotment and Issue

Subject to Section 4.2(j) and Article 13, the Trustees may allot and issue Trust Units at such time or times and in such manner (including pursuant to any plan from time to time in effect relating to reinvestment by Unitholders of their distributions of the Trust in Trust Units), and for such consideration and to such person, persons or class of persons as the Trustees in their sole discretion shall determine. In the event that Trust Units are issued in whole or in part for a consideration other than money, the resolution of the Trustees allotting and issuing such Trust Units shall express the fair equivalent in money of the other consideration received.

3.8 Rights, Warrants, Options, Convertible Indebtedness and Other Securities

Subject to Article 13, the Trustees may create and issue rights, warrants or options or other instruments or securities to subscribe for fully paid Trust Units which rights, warrants, options, instruments or securities may be exercisable at such subscription price or prices and at such time or times as the Trustees may determine. The rights, warrants, options, instruments or securities so created may be issued for such consideration or for no consideration, all as the Trustees may determine. A right, warrant, option, instrument or security shall not be a Trust Unit and a holder thereof shall not be a Unitholder. Subject to the provisions of Article 4 hereof, the Trustees may create and issue indebtedness of the Trust in respect of which interest, premium or principal payable thereon may be paid, at the option of the Trust or the holder, in fully paid Trust Units, or which indebtedness, by its terms, may be convertible into Trust Units at such time and for such prices as the Trustees may determine. Any indebtedness so created shall not be a Trust Unit and a holder thereof shall not be a Unitholder unless and until fully paid Trust Units are issued in accordance with the terms of such indebtedness.

ARTICLE 4
INVESTMENTS AND OPERATIONS OF THE TRUST

4.1 Investment Restrictions

After the Closing, the assets of the Trust may be invested, directly or indirectly, only in accordance with the following restrictions:

(a) holding and investing in real properties, directly or indirectly through its ownership of entities holding interest in real property and through lending, financing and other activities (including mezzanine loans) and transactions ancillary to the ownership of real property;

(b) investing in debt and equity securities, including those issued by Master LP, Benco and Devco;

(c) issuing or redeeming Trust Units;

(d) issuing or repaying debt securities, including the Trust Notes;

(e) guaranteeing the obligations of the Fund, Master LP or any affiliate of the Trust or Master LP pursuant to any good faith debt for borrowed money incurred by the Fund, Master LP or any affiliate, as the case may be, and pledging securities held by the Trust in Master LP or any such affiliate, as security for such guarantee;

(f) satisfying the obligations, liabilities or indebtedness of the Trust;

(g) except for temporary investments held in cash, deposits with a Canadian chartered bank or trust company registered under the laws of a province of Canada, short-term government debt securities, some or all of the receivables under instalment receipt agreements or money market instruments of, or guaranteed by, a Canadian bank listed on Schedule I to the *Bank Act* (Canada) maturing prior to one year from the date of issue, the Trust may not hold securities other than securities of the Fund, Master LP, Devco, an entity wholly owned by Master LP and/or the Fund formed and operated solely for the purpose of holding a particular real property or real properties or managing real property or real properties or some or all of the receivables under instalment receipt agreements, and provided further that, subject to paragraph (h) below, notwithstanding anything contained in this Declaration of Trust to the contrary, the Trust may acquire securities of other Canadian real estate investment trusts or limited partnership units of limited partnerships that invest in real estate; and

(h) notwithstanding anything else contained in this Declaration of Trust, the Trust shall not make any investment, take any action or omit to take any action that would result in the Fund failing or ceasing to qualify as a "mutual fund trust" and a "registered investment" within the meaning of the Tax Act; that would result in the Fund Units being disqualified for investment by Deferred Income Plans; that would result in Fund Units being foreign property for the purposes of the Tax Act; or that would, if the Fund is a registered investment within the meaning of the Tax Act, result in the Fund paying a tax under Part XI of the Tax Act for exceeding certain foreign property investment limits; that would result in the Trust being subject to tax under Part XII.2 of the Tax Act or that would result in the Trust failing or ceasing to qualify as a "unit trust" within the meaning of the Tax Act.

4.2 Operating Policies

After the Closing, the operations and affairs of the Trust will be conducted in accordance with the following policies:

(a) the Trust shall not purchase, sell, market or trade in currency or interest rate futures contracts otherwise than for hedging purposes where, for the purposes hereof, the term “hedging” shall have the meaning ascribed thereto by National Instrument 81-102 adopted by the Canadian Securities Administrators, as amended from time to time;

(b) (i) any written instrument creating an obligation which is or includes the granting by the Trust of a mortgage, and (ii) to the extent the Trustees determine to be practicable and consistent with their fiduciary duty to act in the best interests of the Unitholders, any written instrument which is, in the judgment of the Trustees, a material obligation shall contain a provision or be subject to an acknowledgement to the effect that the obligation being created is not personally binding upon, and that resort shall not be had to, nor shall recourse or satisfaction be sought from, by way of lawsuit or otherwise, the private property of any of the Trustees, Unitholders, Annuitants or officers, employees or agents of the Trust, but that only property of the Trust or a specific portion thereof shall be bound; the Trust, however, is not required, but shall use all reasonable efforts, to comply with this requirement in respect of obligations assumed by the Trust upon the acquisition of real property;

(c) the Trust shall not engage in construction or development of real property except as permitted under Section 4.2(h) of the Fund Declaration of Trust and except as necessary to maintain its real properties in good repair or to enhance the income-producing ability of capital properties in which the Trust has an interest;

(d) title to each real property shall be held by and registered in the name of the Trust, the Trustees, or a corporation or other entity wholly-owned by the Trust or jointly-owned by the Trust with joint venturers;

(e) the Trust shall not incur or assume any indebtedness under a mortgage on any real property of the Trust or the Operator unless, at the date of the proposed assumption or incurring of the indebtedness, the aggregate of (i) the amount of all indebtedness, excluding operating lines, secured on such real property, and (ii) the amount of additional indebtedness, excluding operating lines, proposed to be assumed or incurred, does not exceed 75% of the market value of such real property provided that such aggregate indebtedness may exceed 75% of such market value (a) if the entire amount of such aggregate indebtedness is insured by Canada Mortgage and Housing Corporation, or (b) where such indebtedness is the result of an assumption of mortgage indebtedness upon the acquisition of real property, until the maturity of the mortgage, at which time the amount of mortgage indebtedness outstanding must be reduced so as not to exceed 75% of the then applicable market value;

(f) the Trust shall not incur or assume any indebtedness if, after giving effect to the incurring or assumption of the indebtedness:

(i) the total indebtedness of the Fund and its consolidated subsidiaries, excluding convertible debentures, would be more than 60% of Adjusted Gross Book Value; or

(ii) the total indebtedness of the Fund and its consolidated subsidiaries, including convertible debentures, would be more than 65% of Adjusted Gross Book Value;

unless a majority of the Independent Trustees, in their discretion, determine that the maximum amount of indebtedness shall be based on the appraised value;

(g) the Trust shall conduct or receive on terms approved by the Trustees an independent appraisal and an engineering survey with respect to the physical condition thereof (including capital replacement programs) of each property that it intends to acquire;

(h) the Trust shall obtain and maintain at all times insurance coverage in respect of potential liabilities of the Trust and the accidental loss of value of the assets of the Trust from risks, in amounts, with such insurers, and on such terms as the Trustees consider appropriate, taking into account all relevant factors including the practices of owners of comparable properties;

(i) the Trust shall conduct or receive on terms approved by the Trustees a Phase I environmental site assessment of each property to be acquired by it and, if the Phase I environmental site assessment recommends that further environmental site assessments be conducted, the Trust shall conduct or receive on terms approved by the Trustees such further environmental site assessments, in each case by an independent and experienced environmental consultant; such assessment as a condition to any acquisition shall be satisfactory to the Trustees; and

(j) the Trust shall not issue additional Trust Units unless the Trustees consider such issuances not to be dilutive to ensuing annual distributions of Distributable Income per Fund Unit to existing Fund Unitholders.

For the purposes of the foregoing restrictions and policies, the assets, liabilities and transactions of a corporation, partnership or other entity wholly or partially owned by the Trust will be deemed to be those of the Trust on a proportionate, consolidated basis. In addition, any references in the foregoing investment restrictions and operating policies to investment in real property will be deemed to include an investment in a joint venture arrangement. In addition, the term “indebtedness” means (without duplication) on a consolidated basis:

(i) any obligation of the Trust for borrowed money;

(ii) any obligation of the Trust incurred in connection with the acquisition of property, assets or business other than the amount of future income tax liability arising out of indirect acquisitions;

(iii) any obligation of the Trust issued or assumed as the deferred purchase price of property;

(iv) any capital lease obligation of the Trust; and

(v) any obligation of the type referred to in clauses (i) through (iv) of another person, the payment of which the Trust has guaranteed or for which the Trust is responsible for or liable;

provided that (A) for the purposes of (i) through (iv), an obligation (other than an obligation relating to convertible debentures) will constitute indebtedness only to the extent that it would appear as a liability on the consolidated balance sheet of the Fund in accordance with generally accepted accounting principles; (B) obligations referred to in clauses (i) through (iii) exclude trade accounts payable, distributions payable to Unitholders and accrued liabilities arising in the ordinary course of business; and (C) convertible debentures will constitute indebtedness to the extent of the principal amount thereof outstanding.

4.3 Application of Investment Restrictions and Operating Guidelines

With respect to the investment restrictions and operating guidelines contained in Sections 4.1 and 4.2, where any maximum or minimum percentage limitation is specified in any of the restrictions therein contained, such restrictions shall be applied on the basis of the relevant amounts calculated immediately after the making of such investment. Any subsequent change relative to any percentage limitation which results from a subsequent change in the book value of the assets of the Trust or the amount of Adjusted Gross Book Value will not require divestiture of any investment.

ARTICLE 5
DISTRIBUTIONS

5.1 Computation of Distributable Income

The Distributable Income of the Trust for or in respect of any period shall be the Net Income for the period.

Distributable Income may be estimated by the Trustees whenever the actual amount has not been fully determined. Such estimates shall be adjusted as of a subsequent Distribution Date when the amount of Distributable Income has been determined by the Trustees.

Distributable Income shall be calculated for each Distribution Period or other calendar period selected by the Trustees.

5.2 Distribution of Distributable Income

The Trust may distribute to Trust Unitholders on each Distribution Date all of the Distributable Income of the Trust for any Distribution Period or other period as the Trustees in their discretion may determine and declare. Notwithstanding the foregoing, the Trust shall distribute in each year an amount equal to 80% of the Distributable Income of the Trust provided that the Trust receives amounts equal to such distributions from its investments. The constating documents of Master LP provide for minimum distributions and the Trustees shall not amend such constating documents without the approval of Unitholders by a majority of votes cast at a duly called meeting. Unitholders at the close of business on each Distribution Record Date shall be entitled to receive and to enforce payment of any distribution of Distributable Income declared by the Trustees for such Distribution Period. The distribution for any Distribution Period will be paid on the Distribution Date for such Distribution Period. In addition to the distributions which are made payable to Unitholders, the Trustees may designate and make payable any income or capital gains realized by the Trust (including any income realized by the Trust on the redemption of Trust Units *in specie*) to redeeming Unitholders. The Trustees, if they so determine when income has been accrued but not collected may, on a temporary basis, transfer sufficient monies from the capital to the income account of the Trust to permit distributions of income which are payable to be effected.

5.3 Automatic Year End Distribution of Net Income

On the last day of each Taxation Year an amount equal to the Net Income of the Trust for such Taxation Year not previously made payable or treated as having been paid to Unitholders in the Taxation Year (including any income realized by the Trust on the redemption of Trust Units and Trust Notes *in specie*) shall be automatically payable to Unitholders at the close of business on such day.

5.4 Automatic Year End Distribution of Net Realized Capital Gains

On the last day of each Taxation Year, an additional distribution equal to the Net Realized Capital Gains for such Taxation Year not previously made payable or treated as having been paid to Unitholders in the Taxation Year (including any capital gains realized by the Trust on the redemption of Trust Units and Trust Notes *in specie*) shall be automatically payable to Trust Unitholders at the close of business on such day except to the extent that the distributions previously payable or treated as having been paid to Unitholders in the Taxation Year (including any capital gains realized by the Trust on the redemption of Trust Units and Trust Notes *in specie*) exceed the aggregate of (A) the Net Income of the Trust for such Taxation Year, and (B) any Net Realized Capital Gains previously made payable or treated as having been paid to Unitholders in the Taxation Year (such excess is hereinafter referred to as an "Excess Distribution").

To the extent that an additional distribution of Net Realized Capital Gains, pursuant to this Section 5.4 is reduced by the Excess Distributions, the distributions of Distributable Income made pursuant to Section 5.2 shall be deemed to have included payment of an amount of Net Realized Capital Gains equal to the lesser of the Net Realized Capital Gains for the Taxation Year and the Excess Distribution.

5.5 Payment of Distributions

(a) Distributions paid on each Trust Unit shall be equal to that paid on each other Trust Unit, and cash distributions shall be made by cheque payable to or to the order of the Unitholder, by electronic funds transfer or by such other manner of payment approved by the Trustees from time to time. A Unitholder shall be entitled on the day on which a distribution is payable pursuant to Section 5.2, 5.3 or 5.4 to enforce payment of the amount payable.

(b) Where the Trustees determine that the Trust does not have available cash in an amount sufficient to make payment of the full amount of any distribution which is payable under this Article 5 on the due date for such payment, the payment, in full satisfaction of the distribution, may, at the option of the Trustees, include the issuance of additional Trust Units, or fractions of Trust Units, or Series 1 Trust Notes, if necessary, having a fair market value in the aggregate as determined by the Trustees equal to the difference between the amount of such distribution and the amount of cash which has been determined by the Trustees to be available for the payment of such distribution provided that such issuance will not affect the status of the Fund Units for purposes of the foreign property rules under the Tax Act nor result in the Fund being liable for foreign property penalty tax.

5.6 Withholding Taxes

The Trustees may deduct or withhold from distributions payable to any Unitholder all amounts required by law to be withheld from such distributions, whether such distributions are in the form of cash, additional Trust Units or otherwise.

5.7 Income Tax Matters

In computing the Net Income of the Trust for income tax purposes for any year, except as the Trustees otherwise determine, the Trust shall claim the maximum amount of any discretionary deductions available to the Trust under the Tax Act.

5.8 Allocations of Net Income and Net Realized Capital Gains for Tax Purposes

In accordance with and to the extent permitted by the Tax Act, the Trustees shall, in each year, make such designations for income tax purposes in respect of amounts paid or payable or deemed to be paid to the Unitholders for such amounts that the Trustees consider to be reasonable in all the circumstances, including designations relating to taxable dividends received or deemed to be received by the Trust in the year on shares of taxable Canadian corporations, if any, and net taxable capital gains of the Trust in the year. Where permitted by the Tax Act, the Trustees shall make designations under the Tax Act so that the amount distributed to a Unitholder but not deducted by the Trust would not be included in the Unitholder's income for the purposes of the Tax Act. For greater certainty, it is hereby declared that any distributions of Net Realized Capital Gains of the Trust shall include the non-taxable portion of the capital gains of the Trust which are included in such distribution. Unless the Trustees otherwise determine, the proportionate share per Trust Unit of any distribution of both (i) the Net Income of the Trust for a Taxation Year; and (ii) Net Realized Capital Gains; payable to the holders of Trust Units that is allocated to such holders in respect of each Trust Unit for the purposes of the Tax Act shall be determined by dividing such amount by the number of issued and outstanding Trust Units on the applicable record date in respect of a distribution of Net Income of the Trust and on December 31 in respect of a distribution of Net Realized Capital Gains. Each Unitholder's share of the amount of any such distribution shall be an amount equal to the proportionate share of each Trust Unit of such amount multiplied by the number of Trust Units owned of record by each such Unitholder on such applicable record date or December 31 in the year of such distribution, as the case may be.

5.9 Definitions

Unless otherwise specified or the context otherwise requires, any term in Article 1 and this Article 5 which is defined in the Tax Act shall have for the purposes of Article 1 and this Article 5 the meaning that it has in the Tax Act.

ARTICLE 6
REDEMPTION OF TRUST UNITS

6.1 Right of Redemption

Each Unitholder shall be entitled to require the Trust to redeem at any time or from time to time at the demand of such Unitholder all or any part of the Trust Units registered in the name of such Unitholder at the prices determined and payable in accordance with the conditions hereinafter provided. The Trustees will also be entitled to call for redemption, at any time, all or part of the outstanding Trust Units registered in the name of the Unitholders at the same redemption price as described above for each Trust Unit called for redemption, calculated with reference to the date the Trustees approved the redemption of Trust Units.

6.2 Exercise of Redemption Right

(a) To exercise a Unitholder’s right to require redemption under this Article 6, a duly completed and properly executed redemption notice, in a form reasonably acceptable to the Trustees, requiring the Trust to redeem the number of Trust Units specified therein to be so redeemed, together with the certificate for the Trust Units representing the Trust Units to be redeemed and written instructions as to the number of Trust Units to be redeemed shall be sent to the Trust (at its head office) or as the Trustee may otherwise direct. No form or manner of completion or execution shall be sufficient unless the same is in all respects satisfactory to the Trustees and is accompanied by any further evidence that the Trustees may reasonably require with respect to the identity, capacity or authority of the person giving such notice.

(b) Upon receipt by the Trust of the notice to redeem Trust Units, the Unitholder shall thereafter cease to have any rights with respect to the Trust Units tendered for redemption (other than to receive the redemption payment therefor unless the redemption payment is not made as provided for herein) including the right to receive any distributions thereon which are declared payable to the Unitholders of record on a date which is subsequent to the day of receipt by the Trust of such notice. Trust Units shall be considered to be tendered for redemption on the date that the Trust has, to the satisfaction of the Trustees, received the notice and other required documents or evidence as aforesaid (the “Redemption Date”).

6.3 Redemption

(a) Upon receipt by the Trust of the notice to redeem Trust Units in accordance with Section 6.2, the Unitholder tendering such notice shall be entitled to receive a price per Trust Unit (hereinafter called the "Redemption Price") equal to:

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

where:

A = the redemption price per Fund Unit calculated as of the close of business on the Redemption Date;

B = the aggregate number of Fund Units outstanding as of the close of business on the Redemption Date;

C = the aggregate unpaid principal amount and accrued interest thereon of the Series 1 Trust Notes and any other indebtedness of the Trust held by or owed to the Fund and the fair market value of any other assets or investments held by the Fund (other than Trust Units) as of the close of business on the Redemption Date;

D = indebtedness of the Fund (on an unconsolidated basis) as of the close of business on the Redemption Date; and

E = the aggregate number of Trust Units outstanding held by the Fund as of the close of business on the Redemption Date.

(b) The aggregate Redemption Price payable by the Trust in respect of any Trust Unit tendered for redemption by the holder thereof during any month will be satisfied by the issuance to or to the order of the holder whose Trust Units are to be redeemed of such aggregate amount of such Series 2 Trust Notes as is equal to the aggregate Redemption Price payable to such holder rounded down to the nearest $100, with the balance of any such aggregate Redemption Price not paid in Series 2 Trust Notes to be paid in immediately available funds by cheque, if so elected by the Fund or if no election is made by the Fund, at the direction of the Trustees, in their sole discretion (i) in immediately available funds by cheque; (ii) by the issuance to or to the order of the holder whose Trust Units are to be redeemed of such aggregate amount of such Series 2 Trust Notes as is equal to the aggregate Redemption Price payable to such holder rounded down to the nearest $100, with the balance of any such aggregate Redemption Price not paid in Series 2 Trust Notes to be paid in immediately available funds by cheque; or (iii) by any combination of immediately available funds and Series 2 Trust Notes as the Trustees shall determine in their sole discretion, in each such case, payable or issuable on the last day of the calendar month following the calendar month in which the Trust Units were so tendered for redemption. A holder of Trust Units whose Trust Units are tendered for redemption may elect, at any time prior to the payment of the Redemption Price, to receive Series 2 Trust Notes pursuant to (ii) above in the place of all or part of the funds otherwise payable, the principal amount of such Series 2 Trust Notes payable to be equal to the funds otherwise payable, rounded down to the nearest $100 with the balance not paid in Series 2 Trust Notes to be paid in immediately available funds by cheque.

(c) Payments by the Trust of the Redemption Price are conclusively deemed to have been made upon the mailing of the cheque representing any funds payable or any Series 2 Trust Notes issuable by registered mail in a postage prepaid envelope addressed to the redeeming Unitholder and/or any party having a security interest in respect of the Trust Units so redeemed. Upon such payment, the Trust shall be discharged from all liability to the redeeming Unitholder and any party having a security interest in respect of the Trust Units so redeemed.

Notwithstanding the foregoing, in the case of an *in specie* redemption pursuant to Section 6.3(b), the Trust will redeem an appropriate number (which may be none) of Series 1 Trust Notes and Trust Units in consideration of Series 2 and Series 3 Trust Notes so that the Fund Units will not thereafter constitute "foreign property" under the Tax Act and the Fund will not be subject to tax under Part XI of the Tax Act. Where the Trust makes a distribution *in specie* of Trust Notes on the redemption of Trust Units and Series 1 Trust Notes, some or all of the income of the Trust and the Net Realized Capital Gains of the Trust for the year may, for purposes of computing the Net Income of the Trust and the Net Realized Capital Gains of the Trust under the Tax Act or other tax legislation be treated as payable in the year by the Trust to the Unitholders redeeming Trust Units and Series 1 Trust Notes in such year and, to the extent of the amount thereof so treated has been designated as taxable capital gains or income to such Unitholders, the holder's redemption proceeds shall be reduced accordingly. Any such amounts shall be determined at the discretion of a majority of the Trustees; however in all cases, a redeeming Unitholder will only be treated as having been paid an amount to which the Unitholders of the Trust Units redeemed would be entitled to receive.

6.4 Cancellation of all Redeemed Trust Units

All Trust Units which are redeemed under this Article 6 shall be cancelled and such Trust Units shall no longer be outstanding and shall not be reissued.

ARTICLE 7
TRUSTEES

7.1 Number of Trustees

The number of Trustees shall consist of not less than one and not more than 11 Trustees. The number of Trustees may only be changed within such limits by the Unitholders or, if authorized by the Unitholders, by the Trustees, provided that the Trustees may not, between meetings of the Unitholders, unless otherwise approved by a majority of the Independent Trustees, appoint an additional Trustee if, after such appointment, the total number of Trustees would be greater than one and one-third times the number of Trustees in office immediately following the last annual meeting of the Unitholders. Until completion of the Closing, the Initial Trustee shall be the sole trustee of the Trust. Upon completion of the Closing, pursuant to a resolution of the Initial Unitholder as the sole Unitholder of the Trust made prior to the Closing and passed pursuant to Section 8.6, the Initial Trustee is removed as trustee and, pursuant to a resolution of the Initial Unitholder as the sole Unitholder of the Trust made prior to the Closing and passed pursuant to Section 8.2, the number of Trustees is increased to three and Mike Harris, Sidney Robinson and Thomas Schwartz are appointed as Trustees until the close of the next annual meeting of Unitholders, both resolutions to take effect as of the Time of Closing.

7.2 Calling and Notice of Meetings

The Trustees may act with or without a meeting. Meetings of the Trustees shall be called and held at such time and at such place in Canada as the Trustees, the Chairman of the Trustees or any two Trustees may determine, and any one Trustee or officer of the Trust may give notice of meetings when directed or authorized by such persons. Notice of each meeting of the Trustees shall be given to each Trustee not less than 48 hours before the time when the meeting is to be held, provided that if a quorum of Trustees is present, the Trustees may without notice hold a meeting immediately following an annual meeting of Unitholders. Notice of a meeting of the Trustees may be given verbally, in writing or by telephone, fax or other means of communication. A notice of a meeting of Trustees need not specify the purpose of or the business to be transacted at the meeting. Notwithstanding the foregoing, the Trustees may by resolution from time to time fix a day or days in any month or months for regular meetings of the Trustees at a place and hour to be named, in which case, provided that a copy of such resolution is sent to each Trustee forthwith after being passed and forthwith after each Trustee's appointment, no other notice shall be required for any such regular meeting. A Trustee who attends a meeting of Trustees, in person or by telephone, is deemed to have waived notice of such meeting except when the Trustee attends the meeting for the purpose of objecting to the transaction of any business on the grounds that the meeting has not been lawfully called or convened. Each committee of Trustees appointed by the Trustees may adopt its own rules or procedures for the calling, conduct, adjournment and regulation of the meetings of such committees as it sees fit and may amend or repeal such rules or procedures from time to time; provided, however, that the Trustees' Resolutions and any such rules or procedures shall not be inconsistent with this Declaration of Trust.

7.3 Place of Meetings

Meetings of the Trustees may be held at any place in Canada. A Trustee who attends a meeting of Trustees, in person or by telephone, is deemed to have consented to the location of the meeting except when he or she attends the meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting has not lawfully called or convened.

7.4 Meetings by Telephone

With the consent of the chairman of the meeting or a majority of the other Trustees present at the meeting, a Trustee may participate in a meeting of the Trustees or of a committee of the Trustees by means of telephone or other communication facilities that permit all persons participating in the meeting to hear each other. A Trustee participating in such a meeting in such manner shall be considered present at the meeting and at the place of the meeting.

7.5 Quorum

The quorum for the transaction of business at any meeting of the Trustees shall consist of a majority of the number of Trustees then holding office, provided that a majority of the Trustees comprising the quorum must be Residents and Independent Trustees. Notwithstanding any vacancy among the number of Trustees, a quorum of Trustees may exercise all of the powers of the Trustees.

7.6 Chairman

The chairman of any meeting of the Trustees shall be the Trustee present at the meeting who holds the office of Chairman of the Trustees or if such person is not present, the Trustees present shall choose one of their number to be chairman for the purposes of that meeting. The Chairman of the Trustees and the chairman of any meeting of Trustees shall be a Resident and an Independent Trustee.

7.7 Action by the Trustees

At all meetings of the Trustees every question shall be decided by a majority of the votes cast on the question, provided, however, that the approval required with respect to any Independent Trustee Matter shall be that of a majority of the Independent Trustees who have no interest in the Independent Trustee Matter. In the case of equality of votes, the chairman of the meeting shall not be entitled to a second or casting vote. The powers of the Trustees may be exercised by resolution passed at a meeting at which a quorum is present or by resolution in writing signed by all Trustees. Resolutions in writing may be signed in counterparts each of which shall be deemed to be an original and all originals together shall be deemed to be one and the same instrument.

7.8 Adjourned Meeting

Any meeting of Trustees may be adjourned from time to time by the chairman of the meeting with the consent of the meeting to a fixed time and place. Further notice of the adjourned meeting need not be given. The adjourned meeting shall be duly constituted if a quorum is present and if it is held in accordance with the terms of the adjournment. If there is not a quorum present at the adjourned meeting, the original meeting shall be deemed to have terminated upon its adjournment.

7.9 Remuneration and Expenses

The Trustees shall be paid such compensation for their services as the Trustees may from time to time determine. Until otherwise determined, such compensation for each Trustee, who is not also a Director of the General Partner or a trustee, director, officer or employee of the Fund or a subsidiary of the Fund, shall be $15,000 per year and $1,000 per meeting for attending each board or committee attended, if attending in person, or, $500 per meeting if attending by conference call, in respect of meetings held on separate occasions from meetings of the Board of Directors of the General Partner and its committees and on separate occasions from meetings of the trustees of the Fund. The Trustees shall also be entitled to be reimbursed for reasonable travel and other expenses properly incurred by them in attending meetings of the Trustees or any committee thereof, held on separate occasions, or in connection with their services as Trustees. Nothing herein contained shall preclude any Trustee from serving the Trust in any other capacity and receiving remuneration therefor. The Trustees shall be eligible to participate in any incentive plan for employees and/or officers adopted by the Trust.

7.10 Officers

The Trustees from time to time may appoint one or more officers of the Trust, including without limitation a Chairman of the Trustees, and, may remove any officer of the Trust. The powers and duties of each officer of the Trust shall be those determined from time to time by the Trustees and, in the absence of such determination, shall be those usually applicable to the office held. All officers so appointed shall be Residents.

7.11 Residency of Trustees

A majority of the Trustees must be Residents. If at any time a majority of the Trustees are not Residents or there are no Trustees who are Residents, the Trustee or Trustees who are Non-Residents shall be deemed, immediately before that time, to have resigned and shall cease to be Trustees with effect from the time of such deemed resignation. If at any time the number of Trustees is less than the number required under this Declaration of Trust and the remaining Trustee or Trustees fail or are unable to act in accordance with Sections 8.2 and/or 8.7 to appoint one or more additional Trustees or if, upon the resignation or deemed resignation of one or more Trustees there would be no Trustees, then the Unitholders shall appoint one or more Trustees so that following such appointment a majority of the Trustees are Residents and, failing such appointment, any remaining Trustee or Unitholder or officer of the Trust or the Auditors, as the case may be, may apply to the Superior Court of Ontario for an order appointing one or more Trustees so that following such appointment a majority of the Trustees are Residents, to act until the next annual meeting of Unitholders or on such other terms as the Court may order. Any Trustee who is a Resident who proposes to become a Non-Resident shall notify the other Trustees thereof as soon as reasonably practicable and shall resign as a Trustee effective upon the day of such notification and shall be replaced with a Trustee who is a Resident.

7.12 Independent Trustees

A majority of the Trustees and all the members of any committee of the Trustees must be Independent Trustees. If at any time a majority of the Trustees are not Independent Trustees because of the death, resignation, bankruptcy, adjudicated incompetence, removal or change in circumstance of any Trustee who was an Independent Trustee, this requirement shall not be applicable for a period of 60 days thereafter, during which period of time the remaining Trustees, whether or not they constitute a quorum, shall appoint a sufficient number of Independent Trustees to comply with this requirement.

ARTICLE 8
APPOINTMENT, RESIGNATION AND REMOVAL OF THE TRUSTEES

8.1 Qualification of Trustees

The following persons are disqualified from being a Trustee of the Trust:

(a) anyone who is less than 18 years of age;

(b) anyone who is of unsound mind and has been so found by a court in Canada or elsewhere;

(c) a person who is not an individual; and

(d) a person who has the status of bankrupt.

A majority of the Trustees must be Independent Trustees, unless the absence of such a majority arises between meetings of the Unitholders by reason of any Trustee's resignation, death or failure to meet the above qualifications.

8.2 Appointment of Trustees

Subject to Sections 7.11, 7.12 and 8.6, the Initial Trustee is hereby confirmed as the Initial Trustee of the Trust for an initial term of office which, shall expire upon completion of the Closing. The appointment of Mike Harris, Sidney Robinson, Thomas Schwartz as Trustees upon completion of the Closing is hereby confirmed for a term of office which, subject to Section 8.5, shall expire (subject to further appointment) at the close of the next annual meeting of Unitholders. Except as otherwise provided herein, Trustees shall be appointed (including the reappointment of incumbent Trustees) at each annual meeting of Unitholders, and may be appointed at a special meeting of Unitholders, in each case to hold office, subject to Section 8.5, for a term expiring at the close of the next annual meeting of Unitholders following such an appointment. Any such appointment shall be made either by a resolution approved by a majority of the votes cast at a meeting of Unitholders or shall be made by resolution in writing in the manner set out in Section 12.14. Notwithstanding the foregoing, if no Trustees are appointed at the annual meeting of Unitholders held immediately before the term of office of the existing Trustees expires, such existing Trustees shall continue to hold the office of Trustees under this Declaration of Trust until successors have been appointed or they cease to hold office.

8.3 Consent to Act

(a) A person who is appointed a Trustee hereunder, other than the Initial Trustee whose consent to act is given by the signature hereto and the persons appointed pursuant to Section 8.2, shall not become a Trustee until the person has, either before or after such appointment, executed and delivered to the Trust a consent substantially as follows:

"To: CSH Trust (the "Trust")

And to: The Trustees thereof

The undersigned hereby certifies that he or she is/is not a resident of Canada within the meaning of the *Income Tax Act* (Canada) and consents to act as a Trustee of the Trust and hereby agrees, upon the later of the date of this consent and the date of the undersigned's appointment as a Trustee of the Trust, to thereby become a party, as a Trustee, to the Declaration of Trust made the 8th day of September, 2003, as amended and restated on November 14, 2003 and as supplemented, amended and restated from time to time, constituting the Trust.

Dated: ______________________________

____
[Signature]

____
[Print Name]"

(b) Except as provided in Section 8.2, upon the later of a person being appointed a Trustee hereunder and executing and delivering to the Trust a consent substantially as set forth in Section 8.3(a), such person shall become a Trustee hereunder and shall be deemed to be a party (as a Trustee) to this Declaration of Trust, as amended and restated on November 14, 2003, as further amended and restated on July 1, 2005 and as supplemented, amended and restated from time to time.

(c) The right, title and interest of the Trustees to control and exclusively administer the Trust and have title in and to the property of the Trust drawn up in their names and all other rights to the Trustees at law shall vest automatically in all individuals who may hereafter become Trustees upon their due election or appointment and qualification (including pursuant to Section 8.3(a)) without any further act, and they shall thereupon have all the rights, privileges, powers, authorities, obligations and immunities of Trustees hereunder, whether or not conveyancing documents have been executed and delivered pursuant to Section 8.5 or otherwise.

8.4 Failure to Elect Minimum Number of Trustees

If a meeting of Unitholders fails to elect the minimum number of Trustees required by this Declaration of Trust by reason of the disqualification or death of any nominee, the Trustees elected at the meeting may, subject to Sections 7.11 and 7.12, exercise all of the powers of the Trustees if the number of Trustees so elected constitutes a quorum.

8.5 Ceasing to Hold Office

(a) A Trustee ceases to hold office when:

(i) he or she dies or resigns;

(ii) he or she is removed in accordance with Section 8.6;

(iii) he or she ceases to be duly qualified to act as a Trustee as provided under Section 8.1; or

(iv) he or she ceases to be a Trustee in accordance with Section 7.11.

(b) A Trustee may resign at any time by an instrument in writing signed by him/her and delivered or mailed to the Chairman of the Trustees or, if there is no Chairman of the Trustees, the President of the Trust. A resignation of a Trustee becomes effective at the time a written resignation is received by the Trust upon 30 days' written notice, or at the time specified in the resignation, whichever is later, provided that if, upon the resignation becoming effective, the number of remaining Trustees would be less than the number necessary to constitute a quorum for a meeting of Trustees, the resignation is not effective until the resigning Trustee's successor is duly appointed as a Trustee, except in the case of a deemed resignation under Section 7.11 which shall be effective at the time therein prescribed.

(c) Upon a Trustee ceasing to hold office as such hereunder, such Trustee shall cease to be a party (as a Trustee) to this Declaration of Trust; provided, however, that such Trustee shall continue to be entitled to be paid any amounts owing by the Trust to the Trustee and to the benefits of the indemnity provided in Section 9.11. Upon the resignation or removal of any Trustee, or his/her otherwise ceasing to be a Trustee, s/he shall: (i) cease to have the rights, privileges and powers of a Trustee hereunder; (ii) execute and deliver such documents as the remaining Trustees shall reasonably require for the conveyance of any Trust property held in his/her name; (iii) account to the remaining Trustees as they may require for all property which s/he holds as Trustee; and (iv) resign from all representative or other positions held by him/her on behalf of the Trust, including as a director or officer of any corporation in which the Trust owns any securities (directly or indirectly); upon which s/he shall be discharged from his/her obligations as Trustee. Upon the incapacity or death of any Trustee, his/her legal representative shall execute and deliver on his/her behalf such documents as the remaining Trustees may require as provided in this section. In the event that a Trustee or his/her legal representative, as applicable, is unable or unwilling to execute and deliver such required documents, each of the remaining Trustees is hereby appointed as the attorney of such Trustee for the purpose of executing and delivering such required documents.

8.6 Removal of Trustees

The Unitholders may remove any Trustee or Trustees from office by resolution approved by at least a majority of the votes cast at a meeting of Unitholders called for that purpose or by the written consent of the Unitholders holding in the aggregate not less than a majority of the outstanding Trust Units entitled to vote thereon. Any Trustee or Trustees may be removed from office for cause by resolution passed by not less than two-thirds of the remaining Trustees. Any removal of a Trustee shall take effect immediately following the aforesaid vote or resolution, and any Trustee so removed shall be so notified by the Chair or another officer of the Trust forthwith following such removal. A vacancy created by the removal of a Trustee may be filled at the meeting of Unitholders at which the Trustee is removed or, if not so filled, may be filled as set forth in Section 8.7.

8.7 Filling Vacancies

No vacancy among the Trustees shall operate to annul this Declaration of Trust or affect the continuity of the Trust. Until vacancies are filled, the remaining Trustee or Trustees (even if less than a quorum) may exercise the powers of the Trustees hereunder. A quorum of Trustees may fill a vacancy among the Trustees, except a vacancy resulting from an increase in the number of Trustees other than in accordance with Section 7.1 or from a failure of the Unitholders to elect the minimum number of Trustees fixed by or pursuant to this Declaration of Trust. Trustees appointed by the Trustees between meetings of the Unitholders or to fill a vacancy, in each case in accordance with Section 7.1 or 8.7, shall be appointed for a term expiring at the conclusion of the next annual meeting or until their successors are elected or appointed and shall be eligible for election or re-election. If there is not a quorum of Trustees, or if the vacancy has arisen from an increase in the number of Trustees other than in accordance with Section 7.1 or from a failure by the Unitholders to elect the minimum number of Trustees required by or pursuant to this Declaration of Trust, the Trustees then in office shall forthwith call a special meeting of Unitholders to fill the vacancy and, if they fail to call a meeting or if there are no Trustees then in office, the meeting may be called by any Unitholder. A Trustee appointed to fill a vacancy holds office, subject to Sections 8.5 and 8.6, until the close of the next annual meeting of the Unitholders.

8.8 Validity of Acts

Any act of a Trustee is valid notwithstanding any irregularity in the appointment of the Trustees or a defect in the qualifications of the Trustees.

ARTICLE 9
CONCERNING THE TRUSTEES

9.1 Powers of the Trustees

Subject to the terms and conditions of this Declaration of Trust, the Trustees may exercise from time to time in respect of the Trust's property and the investments and affairs of the Trust any and all rights, powers and privileges that could be exercised by a legal and beneficial owner thereof.

Subject to the specific limitations contained in this Declaration of Trust, the Trustees shall have, without further or other action or consent, and free from any power or control on the part of the Unitholders, full, absolute and exclusive power, control and authority over the assets of the Trust and over the affairs of the Trust to the same extent as if the Trustees were the sole and absolute beneficial owners of the assets of the Trust in their own right, to do all such acts and things as in their sole judgment and discretion are necessary or incidental to, or desirable for, carrying out the trust created hereunder. In construing the provisions of this Declaration of Trust, the presumption shall be in favour of the granted powers and authority to the Trustees. The enumeration of any specific power or authority herein (including pursuant to Section 9.2) shall not be construed as limiting the general powers or authority or any other specified power or authority conferred herein on the Trustees. To the maximum extent permitted by law the Trustees shall, in carrying out investment activities, not be in any way restricted by the provisions of the laws of any jurisdiction limited or purporting to limit investments which may be made by trustees. Without limiting the generality of the foregoing, but subject to Sections 4.1, 4.2 and 9.2 and any other express limitations contained in this Declaration of Trust, the Trustees may make any investments without being required to adhere to all of or any particular portion of the investment criteria or diversification requirements set forth in the *Trustee Act* (Ontario), as amended from time to time, including investments in mutual funds, common trust funds, unit trusts and similar types of investment vehicles, to alter or vary such investments from time to time in a like manner, to retain such investments for such length of time as the Trustees, in their discretion determine and to delegate management and authority to discretionary managers of investment funds as the Trustees in their discretion determine appropriate.

9.2 Specific Powers and Authorities

Subject only to the express limitations contained in this Declaration of Trust and in addition to any other powers and authorities conferred by this Declaration of Trust or which the Trustees may have by virtue of any present or future statute or rule of law, the Trustees, without any action or consent by the Unitholders, shall have and may exercise at any time and from time to time the following powers and authorities which may or may not be exercised by the Trustees in such manner and upon such terms and conditions as they may from time to time determine proper:

(a) to supervise the activities and manage the investments and affairs of the Trust;

(b) to maintain records and provide reports to Unitholders;

(c) to collect, sue for and receive all sums of money due to the Trust;

(d) to effect payment of distributions to the Unitholders as provided in Article 5;

(e) to invest funds of the Trust as provided in Article 4;

(f) to effect payment of interest and principal when required in respect of the Trust Notes;

(g) to establish systems to monitor the continued qualification of the Trust as a "unit trust" within the meaning of the Tax Act and to ensure that Trust Notes are not considered "foreign property" for the purposes of the Tax Act;

(h) to possess and exercise all the rights, powers and privileges pertaining to the ownership of Master LP Class A Units and other Master LP securities and securities of Benco, to the same extent that an individual might, unless otherwise limited herein, and, without limiting the generality of the foregoing, to vote or give any consent, request or notice, or waive any notice, either in person or by proxy or power of attorney, with or without power of substitution, to one or more persons, which proxies and powers of attorney may be for meetings or actions generally or for any particular meeting or action and may include the exercise of discretionary power;

(i) where reasonably required, to engage or employ on behalf of the Trust any persons as agents, representatives, employees or independent contractors (including, without limitation, investment advisors, registrars, underwriters, accountants, lawyers, appraisers, brokers or otherwise) in one or more capacities, and to pay compensation from the Trust for services in as many capacities as such Person may be so engaged or employed;

(j) to elect, appoint, engage or employ officers for the Trust, who may be removed or discharged at the discretion of the Trustees, such officers to have such powers and duties, and to serve such terms as may be prescribed by the Trustees and except as prohibited by law, to delegate any of the powers and duties of the Trustees (including the power of delegation) to any one or more agents, representatives, officers, employees, independent contractors or other persons, including the directors of the General Partner, without liability to the Trustees, except as provided in this Declaration of Trust and without regard to whether such power, authority or duty is normally granted or delegated by Trustees;

(k) to engage in, intervene in, prosecute, join, defend, compromise, abandon or adjust, by arbitration or otherwise, any actions, suits, disputes, claims, demands or other litigation or proceedings, regulatory or judicial, relating to the Trust, the assets of the Trust or the Trust's affairs, to enter into agreements therefor, whether or not any suit or proceeding is commenced or claim asserted and, in advance of any controversy, to enter into agreements regarding the arbitration, adjudication or settlement thereof;

(l) to arrange for, out of the assets of the Trust, insurance contracts and policies insuring the Trust, its assets and/or any or all of the Trustees, the Unitholders, Annuitants or officers including against any and all claims and liabilities of any nature asserted by any person arising by reason of any action alleged to have been taken or omitted by the Trust or by the Trustees or Unitholders, Annuitants or officers;

(m) to cause legal title to any of the assets of the Trust to be held by and/or in the name of a Trustee, or except as prohibited by law, by and/or in the name of the Trust or any other custodian or person, on such terms, in such manner, with such powers in such person as the Trustees may determine and with or without disclosure that the Trust or the Trustee is interested therein; provided, however, that should legal title to any of the Trust's property be held by and/or in the name of any person or persons other than a Trustee or the Trust, the Trustees shall require such person or persons to execute a trust agreement acknowledging that legal title to such assets is held in trust for the benefit of the Trust;

(n) to issue Trust Units for such consideration as the Trustees may deem appropriate in their sole discretion, such issuance to be subject to the terms and conditions of this Declaration of Trust;

(o) to enter into and perform the Trust's obligations under any agreement in connection with, or to facilitate, the issuance of Exchangeable Securities;

(p) in addition to the mandatory indemnification provided for in Section 9.11 to the extent permitted by law to indemnify, or enter into agreements with respect to the indemnification of, any person with whom the Trust has dealings including, without limitation, the Trustees, the Unitholders, Annuitants, any transfer agent or any escrow agent, to such extent as the Trustees shall determine;

(q) with the approval or confirmation of Unitholders, enact and from time to time amend or repeal by-laws not inconsistent with this Declaration of Trust containing provisions relating to the Trust, the Trust's property and the conduct of the affairs of the Trust, but not in conflict with any provision of this Declaration of Trust;

(r) without limit as to amount, to issue any type of debt securities or convertible debt securities and to borrow money or incur any other form of indebtedness, including pursuant to the Note Indenture, for the purpose of carrying out the purposes of the Trust or for other expenses incurred in connection with the Trust and for such purposes may draw, make, execute and issue promissory notes and other negotiable and non-negotiable instruments or securities and evidences of indebtedness, secure the payment of sums so borrowed or indebtedness incurred and mortgage, pledge, assign or grant a security interest in any money owing to the Trust or its property or engage in any other means of financing the Trust;

(s) to pay all taxes or assessments, of whatever kind or nature, whether within or outside Canada, imposed upon or against the Trustees in connection with the Trust's property, undertaking or income of the Trust, or imposed upon or against the Trust's property, undertaking or income of the Trust, or any part thereof and to settle or compromise disputed tax liabilities and for the foregoing purposes to make such returns, take such deductions, and make such designations, elections and determinations in respect of Net Income, Net Income of the Trust or Net Realized Capital Gains distributed to Unitholders in the year and any other matter as shall be permitted under the Tax Act (provided that to the extent necessary the Trustees will seek the advice of the Trust's counsel or the Auditors), and do all such other acts and things as may be deemed by the Trustees in their sole discretion to be necessary, desirable or convenient;

(t) for such consideration as they deem proper, to invest in, purchase or otherwise acquire for cash or other property or through the issuance of Trust Units or Trust Notes or through the issuance of obligations or securities of the Trust and hold for investment, securities of Master LP and Benco;

(u) to sell, rent, lease, hire, exchange, release, partition, assign, mortgage, pledge, hypothecate, grant security interests in, encumber, negotiate, convey, transfer or otherwise dispose of any or all of the property of the Trust by deeds, trust deeds, assignments, bills of sale, transfers, leases, mortgages, financing statements, security agreements and other instruments for any of such purposes executed and delivered for and on behalf of the Trust by one or more of the Trustees or by a duly authorized officer, employee, agent or any nominee of the Trust; to guarantee, indemnify or act as surety subject to complying with Section 4.2; to lend money or other property of the Trust, whether secured or unsecured; to renew, modify, release, compromise, extend, consolidate or cancel, in whole or in part, any obligation to or of the Trust;

(v) to enter into leases, contracts, obligations and other agreements for a term extending beyond the term of office of the Trustees and beyond the possible termination of the Trust or for a lesser term;

(w) to incur and pay out of the property of the Trust any charges or expenses and disburse any funds of the Trust, which charges, expenses or disbursements are, in the opinion of the Trustees, necessary or incidental to or desirable for the carrying out of any of the purposes of the Trust or conducting the affairs of the Trust including taxes or other governmental levies, charges and assessments of whatever kind or nature, imposed upon or against the Trustees in connection with the undertaking or taxable income of the Trust or the property of the Trust or upon or against the undertaking, taxable income or property of the Trust or any part thereof and for any of the purposes herein;

(x) to exercise any conversion privilege, subscription right, warrant or other right or option available in connection with any property of the Trust at any time held by it and to make payments incidental thereto; to consent, or otherwise participate in or dissent from, the reorganization, consolidation, amalgamation, merger or readjustment of the finances of any Person (other than the Trust), any of the securities of which may at any time be held by the Trust or to the sale, mortgage or lease of the property of any such Person; and to do any act with reference thereto, including the delegation of discretionary powers, the exercise of options, the making of agreements or subscriptions and the payment of expenses, assessments or subscriptions which it may consider necessary or advisable in connection therewith;

(y) to determine conclusively the allocation to capital, income or other appropriate accounts for all receipts, expenses, disbursements and property of the Trust;

(z) to determine conclusively the value of any or all of the property of the Trust from time to time and, in determining such value, to consider such information and advice as the Trustees, in their sole judgment, may deem material and reliable;

(aa) to grant broad discretion to a third party, including the directors of the General Partner, to administer and manage the day-to-day operations of the Trust and to make executive decisions which conform to the general policies and principles set forth in this Declaration of Trust or otherwise established by the Trustees from time to time;

(bb) to enter into or perform the obligations of the Trust under any administrative services agreement;

(cc) to develop the Trust's approach to governance issues and periodically reviewing the composition and effectiveness of the Trustees; and

(dd) to do all such other acts and things as are incidental to the foregoing, and to exercise all powers which are necessary or useful to carry on the purpose and activities of the Trust, to promote any of the purposes for which the Trust is formed and to carry out the provisions of this Declaration of Trust.

9.3 Further Powers of the Trustees

Subject to the provisions hereof, the Trustees shall have the power to prescribe any form provided for or contemplated by this Declaration of Trust and the Trustees may make, adopt, amend or repeal regulations (the "Trustees' Regulations") containing provisions relating to the conduct of the affairs of the Trust, the rights or powers of the Trustees and the rights or powers of the Unitholders or officers of the Trust, provided that such regulations shall not be inconsistent with law or with this Declaration of Trust and not, in the opinion of the Trustees, prejudicial to the Unitholders. The Trustees shall also be entitled to make any reasonable decisions, designations or determinations not contrary to this Declaration of Trust which it may determine are necessary or desirable in interpreting, applying or administering this Declaration of Trust or in administering, managing or operating the Trust. To the extent of any inconsistency between this Declaration of Trust and any regulation, decision, designation or determination made by the Trustees, this Declaration of Trust shall prevail and such regulation, decision, designation or determination shall be deemed to be modified to eliminate such inconsistency. Any Trustees' Regulations, decisions, designations or determinations made pursuant to this Section shall be conclusive and binding upon all persons affected thereby. The Trustees shall also have such additional powers as may be approved by a resolution of the Unitholders passes at a meeting of Unitholders by a majority of the votes cast at that meeting.

9.4 Limitations on Powers

The Trustees hereby acknowledge that the Fund is subject to certain investment guidelines and operating policies under the Fund Declaration of Trust and the Trustees Agree that they will act and cause the Trust to act to the extent possible in a manner consistent with such provisions. The Trustees hereby acknowledge that Master LP is bound by certain investment guidelines and operating policies and the Trustees agree that at no time shall they act or cause the Trust to act in such a manner, including without limitation, through voting its units or shares, as applicable, in Master LP or Benco to effect any changes or amendments to the provisions of Master LP's investment guidelines or operating policies that are set forth in Sections 4.5 and 4.6 (a), (c), (e), (f), (g), (h), (i), (j) and (k) of the Master LP Partnership Agreement without the approval of Unitholders by Special Resolution and for any other amendment to such guidelines or policies without the approval of a majority of votes cast at a meeting of Unitholders.

9.5 Banking

The banking activities of the Trust, or any part thereof, including, but without restricting the generality of the foregoing, the operation of the Trust's accounts; the making, signing, drawing, accepting, endorsing, negotiation, lodging, depositing or transferring of any cheques, promissory notes, drafts, acceptances, bills of exchange and orders for the payment of money; the giving of receipts for orders relating to any property of the Trust; the execution of any agreement relating to any property of the Trust; the execution of any agreement relating to any such banking activities and defining the rights and powers of the parties thereto; and the authorizing of any officer of such banker to do any act or thing on the Trust's behalf to facilitate such banking activities, shall be transacted with such bank, trust company, or other firm or corporation carrying on a banking business as the Trustees may designate, appoint or authorize from time to time and shall be transacted on the Trust's behalf by one or more officers of the Trust or the General Partner as the Trustees may designate, appoint or authorize from time to time.

9.6 Standard of Care and Duties

The Trustees shall act honestly and in good faith with a view to the best interests of the Trust and the Unitholders and in connection therewith shall exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. The Trustees shall not be liable in carrying out their duties under this Declaration of Trust except in cases where the Trustees fail (a) to act honestly and in good faith with a view to the best interests of the Trust and the Unitholders or (b) to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. The duties and standard of care of the Trustees provided as aforesaid are intended to be similar to, and not to be any greater than, those imposed on a director of a corporation governed by the *Business Corporations Act* (Ontario). Unless otherwise required by law, the Trustees shall not be required to give bond, surety or security in any jurisdiction for the performance of any duties or obligations hereunder. The Trustees shall not be required to devote their entire time to the investments or business or affairs of the Trust.

9.7 Reliance Upon Trustees and Officers

Any person dealing with the Trust in respect of any matters pertaining to the assets of the Trust and any right, title or interest therein or to the Trust or to securities of the Trust shall be entitled to rely on a certificate, statutory declaration or resolution executed or certified by the Trustees or any officer of the Trust appointed by the Trustees as to the capacity, power and authority of the Trustees or any other person to act for and on behalf and in the name of the Trust. No person dealing with the Trustees or officers of the Trust shall be bound to see the application of any funds or property passing into the hands or control of the Trustees or officers of the Trust. The receipt of the Trustees or officers of the Trust for monies or other consideration shall be binding upon the Trust.

9.8 Fees and Expenses

As part of the expenses of the Trust, the Trustees may pay or cause to be paid out of the Trust's property, reasonable fees, costs and expenses incurred in connection with the administration and management of the Trust, including (without limitation) real property and brokerage commissions in respect of investments and dispositions of real property made by the Trust, fees of auditors, accountants, lawyers, engineers, appraisers and other agents, consultants and professional advisors employed by or on behalf of the Trust, fees of stock exchanges, securities administrators and the cost of reporting or giving notices to Unitholders. All costs, charges and expenses properly incurred by the Trustees on behalf of the Trust shall be payable out of the Trust's property.

9.9 Determinations of Trustees Binding

All determinations of the Trustees that are made in good faith with respect to any matters relating to the Trust, including whether any particular investment or disposition meets the requirements of this Declaration of Trust, shall be final and conclusive and shall be binding upon the Trust and all Unitholders (and, where the Unitholder is a Deferred Income Plan or registered pension fund or plan as defined in the Tax Act, or other similar fund or plan registered under the Tax Act, upon the Annuitants and plan holders past, present and future) and Trust Units shall be issued and sold on the condition and understanding that any and all such determinations shall be binding as aforesaid.

9.10 Limitations on Liability of Trustees

(a) Subject to Section 9.6, none of the Trustees nor any officers or any agents of the Trust shall be liable to any Unitholder or holder of Exchangeable Securities or any other person in tort, contract or otherwise for any action taken or not taken in good faith in reliance on any documents that are, *prima facie*, properly executed; for any depreciation of, or loss to, the Trust incurred by reason of the sale of any security; for the loss or disposition of monies or securities; or for any other action or failure to act including, without limitation, the failure to compel in any way any former Trustee to redress any breach of trust or any failure by any person to perform obligations or pay monies owed to the Trust, unless such liabilities arise out of a breach of the standard of care, diligence and skill as set out in Section 9.6.

If the Trustees have retained an appropriate expert, advisor or legal counsel with respect to any matter connected with their duties under this Declaration of Trust, the Trustees may act or refuse to act based on the advice of such expert, advisor or legal counsel and, notwithstanding any provision of this Declaration of Trust, including, without limitation, the standard of care, diligence and skill set out in Section 9.6 hereof, the Trustees shall not be liable for and shall be fully protected from any action or refusal to act based on the advice of any such expert, advisor or legal counsel which it is reasonable to conclude is within the expertise of such expert or advisor to give.

(b) Subject to Section 9.6, none of the Trustee nor any officer or agent thereof shall be subject to any liability whatsoever in tort, contract or otherwise, in connection with the Trust's property or the affairs of the Trust, including, without limitation, in respect of any loss or diminution in value of any the Trust's property, to the Trust or to the Unitholders or to any other person for anything done or permitted to be done by the Trustees. The Trustees shall not be subject to any personal liability for any debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses against or with respect to the Trust arising out of anything done or permitted or omitted to be done in respect of the execution of the duties of the office of Trustees for or in respect to the affairs of the Trust. No property or assets of the Trustees, owned in their personal capacity or otherwise, will be subject to any levy, execution or other enforcement procedure with regard to any obligations under this Declaration of Trust or under any other related agreements. No recourse may be had or taken, directly or indirectly, against the Trustees in their personal capacity or against any incorporator shareholder, director, officer, employee or agent of the Trustees or any successor of the Trustees. The Trust shall be solely liable therefor and resort shall be had solely to the Trust's property for payment or performance thereof.

In the exercise of the powers, authorities or discretion conferred upon the Trustees under this Declaration of Trust, the Trustees are and shall be conclusively deemed to be acting as trustees of the Trust's property.

9.11 Indemnification of Trustees

Each Trustee, each former Trustee, each officer of the Trust and each former officer of the Trust shall be entitled to be and shall be indemnified and reimbursed out of the Trust's property in respect of any and all taxes, penalties or interest in respect of unpaid taxes or other governmental charges imposed upon the Trustee or former Trustee or officer or former officer in consequence of the performance of its duties hereunder, other than in respect of remuneration received by such person for the performance of such duties, and in respect of any and all costs, charges and expenses, including amounts paid to settle an action or satisfy a judgment, reasonably incurred in respect of any civil, criminal or administrative action or proceeding to which the Trustee, former Trustee, officer or former officer is made a party by reason of being or having been a Trustee or officer of the Trust or any of subsidiaries thereof, provided that a Trustee, former Trustee, officer or former officer shall not be indemnified out of the Trust's property in respect of unpaid taxes or other governmental charges or in respect of such costs, charges and expenses that arise out of or as a result or in the course of a breach of the standard of care, diligence and skill set out in Section 9.6. A Trustee, former Trustee, officer or former officer shall not be entitled to satisfy any right of indemnity or reimbursement granted herein, or otherwise existing under law, except out of the Trust's property, and no Trust Unitholder, Annuitant or other Trustee or officer shall be personally liable to any person with respect to any claim for such indemnity or reimbursement as aforesaid.

9.12 Contractual Obligations of the Trust

In respect of any obligations or liabilities being incurred by the Trust or the Trustees on behalf of the Trust, the Trustees and the Trust shall make all reasonable efforts to include in any written instrument which is, in the judgment of the Trustees, a material obligation as a specific term of such obligations or liabilities a contractual provision or be subject to an acknowledgement to the effect that the obligation being created is not personally binding upon and that resort shall not be had to, nor shall recourse or satisfaction be sought from, by way of lawsuit or otherwise, the private property of any of the Trustees, Unitholders, Annuitants or officers, employees or agents of the Trust, but that only property of the Trust or a specific portion thereof shall be bound. The Trust, however, is not required, but shall use all reasonable efforts, to comply with this requirement in respect of obligations assumed by the Trust upon the acquisition of real property. The omission of such statement from any such document or instrument shall not render the Trustees or the Unitholders or Annuitants liable to any person, nor shall the Trustees or the Unitholders or Annuitants be liable for such omission. If, notwithstanding this provision, the Trustees or any Unitholder or Annuitant shall be held liable to any person by reason of the omission of such statement from any such agreement, undertaking or obligation such Trustee, Unitholder or Annuitant shall be entitled to indemnity and reimbursement out of the Trust's property to the full extent of such liability.

9.13 Conflicts of Interest

After Closing, if a Trustee or an officer of the Trust is a party to a material contract or transaction or proposed material contract or transaction with the Trust or its subsidiaries, or is a director or officer or employee of, or otherwise has a material interest in, any person who is a party to a material contract or transaction or proposed material contract or transaction with the Fund, the Trust or its subsidiaries, such Trustee or officer of the Trust, as the case may be, shall disclose in writing to the Trustees or request to have entered in the minutes of meetings of Trustees or a committee of the Trustees, as the case may be, the nature and extent of such interest.

(a) The disclosure required in the case of a Trustee or officer shall be made:

(i) at the meeting of Trustees or a committee of the Trustees, as the case may be, at which a proposed contract or transaction is first considered;

(ii) if the Trustee or officer was not then interested in a proposed contract or transaction, at the first such meeting after he or she becomes so interested;

(iii) if the Trustee or officer becomes interested after a contract is made or a transaction is entered into, at the first meeting after he or she becomes so interested; or

(iv) if a person who is interested in a contract or transaction later becomes a Trustee or officer, at the first such meeting of Trustees after he or she assumes that capacity.

(b) Notwithstanding paragraph (a), where this section applies to any person in respect of a material contract or transaction or proposed material contract or transaction that, in the ordinary course of the business of the Trust, would not require approval by the Trustees or the Unitholders, such person shall disclose in writing to the Trustees or request to have entered in the minutes of meetings of Trustees the nature and extent of his interest forthwith after that person becomes aware of the contract or transaction or proposed contract or transaction.

(c) A Trustee referred to in this section shall not vote on any resolution to approve the contract or transaction unless the contract or transaction is:

(i) one relating primarily to his or her remuneration as a Trustee, officer, employee or agent of the Trust; or

(ii) one for indemnity under Section 9.11 hereof or for the purchase of liability insurance.

(d) For the purposes hereof, a general notice to the Trustees by a Trustee or an officer of the Trust or any other person referred to in this Section 9.13 disclosing that he or she is a director, officer or employee of or has a material interest in a person and is to be regarded as interested in any contract made or any transaction entered into with that person, is a sufficient disclosure of interest in relation to any contract so made or transaction so entered into. In the event that a meeting of the Unitholders is called to confirm or approve a contract or transaction which is the subject of a general notice to the Trustees, the nature and extent of the interest in the contract or transaction of the Persons giving such general notice shall be disclosed in reasonable detail in the notice calling the said meeting of the Unitholders or in any information circular to be provided by this Declaration of Trust or by law.

(e) Where a material contract is made or a material transaction is entered into between the Trust and any one or more of its Trustees or officers, or between the Trust and another person of which a Trustee or officer of the Trust is a director or officer or in which he or she has a material interest:

(i) the Trustee or officer, as applicable, is not accountable to the Trust or to the Unitholders for any profit or gain realized from the contract or transaction; and

(ii) the contract or transaction is neither void nor voidable;

by reason only of that relationship or by reason only that the Trustee or officer is present at or is counted to determine the presence of a quorum at the meeting of Trustees or committee of Trustees that authorized the contract or transaction, if the Trustee or an officer disclosed his or her interest in accordance with this Section 9.13 and the contract or transaction was reasonable and fair to the Trust at the time it was so approved.

(f) Notwithstanding anything in this section, but without limiting the effect of paragraph (e) hereof, a Trustee or officer of the Trust, acting honestly and in good faith, is not accountable to the Trust or to the Unitholders for any profit or gain realized from any such contract or transaction by reason only of holding the office of Trustee or officer, and the contract or transaction, if it was reasonable and fair to the Trust at the time it was approved, is not by reason only of the Trustee's or officer's interest therein void or voidable, where:

(i) the contract or transaction is confirmed or approved at a meeting of Unitholders duly called for that purpose; and

(ii) the nature and extent of the Trustee's or officer's interest in the contract or transaction are disclosed in reasonable detail in the notice calling the meeting or in any information circular required to be provided by this Declaration of Trust or by law.

(g) Subject to paragraphs (e) and (f) hereof, where, after Closing, any Trustee or officer of the Trust fails to disclose his interest in a material contract or transaction in accordance with this Declaration of Trust or otherwise fails to comply with this section, the Trustees or any Unitholder, in addition to exercising any other rights or remedies in connection with such failure exercisable at law or in equity, may apply to a court for an order setting aside the contract or transaction and directing that the Trustee or officer account to the Trust for any profit or gain realized.

9.14 Conditions Precedent

The obligation of the Trustees to commence or continue any act, action, suit or proceeding or to represent the Trust in any action, suit or proceeding shall be conditional upon sufficient funds being available to the Trustees from the Trust's property to commence or continue such act, action, suit or proceeding or to represent the Trust in any action, suit or proceeding and an indemnity reasonably satisfactory to the Trustees to protect and hold harmless the Trustees against the costs, charges and expenses and liabilities to be incurred therein and any loss and damage it may suffer by reason thereof. None of the provisions contained in this Declaration of Trust shall require the Trustees to expend or risk their own funds or otherwise incur financial liability in the performance of their duties or in the exercise of any of their rights or powers unless it is given an indemnity and funding satisfactory to the Trustees, acting reasonably.

9.15 Independent Trustee Matters

Notwithstanding anything herein to the contrary, in addition to requiring the approval of a majority of the Trustees, the approval of not less than a majority of the Independent Trustees holding office at such time who have no interest in the matter (given by vote at a meeting of Trustees or by written consent) shall be required with respect to any decision regarding Independent Trustee Matters.

ARTICLE 10
COMMITTEES OF TRUSTEES

10.1 Delegation

Except as prohibited by law, the Trustees may appoint from their number a committee of Trustees and may delegate to the committee of Trustees such authority as the Trustees may in their sole discretion deem necessary or desirable to effect the administration of the duties of the Trustees under this Declaration of Trust, without regard to whether such authority is normally granted or delegated by Trustees, provided that a majority of the Trustees appointed to any committee shall be Residents and all Trustees appointed to any committee shall be Independent Trustees.

10.2 Procedure

Unless otherwise determined by the Trustees, a quorum for meetings of any committee shall be a majority of its members provided that a majority of the Trustees comprising such quorum must be Residents. Each committee shall have the power to appoint its chairman who must be a Resident and the rules for calling, holding, conducting and adjourning meetings of the committee shall be the same as those governing meetings of the Trustees. Each member of a committee shall serve during the pleasure of the Trustees and, in any event, only so long as he or she shall be a Trustee. The Trustees may fill vacancies in a committee by appointment from among their members. Provided that a quorum is maintained, the committee may continue to exercise its powers notwithstanding any vacancy among its members.

ARTICLE 11
AMENDMENT

11.1 Amendment

Subject to Sections 11.2 and 11.3, the provisions of this Declaration of Trust, except where specifically provided otherwise, may only be amended by the vote of a majority of the votes cast at a meeting of Unitholders duly called for that purpose; provided that the provisions of this Declaration of Trust may be amended by the Trustees without the consent, approval or ratification of the Unitholders or any other person:

(a) at any time and in any manner prior to the Closing; or

(b) after the Closing for the purpose of:

(i) ensuring continuing compliance with applicable laws (including the Tax Act and maintaining the Trust's status as a "unit trust" under the Tax Act), regulations, requirements or policies of any governmental or other authority having jurisdiction over the Trustees, the Trust or over the distribution of Trust Units;

(ii) providing additional protection, in the opinion of the Trustees, for the Unitholders;

(iii) removing any conflicts or inconsistencies in this Declaration of Trust or making minor corrections including the rectification of any ambiguities, defective provisions, errors, mistakes or omissions which are, in the opinion of the Trustees, necessary or desirable and not prejudicial to the Unitholders;

(iv) making amendments which, in the opinion of the Trustees, are necessary or desirable to remove conflicts or inconsistencies between the disclosure in the Prospectus and this Declaration of Trust;

(v) making amendments which, in the opinion of the Trustees, are necessary or desirable as a result of changes in generally accepted accounting principles (including accounting guidelines) or taxation or other laws or the administration or enforcement thereof;

(vi) enabling the Trust to issue Trust Units for which the purchase price is payable in installments; or

(vii) any purpose (except one in respect of which a Unitholder vote is specifically otherwise required) if the Trustees are of the opinion that the amendment is not prejudicial to Unitholders and is necessary or desirable,

but notwithstanding the foregoing, no such amendment shall modify the right to vote attached to any Trust Unit or the entitlement to distributions from the Trust provided hereunder represented by any Trust Unit without the consent of the Unitholders and no such amendment shall reduce the percentage of votes required to be cast at a meeting of the Unitholders for the purpose of this Section 11.1 without the consent of the holders of all of the Trust Units then outstanding or cause the Trust to fail or cease to qualify as a "unit trust" under the Tax Act to be subject to tax under Part XII.2 of the Tax Act, cause the Fund Units to constitute foreign property for purposes of the Tax Act or subject the Fund to tax under Part XI of the Tax Act.

11.2 Unitholder Vote

(a) The Trustees may not without approval of Unitholders given by the affirmative vote of at least the majority of the votes cast at a meeting of Unitholders duly called for that purpose:

(i) take any action under applicable law (including policies of Canadian Securities Commissions) or applicable stock exchange rules would require approval by ordinary resolution had the Trust been a reporting issuer (or equivalent) in the jurisdiction in which the Fund is a reporting issuer (or the equivalent and had the Trust Units been listed on a stock exchange where the Fund Units are listed for trading; and

(ii) appoint or change the Auditors.

(b) No action or authorization and no amendment may be made to this Declaration of Trust with respect to:

(i) the termination liquidation, or winding up, other than in accordance with Article 14 of the Trust;

(ii) any combination, merger, amalgamation or arrangement of the Trust or Master LP, as the case may be, any sale lease or exchange of all or substantially all of the assets of the Trust or Master LP, as the case may be, or the liquidation or dissolution of the Trust or Master LP, as the case may be, (other than in the ordinary course of business or as part of an internal reorganization of the assets of the Trust or Master LP, as the case may be, as approved by the Trustees); or

(iii) the provisions of Section 4.1 or the provisions of paragraphs (a), (c), (e), (f), (g), (h), (i) and (j) of Section 4.2;

except in each case with the approval of Unitholders given by the affirmative vote of at least two-thirds of the votes cast at a meeting of Unitholders duly called for that purpose. The remaining provisions of Section 4.2 may be amended with the approval of a majority of the votes cast by Unitholders duly called for that purpose.

(c) The Trustees may not without the approval of Unitholders given by the affirmative vote of at least two-thirds of the votes cast at a meeting of Unitholders duly called for that purpose:

(i) take any action upon any matter which under applicable law (including policies of Canadian Securities Commissions) or applicable stock exchange policies would require approval by special resolution or super-majority (as defined in such policies) had the Trust been a reporting issuer (or the equivalent) in the jurisdictions in which the Fund is a reporting issuer (or the equivalent) and had the Trust Units been listed for trading on the stock exchanges where the Fund Units are listed for trading, respectively; and

(ii) to amend the Note Indenture other than in contemplation of a further issuance of Trust Notes.

11.3 Special Resolution Vote

Notwithstanding Section 11.1, at all times the following amendments to the Declaration of Trust require the approval of at least two-thirds of the votes cast at a meeting of Unitholders duly called for that purpose:

(a) an exchange, reclassification or cancellation of all or part of the Trust Units;

(b) the addition, change or removal of the rights, privileges, restrictions or conditions attached to the Trust Units and, including, without limiting the generality of the foregoing:

(i) the removal or change of rights to distributions;

(ii) the addition or removal of or change to conversion privileges, options, voting, transfer or preemptive rights; or

(iii) the reduction or removal of a distribution preference or liquidation preference;

(c) the creation of new rights or privileges attaching to certain of the Trust Units; or

(d) the constraint on the issue, transfer or ownership of Trust Units or the change or removal of such constraint, except as otherwise provided herein.

11.4 Changes to Other Documents

The Trust will not agree to or approve any material change to the Master LP Agreement or the Exchange Agreement without approval of at least a two-thirds majority of the votes cast at a meeting of the Unitholders called for that purpose.

11.5 No Termination

No amendment to or amendment and restatement of this Declaration of Trust, whether pursuant to this Article 11 or otherwise, shall be construed as a termination of the Trust and the settlement or establishment of a new trust.

ARTICLE 12
MEETINGS OF UNITHOLDERS

12.1 Annual and Special Meetings of Unitholders

Annual meetings of the Unitholders shall be called at a time and at a place in Canada and for the purpose of transacting such business as the Trustees may determine. The business transacted at such meetings shall include (i) the presentation of the audited financial statements of the Trust for the immediately preceding fiscal year, (ii) the appointment of the Trustees for the ensuing year in accordance with Article 8, (iii) the appointment of Auditors, (iv) directing the Trustees as to the election of nominees of the Trust to serve as directors of Benco, and (v) the transaction of such other business as Unitholders may be entitled to vote upon as hereinafter provided in this Article 12 or as the Trustees may determine. Special meetings of the Unitholders may be called at any time by the Trustees and, except in the circumstances contemplated by Section 105(3) of the *Business Corporations Act* (Ontario), must be called by the Trustees upon a written request of Unitholders holding in the aggregate not less than 10% of the Trust Units then outstanding, such request specifying in reasonable detail the business proposed to be transacted at the meeting. The chairperson of any annual or special meeting shall be the Chairman of the Trustees or any other Trustee specified by resolutions of the Trustees or, in the absence of any Trustee, any person appointed as chairperson of the meeting by the Unitholders present. The Trustees, the officers of the Trust, the Auditors and any other person approved by the Trustees, the chairperson of the meeting or by resolution passed by a majority of the votes cast by Unitholders represented at the meeting may attend meetings of the Unitholders.

12.2 Notice of Meetings

Notice of all meetings of Unitholders shall be given by unregistered mail, postage prepaid, addressed to each Unitholder at his or her last address on the books of the Trust, mailed at least 21 days and not more than 50 days before the meeting. Such notice shall specify the time when, and the place in Canada where, such meeting is to be held and shall specify the nature of the business to be transacted at such meeting in sufficient detail to permit a Unitholder to form a reasoned judgment thereon, together with the text of any Special Resolution, at the time of mailing of the notice, proposed to be passed. Any adjourned meeting, other than a meeting adjourned for lack of a quorum under Section 12.6(b), may be held as adjourned without further notice. The accidental omission to give notice or the non-receipt of such notice by a Unitholder shall not invalidate any resolution passed at any such meeting. Notwithstanding the foregoing, a meeting of Unitholders may be held at any time without notice if all the Unitholders are present or represented thereat (unless the Unitholder or other person attends the meeting for the purpose of objecting to the transaction of any business on the grounds that the meeting is not properly called) or those not so present or represented have waived notice. Any Unitholder (or a duly appointed proxy of a Unitholder) may waive any notice required to be given under the provisions of this Section, and such waiver, whether given before or after the meeting, shall cure any default in the giving of such notice.

12.3 Quorum

At any meeting of the Unitholders, subject as hereinafter provided, a quorum shall consist of two or more individuals present in person either holding personally or representing as proxies not less in aggregate than 20% of the aggregate number of votes attached to all outstanding Trust Units. In the event of such quorum not being present at the appointed place on the date for which the meeting is called within 30 minutes after the time fixed for the holding of such meeting, the meeting, if called by request of Unitholders, shall be terminated and, if otherwise called, shall stand adjourned to such day being not less than 7 days later and to such place in Canada and time as may be appointed by the chairperson of the meeting. If at such adjourned meeting a quorum as above defined is not present, the Unitholders present either personally or by proxy shall form a quorum, and any business may be brought before or dealt with at such an adjourned meeting which might have been brought before or dealt with at the original meeting in accordance with the notice calling the same.

12.4 Voting Rights of Unitholders

Only Unitholders of record shall be entitled to vote. On a poll vote at any meeting of Unitholders, each Trust Unit shall entitle the holder or holders of that Trust Unit to one vote. Every question submitted to a meeting, other than a Special Resolution, shall, unless a poll vote is demanded, be decided by a show of hands, on which every person present and entitled to vote shall be entitled to one vote. At any meeting of Unitholders, any holder of Trust Units entitled to vote thereat may vote by proxy and a proxy need not be a Unitholder, provided that no proxy shall be voted at any meeting unless it shall have been received by the Transfer Agent for verification at least 24 hours prior to the commencement of such meeting. When any Trust Unit is held jointly by several persons, any one of them may vote at any meeting in person or by proxy in respect of such Trust Unit, but if more than one of them shall be present at such meeting in person or by proxy, and such joint owners or their proxies so present disagree as to any vote to be cast, such vote purporting to be executed by or on behalf of a Unitholder shall be deemed valid unless challenged at or prior to its exercise, and the burden of proving invalidity shall rest on the challenger.

12.5 Certain Matters on which Unitholders must Vote

None of the following shall occur unless the same has been duly approved by the Unitholders at a meeting duly called and held:

(a) subject to Sections 7.1, 8.2 and 8.6, a change in the number, the election or removal, of Trustees;

(b) except as provided in Article 17, the appointment or removal of auditors of the Trust;

(c) the appointment of an inspector as provided in Section 12.11;

(d) the exercise of certain voting rights attached to the common shares in Benco held by the Trust and to the Class A Master LP Units held by the Trust as provided in Sections 9.4 and 12.1; or

(e) any amendment to this Declaration of Trust (except as provided in Section 4.4 or Article 11).

Nothing in this Section, however, shall prevent the Trustees from submitting to a vote of Unitholders at a meeting any matter which they deem appropriate.

12.6 Meaning of "Special Resolution"

(a) The expression "Special Resolution" when used in this Declaration of Trust means, subject to this Article 12, a resolution proposed to be passed as a special resolution at a meeting of Unitholders (including an adjourned meeting) duly convened for that purpose and held in accordance with the provisions of this Section at which two or more individuals present in person either holding personally or representing as proxies not less in aggregate than 20% of the number of votes attached to the Trust Units then outstanding and passed by the affirmative votes of the holders of at least two-thirds of the Trust Units represented at the meeting and voted on a poll upon such resolution.

(b) Notwithstanding Section 12.3, if at any meeting at which a Special Resolution is proposed to be passed the holders of 20% of the aggregate number of votes attached to all outstanding Trust Units are not present in person or by proxy within 30 minutes after the time appointed for the meeting, then the meeting, if convened by or on the requisition of Unitholders, shall be dissolved, but in any other case it shall stand adjourned to such date, being not less than 21 nor more than 60 days later and to such place in Canada and time as may be appointed by the chairperson of the meeting. Not less than 10 days prior notice shall be given of the time and place of such adjourned meeting in the manner provided in Section 12.2. Such notice shall state that at the adjourned meeting the Unitholders present in person or by proxy shall form a quorum but it shall not be necessary to set forth the purposes for which the meeting was originally called or any other particulars. At the adjourned meeting, the Unitholders present in person or by proxy shall form a quorum and may transact the business for which the meeting was originally convened and a resolution proposed at such adjourned meeting and passed by the requisite vote as provided in Section 12.6(a) shall be a Special Resolution within the meaning of this Declaration of Trust, notwithstanding that the holders of less than 20% of the aggregate number of Trust Units then outstanding are present in person or by proxy at such adjourned meeting.

(c) Votes on a Special Resolution shall always be given on a poll and no demand for a poll on a Special Resolution shall be necessary.

12.7 Meaning of "Outstanding"

Subject to the provisions of Article 13, every Trust Unit issued, certified and delivered hereunder shall be deemed to be outstanding until it shall be cancelled or delivered to the Trustees or Transfer Agent for cancellation provided that:

(a) when a new certificate has been issued in substitution for a Unit Certificate which has been lost, stolen, mutilated or destroyed, only one of such Unit Certificates shall be counted for the purposes of determining the number of Trust Units outstanding; and

(b) for the purpose of any provision of this Declaration of Trust entitling holders of outstanding Trust Units to vote, sign consents, requisitions or other instruments or take any action under this Declaration of Trust, Trust Units deemed not to be outstanding pursuant to Sections 13.5 and Trust Units owned directly or indirectly, legally or equitably, by the Trust or any affiliate thereof shall be disregarded, except that:

    (i) for the purpose of determining whether the Trustees shall be protected in relying on any such vote, consent, requisition or other instrument or action only the Trust Units which the Trustees know are so deemed or owned shall be so disregarded; and

    (ii) Trust Units so owned which have been pledged in good faith other than to the Trust or an affiliate thereof shall not be so disregarded if the pledgee shall establish to the satisfaction of the Trustees the pledgee's right to vote such Trust Units in his or her discretion free from the control of the Trust or any affiliate thereof;

(c) for the purposes of Section 12.7(b), the Fund shall provide a certificate which will state the number of Trust Units and the certificate numbers of Unit Certificates, if such certificates are issued, of the Trust, which are so held by the Fund or any affiliate thereof. The Trustees shall be entitled to rely on such certificates in order to disregard the votes of any of the parties mentioned above.

12.8 Record Date for Voting

For the purpose of determining the Unitholders who are entitled to vote or act at any meeting or any adjournment thereof, the Trustees may fix a date not more than 60 days and not less than 21 days prior to the date of any meeting of Unitholders as a record date for the determination of Unitholders entitled to vote at such meeting or any adjournment thereof, and any Unitholder who was a Unitholder at the time so fixed shall be entitled to receive notice of and vote at such meeting or any adjournment thereof even though the Unitholder has since that time disposed of his or her Trust Units, and no Unitholder becoming such after that time shall be so entitled to vote at such meeting or any adjournment thereof, unless the Trustees determine otherwise. In the event that the Trustees do not fix a record date for any meeting of Unitholders, the record date for such meeting shall be the date upon which notice of the meeting is given as provided under Section 12.2.

12.9 Proxies

Whenever the vote or consent of Unitholders is required or permitted under this Declaration of Trust, such vote or consent may be given either directly by the Unitholder or by a proxy. The instrument appointing a proxy must be in writing and either substantially in a form which may be approved by the Trustees acting reasonably or as may be satisfactory to the chairman of the meeting at which it is sought to be exercised. The instrument of proxy must be executed by the Unitholder giving the proxy or his or her agent duly authorized in writing and, if given on behalf of joint holders, must be executed by all of them and may be revoked by any of them, and, if given by a Unitholder which is a body corporate, must be executed on its behalf by a person duly authorized in writing. Any person may be appointed a proxy, whether or not that person is a Unitholder. The Trustees, on behalf of the Trust, may solicit instruments of proxy from the Unitholders or any of them in respect of any matter requiring or permitting the Unitholders' vote or consent. An instrument of proxy shall be deposited with the chairman of the meeting before any vote is cast under its authority or at such earlier time or in such manner as the Trustees may prescribe from time to time.

An instrument of proxy executed in compliance with the foregoing shall be valid unless challenged at the time of or prior to its exercise and the person challenging the instrument shall have the burden of proving, to the satisfaction of the chairman of the meeting at which the instrument is proposed to be used, that the instrument of proxy is invalid. Any decision of the chairman of the meeting in respect of the validity of an instrument of proxy shall be final and binding upon all persons. An instrument of proxy shall be valid only at the meeting with respect to which it was solicited or any adjournment thereof.

A vote cast in accordance with any proxy shall be valid notwithstanding the death, incapacity, insolvency or bankruptcy of the Unitholder giving the proxy or the revocation of the proxy unless written notice of the death, incapacity, insolvency, bankruptcy of the Unitholder or revocation of the proxy has been received by the chairman of the meeting prior to the time the vote is cast.

12.10 Personal Representatives

Subject to the provisions of Article 13, if a Unitholder is deceased, his personal representative, upon filing with the secretary of the meeting such proof of his appointment as the secretary considers sufficient, shall be entitled to exercise the same voting rights at any meeting of Unitholders as the Unitholder would have been entitled to exercise if the Unitholder were living and for the purpose of the meeting shall be considered to be a Unitholder. Subject to the provisions of the will of a deceased Unitholder, if there is more than one personal representative, the provisions of Section 12.4 relating to joint holders shall apply.

12.11 Appointment of Inspector

The Trustees shall call a meeting of Unitholders upon the written request of Unitholders holding in the aggregate not less than 25% of the Trust Units then outstanding for the purpose of considering the appointment of an inspector to investigate the performance by the Trustees of their responsibilities and duties in respect of the Trust. An inspector may be appointed for such purpose, at the expense of the Trust, at such meeting by a resolution approved by a majority of the votes cast at the meeting.

12.12 Conduct of Meetings

To the extent that the rules and procedures for the conduct of a meeting of Unitholders are not prescribed herein, the rules and procedures shall be such reasonable rules and procedures as are determined by the Chairman of the meeting and such rules and procedures shall be binding upon all parties participating in the meeting.

12.13 Binding Effect of Resolutions

Every resolution passed at a meeting in accordance with the provisions of this Article 12 shall be binding upon all Unitholders, whether present at or absent from the meeting. Subject to Section 12.5, no action taken by Unitholders at any meeting of Unitholders shall in any way bind the Trust or the Trustees without the approval of the Trustees.

12.14 Resolution in Lieu of Meeting

Notwithstanding any other provision of this Declaration of Trust, a resolution signed in writing by all of the Unitholders entitled to vote on that resolution at a meeting of the Unitholders is as valid as if it had been passed at a meeting of the Unitholders.

12.15 Actions by Unitholders

Any action, change, approval, decision or determination required or permitted to be taken or made by the Unitholders hereunder shall be effected by a resolution passed by the Unitholders at a duly constituted meeting (or a special resolution in lieu thereof) in accordance with this Article 12.

ARTICLE 13
CERTIFICATES, REGISTRATION AND TRANSFER OF TRUST UNITS

The provisions of this Article 13 shall not in any way alter the nature of the Trust Units or the relationships of a Unitholder to the Trustees and of one Unitholder to another but are intended only to facilitate the issuance of certificates evidencing the ownership of Trust Units if desirable to issue them to Unitholders and the recording of all transactions in respect of Trust Units and Unit Certificates whether by the Trust, transfer agents, registrars or other persons. Trust Units shall be issued in the form of the Unit Certificate.

13.1 Unit Certificates

(a) Unit Certificates shall, subject to the provisions hereof, be in such form as is authorized from time to time by the Trustees.

(b) If issued, Unit Certificates are issuable only in fully registered form.

(c) The definitive form of the Unit Certificates shall:

(i) be in the English language;

(ii) be dated as of the date of issue thereof;

(iii) contain the CUSIP number, if any, for the Trust Units; and

(iv) contain such distinguishing letters and numbers as the Trustees shall prescribe.

(d) In the event that the Unit Certificate is translated into the French language and any provision of the Unit Certificate in the French language shall be susceptible of an interpretation different from the equivalent provision in the English language, the interpretation of such provision in the English language shall be determinative.

(e) Each Unit Certificate shall be signed on behalf of the Trustees and the Transfer Agent of the Trust. The signature of the Trustees required to appear on such certificate may be printed, lithographed or otherwise mechanically reproduced thereon and, in such event, certificates so signed are as valid as if they had been signed manually.

13.2 Contents of Unit Certificates

(a) Until otherwise determined by the Trustees, each Unit Certificate shall legibly set forth on the face thereof, *inter alia*, the following:

(i) the name of the Trust and the words "A trust governed under the laws of the Province of Ontario created by a Declaration of Trust made on the 8th day of September, 2003, as amended and restated on November 14, 2003 and supplemented, amended and amended and restated from time to time" or words of like effect;

(ii) the name of the person to whom the Unit Certificate is issued as Unitholder;

(iii) the number of Trust Units represented thereby and whether or not the Trust Units represented thereby are fully paid;

(iv) that the Trust Units represented thereby are transferable subject to Article 13 of the Declaration of Trust;

(v) The Trust Units represented by this certificate are issued upon the terms and subject to the conditions of the Declaration of Trust, which Declaration of Trust is binding upon all holders of Trust Units and, by acceptance of this certificate, the holder assents to the terms and conditions of the Declaration of Trust. A copy of the Declaration of Trust, pursuant to which this certificate and the Trust Units represented thereby are issued may be obtained by a Unitholder on demand and without fee from the head office of the Trust or words of like effect; and

(vi) "For information as to personal liability of a Unitholder, see the reverse side of this certificate" or words of like effect.

(b) Until otherwise determined by the Trustees, each such certificate shall legibly set forth on the reverse side thereof, *inter alia,* the following:

(i) "The Declaration of Trust provides that no Unitholder or annuitant or beneficiary of a trust governed by a registered retirement savings plan, a registered retirement income fund, a registered education savings plan or a deferred profit sharing plan or any other plan of which a Unitholder acts as trustee or carrier shall be subject to any personal liability whatsoever, in tort, contract or otherwise, to any person in connection with the assets of the Trust or the obligations or the affairs of the Trust and all such persons shall look solely to the assets of the Trust for satisfaction of claims of any nature arising out of or in connection therewith and the assets of the Trust only shall be subject to levy or execution", or words of like effect; and

(ii) appropriate forms of notice of exercise of the right of redemption and of powers of attorney for transferring Trust Units.

The Unit Certificates may be engraved, printed or lithographed, or partly in one form and partly in another, as the Trustees may determine.

13.3 Register of Trust Unitholders

A register (the "Register") shall be kept at the principal stock transfer office in Toronto, Ontario of the Transfer Agent, which Register shall contain the names and addresses of the Unitholders, the respective numbers of Trust Units held by them, the certificate numbers of certificates representing such Trust Units, if any, and a record of all transfers and redemptions thereof. Branch transfer registers shall be maintained at such other offices of the Transfer Agent as the Trustees may from time to time designate. Only Unitholders whose Trust Units or certificates are so recorded shall be entitled to receive distributions or to exercise or enjoy the rights of Unitholders hereunder. The Trustees shall have the right to treat the person registered as a Unitholder on the Register as the owner of such Trust Units for all purposes, including, without limitation, payment of any distribution, giving notice to Unitholders and determining the right to attend and vote at meetings of Unitholders. Subject to Sections 13.1 and 13.5 upon any issue of Trust Units, the name of the subscriber shall be promptly entered on the Register as the owner of the number of Trust Units issued to such subscriber, or if the subscriber is already a Unitholder, the Register shall be amended to include his/her additional Trust Units.

13.4 Lost Certificates

In the event that any Unit Certificate for Trust Units is lost, stolen, destroyed or mutilated, the Trustees may authorize the issuance of a new Unit Certificate for the same number of Trust Units in lieu thereof. The Trustees may in their sole discretion, before the issuance of such new Unit Certificate, require the owner of the lost, stolen, destroyed or mutilated Unit Certificate, or the legal representative of the owner, to make an affidavit or statutory declaration setting forth such facts as to the loss, theft, destruction or mutilation as the Trustees may deem necessary, to surrender any mutilated certificate and to require the applicant to supply to the Trust a "lost certificate bond" or a similar bond in such reasonable sum as the Trustees or the Transfer Agent may direct indemnifying the Trust for so doing.

13.5 Restriction on Issuance or Transfer of Trust Units

Units of the Trust may only be issued or transferred with the approval of the Trustees. The Trustees shall not approve any issuance or transfer of Trust Units to any Person other than to the Fund for a period of 24 months from the date of this Declaration of Trust and, after then, only if such issuance or transfer has the approval of at least 66 2/3% of the votes cast at a meeting of the Unitholders and only if such issuance or transfer would not result in Trust Units being held by a "designated beneficiary" within the meaning of Part XII.2 of the Tax Act ("Designated Beneficiary"). The Trustees shall not accept a subscription for Trust Units from, or issue or register a transfer of Trust Units to, a Person unless the Person provides a declaration to the Trustees that it is not a Designated Beneficiary and covenants to maintain such representation true for as long as it continues to hold one or more Trust Units. If, notwithstanding the foregoing, the Trustees determine that a Person has purported to become or remain a holder of Trust Units in breach of the above mentioned declaration or covenant, or if the holder fails to provide, upon request, a declaration in form and content satisfactory to the Trustees that it is not a Designated Beneficiary, (i) the Trustees will require such Person to dispose of the Trust Units within a specified period not to exceed 60 days to a Person who does not contravene the above mentioned limitation on ownership ("New Holder"), and (ii) effective immediately prior to the breach, such Person shall be deemed to have ceased to be a holder of such Trust Units, the voting and distribution rights attached to such Trust Units shall be suspended and such Trust Units shall be deemed not to be outstanding until acquired by a New Holder (provided that holders of other Trust Units shall not be entitled to any portion of the distributions that may have been paid in respect of Trust Units that have been so deemed not to be outstanding) and such Person's rights in respect of such Trust Units shall be limited to receiving the net proceeds of the sale thereof. If such Person has not, within such period, sold such Trust Units or provided the Trustees with a declaration in form and content satisfactory to the Trustees that it is not a Designated Beneficiary, the Trustees may sell such Trust Units on behalf of such Person (and the Trustees shall have the power of attorney of such Person to do so), and such Person's rights in respect of such Trust Units shall be limited to receiving the net proceeds of sale upon surrender of the certificates representing such Trust Units.

Subject to Section 9.6, unless and until the Trustees shall have been required to do so under the terms hereof, the Trustees shall not be bound to do or take any proceeding or action with respect to this Section 13.5 by virtue of the powers conferred on them hereby. The Trustees shall have the sole right and authority to make any determination required for the administration of the provisions of, or contemplated under, this Section 13.5, and without limiting the generality of the foregoing, if the Trustees consider that there are reasonable grounds for believing that a contravention of the above mentioned limitation on ownership has occurred or may occur, the Trustees shall make a determination with respect to the matter. Any such determination shall be conclusive, final and binding for the purposes of this Section 13.5 except to the extent modified by any subsequent determination by the Trustees. The Trustees may require declarations as to whether a Unitholder is a Designated Beneficiary or as to factual information that will enable the Trustees to determine whether a Unitholder or a prospective transferee of a Trust Unit may be a Designated Beneficiary. In any situation where it is unclear whether Trust Units may be held by a Person who may be a Designated Beneficiary, the Trustees may exercise their discretion in determining whether such Person is or is not a Designed Beneficiary, and any such exercise by them of their discretion shall be binding for the purposes of this Section 13.5. Notwithstanding the foregoing, the Trustees may delegate, in whole or in part, their power to make a determination in this respect to any officer of the Trust.

13.6 Restrictions on Ownership by Certain Parties

(a) In this Section 13.6:

(i) "Arrangement and Purchase Agreement" means the agreement made as of September 15, 2003 among, TD Capital Group Limited, HRC Alert Investors Limited Partnership, Alert Acquisition Corp., Eclipse Capital Corporation, Alert Holdings Corp., Robert I. Ezer, Leslie Veiner, Alert Care Corporation, 1572879 Ontario Limited, 2032053 Ontario Inc. and Chartwell Care Corporation.

(ii) "Arrangement Closing" means the completion of the transactions contemplated by the Arrangement and Purchase Agreement.

(iii) "Barton Group" means the group of persons consisting of Janet Barton, the Estate of Wayne Barton, Braeburn Capital Corporation, the shareholders of Braeburn Capital Corporation, Brading Investments Ltd. and the shareholders of Brading Investments Ltd.

(iv) "Prohibited Transferee" means:

(a) any direct or indirect beneficial owner of issued and outstanding securities of Alert Care Corporation and Eclipse Capital Corporation immediately prior to the Arrangement Closing including (i) TD Capital Group Limited; (ii) Norman Smith; (iii) each member of the Barton Group; (iv) any person that is a partner in the HRC Alert Investors Limited Partnership; (v) any person who, at a time prior to the Arrangement Closing, is a shareholder of Eclipse Capital Corporation (other than Norman Smith or a member of the Barton Group) or a partner of HRC Alert Investors

Limited Partnership other than a partner referred to in (iv) above; (vi) any person, who at any time prior to the indirect acquisition of Ballycliffe Lodge Limited by the Trust, is directly or indirectly in any manner whatsoever a shareholder of Ballycliffe Lodge Limited; (vii) a person that is a corporation of which any person referred to in (i), (ii), (iii), (iv) or (vi) above owns 10% or more of any class of shares of the corporation, or in which any one or more of the persons referred to in (i) through (vi) above inclusive, in the aggregate, owns 10% of more of the shares of any class of the corporation) and any other person who, as a result of the acquisition of Units by that person, would cause the partnership interests owned by Alert Care Corporation, after the Arrangement Closing, to be ineligible property within the meaning of paragraph 88(1)(c) of the Tax Act, save and except for Robert I. Ezer, Leslie Veiner, the other shareholders of Alert Holdings Corp. and such other Persons as the Trustees may, in their discretion, determine provided that the Trustees have received advice indicating that such determination is prudent in the circumstances;

(b) a person related to or considered not to be dealing at arm's length within the meaning of the Tax Act with any person referred to in Section 14.6(a)(iv)(a); and

(c) any affiliate, associate, insider, partner or subsidiary of any person or of any group of persons referred to in Sections 14.6(a)(iv)(a) and (iv)(b).

(v) "Restricted Period" means the period of two years immediately following the date of the Arrangement Closing.

(vi) "TD Bank Group" means:

(a) The Toronto-Dominion Bank (the "Bank");

(b) any affiliate of the Bank;

(c) any corporation that is directly or indirectly controlled by or otherwise related within the meaning of the Tax Act to the Bank;

(d) any mutual fund, closed-end fund, pooled fund, trust, limited partnership or other investment vehicle (whether or not the entity is a reporting issuer in any province or territory in Canada) that is managed or advised by TD Asset Management Inc. or any of its affiliates;

(e) any person considered not to be dealing at arm's length within the meaning of the Tax Act with any person referred to in Sections 13.6 (a)(vi)(a), (vi)(b), (vi)(c) and (vi)(d);

save and except for any person acting for and on behalf of a Third Party Investment Account and not for its own account; and

(vii) "Third Party Investment Account" means any client investment account held with TD Securities Limited, TD Asset Management Inc., TD Investment Management Inc. or any of their respective affiliates or associates for or on behalf of a client other than a client that is a Prohibited Transferee or a person described in Section 13.6(a)(v).

(b) Notwithstanding any other provision in this Declaration of Trust, no Trust Units or Trust Notes shall be issued, or exchanged, assigned or transferred, to a Prohibited Transferee during the Restricted Period. No Prohibited Transferee shall in any circumstances during the Restricted Period acquire, hold or own a Trust Unit or Trust Note or, subject to the express terms of this Declaration of Trust, be entitled to any of the rights, privileges, benefits or legal or equitable interests which may attach to or be associated with any such Trust Unit or Trust Note.

(c) If at any time during the Restricted Period, a Prohibited Transferee purports to acquire one or more Trust Units or Trust Notes ("Prohibited Units"),

(i) the Prohibited Transferee shall be deemed to have not acquired any legal or beneficial interest in such Prohibited Units, such purported acquisition shall be deemed to be *void ab initio* and the Prohibited Transferee shall be deemed to hold at all times the Prohibited Units as agent and in trust for the Trustees. All monies received, actions taken and rights exercised by such Prohibited Transferee in respect of such Prohibited Units shall be deemed to have been received and belong to, and have been taken or exercised on behalf of, the Trustees, and any votes cast by a Prohibited Transferee attaching to Prohibited Units shall be treated as votes cast on behalf of and for the benefit of the Trustees;

(ii) if the Trustees determine (a "Determination") that a Prohibited Transferee holds during the Restricted Period, as agent and in trust for the Trustees, one or more Prohibited Units, (a) to the extent that the Prohibited Units are held by such Prohibited Transferee at the time of the Determination, the Trustees shall forthwith cancel the Prohibited Units without any consideration, payment or compensation to the Prohibited Transferee and the Trustees shall notify the Transfer Agent of such cancellation; and (b) whether or not the Prohibited Transferee holds, as agent and in trust for the Trustees, the Prohibited Units at the time of the Determination, the Trustees shall have the right to claim from the Prohibited Transferee for the benefit of the Trustees all distributions or other payments or amounts received by the Prohibited Transferee on or in connection with the Prohibited Units, and, if the Prohibited Transferee shall have disposed of the Prohibited Units, the Trustees shall have the right to claim from the Prohibited Transferee for the benefit of the Trustees any and all proceeds of disposition of the Prohibited Units, if any, received by such Prohibited Transferee.

(iii) where a Prohibited Transferee has transferred or purported to transfer Prohibited Units to a person who is neither a Prohibited Transferee nor, if such transfer occurs during the 60 day period immediately following the date of the Arrangement Closing, a person within the TD Bank Group, such Units shall not be Prohibited Units in the hands of such transferee and the rights of such transferee as a Unitholder hereunder shall not be affected by this Section 13.6;

(iv) any action taken by the Trustees in reliance on a vote of Unitholders shall not be invalidated or otherwise affected by the exercise by a Prohibited Transferee of any voting rights attaching to Prohibited Units;

(v) the Trustees shall not be obligated to but shall be entitled to, and may, take any action the Trustees, in their sole discretion, deem advisable and practicable in the circumstances to recover any amounts received by a Prohibited Transferee in connection with Prohibited Units, including but not limited to amounts referred to in (ii) above.

(d) The Trustees shall have the sole right and authority to make any determination required for the administration of the provisions of, or contemplated under, this Section 13.6, and without limiting the generality of the foregoing, if the Trustees consider that there are reasonable grounds for believing that a Prohibited Transferee holds Prohibited Units within the Restricted Period, the Trustees shall make a determination with respect to the matter. Any such determination shall be conclusive, final and binding for the purposes of this Section 13.6 except to the extent modified by any subsequent determination by the Trustees. Notwithstanding the foregoing, the Trustees may delegate, in whole or in part, their power to make a Determination to any officer of the Trust.

(e) No Prohibited Transferee shall have any right enforceable against the Trustees, the assets of the Trust or any other Unitholder arising out of or in connection with anything done in good faith or occurring under or pursuant to this Section 13.6, and each Prohibited Transferee shall conclusively be deemed to have agreed to indemnify the Trustees in respect of any liability the Trustees or any of them may incur as a result or in consequences of the Prohibited Transferee purporting to acquire Prohibited Units.

(f) Notwithstanding any other provision in this Declaration of Trust, no Trust Units or Trust Notes shall be issued, or exchanged, assigned or transferred, to any person within the TD Bank Group during the 60 day period immediately following the date of the Arrangement Closing. No person within the TD Bank Group shall in any circumstances during the 60 day period immediately following the date of the Arrangement Closing acquire, hold or own a Trust Unit or Trust Note or, subject to the express terms of this Declaration of Trust, be entitled to any of the rights, privileges, benefits or legal or equitable interests which may attach to or be associated with any such Trust Unit or Trust Note. If at any time during the 60 day period immediately following the date of the Arrangement Closing, a person within of the TD Bank Group purports to acquire a Trust Unit or Trust Note, such Trust Unit or Trust Note shall be deemed to be a Prohibited Unit and such Prohibited Unit shall be subject to and governed by the provisions of Section 14.6(c) and the provisions of Sections 14.6(c), (d) and (e) shall apply, *mutatis mutandis*, to such Prohibited Unit and to the person within the TD Bank Group purporting to acquire the Trust Unit or Trust Note during this period.

13.6A Restrictions on Ownership by Certain Other Parties

(a) In this Section 14.6A:

(i) "Prohibited Transferee" means.

(a) any direct or indirect beneficial owner of issued and outstanding common shares of CPAC (Care) Holdings Ltd.;

(b) a person related to or considered not to be dealing at arm's length within the meaning of the Tax Act with any person referred to in Section 13.6A(a)(i)(a); and

(c) any affiliate, associate, insider, partner or subsidiary of any person or of any group of persons referred to in Sections 13.6A(a)(i)(a) and (a)(i)(b).

(ii) "Restricted Period" means the period from July 5, 2005 to and including July 31, 2007.

(b) Notwithstanding any other provision in this Declaration of Trust, no Trust Units or Trust Notes shall be issued, or exchanged, assigned or transferred, to a Prohibited Transferee during the Restricted Period. No Prohibited Transferee shall in any circumstances during the Restricted Period acquire, hold or own a Trust Unit or Trust Note or, subject to the express terms of this Declaration of Trust, be entitled to any of the rights, privileges, benefits or legal or equitable interests which may attach to or be associated with any such Trust Unit or Trust Note.

(c) If at any time during the Restricted Period, a Prohibited Transferee purports to acquire one or more Trust Units or Trust Notes ("Prohibited Units"):

(i) the Prohibited Transferee shall be deemed to have not acquired any legal or beneficial interest in such Prohibited Units, such purported acquisition shall be deemed to be void ab initic and the Prohibited Transferee shall be deemed to hold at all times the Prohibited Units as agent and in trust for the Trustees. All monies received, actions taken and rights exercised by such Prohibited Transferee in respect of such Prohibited Units shall be deemed to have been received and belong to, and have been taken or exercised on behalf of, the Trustees, and any votes cast by a Prohibited Transferee attaching to Prohibited Units shall be treated as votes cast on behalf of and for the benefit of the Trustees;

(ii) if the Trustees determine (a "Determination") that a Prohibited Transferee holds during the Restricted Period, as agent and in trust for the Trustees, one or more Prohibited Units, (a) to the extent that the Prohibited Units are held by such Prohibited Transferee at the time of the Determination, the Trustees shall forthwith cancel the Prohibited Units without any consideration, payment or compensation to the Prohibited Transferee and the Trustees shall notify the Transfer Agent of such cancellation; and (b) whether or not the Prohibited Transferee holds, as agent and in trust for the Trustees, the Prohibited Units at the time of the Determination, the Trustees shall have the right to claim from the Prohibited Transferee for the benefit of the Trustees all distributions or other payments or amounts received by the Prohibited Transferee on or in connection with the Prohibited Units, and, if the Prohibited Transferee shall have disposed of the Prohibited Units, the Trustees shall have the right to claim from the Prohibited Transferee for the benefit of the Trustees any and all proceeds of disposition of the Prohibited Units, if any, received by such Prohibited Transferee;

(iii) any action taken by the Trustees in reliance on a vote of Unitholders shall not be invalidated or otherwise affected by the exercise by a Prohibited Transferee of any voting rights attaching to Prohibited Units;

(iv) the Trustees shall not be obligated to but shall be entitled to, and may, take any action the Trustees, in their sole discretion, deem advisable and practicable in the circumstances to recover any amounts received by a Prohibited Transferee in connection with Prohibited Units, including but not limited to amounts referred to in (ii) above.

(d) The Trustees shall have the sole right and authority to make any determination required for the administration of the provisions of, or contemplated under, this Section 13.6A, and without limiting the generality of the foregoing, if the Trustees consider that there are reasonable grounds for believing that a Prohibited Transferee holds Prohibited Units within the Restricted Period, the Trustees shall make a determination with respect to the matter. Any such determination shall be conclusive, final and binding for the purposes of this Section 13.6A except to the extent modified by any subsequent determination by the Trustees. Notwithstanding the foregoing, the Trustees may delegate, in whole or in part, their power to make a Determination to any officer of the Trust.

(e) No Prohibited Transferee shall have any right enforceable against the Trustees, the assets of the Trust or any other Unitholder arising out of or in connection with anything done in good faith or occurring under or pursuant to this Section 13.6A, and each Prohibited Transferee shall conclusively be deemed to have agreed to indemnify the Trustees in respect of any liability the Trustees or any of them may incur as a result or in consequences of the Prohibited Transferee purporting to acquire Prohibited Units.

ARTICLE 14
TERMINATION

14.1 Term of the Trust

Subject to the other provisions of this Declaration of Trust, the Trust shall continue for a term ending 21 years after the date of death of the last surviving issue of Her Majesty, Queen Elizabeth II, alive on September 8, 2003. For the purpose of terminating the Trust by such date, the Trustees shall commence to wind-up the affairs of the Trust on such date as may be determined by the Trustees, being not more than two years prior to the end of the term of the Trust.

14.2 Termination with the Approval of Unitholders

The Unitholders may vote by Special Resolution to terminate the Trust at any meeting of Unitholders duly called by the Trustees for the purpose of considering termination of the Trust, following which the Trustees shall commence to wind up the affairs of the Trust as soon as may be reasonably practicable. Such Special Resolution may contain such directions to the Trustees as the Unitholders determine, including a direction to distribute the property of the Trust *in specie*.

14.3 Procedure Upon Termination

Forthwith upon being required to commence to wind up the affairs of the Trust, the Trustees shall give notice thereof to the Unitholders, which notice shall designate the time or times at which Unitholders may surrender their Trust Units for cancellation and the date at which the registers of Units of the Trust shall be closed.

14.4 Powers of the Trustees Upon Termination

After the date on which the Trustees are required to commence to wind up the affairs of the Trust, the Trustees shall undertake no activities except for the purpose of winding-up the affairs of the Trust as hereinafter provided and, for this purpose, the Trustees shall continue to be vested with and may exercise all or any of the powers conferred upon the Trustees under this Declaration of Trust.

14.5 Sale of Investments

After the date referred to in Section 14.3, the Trustees shall proceed to wind up the affairs of the Trust as soon as may be reasonably practicable and for such purpose shall, subject to any direction to the contrary in respect of a termination authorized under Section 14.2, sell and convert into money all the Trust's property in one transaction or in a series of transactions at public or private sales and do all other acts appropriate to liquidate the Trust, and shall in all respects act in accordance with the directions, if any, of the Unitholders (in respect of a termination authorized under Section 14.2). If the Trustees are unable to sell all or any of the assets which comprise part of the Trust by the date set for termination, the Trustees may, subject to obtaining all necessary regulatory approvals, distribute the remaining shares or other assets directly to the Unitholders in accordance with their pro rata interests.

14.6 Distribution of Proceeds or Assets

After paying, retiring or discharging or making provision for the payment, retirement or discharge of all known liabilities and obligations of the Trust and providing for indemnity against any other outstanding liabilities and obligations, the Trustees shall, subject to obtaining all necessary regulatory approvals, distribute the remaining part of the proceeds of the sale of the Trust's property together with any cash forming part of the Trust's property among the Unitholders in accordance with their pro rata interests.

14.7 Further Notice to Unitholders

In the event that less than all of the Unitholders have surrendered their Trust Units for cancellation within six months after the time specified in the notice referred to in Section 14.3, the Trustees shall give further notice to the remaining Unitholders to surrender their Trust Units for cancellation and if, within one year after the further notice, all the Trust Units shall not have been surrendered for cancellation, such remaining Trust Units shall be deemed to be cancelled without prejudice to the rights of the holders of such Trust Units to receive their pro rata share of the remaining property of the Trust, and the Trustees may either take appropriate steps, or appoint an agent to take appropriate steps, to contact such Unitholders (deducting all expenses thereby incurred from the amounts to which such Unitholders are entitled as aforesaid) or, in the discretion of the Trustees, may pay such amounts into court.

14.8 Responsibility of the Trustees after Sale and Conversion

The Trustees shall be under no obligation to invest the proceeds of any sale of investments or other assets or cash forming part of the Trust's property after the date referred to in Section 14.3 and, after such sale, the sole obligation of the Trustees under this Declaration of Trust shall be to hold such proceeds or assets in trust for distribution under Section 14.6.

ARTICLE 15
SUPPLEMENTAL INDENTURES

15.1 Provision for Supplemental Indentures for Certain Purposes

The Trustees may, without approval of the Unitholders and subject to the provisions hereof, and shall, when so directed in accordance with the provisions hereof, execute and deliver indentures or instruments supplemental hereto which thereafter shall form part hereof, for any one or more or all of the following purposes:

(a) modifying or amending any provisions of this Declaration of Trust in the circumstances set forth in Section 11.1 where the Trustees may do so without the consent, approval or ratification of the Unitholders or any other person; and

(b) modifying or amending any provisions of this Declaration of Trust where the modification or amendment has been approved by a majority of the votes cast by Unitholders or by two-thirds of the votes cast by Unitholders, as the case may be.

ARTICLE 16
GENERAL

16.1 Notices

(a) Any notice or other document required to be given or sent to Unitholders under this Declaration of Trust shall be given or sent through ordinary post addressed to each registered holder at his or her last address appearing on the register; provided that if there is a general discontinuance of postal service due to strike, lockout or otherwise, such notice may be given by publication twice in the Report on Business section of the National Edition of *The Globe and Mail* or similar section of any other newspaper having national circulation in Canada; provided further that if there is no newspaper having national circulation, then by publishing twice in the business section of a newspaper in each city where the register or a branch register is maintained. Any notice so given shall be deemed to have been given on the day following that on which the letter or circular was posted or, in the case of notice being given by publication, after publishing such notice twice in the designated newspaper or newspapers. In proving notice was posted, it shall be sufficient to prove that such letter or circular was properly addressed, stamped and posted.

(b) Any written notice or written communication given to the Trustees shall be addressed to the Trustees at the head office of the Trust, and shall be deemed to have been given on the date of delivery or date sent by facsimile or other means of prepaid, transmitted or recorded communications or, if mailed, five days from the date of mailing. If any such notice or communication shall have been mailed and if regular mail service shall be interrupted by strikes or other irregularities, such notice or communication shall be deemed to have been received 48 hours after 12:01 a.m. on the day following the resumption of normal mail service, provided that during the period that regular mail service shall be interrupted any notice or other communication shall be given by personal delivery or by facsimile or other means of prepaid, transmitted or recorded communication.

16.2 Failure to Give Notice

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

16.3 Joint Holders

Service of a notice or document on any one of several joint holders of Trust Units shall be deemed effective service on the other joint holders.

16.4 Service of Notice

Any notice or document sent by post to or left at the address of a Unitholder pursuant to this Section shall, notwithstanding the death or bankruptcy of such Unitholder, and whether or not the Trustees have notice of such death or bankruptcy, be deemed to have been fully served and such service shall be deemed sufficient service on all persons having an interest in the Trust Units concerned.

16.5 Information Available to Unitholders

Each Unitholder shall have the right to obtain, on demand and without fee, from the head office of the Trust a copy of this Declaration of Trust and any amendments thereto relating to the Trust Units held by that Unitholder and shall be entitled to inspect and, on payment of a reasonable fee therefor and after delivering to the Trustees a statutory declaration stating the name and address of the person requiring the Trustees to furnish the list of Unitholders and, if the person is a body corporate, the address for service thereof, and that the list will not be used except in connection with:

(a) an effort to influence the voting of the holders of Trust Units;

(b) an offer to acquire Trust Units; or

(c) any other matter relating to the Trust Units or the affairs of the Trust,

obtain a list of the Unitholders for the aforesaid purposes.

16.6 Fiscal Year and Taxation Year

The fiscal year and taxation year of the Trust shall end on December 31 of each year.

16.7 Financial Disclosure

The Trust will send to Unitholders:

(a) within 140 days of the end of each fiscal year of the Trust (or within such shorter period required by law) and at least 21 days prior to the date of each annual meeting of Unitholders, the annual financial statements of the Trust for the fiscal year ended immediately prior to such annual meeting, together with comparative financial statements for the preceding fiscal year, if any, and the report of the Auditors thereon referred to in Section 17.4; and

(b) within 60 days after the end of each fiscal quarter of the Trust (other than the fourth quarter of each year) (or within such shorter period required by law), unaudited quarterly financial statements of the Trust for such fiscal quarter, together with comparative financial statements for the same fiscal quarter in the preceding fiscal year, if any.

Such financial statements shall be prepared in accordance with generally accepted accounting principles in Canada as recommended from time to time in the Handbook of the Canadian Institute of Chartered Accountants; provided that such statements and the obligation to deliver such statements may vary from such principles to the extent required to comply with applicable securities laws or securities regulatory requirements or to the extent permitted by applicable securities regulatory authorities.

16.8 Unitholder Meeting Information

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

(a) a form of proxy which can be used by a Unitholder to appoint a proxy, who need not be a Unitholder, to attend and act at the meeting on behalf of the Unitholder, in the manner and to the extent authorized by the proxy; and

(b) all information required by applicable law for reporting issuers and offering corporations.

16.9 Taxation Information

On or before March 15 in each year, the Trust will provide to Unitholders who received distributions from the Trust in the prior calendar year or on or before January 15 of the current calendar year, such information regarding the Trust as required by Canadian law to be submitted to such Unitholders for income tax purposes to enable Unitholders to complete their tax returns in respect of the prior calendar year.

16.10 Power of Attorney

The Trustees hereby grant to CCC a power of attorney constituting the CCC with full power of substitution, as their true and lawful attorney to act on behalf of the Trust with full power and authority in their name, place and stead, and to execute, under seal or otherwise, swear to, acknowledge, deliver, make or file or record when, as and where required, any instrument, deed, agreement or document in connection with carrying out the activities of the Trust in connection with the Offering.

16.11 Trust Property to be Kept Separate

The Trustees shall maintain the Trust's property separate from all other property in their possession and from the property of all other persons. For greater certainty, the Trust's property shall not form part of or include the assets of Master LP or any other person, except to the extent that legal title to such property is held by the Trustees on behalf of the Trust.

16.12 Trust Records

The Trustee shall prepare and maintain, at the principal office of the Trust or at any other place in Canada designated by the Trustees, records containing: (i) the Declaration of Trust; and (ii) minutes of meetings and resolutions of the Unitholders. The Trust shall also prepare and maintain adequate accounting records and records containing minutes of meetings and resolutions of the Trustees and any committee thereof. Such records shall be kept at the principal office of the Trust or at such other place in Canada as the Trustees think fit and shall at all reasonable times be open to inspection by the Trustees.

16.13 Consolidations

Any one or more Trustees may prepare consolidated copies of the Declaration of Trust as it may from time to time be supplemented, amended or amended and restated and may certify the same to be a true consolidated copy of the Declaration of Trust, as amended or amended and restated.

ARTICLE 17
AUDITORS

17.1 Qualification of Auditors

The Auditors shall be an independent recognized firm of chartered accountants which has an office in Canada.

17.2 Appointment of Auditors

KPMG LLP are confirmed as the Auditors of the Trust, to hold such office until the first annual meeting of the Unitholders. The Auditors will be selected at each succeeding annual meeting of Unitholders. The Auditors will receive such remuneration as may be approved by the Trustees. If at any time a vacancy occurs in the position of Auditors of the Trust, the Trustees may appoint new auditors to act as the Auditors of the Trust until the next annual meeting of the Unitholders.

17.3 Change of Auditors

The Auditors may at any time be removed by the Trustees with the approval of a majority of the votes cast by Unitholders, at a meeting of Unitholders duly called for the purpose and, upon the resignation or the removal of Auditors as aforesaid, new auditors may be appointed by a majority of votes cast by Unitholders at a meeting duly called for the purpose or, in the absence of such meeting, by the Trustees.

17.4 Report of Auditors

The Auditors shall audit the accounts of the Trust at least once in each year and a report of the Auditors with respect to the annual financial statements of the Trust shall be provided to each Unitholder with the annual financial statements referred to in Section 16.7.

ARTICLE 18
MISCELLANEOUS

18.1 Counterparts

This Declaration of Trust may be executed in several counterparts, each of which when executed shall be deemed to be an original, and such counterparts, together, shall constitute but one and the same instrument, which shall be sufficiently evidenced by any such original or facsimile counterparts.

18.2 Severability

The provisions of this Declaration of Trust are severable. If any provision of this Declaration of Trust shall be held invalid or unenforceable in any jurisdiction, such invalidity or unenforceability shall attach only to such provision in such jurisdiction and shall not in any manner affect or render invalid or unenforceable such provision in any other jurisdiction or any other provision of this Declaration of Trust in any jurisdiction.

18.3 Language

Les parties aux présentes ont exigés que la présente convention ainsi que tous les documents et avis qui s’y rattachent et/ou qui en découleront soient rédigés en la langue anglaise. The parties hereto have required that this Declaration of Trust and all documents and notices resulting herefrom be drawn up in English.

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IN WITNESS WHEREOF this Third Amended and Restated Declaration of Trust has been executed by the undersigned as of the date referenced above.

Mike Harris,
in his capacity as trustee of
CSH TRUST

(signed) *"Mike Harris"*

Victor Durman,
in his capacity as trustee of
CSH TRUST

(signed) *"Victor Durman"*

Thomas Schwartz,
in his capacity as trustee of
CSH TRUST

(signed) *"Thomas Schwartz"*