
SECOND CUP ROYALTY INCOME FUND

**THIRD AMENDED AND RESTATED
DECLARATION OF TRUST**

October 22, 2007

TABLE OF CONTENTS

ARTICLE 1 INTERPRETATION

1.1	Definitions	2
1.2	References to Acts Performed by the Trust	9
1.3	References to Contracts and Statutes.....	9
1.4	Number and Gender	9
1.5	Headings for Reference Only.....	10
1.6	Currency	10
1.7	Day Not a Business Day	10
1.8	Time of the Essence	10
1.9	Accounting Principles.....	10
1.10	Governing Law	10
1.11	Amendment and Restatement.....	10

ARTICLE 2 DECLARATION OF TRUST

2.1	Continuation of Trust	11
2.2	Name of Trust	11
2.3	Head Office.....	11
2.4	Nature of the Trust.....	11
2.5	Rights of Unitholders.....	12
2.6	Ownership of Assets of the Trust.....	12
2.7	Liability of Unitholders	12

ARTICLE 3 ISSUE AND SALE OF UNITS

3.1	Nature of Units	14
3.2	Authorized Number of Units	15
3.3	Issue of Units.....	15
3.4	Fractional Units.....	16
3.5	Consolidation of Units.....	16
3.6	No Pre-Emptive Rights.....	17
3.7	Distribution Reinvestment and Unit Purchase Plans.....	17

ARTICLE 4 INVESTMENTS OF THE TRUST

4.1	Purpose of the Trust.....	17
4.2	Other Investments	18

ARTICLE 5 DISTRIBUTIONS

5.1	Computation of Distributable Cash Flow of the Trust	19
5.2	Computation of Income and Net Realized Capital Gains	20
5.3	Distributions of Distributable Cash	21
5.4	Other Distributions	21
5.5	Character of Distributions and Designations	22
5.6	Enforceability of Right to Receive Distributions	23
5.7	Method of Payment of Distributions	23
5.8	Withholding Taxes	23
5.9	Definitions	23
5.10	Payments to Unitholders	24
5.11	Unclaimed Distributions	24

ARTICLE 6 REDEMPTION OF UNITS

6.1	Right of Redemption	24
6.2	Exercise of Redemption Right	25
6.3	Cash Redemption	26
6.4	No Cash Redemption in Certain Circumstances	27
6.5	In Specie Redemption	27
6.6	Cancellation of all Redeemed Units	28

ARTICLE 7 TRUSTEES

7.1	Number of Trustees	28
7.2	Calling and Notice of Meetings	29
7.3	Place of Meetings	29
7.4	Meetings by Telephone	29
7.5	Quorum	29
7.6	Chairman	30
7.7	Action by the Trustees	30
7.8	Adjourned Meeting	30
7.9	Remuneration and Expenses	30
7.10	Officers	31

ARTICLE 8 APPOINTMENT, RESIGNATION AND REMOVAL OF THE TRUSTEES

8.1	Qualification of Trustees	31
8.2	Appointment of Trustees	31
8.3	Consent to Act	32
8.4	Failure to Appoint Minimum Number of Trustees	33

8.5	Ceasing to Hold Office	33
8.6	Removal of Trustees.....	34
8.7	Filling Vacancies.....	34
8.8	Validity of Acts	35
8.9	Successor and Additional Trustee	35

ARTICLE 9 CONCERNING THE TRUSTEES

9.1	Powers of the Trustees.....	35
9.2	Specific Powers and Authorities	36
9.3	Shares and Notes Held by the Trust.....	41
9.4	Restrictions on Trustee's Powers	42
9.5	Banking	43
9.6	Standard of Care and Duties	43
9.7	Fees and Expenses	43
9.8	Limitations on Liability of Trustees.....	44
9.9	Indemnification of Trustees	45
9.10	Contractual Obligations of the Trust.....	46
9.11	Conflicts of Interest	46
9.12	Conditions Precedent.....	49
9.13	Reliance Upon Trustees and Officers	49
9.14	Determinations of Trustees Binding.....	50

ARTICLE 10 COMMITTEES OF TRUSTEES

10.1	Delegation.....	50
10.2	Procedure.....	50

ARTICLE 11 AMENDMENT

11.1	Amendment.....	51
11.2	Notification of Amendment.....	52
11.3	Variation of Rights	52

ARTICLE 12 MEETINGS OF UNITHOLDERS

12.1	Annual and Special Meetings of Unitholders	52
12.2	Notice of Meetings	54
12.3	Quorum.....	54
12.4	Voting Rights of Unitholders.....	55
12.5	Resolutions Binding the Trustees.....	55
12.6	Meaning of "Special Resolution"	56

12.7	Meaning of “Outstanding”	56
12.8	Record Date for Voting.....	57
12.9	Appointment of Inspector.....	57
12.10	Resolutions in Writing.....	57
12.11	Binding Effect of Resolutions	58
12.12	Proxies.....	58

ARTICLE 13

CERTIFICATES, REGISTRATION AND TRANSFER OF UNITS

13.1	Nature of Units	59
13.2	Book-Entry Only System.....	59
13.3	Notice to Clearing Agency	60
13.4	Liability	60
13.5	Unit Certificates	61
13.6	Contents of Unit Certificates.....	62
13.7	Register of Unitholders.....	64
13.8	Transfer Agents and Registrars.....	64
13.9	Lost Certificates	64
13.10	Limitation of Non-Resident Ownership	65
13.11	Transfer of Units.....	66
13.12	Units Held Jointly or in a Fiduciary Capacity	68
13.13	Performance of Trust	68
13.14	Death of a Unitholder	68
13.15	Take-Over Bids	68

ARTICLE 14

TERMINATION

14.1	Term of Trust	72
14.2	Termination with the Approval of Unitholders	72
14.3	Procedure Upon Termination.....	72
14.4	Powers of the Trustees Upon Termination.....	72
14.5	Sale of Investments.....	72
14.6	Distribution of Proceeds or Assets.....	73
14.7	Further Notice to Unitholders	73
14.8	Responsibility of the Trustees after Sale and Conversion	73

ARTICLE 15

SUPPLEMENTAL INDENTURES

15.1	Provision for Supplemental Indentures for Certain Purposes	74
------	--	----

**ARTICLE 16
GENERAL**

16.1	Notices.....	74
16.2	Failure to Give Notice.....	75
16.3	Joint Holders	75
16.4	Service of Notice	75
16.5	Information Available to Unitholders.....	75
16.6	Fiscal Year.....	76
16.7	Financial Disclosure	76
16.8	Meeting Information.....	76
16.9	Taxation Information	76
16.10	Intentionally deleted.....	77
16.11	Trust Property to be Kept Separate.....	77
16.12	Power of Attorney	77

**ARTICLE 17
AUDITORS**

17.1	Qualification of Auditors	77
17.2	Appointment of Auditors.....	77
17.3	Change of Auditors.....	78
17.4	Report of Auditors	78

**ARTICLE 18
MISCELLANEOUS**

18.1	Counterparts	78
18.2	Severability	78
18.3	Language	78

SECOND CUP ROYALTY INCOME FUND

THIS AMENDED AND RESTATED DECLARATION OF TRUST dated the 22nd day of October, 2007, is made by:

DAVID BLOOM, an individual resident in the Province of Ontario,

MICHAEL ROSICKI, an individual resident in the Province of Ontario,

RAYMOND GUYATT, an individual resident in the Province of Québec,

The three of whom will continue to be the trustees of the trust constituted on the terms of this Declaration of Trust and all persons who after the date hereof become a trustee of the trust as herein provided (each person, while a trustee of the trust as herein provided, is hereinafter called a "Trustee"),

OF THE FIRST PART

- AND -

All persons who after the date hereof are or become holders of Units as herein provided,

OF THE SECOND PART

RECITALS:

- A. Pursuant to a declaration of trust (the "**Original Declaration of Trust**") dated October 22, 2004, a trust known as "**Second Cup Royalty Income Fund**" was established for investment purposes.
- B. The Original Declaration of Trust was amended on December 1, 2004 (the "**First Amended and Restated Declaration of Trust**") by the Trustees in accordance with its provisions.

- C. The First Amended and Restated Declaration of Trust was further amended on April 2, 2007 (the “**Second Amended and Restated Declaration of Trust**”) by the Trustees in accordance with its provisions in order to give effect to the reorganization of the Trust’s organizational structure which occurred on April 2, 2007 (the “**Reorganization**”).
- D. Unitholders have approved the amendments to the First Amended and Restated Declaration of Trust and the Second Amended and Restated Declaration of Trust.
- E. Certain amendments are desired to be made to the Second Amended and Restated Declaration of Trust following the completion of the Reorganization, as well as certain other administrative amendments, and the Trustees have determined that such amendments may be adopted in this Declaration of Trust without the approval or consent of the Unitholders pursuant to Section 11.1 of the Second Amended and Restated Declaration of Trust.
- F. The amendment and restatement of the Second Amended and Restated Declaration of Trust by executing this Declaration of Trust shall not be deemed to constitute a termination of the Trust or a resettlement of the Trust.

DECLARATION

NOW THEREFORE, the undersigned Trustees, being all of the Trustees, hereby confirm and declare that the Second Amended and Restated Declaration of Trust is hereby further amended and restated and the Trust shall continue to exist under the terms of this Declaration of Trust.

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) “**AdminCo**” means Second Cup GP Inc., a wholly-owned subsidiary of the Trust;
- (b) “**Administration Agreement**” means the administration agreement dated April 11, 2007, as amended, modified or superseded from time to time between the Trust and AdminCo pursuant to which AdminCo has agreed to provide or arrange for the provision of services required for the administration of the Trust;

- (c) “**affiliate**” means, in respect of a Person, any other Person that would be considered to be an “affiliated entity” in respect of such Person for the purposes of Ontario Securities Commission Rule 45 501 – *Exempt Distributions*, constituted as of the date of this Agreement;
- (d) “**annuitant**” means the annuitant 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, all as defined in the Tax Act, or any other plan of which a Unitholder acts as trustee or carrier;
- (e) “**associate**” has the meaning ascribed to such term in the *Securities Act* (Ontario);
- (f) “**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 PricewaterhouseCoopers LLP, Chartered Accountants;
- (g) “**Beneficial Unitholder**” means the beneficial owner of a Unit where the Book-Entry Only System is being used for the Units;
- (h) “**Book-Entry Only System**” means the record-entry securities transfer and pledge system known as of the Effective Date by such name, and which is administered by CDS in accordance with the operating rules and procedures of the Securities Settlement Service of CDS in force from time to time, or any successor system which CDS may offer from time to time;
- (i) “**Business Day**” means a day, other than a Saturday, Sunday or statutory holiday, when banks are generally open in Toronto, Ontario for the transaction of banking business;
- (j) “**Canadian Partnership**” has the meaning ascribed to such term in Section 13.10;
- (k) “**Cash Flow**” has the meaning ascribed to such term in Section 5.1(a);
- (l) “**CDS**” means CDS Clearing and Depository Securities Inc. and its successors;

- (m) **"CDS Participant"** means a broker, dealer, bank, other financial institution or other person who, directly or indirectly, from time to time, is a participant in the Book-Entry Only System;
- (n) **"Closing Market Price"** means: (a) an amount equal to the closing price of the Units on the applicable marketplace if there was a trade of Units on the specified date and the applicable marketplace provides a closing price; (b) an amount equal to the average of the highest and lowest prices of Units on the applicable marketplace if there was trading of Units on the specified date and the applicable marketplace provides only the highest and lowest trading prices of Units on a particular day; or (c) the average of the last bid and last asking prices on the applicable marketplace if there was no trading of Units on the specified date;
- (o) **"Convertible Units"** has the meaning ascribed to such term in Section 3.6;
- (p) **"Counsel"** means a barrister or solicitor or firm of barristers and solicitors or other lawyers in an appropriate jurisdiction retained by the Trust;
- (q) **"CPOA"** has the meaning ascribed to such term in Section 8.5;
- (r) **"Declaration of Trust"** means this third amended and restated declaration of trust, as the same may be further supplemented, amended or amended and restated from time to time; and **"hereto"**, **"herein"**, **"hereof"**, **"hereby"**, **"hereunder"** and similar expressions refer to this instrument and not to any particular Article, Section or portion hereof and the expressions **"Article"** and **"Section"** followed by a number mean and refer to the specified Article or Section of this Declaration of Trust;
- (s) **"Distributable Cash"** has the meaning ascribed to such term in Section 5.1(b);
- (t) **"Distribution Payment Date"** in respect of a Distribution Period means on or about, but no later than, the last day of the immediately following month or, if such day is not a Business Day, the next following Business Day or such other date determined from time to time by the Trustees, in each case subject to Section 5.6;
- (u) **"Distribution Period"** means each month in each calendar year, from and including the first day thereof and to and including the last day thereof;

- (v) **"Distribution Record Date"** means, in respect of a Distribution Period, the last Business Day of the Distribution Period, or such other date as may be determined from time to time by the Trustees; provided that, in the case of a Distribution Record Date falling on December 31, the Distribution Record Date shall be December 31 irrespective of whether such day is a Business Day, unless otherwise determined by the Trustees;
- (w) **"Effective Date"** means the date hereof;
- (x) **"Governance Agreement"** means the governance agreement among the Trust and certain of its subsidiaries and others providing for, among other matters, the governance of the Trust's subsidiaries;
- (y) **"Global Unit Certificate"** has the meaning ascribed to such term in Section 13.2;
- (z) **"GP Trust"** means Second Cup GP Trust, a trust established under the laws of the Province of Ontario pursuant to a declaration of trust;
- (aa) **"GP Trust Unit"** means a trust unit of GP Trust;
- (bb) **"Income"** has the meaning ascribed to such term in Section 5.2(a);
- (cc) **"Initial Trustees"** means David Bloom, Michael Rosicki and Raymond Guyatt;
- (dd) **"Issue Expenses"** means amounts payable by the Trust in respect of any issuance of Units;
- (ee) **"Licence and Royalty Agreement"** means the licence and royalty agreement between Second Cup and, as assigned in connection with the Reorganization, the Partnership, as the same may be amended, modified or superseded from time to time;
- (ff) **"LP Unit"** means a limited partnership unit in the Partnership;
- (gg) **"Market Price"** means the amount equal to the weighted average of all reported trading prices of the Units on the applicable marketplace for each of the trading days on which there was a trade of Units during the specified trading day period; provided that if there was trading in the Units on the applicable marketplace for fewer than five of the trading days during the specified trading day period, the **"Market Price"** shall be the weighted average of the

following prices established for each of the trading days during the specified trading day period: (a) the average of the last bid and last asking prices of the Units for each trading day on which there was no trading and (b) the weighted average reported trading prices of the Units for each trading day that there was trading;

- (hh) “**Monthly Limit**” has the meaning ascribed to such term in Section 6.4;
- (ii) “**mutual fund trust**” has the meaning ascribed to such term in the Tax Act;
- (jj) “**Net Realized Capital Gains**” has the meaning ascribed to such term in Section 5.2(b);
- (kk) “**Non-Resident**” means a non-resident of Canada within the meaning of the Tax Act;
- (ll) “**Non-Resident Beneficiaries**” has the meaning ascribed to such term in Section 13.10;
- (mm) “**Operating Loan**” means the revolving loan facility in the amount of up to \$1.0 million in favour of the Trust and any renewal thereof and any replacement thereof by a financial institution carrying on business in Canada;
- (nn) “**Partnership**” means Second Cup Trade-Marks Limited Partnership, a limited partnership established under the laws of the Province of Ontario;
- (oo) “**Permitted Investments**” has the meaning ascribed to such term in Section 4.2;
- (pp) “**person**” includes any individual, general partnership, limited partnership, joint venture, syndicate, sole proprietorship, company or corporation with or without share capital, joint stock company, association, trust, trust company, bank, pension fund, trustee, executor, administrator or other legal personal representative, regulatory body or agency, government or governmental agency, authority or other organization or entity, whether or not a legal entity, however designated or constituted;
- (qq) “**Plans**” means, collectively, trusts governed by a registered retirement savings plan, registered retirement income fund, deferred profit sharing plan or registered education savings plan;

- (rr) **"Redemption Price"** has the meaning ascribed to such term in Section 6.3(a);
- (ss) **"Register"** has the meaning ascribed to such term in Section 13.7;
- (tt) **"Reorganization"** has the meaning ascribed to such term in the Recitals;
- (uu) **"Second Cup"** means The Second Cup Ltd., a corporation incorporated under the laws of the Province of Ontario;
- (vv) **"Security Agreement"** has the meaning ascribed to such term in Section 2.7;
- (ww) **"Special Resolution"** has the meaning ascribed to such term in Section 12.6;
- (xx) **"Subscription Agreement"** means the subscription agreement dated April 16, 2007, as amended, modified or superseded from time to time, among the Trust, the Partnership and Second Cup pursuant to which, among other things, the Trust will ensure that the Partnership is able to deliver Units to Second Cup if required to do so under the Licence and Royalty Agreement;
- (yy) **"subsidiary"** means, in respect of a Person, another Person that would be considered to be a "subsidiary entity" of such Person for the purposes of Ontario Securities Commission Rule 45 501 - *Exempt Distributions*, constituted as of the date of this Agreement;
- (zz) **"Subsidiary of the Trust"** means the Partnership, GP Trust, AdminCo and any other entity that is or becomes a subsidiary of the Trust;
- (aaa) **"Tax Act"** means the *Income Tax Act*, R.S.C. 1985 (5th Supp.) c. 1 and the regulations thereunder, as amended from time to time;
- (bbb) **"Term Loan"** means the term loan in the principal amount of \$11 million in favour of the Trust and any renewal thereof and any replacement thereof by a financial institution carrying on business in Canada;
- (ccc) **"Transfer Agent"** means any registrar and transfer agent as may from time to time be appointed by the Trust to act as registrar and transfer agent for the Units, which initially will be Computershare

Investor Services Inc. together with any sub-transfer agent duly appointed by such company;

- (ddd) **"Trust"** means the trust constituted by this Declaration of Trust;
- (eee) **"Trust Assets"**, at any time, means all monies, properties and assets as are at such time held by the Trust or by the Trustees on behalf of the Trust, including:
 - (i) all funds or property derived from the issuance or sale of Units or other cash or property received by the Trust;
 - (ii) any securities, whether debt or equity, including that of GP Trust, AdminCo or the Partnership held from time to time by or on behalf of the Trust;
 - (iii) any Permitted Investments held from time to time by or on behalf of the Trust;
 - (iv) any proceeds of disposition of any of the foregoing property or in respect of the investment or substitution of the properties and assets of the Trust; and
 - (v) all proceeds, income, interest, dividends, profit, return of capital, gains and accretions and all substituted assets, rights and benefits of any kind or nature whatsoever arising directly or indirectly from or in connection with or accruing to such foregoing property or such proceeds of disposition;
- (fff) **"Trust Liabilities"** has the meaning ascribed to such term in Section 2.7(a);
- (ggg) **"Trustees"** means the trustees of the Trust, and for the time being means the Initial Trustees and thereafter such other person or persons as may be appointed to serve as a trustee or trustees in accordance with the provisions hereof;
- (hhh) **"Unit Certificate"** means a definitive certificate, in the form approved by the Trustees, evidencing ownership of one or more Units, issued and certified in accordance with the provisions hereof;
- (iii) **"Unit Redemption Date"** has the meaning ascribed to such term in Section 6.3(a);

- (jjj) “**Unitholders**” means, at any time, the holders at that time of one or more Units, as shown on the Register; and
- (kkk) “**Units**” means the Units referred to in Section 3.1(a) and includes a fraction of a Unit.

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 or which may not 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 or which may not 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 References to Contracts and Statutes

Except as otherwise specifically provided herein, reference in this Declaration of Trust to any contract, agreement or any other instrument will be deemed to include references to the same as varied, amended, supplemented, restated or replaced from time to time. Except as otherwise specifically provided herein, any reference in this Declaration of Trust to a statute or regulations, rules, policies or instruments thereunder will be deemed to be a reference to such statute or regulation, rule, policy or instrument as amended, re-enacted or replaced from time to time, and reference to specific parts, paragraphs or sections thereof will include all amendments, re-enactments or replacements.

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 that have not been enacted into law or proclaimed into force on or before the date on which such proposals are to become effective, the Trustees may take such proposals into consideration and apply the provisions hereof as if such proposals had been enacted into law and proclaimed into force.

1.4 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.

1.5 Headings for Reference Only

The division of this Declaration of Trust into Articles and 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 Currency

All references in this Declaration of Trust to dollars or "\$", unless otherwise specified herein, are references to Canadian currency.

1.7 Day Not a Business Day

Except with respect to Sections 5.1, 5.2, 5.3, 5.4 and 5.6, 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, 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.

1.8 Time of the Essence

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

1.9 Accounting Principles

Where the character or amount of any asset or liability or item of revenue or expense or amount of equity is required to be determined, or any consolidation or other accounting computation is required to be made for the purpose of this Declaration of Trust, such determination or calculation shall, to the extent applicable and except as otherwise specified herein or as otherwise approved by resolution of the Trustees, be made in accordance with generally accepted accounting principles as recommended from time to time in the Handbook of the Canadian Institute of Chartered Accountants, applied on a consistent basis.

1.10 Governing Law

This Declaration of Trust shall be interpreted and enforced in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein. The parties hereto hereby irrevocably submit and attorn to the jurisdiction of the courts of the Province of Ontario.

1.11 Amendment and Restatement

As of the Effective Date, the terms and conditions and provisions of this Declaration of Trust amend, restate and supercede in their entirety the terms, conditions and provisions of the Second Amended and Restated Declaration of Trust, which shall be of no further force or effect, and this Declaration of Trust shall govern the Trust.

ARTICLE 2

DECLARATION OF TRUST

2.1 Continuation of Trust

The Trust, as established pursuant to the Original Declaration of Trust and as amended by the First Amended and Restated Declaration of Trust and the Second Amended and Restated Declaration of Trust, shall continue upon the terms and conditions of this Declaration of Trust. The Initial Trustees hereby declare themselves, and agree to continue to act as, trustees of the Trust and agree to continue to hold the Trust Assets in trust for the use and benefit of the Unitholders, their successors, permitted assigns and personal representatives and, subject to the terms and conditions of this Declaration of Trust such trust constitutes the Trust hereunder.

2.2 Name of Trust

- (a) The Trust shall be known and designated as the “**SECOND CUP ROYALTY INCOME FUND**” 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.
- (c) The Trustees may approve and use a version of any name or designation used by the Trust in any foreign language.

2.3 Head Office

The head office of the Trust hereby created shall be located at 6303 Airport Road, Mississauga, Ontario, L4V 1R8, 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 for the conduct of its affairs as the Trustees may from time to time determine as necessary or desirable.

2.4 Nature of the Trust

The Trust is an open-ended trust established under the laws of the Province of Ontario for the purposes specified in Section 4.1. The Trust, the Units and the Trust Assets shall be governed by the general law of trusts, as such general law of trusts has been or is from time to time modified, altered or abridged for trusts by:

- (a) applicable laws and regulations or other requirements imposed by applicable securities or other regulatory authorities; and
- (b) the terms, conditions and trusts set forth in this Declaration of Trust.

The beneficial interest and rights generally of a Unitholder in the Trust shall be limited to the right to participate *pro rata* in distributions when and as declared by the Trustees as contemplated herein and distributions upon the termination of the Trust as contemplated in Article 14. The Trust is not, shall not be deemed to be and shall not be treated as a general partnership, limited partnership, society, syndicate, association, joint venture, company, corporation or joint stock company, nor shall the Trustees or any individual Trustee or the Unitholders or any of them or any person be or be deemed to be treated in any way whatsoever as liable or responsible hereunder as partners, joint venturers, or as that of a principal and agent or as members of a society, syndicate, association, partnership or limited partnership or shareholders of a corporation or other joint stock company. The relationship of the Unitholders to the Trustees 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.

2.5 Rights of Unitholders

The rights of each Unitholder to call for a 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 Assets or for a distribution of any particular asset forming part of the Trust Assets or of any particular monies or funds received by the Trustees.

2.6 Ownership of Assets of the Trust

The legal ownership of the assets 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 assets 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 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, Beneficial 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, Beneficial Unitholder or annuitant for any liability whatsoever in connection with: (i) the Trust Assets 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 actual or alleged act or omission of the Trustees or 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) 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 on behalf of or in connection with the activities or affairs of the Trust (collectively, "**Trust Liabilities**"), but rather recourse shall be solely limited to the Trust Assets for satisfaction of such liability.

- (b) No Unitholder, Beneficial 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 Beneficial Unitholder, 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 judgment and any writ of execution or similar process in respect thereof shall be enforceable only against, and shall be satisfied only out of, the Unitholders' or Beneficial Unitholders' share of the Trust Assets represented by the Units held by such Unitholder or Beneficial Unitholder.
- (d) If, contrary to the provisions of this Section 2.7, any Unitholder or Beneficial Unitholder shall be held personally liable as such to any other person in respect of any Trust Liabilities, such Unitholder or Beneficial Unitholder shall be entitled to indemnity and

reimbursement out of the Trust Assets to the full extent of such liability and for all costs of any litigation or other proceedings in which such liability shall have been determined, including, without limitation, all fees and disbursements of counsel. The rights accruing to a Unitholder or Beneficial Unitholder under this Section 2.7 shall not exclude any other rights to which such Unitholder or Beneficial Unitholder may be lawfully entitled, nor shall anything herein contained restrict the right of the Trustees to indemnify or reimburse a Unitholder or Beneficial Unitholder out of the Trust Assets in any appropriate situation even though not specifically provided herein but, for greater certainty, the Trustees shall have no liability to reimburse Unitholders or Beneficial Unitholders for taxes assessed against them by reason of their ownership of Units.

- (e) If any Trust Asset should be distributed or declared to be distributable to Unitholders contrary to the provisions of any credit agreement, security agreement or guarantee (each, a “**Security Agreement**”) entered into by the Trustees (on behalf of the Trust in accordance with the provisions of this Declaration of Trust) and the persons entitled to enforce such Security Agreements in respect of any of the obligations of the Trust, the persons entitled to enforce such Security Agreement shall be entitled to pursue whatever remedies may be available to them to enforce such Security 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 or Beneficial Unitholder shall have the right to enforce any distribution contrary to any Security Agreement or provision thereof.

ARTICLE 3

ISSUE AND SALE OF UNITS

3.1 Nature of Units

- (a) The beneficial interests in the Trust shall be divided into interests of one class described and designated as units (the “**Units**”), which shall be entitled to the rights and subject to the limitations, restrictions and conditions set out herein.
- (b) Each Unit represents an equal, undivided beneficial interest in any distributions by the Trust (whether of Income, Net Realized Capital Gains or other amounts) and in any distributions by the Trust in the event of the termination of the Trust. All Units shall rank among themselves equally and rateably without discrimination, preference

or priority. Each Unit shall vest indefeasibly in the holder thereof, and the interest of each Unitholder shall be determined by the number of Units registered in the name of the Unitholder. Each whole Unit shall entitle the holder of record thereof to one vote at all meetings of Unitholders.

- (c) The issued and outstanding Units may be subdivided or consolidated from time to time by the Trustees with the consent of the Unitholders by Special Resolution except for a consolidation of Units contemplated by Section 3.5 for which no consent shall be required.

3.2 Authorized Number of Units

The aggregate number of Units authorized hereunder and available for issue is unlimited.

3.3 Issue of Units

- (a) Subject to Section 3.6, Units may be allotted and issued by the Trust at the times, to the persons, for the consideration and on the terms and conditions that the Trustees determine. Without limiting the generality of the foregoing, the Trustees may authorize the Trust to pay a reasonable commission to any person in consideration of such person purchasing or agreeing to purchase Units from the Trust or from any other person or procuring or agreeing to procure purchasers for Units and may allow discounts to persons in consideration of their subscribing or agreeing to subscribe, whether absolutely or conditionally, for Units or of their agreeing to produce or obtain subscriptions therefor, whether absolute or conditional. Without limiting the generality of the foregoing, the Trustees may create and issue rights, warrants (including so-called "special warrants" that may be exercisable for no additional consideration), convertible or exchangeable securities, subscription receipts or options (including all types of incentive program options) to subscribe for Units. Any such rights, warrants, convertible or exchangeable securities, subscription receipts and options may be exercisable at such subscription price or prices, at such time or times, and on such other terms and conditions as the Trustees may determine. Any securities so created may be issued for such consideration or for no consideration as the Trustees may determine. Any such right, warrant, convertible or exchangeable security, subscription receipt or option shall not be a Unit and the holder thereof shall not be a Unitholder.

- (b) Units are only to be issued as fully paid in money, property (including an obligation to pay consideration in instalments) or in past services that are not less in value than the fair equivalent of money that the Trust would have received if the Units had been issued for money, and they are not to be subject to future calls or assessments, except that Units to be issued under an offering may be issued for a consideration payable in instalments and the Trust may take a security interest over such Units for unpaid instalments. In determining whether property or past services are the fair equivalent of 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, and the resolution of the Trustees allotting and issuing such Units shall express the fair equivalent in money of the other consideration received.
- (c) For greater certainty, Units and at any time other securities of the Trust may be issued by the Trust (i) as contemplated by this Section 3.3; (ii) pursuant to Section 5.7; (iii) pursuant to any Unitholder rights plans, distribution reinvestment plans, Unit purchase plans, incentive option plans or other compensation plans, if any, established by the Trust; (iv) upon the exercise of any rights, warrants, convertible or exchangeable securities, subscription receipts or options to acquire Units or other securities issued by the Trust; (v) in order to acquire securities, including securities of GP Trust, AdminCo and the Partnership; (vi) pursuant to Section 3.5; and (vii) in satisfaction of any indebtedness of or borrowing by the Trust, provided such is otherwise in compliance with the Declaration of Trust.

3.4 Fractional Units

Fractions of Units will carry and be subject to the provisions hereof applicable to whole Units in the proportion that they bear to a whole Unit, except that no Unit Certificates will be issued for the fractional Units and no holder of a fractional Unit, as such, will be entitled to notice of, or to attend, or to vote at any meeting of Unitholders in respect of such fractional Unit.

3.5 Consolidation of Units

Unless the Trustees determine otherwise, and subject to the receipt of any necessary regulatory approvals, immediately after any *pro rata* distribution of additional Units to all Unitholders pursuant to Section 5.7, the number of the then outstanding Units will automatically be consolidated such that each Unitholder will hold after the consolidation the same number of Units as the Unitholder held before the

distribution of additional Units. In such case, each Unit Certificate representing a number of Units prior to the distribution of additional Units is deemed to represent the same number of Units after the non-cash distribution of additional Units and the consolidation. Notwithstanding the foregoing, where tax is required to be withheld in respect of a Unitholder's share of a distribution, the consolidation will result in such Unitholder holding that number of Units equal to the product of (i) the number of Units held by such Unitholder immediately prior to the distribution plus the number of Units received by such Unitholder in connection with the distribution (net of Units withheld by the Trust to satisfy the Trust's withholding obligations) and (ii) the quotient obtained by dividing the aggregate number of Units outstanding immediately prior to the distribution by the aggregate number of 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 Unitholders. Any Units that have been so withheld will be sold and the tax remitted. Such Unitholder will be required to surrender the Unit Certificates, if any, representing such Unitholder's original pre-consolidation Units in exchange for a Unit Certificate representing such Unitholders' post-consolidation Units.

3.6 No Pre-Emptive Rights

Except as may otherwise be provided in the Governance Agreement or as expressly agreed to in writing by the Trust, no person shall be entitled, as a matter of right, to subscribe for or purchase any Units.

3.7 Distribution Reinvestment and Unit Purchase Plans

Subject to the receipt of any required regulatory or Unitholder approvals, the Trustees may, acting in their sole discretion, establish one or more distribution reinvestment plans, unit purchase plans, unit option plans, unitholder rights plans or incentive or compensation plans involving the issuance of Units at any time and from time to time.

ARTICLE 4 INVESTMENTS OF THE TRUST

4.1 Purpose of the Trust

The Trust is an open-ended trust and its operations and activities shall be restricted to:

- (a) investing in or acquiring or disposing of securities, including those issued by GP Trust, AdminCo and the Partnership and their affiliated entities;
- (b) temporarily holding cash in interest-bearing accounts, short-term government debt or investment grade corporate debt for the

purposes of paying the expenses of the Trust, paying amounts payable by the Trust in connection with the redemption of any Units and making distributions to Unitholders;

- (c) issuing Units (or rights, warrants, convertible or exchangeable securities, subscription receipts or options in respect thereof) pursuant to this Declaration of Trust;
- (d) issuing debt securities or borrowing funds (including by way of letters of credit, bank guarantees and bankers' acceptances) including with respect to the Term Loan and Operating Loan and granting security interests in or otherwise encumbering, pledging (provided that doing so would not affect the redemption rights of Unitholders), mortgaging or charging any or all of the Trust's assets for those obligations, and where considered appropriate, postponing or subordinating its rights under indebtedness or other obligations;
- (e) issuing or redeeming rights to acquire Units pursuant to any unitholder rights plan adopted by the Trust;
- (f) redeeming or repurchasing securities of the Trust;
- (g) entering into and performing its obligations under the Administration Agreement, the Governance Agreement, Licence and Royalty Agreement and the Subscription Agreement; and
- (h) undertaking such other activities, or taking such actions, including investing in securities, as are related to or in connection with the foregoing or as are contemplated by this Declaration of Trust or as may otherwise be approved by the Trustees from time to time,

provided that the Trust will not undertake any activity, take any action, or make any investment which would result in the Trust not being considered a "**mutual fund trust**" for purposes of the Tax Act.

4.2 Other Investments

To the extent that any monies or other property received by the Trust or the Trustees are not to be immediately used by the Trust, the Trustees are hereby authorized and, where prudent to do so, shall invest such monies in: (i) debt obligations of or guaranteed by the Government of Canada or a province of Canada; (ii) commercial paper obligations of a corporation whose commercial paper is rated investment grade by Dominion Bond Rating Service Limited or Standard and Poor's Rating Services, a division of The McGraw-Hill Companies, Inc., or their respective

successors; (iii) interest-bearing accounts and certificates of deposit issued or guaranteed by one of the six largest (in terms of total assets) Canadian chartered banks; (iv) money market mutual funds; or (v) any combination thereof (collectively, the “**Permitted Investments**”).

ARTICLE 5 DISTRIBUTIONS

5.1 Computation of Distributable Cash Flow of the Trust

- (a) The cash flow of the Trust for any Distribution Period (the “**Cash Flow**”) shall be equal to:
 - (i) all cash amounts received by the Trust in or in respect of the Distribution Period, including, without limitation, all Income, interest, distributions, dividends, proceeds from the disposition of securities, returns of capital and repayments of indebtedness, as well as all cash amounts received by the Trust in a prior Distribution Period to the extent not previously distributed;
 - (ii) less the following amounts:
 - (A) all costs and expenses (including administrative expenses) and other obligations and liabilities of the Trust that, in the opinion of the Trustees, may reasonably be considered to have accrued and become owing in respect of, or which relate to, such Distribution Period or a prior Distribution Period if not accrued in such prior period;
 - (B) all amounts payable in cash that relate to the redemption or repurchase of Units and that have been paid or become payable in cash by the Trust in such Distribution Period; and
 - (C) all debt service obligations of the Trust that, in the opinion of the Trustees, may reasonably be considered to have accrued and become owing in respect of, or which relate to, such Distribution Period or a prior Distribution Period if not accrued in such prior period,

provided that the proceeds of any issuance of Units or other securities of the Trust and the Issue Expenses and related transaction costs in connection therewith, shall not be included in

the calculation of Cash Flow of the Trust in respect of any Distribution Period.

- (b) The distributable cash for, or in respect of, a Distribution Period (the “**Distributable Cash**”) shall be the Cash Flow of the Trust for such Distribution Period less any amount which the Trustees may reasonably consider to be necessary to provide for the payment of any costs or expenses, including any tax liability of the Trust, which have been or are reasonably expected to be incurred in the activities and operations of the Trust (to the extent that such costs or expenses have not been otherwise taken into account in the calculation of Cash Flow) and to provide for reasonable reserves.

5.2 Computation of Income and Net Realized Capital Gains

- (a) The income of the Trust (“**Income**”) for any taxation year shall be the net income for such year determined in accordance with the provisions of the Tax Act having regard to the provisions thereof that relate to the calculation of taxable income of a trust, without reference to paragraph 82(1)(b) and subsection 104(6) of the Tax Act, and taking into account such other adjustments as may be determined in the discretion of the Trustees; provided, however, that capital gains and capital losses shall be excluded from the computation of net income.
- (b) The net realized capital gains of the Trust (the “**Net Realized Capital Gains**”) for any taxation year of the Trust shall be determined as the amount, if any, by which the aggregate of the capital gains of the Trust, determined in accordance with the provisions of the Tax Act, in such year exceeds the aggregate of (i) all of the capital losses of the Trust in such year, determined in accordance with the provisions of the Tax Act; (ii) any capital gains that are realized by the Trust as a result of a redemption of Units pursuant to Article 6 that are allocated to the redeeming Unitholder; (iii) the amount determined by the Trustees in respect of any net capital losses realized in prior taxation years which the Trust is permitted by the Tax Act to deduct in computing the taxable income of the Trust for the year; and (iv) any amount in respect of which the Trust is entitled to a capital gains refund in such taxation year under the Tax Act as determined by the Trustees; provided that, at the discretion of the Trustees, the Net Realized Capital Gains 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.

5.3 Distributions of Distributable Cash

Subject to the terms hereof, the Trustees may, in their sole discretion, on or before each Distribution Record Date, declare payable to the Unitholders on such Distribution Record Date, all or any part (or none) of the Distributable Cash for the Distribution Period determined by the Trustees to be available for distribution by the Trust for such Distribution Period. Each Unitholder's share of such Distributable Cash shall be an amount equal to the proportionate share of each Unit of such Distributable Cash multiplied by the number of Units owned of record by each such Unitholder on such Distribution Record Date. The proportionate share of each Unit of the amount of such Distributable Cash shall be determined by dividing such amount of Distributable Cash by the number of issued and outstanding Units on such Distribution Record Date. Subject to Section 5.7, Distributable Cash that has been declared to be payable to Unitholders in respect of a Distribution Period shall be paid in cash on the Distribution Payment Date in respect of such Distribution Period.

5.4 Other Distributions

- (a) Subject to the terms hereof, in addition to the distributions that are made payable to Unitholders pursuant to Section 5.3, the Trustees may declare to be payable and make distributions, from time to time, out of Income, Net Realized Capital Gains, the capital of the Trust or otherwise, in any year, in such amount or amounts, and on such dates as the Trustees may determine to persons who are Unitholders at the record date for such distribution.
- (b) Having regard to the present intention of the Trustees to allocate, distribute and make payable to Unitholders all of the Income, Net Realized Capital Gains and any other applicable amounts so that the Trust will not have any liability for tax under Part I of the Tax Act in any taxation year, the following amounts shall, without any further actions on the part of the Trustees, be due and payable to Unitholders of record on December 31 in each such year:
 - (i) the amount, if any, by which the Income for such year exceeds the aggregate of the portions, if any, of each distribution made by the Trust pursuant to Section 5.3 and Section 5.4(a) which have been determined by the Trustees, pursuant to Section 5.5, to have been payable by the Trust out of Income for such year; and

- (ii) the amount, if any, by which the Net Realized Capital Gains of the Trust for such year exceeds the aggregate of the portions, if any, of each distribution made by the Trust pursuant to Sections 5.3 and 5.4(a) which have been determined by the Trustees, pursuant to Section 5.5, to have been payable by the Trust out of Net Realized Capital Gains for such year.
- (c) The proportionate share of each Unit in respect of the amount of any distribution made pursuant to either or both of Sections 5.4(a) and (b) shall be determined by dividing such amount by the number of issued and outstanding Units on the applicable record date in respect of a distribution pursuant to Section 5.4(a) and on December 31 in respect of a distribution pursuant to Section 5.4(b). Each Unitholder's share of the amount of any such distribution shall be an amount equal to the proportionate share of each Unit of such amount multiplied by the number of 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. Subject to Section 5.6 and 5.7, amounts that have been declared to be payable to Unitholders pursuant to either Section 5.4(a) or (b) shall be paid on or before the Distribution Payment Date that immediately follows the applicable record date.
- (d) In addition to the distributions that are made payable to Unitholders, the Trustees may designate as payable any income or capital gain realized by the Trust as a result of the redemption of Units pursuant to Section 6.5 to the redeeming Unitholders in accordance with such Section.

5.5 Character of Distributions and Designations

In accordance with and to the extent permitted by the Tax Act, the Trustees in each year shall make designations in respect of the amounts payable or deemed to be payable to or on behalf of Unitholders for such amounts that the Trustees consider to be reasonable in all of the circumstances, including, without limitation, designations relating to taxable dividends received or deemed to be received by the Trust in the year on shares of taxable Canadian corporations, net capital gains realized by the Trust in the year and foreign source income for the year, as well as elect under subsections 104(13.1) and/or 104(13.2) of the Tax Act that income be taxed to the Trust rather than to the Unitholders. Distributions payable to Unitholders pursuant to this Article 5 shall be deemed to be distributions of Income, Net Realized Capital Gains, trust capital or other items in such amounts as the Trustees shall, in their absolute discretion, determine and shall be allocated to

Unitholders in the same proportions as distributions received by Unitholders, subject to the discretion of the Trustees to adopt an allocation method which the Trustees consider to be more reasonable in the circumstances including pursuant to Section 5.4(d). For greater certainty, it is hereby declared that any distribution of Net Realized Capital Gains shall include the non-taxable portion of the capital gains of the Trust which are encompassed in such distribution.

5.6 Enforceability of Right to Receive Distributions

Subject to Section 2.7(e) and notwithstanding Section 5.4, for greater certainty, it is hereby declared that each Unitholder shall have the legal right to enforce payment on the applicable Distribution Payment Date of any amount payable to such Unitholder as a result of any distribution that is declared or made payable to such Unitholder and, in the case of a distribution payable to Unitholders of record on December 31, to enforce payment of such distribution on December 31 of such year.

5.7 Method of Payment of Distributions

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 that has been declared to be payable pursuant to this Article 5 on the due date for such payment, the payment may, at the option of the Trustees, include the issuance of additional Units, or fractions of Units, if necessary, having a value equal to the difference between the amount of such distribution declared to be payable and the amount of cash that has been determined by the Trustees to be available for the payment of such distribution.

5.8 Withholding Taxes

The Trustees shall deduct or withhold from distributions payable to any Unitholder all amounts required by law to be withheld from such distribution, whether such distributions are in the form of cash or additional Units. In the event of a distribution in the form of additional Units, the Trustees may sell Units of such Unitholder to pay such withholding taxes and to pay all of the Trustees' reasonable expenses with regard thereto and the Trustees shall have the power of attorney of such Unitholder to do so. Any such sale may be made on any marketplace on which Units are then traded or otherwise as the Trustees see fit, and upon such sale, the affected Unitholder shall cease to be holder of such Units.

5.9 Definitions

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

5.10 Payments to Unitholders

Any payment of cash by the Trust to a Unitholder pursuant to this Article or any other provision of this Declaration of Trust shall be conclusively deemed to have been made upon mailing of a cheque in a postage pre-paid envelope, addressed to the Unitholder at the Unitholder's address appearing on the Register unless such cheque is dishonoured upon presentment. Upon such payment, the Trust shall be discharged from all liability to the Unitholder in respect of such payment; provided, however, that if such cheque is lost or destroyed, upon the presentation of evidence satisfactory to the Trustees of such loss or destruction, together with such indemnity as the Trustees may reasonably require, the Trust may issue a replacement cheque to the Unitholder. Notwithstanding the foregoing, the Trust may, in lieu of forwarding or causing to be forwarded a cheque to a Unitholder pursuant to this Article, enter into an agreement with a Unitholder or with a representative thereof or a person for whom such Unitholder is acting as nominee providing for the payment to such Unitholder of the amounts to which such Unitholder is entitled, from time to time, hereunder by electronic funds transfer or by any other method at a place or places other than the place or places specified herein as the place or places for such payment. Any payment made hereunder or in connection with this Declaration of Trust that is made pursuant to any such agreement shall, notwithstanding any other provision of this Declaration of Trust, be valid and binding on the Trust and the relevant Unitholder.

5.11 Unclaimed Distributions

In the event that the Trustees shall hold any distributable amount which is unclaimed or which cannot be paid for any reason, the Trustees shall be under no obligation to invest or reinvest the same but shall only be obliged to hold the same in a current interest bearing account pending payment to the person or persons entitled thereto. The Trustees shall, as and when required by law, and may, at any time prior to such required time, pay all or part of such distributable amount so held to the public guardian (or other appropriate government official or agency) whose receipt shall be a good discharge and release of the Trustees.

ARTICLE 6 REDEMPTION OF 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 the Unitholder all or any part of the Units registered in the name of the Unitholder or beneficially owned by the Beneficial Unitholder at the prices determined and payable in accordance with the conditions hereinafter provided.

6.2 Exercise of Redemption Right

- (a) Units may be surrendered at any time to the Transfer Agent for redemption by presentation to the Transfer Agent of a written request for redemption from the Unitholder or CDS, as the case may be, in a form acceptable to the Transfer Agent and approved by the Trustees, specifying the number of Units to be redeemed and accompanied by the Unit Certificate(s), representing the Units to be redeemed together with any further evidence that the Trustees may reasonably require. Any expense associated with the preparation and delivery of redemption notices will be for the account of the Unitholder exercising the redemption privilege. Such surrender will be irrevocable except with respect to any Units surrendered for redemption in respect of which the redemption proceeds are not paid by the Trust on or before the date on which such payment is due and except as otherwise provided herein.
- (b) A Beneficial Unitholder who desires to redeem Units held in the Book-Entry Only System must do so by causing a CDS Participant to deliver to CDS on behalf of the Beneficial Unitholder a written notice of the Beneficial Unitholder's intention to redeem Units. The form of redemption notice should be available from a CDS Participant, the Trust or the Transfer Agent. By causing a CDS Participant to deliver to CDS a notice of the Beneficial Unitholder's intention to redeem Units, a Beneficial Unitholder shall be deemed to have irrevocably surrendered the applicable Units for redemption and appointed such CDS Participant to act as his, her or its exclusive settlement agent with respect to the exercise of the redemption privilege and the receipt of payment in connection with the settlement of obligations arising from such exercise. Any redemption notice that CDS determines to be incomplete, not in proper form or not duly executed shall for all purposes be void and of no effect and the redemption privilege to which it relates shall be considered for all purposes not to have been exercised thereby. A failure by CDS or a CDS Participant to exercise redemption privileges or to give effect to the settlement thereof in accordance with the Beneficial Unitholder's instructions will not give rise to any obligations or liability on the part of the Trust or the Trustees to the CDS Participant or to the Beneficial Unitholder. A Beneficial Unitholder shall have no direct redemption rights as against the Trust or the Trustees.
- (c) As of the close of business on the date the Units are surrendered for redemption, the Unitholder shall cease to be the Unitholder of

record in respect of such Units, such Units shall cease to have any rights associated therewith (other than to receive the Redemption Price therefor) and shall cease to be entitled to share in the income or any participation in the assets of the Trust (other than the receipt of the Redemption Price), and the Unitholder (or Beneficial Unitholder) shall not be entitled to exercise any of the rights of holders of Units in respect thereof (other than the right to receive the Redemption Price) unless payment of the Redemption Price shall not have been made prior to the payment date specified in Section 6.3(b) or shall have been dishonoured.

6.3 Cash Redemption

- (a) Upon receipt by the Trust of a notice to redeem Units in accordance with Section 6.2 and surrender of the relevant Unit Certificate, the Unitholder of the Units tendered for redemption shall, subject to the terms of this Declaration of Trust, be entitled to receive a price per Unit (the “**Redemption Price**”) equal to the lesser of:
 - (i) 90% of the Market Price of the Units on the principal marketplace on which the Units are traded during the 10 trading day period immediately preceding the date on which the applicable Units were surrendered for redemption (the “**Unit Redemption Date**”); and
 - (ii) 100% of the Closing Market Price of the Units on the principal marketplace on which the Units are traded on the Unit Redemption Date.
- (b) Subject to Section 6.4 and Section 6.5, the aggregate Redemption Price payable in respect of the Units surrendered for redemption during any calendar month shall be satisfied by way of cash payment no later than the last day of the calendar month following the calendar month in which the Units were tendered for redemption. Payments made by the Trust of the cash portion of the Redemption Price are conclusively deemed to have been made upon the mailing by or on behalf of the Trust of a cheque in a postage prepaid envelope addressed to the former Unitholder at his, her or its address appearing in the Register unless such cheque is dishonoured upon presentation or unless such cheque is lost or destroyed, in the latter of which case, upon the presentation of evidence satisfactory to the Trustees of such loss or destruction, together with such indemnity as the Trustees may reasonably require, the Trust may issue a replacement cheque to the former

Unitholder. Upon such payment, the Trust shall be discharged from all liability to the former Unitholder in respect of the Units so redeemed.

6.4 No Cash Redemption in Certain Circumstances

Section 6.3(b) shall not be applicable to Units tendered for redemption by a Unitholder, if:

- (a) the total amount payable by the Trust pursuant to Section 6.3 in respect of the redemption of such Units and all other Units tendered for redemption in the same calendar month exceeds \$50,000 (the “**Monthly Limit**”); provided that the Trustees may, in their sole discretion, waive such limitation in respect of all Units tendered for redemption in any calendar month. Units tendered for redemption in any calendar month in which the total amount payable by the Trust pursuant to Section 6.3(b) exceeds the Monthly Limit will be redeemed for a Redemption Price to be satisfied by a payment equal to such Unitholder’s *pro rata* share of the Monthly Limit based upon the aggregate number of Units tendered for redemption in the applicable calendar month; and as to the balance of such aggregate Redemption Price, subject to obtaining all applicable regulatory approvals, by a distribution *in specie* of securities of any Subsidiary of the Trust to be effected in accordance with Section 6.5;
- (b) at the time the Units are tendered for redemption, the outstanding Units (or, as applicable, instalment receipts) are not listed for trading or quoted for trading on the Toronto Stock Exchange or another stock exchange or organized market which the Trustees consider to be, in their sole discretion, one which provides representative fair market value prices for the Units (or, as applicable, instalment receipts); or
- (c) the normal trading of Units (or, as applicable, instalment receipts) is suspended or halted on any stock exchange or organized market on which the Units (or, as applicable, instalment receipts) are listed or quoted for trading on the Unit Redemption Date or for more than five trading days during the 10 day trading period commencing immediately after the Unit Redemption Date.

6.5 In Specie Redemption

If, pursuant to Sections 6.4(b) or 6.4(c), Section 6.3(b) is not applicable to Units tendered for redemption by a Unitholder, the redemption price per Unit shall be equal to the fair market value of the Units as determined by the Trustees in their sole

discretion, and the redemption price per Unit shall, subject to obtaining all applicable regulatory approvals (which the Trust shall use reasonable commercial efforts to obtain forthwith), be paid and satisfied by way of a distribution *in specie* by the Trust of securities of any Subsidiary of the Trust (other than partnership units of the Partnership, units of GP Trust and shares of AdminCo). The securities of any Subsidiary of the Trust shall then be distributed by the Trust to the redeeming Unitholder in full satisfaction of the redemption price. The aggregate fair market value of the securities of any Subsidiary of the Trust being distributed shall be equal to the product of the redemption price per Unit payable by the Trust and the number of Units tendered. Where the Trust makes a distribution *in specie* of securities of any Subsidiary of the Trust on a redemption of Units pursuant to this Section 6.5, the Trustees may, in their sole discretion, designate to the redeeming Unitholders any capital gain or income realized by the Trust as a result of the distribution of such securities to the Unitholder. The redemption price payable pursuant to this Section 6.5 in respect of Units tendered for redemption during any month shall, subject to receipt of all necessary regulatory approvals, be paid by the transfer of such securities of any Subsidiary of the Trust to or to the order of the Unitholder who exercised the right of redemption on the last day (the “**Transfer Date**”) of the calendar month following the month in which the Units were tendered for redemption. Payments by the Trust of the redemption price pursuant to this Section 6.5 shall be conclusively deemed to have been made upon the mailing of the *in specie* distribution of such securities of any Subsidiary of the Trust by registered mail in a postage prepaid envelope addressed to the former Unitholder. Upon such mailing, the Trust shall be discharged from all liability to the former Unitholder in respect of the Units so redeemed.

6.6 Cancellation of all Redeemed Units

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

ARTICLE 7 TRUSTEES

7.1 Number of Trustees

The Trust shall have a minimum of three and a maximum of 10 Trustees. The number of Trustees may be fixed from time to time within such range by resolution of the Trustees; provided that until otherwise so determined by resolution passed by Unitholders casting a majority of the votes entitled to be voted at the meeting, the number of Trustees shall be fixed at three.

7.2 Calling and Notice of Meetings

Meetings of the Trustees shall be called and held at such time and at such place 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, facsimile, electronic mail 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. A Trustee may waive such notice, and the presence of a Trustee at a meeting shall be deemed to be a waiver of such notice requirement by such Trustee, except where the Trustee attends a meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting has not been lawfully called or canvassed. 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.

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 attends the meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully held.

7.4 Meetings by Telephone

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 communicate with each other. A Trustee participating in a meeting in such a 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 the greater of two Trustees or a majority of the number of Trustees then holding office and, 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 participating in the meeting, the Trustees participating in the meeting shall choose one of their number to act as chairman.

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. 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 who would be entitled to vote on that resolution at a meeting of the Trustees. Resolutions in writing may be signed in counterparts and by facsimile, 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 the Trustees may be adjourned from time to time by the chairman of the meeting with the consent of the Trustees present at 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, Trustees, other than Trustees who are directors or full-time employees of Second Cup or any of its affiliates, shall receive an annual retainer in the amount of \$15,000 per year from the Trust plus a meeting fee of \$1,000 per day for each meeting of Trustees or a committee thereof, in each case that is attended in person or a meeting fee of \$750 per day for each such meeting that is attended pursuant to Section 7.4, except in the case where the Trustee attends a meeting of the board of directors of AdminCo in his capacity as a member of the board on the same day, in which case the Trustee will be entitled to an aggregate of \$1,000 for attending all such meetings. The Trustees shall also be entitled to be reimbursed for reasonable travelling and other expenses properly incurred by them in attending meetings of the Trustees or any committee thereof 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.

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 without prejudice to rights under any employment contract, the Trustees 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.

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 eighteen 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;
- (d) a person who is a Non-Resident; and
- (e) a person who has the status of bankrupt.

8.2 Appointment of Trustees

- (a) The Initial Trustees are hereby appointed as Trustees of the Trust for an initial term of office which, subject to Section 8.5, shall expire at the close of the first annual meeting of Unitholders following the date hereof. Except as otherwise provided herein, Trustees shall be appointed (which includes, for greater certainty, 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 12.10. Notwithstanding the foregoing:
 - (i) 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; and

- (ii) the Trustees may, prior to the first annual meeting of Unitholders and between annual meetings of Unitholders, appoint one or more additional Trustees for a term to expire at the close of the next annual meeting of Unitholders, but the number of additional Trustees so appointed shall not at any time exceed one-third of the number of Trustees who held office at the expiration of the immediately preceding annual meeting of Unitholders.
- (b) The Trustees shall ensure that at all times a majority of the Trustees are "independent" within the meaning of National Instrument 58-101 - *Disclosure of Corporate Governance Practices* ("NI 58-101"). In the event that, at any time, a majority of the Trustees are not "independent" within the meaning of NI 58-101, the Trustees then in office shall appoint, pursuant to clause (a)(ii) above, such number of independent Trustees as may be necessary so that a majority of the Trustees are "independent" within the meaning of NI 58-101 or, if necessary, convene a special meeting of Unitholders in order to do so.

8.3 Consent to Act

- (a) A person who is appointed a Trustee hereunder, other than the Initial Trustees whose consent to act is given by their execution of this Declaration of Trust, 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: Second Cup Royalty Income Fund (the "Trust")

And to: The trustees thereof

The undersigned hereby 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 Third Amended and Restated Declaration of Trust dated the 22nd day of October, 2007, as amended or as amended and restated from time to time, constituting the Trust and to be bound by the obligations and liabilities of a trustee thereunder.

Dated: _____

[Signature]

[Print Name]"

- (b) Upon the later of a person being appointed a Trustee hereunder and the execution and delivery to the Trust of 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 from time to time.

8.4 Failure to Appoint Minimum Number of Trustees

If a meeting of Unitholders fails to appoint the minimum number of Trustees required by this Declaration of Trust by reason of the disqualification or death of any nominee, the Trustees appointed at the meeting may exercise all of the powers of the Trustees if the number of Trustees so appointed 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; or
 - (iii) he or she ceases to be duly qualified to act as a Trustee as provided under Section 8.1.
- (b) A resignation of a Trustee becomes effective immediately after a written resignation is received by the Trust, unless otherwise specified in the resignation, 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.
- (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 and cease to have the rights, privileges and powers of a Trustee hereunder; 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 9.9. Upon the resignation or removal of any Trustee or upon a Trustee otherwise ceasing to be a Trustee, the Trustee shall cease to have the rights, privileges and powers of a Trustee hereunder, shall execute and deliver such documents as the remaining Trustees shall require for the conveyance of any Trust property held in that Trustee's name, shall account to the remaining Trustees as they may require for all property which that Trustee holds as Trustee, shall resign from all representative or other positions held by such Trustee on behalf of the Trust, including as a director or officer of any corporation in which the Trust owns any securities (directly or indirectly) and shall thereupon be discharged as Trustee. Upon the incapacity or death of any Trustee, his legal representative shall execute and deliver on his behalf such documents as the remaining Trustees may require as provided in this Section 8.5. In the event that a Trustee or his legal representatives, as applicable, are 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 purposes of executing and delivering such required documents. This power of attorney granted to each of the remaining Trustees is intended to be a continuing power of attorney within the meaning of the *Substitute Decisions Act, 1992* (Ontario), exercisable during a Trustee's incapacity to manage property, or any similar power of attorney under equivalent legislation in any of the provinces or territories of Canada (a "CPOA"). The execution of this power of attorney will not terminate any CPOA granted by the Trustee previously and will not be terminated by the execution by the Trustee in the future of a CPOA, and the Trustee hereby agrees not to take any action in the future which will result in the termination of this power of attorney.

8.6 Removal of Trustees

The Unitholders may remove any Trustee or Trustees from office by resolution approved by a majority of the votes cast at a meeting of Unitholders called for that purpose, which removal shall be effective as at the date of such resolution. 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

A quorum of Trustees may fill a vacancy among the Trustees, except a vacancy resulting from an increase in the maximum number of Trustees or from a failure of the Unitholders to appoint the minimum number of Trustees fixed by or pursuant to this Declaration of Trust. If there is not a quorum of Trustees or if there has been a

failure of the Unitholders to appoint 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 Section 8.5, until the close of the next annual meeting of 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.

8.9 Successor and Additional Trustee

The rights of the Trustees to control and exclusively administer the Trust and to have the title to the Trust Assets drawn up in their names or in the name of any other successor and all other rights of the Trustees at law shall vest automatically in any person who may hereafter become a Trustee upon such person's due appointment and qualification without any further act and such person shall thereupon have all the rights, privileges, powers, authorities, obligations and immunities of a Trustee hereunder whether or not conveyancing documents have been executed and delivered.

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 Assets 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 of control on the part of the Unitholders, full, absolute and exclusive power, control and authority over the Trust Assets and over the affairs of the Trust to the same extent as if the Trustees were the sole and absolute beneficial owner of the Trust Assets 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, presumption shall be in favour of the granted powers and authority of 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 limiting or purporting to limit investments which may be made by trustees. Without limiting the generality of the foregoing, and subject to Section 4.1 and any other express limitations contained in this Declaration of Trust, the Trustees may make any investments without being required to adhere to all, 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, and may alter or vary such investments from time to time in a like manner, retain such investments for such length of time as the Trustees, in their discretion, determine and may 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, including the following powers and authorities:

- (a) to supervise the activities of the Trust, including the investments of the Trust;
- (b) to maintain records and provide reports to Unitholders;
- (c) to open, operate and close accounts and other similar credit, deposit and banking arrangements and to negotiate and sign banking and financing contracts and agreements;
- (d) to borrow money upon the credit of the Trust and the Trust Assets and, 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 for the purpose of carrying out the purposes of the Trust or for payment of 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 or other property of the Trust or engage in any other means of financing the Trust;

- (e) to give a guarantee on behalf of the Trust to secure the performance of an obligation of another person as permitted by Section 4.1(d);
- (f) to issue, reissue, sell or pledge debt obligations of the Trust and to make, accept, endorse, negotiate or otherwise deal with bonds, debentures, cheques, drafts, notes, orders for the payment of money, bills of exchange, bills of lading, acceptances and other similar instruments and obligations as may be necessary or useful to carry out the purpose of the Trust;
- (g) to supervise the application of written policies, including disclosure and insider trading policies adopted by the Trustees or any committee of the Trustees;
- (h) to mortgage, hypothecate, pledge or otherwise create a security interest in all or any movable or personal, immovable or real or other property of the Trust, owned or subsequently acquired, to secure any obligation of the Trust;
- (i) to obtain security, including encumbrances on assets, to secure the full payment of monies owed to the Trust and the performance of obligations in favour of the Trust, and to exercise all of the rights of the Trust and to perform all of the obligations of the Trust under such security;
- (j) to exercise and enforce any and all rights of foreclosure, to bid on property on sale or foreclosure, to take a conveyance *in lieu* of foreclosure with or without paying consideration therefor and in connection therewith to revive the obligation on the covenants secured by such security and to exercise and enforce in any action, suit or proceeding at law or in equity any rights or remedies with respect to any such security or guarantee;
- (k) to exercise and enforce any and all rights of the Trust;
- (l) to establish places where the activities of the Trust are conducted;
- (m) to manage the Trust Assets;
- (n) to grant broad discretion to a third party to administer and manage the day-to-day operations of the Trust and to make executive decisions that conform to the general policies and principals set

forth in this Declaration of Trust or otherwise established by the Trustees from time to time, including but not limited to, entering into the Administration Agreement;

- (o) to invest in or hold securities of any Person, including debt securities, bonds, notes, shares, units, beneficial interests, partnership interests, joint venture interests or other interests necessary or useful to carry out the purpose of the Trust;
- (p) to determine conclusively the allocation to capital, income or other appropriate accounts of all receipts, expenses and disbursements;
- (q) to enter into any agreement or instrument to create or provide for the issue of Units (including any firm or best efforts underwriting agreement), to cause such Units to be issued for such consideration as the Trustees, in their sole discretion, may deem appropriate and to do such things and prepare and sign such documents, including any prospectus and registration rights agreement, to qualify such Units for sale in whatever jurisdictions they will be sold or offered for sale;
- (r) to make or cause to be made application for the listing or quotation on any stock exchange or market of any Units or other securities of the Trust, and to do all things which, in the opinion of the Trustees, may be necessary or desirable to effect or maintain such listing or listings or quotation;
- (s) to determine conclusively the value of any or all of the Trust Assets 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;
- (t) to collect, sue for and receive all sums of money or other property due to the Trust or items that are believed due to the trust;
- (u) subject to the terms thereof, to effect payment of distributions to the Unitholders as provided in Article 5 but not contrary to any provisions of any Security Agreement;
- (v) to invest and/or lend funds of the Trust as provided in Article 4;
- (w) to, if the Trustees become aware by written notice that the beneficial owners of 40% of the Units then outstanding are, or may be, Non-Resident Beneficiaries or that such situation is imminent, ensure

that the limitations on Non-Resident ownership as provided in Section 13.10 are met;

- (x) to possess and exercise all the rights, powers and privileges pertaining to the ownership of all or any part of the Trust Assets, 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;
- (y) to act for, vote on behalf of, and represent the Trust as a unitholder, shareholder or noteholder of, any Subsidiary of the Trust, including to vote for the appointment of trustees or directors of such Subsidiary;
- (z) where reasonably required, to engage, employ, contract with or retain on behalf of the Trust any persons as agents, representatives, employees or independent contractors (including, without limitation, investment advisors, registrars, depositories, technical advisors, underwriters, accountants, lawyers, appraisers, brokers or otherwise) in one or more capacities;
- (aa) except as prohibited by law, to delegate from time to time any of the powers and duties of the Trustees to any one or more agents, representatives, officers, employees, independent contractors or other persons without liability to the Trustees, except as provided in this Declaration of Trust;
- (bb) 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 Trust Assets 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;
- (cc) to arrange for insurance contracts and policies insuring the Trust, the Trust Assets and/or any or all of the Trustees, the Unitholders, consultants, officers, representatives or agents of the Trust and

annuitants under Plans of which Unitholders act as trustees or carriers or any person with whom the Trust has dealings, in such amounts as the Trustees deem appropriate and which may cover any and all claims and liabilities of every nature, including 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, including any action taken or omitted that may be determined to constitute negligence in their capacity as such;

- (dd) to cause legal title to any of the Trust Assets 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 Assets 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 or to effect the payment of the Redemption Price for Units;
- (ee) to issue Units or rights, warrants, convertible or exchangeable securities, subscription receipts and options for such consideration as the Trustees may deem appropriate in their sole discretion, such issuance to be subject to the terms and conditions of the Declaration of Trust;
- (ff) to enter into or perform the obligations of the Trust under any agreement required or desired to facilitate the business or administration of the Trust, including, without limitation, the Governance Agreement, the Administration Agreement and the Subscription Agreement;
- (gg) to use their best efforts to ensure that the Trust qualifies at all times as a "mutual fund trust" pursuant to subsection 132(6) of the Tax Act;
- (hh) in addition to the mandatory indemnification provided for in Section 9.9, 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, CDS, any registrar and transfer agent or escrow agent, to such extent as the Trustees shall determine;

- (ii) with the approval or confirmation of Unitholders, to 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 Assets and the conduct of the affairs of the Trust, but not in conflict with any provision of this Declaration of Trust;
- (jj) 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 Assets, undertaking or taxable income of the Trust, or imposed upon or against the Trust Assets, undertaking or taxable 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 the Income 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 Counsel or the Auditor), 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;
- (kk) to pay or satisfy out of the Trust Assets any debts of or claims against the Trust or the Trust Assets, and to incur and to pay out of the Trust Assets any charges or expenses (including those incurred by others prior to the creation of the Trust) that, in the opinion of the Trustees, are or were appropriate, necessary or desirable for the creation or the affairs of the Trust that are for the account of the Trust; and
- (ll) 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 Shares and Notes Held by the Trust

Subject to the provisions hereof and the Governance Agreement, any securities held from time to time by the Trustees as part of the Trust Assets may be voted by the Trustees at any and all meetings of shareholders, unitholders or noteholders, as the case may be, at which the holders of such shares, units, notes or other securities are

entitled to vote in such manner as the Trustees, in their sole discretion, consider to be in the best interests of the Unitholders.

9.4 Restrictions on Trustee's Powers

(a) Notwithstanding Section 9.3, the Trustees may not, under any circumstances whatsoever, vote any securities held by the Trust, nor permit (to the extent that it is within the Trust's power) the Trust as a shareholder, unitholder or noteholder of any Subsidiary of the Trust to vote its securities to authorize:

- (i) any sale, lease or other disposition of all or substantially all of the direct or indirect assets of any Subsidiary of the Trust, except in conjunction with an internal reorganization or a permitted charge, pledge or lien or pursuant to any guarantee of any obligation of any Subsidiary of the Trust;
- (ii) any amalgamation, arrangement or other merger of any Subsidiary of the Trust with any other person, except in conjunction with an internal reorganization or in conjunction with the acquisition by the Trust or any Subsidiary of the Trust of the securities or assets of another entity;
- (iii) any material amendment to the constating documents of any Subsidiary of the Trust to change the authorized share capital in a manner which may reasonably be expected to be prejudicial to the Trust,

without the approval of the Unitholders by Special Resolution at a meeting of Unitholders called for that purpose.

(b) Other than as expressly contemplated herein, the Trustees shall have no power to sell or otherwise dispose of any securities held by the Trust in any Subsidiary of the Trust, or to sell all or substantially all of the Trust Assets or cause, directly or indirectly, any Subsidiary of the Trust to sell all or substantially all of their respective assets, except with the approval of the Unitholders by Special Resolution at a meeting of Unitholders called for that purpose, or except as part of an internal reorganization of the direct or indirect assets of the Trust as a result of which the Trust has the same interest, whether direct or indirect, in the assets as the interest, whether direct or indirect, that it had prior to the internal reorganization.

- (c) The Trustees shall only vote the securities held by the Trust in a Subsidiary of the Trust in the manner provided for herein and in the Governance Agreement on the conditions contained therein.

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, negotiating, 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 banks, trust companies or other firms or corporations carrying on a banking business or similar business 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 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 to act honestly and in good faith with a view to the best interests of the Trust or 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 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 Fees and Expenses

As part of the expenses of the Trust, the Trustees may pay or cause to be paid out of the Trust Assets, reasonable fees, costs and expenses incurred in connection with the administration and management of the Trust, including, without limitation, fees of auditors, accountants, lawyers, appraisers and other agents, consultants and professional advisors employed by or on behalf of the Trust 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 Assets.

9.8 Limitations on Liability of Trustees

- (a) Subject to the standard of care set forth in Section 9.6, none of the Trustees nor any officer, employee or agent thereof shall be liable to the Trust or to any Unitholder, or former Unitholder for any action 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 Subsidiary of the Trust to perform obligations or pay monies owed to the Trust, except for a breach of the standard of care, diligence and skill as set out in Section 9.6 or a breach of Section 9.4. If the Trustees have retained an appropriate expert or advisor (or other person whose profession lends credibility to a statement made by the professional person) 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 or advisor 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 any action or refusal to act based on the advice of any such expert or advisor which it is reasonable to conclude is within the expertise of such expert or advisor to give.
- (b) Subject to the standard of care set forth in Section 9.6, none of the Trustees nor any officer, employee or agent thereof shall be subject to any liability whatsoever in tort, contract or otherwise, in connection with Trust Assets or the affairs of the Trust, including, without limitation, in respect of any loss or diminution in value of any Trust Assets, 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. Other than Trust Assets, 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, heir, executor, administrator, or legal representative of the Trustees. The Trust shall be solely liable therefor and resort shall be had solely to the Trust Assets for payment or performance thereof.

9.9 Indemnification of Trustees

- (a) Subject to clause (b) below, in addition to and without limiting any other protection hereunder or otherwise by law of each person who is, or shall have been, a Trustee, an officer of the Trust, or an officer, director, trustee or partner (if any) of any Subsidiary of the Trust or of any other affiliate, as a nominee or representative of the Trust (collectively, the “**Indemnified Persons**”), the Trust hereby agrees to indemnify, defend and save harmless the Indemnified Persons out of the Trust Assets, from and against any and all liabilities, losses, claims, damages, penalties, fines, actions, suits, demands, levies, assessments, costs, charges, expenses and disbursements (whether or not involving a third party claim), including legal expenses and including amounts paid to settle an action or satisfy a judgment (collectively, “**Damages**”), which may at any time be suffered by, imposed upon, incurred by or asserted against any of the Indemnified Persons (i) in respect of any civil, criminal or administrative action or proceeding to which the Indemnified Person is made a party by reason of being or having been a Trustee or officer of the Trust or an affiliate or, at the request of the Trust, an officer, director, trustee or partner (if any) of any Subsidiary of the Trust, or of any of their respective affiliates and/or (ii) in respect of any and all taxes, penalties or interest in respect of unpaid taxes or other governmental charges imposed upon the Indemnified Person in consequence of his or her performance of his or her duties hereunder; provided that such Indemnified Person shall not be entitled to be indemnified in respect of such Damages that arise out of or as a result of or in the course of his or her failure to act honestly and in good faith with a view to the best interest of Unitholders, or in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, where the Indemnified Person did not have reasonable grounds for believing that his or her conduct was lawful. An Indemnified Person shall not be entitled to satisfy any rights of indemnity or reimbursement granted herein, or otherwise existing under law, except out of the Trust Assets, and no Unitholder or other Trustee or officer shall be

personally liable to any person with respect to any claim for such indemnity or reimbursement.

- (b) It is acknowledged that any Subsidiary of the Trust may also agree to indemnify the Trustees.

9.10 Contractual Obligations of the Trust

The Trustees must use all reasonable means where practicable to inform all persons having dealings with the Trust of the limitation of liability set forth in Section 9.9 and Section 2.7 and must use reasonable means where practicable to ensure that every agreement, undertaking or obligation entered into by or on behalf of the Trust, whether by the Trustees, or otherwise, shall (except as the Trustees may otherwise expressly agree in writing with respect to personal liability of the Trustees) include an appropriate statement of the disavowal and limitation of liability as set forth in Section 9.9 and Section 2.7, but the omission of such statement from any instrument will not render any Trustee, Unitholder or officer of the Trust liable to any person for such omission, nor will any Trustee, Unitholder or officer of the Trust be liable to any person for such omission. If, notwithstanding this provision, any Trustee, Unitholder or officer of the Trust is held liable to any other person by reason of the omission of such statement from any such agreement, undertaking or obligation, such Trustee, Unitholder or officer will be entitled to indemnity out of the Trust Assets to the full extent of such liability and the costs of any litigation or other proceedings in which such liability has been determined, including without limitation, the fees and disbursements of counsel.

The rights accruing to a Trustee, Unitholder, or officer of the Trust under this Section 9.10 shall not exclude any other rights to which such Trustee, Unitholder, or officer of the Trust may be lawfully entitled, nor shall anything herein contained restrict the right of the Trustees to indemnify or reimburse a Trustee, Unitholder, or officer out of the Trust Assets in any appropriate situation even though not specifically provided herein. For greater certainty, the Trustees shall have no liability to reimburse Unitholders for taxes assessed against them by reason of their ownership of Units, nor for any losses suffered by reason of changes in the market value of investments forming part of the Trust Assets.

9.11 Conflicts of Interest

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 is a director or officer or employee of, or 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 Trust, 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 the nature and extent of such interest.

- (a) The disclosure required in the case of a Trustee or officer of the Trust shall be made:
 - (i) at the meeting of Trustees 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 9.11 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 9.11 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 9.9 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 9.11 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.

- (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, if the Trustee disclosed his or her interest in accordance with this Section 9.11 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 9.11, 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.

- (g) Subject to paragraphs (e) and (f) hereof, where any Trustee or officer of the Trust fails to disclose his or her interest in a material contract or transaction in accordance with this Declaration of Trust or otherwise fails to comply with this Section 9.11, 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.

- (h) The provisions of this Section 9.11 shall not apply in respect of the Reorganization and all transactions occurring in connection therewith.

9.12 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 Assets 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 a related indemnity and funding satisfactory to the Trustees, acting reasonably, are given to them.

9.13 Reliance Upon Trustees and Officers

- (a) Any instrument executed in the name of the Trust or on behalf of the Trust by the Trustees in accordance with this Section 9.13 or executed pursuant to the Administration Agreement applicable to the Trust shall constitute and shall be deemed to constitute a valid obligation of the Trust enforceable in accordance with its terms as if executed by the Trustees. Any two Trustees shall have the authority to sign in the name of and on behalf of the Trust all instruments in writing and any instruments in writing so signed shall be binding upon the Trust without any further authorization or formality. For greater certainty, the foregoing shall not limit in any way the power of the Trustees to delegate to any person or persons, including pursuant to the Administration Agreement, the authority to sign in the name of and on behalf of the Trust any specific instrument or any instruments in writing generally. The Trustees may, from time to time, direct the manner in which and the person or persons by whom any particular instrument or class of instruments may or shall be signed.
- (b) Any person dealing with the Trust in respect of any matters pertaining to the Trust Assets 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 a Trustee 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.

9.14 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 and in respect of the Non-Resident holding provisions in Section 13.10, shall be final and conclusive and shall be binding upon the Trust and all Unitholders and Units of the Trust shall be issued and sold on the condition and understanding that any and all such determinations shall be binding as aforesaid.

ARTICLE 10 COMMITTEES OF TRUSTEES

10.1 Delegation

Except as prohibited by law, the Trustees may appoint from their number one or more committees 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.

10.2 Procedure

Unless otherwise determined by the Trustees, a quorum for meetings of any committee shall be a majority of its members, each committee shall have the power to appoint its chairman and the rules for calling, holding, conducting and adjourning meetings of the committee shall be the same as those governing 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 Section 11.3, the provisions of this Declaration of Trust, except where specifically provided otherwise, may only be amended by the Trustees with the consent of the Unitholders by Special Resolution. However, the Trustees may, without the consent, approval or ratification of the Unitholders or any other person, make amendments to this Declaration of Trust:

- (a) at any time:
 - (i) for the purpose of ensuring continuing compliance of this Declaration of Trust with applicable laws, regulations, requirements or policies of any governmental authority having jurisdiction over the Trustees or the Trust Assets or its subsidiary entities, or any stock exchange or other organized market on which the Units are listed or quoted for trading;
 - (ii) which, in the opinion of the Trustees, provide additional benefits or protection for the Unitholders;
 - (iii) to remove any conflicts or inconsistencies in this Declaration of Trust or making minor corrections which are, in the opinion of the Trustees, necessary or desirable and not prejudicial to the Unitholders;
 - (iv) which, in the opinion of the Trustees, are necessary or desirable as a result of changes in Canadian taxation laws or policies of any governmental authority having jurisdiction over the Trustees or the Trust; or
 - (v) for the purpose of ensuring that the Trust continues to qualify as a "mutual fund trust" under the Tax Act,

but notwithstanding the foregoing, no such amendment shall be adopted which causes the Trust to fail to qualify as a "mutual fund trust" under the Tax Act without the consent of the Unitholders or modify the voting rights in this Declaration of Trust (for greater certainty, except via the issuance of new Units or a subdivision thereof or distribution of Units in accordance with this Declaration of Trust) or reduce the equal interest in the Trust Assets represented by any Unit without the consent of the holder of such Unit, and no 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 Units then outstanding.

11.2 Notification of Amendment

As soon as shall be practicable after the making of any amendment pursuant to this Article 11, the Trustees shall furnish written notification of, or shall issue a press release disclosing the substance of, such amendment to each Unitholder.

11.3 Variation of Rights

Except as otherwise provided herein, the rights and restrictions attached to Units may not be varied or abrogated without the consent of the holders of the outstanding Units by Special Resolution voting separately as a class.

ARTICLE 12 MEETINGS OF UNITHOLDERS

12.1 Annual and Special Meetings of Unitholders

Annual meetings of the Unitholders shall be called on a day on or before June 30 in each year, at a time and at a place in Canada or by electronic means as the Trustees may determine. The business transacted at such meetings shall include the presentation of the audited financial statements of the Trust for the immediately preceding fiscal year, the appointment of the Trustees for the ensuing year in accordance with Article 8, the appointment of Auditors and the transaction of such other business as the Unitholders may be entitled to vote upon as hereinafter provided or as the Trustees may determine or as may otherwise properly brought before the meeting.

The Trustees shall have power at any time to call special meetings of the Unitholders, to be held at such time and place in Canada or by electronic means as the Trustees may determine. Except in respect of a requisition to call a meeting for the purposes of appointing an inspector as provided in Section 12.9, Unitholders holding in the aggregate not less than 10% of the outstanding Units may requisition the Trustees in writing to call a special meeting of the Unitholders for the purposes stated in the requisition. The requisition must state in reasonable detail the business proposed to be transacted at the meeting and shall be sent to each of the Trustees and to the principal office of the Trust. Unitholders have the right to obtain a list of Unitholders to the same extent and upon the same conditions and limitations as those which apply to shareholders of a corporation governed by the *Business Corporations Act* (Ontario). Upon receiving the requisition, the Trustees shall call a meeting of Unitholders to transact the business referred to in the requisition, unless:

- (a) a record date for a meeting of the Unitholders has been fixed and notice thereof has been given to each stock exchange in Canada on which the Units are listed for trading;
- (b) the Trustees have called a meeting of the Unitholders and have given notice thereof pursuant to Section 12.2;
- (c) in connection with the business as stated in the requisition:
 - (i) the proposal is not submitted at least 90 days before the anniversary date of the notice of meeting that was sent to Unitholders in connection with the previous annual meeting of Unitholders;
 - (ii) it clearly appears to the Trustees that the primary purpose of the matter covered by the requisition as submitted by the Unitholder is to enforce a personal claim or to redress a personal grievance against the Trust, the Trustees, the officers of the Trust or its securityholders;
 - (iii) it clearly appears to the Trustees that the matter covered by the requisition does not relate in a significant way to the business or affairs of the Trust;
 - (iv) the Trust, at the Unitholder's request, included a matter covered by a requisition in an information circular relating to a meeting of Unitholders held within two years preceding the receipt of such request, and the Unitholder failed to present the matter, in person or by proxy, at the meeting;
 - (v) substantially the same matter covered by the requisition was submitted to Unitholders in an information circular (including a dissident's information circular) relating to a meeting of Unitholders held within five years preceding the receipt of the Unitholder's request and the matter covered by the requisition did not receive the prescribed minimum amount of support at the meeting; or
 - (vi) the rights conferred by this Section 12.1 are being abused to secure publicity; or
- (d) any other circumstance exists when, under the *Business Corporations Act* (Ontario) or at law, directors of a corporation would not be required to call such a meeting.

Subject to the foregoing, if the Trustees do not, within 21 days after receiving the requisition, call a meeting, any Unitholder who signed the requisition may call the meeting in accordance with the provisions of Sections 12.2 and 12.8.

In the event that there are no Trustees, whether due to resignation or otherwise, any Unitholder of the Trust may call a special meeting of the Unitholders for the election of Trustees.

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 60 days before the meeting. Such notice shall specify the time and place where such meeting is to be held. It shall also 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 and include the text of any Special Resolution proposed to be passed at such meeting as it may exist at the time of mailing of the 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. Any Unitholder (or a duly appointed proxy of a Unitholder) may waive any notice required to be given under the provisions of this Section 12.2, 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 one or more Unitholders present in person or represented by proxy and representing in the aggregate at least 10% of the votes attached to all Units then outstanding. 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 not adjourned) and, if otherwise called, shall stand adjourned to such day being not less than seven days later and to such place and time as may be appointed by the chairperson of the meeting and notified by a news release of the Trust. 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 any resolution and each whole Unit shall entitle the holder or holders of that Unit to one vote on a ballot vote at any meeting of Unitholders. Every question submitted to a meeting, other than a Special Resolution, shall, unless a ballot vote is demanded, be decided by a show of hands vote on which every person present and entitled to vote shall be entitled to one vote. A Unitholder or proxyholder may demand a ballot vote either before or after any vote by show of hands. At any meeting of Unitholders, any holder of Units entitled to vote thereat or upon a resolution 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 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 Unit, but if more than one of them are present at such meeting in person or by proxy, they shall vote as one with respect to the Units held jointly by them. Notwithstanding the foregoing, the Trustees may establish rules for voting at a meeting of Unitholders to be carried out by means of telephone, electronic or other communication facility.

12.5 Resolutions Binding the Trustees

Unitholders shall be entitled to pass resolutions that will bind the Trust only with respect to the following matters (and such actions shall not occur without the passing of such resolutions):

- (a) the election or removal of a Trustee as provided in Article 8 (subject to Section 8.2 and Section 8.7);
- (b) the appointment or removal of the Auditors as provided in Article 17;
- (c) the appointment of an inspector to investigate the performance by the Trustees of their responsibilities and duties as provided in Section 12.9;
- (d) the approval of amendments of this Declaration of Trust as provided in Section 11.1, except such amendments as specifically excepted;
- (e) the sale, lease or exchange of all or substantially all of the Trust Assets (other than in connection with an internal reorganization or an *in specie* redemption of Units by the Trust);

- (f) any amalgamation, arrangement, other merger or capital reorganization of the Trust with any other entity, except in conjunction with an internal reorganization;
- (g) the exercise of certain voting rights attached to the securities of any Subsidiary of the Trust and held directly or indirectly by the Trust as provided in Section 9.4(a);
- (h) the termination, winding-up or dissolution of the Trust prior to the end of its term, as provided in Section 14.2; and
- (i) such other business as the Trustees may determine or as may be properly brought before a meeting.

Except with respect to the above matters set out in this Section 12.5, no action taken by the Unitholders or any resolution of the Unitholders at any meeting shall in any way bind the Trust or the Trustees. Any action taken or resolution passed in respect of any matter at a meeting of Unitholders shall be by Special Resolution, unless the contrary is otherwise expressly provided under any specific provision of this Declaration of Trust and except for the matters set out in Sections 12.5(a) and 12.5(b) above which may be approved by a resolution passed by a majority of the total of the votes cast by Unitholders represented at the meeting. The Unitholders may ratify any acts of the Trustees or the Trust and may vote on such other business as the Trustees may determine or as may properly be brought before a meeting of the Unitholders, including without limitation any other matters required by securities legislation, stock exchange or other marketplace rules or other laws or regulations to be submitted to Unitholders for their approval.

12.6 Meaning of "Special Resolution"

- (a) The expression "Special Resolution", when used in this Declaration of Trust, means 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 Article at which a quorum is present and passed by the affirmative votes of the holders of not less than 66 2/3% of the total of the Units then outstanding represented at the meeting, either in person or by proxy, and voted on by ballot.
- (b) Votes on a Special Resolution shall always be given by ballot and no demand for a ballot on a Special Resolution shall be necessary.

12.7 Meaning of "Outstanding"

Every Unit issued, certified and delivered hereunder shall be deemed to be outstanding until it shall be cancelled or delivered to the Trustees or the Transfer

Agent for cancellation, provided that, when a new certificate has been issued in substitution for a Unit Certificate that has been lost, stolen, mutilated or destroyed, only one of such Unit Certificates shall be counted for the purposes of determining the number of Units outstanding.

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 receive notice of and 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 since that time disposed of his or her Units, and no Unitholder becoming such after that time shall be so entitled to vote at such meeting or any adjournment thereof. 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 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 total of the 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 resolution approved by a majority of the votes cast at the meeting. Any inspector will, on reasonable notice, be given reasonable access during normal business hours to: (i) all books, records, accounts of the Trust, and any Subsidiary of the Trust (ii) the Trustees, trustees, officers and senior management of the Trust, the trustees, officers, directors, shareholders or partners of any Subsidiary of the Trust, as the case may be, and (iii) such financial and operating data and other information with respect to the Trust and any Subsidiary of the Trust as the inspector may reasonably request.

12.10 Resolutions in Writing

Notwithstanding any other provision of this Declaration of Trust, a resolution in writing executed by Unitholders holding not less than $66 \frac{2}{3}\%$ of the total of the Units then outstanding entitled to vote upon such resolution, without restriction, at any time shall be as valid and binding for all purposes of this Declaration of Trust as if such Unitholders had exercised at that time all of the voting rights to which they were then entitled under this Declaration of Trust in favour of such resolution at a meeting of Unitholders duly called for the purpose.

12.11 Binding Effect of Resolutions

Every resolution passed in accordance with the provisions of this Article 13 at a meeting of Unitholders shall be binding upon all the Unitholders, whether present at or absent from such meeting, and every instrument in writing signed by Unitholders in accordance with Section 12.10 shall be binding upon all the Unitholders, whether signatories thereto or not, and each and every Unitholder and the Trustee (subject to the provisions for its remuneration, indemnification and protection herein contained) shall be bound to give effect accordingly to every such resolution and instrument in writing.

12.12 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 indirectly by 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 vote or consent of the Unitholders. 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 or revocation of the proxy has been received by the chairman of the meeting prior to the time the vote is cast.

ARTICLE 13
CERTIFICATES, REGISTRATION AND TRANSFER OF UNITS

13.1 Nature of Units

The provisions of this Article 13 shall not in any way alter the nature of 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 Units if desirable to issue them to Unitholders and the recording of all transactions in respect of Units, and Unit Certificates whether by the Trust, securities dealers, stock exchanges, transfer agents, registrars or other persons.

13.2 Book-Entry Only System

- (a) Subject to Section 13.5 and Section 13.7, registration of interests in and transfers of the Units will be made only through the Book-Entry Only System. On the Effective Date and, subject to Section 13.5, on any other date upon which Units will be issued, the Trust will deliver to CDS one or more Unit Certificates evidencing the aggregate number of Units subscribed for, registered in the name of CDS, or a successor of CDS, or as CDS may otherwise direct (each, a **"Global Unit Certificate"**). Beneficial interests in Units must be purchased, transferred and surrendered for repurchase or redemption through a CDS Participant. All rights of a Beneficial Unitholder must be exercised through, and all payments or other property to which such Beneficial Unitholder is entitled will be made or delivered by, CDS or the CDS Participant through which the Beneficial Unitholder holds such Units. Upon purchase of any Units, the Beneficial Unitholder will receive only a customer confirmation of the CDS Participant, and no Beneficial Unitholder will receive definitive Unit Certificate(s) representing such Beneficial Unitholder's interest therein except as provided in Section 13.5.
- (b) No Beneficial Unitholder of Units represented by a Global Unit Certificate will be entitled to a certificate or other instrument from the Trust or CDS evidencing that Beneficial Unitholder's ownership thereof, except as provided in Section 13.5.
- (c) Unless and until Unit Certificates have been issued to the Beneficial Unitholder pursuant to Section 13.5:
 - (i) All references herein to actions by, notices given to or by, or payments made to, Unitholders shall refer to actions taken by, or notices given to or by, or payments made to,

CDS, where applicable, upon instruction from the CDS Participants;

- (ii) For the purposes of any provision hereof requiring or permitting actions with the consent of or at the direction of Unitholders evidencing a specified percentage of the aggregate Units outstanding, such direction or consent may be given by Beneficial Unitholders acting through CDS and the CDS Participants owning Units evidencing the requisite percentage of the Units;
- (iii) The rights of a Beneficial Unitholder shall be exercised only through CDS and the CDS Participants and shall be limited to those established by law and agreements between such Beneficial Unitholders and CDS and/or the CDS Participants or upon instruction from the CDS Participants;
- (iv) Each of the Transfer Agent and the Trustees may deal with CDS for all purposes (including the making of distributions) as the sole holder of the Global Unit Certificate(s) and authorized representative of the respective Beneficial Unitholders and such dealing with CDS shall constitute satisfaction or performance, as applicable, towards their respective obligations hereunder; and
- (v) A Beneficial Unitholder shall have no direct rights as against the Trust or the Trustees, who may treat CDS as the sole Unitholder.

13.3 Notice to Clearing Agency

Whenever a notice or other communication is required to be provided to Unitholders, unless and until Unit Certificate(s) have been issued to such Unitholders pursuant to Section 13.5, the Trustees and the Transfer Agent shall provide all such notices and communications to CDS and CDS shall deliver or cause to be delivered such notices and communications to the owners of such Units in accordance with the *Securities Act* (Ontario) and other applicable securities legislation (including applicable rules, regulations, instruments and policies).

13.4 Liability

The Trust, the Trustees and the Transfer Agent shall not have any liability for:

- (a) records maintained by CDS relating to the beneficial interests in the Units or the book entry accounts maintained by CDS;
- (b) maintaining, supervising or reviewing any records relating to such beneficial interests; or
- (c) any advice or representation made or given by CDS and made or given with respect to the rules and regulations of CDS, or any action taken or not taken by CDS or the CDS Participants.

13.5 Unit Certificates

- (a) If CDS advises the Trust that it is no longer willing or able to discharge properly its responsibilities as depository with respect to the Units and the Trust is unable to locate a qualified successor, or the Trust advises CDS in writing that it has elected to terminate the Book-Entry Only System for the Units, the Trustees shall so notify CDS and request that CDS notify all Beneficial Unitholders of the occurrence of any such event and of the availability to Beneficial Unitholders of definitive Unit Certificate(s). As soon as is reasonably practicable thereafter upon the surrender by CDS to the Trustees of the Global Unit Certificate(s), the Trust shall execute and the Transfer Agent shall certify and deliver definitive Unit Certificates, register such certificates in the names of the Beneficial Unitholders (or in such names as the Beneficial Unitholders may instruct) and deliver such certificates in accordance with the instructions of the Beneficial Unitholders and cause the names of such Beneficial Unitholders (or such other persons as the Beneficial Unitholders have instructed) to be entered on the Register. Failing instructions from the Beneficial Unitholder, Units will be registered in the name of the CDS Participant holding such Units on behalf of the Beneficial Unitholder. Neither the Trust nor the Trustees shall be liable for any delay in delivery of such instructions. Upon the issuance of such Unit Certificate(s), the Trustees and the Transfer Agent shall recognize the registered holders of the Unit Certificate(s) as holders of the Units.
- (b) If issued, Unit Certificates shall, subject to the provisions hereof, be in such form as is authorized from time to time by the Trustees.
- (c) Unit Certificates shall be issuable only in fully registered form.
- (d) The definitive form of the Unit Certificates shall:

- (i) be in the English language (or in both the English and French languages);
 - (ii) be dated as of the date of issue thereof;
 - (iii) contain the ISIN and/or CUSIP number for the Units; and
 - (iv) contain such distinguishing letters and numbers as the Trustees shall prescribe.
- (e) In the event that the Unit Certificate is translated into the French language and any provision of the Unit Certificates in the French language shall be susceptible to an interpretation different from the equivalent provision in the English language, the interpretation of such provision in the English language shall be determinative.
- (f) Each Unit Certificate shall be signed on behalf of the Trustees and the Transfer Agent of such Units. The signature of any 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.
- (g) Notwithstanding that any person signing on behalf of the Trust (including without limitation any officer of the Trust or any Trustee) whose signature, either manual or in facsimile, may appear on the Unit Certificates is no longer, at the date of this Declaration of Trust or at the date of the Unit Certificates or at the date of the certification and delivery thereof, the holder of the office indicated, any such Unit Certificates shall be valid and binding upon the Trust and entitled to the benefits of this Declaration of Trust.

13.6 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 by the laws of the Province of Ontario by the Third Amended and Restated Declaration of Trust dated the 22nd day of October, 2007, as further amended or amended and restated from time to time” or words of like effect;
 - (ii) “The Units represented by this certificate are issued upon the terms and subject to the conditions of the Third

Amended and Restated Declaration of Trust, which is binding upon all holders of Units and, by acceptance of this certificate, the holder assents to the terms and conditions of the Third Amended and Restated Declaration of Trust. A copy of the Third Amended and Restated Declaration of Trust pursuant to which this certificate and the 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;

- (iii) "For information as to personal liability of a Unitholder, see the reverse side of this certificate" or words of like effect;
 - (iv) the name of the person to whom the Unit Certificate is issued as Unitholder;
 - (v) the number and class of Units represented thereby and whether or not the Units represented thereby are fully paid; and
 - (vi) that the Units represented thereby are transferable.
- (b) Until otherwise determined by the Trustees, each such certificate shall legibly set forth on the face or the reverse side thereof, *inter alia*, the following:
- (i) "The Third Amended and Restated Declaration of Trust provides that no Unitholder 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 a transfer form for transferring Units.

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

13.7 Register of Unitholders

A register (the “**Register**”) shall be kept by the Transfer Agent, which Register shall contain the names and addresses of the Unitholders, the respective numbers of Units held by them, the certificate numbers of the certificates of such Units and a record of all transfers thereof. The Trustees may appoint one or more chartered banks or trust companies to act as transfer agents and to act as registrars for Units and may provide for the transfer of Units in one or more places within Canada. The Transfer Agent shall keep all necessary Registers and other books (which may be kept on a computer or similar device) for recording original issues and registering and transferring the Units of the Trust. No certificate for Units shall be valid unless countersigned by or on behalf of a Transfer Agent. Only the Unitholders whose Units are recorded on the Register shall be entitled to vote or to receive distributions or otherwise exercise or enjoy the rights of the Unitholders.

13.8 Transfer Agents and Registrars

The Trustees shall enter into a registrar and transfer agency agreement with the Transfer Agent according to which the Transfer Agent shall agree to act as transfer agent and registrar for the Units and the Trustees may provide for the transfer of Units in one or more places within or outside Canada (provided that if such appointments are made, there shall be a transfer agent and registrar within the Province of Ontario). Such Transfer Agent shall perform those functions and duties usually performed by transfer agents and registrars of shares of corporations having share capital, including maintaining the Register and all other necessary or appropriate books and records (which may be kept on a computer or similar device) for recording original issues and registering and transferring and redeeming the Units, and shall to the extent practicable monitor for the jurisdiction of residence of the Beneficial Unitholders. In the event that the agreement with the Transfer Agent is terminated in accordance with its terms, the Trustees may appoint one or more chartered banks or banking institutions, trust companies or other persons to act as registrar and transfer agent upon terms satisfactory to the Trustees. In the case of an original issue of Units, the Transfer Agent may rely and act upon the written instruction of the Trustees without inquiry into the receipt by the Trust of, or the sufficiency of, the consideration for such original issue. The Trustees shall cause similar registers to be created and maintained by or on behalf of the Trust for other securities issued by the Trust, where appropriate. The Trustees shall have no liability for any actions of the Transfer Agent and the Trustees, in relying in good faith upon the Transfer Agent, shall be deemed to have complied with the obligations under Section 9.6.

13.9 Lost Certificates

In the event that any certificate for Units is lost, stolen, destroyed or mutilated, the Trustees or any officer of the Trust may authorize the issuance of a new certificate for the same number of Units in lieu thereof. The Trustees or any officer of the Trust

may, in their sole discretion, before the issuance of such new certificate, require the Unitholder of the lost, stolen, destroyed or mutilated certificate, or the legal representative of the Unitholder, to make an affidavit or statutory declaration setting forth such facts as to the loss, theft, destruction or mutilation as the Trustees or any officer of the Trust, as the case may be, may deem necessary, to surrender any mutilated certificate and shall require the applicant to supply to the Trust a "lost certificate bond" or similar bond in such reasonable sum as the Trustees or any officer of the Trust or the Transfer Agent may direct indemnifying the Trust for so doing. The Trustees or any officers of the Trust shall have the power to acquire from an insurer or insurers a blanket lost security bond or bonds in respect of the replacement of lost, stolen, destroyed or mutilated certificates. The Trust shall pay all premiums and other sums of money payable for such purpose out of the property of the Trust with such contribution, if any, by those insured as may be determined by the Trustees or any officers of the Trust. If such blanket lost security bond is acquired, the Trustees or any officers of the Trust may authorize and direct (upon such terms and conditions as they may from time to time impose) any registrar, transfer agent, trustee, or others to whom the indemnity of such bond extends to take such action to replace such lost, stolen, destroyed or mutilated certificates without further action or approval by the Trustees or any officers of the Trust.

13.10 Limitation of Non-Resident Ownership

Notwithstanding any provision of this Declaration of Trust to the contrary, at no time may Non-Residents and/or partnerships (other than Canadian partnerships as defined in the Tax Act (a "Canadian Partnership") (collectively, "**Non-Resident Beneficiaries**") be the beneficial owners of more than 40% of the outstanding Units. The Trustees may require declarations as to the jurisdictions in which beneficial owners of Units are resident or declarations from the holders of Units as to whether such Units are held for the benefit of Non-Resident Beneficiaries. If the Trustees become aware that the beneficial owners of 40% of the Units then outstanding are, or may be, Non-Resident Beneficiaries or that such a situation is imminent, the Trustees may, or may direct, the Transfer Agent to make a public announcement thereof and shall not accept a subscription for Units from or issue or register a transfer of Units to a person unless the person provides a declaration in form and content satisfactory to the Trustees that the person is not a Non-Resident or a partnership, other than a Canadian Partnership (or, at the discretion of the Trustees, that the person is not a Non-Resident Beneficiary) and does not hold Units for a Non-Resident Beneficiary. If, notwithstanding the foregoing, the Trustees determine that more than 40% of the Units then outstanding are held by Non-Resident Beneficiaries, the Trustees may direct the Transfer Agent to send a notice to such holders of Units, chosen in inverse order to the order of acquisition or registration or in such other manner as the Trustees may consider equitable and practicable, requiring them to sell their Units or a portion thereof within a specified period

determined by the Trustees. If the Unitholders receiving such notice have not sold the specified number of Units or provided the Trustees with satisfactory evidence that they are not Non-Resident Beneficiaries and do not hold Units for a Non-Resident Beneficiary, within such period, the Trustees may direct the Transfer Agent to sell such Units on behalf of such Unitholders and, in the interim, shall suspend the voting and distribution rights attached to such Units. Upon such sale, the affected holders shall cease to be holders of Units and their rights shall be limited to receiving the net proceeds of sale upon surrender of the Unit Certificates representing such Units. In any situation where it is unclear whether Units are held for the benefit of a Non-Resident Beneficiary, the Trustees may exercise their discretion and determine whether such Units are as so held and any such exercise of their discretion shall be binding for the purpose of this Section 13.10. 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. Subject to Section 9.6, unless and until the Trustees shall have been required to do so under the terms hereof, neither the Trustees nor the Transfer Agent shall be bound to do or take any proceeding or action with respect to this Section 13.10 by virtue of the powers conferred on them hereby.

The Trustees shall not be deemed to have notice of any violation of this Section 13.10 unless and until they have been given written notice of such violation, and shall not be required to act as required by this Declaration of Trust unless an indemnity is provided. The Trustees shall not be required to actively monitor the Non-Resident Beneficiary holdings in the Trust. It is acknowledged that the Trustees cannot readily monitor the Non-Resident Beneficiary holdings of the Units given that the Units are registered in the name of CDS. The Trustees shall not be liable for any violation of the non-resident ownership restrictions which may occur during the term of the Trust. In addition, upon request, registered Unitholders shall be obliged to cooperate in dealing with Beneficial Unitholders for whom they hold title in connection with Article 13.

13.11 Transfer of Units

- (a) Subject to the provisions of this Article 13, the Units shall be, for all purposes of the Trust and this Declaration of Trust, personal and movable property and shall be fully transferable at any time and from time to time without charge as between persons, but no transfer of Units shall be effective as against the Trustees or shall be in any way binding upon the Trustees until the transfer has been recorded on the Register or one of the branch transfer registers maintained by the Trustees, the Trust or the Transfer Agent. No transfer of a Unit shall be recognized unless such transfer is of a whole Unit unless otherwise determined by the Trustees. If Units

are issued in the Book-Entry Only System, the provisions relating to Beneficial Unitholders in this Article 13 apply.

- (b) Subject to the provisions of this Article 13, Units shall be transferable on the Register or one of the branch transfer registers only by the Unitholders of record thereof or their executors, administrators or other legal representatives or by their agents or attorneys duly authorized in writing, and only upon delivery to the Trust or to the Transfer Agent of the Unit Certificate therefor, properly endorsed or accompanied by a duly executed instrument of transfer or power of attorney and accompanied by all necessary transfer or other taxes imposed by law that are required to be collected and remitted to the applicable authorities by the Trust, Transfer Agent or Trustees, if any, together with such evidence of the genuineness of such endorsement, execution and authorization and other matters that may reasonably be required by the Trustees or the Transfer Agent. Upon such delivery the transfer shall be recorded on the Register or branch transfer registers and a new Unit Certificate for the Units transferred shall be issued to the transferee and a new Unit Certificate for the balance of Units not transferred shall be issued to the transferor.
- (c) Subject to the provision of this Section 13.11, any person becoming entitled to any Units as a consequence of the death, bankruptcy or mental incompetence of any Unitholder, or otherwise by operation of law, shall be recorded in the Register as the holder of such Units, and shall receive a new certificate therefor only upon production of evidence satisfactory to the Trustees or the Transfer Agent and delivery of the existing Unit Certificate to the Trustees or the Transfer Agent, but until such record is made, the Unitholder of record shall continue to be and be deemed to be the holder of such Units for all purposes whether or not the Trustees or the Transfer Agent shall have actual or other notice of such death or other event.
- (d) Unit Certificates representing any number of Units may be exchanged without charge for Unit Certificates representing an equivalent number of Units in the aggregate. Any exchange of Unit Certificates may be made at the offices of the Trust or the Transfer Agent where Registers are maintained for Unit Certificates pursuant to the provisions of this Article 13.
- (e) Any Unit Certificates tendered for exchange shall be surrendered to the Trustees or appropriate Transfer Agent and then shall be cancelled.

13.12 Units Held Jointly or in a Fiduciary Capacity

Except as herein provided, the Trustees may treat two or more persons holding any Units as joint owners of the entire interest therein unless their ownership is expressly otherwise recorded on the Register, but no entry shall be made in the Register or on any certificate that any person is in any other manner entitled to any future, limited or contingent interest in any Unit; provided, however, that any person recorded as a Unitholder may, subject to the provisions hereinafter contained, be described in the Register or on any certificate as a fiduciary of any kind and any customary words may be added to the description of the holder to identify the nature of such fiduciary relationship, but as set forth in Section 13.3 the same shall not bind the Trust, the Trustees or the Transfer Agent.

13.13 Performance of Trust

The Trustees, the Transfer Agent and any other authorized representative or agent of the Trust shall not be bound to be responsible for or otherwise inquire into or ensure the performance of any trust, express, implied or constructive, or of any pledge or equity to which any of the Units or any interest therein are or may be subject, or to ascertain or enquire whether any transfer of any such Units or interests therein by any such Unitholder or by his or her personal representatives is authorized by such trust, pledge or equity, or to recognize any person as having any interest therein except for the person recorded as Unitholder.

13.14 Death of a Unitholder

The death or disability of a Unitholder during the continuance of the Trust shall not terminate the Trust or any of the mutual or respective rights and obligations created by or arising under this Declaration of Trust nor give such Unitholder's personal representatives a right to an accounting or take any action in court or otherwise against other Unitholders, the Trustees, officers of the Trust or the Trust Assets. The death of a Unitholder shall merely entitle the personal representatives of the deceased Unitholder to demand and receive, pursuant to the provisions hereof, a new certificate for Units in place of the certificate held by the deceased Unitholder, if any, and upon the acceptance thereof such personal representatives shall succeed to all rights of the deceased Unitholder under this Declaration of Trust.

13.15 Take-Over Bids

(a) In this Section 13.5:

- (i) "Dissenting Unitholder" means a Unitholder to whom an Offer is made who does not accept the Offer in respect of any portion of the Units registered in its name, and includes any person who subsequently acquires a Unit that is subject of the Offer;

- (ii) "Offer" means an offer to acquire, directly or indirectly, outstanding Units where, as of the date of the Offer to acquire, the Units that are subject to the Offer to acquire, together with the Offeror's Units, constitute in the aggregate 20% or more of all outstanding Units;
 - (iii) "offer to acquire" includes an acceptance of an offer to sell;
 - (iv) "Offeror" means a person, or two or more persons acting jointly or in concert, who make an Offer;
 - (v) "Offeror's Notice" means the notice described in Section 13.15(c) and
 - (vi) "Offeror's Units" means Units beneficially owned, or over which control or direction is exercised, on the date of an Offer by the Offeror, any affiliate or associate of the Offeror or any person or company acting jointly or in concert with the Offeror.
- (b) If an Offer for all of the outstanding Units (other than Units held by or on behalf of the Offeror or an affiliate or associate of the Offeror) is made and, by such Offer, the Offeror agrees to be bound by the provisions of this Section 13.15, and:
- (i) within the time provided in the Offer for its acceptance or within 120 days after the date the Offer is made, whichever period is shorter, the Offer is accepted by Unitholders representing at least 90% of the outstanding Units, other than the Offeror's Units;
 - (ii) the Offeror is bound to take up and pay for, or has taken up and paid for the Units of the Unitholders who accepted the Offer; and
 - (iii) the Offeror complies with Sections 13.15(c) and 13.15(e);
- then the Offeror is entitled to acquire, and the Dissenting Unitholders are required to sell to the Offeror, the Units held by the Dissenting Unitholders for the same consideration per Unit payable or paid, as the case may be, under the Offer.
- (c) Where an Offeror is entitled to acquire Units held by a Dissenting Unitholder pursuant to Section 13.15(b), and the Offeror wishes to exercise such right, the Offeror shall send by registered mail within

60 days after the date of termination of the Offer and 180 days following the date of the Offer, a notice (the "Offeror's Notice") to each Dissenting Unitholder stating that:

- (i) Unitholders holding at least 90% of the Units of all Unitholders, other than Offeror's Units, have accepted the Offer;
 - (ii) the Offeror is bound to take up and pay for, or has taken up and paid for, the Units of the Unitholders who accepted the Offer; and
 - (iii) Dissenting Unitholders will be deemed to transfer their respective Units to the Offeror on the terms on which the Offeror acquired the Units of the Unitholders who accepted the Offer on payment of the amount referred to in Section 13.15(b); and
 - (iv) Dissenting Unitholders must send their respective Unit Certificate(s) to the Trust within 21 days after the date of the sending of the Offeror's Notice.
- (d) A Dissenting Unitholder to whom an Offeror's Notice is sent pursuant to Section 13.15(c) shall, within 21 days after the sending of the Offeror's Notice instruct its CDS Participant to cause its Units to be transferred to the Trust or, send his or her Unit Certificate(s) to the Trust, duly endorsed for transfer, if such certificate has been provided.
- (e) Within 21 days after the Offeror sends an Offeror's Notice pursuant to Section 13.15(c), the Offeror shall pay or transfer to the Trustees, or to such other person as the Trustees may direct, the cash or other consideration that is payable to Dissenting Unitholders pursuant to Section 13.15(b) and upon complying with this Section 13.15(c) and making such payment the Offeror shall be deemed to be the registered and beneficial owner of such Units.
- (f) The Trustees, or the person directed by the Trustees, shall hold in trust for the Dissenting Unitholders the cash or other consideration they receive under Section 13.15(e), but such cash or other consideration shall not form any part of the Trust Assets. The Trustees, or such persons, shall deposit cash in a separate account in a Canadian chartered bank and shall place other consideration in

the custody of a Canadian chartered bank or similar institution for safekeeping.

(g) If the Offeror has complied with Sections 13.15(c) and 13.15(e), the Trustees shall:

(i) do or cause to be done all acts and things and execute and cause to be executed all instruments as in the Trustees' opinion may be necessary or desirable to cause the transfer of the Units of the Dissenting Unitholders to the Offeror;

(ii) send or cause to be sent to each Dissenting Unitholder who has complied with Section 13.5(d) the consideration to which such Dissenting Unitholder is entitled under this Section 13.5 within 10 Business Days of the deposit by the Unitholder of the Unit Certificate in accordance with Section 13.5(d); and

(iii) send or cause to be sent to each Dissenting Unitholder who has not complied with Section 13.5(d) a notice stating that:

(A) his or her Units have been transferred to the Offeror;

(B) the Trustees or some other person designated in such notice are holding in trust the consideration for such Units; and

(C) the Trustees, or such other person, will send the consideration to such Dissenting Unitholder as soon as practicable after receiving such Dissenting Unitholder's Unit Certificate(s) or such other documents as the Trustees or such other person may require in lieu thereof,

and the Trustees or such other person as they may designate are hereby appointed the agents and attorneys of the Dissenting Unitholders for the purposes of giving effect to the foregoing provisions.

(h) Subject to applicable law, an Offeror cannot make an Offer for Units unless, concurrently with the communication of the Offer to any Unitholder, a copy of the Offer is provided to the Trust.

ARTICLE 14 TERMINATION

14.1 Term of Trust

Unless the Trust is sooner terminated as otherwise provided herein, the Trust shall continue in full force and effect so long as any property of the Trust is held by the Trustees, and the Trustees shall have all the powers and discretions, expressed and implied, conferred upon them by law or by this Declaration of 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 the termination of the Trust. Following the approval of such termination by Special Resolution, the Trustees shall commence to wind up the affairs of the Trust. Such Special Resolution may approve the plan of liquidation or winding up and distributions proposed by the Trustees.

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 the Unitholders may surrender their Units for cancellation and the date on which the Register 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 on which the Register of Units shall be closed 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 of the assets comprising the Trust, including if applicable the securities of any Subsidiary of the Trust, and all of the other assets of the Trust 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).

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 assets comprising the Trust, together with any cash forming part of the assets comprising the Trust among the Unitholders in accordance with their pro rata interests and the terms and conditions hereof, against delivery of Units. If the Trustees are unable to sell all or any of the assets comprising part of the Trust by the date set for termination, the Trustees may, subject to obtaining all necessary regulatory approvals, distribute the remaining assets *in specie* directly to 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 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 Units for cancellation and if, within one year after the further notice, all the Units shall not have been surrendered for cancellation, such remaining Units shall be deemed to be cancelled without prejudice to the rights of the holders of such Units to receive their pro rata share of the remaining Trust Assets, 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 and/or deposit such amounts in an account in a chartered bank or similar institution in Canada in the name of such Unitholder for delivery against receipt of Units for cancellation, and the Trust, the Trustees and any representative thereof shall thereupon be released from any and all further liability with respect to such property and thereafter the Unitholder shall have no rights as against the Trust, the Trustees or any representative thereof in respect of such property or an accounting therefor.

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 Assets 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 or Section 14.7.

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 they 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 Special Resolution or, if required, with the consent of the holders of all of the Units.

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 or such other method designed to give reasonable general notice thereof as is determined by the Trustees, which may include 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 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 Trust shall be addressed to the Trustees c/o the Transfer Agent with a

copy to the head office of the Trust or in such other manner as the Trustees may direct, and shall be deemed to have been given on the date of delivery 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.

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 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 Article 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 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 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 Units, (b) an offer to acquire Units, or (c) any other matter relating to the Units or the affairs of the Trust, obtain a list setting out the names of the Unitholders, the number of Units held by them and the address of each Unitholder.

16.6 Fiscal Year

The fiscal year of the Trust shall end on December 31 of each year. Notwithstanding the foregoing, the Trustees may, but are not obligated to, adopt a December 15 year end pursuant to subsection 132.11(1) of the Tax Act.

16.7 Financial Disclosure

The Trust will send to Unitholders in accordance with and at the times mandated by applicable law:

- (a) 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) unaudited quarterly financial statements of the Trust for each fiscal quarter (other than the fourth quarter of each year), 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 obligations 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 Meeting Information

Prior to each meeting of Unitholders, the Trustees shall provide or arrange to 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) such accompanying proxy circulars and all other information required by applicable law.

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, such information regarding the Trust required by applicable law to be submitted to Unitholders for

income tax purposes to enable Unitholders to complete their tax returns in respect of the prior calendar year.

16.10 Intentionally deleted.

16.11 Trust Property to be Kept Separate

The Trustees shall maintain the Trust Assets separate from all other property in their possession and from the property of all other persons. For greater certainty, the Trust Assets shall not form part of or include the assets of Subsidiary of the Trust 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 Power of Attorney

The Trustees hereby grant AdminCo and its successors, a power of attorney constituting AdminCo and its successors, 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 and to perform the obligations of the Trust and exercise the rights of the Trust under, any instrument, deed, agreement or document to which the Trust is a party, including, without limitation, to execute and deliver the Administration Agreement, the Governance Agreement, documents in connection with the Term Loan and the Operating Loan and such other agreements, documents, certificates and other writings as are required or contemplated by this Declaration of Trust.

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

PricewaterhouseCoopers LLP, Chartered Accountants, are appointed as the initial 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 from time to time.

17.3 Change of Auditors

The Auditors may at any time resign or be removed by the Trustees for good reason or with the approval of a majority of the votes cast by Unitholders at a meeting of Unitholders duly called for such 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 such 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 simultaneously 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.

IN WITNESS WHEREOF each of the parties has caused these presents to be executed as of the date first written above.

SIGNED, SEALED & DELIVERED

In the presence of:


Witness


DAVID BLOOM

SIGNED, SEALED & DELIVERED

In the presence of:

Witness

MICHAEL ROSICKI

SIGNED, SEALED & DELIVERED

In the presence of:

Witness

RAYMOND GUYATT

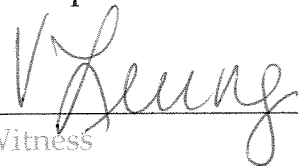
IN WITNESS WHEREOF each of the parties has caused these presents to be executed as of the date first written above.

SIGNED, SEALED & DELIVERED
In the presence of:

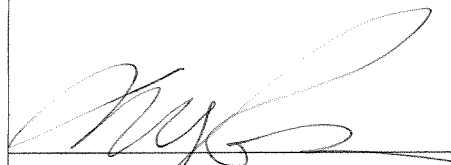
Witness

DAVID BLOOM

SIGNED, SEALED & DELIVERED
In the presence of:



Witness



MICHAEL ROSICKI

SIGNED, SEALED & DELIVERED
In the presence of:

Witness

RAYMOND GUYATT

IN WITNESS WHEREOF each of the parties has caused these presents to be executed as of the date first written above.

SIGNED, SEALED & DELIVERED
In the presence of:

Witness

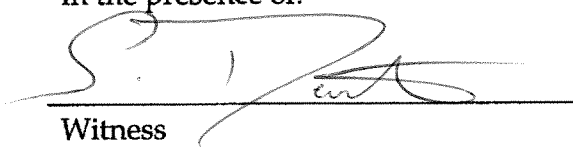
DAVID BLOOM

SIGNED, SEALED & DELIVERED
In the presence of:

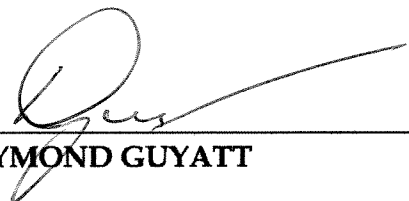
Witness

MICHAEL ROSICKI

SIGNED, SEALED & DELIVERED
In the presence of:



Witness



RAYMOND GUYATT