

PARTNERS REAL ESTATE INVESTMENT TRUST

AMENDED AND RESTATED DECLARATION OF TRUST

**March 27, 2007, as amended and restated with effect as of June 4, 2010 and as further
amended and restated with effect as of
November 3, 2010, December 15, 2011, March 29, 2012, May 11, 2012, April 8, 2013, May
28, 2014, March 23, 2015 and December 10, 2018**

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PARTNERS REAL ESTATE INVESTMENT TRUST
AMENDED AND RESTATED DECLARATION OF TRUST

THIS DECLARATION OF TRUST made in Toronto, Ontario the 27th day of March, 2007 and amended and restated in Toronto, Ontario with effect as of the 4th day of June, 2010 and further amended and restated with effect as of the 3rd day of November, 2010 and further amended and restated with effect as of the 15th day of December, 2011 and further amended and restated with effect as of March 29, 2012 and further amended and restated with effect as of May 11, 2012 and further amended and restated with effect as of April 8, 2013 and further amended and restated with effect as of May 28, 2014 and further amended and restated with effect as of March 23, 2015 and further amended and restated with effect as of December 10, 2018.

BETWEEN:

Grant Anthony, resident in the Province of Ontario;

Colin Chapin, resident in the Province of Ontario;

Jane Domenico, resident in the Province of Ontario;

Allan Kimberley, resident in the Province of Ontario;

C. Ian Ross, resident in the Province of Ontario; and

Michael Woollcombe, resident in the Province of Ontario;

all of whom are the trustees of the trust as further amended and restated herein (collectively, the “**Trustees**”), and each person who after the date hereof becomes a trustee of the trust as herein provided,

- and -

all persons who after the date hereof become holders of units of the Trust as herein provided,

WHEREAS Charter Real Estate Investment Trust (“**Charter REIT**”) was settled on March 27, 2007 with \$10.00 (the “**Initial Contribution**”) by the C.A. Bancorp Inc., (the “**Initial Unitholder**”) in consideration for the issuance to the Initial Unitholder of one Unit;

AND WHEREAS the Trust has been established for the principal purpose of providing persons who may become the holders of Units of the Trust with an opportunity to participate directly or indirectly in a portfolio of income-producing real property investments and related assets;

AND WHEREAS the Trustees have agreed to hold the Initial Contribution and all amounts and assets subsequently received under this Declaration of Trust or in respect of the investment of the assets of the Trust in accordance with the provisions hereinafter set forth;

AND WHEREAS the Trustees desire and the Initial Unitholder similarly desired that the Trust shall qualify as a “mutual fund trust” pursuant to subsection 132(6) of the Tax Act;

AND WHEREAS pursuant to Article 11 of the Declaration of Trust, the Trustees are authorized to make amendments to the Declaration of Trust, as provided for therein;

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

ARTICLE 1 INTERPRETATION

1.1 Definitions

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

“**Adjusted Unitholders’ Equity**” means, at any time, the aggregate of Unitholders’ equity and the amount of accumulated depreciation and amortization recorded on the books and records of the Trust in respect of its properties and assets, calculated in accordance with GAAP.

“**affiliate**”, when used to indicate a relationship with a person, has the meaning ascribed thereto in National Instrument 45-106 - *Prospectus and Registration Exemptions*.

“**Arrangement**” means the arrangement involving the Trust and Charter carried out pursuant to (i) an arrangement agreement among the same parties, as such agreement may be amended from time to time, (ii) a plan of arrangement under Section 193 of the *Business Corporations Act* (Alberta), and (iii) a final order of the Court of Queen’s Bench in respect thereof.

“**associate**” has the meaning specified in the *Securities Act* (Ontario) as in effect on the date hereof.

“**Auditors**” means the firm of chartered accountants appointed as the auditors of the Trust from time to time in accordance with the provisions hereof.

“**Beneficial Unitholder**” means, in connection with the use of the Book-Entry System for the Units, the beneficial owner of a Unit.

“**Book-Entry System**” means the record-entry securities transfer and pledge system known, as of the date hereof, by such name, 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.

“**Business Day**” means any day other than a Saturday, a Sunday or a statutory holiday in the City of Toronto, Ontario.

“**CDS**” means The Canadian Depository for Securities Limited and its successors.

“**CDS Participant**” means a broker, dealer, bank, other financial institution or other person who, directly or indirectly, from time to time affects book-based transfers with CDS and pledges of securities deposited with CDS.

“**Charter**” means Charter Realty Holdings Ltd.

“**Closing**” means the completion of the Arrangement, upon the filing of articles of arrangement in respect thereof.

“**Closing Date**” means the date on which Closing occurs.

“**Closing Market Price**” has the meaning specified in Section 6.3(1).

“**Counsel**” means a barrister or solicitor or firm of barristers and solicitors or other lawyers in an appropriate jurisdiction retained by the Trust, who may be counsel for the Trust or any of its Unitholders.

“**CPOA**” has the meaning specified in Section 9.6(4).

“**Damages**” has the meaning specified in Section 10.9(1).

“**Declaration of Trust**” means this declaration of trust, as the same may be further supplemented, amended or 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.

“**Distribution Payment Date**” means, in respect of a Distribution Period, a Business Day that is not later than 15 calendar days immediately following the end of a Distribution Period, or such other date as may be determined from time to time by the Trustees.

“**Distribution Period**” means:

- (a) each calendar quarter or each calendar month, as determined by the Trustees from time to time, from and including the first day thereof and to and including the last day thereof; or
- (b) such other period or periods as the Trustees may determine from time to time; provided that there is at least one such period in each calendar quarter.

“**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, except that December 31 shall in all cases be a Distribution Record Date.

“**Distributions**” has the meaning specified in Section 5.2(1).

“**Exchange Agreement**” means any exchange agreement entered into between the Trust and any other person with respect to the exchange of securities into Units.

“**Exchangeable Securities**” means any securities that are exchangeable or convertible, directly or indirectly, for or into, as applicable, Units, that contain transfer restrictions acceptable to the Toronto Stock Exchange.

“**Fixed Number**” has the meaning specified in Section 8.1.

“**GAAP**” means at any time accounting principles generally accepted in Canada, including those set out in the Handbook of the Canadian Institute of Chartered Accountants, applied on a consistent basis.

“**Global Unit Certificate**” has the meaning specified in Section 13.1(2).

“**Gross Book Value**” means from time to time the book value of the assets of the Trust and its consolidated subsidiaries, as shown on its then most recent consolidated balance sheet, plus accumulated depreciation and amortization on assets and excluding the amount of any receivable reflecting interest rate subsidies on any debt assumed by the Trust, or, if approved by a majority of the Trustees, the most recently appraised value of the assets of the Trust and its consolidated subsidiaries may be used instead of book value.

“**Indemnified Person**” has the meaning specified in Section 10.9(1).

“**Independent Trustee**” means a Trustee who is “**independent**” (as defined in Multilateral Instrument 52-110 as in effect on the date hereof and as amended from time to time) to the Trust .

“**Information Circular**” means the management information circular of Charter, with respect to the approval by its shareholders of the Arrangement and certain other matters.

“**Initial Contribution**” has the meaning specified in the recitals to this Declaration of Trust.

“**Initial Unitholder**” has the meaning specified in the first paragraph of this Declaration of Trust.

“**In specie Redemption Price**” has the meaning specified in Section 6.5.

“**Management Agreement**” means the management agreement dated as of June 4, 2010 and made among Charter Real Estate Investment Trust (now Partners Real Estate Investment Trust) and the Manager, as such agreement may be assigned to the Trust and amended, restated, superseded or replaced from time to time.

“**Manager**” means the manager of the Trust as appointed by the Trustees from time to time in accordance with this Declaration of Trust and any duly appointed successor.

“**Market Price**” has the meaning specified in Section 6.3(1).

“**Monthly Limit**” has the meaning specified in Section 6.4(a).

“**mortgage**” means any mortgage, charge, hypothec, bond, debenture, note or other evidence of indebtedness directly or indirectly secured by real property.

“**Net Realized Capital Gains**” has the meaning specified in Section 5.1.

“**Non-resident**” means a person who is a non-resident of Canada or a partnership that is not a Canadian partnership for purposes of the Tax Act.

“**Ordinary Resolution**” means a resolution proposed to be passed as an ordinary resolution at a meeting of Voting Unitholders (including an adjourned meeting) duly convened for that purpose and held in accordance with the provisions hereof at which a quorum is present, which resolution is passed by the affirmative votes of a majority of the Voting Units represented at the meeting in person or by proxy and voted upon such resolution or a resolution proposed to be passed as an ordinary resolution approved in writing by a majority of the holders of Voting Units.

“**person**” means a natural person, partnership, limited partnership, limited liability partnership, corporation, joint stock company, trust, unincorporated association, limited liability company, joint venture or other entity or governmental or regulatory authority or entity, and pronouns have a similarly extended meaning.

“**Proposed Manager Trustee**” has the meaning specified in Section 9.2.

“**Proposed Manager Trustee Notice**” has the meaning specified in Section 9.2.

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

“**Redemption Notes**” means unsecured subordinated promissory notes of the Trust having a maturity date to be determined at the time of issuance by the Trustees (provided that in no event shall the maturity date be set at a date subsequent to the first Business Day following the fifth anniversary of the date of issuance of such note), bearing interest from the date of issue at a market rate of interest determined at the time of issuance by the Trustees, payable for each month during the term on the 15th day of each subsequent month with all principal being due on maturity, such promissory notes to provide that the Trust shall at any time be allowed to prepay all or any part of the outstanding principal without notice or bonus.

“**Redemption Price**” has the meaning specified in Section 6.3(1).

“**Register**” has the meaning specified in Section 13.5.

“**Registrar and Transfer Agency Agreement**” means the agreement to be entered into on Closing between the Trust and the Transfer Agent.

“**Resident Canadian**” means a person resident in Canada, or a partnership that is a Canadian partnership, for purposes of the Tax Act.

“**SIFT Proposals**” has the meaning specified in Section 1.11.

“**SIFT Trust**” has the meaning ascribed thereto in the SIFT Proposals or any final legislation implementing the SIFT Proposals.

“**Special Resolution**” has the meaning specified in Section 12.6.

“**Special Voting Unitholder**” means at any time a person whose name appears on the Register as a holder of one or more Special Voting Units.

“**Special Voting Units**” has the meaning specified in Section 3.1.

“**subsidiary**” when used to indicate a relationship with a person, has the meaning ascribed thereto in National Instrument 45-106 – *Prospectus and Registration Exemptions*.

“**Tax Act**” means the *Income Tax Act*, R.S.C. 1985 (5th Supp.), c. 1 and the regulations thereunder.

“**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 of Units, which initially will be Computershare Investor Services Inc., together with any sub-transfer agent duly appointed by the Transfer Agent.

“**Trust**” means the trust established and constituted by this Declaration of Trust.

“**Trust Assets**” means the properties and assets held from time to time by the Trust or by the Trustees on behalf of the Trust, including:

- (a) the Initial Contribution;
- (b) all funds, securities or other property derived or received from the issuance or sale of Units or other funds, securities or other property received by the Trustees in their capacity as trustees of the Trust;
- (c) any securities, whether debt or equity, of Charter or any subsidiaries of the Trust held from time to time by or on behalf of the Trust;
- (d) any investments held from time to time by or on behalf of the Trust;
- (e) any proceeds of disposition of any of the foregoing property or in respect of the investment or substitution of the foregoing property; and
- (f) all proceeds, income, dividends, interest, 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.

“**Trust Income**” has the meaning specified in Section 5.1.

“**Trust Liabilities**” has the meaning specified in Section 2.8.

“**Trustee**” means, at any time, a person who is, in accordance with the provisions hereof, a trustee of the Trust at such time, and “**Trustees**” means, at any time, all of the persons, each of whom is at that time a Trustee.

“**Trustees’ Regulations**” has the meaning specified in Section 10.3.

“**Unit Certificate**” means a certificate, in the form approved by the Trustees, evidencing one or more Units, issued and certified in accordance with the provisions hereof.

“**Unitholder**” means, at any time, a holder at that time of one or more Units, as shown on the Register.

“**Unit Option Plan**” means any Unit compensation plan established by the Trustees pursuant to which options to purchase Units may be granted to Trustees and to officers, employees and consultants of the Trust, its affiliates and the Manager;

“**Units**” has the meaning specified in Section 3.1.

“**Voting Unitholders**” means the Unitholders and the Special Voting Unitholders, collectively.

“**Voting Units**” means the Units and the Special Voting Units.

1.2 References to Acts Performed by the Trust

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

1.3 References

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.

1.4 Number and Gender

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

1.5 Headings for Reference Only

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

1.6 Day Not a Business Day

If any day on which any amount is to be determined or any action is required to be taken hereunder is not a Business Day, then such amount will be determined or such action will be required to be taken at or before the requisite time, if any, on the next succeeding day that is a Business Day. This Section is not applicable to Section 5.1 and Section 5.2.

1.7 Certain Phrases, etc.

In this Declaration of Trust (i) the words “**including**” and “**includes**” mean “**including (or includes) without limitation**”, and (ii) the phrase “**the aggregate of**”, “**the sum of**”, or a phrase of similar meaning means “**the aggregate (or total or sum), without duplication, of**”.

1.8 Governing Law

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

1.9 Currency

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

1.10 Accounting Principles

All accounting terms not specifically defined in this Declaration of Trust will be interpreted in accordance with GAAP. 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 will, to the extent applicable and except as otherwise specified herein or as otherwise determined by the Trustees, be made in accordance with GAAP.

1.11 Tax Act

Any reference herein to a particular provision of the Tax Act shall include a reference to that provision as it may be renumbered or amended from time to time. Where there are proposals for amendments to the Tax Act which have not been enacted into law or proclaimed into force on or before the date on which such proposals are to become effective, the Trustees may take such proposals into consideration and apply the provisions hereof as if such proposals had been enacted into law and proclaimed into force, including without limitation certain draft legislation in respect of income trusts and other flow-through entities released by the Department of Finance on December 21, 2006 and any successor proposals to such draft legislation (the “**SIFT Proposals**”).

ARTICLE 2 DECLARATION OF TRUST

2.1 Establishment of the Trust

The Trustees hereby declare themselves and agree to act as trustees of the Trust and to hold and administer the Trust Assets in trust for the benefit of the Unitholders on and subject to the terms and conditions of this Declaration of Trust.

2.2 Initial Contribution

The Initial Unitholder pays concurrently with the execution of the Declaration of Trust, the Initial Contribution to the Trustees for the purpose of settling the Trust. The Trustees acknowledge receipt of the Initial Contribution and issue one Unit to the Initial Unitholder.

2.3 Name of the Trust

(1) The Trust shall be known and designated as “**Partners Real Estate Investment Trust**” and, whenever practicable, lawful and convenient, the property of the Trust shall be held and the affairs of the Trust shall be conducted and transacted under that name.

(2) 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.

(3) The Trustees may approve and use a version of any name or designation used by the Trust in any foreign language.

2.4 Head Office

The principal office of the Trust will be located at such place or places in Canada as the Trustees may from time to time designate. The Trust may have such other offices or places in Canada for the conduct of its affairs as the Trustees may from time to time determine as necessary or desirable.

2.5 Nature of the Trust

(1) The Trust is an unincorporated open-ended limited purpose investment trust. The Trust is not, will not be deemed to be and will not be treated as, a partnership, limited partnership, society, syndicate, association, joint venture, company, corporation or joint stock company, nor will the Trustees or any individual Trustee or the Unitholders or Special Voting 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 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.

(2) The relationship of the Unitholders to the Trustees will be solely that of beneficiaries of the Trust, and the rights of Unitholders and Special Voting Unitholders will be limited to those expressly conferred upon them by this Declaration of Trust.

2.6 Rights of Unitholders and Special Voting Unitholders

The rights of each Unitholder (including the right, if any, to call for or receive a distribution or division of property, assets, monies, funds, income, dividends and capital gains held, received or realized by the Trust) are limited to those contained herein and, except as provided herein, no Unitholder will 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 Trust. The legal ownership of the Trust Assets and the right to conduct the activities of the Trust are vested exclusively in the Trustees, and no Unitholder or Special Voting Unitholder has or is deemed to have any right of ownership in any of the Trust Assets, except as specifically provided herein. Except as specifically provided herein, no Unitholder or Special Voting Unitholder will 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 and the Special Voting Units will be personal property and will confer upon the holders thereof only the interest and rights specifically set forth in this Declaration of Trust.

2.7 Unitholders and Special Voting Unitholders Bound

This Declaration of Trust shall be binding upon all persons who become Unitholders or Special Voting Unitholders from time to time. By acceptance of a certificate representing any Units or Special Voting Units or, during use of the Book-Entry System for the Units, upon completion of a purchase of a Unit or a Special Voting Unit, the holder thereof shall be deemed to agree to be bound, and shall be so bound, by this Declaration of Trust.

2.8 Liability of Unitholders

(1) No Unitholder, Beneficial Unitholder or Special Voting Unitholder, 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 Special Voting Unitholder, in its capacity as such, for any liability whatsoever in connection with:

- (a) 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;
- (b) the obligations or the activities or affairs of the Trust;
- (c) 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);
- (d) any act or omission of the Trustees or by any other person in the performance or exercise, or purported or attempted performance or exercise, of any obligation, power, discretion or authority conferred upon the Trustees or such other person in respect of the activities or affairs of the Trust (whether or not authorized by or pursuant to this Declaration of Trust);
- (e) 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
- (f) any taxes, levies, imposts or charges or fines, penalties or interest in respect thereof payable by the Trust or by the Trustees or by any other person (except a Unitholder or a Special Voting Unitholder to the extent required by applicable tax laws by reason of or arising out of his ownership of Units or Special Voting Units) as applicable on behalf of or in connection with the activities or affairs of the Trust

(collectively “**Trust Liabilities**”) but rather the assets of the Trust are intended to be subject to levy or execution for satisfaction of such Trust Liabilities.

(2) No Unitholder, Beneficial Unitholder or Special Voting Unitholder in its capacity as such shall be liable to indemnify the Trustees or any other person with respect to any Trust Liabilities.

(3) To the extent that, notwithstanding the provisions of this Section 2.8 any Unitholder, Beneficial Unitholder or Special Voting 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 Unitholder, Beneficial Unitholder or Special Voting Unitholder is 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 has been determined, including, without limitation, all fees and disbursements of counsel. The rights accruing to a Unitholder, Beneficial Unitholder or Special Voting Unitholder under this Section 2.8(3) do not exclude any other rights to which such Unitholder, Beneficial Unitholder or Special Voting Unitholder may be lawfully entitled, nor does anything herein contained restrict the right of the Trustees to indemnify or reimburse a Unitholder, Beneficial Unitholder or Special Voting Unitholder out of the Trust Assets in any appropriate situation not specially provided herein but, for greater certainty, the Trustees have no liability to reimburse Unitholders, Beneficial Unitholders or Special Voting Unitholder for taxes assessed against them by reason of or arising out of their ownership of Units or Special Voting Units (as applicable).

ARTICLE 3 ISSUE AND SALE OF UNITS

3.1 Nature of Units and Special Voting Units

(1) The beneficial interests in the Trust will be divided into interests of two classes, described and designated as “**Units**” and “**Special Voting Units**”, respectively, which will be entitled to the rights and subject to the limitations, restrictions and conditions set out herein.

(2) Each Unit represents an equal undivided beneficial interest in the Trust, in any distribution from the Trust (whether of Trust Income, Net Realized Capital Gains or other amounts) and in any net assets of the Trust in the event of the termination or winding-up of the Trust. All Units will rank among themselves equally and rateably without discrimination, preference or priority. Each Unit shall entitle the holder of record thereof to one vote at all meetings of Voting Unitholders or in respect of any written resolution of Voting Unitholders.

(3) No Special Voting Unit will be entitled to any interest or share in the Trust, in any distribution from the Trust (whether of Trust Income, Net Realized Capital Gains or other amounts) or in any net assets of the Trust in the event of the termination or winding-up of the Trust, other than the right to receive, upon the redemption of a Special Voting Unit, the amount of \$0.00001 for each Special Voting Unit so redeemed. Special Voting Units may be issued in series and will only be issued in connection with or in relation to, if the Trustees so determine, Exchangeable Securities. A Special Voting Unit will be issued together with, and will be attached to, if the Trustees so determine, each Exchangeable Security issued, and will be evidenced only by the certificates representing such Exchangeable Securities. Special Voting Units will not be transferable separately from the Exchangeable Securities to which they are attached. Each Special Voting Unit will be redeemable by the holder of the Special Voting Unit in accordance with Article 7. Each Special Voting Unit will entitle the holder of record thereof from time to time, as shown on the Register, to that number of votes at all meetings of Voting Unitholders that is equal to the number of Units into which the Exchangeable Security to which such Special Voting Unit is attached is, directly or indirectly, exchangeable or convertible. Upon the exchange, redemption or conversion of an Exchangeable Security for Units, the Special Voting Unit that is attached to such Exchangeable Security will immediately be cancelled without any further action of the Trustees, and the former holder of such Special Voting Unit will cease to have any rights with respect thereto.

(4) Concurrently with the issuance of any Exchangeable Securities (and any attached Special Voting Units), the Trust will enter into such agreements, including Exchange Agreements, as may be necessary or desirable to properly give effect to the terms of the Exchangeable Securities, including, without limitation, to provide for the voting of all attached Special Voting Units and the automatic conversion, exercise, redemption or exchange of such Exchangeable Securities in the event of an Offer (as defined in Section 14.6) for the Units as provided in Section 14.6.

(5) Issued and outstanding Units and Special Voting Units may be subdivided or consolidated from time to time by the Trustees without the approval of Voting Unitholders. In the event of a subdivision or consolidation of the Units or Special Voting Units, such consolidation shall not result in a disposition, redemption, cancellation, novation, or transfer of the relevant units and each holder shall remain a holder of the relevant units such that there is no change in the holder’s interests, rights or privileges in the capital structure of the Trust.

3.2 Authorized Number of Units and Special Voting Units

(1) The number of Units that are authorized and that may be issued hereunder is unlimited.

(2) The number of Special Voting Units that are authorized and that may be issued hereunder is unlimited.

3.3 Issue of Units

(1) Units and Special Voting Units may be allotted and issued by the Trust at such times, to such persons, for such consideration and on such terms and conditions as the Trustees may determine; provided, however, that Special Voting Units may only be issued in connection with or in relation to Exchangeable Securities. The Trustees may authorize the Trust to pay a reasonable commission to any person in consideration of such person purchasing or agreeing to purchase, whether absolutely or conditionally, Units from the Trust or from any other person or procuring or agreeing to procure purchasers, whether absolute or conditional, for Units.

(2) The Trustees may create and issue rights, warrants (including so-called “special warrants” or “subscription receipts” which may be exercisable for no additional consideration), convertible or exchangeable securities (including Units issuable upon the exchange of securities of other issuers, including Exchangeable Securities) or options (including all types of share compensation or incentive programs) to subscribe for Units, which rights, warrants, convertible or exchangeable securities or options may be exercisable at such subscription price or prices and at such time or times and on such terms or conditions as the Trustees may determine. The rights, warrants, convertible or exchangeable securities or options so created may be issued for such consideration, or for no consideration, all as the Trustees may determine. A right, warrant, convertible or exchangeable security or option will not be a Unit and the holder thereof will not be a Unitholder.

(3) Units are only to be issued as fully paid in money, property (including, without limitation, an obligation to pay consideration in instalments) or services, and are not to be subject to future calls or assessments, except that Units to be issued under an offering following the Closing may be issued for consideration payable in instalments, and the Trust may take a security interest over such Units or other property for unpaid instalments.

(4) For greater certainty, Units may be issued by the Trust:

(a) as contemplated by this Section 3.3,

(b) pursuant to Section 5.6,

(c) as contemplated by an Exchange Agreement,

(d) pursuant to the Unit Option Plan, any Unitholder rights plans, distribution reinvestment plans and Unit purchase plans, incentive option plans or other compensation plans, if any, established by the Trust or any of its affiliates,

- (e) in order to acquire and as consideration for securities, including securities of or issued by Charter and subsidiaries of the Trust,
- (f) upon the exercise of any rights, warrants, convertible or exchangeable securities or options to acquire Units issued by the Trust or other issuers, including upon the exercise of any rights of exchange or conversion set out in any Exchangeable Securities,
- (g) pursuant to Section 3.6,
- (h) in satisfaction of any indebtedness of or borrowing by the Trust, and
- (i) making non-cash distributions to Unitholders, including pursuant to distribution reinvestment plans, if any, established by the Trust.

3.4 Fractional Units

Fractions of Units may be issued, including pursuant to distributions of additional Units to all Unitholders pursuant to Section 5.6. No certificates will be issued for fractional Units. Fractional Units shall not, except to the extent that they may represent in the aggregate one or more whole Units, entitle the holder thereof to notice of, or to attend or to vote at meetings of Unitholders. Subject to the foregoing, fractions of Units will carry the rights and be subject to the provisions hereof applicable to whole Units in the proportion that they bear to one Unit.

3.5 Re-Purchase of Units by Trust

The Trust may, from time to time, purchase Units (or other securities of the Trust which may be issued and outstanding from time to time) for cancellation in accordance with the requirements of applicable securities legislation and the rules prescribed from time to time under applicable stock exchange or regulatory policies. In connection with or immediately after the Closing, the Trust will purchase the initial Unit from the Initial Unitholder, and the Initial Unitholder will sell the initial Unit to the Trust, for a purchase price of \$10.00 and, upon the completion of such purchase and sale, the initial Unit will be cancelled and will no longer be outstanding for any of the purposes of this Declaration of Trust.

3.6 Consolidation of Units

Unless the Trustees determine otherwise, and subject to all necessary regulatory approvals, immediately after any pro rata distribution of additional Units to all Unitholders pursuant to Section 5.6, the number of outstanding Units will be consolidated such that each Unitholder will hold after such consolidation the same number of Units as the Unitholder held immediately prior to the distribution of such additional Units. In such case, each Unit Certificate representing a number of Units prior to the distribution of additional Units will be deemed to represent the same number of Units after the 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 Trust shall withhold from the cash portion of such distribution, if any, or the Unitholder shall make a cash payment to the Trust, of an amount equal to the amount of tax required to be remitted to the appropriate taxation authority by the Trust, or, if such withholding cannot be made by the Trust or such payment is not made by the Unitholder the consolidation will result in such Unitholder holding

that number of Units equal to the product of (i) the sum of the number of Units held by such Unitholder prior to the distribution and 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) a fraction, the numerator of which is the aggregate number of Units outstanding prior to the distribution and the denominator of which is 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 so withheld shall either be delivered to the appropriate taxation authority or sold, in which case the net proceeds shall be remitted to the appropriate taxation authority. Such Unitholder will be required to surrender the Unit Certificates, if any, representing such Unitholder's original Units in exchange for a Unit Certificate representing such Unitholder's post-consolidation Units.

3.7 Pre-Emptive Rights

[intentionally deleted]

3.8 Unclaimed Distributions

In the event that the Trustees hold amounts to be paid to Unitholders under Article 5, Article 6 or Article 15 or otherwise which are unclaimed or which can not be paid for any reason, neither the Trustees nor any distribution disbursing agent shall be under any obligation to invest or reinvest the same and shall only be obligated to hold the same in a current or other non-interest bearing account with a chartered bank or trust company, pending payment to the person or persons entitled thereto. The Trustees shall, as and when required by law, and may any time prior to such required time, pay all or part of the distributions so held to a court in the province in which the Trust has its principal office or to the Public Guardian and Trustee of Ontario (or other similar government official or agency in the province in which the Trust has its principal office) whose receipt shall be a good and sufficient discharge of the obligations of the Trustees.

ARTICLE 4 INVESTMENTS AND OPERATIONS OF THE TRUST

4.1 Investment Guidelines

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

- (a) subject to the remainder of this Section 4.1, the Trust may only invest, directly or indirectly, in:
 - (i) interests (including fee ownership and leasehold interest) in income-producing real property;
 - (ii) corporations, trusts, partnerships or other persons which principally have interests (including the ownership of leasehold interests) in income-producing real property (or activities relating or ancillary thereto); and

- (iii) such other activities, properties or assets as are consistent with the other investment guidelines of the Trust or as may be approved by Unitholders in accordance with the terms of this Declaration of Trust;
- (b) notwithstanding anything in Sections 4.1 and 4.2, the Trust shall not make any investment, take any action or omit to take any action that would result in Units not being units of a “mutual fund trust” within the meaning of the Tax Act;
- (c) the Trust may, directly or indirectly, invest in a joint venture arrangement for the purposes of owning interests or investments otherwise permitted to be held by the Trust; provided that such joint venture arrangement contains terms and conditions which, in the opinion of the Trustees, are commercially reasonable, including without limitation such terms and conditions relating to restrictions on transfer and the acquisition and sale of the Trust’s and any joint venturer’s interest in the joint venture arrangement, provisions to provide liquidity to the Trust, such as buy-sell mechanisms and provisions that limit the liability of the Trust to third parties. For purposes of this Section 4.1, a joint venture arrangement is an arrangement between the Trust and one or more other persons (“**joint venturers**”) pursuant to which the Trust, directly or indirectly, conducts an undertaking for one or more of the purposes set out above and in respect of which the Trust may hold its interest jointly or in common or in another manner with others either directly or through the ownership of securities of a corporation or other entity (a “**joint venture entity**”), including without limitation a general partnership, limited partnership or limited liability company;
- (d) except for temporary investments held in cash, deposits with a Canadian chartered bank or trust company registered under the laws of Canada or of a province of Canada, short-term government debt securities, or receivables under instalment receipt agreements or money market instruments of, or guaranteed by, a Schedule I Canadian bank maturing within one year from the date of issue or except as permitted pursuant to Sections 4.1(a), 4.1(c), 4.1(f), 4.1(h) and 4.1(i), the Trust may not hold securities other than (i) securities of any issuer referred to in Section 4.1(a), (ii) securities of a joint venture entity, (iii) securities of an entity wholly-owned by the Trust, which has been formed and operated solely for the purpose of holding a particular real property or real properties; and (iv) securities of persons described in Section 4.1(f) and provided further that, notwithstanding anything contained in the Declaration of Trust to the contrary, the Trust may acquire securities of other real estate investment trusts;
- (e) the Trust shall not invest in rights to or interests in mineral or other natural resources, including oil or gas, except as incidental to an investment in real property;
- (f) notwithstanding the provisions of Section 4.1(d) or any other provision to the contrary, but subject to the provisions of Section 4.3, the Trust may invest in operating businesses which are ancillary to the Trust’s ownership of real property or acquire interests in limited partnerships or corporations which may operate businesses related to the Trust’s real estate investments;

- (g) the Trust shall not invest directly in raw land for development and ownership or for other development projects, except:
 - (i) for the purpose of renovating or expanding existing properties or facilities on adjacent properties; or
 - (ii) for the purpose of developing new properties which will be or are expected to be, upon completion, income producing, provided that the aggregate value of investments in raw land for such purpose will not, after giving effect to the proposed investment, exceed 10% of the Adjusted Unitholders' Equity;
- (h) the Trust shall invest in a mortgage or a mortgage bond (including a participating or convertible mortgage) only where:
 - (i) the real property which is security therefor is income-producing real property which otherwise meets the investment guidelines of the Trust contained in this Section 4.1; and
 - (ii) the aggregate value of the investments of the Trust in mortgages and mortgage bonds, after giving effect to the proposed investment, will not exceed 20% of the Adjusted Unitholders' Equity;
- (i) notwithstanding any of the provisions of Section 4.1(h) hereof, the Trust may invest in any mortgage which is not a first ranking mortgage, including mezzanine financings, for purposes of providing, directly or indirectly, financing in connection with a transaction in which the Trust is the vendor or with the intention of using such mortgage as part of a method for subsequently acquiring an interest in or control of a property or a portfolio of properties that would otherwise meet the investment guidelines of the Trust; provided that the aggregate value of the investments of the Trust in these mortgages, after giving effect to the proposed investments, will not exceed 20% of the Gross Book Value; and
- (j) the Trust may invest, from time to time, an amount (which, in the case of an amount invested to acquire real property, is the purchase price less the amount of any indebtedness assumed or incurred by the Trust and secured by a mortgage on such property) up to 15% of the Adjusted Unitholders' Equity in investments which do not comply with one or more of subsections 4.1(d) or (g).

For the purpose of the foregoing guidelines, the assets, liabilities and transactions of a corporation or other entity wholly or partially owned by the Trust will be deemed to be those of the Trust on a proportionate consolidated basis. In addition, any references in the foregoing to investment in real property will be deemed to include an investment in a joint venture entity. For greater certainty, Sections 4.1(a) through (j) are intended to set out generally the parameters under which subsidiaries in which the Trust is permitted to invest will be empowered under their constating documents to invest. Further, any determinations in respect of the investment restrictions that are determinations reserved to the Trustees, where the actual activity is carried on by a subsidiary, will be made by the trustees or directors of the relevant subsidiary. Nothing in Section 4.1(a) and paragraphs (c) through

(j) empowers or entitles the Trust or the Trustees to carry on business or to otherwise undertake any activity that would violate Section 4.3.

4.2 Operating Policies

The operations and affairs of the Trust shall be conducted in accordance with the following policies:

- (a) the Trust shall not purchase, sell, market or trade in currency or interest rate futures contracts otherwise than for hedging purposes where, for the purposes hereof; the term “hedging” shall have the meaning ascribed thereto by National Instrument 81-102 adopted by the Canadian Securities Administrators, as amended from time to time;
- (b) (i) any written instrument creating an obligation which is or includes the granting by the Trust of a mortgage, and (ii) to the extent management of the Trust determines to be practicable, any written instrument which is, in the judgment of management of the Trust, a material obligation, shall contain a provision or be subject to an acknowledgement in the form substantially provided for in Section 10.10;
- (c) the Trust may engage (i) in construction or development of real property in order to maintain its real properties in good repair and/or to enhance the income-producing potential of properties in which the Trust has an interest; and (ii) in the development of raw land and/or other development projects, provided that investments by the Trust in such development are within the investment guidelines set out in Section 4.1;
- (d) title to each real property shall be held by and registered in the name of the Trust, the Trustees or in the name of a corporation or other entity owned, directly or indirectly, by the Trust or jointly-owned, directly or indirectly, by the Trust, with joint venturers or a corporation which is a nominee of the Trust which holds registered title to such real property pursuant to a nominee agreement with the Trust;
- (e) the Trust may directly or indirectly guarantee indebtedness or liabilities of a third party, provided that such guarantee is related to the direct or indirect ownership or acquisition by the Trust of real property that would otherwise comply with the investment guidelines and operating policies contained in Sections 4.1 and 4.2;
- (f) the Trust will obtain an independent appraisal of each property that it intends to acquire;
- (g) the Trust shall obtain and maintain at all times insurance coverage in respect of potential liabilities of the Trust and the accidental loss of value of the assets of the Trust from risks, in amounts, with such insurers, and on such terms as the Trustees consider appropriate, taking into account all relevant factors including the practices of owners of comparable properties and the cost of such coverage; and
- (h) the Trust shall obtain or review a Phase I environmental audit of each real property to be acquired by it, dated within 12 months of the proposed date of acquisition, and, if

the Phase I environmental audit report recommends or recommended a Phase II environmental audit be obtained, the Trust shall obtain or review a Phase II environmental audit, in each case prepared by an independent environmental consultant.

For the purpose of the foregoing policies, the assets, liabilities and transactions of a corporation or other entity wholly or partially owned by the Trust will be deemed to be those of the Trust on a proportionate consolidated basis. In addition, any references in the foregoing investment restrictions and operating policies to investment in real property will be deemed to include an investment in a joint venture entity. For greater certainty Sections 4.2(a) through (h) are intended to set out generally the parameters under which the Trust (and subsidiaries in which the Trust is permitted to invest) will operate. References to the Trust in those paragraphs shall be read as applying to such subsidiary where the actual activity that is the subject of the policy is carried on by such subsidiary (with the exception of Section 4.2(b)(ii) and Section 4.2(f), which are only intended to apply to the Trust. Further, any determinations in respect of the operating policies that are determinations reserved to the Trustees, where the actual activity is carried on by a subsidiary, will be made by the trustees or directors of the relevant subsidiary. Nothing in Sections 4.2(a) through (h) empowers or entitles the Trust or the Trustees to carry on business or otherwise undertake any activity that would violate Section 4.3.

4.3 Tax Status

The Trustees shall cause the Trust to elect, in its return of income for the first taxation year of the Trust, pursuant to Subsection 132(6.1) of the Tax Act, that the Trust be deemed to be a “mutual fund trust” for the purposes of the Tax Act from the date it was established, provided that the Trust has sufficient unitholders so as to be entitled to make such election. Notwithstanding anything else contained in this Declaration of Trust, the Trust (a) shall not make any investment, take any action or omit to take any action that would result in the Trust failing or ceasing to qualify as a “mutual fund trust” within the meaning of the Tax Act and (b) shall use its reasonable best efforts not to be a SIFT Trust, except where the Trustees determine that the Trust’s status as a SIFT Trust would be temporary in nature and would not have adverse tax consequences to holders of Units.

4.4 Application of Investment Guidelines and Operating Guidelines

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

4.5 Regulatory Matters

If at any time a regulatory authority having jurisdiction over the Trust or any property of the Trust shall enact any law, regulation or requirement which is in conflict with any investment guideline of the Trust then in force, such guideline in conflict shall, if the Trustees so resolve, be

deemed to have been amended to the extent necessary to resolve any such conflict, and, notwithstanding anything to the contrary herein contained, any such resolution of the Trustees shall not require the prior approval of Voting Unitholders.

ARTICLE 5 DISTRIBUTIONS

5.1 Computation of Income and Net Realized Capital Gains

The income of the Trust (the “**Trust Income**”) for any taxation year of the Trust will be the income for such year computed in accordance with the provisions of the Tax Act, other than paragraph 82(1)(b) and subsection 104(6) thereof, regarding the calculation of income for the purposes of determining the “**taxable income**” of the Trust; provided, however, that capital gains and capital losses will be excluded from the computation of Trust Income and, if an amount has been designated by the Trust under subsection 104(19) of the Tax Act, such designation shall be disregarded.

The net realized capital gains of the Trust (the “**Net Realized Capital Gains**”) for any taxation year of the Trust will be determined as the amount, if any, by which the aggregate of the capital gains of the Trust realized in such year exceeds the sum of (i) the aggregate of the capital losses of the Trust realized in such year, (ii) any capital gains that are realized by the Trust as a result of a redemption of Units pursuant to Article 6 and that are payable to redeeming Unitholders pursuant to Section 6.5, and (iii) each amount determined by the Trustees in respect of any net capital loss for a prior taxation year that the Trust is permitted by the Tax Act to deduct in computing the taxable income of the Trust for such year multiplied by the reciprocal of the fraction applicable in determining the proportion of a capital gain for such prior taxation year that is a taxable capital gain.

5.2 Distributions

(1) The Trustees may, in respect of each Distribution Period, on or before each Distribution Record Date, declare payable to the Unitholders of record at the close of business on each Distribution Record Date, all or any part of the cash flow of the Trust for the Distribution Period. The amount of the cash flow of the Trust (being the sum of all cash amounts received by the Trust in respect of such Distribution Period, other than, for greater certainty, the proceeds of any offering of Units) to be distributed by the Trust in respect of a Distribution Period (the “**Distributions**”) will be determined by, or in accordance with guidelines established from time to time by, the Trustees on or before the applicable Distribution Payment Date.

(2) Distributions will be payable to each Unitholder of record on such Distribution Record Date pro rata in proportion to the number of Units held as of record by such Unitholder on such Distribution Record Date. Subject to Section 5.6, Distributions that have been declared to be payable to Unitholders in respect of a Distribution Period will be paid in cash on the Distribution Payment Date in respect of such Distribution Period.

5.3 Other Distributions

(1) In addition to the Distributions that are declared payable to Unitholders pursuant to Section 5.2, the Trustees may allocate, declare payable and/or make distributions, from time to time, out of Trust Income, Net Realized Capital Gains, the capital of the Trust or otherwise, in any year, in such amount or amounts, and on such dates and to Unitholders of record on such dates, as the Trustees may determine.

(2) Having regard to the present intention of the Trustees to allocate, distribute and make payable to Unitholders all of the Trust Income, a sufficient amount of the 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 (other than tax on Net Realized Capital Gains that would be recoverable by it with respect to the relevant taxation year or, in the event that the Trust is not a mutual fund trust at any time in the relevant taxation year, tax under Division E.1 of Part I of the Tax Act) (the “taxation distribution amount”), the following amounts will, unless the Trustees in their absolute discretion have otherwise determined to not distribute such taxation distribution amount but in lieu thereof to distribute another specified amount, be due and payable to Unitholders of record at the close of business on December 31 in each year:

- (a) the amount of Trust Income for such year not previously paid or made payable to Unitholders in such year, provided that if the Trust is a SIFT Trust, the aggregate amount so payable for the year shall be reduced by such amount as is necessary to provide for the tax payable by the Trust by virtue of the SIFT Proposals, including, in particular, proposed paragraph 104(6)(b)(iv) of the Tax Act or any similar provision; and
- (b) the amount of Net Realized Capital Gains for such year not previously paid or made payable to Unitholders in such year, except to the extent of Net Realized Capital Gains in respect of which the tax payable by the Trust would be refunded as a “capital gains refund” as defined in the Tax Act for such year, provided that if the Trust is a SIFT Trust, the aggregate amount so payable for the year shall be reduced by such amount as is necessary to provide for the tax payable by the Trust by virtue of the SIFT Proposals, including, in particular, proposed paragraph 104(6)(b)(iv) of the Tax Act or any similar provision.

For greater certainty, if the Trustees have exercised their absolute discretion to not distribute the taxation distribution amount in respect of any year, the difference between amounts actually declared as Distributions and the taxation distribution amount in respect of such year shall not be payable to Unitholders. Moreover, the Trustees, in their absolute discretion, may at any time refute the intention referred to above to distribute taxation distribution amounts in respect of any year or future year.

(3) Any distribution made pursuant to this Section 5.3 will be payable to each Unitholder of record on the applicable record date in respect of a distribution pursuant to Section 5.3(1), or on December 31 in the year of distribution in respect of a distribution pursuant to Section 5.3(2), pro rata in proportion to the number of Units held of record by 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, amounts that have been declared to be payable to Unitholders pursuant to Section 5.3(1)

will be paid in cash on the Distribution Payment Date determined by the Trustees in respect of such distribution and amounts that are payable pursuant to Section 5.3(2) will be paid in cash or Units not later than January 31 of the following year.

(4) As contemplated in Section 6.5, the Trustees may designate as payable to redeeming Unitholders as part of the redemption price any capital gain and/or income realized by the Trust as a result of the redemption of Units pursuant to Section 6.5.

5.4 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 for income tax purposes in respect of the amounts paid or payable or deemed to be paid to Unitholders for such amounts that the Trustees consider to be reasonable in all of the circumstances, including designations relating to taxable dividends 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 of the Trust for the year, as well as elect under subsection 104(13.1) and/or subsection 104(13.2) of the Tax Act that income be taxed to the Trust, rather than to the Unitholders. Distributions paid or payable to Unitholders pursuant to this Article 5 will be deemed to be distributions of Trust Income, Net Realized Capital Gains, trust capital or other items in such amounts as the Trustees may, in their absolute discretion, determine. For greater certainty, it is hereby declared that any distribution of Net Realized Capital Gains will include the non-taxable portion of the capital gains of the Trust that are encompassed in such distribution.

5.5 Enforceability of Right to Receive Distributions

Notwithstanding any other provision of this Article 5, each Unitholder will have the legal right to enforce payment on the Distribution Payment Date or December 31, as the case may be, of any amount payable to such Unitholder as a result of any distribution declared or otherwise made payable pursuant to this Article 5 on the applicable Distribution Record Date or the applicable December 31, as the case may be, to, and not yet received by, such Unitholder pursuant to this Article 5.

5.6 Method of Payment of Distributions

(1) 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 payable, or otherwise made payable, pursuant to this Article on the due date for such payment, the payment may, at the option of the Trustees, include or consist entirely of the issuance of additional Units, or fractions of Units, if necessary or desirable, 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. Such additional Units will be issued pursuant to applicable exemptions under applicable securities laws, discretionary exemptions granted by applicable securities regulatory authorities or a prospectus or similar filing.

(2) The value of each Unit that is issued pursuant to Section 5.6(1) will be the Market Price of the Units on the principal market on which the Units are quoted for trading during the trading day period ending on the trading day immediately prior to (i) the applicable Distribution

Record Date in respect of a distribution pursuant to Section 5.2, (ii) the applicable record date in respect of a distribution under Section 5.3(1), or (iii) December 31 in respect of a distribution under Section 5.3(2).

5.7 Withholding Taxes

The Trustees shall deduct or withhold from distributions payable to any Unitholder all amounts required by law to be withheld from such distributions, whether such distributions are in the form of cash or otherwise. 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 shall be made on any stock exchange on which the Units are then listed and upon such sale, the affected Unitholder shall cease to be the holder of such Units.

5.8 Definitions

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

5.9 Payments of Cash

Any payment of cash by the Trust to a Unitholder pursuant to this Article 5 or any other provision of this Declaration of Trust will be conclusively deemed to have been made upon receipt of a wire transfer or other means of electronic funds transfer or upon mailing of a cheque in a postage pre-paid envelope, addressed to the Unitholder at the Unitholder's address appearing in the Register, unless such cheque is dishonoured upon presentment. Upon such payment, the Trust will be discharged from all liability to the Unitholder in respect of such payment; provided, however, that if such cheque is lost or destroyed then, 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 will issue a replacement cheque to the Unitholder.

5.10 Distribution Reinvestment and Unit Purchase Plan

Subject to any required regulatory approvals (and any Voting Unitholder approval imposed by regulatory requirements), the Trustees may, in their sole discretion, establish one or more Unitholder rights plans, distribution reinvestment plans and Unit purchase plans or Unit option plans, including the Unit Option Plan, at any time and from time to time.

5.11 Income Tax Matters

In computing the net income of the Trust for income tax purposes for any year, except as the Trustees otherwise determine, the Trust shall claim the maximum amount of capital cost allowance and other discretionary deductions available to the Trust under the Tax Act.

ARTICLE 6 REDEMPTION OF UNITS

6.1 Redemption Right

Each Unitholder will 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 at the prices determined and payable in accordance with this Article 6.

6.2 Exercise of Redemption Right

(1) Units may be surrendered at any time to the Transfer Agent for redemption by presentation to the Transfer Agent and the Trust of a written notice of 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 if a Unit Certificate has been issued. 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.

(2) If the Book-Entry System is being used for the Units, a Beneficial Unitholder who desires to redeem Units shall 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, which notice shall then be provided to the Transfer Agent and the Trust. The form of redemption notice shall be substantially in the form set forth on the Unit Certificate. By causing a CDS Participant to deliver to CDS a notice of the Beneficial Unitholder's intention to redeem Units, a Beneficial Unitholder will be deemed to have irrevocably surrendered the applicable Units for redemption and appointed such CDS Participant to act as his or her 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 will for all purposes be void and of no effect, and the redemption privilege to which it relates will 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 will have no direct redemption rights as against the Trust or the Trustees, and any such redemption effected by such Beneficial Unitholder will, insofar as the Trust or the Trustees are concerned, be deemed to be on the part of the registered Unitholder.

(3) As of the close of business on the date when the Units are surrendered for redemption, the Unitholder will cease to be the Unitholder of record in respect of such Units, such Units will 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 proceeds), and the Unitholder (or Beneficial Unitholder) thereof will not be entitled to exercise any of the rights of holders of Units in respect thereof.

6.3 Cash Redemption

(1) Subject to Section 6.4, upon receipt by the Trust of a notice to redeem Units in accordance with Section 6.2 and surrender of the relevant Unit Certificate (as applicable), the Unitholder or Beneficial Unitholder of the Units tendered for redemption will, subject to Section 6.5, be entitled to receive a price per Unit (the “**Redemption Price**”) equal to the lesser of:

- (a) 90% of the Market Price of the Units on the principal stock exchange on which the Units are listed (or, if the Units are not listed on any stock exchange, on the principal market on which the Units are quoted for trading) during the 10 trading day period ending immediately prior to the date on which the Units were surrendered to the Trust for redemption; and
- (b) the Closing Market Price of the Units on the date on which the Units were surrendered to the Trust for redemption on the principal stock exchange on which the Units are listed (or, if the Units are not listed on any stock exchange, on the principal market on which the Units are quoted for trading).

For the purposes of this Declaration of Trust, “**Market Price**” will be the amount equal to the weighted average of the trading prices of the Units on the applicable market or exchange for each of the trading days on which there was a trade during the specified trading day period; provided that if there was trading on the applicable exchange or market for fewer than five of the trading days during the specified trading day period, “**Market Price**” will be the average of the following prices established for each of the trading days during the specified trading day period: the average of the last bid and last ask prices for each trading day on which there was no trading and the weighted average trading prices of the Units for each trading day that there was trading. For the purposes of this Declaration of Trust, “**Closing Market Price**” will be: (i) an amount equal to the closing price of the Units on the applicable market or exchange if there was a trade on the specified date and the applicable market or exchange provides a closing price; (ii) an amount equal to the average of the highest and lowest prices of Units on the applicable market or exchange if there was trading on the specified date and the applicable market or exchange provides only the highest and lowest trading prices of Units traded on a particular day; or (iii) the average of the last bid and last ask prices on the applicable market or exchange if there was no trading on the specified date.

(2) Subject to Section 6.4 and Section 6.5, the Redemption Price payable in respect of the Units surrendered for redemption during any calendar month will 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 will be conclusively deemed to have been made upon the mailing by the Trust of a cheque in a postage-prepaid envelope addressed to the former Unitholder at the former Unitholder’s address appearing in the Register, or as otherwise advised by a CDS Participant in the event of a redemption by a Beneficial Unitholder, unless such cheque is dishonoured upon presentment. Upon such payment, the Trust will be discharged from all liability to the former Unitholder (or Beneficial Unitholder) in respect of the redeemed Units; provided, however, that if such cheque is lost or destroyed then, 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 will issue a replacement cheque to the former Unitholder (or Beneficial Unitholder).

6.4 No Cash Redemption in Certain Circumstances

Section 6.3(2) will 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 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(2) exceeds the Monthly Limit will be redeemed for cash pursuant to Section 6.3(2) and, unless any applicable regulatory approvals are required, by a distribution in specie under Section 6.5, on a pro rata basis;
- (b) on the date the Units are tendered for redemption, the outstanding Units are not listed for trading or quoted on any stock exchange or market that the Trustees consider, in their sole discretion, to provide a representative fair market value price for the Units;
- (c) on the date the Units are tendered for redemption or if, for more than five trading days during the 10 trading day period immediately prior to the date on which such Units were tendered for redemption, the normal trading of the outstanding Units is suspended or halted on any stock exchange on which the Units are listed for trading or, if not so listed, on any market on which the Units are quoted for trading; or
- (d) the redemption of the Units will result in the delisting of the Units on the principal stock exchange on which the Units are listed.

6.5 In Specie Redemption

If, pursuant to Section 6.4(a), Section 6.3(2) is not applicable to all or any of the Units tendered for redemption by a Unitholder, then such holder of Units shall, instead of the Redemption Price per Unit specified in Section 6.3 payable in respect of such Units, to be entitled to receive a price per Unit (the “**In specie Redemption Price**”) equal to the fair market value of a Unit as determined by the Trustees, and the In specie Redemption Price shall, subject to all necessary regulatory approvals, be paid and satisfied by the Trust issuing Redemption Notes having an aggregate principal amount equal to the aggregate In specie Redemption Price of the Units tendered for redemption. In the event of distributions of Redemption Notes, each Redemption Note so distributed to the redeeming holder of Units shall be in the principal amount of \$100 or such other amount as may be determined by the Trustees. No fractional Redemption Notes shall be distributed and where the number of Redemption Notes to be received upon redemption by a holder of Units would otherwise include a fraction, that number shall be rounded down to the next lowest whole number.

6.6 Cancellation of all Redeemed Units

All Units that are redeemed under this Article 6 will be cancelled, and such Units will no longer be outstanding and will not be reissued.

6.7 Withholdings by the Trustees

The Trustees may deduct or withhold from all payments or other distributions payable to any Unitholder pursuant to this Article 6 all amounts required by law to be so withheld.

6.8 Redemption of Initial Unit

If at any time the Unit held by the Initial Unitholder is the only outstanding Unit, the holder thereof may require the Trust to redeem the Unit for an amount equal to the Trust Assets.

ARTICLE 7 REDEMPTION OF SPECIAL VOTING UNITS

7.1 Right of Redemption

Each holder of Special Voting Units will be entitled to require the Trust to redeem, at any time and from time to time, at the demand of such holder, all or any part of the Special Voting Units registered in the name of such holder at the prices determined and payable in accordance with the provisions of this Article 7.

7.2 Exercise of Redemption Right

Special Voting Units may be surrendered at any time to the Transfer Agent for redemption by presentation to the Trust of a written request for redemption from the registered holder of the Special Voting Units in a form acceptable to the Trust, specifying the number of Special Voting Units to be redeemed. Such surrender will be irrevocable except with respect to any Special Voting 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.

As of the close of business on the date the Special Voting Units are surrendered for redemption, the registered holder of the Special Voting Units will cease to be the holder of record in respect of such Special Voting Units, and will cease to have any rights with respect to the Special Voting Units tendered for redemption (other than the receipt of the redemption proceeds).

7.3 Cash Redemption

Upon receipt by the Trust of a notice to redeem Special Voting Units in accordance with Section 7.2, the holder of the Special Voting Units tendered for redemption will be entitled to receive a price per Special Voting Unit equal to \$0.00001. All payments made in respect of the redemption of Special Voting Units will be rounded up to the nearest whole cent.

The redemption price payable in respect of the Special Voting Units surrendered for redemption during any calendar month will be satisfied by way of cash payment no later than the last day of the calendar month following the calendar month in which the Special Voting Units were tendered for redemption. Payments made by the Trust of the cash portion of the redemption price for such Special Voting Units will be conclusively deemed to have been made upon the mailing by the Trust of a cheque in a postage-prepaid envelope addressed to the former holder of the Special Voting Units at the former holder's address appearing in the Register, unless such cheque is dishonoured upon presentment. Upon such payment, the Trust will be discharged from all liability to the former

holder of the Special Voting Units in respect of the redeemed Special Voting Units; provided, however, that if such cheque is lost or destroyed then, 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 will issue a replacement cheque to the former holder of the Special Voting Units.

7.4 Cancellation of all Redeemed Special Voting Units

All Special Voting Units that are redeemed under this Article 7 will be cancelled, and such Special Voting Units will no longer be outstanding and will not be reissued.

ARTICLE 8 TRUSTEES

8.1 Number of Trustees

The Trust shall have not less than three (3) and no more than 11 Trustees, with the number of Trustees from time to time within such range being fixed (the “**Fixed Number**”) by resolution of the Trustees; provided that until otherwise so determined by resolution, the number of Trustees will be five (5). A majority of the Trustees shall be Resident Canadians and shall be Independent Trustees.

8.2 Calling and Notice of Meetings

Meetings of the Trustees will be called and held from time to time at such time and at such place as the Trustees, the Chair 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 will 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 Voting Unitholders. A Trustee may waive this notice and the presence of such Trustee at such a meeting will be deemed to be a waiver of this notice requirement except where such 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 convened. Notice of a meeting of the Trustees may be given verbally, in writing or by telephone, facsimile or electronic mail. A notice of a meeting of Trustees need not specify the purpose of, or the business to be transacted at, the meeting. Notwithstanding the foregoing, the Trustees may by resolution from time to time fix a day or days in any month or months for regular meetings of the Trustees at a place and hour to be named, in which case, provided that a copy of such resolution is sent to each Trustee forthwith after being passed and forthwith after each Trustee’s appointment, no other notice will be required for any such regular meeting.

8.3 Place of Meetings

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

8.4 Meetings by Telephone

With the consent of the chair of the meeting or a majority of the Trustees participating in the meeting, any Trustee may participate in a meeting of the Trustees or of a committee of the Trustees from any location in the world by means of telephone, electronic or other communication facilities that permit all persons participating in the meeting to communicate with each other. A Trustee participating in such a meeting in such manner will be considered present at the meeting and at the place of the meeting. Any such consent will be effective whether given before or after the meeting to which it relates and may be given with respect to all meetings of the Trustees and of committees of Trustees.

8.5 Quorum

The quorum for the transaction of business at any meeting of the Trustees will consist of the greater of two Trustees and a majority of the number of Trustees then holding office (provided that the majority of Trustees present are Resident Canadians), and, notwithstanding any vacancy among the number of Trustees, a quorum of Trustees may exercise all of the powers of the Trustees.

8.6 Chair

The chair of any meeting of the Trustees will be the Trustee present at the meeting who holds the office of Chair of the Trustees (as appointed by the Trustees under Section 8.10) or, if such person is not present at the meeting, the Trustees present at the meeting shall choose one of their number to be chair.

8.7 Action by the Trustees

Each Trustee will have the right to one vote on all matters on which they are entitled to vote. Every question at all meetings of the Trustees will be decided by a majority of the votes cast on the question unless the question is one that requires the approval of only the Independent Trustees in which case the question will be decided by a majority of the votes cast on the question by the Independent Trustees voting on the question. In the case of an equality of votes, the chair of the meeting will 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 a 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 (including by facsimile or in electronic format), each of which will be deemed to be an original and all originals together will be deemed to be one and the same instrument.

8.8 Adjourned Meeting

Any meeting of Trustees may be adjourned from time to time by the chair of the meeting with the consent of the meeting to a fixed time and place. Further notice of the adjourned meeting need not be given. The adjourned meeting will 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 will be deemed to have terminated upon its adjournment.

8.9 Remuneration and Expenses

The Trustees shall be paid such remuneration for their services as the Trustees, or if applicable a committee thereof, may from time to time determine. The Trustees shall also be entitled to be reimbursed for reasonable traveling 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.

8.10 Officers

The Trustees may from time to time appoint one or more officers of the Trust, including without limitation, a Chair and a Secretary of the Trustees, provided that:

(1) no person shall be deemed to be non-independent under applicable securities laws by reason only of his or her appointment as Chair and/or Secretary of the Trustees); and

(2) unless the Independent Trustees otherwise unanimously determine, the Chair shall be an Independent Trustee,

and, without prejudice to rights under any employment contract with the Trust and/or the Manager, may remove any officer of the Trust. The powers and duties of each officer of the Trust will be determined from time to time by the Trustees and, in the absence of such determination, will be those usually applicable to the office held.

8.11 Committees

Except as prohibited by law, the Trustees may appoint from their number a committee of Trustees and may delegate to the committee of Trustees such authority as the Trustees may in their sole discretion deem necessary or desirable to effect the administration of the duties of the Trustees under this Declaration of Trust, without regard to whether such authority is normally granted or delegated by trustees. A majority of the Trustees appointed to any committee shall be Resident Canadians and, with the exception of the Audit Committee, Independent Trustees. All Trustees appointed to the Audit Committee shall be Independent Trustees.

8.12 Committee Procedure

Unless otherwise determined by the Trustees, a quorum for meetings of any committee will be a majority of its members (provided that a majority of the Trustees comprising such quorum shall be Resident Canadians) and each committee will have the power to appoint its chair, and the rules for calling, holding, conducting, transacting business at and adjourning meetings of the committee will be the same as those governing the Trustees. Each member of a committee will serve during the pleasure of the Trustees and, in any event, only so long as he or she is 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 9
APPOINTMENT, RESIGNATION AND REMOVAL OF THE TRUSTEES

9.1 Qualification of Trustees

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

- (a) anyone who is less than 18 years of age;
- (b) anyone who is of unsound mind and has been so found by a court of competent jurisdiction in Canada or elsewhere;
- (c) a person who is not an individual;
- (d) a person, the nomination for whom as a trustee was not made in accordance with the provisions set out in Appendix A to this Declaration of Trust; or
- (e) a person who has the status of bankrupt.

9.2 Proposed Manager Trustees

(1) So long as the Management Agreement is in effect, prior to each annual meeting of Voting Unitholders and any special meeting of Voting Unitholders at which Trustees are to be elected and so long as the number of Trustees to be elected is at least five, the Manager shall be entitled to designate two individuals (the “**Proposed Manager Trustees**”) (which may include the reappointment of incumbent Trustees) to stand for election as Trustees at such meeting. The designation of the Proposed Manager Trustees shall be made by written notice (the “**Proposed Manager Trustee Notice**”) signed by an authorized signatory of the Manager to the Chair of the Trustees. The Manager shall ensure prior to the designation of a Proposed Manager Trustee that such individual is qualified to act as a Trustee pursuant to the requirements of the Declaration of Trust, and that the Proposed Manager Trustees, individually and collectively, meet all applicable legal and other requirements respecting the qualifications of individuals acting as Trustees, including, without limitation, with respect to residency, financial literacy and independence. Upon notification by the Trust that any Proposed Manager Trustee is not qualified to act as a Trustee, the Manager shall forthwith designate a substitute Trustee who is qualified to act as a Trustee. Notwithstanding anything else contained herein, if the Manager fails to provide the Proposed Manager Trustee Notice to the Chair within five business days after the Record Date of the meeting at which the Trustees will stand for election, the existing Trustees shall designate the Proposed Manager Trustees (which may include the reappointment of incumbent Trustees).

9.3 Election of Trustees

(1) The Trustees may, between annual meetings of Voting Unitholders, and subject to Section 8.1, appoint one or more additional Trustees to serve until the next annual meeting of Voting Unitholders, but the number of additional Trustees so appointed may not at any time exceed the greater of:

- (a) two Trustees at any time that there are five or more Trustees; and

- (b) one-third of the number of Trustees who held office at the expiration of the immediately preceding annual meeting of Voting Unitholders,

provided that (i) any Trustees appointed pursuant to this Section are Independent Trustees and (ii) the determination to increase the number of Trustees and the decision as to who to appoint as a Trustee is made solely by the then Independent Trustees, who are also the only Trustees eligible to vote on the matter.

(2) Except as otherwise provided herein, Trustees will be elected (including the re-election of incumbent Trustees) at each annual meeting of Voting Unitholders, and may be elected at a special meeting of Voting Unitholders, in each case to hold office, subject to Section 9.6, for a term expiring at the close of the next annual meeting of Voting Unitholders following such election. Any such election (other than by the Trustees as contemplated by Sections 9.3 and 9.8) will be made by Ordinary Resolution. Notwithstanding anything else contained herein, if no Trustees are elected at the annual meeting of Voting Unitholders held immediately before the term of office of the existing Trustees expires, such existing Trustees will continue to be Trustees under this Declaration of Trust until their successors have been appointed or they otherwise cease to be Trustees.

(3) Only persons who are nominated in accordance with the procedures set out in Appendix A to this Declaration of Trust shall be eligible for election as trustees of the Trust.

9.4 Consent to Act

(1) A person who is elected or appointed as a Trustee hereunder will not become a Trustee until such person has, either before or after such election or appointment, consented in writing to do so. Without limiting the form of such consent, the execution and delivery to the Trust of a consent substantially as follows will satisfy such requirement:

“To: Partners Real Estate Investment Trust (the “Trust”)

And to: The Trustees thereof

The undersigned hereby consents to act as a Trustee of the Trust and hereby agrees, upon the earlier of the date of this consent and the date of the undersigned’s appointment and/or election as a Trustee of the Trust, to become a party, as a Trustee, to the Declaration of Trust, as amended from time to time, constituting the Trust and to be bound by the obligations and liabilities of a Trustee thereunder.

Dated: _____

[Signature]

[Print Name]”

(2) Upon the later of a person being elected or appointed a Trustee hereunder and executing and delivering to the Trust a consent substantially as set forth in Section 9.4(1), such

person shall become a Trustee hereunder and shall be deemed to be a party (as a Trustee) to this Declaration of Trust, as amended and restated from time to time.

(3) The right, title and interest of the Trustees to control and exclusively administer the Trust and have title in and to the property of the Trust drawn up in their names and all other rights to the Trustees at law shall vest automatically in all individuals who may hereafter become Trustees upon their becoming a Trustee in accordance with the provisions of this Declaration of Trust without any further act, and they shall thereupon have all the rights, privileges, powers, authorities, obligations and immunities of Trustees hereunder, whether or not conveyancing documents have been executed and delivered pursuant to Section 9.6 or otherwise.

9.5 Failure to Elect Minimum Number of Trustees

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

9.6 Ceasing to Hold Office

(1) A Trustee ceases to hold office when:

- (a) he or she dies or resigns;
- (b) he or she is removed in accordance with Section 9.7; or
- (c) he or she ceases to be duly qualified to act as a Trustee as provided under Section 9.1.

(2) A resignation of a Trustee becomes effective at the time when a written resignation is received by the Trust, or at the time specified in the resignation, whichever is later.

(3) Upon the resignation or removal of any Trustee, or upon a Trustee otherwise ceasing to be a Trustee, the Trustee will cease to have the rights, privileges and powers of a Trustee hereunder and will cease to be a party (as a Trustee) to this Declaration of Trust; provided, however, that such Trustee will 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 10.9. Upon the resignation or removal of any Trustee, or upon a Trustee otherwise ceasing to be a Trustee, the Trustee shall execute and deliver such documents as the remaining Trustees may require for the conveyance of any Trust Assets 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 person in which the Trust owns any securities (directly or indirectly), and will thereupon be discharged as Trustee.

(4) Upon the incapacity or death of any Trustee, his or her legal representative shall execute and deliver on his or her behalf such documents as the remaining Trustees may require under Section 9.6(3). In the event that a Trustee or his or her 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 not 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 future which results in the termination of this power of attorney.

9.7 Removal of Trustees

The Voting Unitholders may remove any Trustee or Trustees from office by an Ordinary Resolution passed at a meeting of Voting Unitholders called for that purpose. A vacancy created by the removal of a Trustee may be filled at the meeting of Voting Unitholders at which the Trustee is removed or, if not so filled, may be filled as set forth in Section 9.8.

9.8 Filling Vacancies

No vacancy among the Trustees shall operate to annul this Declaration of Trust or affect the continuity of the Trust. Until vacancies are filled, the remaining Trustee or Trustees (even if less than a quorum) may exercise the powers of the Trustees hereunder. A quorum of Trustees may fill a vacancy among the Trustees, except (i) a vacancy resulting from an increase in the number of Trustees other than as provided in Section 9.3(1), or (ii) from a failure to elect the minimum number of Trustees fixed by this Declaration of Trust. If there is not a quorum of Trustees, or if there has been a failure to elect the minimum number of Trustees required by or pursuant to this Declaration of Trust, the Trustees then in office will promptly call a special meeting of Voting Unitholders to fill the vacancy and, if they fail to so call a meeting or if there are no Trustees then in office, such meeting may be called by any Voting Unitholder. A Trustee appointed to fill a vacancy holds office, subject to Sections 9.6 and 9.7, until the close of the next annual meeting of the Voting Unitholders.

9.9 Validity of Acts

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

ARTICLE 10 CONCERNING THE TRUSTEES

10.1 Powers of the Trustees

Subject to the specific limitations contained in this Declaration of Trust, the Trustees shall have, without further or other action or consent, and free from any power or control on the part of the Voting 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 legal and beneficial owners 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, the presumption shall be

in favour of the granted powers and authority to the Trustees. The enumeration of any specific power or authority herein (including pursuant to Section 10.2) shall not be construed as limiting the general power or authority or any other specified power or authority conferred herein on the Trustees. To the maximum extent permitted by law the Trustees shall, in carrying out investment activities, not be in any way restricted by the provisions of the laws of any jurisdiction limited or purporting to limit investments which may be made by trustees. Without limiting the generality of the foregoing, but subject to Sections 4.1, 4.2 and 10.2 and any other express limitations contained in this Declaration of Trust, the Trustees may make any investments without being required to adhere to all of or any particular portion of the investment criteria or diversification requirements set forth in the *Trustee Act* (Ontario), as amended from time to time, including investments in mutual funds, common trust funds, unit trusts and similar types of investment vehicles, to alter or vary such investments from time to time in a like manner, to retain such investments for such length of time as the Trustees, in their discretion, determine and to delegate management and authority to discretionary managers of investment funds as the Trustees in their discretion determine appropriate.

10.2 Specific Powers and Authorities

Subject only to the terms and conditions 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 Voting Unitholders, will have and may exercise at any time and from time to time any and all rights, powers and privileges that can be exercised by a legal and beneficial owner of the Trust Assets, including the following powers and authorities which may be exercised by the Trustees in such manner and upon such terms and conditions as they may from time to time deem proper:

- (a) to supervise the activities and manage the investments and affairs of the Trust;
- (b) to maintain records and provide reports to Voting Unitholders;
- (c) to determine the amount of Distributions and the Distribution Period;
- (d) to obtain security, including encumbrances on assets, to secure the full payment of monies owed to the Trust and the performance of all 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;
- (e) to establish places of business of the Trust;
- (f) to do all such acts and things as are necessary to ensure that the Trust qualifies as a “unit trust” and a “mutual fund trust” pursuant to paragraph 108(2)(a) and subsection 132(6) of the Tax Act and, to the extent reasonably practicable, to undertake any reorganization of the Trust and its assets so as to ensure the Trust is not considered a SIFT Trust;
- (g) in addition to the mandatory indemnification provided for in Section 2.8 and Section 10.9, 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, any depositary, registrar, transfer agent or escrow agent (including CDS and the Transfer Agent), to such extent as the Trustees shall determine and to the extent permitted by law;

- (h) to grant broad discretion to a third party, including the Manager, to administer and manage the day-to-day operations of the Trust and to make executive decisions which conform to the general guidelines, policies and principles set forth in this Declaration of Trust or otherwise established by the Trustees from time to time;
- (i) to arrange for insurance contracts and policies insuring the Trust and its subsidiaries, Trust Assets (whether held by the Trust or its subsidiaries), and/or any or all of the Trustees, officers of the Trust or the Voting Unitholders, including against any and all claims and liabilities of any nature asserted by any person arising by reason of any action alleged to have been taken or omitted by the Trust or by the Trustees, officers of the Trust or Voting Unitholders;
- (j) to approve the adoption of a Unitholders rights plan, if the Trustees determine in good faith that such action is appropriate, including to issue rights in connection with such a plan;
- (k) to negotiate, make, execute, acknowledge and deliver any and all deeds, instruments, contracts, waivers, releases or other documents necessary or useful for the accomplishment of any of the powers herein granted, the purpose of the Trust or its assets or affairs, including, without limitation, the administration of the Trust, and to perform all of the obligations of the Trust thereunder;
- (l) to purchase Units or Voting Units for cancellation in accordance with applicable regulatory requirements;
- (m) to retain, invest and re-invest the capital or other funds of the Trust in real or personal property of any kind, all without regard to whether any such properties are authorized by law for the investment of trust funds, and to possess and exercise all the rights, powers and privileges appertaining to the ownership of the property of the Trust and to increase the capital of the Trust at any time by the issuance of additional Units for such consideration as they deem appropriate;
- (n) for such consideration as they deem proper, to invest in, purchase or otherwise acquire for cash or other property or through the issuance of Units or through the issuance of notes, debentures, bonds or other obligations or securities of the Trust and hold for investment the entire or any participating interest in any mortgages. In connection with any such investment, purchase or acquisition, the Trustees shall have the power to acquire a share of rents, lease payments or other gross income from or a share of the profits from or a share in the equity or ownership of real property;
- (o) to sell, rent, lease, hire, exchange, release, partition, assign, mortgage, pledge, hypothecate, grant security interests in, encumber, negotiate, convey, transfer or otherwise dispose of any or all of the property of the Trust by deeds, trust deeds, assignments, bills of sale, transfers, leases, mortgages, financing statements, security

agreements and other instruments for any of such purposes executed and delivered for and on behalf of the Trust by one or more of the Trustees or by a duly authorized officer, employee, agent or any nominee of the Trust;

- (p) to enter into leases, contracts, obligations and other agreements for a term extending beyond the term of office of the Trustees and beyond the possible termination of the Trust or for a lesser term;
- (q) to borrow money from or incur indebtedness to any person; to guarantee, indemnify or act as surety with respect to payment or performance of obligations of third parties; to enter into other obligations on behalf of the Trust; and to assign, convey, transfer, mortgage, subordinate, pledge, grant security interests in, encumber or hypothecate the property of the Trust to secure any of the foregoing;
- (r) without limit as to amount, to issue any type of debt securities or convertible debt securities and to borrow money or incur any other form of indebtedness for the purpose of carrying out the purposes of the Trust or for other expenses incurred in connection with the Trust and for such purposes may draw, make, execute and issue promissory notes and other negotiable and non-negotiable instruments or securities and evidences of indebtedness, secure the payment of sums so borrowed or indebtedness incurred and mortgage, pledge, assign or grant a security interest in any money owing to the Trust or its property or engage in any other means of financing the Trust;
- (s) to lend money or other property of the Trust, whether secured or unsecured;
- (t) to incur and ratify or pay out of the property of the Trust any debts, claims, charges or expenses and disburse any funds of the Trust, which charges, expenses or disbursements are, in the opinion of the Trustees, necessary or incidental to or desirable for the carrying out of any of the purposes of the Trust or conducting the affairs of the Trust including, without limitation, taxes or other governmental levies, charges and assessments of whatever kind or nature, imposed upon or against the Trustees in connection with the Trust or the property of the Trust or upon or against the property of the Trust or any part thereof and for any of the purposes herein;
- (u) to deposit funds of the Trust in banks, trust companies and other depositories, whether or not such deposits will earn interest, the same to be subject to withdrawal on such terms and in such manner and by such person or persons (including, without limitation, any one or more Trustees, officers, agents or representatives) as the Trustees may determine;
- (v) to possess and exercise all the rights, powers and privileges appertaining to the ownership of or an interest in, all or any mortgages or securities, issued or created by any person, forming part of the assets of the Trust, to the same extent that an individual might 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 action generally or for any particular meeting or action and may include the exercise of discretionary power;

- (w) to exercise any conversion privilege, subscription right, warrant or other right or option available in connection with any property of the Trust at any time held by it and to make payments incidental thereto; to consent, or otherwise participate in or dissent from, the reorganization, consolidation, amalgamation, merger or readjustment of the finances of any person (other than the Trust), any of the securities of which may at any time be held by the Trust or to the sale, mortgage or lease of the property of any such person; and to do any act with reference thereto, including (without limitation) the delegation of discretionary powers, the exercise of options, the making of agreements or subscriptions and the payment of expenses, assessments or subscriptions which it may consider necessary or advisable in connection therewith;
- (x) to elect, appoint, engage or employ officers for the Trust (including, without limitation, the Chair of the Trustees, Chief Executive Officer, President, Chief Financial Officer, non-executive Secretary and such vice-presidents and other officers as the Trustees may determine), who may be removed or discharged at the discretion of the Trustees, such officers to have such powers and duties, and to serve such terms as may be prescribed by the Trustees or by the Trustees' Regulations (as defined below); to engage, appoint, employ or contract with any persons as agents, representatives, employees or independent contractors or otherwise (including, without limitation, real estate advisors, investment advisors, registrars, underwriters, accountants, lawyers, real estate agents, property managers, appraisers, brokers, architects, engineers, construction managers, general contractors or otherwise) in one or more capacities, and to pay compensation from the Trust for services in as many capacities as such persons may be so engaged or employed; and, except as prohibited by law, to delegate any of the powers and duties of the Trustees (including, without limitation, the power of delegation) to any one or more Trustees, agents, representatives, officers, employees, independent contractors or other persons (including, but not limited to, the Manager) without regard to whether such power, authority or duty is normally granted or delegated by Trustees;
- (y) to collect, sue for and receive sums of money coming due to the Trust, and to engage in, intervene in, prosecute, join, defend, compromise, abandon or adjust, by arbitration or otherwise, any actions, suits, proceedings, disputes, claims, demands or other litigation relating to the Trust, the assets of the Trust or the Trust's affairs, to enter into agreements therefore whether or not any suit is commenced or claim accrued or asserted and, in advance of any controversy, to enter into agreements regarding the arbitration, adjudication or settlement thereof;
- (z) to renew, modify, release, compromise, extend, consolidate or cancel, in whole or in part, any obligation to or of the Trust;
- (aa) to cause legal title to any of the assets of the Trust to be held by and/or in the name of the Trustees, or by and/or in the name of the Trust or one or more of the Trustees or any other 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 Trustees are interested therein; provided, however, that should legal title to any of the assets of the Trust be held by and/or in the name of any person or persons other than the Trust, the Trustees shall require such person or persons to execute a declaration of trust acknowledging that legal title to such assets is held in trust for the benefit of the Trust;

- (bb) to determine conclusively the allocation to capital, income or other appropriate accounts for all receipts, expenses, disbursements and property of the Trust;
- (cc) to prepare, sign and file or cause to be prepared, signed and filed any prospectus, offering memorandum or similar document, and any amendment thereto and all agreements contemplated therein or ancillary thereto or relating to or resulting from any offering of the Units or other securities issued or held by the Trust and to pay the cost thereof and related thereto out of the property of the Trust whether or not such offering is or was of direct benefit to the Trust or those persons (if any) who were Unitholders immediately prior to such offering;
- (dd) to make or cause to be made application for the listing on any stock exchange 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;
- (ee) to issue Units and other securities of the Trust for such consideration as the Trustees may deem appropriate in their sole discretion, such issuance to be subject to the terms and conditions of this Declaration of Trust;
- (ff) to implement an internal reorganization of the assets of the Trust and/or any of the Trust's subsidiaries (including, without limitation, forming additional trusts or limited partnerships to be subsidiaries of the Trust);
- (gg) to enter into arrangements regarding the development of raw land and/or construction of real estate assets with a third party (including, without limitation, arrangements with the Manager or its affiliates);
- (hh) in addition to the mandatory indemnification provided for in Section 10.9, 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, the Manager, the Transfer Agent or any escrow agent, to such extent as the Trustees shall determine;
- (ii) to determine conclusively the value of any or all of the property of the Trust from time to time and, in determining such value, to consider such information and advice as the Trustees, in their sole judgment, may deem material and reliable;
- (jj) to do all such acts and things and to exercise such powers as may be delegated to the Trustees by any person who co-owns real property with the Trust;
- (kk) to exercise from time to time any and all rights, powers and privileges in relation to all matters relating to the maximization of Unitholder value in the context of a

response to an offer for Units or for all or substantially all of the property and assets of the Trust or any subsidiary of the Trust pursuant to an Offer (as defined in Section 14.6) including (i) any Unitholder rights protection plan either prior to or during the course of any Offer; (ii) any defensive action either prior to or during the course of any Offer; (iii) the preparation of any “Directors Circular” in response to any Offer; (iv) consideration on behalf of Unitholders and recommendations to Unitholders in response to any Offer; (v) any regulatory or court action in respect of any related matters and (vi) the carriage or all related and ancillary matters; and

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

10.3 Further Powers of the Trustees

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

10.4 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) will be transacted with such banks, trust companies, or other firms or corporations carrying on a banking or similar business as the Trustees may designate, appoint or authorize from time to time, and will be transacted on the Trust’s behalf by one or more officers of the Trust, or the Manager as the Trustees may designate, appoint or authorize from time to time.

10.5 Standard of Care and Duties

The Trustees, in exercising the powers and authority conferred upon them hereunder, shall act honestly and in good faith with a view to the best interests of the Trust and shall exercise that degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. A Trustee will not be liable in carrying out his or her duties under this Declaration of Trust except in cases where the Trustee fails 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 to be any greater than, those imposed on a director of a corporation governed by the *Business Corporations Act* (Ontario). Unless otherwise required by law, the Trustees will not be required to give surety bond or security in any jurisdiction for the performance of any duties or obligations hereunder. The Trustees will not be required to devote their entire time to the investments, business or affairs of the Trust.

10.6 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 Voting Unitholders. All costs, charges and expenses properly incurred by the Trustees on behalf of the Trust will be payable out of the Trust Assets.

10.7 Determinations of Trustees Binding

All determinations of the Trustees that are made in good faith with respect to any matters relating to the Trust, including whether any particular investment or disposition meets the requirements of this Declaration of Trust, shall be final and conclusive and shall be binding upon the Trust and all Unitholders.

10.8 Limitations on Liability

(1) None of the Trustees nor any officers of the Trust or trustees, officers or directors (if any) of the Trust's subsidiaries will be liable to the Trust or any Unitholder, Special Voting Unitholder or former Unitholder or Special Voting Unitholder (in each case whether registered or beneficial) for: (a) any action taken in good faith in reliance on any documents that are, prima facie, properly executed; (b) for any depreciation of, or loss to, the Trust incurred by reason of the sale of any Trust Assets; (c) for the loss or disposition of monies or securities; (d) for any other action or failure to act including, without limitation, the failure to compel in any way any former or acting Trustee to redress any breach of trust or for any failure by the Trust's subsidiaries to perform obligations or pay monies owed to the Trust; except for a breach of the obligations in Section 10.5. 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 in good faith act or refuse to act based on the advice of such expert or advisor or professional person and, notwithstanding any provision of this Declaration of Trust, including, without limitation, the duty of care, diligence and skill set out in

Section 10.5, the Trustees will not be liable for any action or refusal to act in good faith based on the advice of any such expert or advisor or professional person where it is reasonable to conclude that such advice is within the expertise of such expert or advisor or professional person to give.

(2) The Trustees and officers of the Trust in incurring any debts, liabilities or obligations, or taking or omitting any other actions for or in connection with the affairs of the Trust are, and will conclusively be deemed to be, acting for and on behalf of the Trust, and not in their own personal capacities. None of the Trustees nor any officer of the Trust will be subject to any personal liability for any debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses (including legal expenses) against or with respect to the Trust or in respect to the affairs of the Trust. Other than the 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 and no recourse may be had or taken, directly or indirectly, against the Trustees in their personal capacity or against any successor, heir, executor, administrator or legal representative of the Trustees. The Trust will be solely liable therefor and resort will be had solely to the Trust Assets for payment or performance thereof.

10.9 Indemnification

(1) Subject to Section 10.9(2), in addition to and without limiting any other protection hereunder or otherwise provided by law of each person who is, or shall have been, a Trustee, an officer of the Trust, or a trustee, officer or director (if any) of the Trust's subsidiaries or an officer or director of the Manager (and their respective heirs and legal representatives) or any other person acting in a similar capacity (regardless of whether that person is employed by a subsidiary, the Manager or any other person) (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, at the request of the Trust, a trustee, officer or director (if any) of its subsidiaries 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. An Indemnified Person will not be entitled to satisfy any right of indemnity or reimbursement granted herein, or otherwise existing under law, except out of the Trust Assets, and no Unitholder, Special Voting Unitholder or other Trustee or officer will be personally liable to any person with respect to any claim for such indemnity or reimbursement.

(2) An Indemnified Person shall not be indemnified under Section 10.9(1) in respect of Damages, or unpaid taxes or other governmental charges that (i) arise out of or as a result or in the course of his or her failure to act honestly and in good faith with a view to the best interests of the Trust or its subsidiaries, or (ii) 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.

10.10 Contractual Obligations of the Trust

The Trustees shall use reasonable means where practicable to inform all persons having dealings with the Trust of the limitation of liability set forth in Section 10.8 and Section 2.8, and shall use reasonable means where practicable to cause to be inserted in any written agreement, undertaking or obligation made or issued on behalf of the Trust an appropriate statement of the disavowal and limitation of liability as set forth in Section 10.8 and Section 2.8, substantially in the following form:

“Each of the parties hereto acknowledges that the Trustees of the Trust are entering into this agreement solely in their capacity as Trustees of the Trust, and that the obligations or liabilities (including those arising hereunder or arising in connection herewith or from the matters to which this agreement relates, if any, including without limitation, claims based on negligence or otherwise tortious behaviour) of the trustees, managers, officers, consultants, agents or employees of the Trust hereunder will not be binding upon, nor will resort be had to the property of, any of the holders of units of the Trust or any annuitant under a plan of which a holder of units is a trustee or carrier (an “annuitant”). The obligations or liabilities, if any, of the trustees, managers, officers or employees of the Trust hereunder shall be satisfied only out of the property of the Trust and no resort may be had to the property of any trustee, manager, officer or employee of the Trust. The provisions of this paragraph shall enure to the benefit of the heirs, successors, assigns and personal representatives of the trustees, managers, officers or employees of the Trust and of the holders of units and annuitants and, to the extent necessary to provide effective enforcement of such provisions, the trustees of the Trust are hereby acknowledged to be acting, and shall be entitled to act as, trustees for the holders of units and annuitants.”

The omission of such statement from any such instrument will not render any Trustee, any Unitholder, Special Voting Unitholder or manager, officer, consultant, agent or employee of the Trust liable to any person, nor will any Trustee or any Unitholder, Special Voting Unitholder or any manager, officer, consultant, agent or employee of the Trust be liable to any person for such omission. If, notwithstanding this provision, any Trustee, Unitholder, Special Voting Unitholder or any manager, officer, consultant, agent or employee 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, Special Voting Unitholder or manager, officer, consultant, agent or employee 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.

10.11 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.

- (1) The disclosure required in the case of a Trustee or officer shall be made:
 - (a) at the meeting of Trustees, as the case may be, at which a proposed contract or transaction is first considered;
 - (b) 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;
 - (c) 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
 - (d) 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.

(2) Notwithstanding paragraph (1), where this Section applies to any person in respect of a material contract or transaction or proposed material contract or transaction that, in the ordinary course of the business of the Trust, would not require approval by the Trustees or Voting 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 or her interest forthwith after that person becomes aware of the contract or transaction or proposed contract or transaction.

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

- (a) one relating primarily to his or her remuneration as a Trustee, officer, employee or agent of the Trust or its subsidiaries; or
- (b) one for indemnity under Section 10.9 or for the purchase of liability insurance.

(4) 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 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.

(5) 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:

- (a) 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
- (b) the contract or transaction is neither void nor voidable;

by reason only of that relationship or by reason only that the Trustee is present at or is counted to determine the presence of a quorum at the meeting of Trustees or committee of Trustees that authorized the contract or transaction, if the Trustee disclosed his interest in accordance with this

Section and the contract or transaction was reasonable and fair to the Trust at the time it was so approved.

(6) Notwithstanding anything in this Section, but without limiting the effect of paragraph (5), 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 his 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:

- (a) the contract or transaction is confirmed or approved at a meeting of Voting Unitholders duly called for that purpose; and
- (b) 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 the Declaration of Trust or by law.

(7) Subject to paragraphs (5) and (6) of this Section, where any Trustee or officer of the Trust fails to disclose his interest in a material contract or transaction in accordance with this Declaration of Trust or otherwise fails to comply with this Section, the Trustees or any Unitholder, in addition to exercising any other rights or remedies in connection with such failure exercisable at law or in equity, may apply to a court for an order setting aside the contract or transaction and directing that the Trustee or officer account to the Trust for any profit or gain realized.

10.12 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's property to commence or continue such act, action, suit or proceeding or to represent the Trust in any action, suit or proceeding and an indemnity reasonably satisfactory to the Trustees to protect and hold harmless the Trustees against the costs, charges and expenses and liabilities to be incurred therein and any loss and damage they 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 they are given an indemnity and funding satisfactory to the Trustees, acting reasonably.

10.13 Execution of Instruments and Apparent Authority

(1) The Trustees will have the power, from time to time, to appoint any Trustee or Trustees, any officer or officers of the Trust or any other person or persons on behalf of the Trust (including, without limitation, the Manager) either to sign agreements, instruments or other documents in writing and to do such acts and agree to such things, on behalf of the Trust, as may be necessary or desirable in connection therewith.

(2) 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 the Units or Special Voting Units,

will be entitled to rely on a certificate, statutory declaration or resolution executed or certified by a Trustee as to the capacity, power and authority of the Trustees, an officer, employee, consultant or agent of the Trust or any other person to act for and on behalf of and in the name of the Trust. No person dealing with a Trustee or any officer, employee, consultant or agent of the Trust will be bound to see to the application of any funds or property passing into the hands or control of such Trustee, officer, employee, consultant or agent of the Trust. The receipt of a Trustee or of authorized officers, employees, consultants or agents of the Trust, for moneys or other consideration, will be binding upon the Trust.

10.14 Declarations as to Beneficial Owner

The Trustees may require any Unitholder or holder of Special Voting Units as shown on the register of Unitholders or Special Voting Unitholder, as applicable, to provide a declaration, in form prescribed by the Trustees, as to the beneficial owner of Units or Exchangeable Securities registered in such Unitholder's or Special Voting Unitholder's name, as applicable, and as to the jurisdiction in which such beneficial owner is resident.

ARTICLE 11 AMENDMENT

11.1 Amendment

Subject to Section 11.2, the provisions of this Declaration of Trust, except where specifically provided otherwise, may only be amended by an Ordinary Resolution at a meeting of Voting Unitholders duly called for that purpose; provided that the provisions of this Declaration of Trust may be amended by the Trustees without the consent, approval or ratification of the Unitholders or any other person:

- (a) at any time and in any manner prior to the Closing; or
- (b) after the Closing for the purpose of:
 - (i) ensuring continuing compliance with applicable laws (including the Tax Act and maintaining the Trust's status as a "mutual fund trust" under the Tax Act), regulations, requirements or policies of any governmental or other authority having jurisdiction over the Trustees, the Trust or over the distribution of Units and, to the extent reasonably practicable, ensuring that the Trust will not be a SIFT for the purposes of the SIFT Proposals or any final legislation implementing the SIFT Proposals;
 - (ii) providing additional protection or added benefits, in the opinion of the Trustees, for the Voting Unitholders;
 - (iii) removing any conflicts or inconsistencies in this Declaration of Trust or making corrections including the rectification of any ambiguities, defective provisions, errors, mistakes or omissions which are, in the opinion of the Trustees, necessary or desirable and not prejudicial to the Voting Unitholders;

- (iv) making amendments which, in the opinion of the Trustees, are necessary or desirable to remove conflicts or inconsistencies between the disclosure in the Information Circular and this Declaration of Trust;
 - (v) making amendments of a minor or clerical nature or to correct typographical mistakes, ambiguities or manifest omissions or errors, which amendments, in the opinion of the Trustees, are necessary or desirable and not prejudicial to the Voting Unitholders;
 - (vi) making amendments which, in the opinion of the Trustees, are necessary or desirable as a result of changes in GAAP (including accounting guidelines) or taxation or other laws or the administration or enforcement thereof; or
 - (vii) making amendments which, in the opinion of the Trustees, are necessary or desirable to enable the Trust to issue Units for which the purchase price is payable on an instalment basis; or
- (c) for any purpose (except one in respect of which the approval or consent of Voting Unitholders is specifically otherwise required) if the Trustees are of the opinion that the amendment is not prejudicial to Voting Unitholders and is necessary or desirable (including, without limitation, in connection with a reorganization contemplated by Section 11.4), but notwithstanding the foregoing, no such amendment shall modify the right to vote attached to any Unit or Special Voting Unit or the entitlement to distributions from the Trust provided hereunder (including those provided for in Article 5 and Article 14) represented by any Unit without the consent of the Unitholders pursuant to a Special Resolution and no such amendment shall reduce the percentage of votes required to be cast at a meeting of the Voting Unitholders for the purpose of this Section 11.1 without the consent of the Voting Unitholders pursuant to a Special Resolution or cause the Trust to fail or cease to qualify as a “mutual fund trust” under the Tax Act.

11.2 Special Resolution

Notwithstanding Section 11.1, at all times the following actions or amendments to the Declaration of Trust require approval by Special Resolution at a meeting of Unitholders or Voting Unitholders, as applicable, duly called for that purpose:

- (a) any combination, merger, amalgamation or arrangement of the Trust or any of the Trust’s subsidiaries;
- (b) any amendment to the provisions of Section 4.1 or to the provisions of Section 4.2(b), provided that the remaining provisions of Section 4.2 may be amended by Ordinary Resolution;
- (c) an exchange, reclassification or cancellation of all or part of the Units or Special Voting Units;

- (d) the addition, change or removal of the rights, privileges, restrictions or conditions attached to the Units or Special Voting Units and, including, without limiting the generality of the foregoing:
 - (i) the removal or change of rights to distributions;
 - (ii) the addition or removal of or change to conversion privileges, options, voting, transfer or pre-emptive rights; or
 - (iii) the reduction or removal of a distribution preference or liquidation preference; or
- (e) the constraint on the issue, transfer or ownership of Units or Special Voting Units or the change or removal of such constraint, except as otherwise provided herein.

11.3 Variation of Rights

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

11.4 Internal Restructuring

Notwithstanding anything to the contrary herein contained, if at any time the Trustees so resolve to implement an internal reorganization of the assets of the Trust and/or any of the Trust's subsidiaries (including, without limitation, forming additional trusts or limited partnerships to be subsidiaries of the Trust), any such resolution or reorganization shall not require the prior approval of Voting Unitholders.

11.5 No Termination

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

ARTICLE 12 MEETINGS OF VOTING UNITHOLDERS

12.1 Annual and Special Meetings of Voting Unitholders

(1) There shall be an annual meeting of the Voting Unitholders. Each annual meeting of the Voting Unitholders shall be called, commencing in 2008, on a day on or before June 30 in each year or on such other day as determined by the Trustees subject to the receipt of all necessary regulatory approvals, at a time and at a place in Canada set by the Trustees. The business transacted at such meeting shall include:

- (a) the presentation of the audited financial statements of the Trust for the immediately preceding fiscal year;

- (b) the appointment of the Trustees for the ensuing year in accordance with Article 9;
- (c) the appointment of Auditors; and
- (d) the transaction of such other business as Voting Unitholders may be entitled to vote upon as herein provided or as may be properly brought before the meeting or as the Trustees may determine.

(2) Special meetings of the Voting Unitholders may be called at any time by the Trustees.

(3) Voting Unitholders holding in the aggregate not less than 10% of all votes entitled to be voted at a meeting of Voting Unitholders may requisition the Trustees to call a special meeting of Voting Unitholders for the purposes stated in the requisition. The requisition shall (A) be in writing, (B) set forth the name and address of, and number of Units and Exchangeable Securities (and votes attached thereto which, in the aggregate, shall not be less than 10% of all votes entitled to be voted at a meeting of Unitholders) held by, each person who is supporting the requisition, and (C) shall state in reasonable detail the business to be transacted at the meeting and shall be sent to the Trustees. Upon receiving a requisition complying with the foregoing, 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 Voting Unitholders has been fixed;
- (b) the Trustees have called a meeting of Unitholders and have given notice thereof pursuant to Section 12.2; or
- (c) in connection with the business as stated in the requisition:
 - (i) the matter is not submitted to the Trust at least 60 days before the anniversary date of the last annual meeting, if the matter is proposed to be raised at an annual meeting, or at least 60 days before a special meeting other than an annual meeting, if the matter is proposed to be raised at a meeting other than the annual meeting;
 - (ii) it appears that a matter covered by the requisition is submitted by the Voting Unitholder primarily for the purpose of enforcing a personal claim or redressing a personal grievance against the Trust or its subsidiaries, the Trustees, the Manager, the Voting Unitholders, officers or employees of the Trust and/or the Manager, or one or more of the Trust's subsidiaries, or primarily for the purpose of promoting general economic, political, religious, social or similar causes or primarily for a purpose that does not relate in a significant way to the business or affairs of the Trust;
 - (iii) the Trust, at the request of one or more Voting Unitholders, had previously included a matter substantially the same as a matter covered by the requisition in an information circular relating to a meeting of Voting Unitholders held within 30 months preceding the receipt of such requisition and such Voting Unitholders failed to present the matter, in person or by proxy, at the meeting;

- (iv) substantially the same matter covered by the requisition was submitted to Voting Unitholders in an information circular relating to a meeting of Voting Unitholders held within 30 months preceding the receipt of such requisition and the matter covered by the requisition was defeated; or
- (v) the rights conferred by this Section 12.1(3) are being abused to secure publicity.

(4) If the Trustees do not, within 21 days after receiving the requisition, call a meeting (except where the grounds for not calling the meeting are one or more of those set forth in subsection 12.1(3) above), any Unitholder who signed the requisition may call the meeting in accordance with the provisions of Article 12, *mutatis mutandis*.

(5) The chair of any annual or special meeting shall be the Chair of the Trustees or any other Trustee specified by resolution of the Trustees or, in the absence of any Trustee, any person appointed as chair of the meeting by the Voting Unitholders present.

(6) The Trustees, the officers of the Trust, the Auditors, Counsel and any other person(s), whose presence at the meeting is approved by (i) the Trustees, (ii) the chair of the meeting, or (iii) by Ordinary Resolution proposed at the meeting, may attend meetings of the Voting Unitholders.

(7) Any person entitled to attend a meeting of Voting Unitholders may participate in the meeting, subject to and in accordance with applicable securities laws, if any, by means of a telephonic, electronic or other communication facility that permits all participants to communicate adequately with each other during the meeting, if the Trust makes available such a communication facility. A person participating in a meeting by such means is deemed for the purposes of this Declaration of Trust to be present at the meeting.

(8) If the Trustees call a meeting of Voting Unitholders pursuant to this Declaration of Trust, the Trustees may determine that the meeting shall be held, subject to and in accordance with applicable securities laws, if any, entirely by means of a telephonic, electronic or other communication facility that permits all participants to communicate adequately with each other during the meeting.

12.2 Notice of Meetings

Notice of all meetings of Voting Unitholders will be given by unregistered mail, postage prepaid, addressed to each Voting Unitholder at his or her last address on the Register of the Trust, mailed at least 21 days and not more than 60 days before the meeting. Such notice will specify the time and place of such meeting and will specify the nature of the business to be transacted at such meeting in sufficient detail to permit a Voting Unitholder to form a reasoned judgment thereon, together with the text of any Special Resolution, at the time of mailing of the notice, proposed to be passed at such meeting. Any adjourned meeting may be held as adjourned without further notice. The accidental omission to give notice or the non-receipt of such notice by a Voting Unitholder will not invalidate any resolution passed at any such meeting. Notwithstanding the foregoing, a meeting of Voting Unitholders may be held at any time without notice if all the Voting Unitholders are present or represented thereat or those not so present or represented have waived notice. Any Voting Unitholder (or a duly appointed proxy of a Voting 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, will cure any default in the giving of such notice.

12.3 Quorum

At any meeting of the Voting Unitholders, a quorum will consist of two or more persons present in person either holding personally or representing as proxies in the aggregate at least 10% of the votes attached to all outstanding Voting Units. In the event of such quorum not being present at the appointed place on the date for which the meeting is called within 30 minutes after the time fixed for the holding of such meeting, the meeting, if called by request of Voting Unitholders other than pursuant to Section 9.8, will be terminated (and not adjourned) and, if otherwise called, will stand adjourned to a day not less than 7 days later and to such place and time as may be appointed by the chairperson of the meeting. If at such adjourned meeting a quorum as above defined is not present, the Voting Unitholders present either personally or by proxy will be deemed to form a quorum, and any business may be brought before or dealt with at such an adjourned meeting that might have been brought before or dealt with at the original meeting in accordance with the notice calling the same.

12.4 Voting Rights

Only Voting Unitholders of record will be entitled to vote. Each Unit will entitle the holder or holders of that Unit to one vote on a ballot vote at any meeting of Voting Unitholders. Each Special Voting Unit will entitle the holder or holders thereof to that number of votes on a ballot vote at any meeting of Voting Unitholders that is equal to the number of Units into which the Exchangeable Security to which such Special Voting Unit is attached is, directly or indirectly, exchangeable or convertible. Voting will, unless a ballot vote is demanded, be by a show of hands. A Voting Unitholder or proxy holder may demand a ballot vote either before or after any vote by show of hands. At any meeting of Voting Unitholders, any holder of Voting Units entitled to vote at such meeting may vote by proxy and a proxy holder need not be a Voting Unitholder, provided that, unless otherwise determined by the Trustees, no proxy will be voted at any meeting unless it has been received by the Transfer Agent (or if none, the Trust) for verification at least 48 hours prior to the commencement of such meeting. When any Voting 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 Voting Unit, but if more than one of them is present at such meeting in person or by proxy they shall vote as one with respect to the Voting Units jointly held by them. Notwithstanding the foregoing, the Trustees may establish rules for voting at a meeting of Voting Unitholders to be carried out by means of telephone, electronic or other communication facility.

12.5 Resolutions Binding the Trustees

Voting Unitholders will be entitled to pass resolutions that will bind the Trust or the Trustees only with respect to the following matters:

- (a) the election or removal of Trustees;
- (b) the appointment or removal of Auditors;
- (c) amendments to the Declaration of Trust (as provided in Article 11);
- (d) the termination of the Trust as provided in Article 15;

- (e) the actions set out in Section 11.2; and
- (f) such other business as the Trustees may determine or as may properly be brought before the Voting Unitholders, including without limitation, any other matters required by securities law, stock exchange rules or other laws or regulations to be submitted to Voting Unitholders for their approval.

Except with respect to the matters set out in this Section 12.5, no action taken by the Voting Unitholders or any resolution of the Voting Unitholders at any meeting will in any way bind the Trust or the Trustees. Any action taken or resolution passed in respect of any matter at a meeting of Voting Unitholders will be by Special Resolution, except for the matters set out in subsections 12.5(a), 12.5(b) and 12.5(c) above, which matters may be dealt with by Ordinary Resolution unless the contrary is otherwise expressly provided under any specific provision of this Declaration of Trust.

12.6 Meaning of “Special Resolution”

(1) The expression “**Special Resolution**” when used in this Declaration of Trust means, subject to this Article 12, a resolution proposed to be passed as a special resolution at a meeting of Voting Unitholders (including an adjourned meeting) duly convened for that purpose and held in accordance with the provisions of this Section at which a quorum is present and passed by the affirmative votes of the holders of at least two-thirds of the Voting Units represented at the meeting and voted on a poll upon such resolution, or approved in writing by the holders of not less than two-thirds of the Voting Units entitled to vote on such resolution.

(2) For the purpose of a separate class vote by the holders of Units or Special Voting Units as a class as provided herein, the expression “Special Resolution” means a resolution proposed to be passed at a separate meeting of holders of Units or Special Voting Units, as the case may be, at which meeting the provisions of this Article 12 shall apply *mutatis mutandis*.

(3) Notwithstanding Section 12.3, if at any meeting at which a Special Resolution is proposed to be passed, the holders of 10% of the aggregate number of votes attached to Voting Units outstanding are not present in person or by proxy within 30 minutes after the time appointed for the meeting, then the meeting, if convened by or on the requisition of Voting Unitholders, shall be terminated (and not adjourned); but in any other case it shall stand adjourned to such date, being not less than 21 nor more than 60 days later and to such place and time as may be appointed by the chair of the meeting. Not less than 10 days prior notice shall be given of the time and place of such adjourned meeting in the manner provided in Section 12.2. Such notice shall state that at the adjourned meeting the Voting Unitholders present in person or by proxy shall form a quorum, but it shall not be necessary to set forth the purposes for which the meeting was originally called or any other particulars. At the adjourned meeting, the Voting Unitholders present in person or by proxy shall form a quorum and may transact the business for which the meeting was originally convened and a resolution proposed at such adjourned meeting and passed by the requisite vote as provided in Sections 12.6(1) or 12.6(2) shall be a Special Resolution within the meaning of this Declaration of Trust, notwithstanding that the holders of less than 10% of the aggregate number of votes attached to Voting Units then outstanding are present in person or by proxy at such adjourned meeting.

12.7 Meaning of “Outstanding”

Every Voting Unit issued, certified and delivered hereunder will be deemed to be outstanding until it is cancelled or delivered to the Trustees or Transfer Agent for cancellation, provided that:

- (a) when a new certificate has been issued in substitution for a Unit Certificate that has been lost, stolen, mutilated or destroyed, only the later of such Unit Certificates will be counted for the purposes of determining the number of Voting Units outstanding;
- (b) for the purpose of any provision of this Declaration of Trust entitling holders of outstanding Voting Units to vote, sign consents, requisitions or other instruments or take any action under this Declaration of Trust, Voting Units owned directly or indirectly, legally or equitably, by the Trust, or any subsidiary thereof will be disregarded, except that:
 - (i) for the purpose of determining whether the Trustees will be protected in relying on any such vote, consent, requisition or other instrument or action, only the Voting Units that the Trustees know are so owned will be so disregarded; and
 - (ii) Voting Units so owned that have been pledged in good faith other than to the Trust or a subsidiary thereof will not be so disregarded if the pledgee establishes to the satisfaction of the Trustees the pledgee’s right to vote such Voting Units in his or her discretion free from the control of the Trust or any subsidiary thereof; and
- (c) for the purposes of Section 12.7(b), any Trustee, any officer of the Trust or the Transfer Agent will provide a certificate that will state the number of Voting Units and the certificate numbers of certificates, if certificates are issued, held by the Trust or any subsidiary thereof. The Trustees will be entitled to rely on such certificate in order to disregard the votes of any of the parties mentioned above.

12.8 Record Date for Voting

For the purpose of determining the Voting Unitholders who are entitled to receive notice of and vote or act at any meeting or any adjournment thereof or for the purpose of any other action, the Trustees may fix a date as a record date for the determination of Voting Unitholders entitled to receive notice of and/or to vote at such meeting or any adjournment thereof or to be treated as Voting Unitholders of record for purposes of such other action, and any Voting Unitholder who was a Voting Unitholder at the time so fixed will be entitled to receive notice of and vote at such meeting or any adjournment thereof or to be treated as a Voting Unitholder for purposes of such other action even though the Voting Unitholder has since that time disposed of his or her Voting Units, and no Voting Unitholder becoming such after that time will be so entitled to vote at such meeting or any adjournment thereof or to be treated as Voting Unitholders for purposes of such other action. In the event that the Trustees do not fix a record date for any meeting of Voting Unitholders, the record date for receiving notice of and voting at such meeting will be the date upon which notice of the meeting is given as provided under Section 12.2. This Section 12.8 is subject to Section 6.2(3).

12.9 Proxies

(1) Whenever the vote or consent of Voting Unitholders is required or permitted under this Declaration of Trust, such vote or consent may be given either directly by the Voting Unitholder or by a proxy. The instrument appointing a proxy shall 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 chair of the meeting at which it is sought to be exercised. The instrument of proxy shall be executed by the Voting Unitholder giving the proxy or his or her agent duly authorized in writing and, if given on behalf of joint holders, shall be executed by all of them and may be revoked by any of them, and, if given by a Voting Unitholder which is a body corporate, shall 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 Voting Unitholder. The Trustees, on behalf of the Trust, may solicit instruments of proxy from the Voting Unitholders or any of them in respect of any matter requiring or permitting the Voting Unitholders' vote or consent. An instrument of proxy shall be deposited with the chair 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.

(2) 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 chair of the meeting at which the instrument is proposed to be used, that the instrument of proxy is invalid. Any decision of the chair 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.

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

12.10 Personal Representatives

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

12.11 Conduct of Meetings

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

12.12 Binding Effect of Resolutions

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

12.13 Resolution in Writing

Notwithstanding any other provision of this Declaration of Trust, a resolution in writing circulated to all Voting Unitholders not less than 10 days prior to its effective date and executed by Voting Unitholders holding more than 50% of the outstanding Voting Units entitled to be voted on such resolution, if such resolution is an Ordinary Resolution, or a resolution in writing circulated to all Voting Unitholders and executed by Voting Unitholders holding more than two-thirds of the outstanding Voting Units entitled to be voted on such resolution, if such resolution is a Special Resolution, will be as valid and binding for all purposes of this Declaration of Trust as if such Voting Unitholders had exercised at that time all of the voting rights to which they were then entitled under Section 12.4 or Section 12.6 in favour of such resolution at a meeting of Voting Unitholders duly called for the purpose.

ARTICLE 13

CERTIFICATES AND REGISTRATION OF UNITS AND SPECIAL VOTING UNITS

13.1 Nature and Evidence of Voting Units

(1) The provisions of this Article 13 shall not in any way alter the nature of the Units or the Special Voting Units or the relationship of a Voting Unitholder to the Trustees and of one Voting Unitholder to another but are intended only to facilitate the issuance of certificates, if desirable to issue them to Unitholders, evidencing the ownership of Units and the recording of all transactions in respect of Units, Special Voting Units and Unit Certificates whether by the Trust, securities dealers, stock exchanges, transfer agents, registrars or other persons.

(2) At the option of the Trustees, one or more Global Unit Certificates (each a “**Global Unit Certificate**”) may be issued in the name of and deposited by the Transfer Agent with, or on behalf of, CDS or a successor (collectively, the “**Depository**”) as custodian of such Global Unit Certificate and registered by the Transfer Agent in the name of the Depository or its nominee. No beneficial holder of Units represented in part by a Global Unit Certificate will be entitled to a certificate or other instrument from the Trust or the Depository evidencing that beneficial holder’s ownership thereof except in the circumstances where the Depository resigns or is removed from its responsibilities as depository and the Trust is unable or does not wish to locate a qualified successor. Beneficial interests in a Global Unit Certificate will be represented only through the Book-Entry System. Transfers of Units between CDS Participants shall occur in accordance with the Depository’s rules and procedures.

(3) All references herein to actions by, notices given or payments made to Voting Unitholders shall, where such Units are held through the Depository, refer to actions taken by, or notices given or payments made to, the Depository upon instruction from the CDS Participants in accordance with the Depository’s rules and procedures. For the purposes of any provision hereof

requiring or permitting actions with the consent of or at the direction of Voting Unitholders evidencing a specified percentage of the aggregate Voting Units outstanding, such direction or consent may be given by Voting Unitholders acting through the Depository and the CDS Participants owning Units evidencing the requisite percentage of the Voting Units. The rights of a Voting Unitholder whose Voting Units are held through the Depository shall be exercised only through the Depository and the CDS Participants and shall be limited to those established by law and agreements between such Voting Unitholders and the Depository and/or the CDS Participants or upon instruction from the CDS Participants. Each of the Transfer Agent and the Trustees may deal with the Depository for all purposes (including the making of payments) as the authorized representative of the respective Unitholders and such dealing with the Depository shall constitute satisfaction or performance, as applicable, towards their respective obligations hereunder, subject to the voting rights of the holders of record of Special Voting Units.

(4) If any notice or other communication is required to be given to holders of Voting Units held through the Depository, the Trustees and the Transfer Agent shall give all such notices and communications to the Depository. If any notice or other communication is required to be given to direct holders of Voting Units, the Trustees and the Transfer Agent shall deliver all such notices and communications to the registered owners of such Voting Units.

(5) If: (i) the Trust determines that the Depository 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; (ii) the Trust at its option elects, or is required by law, to terminate the Book-Entry System with respect to the Units; or (iii) Voting Unitholders determine by Special Resolution that the continuation of the Book-Entry System with respect to the Units is no longer in the best interest of the Unitholders, then the Depository shall surrender the Global Unit Certificate to the Transfer Agent with instructions from the Depository for registration of Units in the name and in the amounts specified by the Depository and the Trust shall issue and the Trustees and Transfer Agent shall execute and deliver the aggregate number of Units then outstanding in the form of definitive Unit Certificates representing such Units.

13.2 Liability

The Trust, the Trustees and the Transfer Agent will 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 with respect to the rules and regulations of CDS or any action taken or not taken by CDS or the CDS Participants.

13.3 Unit Certificates

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

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

- (3) The definitive form of the Unit Certificates will:
 - (a) be in the English language;
 - (b) be dated as of the date of issue thereof,
 - (c) contain the CUSIP number (if any) for the Units; and
 - (d) contain such distinguishing letters and numbers as the Trustees shall prescribe.

(4) In the event that the form of Unit Certificate is translated into the French language and any provision of Unit Certificates in the French language is 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.

(5) Each Unit Certificate shall be signed on behalf of the Trustees (including by their attorney appointed under Section 17.11) and the Transfer Agent of such Units. The signature on behalf of the Trustees required to appear on such certificate may be printed, lithographed or otherwise mechanically reproduced thereon and, in such event, certificates so signed are as valid as if they had been signed manually.

13.4 Contents of Unit Certificates

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

- (a) the name of the Trust and the words “A trust established under the laws of the Province of Ontario by a Declaration of Trust dated March 27, 2007, as further amended or amended and restated” or words of like effect;
- (b) the name of the person to whom the Unit Certificate is issued as Unitholder;
- (c) the number and class of Units represented thereby, and that the Units represented thereby are fully paid;
- (d) that the Units represented thereby are transferable;
- (e) the words “The Units represented by this certificate are issued upon the terms and subject to the conditions of the Declaration of Trust, which Declaration of Trust is binding upon all holders of Units and, by acceptance of this certificate, the holder assents to the terms and conditions of the Declaration of Trust. A copy of the Declaration of Trust pursuant to which this certificate and the Units represented hereby 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.
- (f) “For information as to personal liability of a Unitholder, see the reverse side of this certificate” or words of like effect.

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

- (a) “The Declaration of Trust provides that no Unitholder will 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
- (b) appropriate forms of notice of exercise of the right of redemption and of powers of attorney for transferring Units (which may request the jurisdiction of residence of the beneficial transferees).

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

13.5 Register of Unitholders and Special Voting Unitholders

A register of holders of Units and Special Voting Units (the “**Register**”) will be kept on behalf of the Trust and will contain the names and addresses of the holders of Units and Special Voting Units, the respective numbers and classes of Units and Special Voting Units held by them, the certificate numbers of certificates, if any, representing such Units and Special Voting Units, and a record of all transfers and redemptions thereof. Registers will be maintained at such office or offices of the Transfer Agent as the Trustees may from time to time designate. Only Unitholders and Special Voting Unitholders whose Units and Special Voting Units are so recorded on the Register will be entitled to receive distributions, if applicable, or to exercise or enjoy the rights of Unitholders and Special Voting Unitholders hereunder. The Trustees will have the right to treat the person registered as a Unitholder or Special Voting Unitholder on the Register as the owner of such Units or Special Voting Units for all purposes, including, without limitation, payment of any distribution, if applicable, giving notice to Unitholders and Special Voting Unitholders and determining the right to attend and vote at meetings of Voting Unitholders. The Trustees will not be bound to recognize any transfer or attempted transfer, pledge or other disposition of a Unit or Special Voting Unit, or any equitable or other claim with respect thereto, whether or not the Trustees have actual or other notice thereof, until such Unit(s) or Special Voting Units have been transferred on the Register as herein provided. Notwithstanding the foregoing, in the event Units are issued in the Book-Entry System, the provisions of Section 13.1(2) and Section 13.1(3) shall apply in respect of such Units.

13.6 Transfer Agents and Registrars

The Trustees will enter into a registrar and transfer agency agreement with the Transfer Agent according to which the Transfer Agent will agree to act as transfer agent and registrar for the Units and the Special Voting Units, and the Trustees may provide for the transfer of Units and Special Voting 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 will 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 the Special Voting Units, and will to the extent practicable monitor the jurisdiction of residence of the beneficial owners of Units and Special Voting Units as set out in Section 14.1. In the event that the agreement with the Transfer Agent is terminated in accordance with its terms, the Trustee 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 or Special Voting 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 will 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 will have no liability for any actions of the Transfer Agent and the Trustees, in relying in good faith upon the Transfer Agent, will be deemed to have complied with their obligations under Section 10.5.

13.7 Lost Certificates

In the event that any certificate for Units is lost, stolen, destroyed or mutilated, the Trustees may authorize the issuance of a new certificate for the same number of Units in lieu thereof. The Trustees 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 may deem necessary, to surrender any mutilated certificate and shall require the applicant to supply to the Trust a “lost certificate bond” or a similar bond in such reasonable sum as the Trustees or the Transfer Agent may direct indemnifying the Trust for so doing.

ARTICLE 14 OWNERSHIP AND TRANSFER OF UNITS AND SPECIAL VOTING UNITS

14.1 Limitation of Non-Resident Ownership

(1) It is hereby acknowledged that it is in the best interest of Unitholders that the Trust always qualify as a “mutual fund trust” under the Tax Act. Accordingly:

- (a) in order to ensure that the Trust continues to qualify as a “mutual fund trust”:
 - (i) the Trust shall not be maintained primarily for the benefit of Non residents and it shall be the responsibility of the Trustees to monitor the holdings by Non residents;
 - (ii) notwithstanding any delegation of the powers of the Trustees to another person, the Trustees shall and shall be entitled to take all such steps as are necessary or desirable to ensure that the Trust is not maintained primarily for the benefit of Non residents;
- (b) the Trustees may, at any time and from time to time, make reasonable efforts, as practicable in the circumstances, to obtain declarations as to beneficial ownership under Section 10.14, perform residency searches of holders of securities of the Trust and beneficial holder mailing address lists and take such other steps specified by the

Trustees, at the cost of the Trust, to determine or estimate in the circumstances the residence of the beneficial owners of securities of the Trust;

- (c) if at any time the Trustees, in their sole discretion, determine that it is in the best interest of the Trust, the Trustees, may:
- (i) require the Trust to refuse to accept a subscription for securities of the Trust from, or issue or register a transfer of securities of the Trust to, a person unless the person provides a declaration to the Trustees pursuant to Section 10.14 that the securities of the Trust to be issued or transferred to such person will not when issued or transferred be beneficially owned by a Non-resident;
 - (ii) to the extent practicable in the circumstances, send a notice to registered holders of securities of the Trust which are beneficially owned by Non-residents, chosen in inverse order to the order of acquisition or registration of such securities beneficially owned by Non-residents or in such other manner as the Trustees may consider equitable and practicable, requiring them to sell their securities of the Trust which are beneficially owned by Non-residents or a specified portion thereof within a specified period of not less than 60 days or such shorter period as may be required to preserve the status of the Trust as a mutual fund trust under the Tax Act. The Trustees may also refuse the issuance of Units to facilitate an exchange of Exchangeable Securities if to do so would cause the Trust to lose its status as a mutual fund trust under the Tax Act. If the holders of securities of the Trust receiving such notice have not sold the specified number of such securities or provided the Trustees with satisfactory evidence that such securities are not beneficially owned by Non-residents within such period, the Trustees may, on behalf of such registered Unitholder, sell such securities and, in the interim and to the extent applicable, suspend the voting and distribution rights attached to such securities of the Trust and make any distribution in respect of such securities by depositing such amount in a separate bank account in a Canadian chartered bank (net of any applicable taxes). Any sale shall be made on any stock exchange on which the applicable securities of the Trust are then listed or in such other manner in which the Trustees shall determine, and upon such sale, the affected holders shall cease to be holders of such securities so disposed of and their rights shall be limited to receiving the net proceeds of sale, and any distribution in respect thereof deposited as aforesaid, net of applicable taxes and costs of sale, upon surrender of the certificates representing such securities;
 - (iii) delist any listed securities of the Trust from any non-Canadian stock exchange; and/or
 - (iv) take such other actions as the Trustees determine, in their sole discretion, are appropriate in the circumstances that will reduce or limit the number of securities of the Trust held by Non-residents to ensure that the Trust is not maintained primarily for the benefit of Non-residents.

(2) The Trustees shall have no liability for amounts received pursuant to sales of securities of the Trust made pursuant to Section 14.1(1)(c)(ii). Except as specifically set out herein, the Trustees shall not be bound to do or take any proceeding or action with respect to this Section 14.1 by virtue of the powers conferred on them under this Declaration of Trust. It is acknowledged that the ability of the Trustees to monitor the Non resident holders of the Units will be limited due to the fact that the Units will be registered in the name of depositories and other non-beneficial holders and, in this regard, the Trustees shall be entitled to rely on information respecting the residency of Unitholders provided to the Trustees by the Transfer Agent and CDS Participants. The Trustees shall not be liable for any violation of the Non-resident ownership restriction in this Section 14.1 which may occur during the term of the Trust.

(3) Notwithstanding any other provision of the Declaration of Trust, Non-residents, whether registered holders or beneficial holders of securities of the Trust, shall not be entitled to vote in respect of any Special Resolutions to amend this Section 14.1.

14.2 Transfer of Units

(1) Units will be, for all purposes of the Trust and this Declaration of Trust, personal and moveable property, and will, subject to Section 14.1, be transferable at any time and from time to time. Transfers of Units will be recorded on the Register and will only become effective when so recorded. If Units are issued in the Book-Entry System, the provisions of Sections 13.1(2) and 13.1(3) will apply.

(2) Special Voting Units will not be transferable without the contemporaneous transfer of the Exchangeable Securities to which such Special Voting Units are attached, and then only if the Transfer Agent has been furnished with evidence acceptable to it, in its sole discretion, of the transfer of the Exchangeable Securities to which such Special Voting Units are attached and evidence that the prospective transferee is not a Non-resident. Subject to the foregoing, transfers of Special Voting Units will be recorded on the Register and will only become effective when so recorded. Notwithstanding the foregoing, in the event of an Offer (as defined in Section 14.6(1)) by any person to purchase Exchangeable Securities that is made on identical terms to all Unitholders, the Special Voting Units to which such Exchangeable Securities are attached may be transferred by the registered holder thereof pursuant to such Offer without regard to the provisions of this Section 14.2(2).

(3) No transfer of a Unit or Special Voting Unit will be recognized unless such transfer is of a whole Unit or Special Voting Unit, unless otherwise determined by the Trustees.

(4) Subject to the provisions of this Article 14, Units and Special Voting Units will be transferable on the Register only by the Unitholders or Special Voting Unitholders of record thereof or their executors, administrators or other legal representatives or by their agents or attorneys duly authorized in writing, and, with respect to transfers of Units, 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, 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 will be recorded on the Register and a new Unit

Certificate for the Units transferred will be issued to the transferee and a new Unit Certificate for the balance of Units not transferred will be issued to the transferor.

(5) Subject to the provisions of this Article 14, any person becoming entitled to any Units or Special Voting Units as a consequence of the death, bankruptcy or incompetence of any Unitholder or Special Voting Unitholder, or otherwise by operation of law, will be recorded as the holder of such Units or Special Voting Units and, in the case of Units, will receive a new Unit Certificate therefor, only upon production of evidence satisfactory to the Trustees or the Transfer Agent and, in the case of Units, upon delivery of the existing Unit Certificate to the Trustees or the Transfer Agent, but until such record is made the Unitholder or Special Voting Unitholder of record will continue to be and be deemed to be the holder of such Units or Special Voting Units for all purposes whether or not the Trust, the Trustees or the Transfer Agent have actual or other notice of such death or other event.

(6) 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 the Register is maintained pursuant to the provisions of this Article 14. Any Unit Certificates tendered for exchange shall be surrendered to the Trustees or the Transfer Agent and will then be cancelled.

14.3 Units and Special Voting Units Held Jointly or in a Fiduciary Capacity

Except as herein provided, the Trustees may treat two or more persons holding any Units or Special Voting Units as joint owners of the entire interest therein, and no entry will be made in the Register or on any certificate that any person is in any manner entitled to any future, limited or contingent interest in any Unit or Special Voting Unit; provided, however, that any person recorded as a Unitholder or Special Voting Unitholder may, subject to the provisions herein 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 14.4 the same shall not bind the Trust, the Trustees or the Transfer Agent.

14.4 Performance of Trust

The Trustees, the Trust and the Transfer Agent will 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 charge, pledge, security interest or equity to which any of the Units or Special Voting Units or any interests therein are or may be subject, or to ascertain or enquire whether any transfer of any such Units or Special Voting Units or interests therein by any such Unitholder or Special Voting Unitholder or by his or her personal representatives is authorized by such trust, charge, pledge, security interest or equity, or to recognize any person as having any interest therein except for the person recorded as the Unitholder or Special Voting Unitholder.

14.5 Death or Disability of a Unitholder or Special Voting Unitholder

The death or disability of a Unitholder or Special Voting Unitholder during the continuance of the Trust will 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 or Special Voting Unitholder's personal representatives a right to an accounting or to take any action in court or

otherwise against other Unitholders or Special Voting Unitholder or the Trustees or the Trust Assets. The death of a Unitholder or Special Voting Unitholder will merely entitle the personal representatives of the deceased Unitholder or Special Voting Unitholder, as the case may be, to demand and receive, pursuant to the provisions hereof, a new certificate for Units or Exchangeable Securities in place of the certificate held by the deceased Unitholder or Special Voting Unitholder, as the case may be, if any, and upon the acceptance thereof such personal representatives will succeed to all rights of the deceased Unitholder or Special Voting Unitholder, as the case may be, under this Declaration of Trust.

14.6 Offer for Units

- (1) In this Section 14.6:
 - (a) “**Dissenting Offeree**” means, where an Offer is made for all the Units, a holder of a Unit who does not accept the Offer, and includes a subsequent holder of a Unit that is the subject of the Offer, including a subsequent holder of Units who acquires such Units upon the conversion or exchange of Exchangeable Securities;
 - (b) “**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 the subject of the offer to acquire, together with the Offeror’s Units, constitute in the aggregate 20% or more of all outstanding Units;
 - (c) “**offer to acquire**” includes an acceptance of an offer to sell;
 - (d) “**Offeror**” means a person, or two or more persons acting jointly or in concert, other than an agent, who makes an Offer;
 - (e) “**Offeror’s Notice**” means the notice described in Section 14.6(4); and
 - (f) “**Offeror’s Units**” means Units (including all Units issuable to the Offeror upon the exchange or conversion of all Exchangeable Securities held by or on behalf of the Offeror) beneficially owned, or over which control or direction is exercised, on the date of an Offer by the Offeror or any affiliate or associate of the Offeror;
- (2) In the event of an Offer, any holder of Exchangeable Securities may, unless otherwise prohibited by the terms and conditions of the Exchangeable Securities, convert, exercise or exchange (whether conditionally or otherwise), such Exchangeable Securities, as the case may be, into Units for the purpose of tendering the Units acquired on such conversion, exercise or exchange to such Offer. Such conversion, exercise or exchange, will be conditional upon the taking up by the Offeror of Units pursuant to the Offer.
- (3) If an Offer is made for all outstanding Units, by such Offer, the Offeror agrees to be bound by the provisions of this Article 14, and:
 - (a) within the time provided in the Offer for its acceptance or within 120 days after the date the Offer is made, whichever period is the longer, the Offer is accepted by the holders of at least 90% of the Units (on a fully diluted basis, assuming the exchange of all Exchangeable Securities for Units) other than the Offeror’s Units; and

- (b) the Offeror is bound to take up and pay for, or has taken up and paid for the Units of the holders of Units who accepted the Offer;

then:

- (c) if any holder of Exchangeable Securities has not either transferred such Exchangeable Securities to the Offeror or elected to convert (whether conditionally or otherwise) such Exchangeable Securities for Units, then the Offeror will be entitled to require the Trust to require the automatic exchange of Exchangeable Securities in accordance with the terms of any applicable Exchange Agreement; and
- (d) the Offeror will be entitled to acquire, and the Dissenting Offeree's will be required to sell to the Offeror, the Units held by the Dissenting Offeree's on the terms on which the Offeror acquired the Units of the Unitholders who accepted the Offer, provided that the Offeror complies with Section 14.6(4) and 14.6(6).

(4) Where an Offeror is entitled to require the Trust to require the automatic exchange of Exchangeable Securities and/or to acquire Units held by a Dissenting Offeree pursuant to Section 14.6(3), and the Offeror wishes to exercise such right, the Offeror shall send by registered mail, before the earlier of (i) 60 days after the date of termination of the Offer and (ii) 180 days following the date of Offer, notice (the "**Offeror's Notice**") to the Trust, each holder of Exchangeable Securities and/or to each Dissenting Offeree stating that:

- (a) Holders holding at least 90% of the Units (on a fully diluted basis, assuming the exchange of all Exchangeable Securities), other than the Offeror's Units, have accepted the Offer;
- (b) the Offeror has taken up and paid for the Units of the Unitholders who accepted the Offer;
- (c) as applicable, each Exchangeable Security will be automatically converted or exchanged for Units;
- (d) a Dissenting Offeree must transfer his, her or its respective Units to the Offeror on the terms on which the Offeror acquired the Units of the Unitholders who accepted the Offer within 21 days after the date of the sending of the Offeror's Notice; and
- (e) Dissenting Offeree's must send the certificates representing their respective Units to the Trust, duly endorsed for transfer, within 21 days after the date of the sending of the Offeror's Notice.

(5) A holder of Exchangeable Securities and/or a Dissenting Offeree to whom an Offeror's Notice is sent pursuant to Section 14.6(4), shall, within 21 days after the sending of the Offeror's Notice, as applicable, send the certificate representing his, her or its Units (or, as applicable, Exchangeable Securities) to the Trust, duly endorsed for transfer, if a certificate for such Units has been provided.

(6) Within 21 days after the Offeror sends an Offeror's Notice pursuant to Section 14.6(4), 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 the Offeror would have had to pay to the Dissenting Offeree had they accepted the Offer in respect of the Units that they continue to hold (including the Units issuable upon the conversion or exchange of any Exchangeable Securities held by the Dissenting Offeree).

(7) The Trustees, or the person directed by the Trustees, shall hold in trust for the Dissenting Offeree's the cash or other consideration received under Section 14.6(6), but such cash or other consideration shall not form any part of the Trust Assets. The Trustees, or such persons, shall deposit such cash in a separate account in a Canadian chartered bank, and shall place such other consideration in the custody of a Canadian chartered bank or similar institution, for safekeeping.

(8) Within 30 days after the date of the sending of an Offeror's Notice pursuant to Section 14.6(4), the Trustees, if the Offeror has complied with Section 14.6(6), shall:

- (a) do or cause to be done all acts and things and execute and cause to be executed all instruments as in the opinion of the Trustees may be necessary or desirable to effect the conversion or exchange of all Exchangeable Securities for Units and shall cause the transfer of the Units of the Dissenting Offeree's (including, as applicable, the Units issuable to such Dissenting Offeree's upon the conversion of their Exchangeable Securities) to the Offeror;
- (b) send or cause to be sent to each Dissenting Offeree who has complied with Section 14.6(5) above (as applicable) the consideration to which such Dissenting Offeree is entitled under this Section 14.6; and
- (c) send or cause to be sent to each Dissenting Offeree who has not complied with Section 14.6(5) (as applicable) a notice stating that:
 - (i) as applicable, his, her or its Exchangeable Securities have been converted, exercised or exchanged for Units;
 - (ii) his, her or its Units have been transferred to the Offeror;
 - (iii) the Trustees or some other person designated in such notice are holding in trust the consideration for such Units; and
 - (iv) the Trustees, or such other person, will send the consideration to such Dissenting Offeree as soon as practicable after receiving the certificate(s) representing such Dissenting Offeree's Units (or, as applicable, Exchangeable Securities) or such other documents as the Trustees or such other person may require in lieu thereof,

and the Trustees are hereby appointed the agent and attorney of the Dissenting Offeree for the purposes of giving effect to the foregoing provisions.

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

(10) For the purpose of giving effect to the provisions hereof, the Trust shall cause the terms, conditions, restrictions, rights and obligations of Exchangeable Securities to contain the provisions necessary to give effect to this Section 14.6.

ARTICLE 15 TERMINATION

15.1 Term of Trust

Subject to the other provisions of this Declaration of Trust, the Trust shall continue for a term ending 21 years after the date of death of the last surviving issue of Her Majesty Queen Elizabeth II alive on March 27, 2007. For the purpose of terminating the Trust by such date, the Trustees will commence to wind-up the affairs of the Trust on such date as may be determined by the Trustees, being not more than two years prior to the end of the term of the Trust.

15.2 Extension or Termination with the Approval of Voting Unitholders

The Voting Unitholders may vote by Special Resolution to extend the term of or terminate the Trust at any meeting of Voting Unitholders duly called by the Trustees for the purpose of considering the extension or termination of the Trust. If Voting Unitholders vote to terminate the Trust, the Trustees will commence to wind-up the affairs of the Trust. Such Special Resolution may contain such directions to the Trustees as the Voting Unitholders determine, including a direction to distribute the Trust Assets, in specie, subject to compliance with any securities or other laws applicable to such distributions.

15.3 Procedure Upon Termination

Following the passage of a Special Resolution authorizing the termination of the Trust, or upon being required to commence the wind-up of the affairs of the Trust, the Trustees will give notice thereof to the Voting Unitholders, which notice will designate the time or times at which Voting Unitholders shall surrender certificates representing their Units and Special Voting Units for cancellation and the date on which the Register will be closed.

15.4 Powers of the Trustees Upon Termination

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

15.5 Sale of Investments

Following the closure of the Register, the Trustees will proceed to wind-up the affairs of the Trust as soon as may be reasonably practicable, and for such purpose may, subject to any direction to the contrary given in respect of a termination authorized under Section 15.2, cause the Trust to fulfill or discharge the contracts of the Trust, perform or cause the Auditor to perform any final audit of the Trust Assets, cause the Trust to collect its assets, sell, convey, assign, exchange, transfer or otherwise dispose of all or any part of the remaining Trust Assets, to one or more persons in one

transaction or a series of transactions at public or private sale for consideration that may consist in whole or in part of cash, securities or other property of any kind, discharge or pay its liabilities, 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 Voting Unitholders (given in respect of a termination authorized under Section 15.2), subject to compliance with applicable laws.

15.6 Distribution of Proceeds or Assets

After causing the Trust to pay, retire or discharge or make provision for the payment, retirement or discharge of all known liabilities and obligations of the Trust and to provide for indemnity against any other outstanding liabilities and obligations, the Trustees will, subject to obtaining all necessary regulatory approvals, distribute the remaining part of the proceeds of the sale of its assets among the Unitholders in accordance with their pro rata interests. If the Trust is unable to sell all or any of the assets of the Trust by the date set for termination, the Trustees may, subject to obtaining all necessary regulatory approvals, distribute the remaining assets directly to the Unitholders in accordance with their pro rata interests. The Trustees will have no liability to the Trust or any Unitholder for any amounts received by the Trust or the Unitholders in connection with the liquidation of the Trust, provided that the Trustees act honestly and in good faith with a view to the best interests of the Trust.

15.7 Further Notice to Voting Unitholders

In the event that less than all of the Voting Unitholders have surrendered their certificate(s) representing their Voting Units for cancellation within six months after the time specified in the notice referred to in Section 15.3, the Trustees will give further notice to the remaining Voting Unitholders to surrender the certificate representing their Voting Units for cancellation and if, within one year after the further notice, all certificates representing the Voting Units have not been surrendered for cancellation, such remaining Voting Units will be deemed to be cancelled without prejudice to the rights of the holders of Voting Units comprising such Voting Units, if applicable, 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 Voting Unitholders (deducting all expenses thereby incurred from the amounts to which such Voting Unitholders are entitled as aforesaid, if applicable) 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 Voting Unitholder, if applicable, for delivery against receipt of Voting 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 Voting Unitholder will have no rights as against the Trust, the Trustees or any representative thereof in respect of such property or an accounting therefor.

15.8 Responsibility of the Trustees after Sale and Conversion

The Trustees will 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 15.3 and, after such sale, the sole obligation of the Trustees under this Declaration of Trust will be to hold such proceeds or assets in trust for distribution under Section 15.6 or Section 15.7.

ARTICLE 16 SUPPLEMENTAL INDENTURES

16.1 Provision for Supplemental Indentures for Certain Purposes

The Trustees may, without approval of the Unitholders and subject to the provisions hereof, and shall, when so required pursuant to 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) 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) amending any provisions of this Declaration of Trust where the modification or amendment has been approved by an Ordinary Resolution or by Special Resolution, as the case may be.

ARTICLE 17 GENERAL

17.1 Notices

(1) Any notice or other document required to be given or sent to Voting Unitholders under this Declaration of Trust and any and all other communications to Voting Unitholders will be deemed to have been duly given if sent through ordinary post addressed to each Voting Unitholder at his or her address of record on the Register or by such other method designed to give reasonable general notice thereof as is determined by the Trustees, which may include publication in a newspaper having national circulation in Canada, a press release disseminated through a recognized wire service or any other electronic means. Any notice so given will be deemed to have been given on the day that is five days following that on which the notice or other communication was posted or, in the case of notice being given by another method determined by the Trustees, on the day specified by the Trustees. In proving notice was posted, it will be sufficient to prove that such letter or circular was properly addressed, stamped and posted.

(2) Any notice, direction or other communication to be given or sent to the Trust shall be in writing and given by delivering, mailing or sending it by facsimile to the head office of the Trust or in such other manner as the Trustees may direct. Any such communication will be deemed to have been validly and effectively given (i) if personally delivered, on the date of delivery, (ii) if mailed by registered mail, five days from the date of mailing, (iii) if transmitted by facsimile, on the Business Day following the date of confirmation of transmission, and (iv) if sent by some other manner as directed by the Trustees, upon receipt by the Trust. If any such notice or communication has been mailed and if regular mail service is interrupted by strikes or other irregularities, such notice or communication will be deemed to have been received 48 hours after 12:01 a.m. on the day following the resumption of normal mail service.

17.2 Failure to Give Notice

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

17.3 Joint Holders

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

17.4 Service of Notice

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

17.5 Information Available to Voting Unitholders

Each Voting Unitholder has 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, and will be entitled to examine a list of Voting Unitholders.

17.6 Fiscal Year

The fiscal year of the Trust will end on December 31 of each year.

17.7 Financial Disclosure

The Trust will send (or otherwise make available electronically on such website of the Trust as the Trust or its affiliates may maintain if sending is not required by law) to Voting Unitholders such consolidated financial statements of the Trust and such other reports as are from time to time required by law, including:

- (a) at least 21 days prior to the date of each annual meeting of Voting Unitholders (or such other time period as may be required by applicable law), 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 18.4; and
- (b) within 45 days (or such shorter time period as may be required by applicable law) after the end of each fiscal quarter of the Trust (other than the fourth quarter of each year), unaudited quarterly financial statements of the Trust for such fiscal quarter, together with comparative financial statements for the same fiscal quarter in the preceding fiscal year, if any.

Such financial statements will be prepared in accordance with GAAP; 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.

17.8 Voting Unitholder Meeting Information

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

- (a) a form of proxy which can be used by a Voting Unitholder to appoint a proxy, who need not be a Voting Unitholder, to attend and act at the meeting on behalf of the Voting Unitholder, in the manner and to the extent authorized by the proxy; and
- (b) all information required by applicable law.

17.9 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 as is required by Canadian federal and provincial law to be submitted to Unitholders for Canadian income tax purposes to enable Unitholders to complete their Canadian tax returns in respect of the prior calendar year.

17.10 Delegation of Trust Management

The Trustees shall be authorized from time to time to engage independent contractors to manage the Trust and to delegate to such contractors such duties as the Trustees consider appropriate. Without limiting the foregoing, the Trust shall be authorized to enter into the Management Agreement with the Manager providing for certain officers and employees of the Manager to provide management services to the Trust and providing for the supply to the Trust of various management, administrative and support services, including accounting and human resource services, office space and equipment and the necessary clerical and secretarial personnel for the administration of the day-to-day activities of the Trust. The Trustees shall be authorized to execute the Management Agreement and settle the terms and conditions thereof, and any amendments thereto, and to terminate the Management Agreement in accordance with its terms.

17.11 Power of Attorney

(1) The Trustees hereby grant to the Manager, a power of attorney constituting the Manager, with full power of substitution, as their true and lawful attorney to act on behalf of the Trust with full power and authority in their name, place and stead, and to execute, under seal or otherwise, swear to, acknowledge, deliver, make or file or record when, as and where required, any instrument, deed, agreement or document in connection with carrying out the activities of the Trust including, without limitation, to execute and deliver, on the Trust's behalf, any Exchange Agreement, the Registrar and Transfer Agency Agreement and such other agreements, documents, certificates and other writings as are required or contemplated by the Information Circular, the Closing or this Declaration of Trust.

(2) Each Voting Unitholder hereby grants to the Trustees and their successors and assigns, a power of attorney constituting the Trustees and such successors and assigns with full power of substitution, as his or her true and lawful attorney to act on his or her behalf, with full power and authority in his or her name, place and stead, and to execute, under seal or otherwise, swear to, acknowledge, deliver, make or file or record when, as and where required:

- (a) this Declaration of Trust and any other instrument required or desirable to qualify, continue and keep in good standing the Trust as a mutual fund trust;
- (b) any instrument, deed, agreement or document in connection with carrying on the affairs of the Trust as authorized in this Declaration of Trust including all conveyances, transfers, and other documents required in connection with any disposition of securities required under Sections 5.7 and 14.1;
- (c) all conveyances, transfers and other documents required in connection with dissolution, liquidation or termination of the Trust in accordance with the terms of this Declaration of Trust;
- (d) any and all elections, determination or designations whether jointly with third parties or otherwise, under the Tax Act or any other taxation or other legislation or similar laws of Canada or of any jurisdiction in respect of the affairs of the Trust or of a Voting Unitholder's interest in the Trust; and
- (e) all transfer, conveyances and other documents required to facilitate the acquisition of Voting Units, Exchangeable Securities of non-tendering offerees pursuant to Section 14.6.

The power of attorney granted herein is, to the extent permitted by applicable law, a power coupled with an interest and is irrevocable and will survive the assignment by each Voting Unitholder of all or part of the Voting Unitholder's interest in the Trust and will extend to and bind the heirs, executors, administrators and other legal representatives and successors and assigns of the Voting Unitholder.

17.12 No Breach

Notwithstanding any other provision of this Declaration of Trust, Voting Unitholders shall have no power to effect any amendment hereto which would require the Trustees to take any action or conduct the affairs of the Trust in a manner which would constitute a breach or default by the Trust or the Trustees under any agreement binding on or obligation of the Trust or the Trustees.

17.13 Execution of Instruments

Any two Trustees and/or officers of the Trust 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 without limitation the Manager, the authority to sign in the name of and on behalf of the Trust any specific instrument or any instruments in writing generally.

17.14 Trust Property

The Trustees shall maintain the Trust's property separate from all other property in their possession and from the property of all other persons.

17.15 Trust Records

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

ARTICLE 18 AUDITORS

18.1 Qualification of Auditors

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

18.2 Appointment of Auditors

The initial Auditors, which shall hold office until the first annual meeting of the Voting Unitholders, will be appointed by a written resolution of the Initial Unitholder, as sole Unitholder, prior to the Closing. Subject to Section 18.3, the Auditors will be selected at each succeeding annual meeting of Unitholders. The Auditors will receive such remuneration as may be approved by the Trustees. If at any time a vacancy occurs in the position of Auditors, the Trustees may appoint new auditors to act as the Auditors until the next annual meeting of the Unitholders.

18.3 Change of Auditors

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

18.4 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 Voting Unitholder with the annual financial statements referred to in Section 17.7.

**ARTICLE 19
MISCELLANEOUS**

19.1 Counterparts

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

19.2 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.

19.3 Successors and Assigns

The provisions of this Declaration of Trust shall enure to the benefit of, and be binding upon, the parties hereto and their respective heirs, executors, administrators, successors and assigns.

19.4 References to Agreements

Any reference herein to any agreement, contract, indenture or obligation shall refer to such agreement, contract, indenture or obligation as the same may be amended from time to time.

19.5 Language

Les parties aux presentes ont exigés que la presente convention ainsi que tous les documents et avis qui s'y rattachent et/ou qui en decouleront soient redigés 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.

[Remainder of this page intentionally left blank.]

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

“Witness”

Witness

“Grant Anthony”

Grant Anthony, Trustee

“Witness”

Witness

“Colin Chapin”

Colin Chapin, Trustee

“Witness”

Witness

“Jane Domenico”

Jane Domenico, Trustee

“Witness”

Witness

“Allan Kimberley”

Allan Kimberley, Trustee

“Witness”

Witness

“C. Ian Ross”

C. Ian Ross, Trustee

“Witness”

Witness

“Michael Woollcombe”

Michael Woollcombe, Trustee

Appendix A

Procedures regarding the Nomination of Trustees for Election

1. Only persons who are nominated in accordance with the provisions set out below (the “**Nomination Provisions**”) and otherwise in accordance with the other provisions of the Declaration of Trust shall be eligible for election as trustees of the Trust. Nominations of persons for election as trustees of the Trust may be made at any annual meeting of Unitholders (or at any special meeting of Unitholders if one of the purposes for which the special meeting was called was the election of trustees) only as follows:
 - (a) by or at the direction of the Trustees, including pursuant to a notice of meeting;
 - (b) by or at the direction or request of one or more Unitholders pursuant to subsection 12.1(3) of the Declaration of Trust; or
 - (c) by any person (a “**Nominating Unitholder**”): (A) who, at the close of business on the date of the giving of the notice provided for in section 2 of these Nomination Provisions and on the record date for notice of such meeting, is entered in the securities register of the Trust as a holder of one or more Units carrying the right to vote at such meeting or who beneficially owns units that are entitled to be voted at such meeting; and (B) who complies with the notice procedures set forth below in these Nomination Provisions.
2. In addition to any other applicable requirements, including the notice provisions under subsection 17.1(2) of the Declaration of Trust, for a nomination to be made by a Nominating Unitholder, the Nominating Unitholder must have given timely notice thereof in proper written form addressed to “*The Chairman of the Trustees of Partners REIT – Private and Confidential*” at the principal office of the Trust in accordance with these Nomination Provisions.
3. To be timely, a Nominating Unitholder’s notice to the Chairman of the Trust must be made:
 - (a) in the case of an annual meeting of Unitholders, not less than 30 days prior to the date of the annual meeting of Unitholders; provided, however, that in the event that the annual meeting of Unitholders is called for a date that is less than 50 days after the date on which the first Public Announcement (as defined below) of the date of the annual meeting was made (the “**Notice Date**”), notice by the Nominating Unitholder may be made not later than the close of business on the tenth (10th) day following the later of (i) the Notice Date and (ii) the first Public Announcement of the amendment to the Declaration of Trust pursuant to which these Nomination Provisions became part of the Declaration of Trust; and
 - (b) in the case of a special meeting (which is not also an annual meeting) of Unitholders called for the purpose of electing trustees (whether or not called for other purposes), notice by the Nominating Unitholder may be made not later than the close of business on the fifteenth (15th) day following the later of (i) the day on which the first Public Announcement of the date of the special meeting of Unitholders was

made, and (ii) the first Public Announcement of the amendment to the Declaration of Trust pursuant to which these Nomination Provisions became part of the Declaration of Trust.

4. To be in proper written form, a Nominating Unitholder's notice to the Chairman of the Trust must set forth:
 - (a) as to each person whom the Nominating Unitholder proposes to nominate for election as a trustee (a "**Proposed Nominee**"): (A) the name, age, business address and residential address of the Proposed Nominee; (B) the principal occupation or employment of the Proposed Nominee, both present and within the five years preceding the notice; (C) whether the Proposed Nominee is a Resident Canadian; (D) the class or series and number of units in the capital of the Trust which are, directly or indirectly, controlled by or which are owned beneficially and of record by such Proposed Nominee as of the record date of the meeting of Unitholders (if such date shall then have been made publicly available and shall have occurred) and as of the date of such notice; (E) a duly completed consent to act in accordance with section 9.4 of the Declaration of Trust; (F) a description of any relationship, agreement, arrangement or understanding (financial, compensation or indemnity related or otherwise) between the Nominating Unitholder and such Proposed Nominee, or any affiliates or associates of, or any person or entity acting jointly or in concert with the Nominating Unitholder or such Proposed Nominee, in connection with such Proposed Nominee's nomination and election as a trustee; (G) whether such Proposed Nominee is party to any existing or proposed relationship, agreement, arrangement or understanding with any competitor of the Trust or any other third party which may give rise to a real or perceived conflict of interest between the interests of the Trust and the interests of such Proposed Nominee, and (H) any other information relating to the Proposed Nominee that would be required to be disclosed in a dissident's proxy circular in connection with solicitations of proxies for election of trustees pursuant to the Declaration of Trust and Applicable Securities Laws (as defined below); and
 - (b) as to the Nominating Unitholder giving the notice and the beneficial owner, if any, on whose behalf the nomination is made: (A) the name and address of such Nominating Unitholder and the beneficial owner, if different, as they appear on the Trust's securities register, and of their respective affiliates or associates or others acting in concert therewith; (B) (i) the class or series and number of units in the capital of the Trust which are, directly or indirectly, controlled by or which are owned beneficially and of record by such Nominating Unitholder and such beneficial owner and their respective affiliates or associates or others acting in concert therewith, (ii) any option, warrant, convertible security, stock appreciation right, or similar right with an exercise or conversion privilege or a settlement payment or mechanism at a price related to any class or series of Units or with a value derived in whole or in part from the value of any class or series of Units, or any derivative or synthetic arrangement having the characteristics of a long position in any class or series of Units, or any contract, derivative, swap or other transaction or series of transactions designed to produce economic benefits and risks that correspond substantially to the ownership of any class or series of Units, including, without

limitation, due to the fact that the value of such contract, derivative, swap or other transaction or series of transactions is determined by reference to the price, value or volatility of any class or series of Units, whether or not such instrument, contract or right shall be subject to settlement in the underlying class or series of Units, through the delivery of cash or other property, or otherwise, and without regard to whether the shareholder of record, the beneficial owner, if any, or any affiliates or associates or others acting in concert therewith, may have entered into transactions that hedge or mitigate the economic effect of such instrument, contract or right, or any other direct or indirect opportunity to profit or share in any profit derived from any increase or decrease in the value of Units (any of the foregoing, a “**Derivative Instrument**”) directly or indirectly owned beneficially by such Nominating Unitholder, the beneficial owner, if any, or any affiliates or associates or others acting in concert therewith, (iii) any proxy, contract, arrangement, understanding, or relationship pursuant to which any such Nominating Unitholder and beneficial owner, if any, has a right to vote any class or series of shares of the Trust, (iv) any agreement, arrangement, understanding, relationship or otherwise, including, without limitation, any repurchase or similar so-called “**stock borrowing**” agreement or arrangement, involving such Nominating Unitholder or beneficial owner, if any, directly or indirectly, the purpose or effect of which is to mitigate loss to, reduce the economic risk (of ownership or otherwise) of any class or series of the Units by, manage the risk of Units price changes for, or increase or decrease the voting power of, such Nominating Unitholder or beneficial owner, if any, with respect to any class or series of the Units, or which provides, directly or indirectly, the opportunity to profit or share in any profit derived from any decrease in the price or value of any class or series of the Units (any of the foregoing, a “**Short Interest**”), (v) any rights to distributions on the Units owned beneficially by such Nominating Unitholder and beneficial owner, if any, that are separated or separable from the underlying Units, (vi) any proportionate interest in Units or Derivative Instruments held, directly or indirectly, by a general or limited partnership in which any such Nominating Unitholder and beneficial owner, if any, is a general partner or, directly or indirectly, beneficially owns an interest in a general partner of such general or limited partnership, (vii) any performance-related fees (other than an asset-based fee) to which any such Nominating Unitholder is entitled based on any increase or decrease in the value of Units or Derivative Instruments, if any, including without limitation any such interests held by members of any such Nominating Unitholder’s or beneficial owner’s immediate family sharing the same household, (viii) any significant equity interests or any Derivative Instruments or Short Interests in any principal competitor of the Trust held by such Nominating Unitholder or Unitholders and beneficial owner, if any, and (ix) any direct or indirect interest of such Nominating Unitholder or Unitholders and beneficial owner, if any, in any contract, understanding or arrangement with the Trust, any affiliate of the Trust, any of the officers or trustees of the Trust, the beneficial owner, the Proposed Nominee or Nominees being nominated for election as a trustee, or any of their respective affiliates or associates, or any principal competitor of the Trust; and (C), any proxy, contract, arrangement, understanding or relationship pursuant to which such Nominating Unitholder has a right to vote any shares of the Trust and any other information relating to such Nominating Unitholder that would be required to be

made in a dissident's proxy circular in connection with solicitations of proxies for election of trustees pursuant to the Declaration of Trust and Applicable Securities Laws (as defined below).

5. In addition, to be considered timely and in proper written form, a Nominating Unitholder's notice shall be promptly updated and supplemented, if necessary, so that the information provided or required to be provided in such notice shall be true and correct as of the record date of the meeting.
6. The Chairman of the Trust shall have the power and duty to determine whether a nomination was made in accordance with the procedures set forth in the foregoing provisions and, if any proposed nomination is not in compliance with such foregoing provisions, to declare that such defective nomination shall be disregarded. In such event the Chairman will provide prompt notice to the Nominating Unitholder.
7. Any individual being proposed for election as a trustee of the Trust in a proxy circular of the Trust that has been approved by the Trustees will be deemed to have complied with these Nomination Provisions.
8. For purposes of these Nomination Provisions:
 - (a) "**Public Announcement**" means disclosure in a press release reported by a national news service in Canada, or in a document publicly filed by the Trust under its profile on the System of Electronic Document Analysis and Retrieval at www.sedar.com; and
 - (b) "**Applicable Securities Laws**" means the applicable securities legislation of each relevant province and territory of Canada, as amended from time to time, the rules, regulations and forms made or promulgated under any such statute and the published national instruments, multilateral instruments, policies, bulletins and notices of the securities commission and similar regulatory authority of each province and territory of Canada.
9. Notwithstanding any of the foregoing, the Trustees may, in their sole discretion, waive any requirement of the Nomination Provisions.