

NORTHVIEW APARTMENT REAL ESTATE INVESTMENT TRUST

NINTH AMENDED AND RESTATED
DECLARATION OF TRUST

May 5, 2016

Borden Ladner Gervais LLP

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NORTHVIEW APARTMENT REAL ESTATE INVESTMENT TRUST

NINTH AMENDED AND RESTATED DECLARATION OF TRUST

THIS DECLARATION OF TRUST made the 2nd day of January, 2002, as amended and restated as of the 11th day of April, 2002, as further amended and restated as of the 17th day of May, 2002, as further amended and restated as of the 26th day of September, 2005, as further amended and restated as of the 4th day of August, 2010, as further amended and restated as of the 31st day of December, 2010, as further amended and restated as of the 14th day of June 2011, as further amended and restated as of the 13th day of May 2014, as further amended and restated as of the 30th, day of October, 2015, and as further amended and restated as of the 5th, day of May, 2016.

RECITAL

WHEREAS the Trust was established for the principal purpose of providing persons who may become the holders (“**Unitholders**”) of Trust Units with an opportunity to invest in a trust owning a diversified portfolio of income-producing real property investments;

AND WHEREAS on January 2, 2002 one Trust Unit was issued to Alan G. James, In Trust (the “**Initial Unitholder**”) as sole Unitholder;

AND WHEREAS the sole trustee (the “**Initial Trustee**”) of the Trust resigned as a Trustee on April 4, 2002 and B. James Britton, having consented to act, was appointed a Trustee by written instrument of the Initial Unitholder;

AND WHEREAS Douglas H. Mitchell, C. Donald Wilson, Kenn Harper and John C. Charles, having consented to act, were appointed as Trustees on April 11, 2002 by written instrument of the Initial Unitholder;

AND WHEREAS Donald G. Reid and Dennis G. Patterson, having consented to act, were appointed as Trustees on May 13, 2002 by written instrument of the Initial Unitholder;

AND WHEREAS the Trustees wish to amend and restate this Declaration of Trust in the manner herein provided and have received the approval of the Unitholders by Special Resolution;

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

DECLARATION

NOW THEREFORE, the undersigned, being all of the Trustees, hereby confirm and declare that they agree to hold in trust as trustees 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 them as such trustees or to which the Trust is otherwise entitled and all rents, income, profits and gains therefrom for the benefit of the Unitholders hereunder in accordance with and subject to the expressed provisions of this Declaration of Trust, to wit:

ARTICLE 1 INTERPRETATION

1.1 Definitions

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

- (a) **“Adjusted Unitholders’ Equity”** means, at any time, the aggregate amount of Unitholders’ equity and the amount of accumulated depreciation and amortization recorded in the books and records of the Trust in respect of its properties calculated in accordance with generally accepted accounting principles.
- (b) **“affiliate”**, when used to indicate a relationship with a person or company, has the same meaning as set forth in National Instrument 45-106 *Prospectus and Registration Exemptions*.
- (c) **“associate”** when used to indicate a relationship with a person or company, has the same meaning as in the *Securities Act* (Ontario).
- (d) **“Auditors”** means the firm of chartered accountants appointed as the auditors of the Trust from time to time in accordance with the provisions hereof and, initially, means Deloitte & Touche LLP, Chartered Accountants.
- (e) **“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.
- (f) **“Business Day”** means a day which is not a Saturday, Sunday or legal holiday in the Province of Alberta.
- (g) **“CDS”** means The Canadian Depository for Securities Limited and its successors.
- (h) **“CDS Participant”** means a broker, dealer, bank, other financial institution or other person who, directly or indirectly, from time to time effects book-based transfers with CDS and pledges of securities deposited with CDS.
- (i) **“Class A LP Units”** means the Class A limited partnership units of the Partnership.
- (j) **“Class B LP Units”** means the Class B limited partnership units of the Partnership.
- (k) **[Intentionally deleted.]**
- (l) **“CMHC”** means Canada Mortgage and Housing Corporation.
- (m) **[Intentionally deleted.]**
- (n) **“Depository”** has the meaning ascribed thereto in Section 14.1(a).
- (o) **“Distributable Income”** has the meaning ascribed thereto in Section 5.1.

- (p) “**Distribution Date**” means, in respect of a Distribution Period and subject to Sections 5.3 and 5.5, the 15th day of the immediately following month or, if any such day is not a Business Day, the next following Business Day, and such other dates determined from time to time by the Trustees.
- (q) “**Distribution Period**” means each calendar month in each calendar year from and including the first day thereof and to and including the last day thereof.
- (r) “**Distribution Record Date**” means, until otherwise determined by the Trustees, the last Business Day of each month of each year, except for the month of December where the Distribution Record Date shall be December 31.
- (s) “**equity lease**” means the system of land leases utilized in Nunavut, which generally have an initial term of 30 years and are renewable for a further term of 30 years at an annual rent of \$1.
- (t) “**Excess Distribution**” has the meaning ascribed thereto in Section 5.5.
- (u) “**Exchange Right**” means the right granted under the Limited Partnership Agreement to each holder of Class B LP Units to exchange all or any part of the Class B LP Units held by such holder for Trust Units on a one-for-one basis.
- (v) “**Exchangeable Security**” or “**Exchangeable Securities**” means a unit or units, a share or shares or other security or securities issued by an affiliate of the Trust and which are convertible into or exchangeable for Trust Units or other Exchangeable Securities without the payment of additional consideration therefor.
- (w) “**Exchangeable Security Distribution Amount**” means the amount that would be distributable by the Trust to the holders of Exchangeable Securities as holders of Trust Units if all such Exchangeable Securities were exchanged for Trust Units in accordance with the terms of the Limited Partnership Agreement or other document governing their issue and terms of exchange.
- (x) “**Executive Compensation Policy**” means the executive compensation policy of the Trust, as amended from time to time.
- (y) “**generally accepted accounting principles**” means generally accepted accounting principles in Canada including, among other things, Recommended Accounting Practices for Real Estate Investment and Development Companies issued by the Canadian Institute of Public and Private Real Estate Companies.
- (z) “**Global Unit Certificate**” has the meaning ascribed thereto in Section 14.1(a).
- (aa) “**Gross Book Value**” means, at any 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 the amount of accumulated depreciation and amortization included therein or in the notes thereto, plus the amount of future income tax liability arising out of indirect acquisitions or, if approved by a majority of the Trustees, the appraised value of the real property held, directly or indirectly, by the Trust, calculated in accordance with generally accepted accounting principles.

(bb) “**Holdings**” means Northern Property Holdings Corp., a direct wholly-owned subsidiary of the Trust.

(cc) “**Independent Trustee**” means a Trustee who is both “independent” (as defined in National Instrument 58-101 *Disclosure of Corporate Governance Practices*) and who deals at arm’s length with the Trust, in accordance with the Tax Act.

(dd) “**Independent Trustee Matter**” means:

- (i) the acquisition or disposition of real property, and the assumption or grant of any mortgage, by the Trust, the Partnership or any of their respective subsidiaries and affiliates;
- (ii) the terms of any financing to be provided by the Trust;
- (iii) the enforcement of any agreement entered into by the Trust, the Partnership or any of their respective subsidiaries and affiliates with a Trustee who is not an Independent Trustee;
- (iv) any matter on which the holders of the Class A LP Units are entitled to vote under the Limited Partnership Agreement; and
- (v) material changes to the LTIP and Unit Option Plan.

(ee) “**Initial Contribution**” means the amount of \$100 paid by the Initial Unitholder to the Trust on the 2nd day of January, 2002 for the purpose of settling the trust constituted by this Declaration of Trust.

(ff) “**Initial Unitholder**” means Alan G. James, In Trust.

(gg) “**Investment Committee**” means the committee established pursuant to Section 11.2.

(hh) “**Limited Partnership Agreement**” means the Limited Partnership Agreement governing the Partnership made the 18th day of October, 2010, as amended and restated from time to time among NPR GP Inc. as general partner, Northern Property Mutual Fund Corporation and each of the holders of Class B LP Units.

(ii) “**LTIP**” means the long term incentive plan of the Trust, as amended from time to time.

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

(kk) “**Net Realized Capital Gains**” means, for any period, the amount, if any, by which the amount of the capital gains of the Trust for the period exceeds the amount of any capital losses of the Trust for the period determined in accordance with the Tax Act.

(ll) “**Nominating Unitholder**” has the meaning ascribed thereto in Section 9.2.1.

(mm) “**Non-Resident**” means a non-resident of Canada within the meaning of the Tax Act.

(nn) “**Notice Date**” has the meaning ascribed thereto in Section 9.2.1.

- (oo) **“Partnership”** means NPR Limited Partnership, a limited partnership formed under the laws of the Province of Alberta pursuant to the Limited Partnership Agreement.
- (pp) **“person”** means and includes any individual, general partnership, limited partnership, joint venture, syndicate, sole proprietorship, company or corporation with or without share capital, joint stock company, association, trust, trust company, bank, pension fund, trustee, executor, administrator or other legal personal representative, regulatory body or agency, government or governmental agency, authority or other organization or entity, whether or not a legal entity, however designated or constituted.
- (qq) **[Intentionally deleted.]**
- (rr) **“real property”** means property which in law is real property and includes, whether or not the same would in law be real property, leaseholds, mortgages, undivided joint interests in real property (whether by way of tenancy in common, joint tenancy, co-ownership, joint venture or otherwise), any interests in any of the foregoing and securities of corporations, trusts or partnerships whose sole or principal purpose and activity is to invest in, hold and/or deal in real property.
- (ss) **“Redemption Date”** has the meaning ascribed thereto in Section 6.3(a).
- (tt) **“Redemption Price”** has the meaning ascribed thereto in Section 6.3(a), subject to Section 6.5.
- (uu) **“Register”** has the meaning ascribed thereto in Section 14.4.
- (vv) **“related party”** has the meaning ascribed thereto in Section 10.12.
- (ww) **“Resident”** means a resident of Canada within the meaning of the Tax Act.
- (xx) **“Special Resolution”** has the meaning ascribed thereto in Section 13.6.
- (yy) **“Special Voting Units”** means the Special Voting Units of the Trust referred to in Section 3.1(a).
- (zz) **“subsidiary”** includes, with respect to any person, company, partnership, limited partnership, trust or other entity, any company, partnership, limited partnership, trust or other entity, controlled, directly or indirectly, by such person, company or entity and, in the case of the Trust, includes the Partnership and its respective subsidiaries and affiliates.
- (aaa) **“Tax Act”** means the *Income Tax Act*, R.S.C. 1985 (5th Supp.) c. 1 and the regulations thereunder as amended from time to time.
- (bbb) **“Taxation Year”** means the Taxation Year of the Trust for the purposes of the Tax Act.
- (ccc) **“this Declaration of Trust”, “this Declaration”, “hereto”, “herein”, “hereof”, “hereby”, “hereunder”** and similar expressions refer to this instrument and not to any particular Section or portion hereof, and include any and every instrument supplemental or ancillary hereto.
- (ddd) **[Intentionally deleted.]**

- (eee) **“Transfer Agent”** means such company as may from time to time be appointed by the Trust to act as registrar and transfer agent of the Trust Units, together with any sub-transfer agent duly appointed by the Transfer Agent and, initially, means Computershare Trust Company of Canada at its principal offices in Calgary, Alberta and Toronto, Ontario.
- (fff) **“Trust”** means the Northview Apartment Real Estate Investment Trust, the trust established by this Declaration of Trust as the same may be amended or restated from time to time.
- (ggg) **“Trust Units”** means the Trust Units of the Trust referred to in Section 3.1(a).
- (hhh) **“Trustee”**, at any time, means an individual who is, in accordance with the provisions hereof, a trustee of the Trust at that time and **“Trustees”** means, at any time, all of the individuals each of whom is at that time a trustee.
- (iii) **“Trustees’ Regulations”** has the meaning ascribed thereto in Section 10.3.
- (jjj) **“Unit Certificate”** means a certificate, in the form stipulated by Article 14, evidencing one or more Trust Units, issued and certified in accordance with the provisions hereof.
- (kkk) **“Unit Option Plan”** means the Trust Unit option plan of the Trust, as amended from time to time.
- (lll) **“Unitholders”** means at any time the persons whose names appear on the Register as holders of one or more Trust Units.
- (mmm) **“Voting Units”** means the Trust Units and the Special Voting Units.
- (nnn) **“Voting Unitholders”** means at any time the Unitholders and the persons whose names appear on the Register as holders of one or more Special Voting Units.

1.2 References to Acts Performed by the Trust

For greater certainty, where any reference is made in this Declaration of Trust to an act to be performed by the Trust, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by the Trustees on behalf of the Trust or by some other person duly authorized to do so by the Trustees or pursuant to the provisions hereof.

1.3 Tax Act

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

1.4 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 Heads for Reference Only

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

1.6 Day Not a Business Day

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

1.7 Time of the Essence

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

1.8 Governing Law

This Declaration of Trust and the Unit Certificates shall be construed in accordance with the laws of the Province of Alberta and the laws of Canada applicable therein and shall be treated in all respects as Alberta contracts. The parties hereto hereby irrevocably submit and attorn to the jurisdiction of the Courts of the Province of Alberta.

**ARTICLE 2
DECLARATION OF TRUST**

2.1 Establishment of the Trust

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

2.2 Initial Contribution

The Trustees hereby acknowledge and confirm that the Initial Unitholder has made the Initial Contribution to the Trustees for the purpose of settling the Trust.

2.3 Name of the Trust

- (a) The Trust shall be known and designated as "NORTHVIEW APARTMENT 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.

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

2.4

Head Office

The head office of the Trust hereby created shall be located at 110, 6131 - 6th Street S.E., Calgary, Alberta, T2H 1L9 or such other place or places in Canada as the Trustees may from time to time designate. The Trust may have such other offices or places for the conduct of its affairs as the Trustees may from time to time determine as necessary or desirable.

2.5

Nature of the Trust

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

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

The beneficial interests and rights of a holder of any Trust Unit shall be limited to the right to participate in distributions when and as declared by the Trustees as contemplated by Article 5 and distributions upon the termination of the Trust as contemplated in Article 15. The Trust is not, is not intended to be, shall not be deemed to be and shall not be treated as, a general partnership, limited partnership, syndicate, association, joint venture, company, corporation or joint stock company nor shall the Trustees or any individual Trustee or the Unitholders or any of them or any officers or other employees of the Trust or any one of them or any person for any purpose be, or be deemed to be, treated in any way whatsoever as liable or responsible hereunder as partners or joint venturers. Neither the Trustees nor any officer or other employee of the Trust shall be, or be deemed to be, agents of the Unitholders. The relationship of the Unitholders to the Trustees, to the Trust and to the property of the Trust shall be solely that of beneficiaries of the Trust and their rights shall be limited to those conferred upon them by this Declaration of Trust.

2.6

Rights of Unitholders

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

ARTICLE 3 **ISSUE AND SALE OF UNITS**

3.1

Nature of Units

- (a) The beneficial interests in the Trust shall be divided into interests of two classes, described and designated as “Trust Units” and “Special Voting Units”, which shall be entitled to the rights and subject to the limitations, restrictions and conditions set out herein. The interest of each Unitholder shall be determined by the number of Trust Units registered in the name of the Unitholder. The interest of each registered holder of Special Voting Units shall be determined by the number of Special Voting Units which appear on the Register in the name of such holder.
- (b) The issued and outstanding Trust Units or Special Voting Units may be subdivided or consolidated from time to time by the Trustees without notice to the Voting Unitholders.
- (c) Each Trust Unit represents an equal undivided beneficial interest in any distribution from the Trust and in any of the net assets of the Trust in the event of termination or winding up of the Trust. Trust Units shall rank among themselves equally and rateably without discrimination, preference or priority.
- (d) Each Trust Unit shall entitle the holder of record thereof to one vote at all meetings of Voting Unitholders.
- (e) Special Voting Units shall not be entitled to any interest or share in any distributions or net assets of the Trust described in Section 3.1(c). Special Voting Units may be issued in series and shall only be issued to holders of record of Exchangeable Securities and may only be issued at the time of issue of such Exchangeable Securities. Each Special Voting Unit shall entitle the holder of record thereof to a number of votes at all meetings of Voting Unitholders or in respect of any written resolution of Voting Unitholders equal to the number of Trust Units into which the Exchangeable Securities to which such Special Voting Unit relates are exchangeable, exercisable or convertible. Each Special Voting Unit shall be redeemable by the Trust and by the holder of the Special Voting Unit in accordance with Article 7. Special Voting Units may only be transferred by the holders thereof together with the related Exchangeable Securities and then only if the Trustees have been provided evidence acceptable to them in their sole discretion that the prospective transferee, and all persons acting jointly and in concert with the prospective transferee, will not, after giving effect to the transfer in question then hold, directly or indirectly, or exercise control or direction over, 20% or more of the outstanding Trust Units. In the event of an offer by any person to purchase Exchangeable Securities which is made on identical terms to the holders of all outstanding Trust Units, the related Special Voting Units may be transferred pursuant to such offer without permission of the Trustees. No registered holder of Special Voting Units shall be entitled to a certificate representing or evidencing such Special Voting Units and a registered holder of Special Voting Units shall be entitled only to be entered on the Register as the holder thereof and the Register shall be conclusive as to the holders of Special Voting Units and the number of Special Voting Units to which each holder is entitled.
- (f) Concurrently with the issuance of any Exchangeable Securities, the Trust shall enter into such agreements as may be necessary or desirable to properly provide for the terms of the Exchangeable Securities, the voting rights attached to any Special Voting Units issued to

the holder of such Exchangeable Securities and the conversion, exercise, redemption or exchange of such Exchangeable Securities for Trust Units or for other Exchangeable Securities including, without limitation, consolidation and subdivision provisions that provide for concurrent consolidation or subdivision, as the case may be, upon the consolidation or subdivision of the Trust Units, and the conditional and automatic conversion, exercise, redemption or exchange of such Exchangeable Securities in the event of a take-over bid for the Trust Units as provided in Section 14.7, provided that the Trust shall not enter into any agreement that would cause the Trust not to qualify as a “mutual fund trust” or a “real estate investment trust” for purposes of the Tax Act.

3.2 Authorized Number of Trust Units

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

3.3 Units Non-Assessable

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

3.4 Fractional Trust Units

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

3.5 Allotment and Issue

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

3.6**Rights, Warrants, Options, Convertible Indebtedness and Other Securities**

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

3.7**Commissions and Discounts**

The Trustees may provide for the payment of commissions or may allow discounts to persons in consideration of their subscribing or agreeing to subscribe, whether absolutely or conditionally, for Trust Units or other securities issued by the Trust or of their agreeing to procure subscriptions therefor, whether absolute or conditional.

3.8**Transferability**

Trust Units are freely transferrable and, except as stipulated in Section 3.9, the Trustees shall not impose any restriction on the transfer of Trust Units by any Unitholder except with the consent of such Unitholder. The Trustees shall seek to obtain and maintain a listing on the Toronto Stock Exchange for the Trust Units.

3.9**Transfer of Trust Units**

- (a) Subject to the provisions of Article 14, the Trust Units shall be, for all purposes of the Trust and this Declaration of Trust, personal and moveable property, and shall be fully transferable without charge as between persons, but no transfer of Trust Units shall be effective as against the Trustees or shall be in any way binding upon the Trustees until the transfer has been recorded on the Register or one of the branch transfer registers maintained by the Trustees, the Trust or the Transfer Agent. No transfer of a Trust Unit shall be recognized unless such transfer is of a whole Trust Unit.
- (b) Subject to the provisions of Article 14, Trust Units shall be transferable on the Register or one of the branch transfer registers only by the holders of record thereof or their executors, administrators or other legal representatives or by their agents or attorneys duly authorized in writing, and only upon delivery to the Trust or to the Transfer Agent of the 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 shall be recorded on the Register or branch transfer registers and a new certificate for the Trust Units shall be issued to the transferee and a new certificate for the balance of Units not transferred shall be issued to the transferor.

(c) Unit Certificates representing any number of Trust Units may be exchanged without charge for Unit Certificates representing an equivalent number of Trust Units in the aggregate. Any exchange of Unit Certificates may be made at the offices of the Trust or the Transfer Agent where registers are maintained for Unit Certificates pursuant to the provisions of Article 14. Any Unit Certificates tendered for exchange shall be surrendered to the Trustees or appropriate Transfer Agent and then shall be cancelled.

3.10 Successors in Interest to Unitholders

Any person becoming entitled to any Trust Units as a consequence of the death, bankruptcy or incompetence of any Unitholder or otherwise by operation of law, shall be recorded as the holder of such Trust Units and shall receive a new certificate therefor upon production of evidence thereof satisfactory to the Trustees and delivery of the existing certificate to the Trustees or a transfer agent to the Trust, but until such record is made, the Unitholder of record shall continue to be and be deemed to be the holder of such Trust Units for all purposes whether or not the Trust, the Trustees or a transfer agent or registrar of the Trust shall have actual or other notice of such death, bankruptcy, incompetence or other event.

3.11 Trust Units Held Jointly or in Fiduciary Capacity

The Trust may treat two or more persons holding any Trust Unit as joint tenants of the entire interest therein unless their ownership is expressly otherwise recorded on the register of the Trust, but no entry shall be made in the register or on any certificate that any person is in any other manner entitled to any future, limited or contingent interest in any Trust Unit; provided, however, that any person recorded as a holder of any Trust Unit 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.

3.12 Performance of Trusts

The Trustees, the officers of the Trust, the Unitholders, any transfer agent or other agent of the Trust or the Trustees, shall not be bound to see to the performance of any trust, express, implied or constructive, or of any charge, pledge or equity to which any of the Trust Units or any interest therein are or may be subject, or to ascertain or inquire whether any sale or transfer of any such Trust Units or interest therein by any such Unitholder or his personal representative is authorized by such trust, charge, pledge or equity, or to recognize any person as having any interest therein, except for the person recorded on the Register as Unitholder.

3.13 Death of Unitholders

The death of a Unitholder during the continuance of the Trust shall not terminate the Trust or give such Unitholder's legal representative a right to an accounting or to take any action in the courts or otherwise against other Unitholders or the Trustees or the property of the Trust, but shall only entitle the legal representative of the deceased Unitholder to demand and receive, pursuant to the provisions of Article 14 hereof, a new certificate for Trust Units in place of the certificate held by the deceased Unitholder, and upon the acceptance thereof such legal representative shall succeed to all rights of the deceased Unitholder under this Declaration of Trust.

3.14 Unclaimed Distributions

In the event that the Trustees hold distributions which are unclaimed or which cannot 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 the Public Trustee (or other similar government official or agency) whose receipt thereof shall constitute payment and discharge of the obligations of the Trustees.

3.15 Repurchase of Trust Units

The Trust shall be entitled to purchase for cancellation at any time the whole or from time to time any part of the outstanding Trust Units, at a price per Trust Unit and on a basis to be determined by the Trustees in compliance with all applicable securities regulatory laws, regulations or policies or the policies of any applicable stock exchange.

3.16 Re-Purchase of Initial Trust Unit by the Trust

Immediately after the completion of the issue of Trust Units to the public pursuant to the initial public offering of Trust Units in Canada, the Trust will purchase the initial Trust Unit from the Initial Unitholder, and the Initial Unitholder shall sell the initial Trust Unit to the Trust, for a purchase price of \$100 and, upon the completion of such purchase and sale, the initial Trust Unit shall be cancelled and shall no longer be outstanding for any of the purposes of this Declaration of Trust.

3.17 No Pre-Emptive Rights

No person shall be entitled, as a matter of right, to subscribe for or purchase any Trust Unit.

ARTICLE 4 INVESTMENTS AND OPERATIONS OF THE TRUST

4.1 Investment Restrictions

The assets of the Trust may be invested only in accordance with the following restrictions:

- (a) notwithstanding anything herein to the contrary, the Trust shall not and shall not permit or cause any subsidiary of the Trust to make any investment, take any action or omit to take any action that would result in Voting Units not being units of a “mutual fund trust” or a “real estate investment trust” within the meaning of the Tax Act, or that would result in Units being disqualified for investment by registered retirement savings plans, registered retirement income funds, deferred profit sharing plans or registered education savings plans.

Subject to the overriding restriction in paragraph 4.1(a),

- (b) the Trust may invest, directly or indirectly through the Partnership, and other subsidiaries, in interests (including fee ownership and leasehold interests) in income-producing real property;
- (c) the Trust may invest in a joint venture arrangement only if:
 - (i) the arrangement is one pursuant to which the Trust holds an interest in real property jointly or in common with others (“**joint venturers**”) either directly or through the

ownership of securities of a corporation or other entity (a “**joint venture entity**”) as co-owners and not as partners;

- (ii) the Trust’s interest in the joint venture arrangement is not subject to any restriction on transfer other than a right of first offer or right of first refusal, if any, in favour of the joint venturers;
- (iii) the Trust has a right of first offer or right of first refusal to buy the interests of the other joint venturers; and
- (iv) the joint venture arrangement provides an appropriate buy-sell mechanism to enable a joint venturer to purchase the other joint venturers’ interests or to sell its interest;

provided that, notwithstanding the foregoing, the Trust may from time to time enter into any joint venture arrangement which does not comply with any of subparagraphs (ii), (iii) or (iv) above if the Trustees determine that the investment is desirable for the Trust and otherwise complies with Sections 4.1 and 4.2;

- (d) 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 *Mutual Funds* adopted by the Canadian Securities Administrators, as amended from time to time;
- (e) except for temporary investments held in cash, deposits with a Canadian chartered bank or trust company registered under the laws of a province or of Canada, short-term government debt securities, 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 paragraphs (b), (c), (d), (h), (i), (j), (k), (l), (m) and (n), the Trust shall not hold securities of another issuer unless either (i) such securities derive their value, directly or indirectly, principally from real property, or (ii) the principal business of the issuer of the securities is the ownership or operation, directly or indirectly, of real property (in each case as determined by the Trustees);
- (f) 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;
- (g) except for its investment in the Partnership and its general partner, the Trust shall not invest, directly or indirectly, in operating businesses unless such investment is incidental to a transaction (i) where revenue will be derived, directly or indirectly, principally from real property, or (ii) which principally involves the ownership, maintenance, improvement, leasing or management, directly or indirectly, of real property (in each case as determined by the Trustees);
- (h) the Trust shall not acquire interests in general partnerships or limited partnerships other than the Partnership, provided that the Trust may invest in a limited partnership if:
 - (i) the limited partnership is formed and operated solely for the purpose of acquiring, owning, maintaining, improving, leasing or managing a particular real property or properties or interests therein;

- (ii) the Trust's interest in the limited partnership is not subject to any restriction on transfer other than a right of first offer or right of first refusal, if any, in favour of any other partner or any affiliate thereof;
- (iii) the Trust has a right of first offer or right of first refusal to buy the interests of the other partners; and
- (iv) the Trust has received a legal opinion to the effect that the investment (a) would not result in the Trust or any registered retirement savings plan, registered retirement income fund or deferred profit sharing plan being liable under the Tax Act to pay tax imposed as a result of holdings by the Trust of foreign property as defined in the Tax Act, (b) would not disqualify the Trust as a "mutual fund trust" or a "real estate investment trust" within the meaning of the Tax Act, and (c) would not result in the Trust losing any status under the Tax Act that is otherwise beneficial to the Trust and its Unitholders,

provided that, notwithstanding the foregoing, the Trust may from time to time enter into any limited partnership arrangement which does not comply with any of subparagraphs (ii) or (iii) above if the Trustees determine that the investment is desirable for the Trust and otherwise complies with Sections 4.1 and 4.2;

- (i) the Trust may invest in raw land for development or other development projects for the purpose of renovating or expanding existing facilities;
- (j) notwithstanding paragraphs (i) and (k), the Trust may invest in mortgages and mortgage bonds (including, with the consent of a majority of the Trustees, a participating or convertible mortgage) where: (1) the security therefor is income-producing real property which otherwise complies with Section 4.1; (2) the mortgage has at least 1.2x debt service coverage; and (3) the aggregate value of the investments of the Trust in these mortgages, after giving effect to the proposed investment, will not exceed 20% of the Adjusted Unitholders' Equity;
- (k) notwithstanding paragraphs (i) and (j), the Trust may invest in mortgages if the Trust intends to use the acquisition of the mortgages as a method of acquiring control of an income-producing real property which would otherwise comply with Section 4.1 and provided the aggregate book value of the investments of the Trust in these mortgages, after giving effect to the proposed investment, will not exceed 20% of the Adjusted Unitholders' Equity;
- (l) the Trust shall not invest in or acquire securities of a Canadian real estate investment trust unless:
 - (i) the activities of the real estate investment trust are focused on acquiring, holding, maintaining, improving, leasing or managing primarily income-producing real properties; and
 - (ii) in the case of any proposed investment or acquisition which would result in the Trust owning beneficially more than 10% of the outstanding units of such real estate investment trust (the "**acquired trust**"), the investment is made for the purpose of subsequently effecting the merger or combination of the operations and

assets of the Trust and the acquired trust or for otherwise ensuring that the Trust will control the undertaking and operations of the acquired trust;

- (m) the Trust may invest 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 of the Trust in investments or transactions which do not comply with paragraphs (b), (c), (e), (i), (j) and (k) under Section 4.1 or paragraph (d) under Section 4.2; and
- (n) in addition to and notwithstanding any of the above, the Trust may subscribe for and hold securities of any entity in accordance with any plan of arrangement to which the Trust is a party and which has been approved by Special Resolution.

For the purpose of the foregoing guidelines (other than paragraph (b)), 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 investments in real property will be deemed to include an investment in a joint venture arrangement.

4.2 Operating Policies

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

- (a)
 - (i) any written instrument creating an obligation which is or includes the granting by the Trust of a mortgage, or
 - (ii) to the extent the Trustees determine to be practicable and consistent with their fiduciary duty to act in the best interests of the Unitholders, any written instrument which in the judgment of the Trustees is a material obligation;

must, in each case, contain a provision or be subject to an acknowledgement to the effect that the obligation being created is not personally binding upon, and that resort will not be had to, nor will recourse or satisfaction be sought from, the private property of any of the Trustees, Unitholders, annuitants under a plan of which a Unitholder acts as a trustee or carrier, or officers, employees or agents of the Trust, but that only property of the Trust or a specific portion thereof will be bound; the Trust, however, is not required, subject to having, in the opinion of the Trustees, used all reasonable efforts to comply with this requirement, to comply in respect of obligations assumed by the Trust upon the acquisition of real property;

- (b) the Trust will not lease or sublease to any person any real property, premises or space where that person and its affiliates would, after the contemplated lease or sublease, be leasing or subleasing real property, premises or space having a fair market value net of encumbrances in excess of 20% of the Adjusted Unitholders' Equity of the Trust;
- (c) the limitation contained in paragraph (b) will not apply to the renewal of a lease or sublease and will not apply where the lessee or sublessee is, or where the lease or sublease is guaranteed by:

- (i) the Government of Canada, the Government of the United States, the Government of Greenland, any province or territory of Canada, any state of the United States, any municipality or city in Canada or the United States or Greenland, or any agency or crown corporation thereof;
- (ii) any corporation or other entity any of the equity or debt securities of which are, or are guaranteed by, an issuer any of whose equity or debt securities are, rated “investment grade” by a recognized credit rating agency, in each case at the time the lease or sublease is entered into, or at the time other satisfactory leasing or pre-leasing arrangements (as determined by the Trustees in their discretion) were entered into; or
- (iii) a Canadian chartered bank or a trust company or insurance company registered or licensed federally or under the laws of a province of Canada;

(d) in addition to the provisions of paragraph (i) under Section 4.1, the Trust may engage in construction or development of real property in order to maintain its real properties in good repair or to enhance the income-producing potential of properties in which the Trust has an interest;

(e) title to each real property must be held by and registered in the name of the Trust, the Trustees or a corporation or other entity which is a subsidiary, directly or indirectly, of the Trust or jointly-owned, directly or indirectly, by the Trust together with joint venturers, except where the applicable land tenure system will not provide fee simple title, in which case the Trust, the Trustees or a corporation or other entity which is a subsidiary, directly or indirectly, or jointly-owned, directly or indirectly, by the Trust with joint venturers shall hold an appropriate land lease under the applicable land tenure system;

(f) the Trust will not incur or assume any indebtedness if, after the incurring or assuming of the indebtedness, the total indebtedness of the Trust would be more than 70% of the Gross Book Value. For the purposes of this subsection, the term “**indebtedness**” means (without duplication) on a consolidated basis:

- (i) any obligation of the Trust for borrowed money;
- (ii) any obligation of the Trust incurred in connection with the acquisition of property, assets or business, other than the amount of future income tax liability arising out of indirect acquisitions;
- (iii) any obligation of the Trust issued or assumed as the deferred purchase price of property;
- (iv) any capital lease obligation of the Trust; and
- (v) any obligation of the type referred to in clauses (i) through (iv) of another person, the payment of which the Trust has guaranteed or for which the Trust is responsible for or liable;

provided that (a) for the purposes of clauses (i) through (iv), an obligation (other than convertible debentures) will constitute indebtedness only to the extent that it would appear as a liability on the consolidated balance sheet of the Trust in accordance with generally

accepted accounting principles; (b) obligations referred to in clauses (i) through (iii) exclude trade accounts payable, distributions payable to Unitholders and accrued liabilities arising in the ordinary course of business; and (c) convertible debentures will constitute indebtedness to the extent of the principal amount thereof outstanding;

- (g) the Trust shall not directly or indirectly guarantee any indebtedness or liabilities of any kind of a third party, except indebtedness assumed or incurred under a mortgage by a subsidiary of the Trust or other entity wholly-owned by the Trust or jointly-owned by the Trust with joint venturers and operated solely for the purpose of holding a particular property or properties where such mortgage, if granted by the Trust directly, would not cause the Trust to otherwise contravene the restrictions set out in Section 4.1 and, where such mortgage is granted by a joint venture entity, subject to a joint venturer being required to give up its interest in a property owned by the joint venture entity as a result of another joint venturer's failure to honour its proportionate share of the obligations relating to such property, the liability of the Trust is limited strictly to the proportion of the mortgage loan equal to the Trust's proportionate ownership interest in the joint venture entity. Notwithstanding the foregoing, the Trust may, in the discretion of the Trustees, guarantee the interest of an aboriginal joint venturer provided it is in the commercial interest of the Trust to do so in order to secure preferential lease or contractual terms. In addition, the Trust will not directly or indirectly guarantee any indebtedness or liabilities of any person if doing so (A) would result in the Trust or any registered retirement savings plan, registered retirement income fund or deferred profit sharing plan being liable under the Tax Act to pay tax imposed as a result of holdings by the Trust of foreign property as defined in the Tax Act, (B) would disqualify the Trust as a "mutual fund trust" or a "real estate investment trust" within the meaning of the Tax Act, or (C) would result in the Trust losing any status under the Tax Act that is otherwise beneficial to the Trust and its Unitholders;
- (h) the Trust shall obtain and maintain at all times insurance coverage in respect of potential liabilities of the Trust and the accidental loss of value of the assets of the Trust from risks, in amounts, with such insurers, and on such terms as the Trustees consider appropriate, taking into account all relevant factors including the practices of owners of comparable properties; and
- (i) the Trust shall obtain a Phase I environmental audit of each real property to be acquired by it or by any of its subsidiaries, excluding any properties acquired in remote communities or single family dwellings and properties where there is no requirement to obtain a Phase I environmental audit in order to obtain CMHC financing for the real property and, if the Phase 1 environmental audit report recommends that further environmental audits be conducted, the Trust shall ensure that such further environmental audits are conducted by it or, in the case of a real property to be acquired by a subsidiary, by such subsidiary, in each case by an independent and experienced environmental consultant; and such audit, as a condition to any such acquisition, shall be satisfactory to the Trustees.

For the purpose of the foregoing policies, the assets, liabilities and transactions of a subsidiary of 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 arrangement.

4.3**Registered Investment**

The Trustees shall cause the Trust to do all such things and take all such action as may be necessary to obtain, as soon as practicable following the closing of the initial public offering of Trust Units in Canada, status for the Trust as a “registered investment” under the Tax Act, and shall do all such things and take such action as may be necessary from time to time to ensure that the Trust shall retain such status. The Trustees shall take all steps necessary to ensure that the Trust does not make or hold any investment that would result in the Trust being liable for tax under Section 122, Part XI or Part X.2 of the Tax Act.

4.4**Application of Investment Restrictions and Operating Guidelines**

With respect to the investment restrictions and operating guidelines contained in Sections 4.1 and 4.2, where any maximum or minimum percentage limitation is specified in any of the restrictions therein contained, such restrictions shall be applied on the basis of the relevant amounts calculated immediately after the making of such investment. Any subsequent change relative to any percentage limitation which results from a subsequent change in the book value of the assets of the Trust or the amount of Adjusted Unitholders’ Equity will not require divestiture of any investment, unless the subsequent change could reasonably be expected to cause the Trust not to be a “real estate investment trust” for the purposes of the Tax Act. If the subsequent change could reasonably be expected to have that consequence, the Trustees shall take such steps as they deem appropriate to divest the Trust of the relevant investment.

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 restriction of the Trust then in force, such restriction in conflict shall, if the Trustees on the advice of legal counsel to the Trust 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 Distributable Income**

The Distributable Income of the Trust for any period shall be the consolidated net income of the Trust for the period computed in accordance with generally accepted accounting principles as adjusted in accordance with the following:

- (a) there shall be added depreciation and amortization (excluding amortization of tenant inducement and other occupancy costs) and payments attributable to prepaid equity leases that were deducted in computing the net income of the Trust for the period under generally accepted accounting principles;
- (b) there shall be excluded any gains or losses on the disposition of any asset and any reserves, provisions and allowances established by the Trustees in their discretion in respect of the period to the extent that they have not been excluded in computing the net income of the Trust for the period under generally accepted accounting principles;
- (c) there shall be deducted the Exchangeable Security Distribution Amount; and

(d) there shall be added or deducted any amount which the Trustees in their discretion determine to be appropriate;

and, for these purposes, interest expense on convertible debentures issued by the Trust shall be calculated on a cash basis.

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

5.2 Distribution of Distributable Income

Unitholders at the close of business on each Distribution Record Date shall be entitled to receive any distribution of Distributable Income declared by the Trustees for such month. The distribution for any Distribution Period will be paid on the Distribution Date for such Distribution Period.

5.3 Automatic Year End Distribution of Net Income

On the last Business Day of each Taxation Year (or on December 31 of a calendar year if the Taxation Year ending in such calendar year does not end on December 31), an amount equal to the net income of the Trust for such Taxation Year, determined in accordance with the provisions of the Tax Act other than paragraph 82(1)(b) and subsection 104(6) thereof and excluding Net Realized Capital Gains, not previously made payable to Unitholders in the Taxation Year, less the amount of any non-capital losses as defined in the Tax Act of the Trust carried forward, shall be automatically payable to Unitholders at the close of business on such day unless the Trustees otherwise, in their absolute discretion, determine another amount, not less than the amount necessary to ensure that the Trust shall not be liable to pay income tax under Part 1 of the Tax Act for the preceding Taxation Year, after taking into account any entitlement to a capital gains refund, in which case such amount determined by the Trustees will be payable at the close of business on such day.

5.4 [Intentionally deleted.]

5.5 Automatic Year End Distribution of Net Realized Capital Gains

On the last Business Day of each Taxation Year (or on December 31 of a calendar year if the Taxation Year ending in such calendar year does not end on December 31), an additional distribution equal to the Net Realized Capital Gains for such Taxation Year not previously made payable to Unitholders in the Taxation Year shall, unless the Trustees otherwise, in their absolute discretion, determine another amount, be automatically payable to Unitholders at the close of business on such day except to the extent that:

- (a) the distributions previously payable to Unitholders in the Taxation Year exceed the aggregate of (A) the net income of the Trust for such Taxation Year, determined in accordance with the provisions of the Tax Act other than paragraph 82(1)(b) and subsection 104(6) thereof and excluding Net Realized Capital Gains, and (B) any Net Realized Capital Gains previously made payable to Unitholders in the Taxation Year (such excess is hereinafter referred to as an “**Excess Distribution**”);
- (b) Net Realized Capital Gains retained by the Trust would not be subject to tax in the Trust by reason of the deduction of the net loss of the Trust for the Taxation Year determined in accordance with the provisions of the Tax Act other than paragraph 82(1)(b) and subsection 104(6) thereof or the carry forward of “net capital losses” as defined in the Tax Act;

- (c) Net Realized Capital Gains retained by the Trust would not be subject to tax in the Trust by reason of the carry forward of “non-capital losses” as defined in the Tax Act, provided that the Trustees exercise their discretion to so apply such loss carried forward before the end of the Taxation Year; and
- (d) Net Realized Capital Gains for the Taxation Year in respect of which the Trust is entitled to a capital gains refund under the Tax Act, as determined by the Trustees in their sole discretion.

To the extent that an additional distribution of Net Realized Capital Gains is not made by reason of paragraph (a), the distributions of Distributable Income made pursuant to Section 5.2 for the Taxation Year shall be deemed to have included payment of an amount of Net Realized Capital Gains equal to the lesser of the Net Realized Capital Gains for the Taxation Year and the Excess Distribution.

5.6 Payment of Distributions

- (a) Distributions paid on each Trust Unit shall be equal and cash distributions shall be made by cheque payable to or to the order of the Unitholder, by electronic funds transfer or by such other manner of payment approved by the Trustees from time to time. The payment, if made by cheque, shall be conclusively deemed to have been made upon hand-delivery of a cheque to the Unitholder or to his agent duly authorized in writing or upon the mailing of a cheque by prepaid first-class mail addressed to the Unitholder at his address as it appears on the Register unless the cheque is not paid on presentation. The Trustees may issue a replacement cheque if they are satisfied that the original cheque has not been received or has been lost or destroyed upon being furnished with such evidence of loss, indemnity or other document in connection therewith that they may in their discretion consider necessary.
- (b) Where the Trustees determine that the Trust does not have available cash in an amount sufficient to make payment of the full amount of any distribution which is payable under this Article 5 on the due date for such payment, the payment may, at the option of the Trustees, include the issuance of additional Trust Units, or fractions of Trust Units, if necessary, having a value equal to the difference between the amount of such distribution and the amount of cash which has been determined by the Trustees to be available for the payment of such distribution. Immediately after such *pro rata* distribution of Trust Units, the number of outstanding Trust Units will be consolidated such that each Unitholder will hold after the consolidation the same number of Trust Units as the Unitholder held before the distribution of additional Trust Units. In this case, each Unit Certificate representing a number of Trust Units prior to the distribution of additional Trust Units is deemed to represent the same number of Trust Units after the distribution of additional Trust Units and the consolidation.

5.7 Reinvestment

The Trustees may in their sole discretion establish a distribution reinvestment plan at any time providing for the voluntary reinvestment by Unitholders of Distributable Income. Such plan may entitle those Unitholders that elect to participate to a bonus distribution as a reduction of capital of the Trust.

5.8**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.

5.9**Allocations of Net Income and Net Realized Capital Gains for Tax Purposes**

Unless the Trustees otherwise determine, both (i) the net income of the Trust for a Taxation Year, determined in accordance with the provisions of the Tax Act other than paragraph 82(1)(b) and subsection 104(6); and (ii) Net Realized Capital Gains; payable to Unitholders shall be allocated to the Unitholders for the purposes of the Tax Act in the same proportion as the total distributions made to Unitholders in the Taxation Year under Sections 5.2, 5.3 and 5.5. The Trustees shall in each year make such other designations for tax purposes in respect of Distributable Income and other distributions that the Trustees consider to be reasonable in all of the circumstances.

5.10**Definitions**

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

**ARTICLE 6
REDEMPTION OF TRUST UNITS****6.1****Right of Redemption**

Each Unitholder shall be entitled to require the Trust to redeem at any time or from time to time at the demand of the Unitholder all or any part of the Trust Units registered in the name of the Unitholder at the prices determined and payable in accordance with the conditions hereinafter provided.

6.2**Exercise of Redemption Right**

- (a) To exercise a Unitholder's right to require redemption under this Article 6, a duly completed and properly executed notice requiring the Trust to redeem Trust Units, in a form approved by the Trustees, shall be sent to the Trust at the head office of the Trust or at any of the principal offices of the Transfer Agent at which it has agreed to act as registrar for Trust Units. No form or manner of completion or execution shall be sufficient unless the same is in all respects satisfactory to the Trustees and is accompanied by any further evidence that the Trustees may reasonably require with respect to the identity, capacity or authority of the person giving such notice.
- (b) Upon receipt by the Trust of the notice to redeem Trust Units, the Unitholder shall thereafter cease to have any rights with respect to the Trust Units tendered for redemption (other than to receive the redemption payment therefor) including the right to receive any distributions thereon which are declared payable to the Unitholders of record on a date which is subsequent to the day of receipt by the Trust of such notice. Trust Units shall be considered to be tendered for redemption on the date that the Trust has, to the satisfaction of the Trustees, received the notice and other required documents or evidence as aforesaid.

6.3

Cash Redemption

(a) Subject to Sections 6.4 and 6.5, upon receipt by the Trust of the notice to redeem Trust Units in accordance with Section 6.2, the holder of the Trust Units tendered for redemption shall be entitled to receive a price per Trust Unit (the “**Redemption Price**”) equal to the lesser of:

- (i) 90% of the “market price” of the Trust Units on the principal market on which the Trust Units are quoted for trading during the 20 trading day period commencing immediately subsequent to the day on which the Trust Units were surrendered to the Trust for redemption (the “**Redemption Date**”); and
- (ii) 100% of the “closing market price” on the principal market on which the Trust Units are quoted for trading on the Redemption Date.

(b) For the purposes of paragraph (a),

- (i) “market price” shall be an amount equal to the weighted average of the closing price of the Trust Units for each of the trading days on which there was a closing price; provided that if the applicable exchange or market does not provide a closing price, but only provides the highest and lowest prices of the Trust Units traded on a particular day, the “market price” shall be an amount equal to the average of the highest and lowest prices for each of the trading days on which there was a trade; and provided further that if there was trading on the applicable exchange or market for fewer than five of the 20 trading days, the “market price” shall be the weighted average of the following prices established for each of the 20 trading days; the weighted average of the last bid and last asking prices for the Trust Units for each day on which there was no trading; the closing price of the Trust Units for each day that there was trading if the exchange or market provides a closing price; and the weighted average of the highest and lowest prices of the Trust Units for each day that there was trading if the market provides only the highest and lowest prices of Trust Units traded on a particular day, and
- (ii) the “closing market price” shall be an amount equal to the closing price of the Trust Units if there was a trade on the date and the exchange or market provides a closing price; an amount equal to the weighted average of the highest and lowest prices of Trust Units if there was trading on the date and the exchange or other market provides only the highest and lowest trading prices of Trust Units traded on a particular day; and the weighted average of the last bid and last asking prices of the Trust Units if there was no trading on the date.

(c) Subject to Sections 6.4 and 6.5, the Redemption Price payable by the Trust in respect of the Trust Units surrendered for redemption during any calendar month shall be satisfied by way of a cash payment no later than the last day of the calendar month following the month in which the 20 trading day period referred to in Subparagraph (a)(i) ended. Payments made by the Trust of the Redemption Price are conclusively deemed to have been made upon the mailing of a cheque in a postage prepaid envelope addressed to the former Unitholder unless such cheque is dishonoured upon presentment. Upon such payment, the Trust shall be discharged from all liability to the former Unitholder in respect of the Trust Units so redeemed.

6.4

No Cash Redemption in Certain Circumstances

Section 6.3 shall not be applicable to Trust 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 Trust Units and all other Trust Units tendered for redemption in the same calendar month exceeds Canadian \$50,000 (the “**Monthly Limit**”); provided that the Trustees may, in their sole discretion, waive such limitation in respect of all Trust Units tendered for redemption in any particular calendar month. Trust Units tendered for redemption in any calendar month in which the total amount payable by the Trust pursuant to Section 6.3(c) exceeds the Monthly Limit will be redeemed for cash pursuant to Section 6.3(c) and, subject to any applicable regulatory approvals, by a distribution *in specie* of securities under Section 6.5 on a *pro rata* basis;
- (b) at the time the Trust Units are tendered for redemption, the outstanding Trust Units (or, as applicable, instalment receipts) are not listed on a stock exchange or traded or quoted on another market which the Trustees consider, in their sole discretion, provides representative fair market value prices for the Trust Units (or, as applicable, instalment receipts); or
- (c) the normal trading of the outstanding Trust Units (or, as applicable, instalment receipts) is suspended or halted on any stock exchange on which the Trust Units (or, as applicable, instalment receipts) are listed for trading or, if not so listed, on any market on which the Trust Units (or, as applicable, instalment receipts) are quoted for trading, on the Redemption Date or for more than five trading days during the 20 trading day period commencing immediately after the Redemption Date.

6.5

In Specie Redemption

If, pursuant to Section 6.4, Section 6.3 is not applicable to Trust Units tendered for redemption by a Unitholder, the Redemption Price per Trust Unit to which the Unitholder is entitled shall be the fair market value thereof as determined by the Trustees and, subject to any applicable regulatory approvals, shall be paid out and satisfied by way of a distribution *in specie* consisting of such assets (in this Section 6.5, the “**Redemption Assets**”) of the Trust as the Trustees determine.

The Redemption Price payable pursuant to this Section 6.5 in respect of Trust Units tendered for redemption during any month shall be paid by the transfer, to or to the order of the Unitholder who exercised the right of redemption, on the last day (the “**Transfer Date**”) of the calendar month following the month in which the Trust Units were tendered for redemption, of the Redemption Assets. The Trust shall be entitled to all income paid on the Redemption Assets up to and including the Transfer Date. Payments by the Trust of the Redemption Price are conclusively deemed to have been made upon the mailing of the *in specie* distribution of Redemption Assets by registered mail in a postage prepaid envelope addressed to the former Unitholder and/or any party having a security interest. Upon such payment, the Trust shall be discharged from all liability to the former Unitholder and any party having a security interest in respect of the Trust Units so redeemed. No fractional Redemption Assets that are securities will be distributed and, where the number of securities to be received by the former Unitholder includes a fraction or a principal amount less than a multiple of \$100, such number shall be rounded to the next lowest number or multiple of \$100, as the case may be. Where the Trust makes a distribution *in specie* of Redemption Assets to a Unitholder on a redemption of Trust Units pursuant to this Section in a particular year, the Trustees shall treat (i) the amount of any capital gain realized by the Trust as a result of the distribution of such property as an amount payable to the redeeming Unitholder in that year out of the Net

Realized Capital Gains, and (ii) the amount of accrued income on or in respect of such property (other than capital gains described in (i)), as an amount payable to the redeeming Unitholder in that year out of the net income of the Trust, except, with respect to both (i) and (ii), to the extent the Trustees determine otherwise in their sole discretion on or before December 31 of that year.

ARTICLE 7 **REDEMPTION OF SPECIAL VOTING UNITS**

7.1

Right of Redemption

Each holder of Special Voting Units shall be entitled to require the Trust to redeem at any time or from time to time at the demand of the holder all or any part of the Special Voting Units registered in the name of the holder at the prices determined and payable in accordance with the conditions hereinafter provided.

7.2

Exercise of Redemption Right

- (a) To exercise the right to require redemption under this Article 7, a duly completed and properly executed notice requiring the Trust to redeem the holder's Special Voting Units, in a form approved by the Trustees, shall be sent to the Trust at the head office of the Trust. No form or manner of completion or execution shall be sufficient unless the same is in all respects satisfactory to the Trustees and is accompanied by any further evidence that the Trustees may reasonably require with respect to the identity, capacity or authority of the person giving such notice.
- (b) Upon receipt by the Trust of the notice to redeem Special Voting Units, the holder shall thereafter cease to have any rights with respect to the Special Voting Units tendered for redemption (other than to receive the redemption payment therefor). Special Voting Units shall be considered to be tendered for redemption on the date that the Trust has, to the satisfaction of the Trustees, received the notice and other required documents or evidence as aforesaid.

7.3

Cash Redemption

- (a) Upon receipt by the Trust of the notice to redeem Special Voting Units in accordance with Section 7.2, the holder of the Special Voting Units tendered for redemption shall be entitled to receive a price per Special Voting Unit equal to \$0.001 (provided that payments will be rounded up to the nearest whole cent).
- (b) The amount payable by the Trust in respect of the Special Voting Units surrendered for redemption during any calendar month shall be satisfied by way of a cash payment no later than the last day of the calendar month following the month in which the Special Voting Units were tendered for redemption. Payments made by the Trust are conclusively deemed to have been made upon the mailing of a cheque in a postage prepaid envelope addressed to the former holder of Special Voting Units unless such cheque is dishonoured upon presentation. Upon such payment, the Trust shall be discharged from all liability to the former holder in respect of the Special Voting Units so redeemed.

7.4**Redemption in Other Circumstances**

If at any time a holder of a Special Voting Unit ceases to hold the related Exchangeable Security or Exchangeable Securities then such holder shall be deemed to have exercised at that time, without any further act or notice by such holder, his or her right of redemption in respect of such Special Voting Unit in accordance with the provisions of Section 7.2.

**ARTICLE 8
TRUSTEES****8.1****Number of Trustees**

The Trustees shall consist of not less than three and not more than ten Trustees, with the Number of Trustees from time to time within such range being fixed by resolution of the Voting Unitholders or, if authorized by the Voting Unitholders, by the Trustees.

8.2**Calling and Notice of Meetings**

Meetings of the Trustees shall be called and held at such time and at such place as the Trustees, the Chairman of the Trustees or any two Trustees may determine, and any one Trustee or officer of the trust may give notice of meetings when directed or authorized by such persons. Notice of each meeting of the Trustees shall be given to each Trustee not less than 48 hours before the time when the meeting is to be held, provided that if a quorum of Trustees is present, the Trustees may without notice hold a meeting immediately following an annual meeting of Voting Unitholders. Notice of a meeting of the Trustees may be given verbally, in writing or by telephone, fax or other means of communication. A notice of a meeting of Trustees need not specify the purpose of or the business to be transacted at the meeting. Notwithstanding the foregoing, the Trustees may by resolution from time to time fix a day or days in any month or months for regular meetings of the Trustees at a place and hour to be named, in which case, provided that a copy of such resolution is sent to each Trustee forthwith after being passed and forthwith after each Trustee's appointment, no other notice shall be required for any such regular meeting. A trustee who attends a meeting of Trustees, in person or by telephone, is deemed to have waived notice of such meeting except when the Trustee attends the meeting for the purpose of objecting to the transaction of any business on the grounds that the meeting has not been lawfully called or convened.

8.3**Place of Meetings**

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

8.4**Meetings by Telephone**

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

8.5**Quorum**

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

8.6**Chairman**

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

8.7**Action by the Trustees**

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

8.8**Adjourned Meeting**

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

8.9**Remuneration and Expenses**

The Trustees shall be paid such compensation for their services as the Trustees may from time to time determine. Until otherwise determined, such compensation shall be (i) \$35,000 per year for each Trustee, (ii) entitlement to participate in the Trust's security based compensation plans, pursuant to the terms of such security based compensation plan, and (iii) an additional member fee for Committees upon which the Trustee shall be appointed. The Trustees shall also be entitled to be reimbursed for reasonable travel and other expenses properly incurred by them in attending meetings of the Trustees or any committee thereof or in connection with their services as Trustees. The Trustees, in their discretion, may elect to pay the Chairman of the board, or any committee thereof, if any, an additional amount as compensation for such individual's service as Chairman. Nothing herein contained shall preclude any Trustee from serving the trust in any other capacity and receiving remuneration therefor. The Trustees shall be eligible to participate in any incentive plan for employees, Trustees and/or officers adopted by the Trust or the partnership.

8.10 Officers

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

8.11 Residency of Trustees

A majority of the Trustees must be Residents. If at any time a majority of the Trustees are not Residents or there are no Trustees who are Residents, the Trustee or Trustees who are Non-Residents shall, immediately before that time, be deemed to have resigned and shall cease to be Trustees with effect from the time of such deemed resignation. If at any time the number of Trustees is less than the number required under this Declaration of Trust and the remaining Trustee or Trustees fail or are unable to act in accordance with Sections 9.2 and/or 9.7 to appoint one or more additional Trustees or if, upon the resignation or deemed resignation of one or more Trustees there would be no Trustees, then the Initial Unitholder shall appoint one or more Trustees so that following such appointment a majority of the Trustees are Residents and, failing such appointment, any remaining Trustee or Voting Unitholder or officer of the Trust or the Auditors, as the case may be, may apply to the Supreme Court of Alberta for an order appointing one or more Trustees so that following such appointment a majority of the Trustees are Residents, to act until the next annual meeting of Voting Unitholders or on such other terms as the Court may order. Any Trustee who is a Resident who proposes to become a Non-Resident shall notify the other Trustees thereof as soon as reasonably practicable and shall resign as a Trustee effective upon the day of such notification and shall be replaced with a Trustee who is a Resident.

8.12 Independent Trustees

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

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 in Canada or elsewhere;
- (c) a person who is not an individual; and
- (d) a person who has the status of bankrupt.

A majority of the Trustees must not be officers, employees or consultants of the Partnership or any of its affiliates unless such a majority arises between meetings of the Voting Unitholders by reason of any Trustee's resignation, death or failure to meet the above qualifications.

9.2 Appointment of Trustees

Subject to Sections 8.11, 8.12 and 9.5, the Trustees as at the date hereof (the "**Initial Trustees**") are hereby confirmed as the Trustees of the Trust for a term of office which, subject to Section 9.5, shall expire (subject to further appointment) at the close of the next annual meeting of Voting Unitholders. Except as otherwise provided herein, Trustees shall be appointed (including the reappointment of incumbent Trustees) at each annual meeting of Voting Unitholders, and may be appointed at a special meeting of Unitholders, in each case to hold office, subject to Section 9.5, for a term expiring at the close of the next annual meeting of Voting Unitholders following such an appointment. Any such appointment (other than by the initial Trustees) shall be made either by a resolution approved by a majority of the votes cast at a meeting of Voting Unitholders or shall be made by resolution in writing in the manner set out in Section 13.12. Notwithstanding the foregoing:

- (a) if no Trustees are appointed at the annual meeting of Voting Unitholders held immediately before the term of office of the existing Trustees expires, such existing Trustees shall continue to hold the office of Trustees under this Declaration of Trust until successors have been appointed or they cease to hold office; and
- (b) the Trustees may, between annual meetings of the Unitholders, appoint one or more additional Trustees for a term to expire (subject to further appointment) at the close of the next annual meeting of Voting Unitholders, but the number of additional Trustees so appointed shall not at any time exceed one-third of the number of Trustees who held office immediately at the expiration of the immediately preceding annual meeting of Voting Unitholders.

9.2.1 Nomination of Trustees

- (a) Only persons who are nominated in accordance with the following procedures shall be eligible for appointment as Trustees of the Trust. Nominations of persons for appointment to the board of Trustees 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:
 - (i) by or at the direction of the board of Trustees, including pursuant to a notice of meeting;
 - (ii) by or at the direction or request of one or more Unitholders pursuant to a requisition of the Unitholders made in accordance with this Declaration of Trust; or
 - (iii) by any person (a "**Nominating Unitholder**") who (A) at the close of business on the date of the giving of the notice provided for below in this Section 9.2.1 and on the record date for notice of such meeting, is entered in the Register as a holder of one or more Trust Units carrying the right to vote at such meeting or who beneficially owns Trust Units that are entitled to be voted at such meeting; and (B) who complies with the notice procedures set forth below in this Section 9.2.1.

(b) In addition to any other applicable requirements, for a nomination to be made by a Nominating Unitholder, the Nominating Unitholder must have given timely notice thereof to the Trustees in the manner prescribed by this Declaration of Trust. Furthermore, if such notice is made on a day which is not a Business Day or later than 5:00 p.m. (Calgary Time) on a day which is a Business Day, then such notice shall be deemed to have been made on the subsequent day that is a Business Day.

(c) To be timely, a Nominating Unitholder's notice to the Trustees must be made:

- (i) in the case of an annual meeting of Unitholders, not less than 30 nor more than 65 days prior to the date of the annual meeting of Unitholders; provided, however, that in the event that the annual meeting of Unitholders is to be held on a date that is less than 50 days after the date (the "**Notice Date**") on which the first public announcement of the date of the annual meeting was made, notice by the Nominating Unitholder may be made not later than the close of business on the tenth (10th) day following the Notice Date; and
- (ii) 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), not later than the close of business on the fifteenth (15th) day following the day on which the first public announcement of the date of the special meeting of Unitholders was made. In no event shall any adjournment or postponement of a meeting of Unitholders or the announcement thereof commence a new time period for the giving of a Nominating Unitholder's notice as described above.

(d) To be in proper written form, a Nominating Unitholder's notice to the Trustees must set forth:

- (i) as to each person whom the Nominating Unitholder proposes to nominate for election as a Trustee: (A) the name, age, business address and residential address of the person; (B) the principal occupation or employment of the person; (C) the class or series and number of Trust Units, Class B LP Units or other securities convertible or exchangeable for Trust Units which are controlled or which are owned beneficially or of record by the person as of the record date for 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; and (D) any other information relating to the person 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 applicable securities laws; and
- (ii) as to the Nominating Unitholder giving the notice, any proxy, contract, arrangement, understanding or relationship pursuant to which such Nominating Unitholder has a right to vote any Trust Units 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 applicable securities laws.

(e) The Trust may require any proposed nominee to furnish such other information as may reasonably be required by the Trust to determine the eligibility of such proposed nominee to serve as an independent trustee of the Trust or that could be material to a reasonable

Unitholder's understanding of the independence, or lack thereof, of such proposed nominee.

- (f) No person shall be eligible for election as a Trustee of the Trust unless nominated in accordance with the provisions of this Section 9.2.1; provided, however, that nothing in this Section 9.2.1 shall be deemed to preclude discussion by a Unitholder (as distinct from the nomination of Trustees) at a meeting of Unitholders of any matter in respect of which it would have been entitled to submit to a vote pursuant to the terms and conditions contained in this Declaration of Trust. The chairman of the applicable meeting 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.
- (g) For purposes of this Section 2.4.1, "**public announcement**" shall mean 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.
- (h) Notwithstanding the foregoing, the Trustees may, in their sole discretion, waive any requirement in this Section 9.2.1.

9.3

Consent to Act

- (a) A person who is appointed a Trustee hereunder shall not become a Trustee until the person has, either before or after such appointment, executed and delivered to the Trust a consent substantially as follows:

"To: Northview Apartment Real Estate Investment Trust (the "Trust")

And to: The Trustees thereof

The undersigned hereby certifies that he or she is [is not] a resident of Canada within the meaning of the *Income Tax Act* (Canada) and consents to act as a Trustee of the Trust and hereby agrees, upon the later of the date of this consent and the date of the undersigned's appointment as a Trustee of the Trust, to thereby become a party, as a Trustee, to the Ninth Amended and Restated Declaration of Trust dated ●, 2016, as amended from time to time.

Dated: _____

[Signature]

[Print Name]"

- (b) Upon the later of a person being appointed a Trustee hereunder and executing and delivering to the Trust a consent substantially as set forth in Section 9.3(a), such person shall become a Trustee hereunder and shall be deemed to be a party (as a Trustee) to this Declaration of Trust, as amended from time to time.

9.4**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.

9.5**Ceasing to Hold Office**

- (a) A Trustee ceases to hold office when:
 - (i) he or she dies or resigns;
 - (ii) he or she is removed in accordance with Section 9.6;
 - (iii) he or she ceases to be duly qualified to act as a Trustee as provided under Section 9.1; or
 - (iv) he or she ceases to be a Trustee in accordance with Section 8.11.
- (b) A resignation of a Trustee becomes effective at the time a written resignation is received by the Trust upon 30 days' written notice, or at the time specified in the resignation, whichever is later, provided that if, upon the resignation becoming effective, the number of remaining Trustees would be less than the number necessary to constitute a quorum for a meeting of Trustees, the resignation is not effective until the resigning Trustee's successor is duly appointed as a Trustee, except in the case of a deemed resignation under Section 8.11 which shall be effective at the time therein prescribed.
- (c) Upon a Trustee ceasing to hold office as such hereunder, such Trustee shall cease to be a party (as a Trustee) to this Declaration of Trust; provided, however, that such Trustee shall continue to be entitled to be paid any amounts owing by the Trust to the Trustee and to the benefits of the indemnity provided in Section 10.9.

9.6**Removal of Trustees**

The Voting Unitholders may remove any Trustee or Trustees from office by resolution approved by at least two-thirds of the votes cast at a meeting of Voting Unitholders called for that purpose. Any Trustee or Trustees may be removed from office for cause by resolution passed by not less than two-thirds of the remaining Trustees. 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 9.7.

9.7**Filling Vacancies**

A quorum of Trustees may fill a vacancy among the Trustees, except a vacancy resulting from an increase in the number of Trustees, other than in accordance with Section 9.2 or from a failure of the Voting Unitholders to elect the minimum number of Trustees fixed by or pursuant to this Declaration of Trust. If there is not a quorum of Trustees, or if the vacancy has arisen from an increase in the number of Trustees, other than in accordance with Section 9.2 or from a failure by the Voting Unitholders to elect the minimum number of Trustees required by or pursuant to this Declaration of Trust, the Trustees then in office shall forthwith call a special meeting of Voting Unitholders to fill the vacancy and, if they fail to call

a meeting or if there are no Trustees then in office, the meeting may be called by any Voting Unitholder. A Trustee appointed to fill a vacancy holds office, subject to Sections 9.5 and 9.6, until the close of the next annual meeting of the Voting Unitholders.

9.8 Validity of Acts

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

ARTICLE 10 CONCERNING THE TRUSTEES

10.1 Powers of the Trustees

Subject to the terms and conditions of this Declaration of Trust, the Trustees may exercise from time to time in respect of the Trust's property and the investments and affairs of the Trust any and all rights, powers and privileges that could be exercised by a legal and beneficial owner thereof. In construing the provisions of this Declaration of Trust, presumptions shall be in favour of the granted powers and authority of the Trustees. The enumeration of any specific power or authority herein shall not be construed as limiting the general powers or authority or any other specified power or authority conferred herein on the Trustees.

10.2 Specific Powers and Authorities

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

- (a) to supervise the activities and manage the investments and affairs of the Trust;
- (b) to maintain records and provide reports to Voting Unitholders;
- (c) to collect, sue for and receive all sums of money due to the Trust;
- (d) to effect payment of distributions to the Unitholders as provided in Article 5;
- (e) to invest funds of the Trust as provided in Article 4;
- (f) if the Trustees become aware by written notice that the beneficial owners of 49% or more of the Trust Units then outstanding are, or may be, Non-Residents or that such situation is imminent, the Trustees shall ensure that the limitations on non-resident ownership as provided in Section 14.5 are met;
- (g) to possess and exercise all the rights, powers and privileges pertaining to the ownership of any securities held by the Trust, including securities issued by the Partnership, to the same extent that an individual might, unless otherwise limited herein, and, without limiting the generality of the foregoing, to vote or give any consent, request or notice, or waive any notice, either in person or by proxy or power of attorney, with or without power of

substitution, to one or more persons, which proxies and powers of attorney may be for meetings or actions generally or for any particular meeting or action and may include the exercise of discretionary power;

- (h) where reasonably required, to engage or employ on behalf of the Trust any persons as agents, representatives, employees or independent contractors (including, without limitation, investment advisors, registrars, underwriters, accountants, lawyers, appraisers, brokers or otherwise) in one or more capacities;
- (i) except as prohibited by law, to delegate any of the powers and duties of the Trustees to any one or more agents, representatives, officers, employees, independent contractors or other persons without liability to the Trustees, except as provided in this Declaration of Trust;
- (j) to engage in, intervene in, prosecute, join, defend, compromise, abandon or adjust, by arbitration or otherwise, any actions, suits, disputes, claims, demands or other litigation or proceedings, regulatory or judicial, relating to the Trust, the assets of the Trust or the Trust's affairs, to enter into agreements therefor, whether or not any suit or proceeding is commenced or claim asserted and, in advance of any controversy, to enter into agreements regarding the arbitration, adjudication or settlement thereof;
- (k) to arrange for insurance contracts and policies insuring the Trust, its assets and/or any or all of the Trustees 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 or Voting Unitholders;
- (l) to cause legal title to any of the assets of the Trust to be held by and/or in the name of a Trustee, or except as prohibited by law, by and/or in the name of the Trust or any other custodian or person, on such terms, in such manner, with such powers in such person as the Trustees may determine and with or without disclosure that the Trust or the Trustee is interested therein; provided, however, that should legal title to any of the Trust's property be held by and/or in the name of any person or persons other than a Trustee or the Trust, the Trustees shall require such person or persons to execute a trust agreement acknowledging that legal title to such assets is held in trust for the benefit of the Trust;
- (m) to issue Trust Units for such consideration as the Trustees may deem appropriate in their sole discretion, such issuance to be subject to the terms and conditions of this Declaration of Trust;
- (n) to enter into any agreement in connection with, or to facilitate, the issuance of Exchangeable Securities;
- (o) 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 Depository, any registrar, the Transfer Agent or any escrow agent, to such extent as the Trustees shall determine;
- (p) with the approval or confirmation of Voting Unitholders, enact and from time to time amend or repeal by-laws not inconsistent with this Declaration of Trust containing provisions relating to the Trust, the Trust's property and the conduct of the affairs of the Trust, but not in conflict with any provision of this Declaration of Trust;

- (q) 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;
- (r) to pay all taxes or assessments, of whatever kind or nature, whether within or outside Canada, imposed upon or against the Trustees in connection with the Trust's property, undertaking or income of the Trust, or imposed upon or against the Trust's property, undertaking or income of the Trust, or any part thereof and to settle or compromise disputed tax liabilities and for the foregoing purposes to make such returns, take such deductions, and make such designations, elections and determinations in respect of Net Income or Net Realized Capital Gains distributed to Unitholders in the year and any other matter as shall be permitted under the Tax Act (provided that to the extent necessary the Trustees will seek the advice of the Trust's counsel or the Auditors), and do all such other acts and things as may be deemed by the Trustees in their sole discretion to be necessary, desirable or convenient;
- (s) to guarantee the obligations of the Partnership or any subsidiary or affiliate of the Trust pursuant to any good faith debt for borrowed money incurred by the Partnership or the subsidiary or affiliate, as the case may be, and pledging securities issued by the Partnership or the subsidiary or affiliate, as the case may be, as security for such guarantee and provided that the Trustees determine that such guarantee is incidental to the Trust's direct or indirect investment in the Partnership or such subsidiary or affiliate; and
- (t) to do all such other acts and things as are incidental to the foregoing, and to exercise all powers which are necessary or useful to carry on the purpose and activities of the Trust, to promote any of the purposes for which the Trust is formed and to carry out the provisions of this Declaration of Trust.

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 not inconsistent with law or with this Declaration of Trust. The Trustees shall also be entitled to make any reasonable decisions, designations or determinations not contrary to this Declaration of Trust which it may determine are necessary or desirable in interpreting, applying or administering this Declaration of Trust or in administering, managing or operating the Trust. Any Trustees' Regulations, decisions, designations or determinations made pursuant to this Section shall be conclusive and binding upon all persons affected thereby. The Trustees shall also have such additional powers as may be approved by a resolution of the Voting Unitholders passed at a meeting of Voting Unitholders by a majority of the votes cast at that meeting.

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, negotiation, lodging, depositing or transferring of any cheques, promissory notes, drafts, acceptances, bills of exchange and orders for the payment of money; the giving of receipts for orders relating to any property of the Trust; the execution of any agreement relating to any property of the Trust; the execution of any agreement relating to any such banking activities and defining the rights and powers of the parties thereto; and the authorizing of any officer of such banker to do any act or thing on the Trust's behalf to facilitate such banking activities, shall be transacted with such bank, trust company, or other firm or corporation carrying on a banking business as the Trustees may designate, appoint or authorize from time to time and shall be transacted on the Trust's behalf by one or more officers of the Trust or the Partnership as the Trustees may designate, appoint or authorize from time to time.

10.5 Standard of Care and Duties

The Trustees shall act honestly and in good faith with a view to the best interests of the Trust and in connection therewith shall exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. No Trustee shall 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 *Canada Business Corporations Act*. Unless otherwise required by law, the Trustees shall not be required to give bond, surety or security in any jurisdiction for the performance of any duties or obligations hereunder. The Trustees, in their capacity as such, shall not be required to devote their entire time to the investments or business or affairs of the Trust.

10.6 Reliance Upon Trustees and Officers

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

10.7 Fees and Expenses

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

10.8 Limitations on Liability of Trustees

- (a) Subject to the standard of care set forth in Section 10.5, none of the Trustees nor any officers of the Trust shall be liable to any Voting Unitholder or holder of Exchangeable Securities or any other person in tort, contract or otherwise for any action taken or not taken

in good faith in reliance on any documents that are, *prima facie*, properly executed; for any depreciation of, or loss to, the Trust incurred by reason of the sale of any security; for the loss or disposition of monies or securities; for any action or failure to act by the Partnership or any other person to whom the Trustees have delegated any of their duties hereunder; or for any other action or failure to act including, without limitation, the failure to compel in any way any former Trustee to redress any breach of trust or any failure by any person to perform obligations or pay monies owed to the Trust, unless such liabilities arise out of a breach of the standard of care, diligence and skill as set out in Section 10.5. If the Trustees have retained an appropriate expert, advisor or legal counsel with respect to any matter connected with their duties under this Declaration of Trust, the Trustees may act or refuse to act based on the advice of such expert, advisor or legal counsel and, notwithstanding any provision of this Declaration of Trust, including, without limitation, the standard of care, diligence and skill set out in Section 10.5 hereof, the Trustees shall not be liable for and shall be fully protected from any action or refusal to act based on the advice of any such expert, advisor or legal counsel which it is reasonable to conclude is within the expertise of such expert or advisor to give.

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

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

10.9

Indemnification of Trustees

Each Trustee, each former Trustee, each officer of the Trust and each former officer of the Trust shall be entitled to be and shall be indemnified and reimbursed out of the Trust's property in respect of any and all taxes, penalties or interest in respect of unpaid taxes or other governmental charges imposed upon the Trustee or former Trustee or officer or former officer in consequence of its performance of its duties hereunder and in respect of any and all costs, charges and expenses, including amounts paid to settle an action or satisfy a judgment, reasonably incurred in respect of any civil, criminal or administrative action or proceeding to which the Trustee, former Trustee, officer or former officer is made a party by reason of being or having been a Trustee or officer of the Trust or, at the request of the Trust, an officer of the Partnership or its general partner or any subsidiary thereof, provided that a Trustee, former Trustee, officer or former officer shall not be indemnified out of the Trust's property in respect of unpaid taxes or other governmental charges or in respect of such costs, charges and expenses that arise out of or as a result or in

the course of a breach of the standard of care, diligence and skill set out in Section 10.5. A Trustee, former Trustee, officer or former officer shall not be entitled to satisfy any right of indemnity or reimbursement granted herein, or otherwise existing under law, except out of the Trust's property, and no Voting Unitholder or other Trustee or officer shall be personally liable to any person with respect to any claim for such indemnity or reimbursement as aforesaid.

10.10 Contractual Obligations of the Trust

In respect of any obligations or liabilities being incurred by the Trust or the Trustees on behalf of the Trust, the Trustees and the Trust shall make all reasonable efforts to include as a specific term of such obligations or liabilities a contractual provision to the effect that neither the Unitholders nor the Trustees shall have any personal liability or obligations in respect thereof. The omission of such statement from any such document or instrument shall not render the Trustees or the Voting Unitholders liable to any person, nor shall the Trustees or the Voting Unitholders be liable for such omission. If, notwithstanding this provision, the Trustees or any Voting Unitholder shall be held liable to any person by reason of the omission of such statement from any such agreement, undertaking or obligation such Trustee or Voting Unitholder shall be entitled to indemnity and reimbursement out of the Trust's property to the full extent of such liability.

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.

- (a) The disclosure required in the case of a Trustee or officer shall be made:
 - (i) at the meeting of Trustees or the Investment Committee, as the case may be, at which a proposed contract or transaction is first considered;
 - (ii) if the Trustee or officer was not then interested in a proposed contract or transaction, at the first such meeting after he or she becomes so interested;
 - (iii) if the Trustee or officer becomes interested after a contract is made or a transaction is entered into, at the first meeting after he or she becomes so interested; or
 - (iv) if a person who is interested in a contract or transaction later becomes a Trustee or officer, at the first such meeting of Trustees after he or she assumes that capacity.
- (b) Notwithstanding paragraph (a), where this section applies to any person in respect of a material contract or transaction or proposed material contract or transaction that, in the ordinary course of the business of the Trust, would not require approval by the Trustees or the 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 interest forthwith after that person becomes aware of the contract or transaction or proposed contract or transaction.

- (c) A Trustee referred to in this section shall not vote on any resolution to approve the contract or transaction unless the contract or transaction is:
 - (i) one relating primarily to his or her remuneration as a Trustee, officer, employee or agent of the Trust; or
 - (ii) one for indemnity under Section 10.9 hereof or for the purchase of liability insurance.
- (d) For the purposes hereof, a general notice to the Trustees by a Trustee or an officer of the Trust or any other person referred to in this Section 10.11 disclosing that he or she is a director, officer or employee of or has a material interest in a person and is to be regarded as interested in any contract made or any transaction entered into with that person, is a sufficient disclosure of interest in relation to any contract so made or transaction so entered into.
- (e) Where a material contract is made or a material transaction is entered into between the Trust and any one or more of its Trustees or officers, or between the Trust and another person of which a Trustee or officer of the Trust is a director or officer or in which he or she has a material interest:
 - (i) the Trustee or officer, as applicable, is not accountable to the Trust or to the Voting Unitholders for any profit or gain realized from the contract or transaction; and
 - (ii) the contract or transaction is neither void nor voidable;

by reason only of that relationship or by reason only that the Trustee 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 or her interest in accordance with this Section 10.11 and the contract or transaction was reasonable and fair to the Trust at the time it was so approved.
- (f) Notwithstanding anything in this section, but without limiting the effect of paragraph (e) hereof, a Trustee or officer of the Trust, acting honestly and in good faith, is not accountable to the Trust or to the Voting Unitholders for any profit or gain realized from any such contract or transaction by reason only of holding the office of Trustee or officer, and the contract or transaction, if it was reasonable and fair to the Trust at the time it was approved, is not by reason only of the Trustee's or officer's interest therein void or voidable, where:
 - (i) the contract or transaction is confirmed or approved at a meeting of Voting Unitholders duly called for that purpose; and
 - (ii) the nature and extent of the Trustee's or officer's interest in the contract or transaction are disclosed in reasonable detail in the notice calling the meeting or in any information circular required to be provided by this Declaration of Trust or by-law.
- (g) Subject to paragraphs (e) and (f) hereof, where 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 Voting

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 Related Party Transactions

(a) Notwithstanding anything contained elsewhere in this Declaration of Trust to the contrary, the provisions of this section shall apply at all times and any related and ancillary transactions:

- (i) to any person who is a “related party” of the Trust within the meaning of Multilateral Instrument 61-101 *Protection of Minority Security Holders in Special Transactions* (as such may be amended or replaced from time to time) (“**MI 61-101**”); and
- (ii) to any person who is:
 - (A) a Trustee or an affiliate of a Trustee;
 - (B) a substantial security holder of the Trust or any affiliate of such substantial security holder (where the term “substantial security holder” shall have the meaning ascribed thereto in Part XXI of the *Securities Act* (Ontario));
 - (C) an officer, director or employee of the Trust or of any of its subsidiaries or affiliates,

(each such person being referred to herein as a “**related party**”).

(b) In the event of any proposed purchase or sale of real property from or to a related party, the Trust shall comply with the provisions of MI 61-101 requiring the preparation of and provision of an independent valuation.

(c) Without limitation, and in addition to the requirement, if any, under MI 61-101 or this Declaration of Trust to obtain the approval of Voting Unitholders, or to obtain minority approval within the meaning of MI 61-101, for any related party transaction within the meaning of MI 61-101, the Trust shall not carry out a proposed purchase or sale of real property from or to a related party, or otherwise effect a related party transaction unless such transaction is determined to be on commercially reasonable terms and is approved by a majority of the Trustees who are not parties to such transaction, or who are not directors, officers or employees of, or who do not have a material interest in, any person (other than the Trust) who is a party to such transaction.

10.13 Conditions Precedent

The obligation of the Trustees to commence or continue any act, action, suit or proceeding or to represent the Trust in any action, suit or proceeding shall be conditional upon sufficient funds being available to the Trustees from the Trust’s property to commence or continue such act, action, suit or proceeding or to represent the Trust in any action, suit or proceeding and an indemnity reasonably satisfactory to the Trustees to protect and hold harmless the Trustees against the costs, charges and expenses and liabilities to be incurred therein and any loss and damage it may suffer by reason thereof. None of the

provisions contained in this Declaration of Trust shall require the Trustees to expend or risk their own funds or otherwise incur financial liability in the performance of their duties or in the exercise of any of their rights or powers unless it is given an indemnity and funding satisfactory to the Trustees, acting reasonably.

ARTICLE 11 **COMMITTEES OF TRUSTEES**

11.1 Delegation

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

11.2 Investment Committee

The Trustees shall appoint an investment committee (the “**Investment Committee**”) to consist of not less than four Trustees, a majority of whom shall be Independent Trustees. The duties of the Investment Committee will be to:

- (a) review all proposals regarding investments;
- (b) approve or reject proposed acquisitions and dispositions of investments by the Trust or any of its subsidiaries or affiliates;
- (c) authorize proposed transactions on behalf of the Trust or any of its subsidiaries or affiliates; and
- (d) approve all borrowings and the assumption or granting of any mortgage or other security interest in real property, including any assignment of rents and other monies derived from or related to real property, by the Trust or any of its subsidiaries and affiliates.

Questions arising at any meeting of the Investment Committee shall be decided by a majority of the votes cast. Decisions may be taken by written consent signed by all of the members of the Investment Committee. Any member of the Investment Committee may call a meeting of the Investment Committee upon not less than 48 hours’ notice. Where for any reason a member of the Investment Committee is disqualified from voting on or participating in a decision, any other independent and disinterested Trustee not already a member of the Investment Committee may be designated by the Trustees to act as an alternate. Notwithstanding the appointment of the Investment Committee, the Trustees may consider and approve any matter which the Investment Committee has the authority to consider or approve.

11.3 Audit Committee

The Trustees shall appoint an audit committee (the “**Audit Committee**”) to consist of not less than three Trustees, all of whom shall be Independent Trustees. The Audit Committee shall:

- (a) review the Trust’s procedures for internal control with the Auditors and the Trust’s chief financial officer;
- (b) review the engagement of the Auditors;

- (c) review and recommend to the Trustees for approval annual and quarterly financial statements and management's discussion and analysis of financial condition and results of operation;
- (d) assess the Trust's financial and accounting personnel; and
- (e) review any significant transactions outside the Trust's ordinary course of business and all pending litigation involving the Trust.

The Auditors are entitled to receive notice of every meeting of the Audit Committee and, at the expense of the Trust, to attend and be heard thereat and, if so requested by a member of the Audit Committee, shall attend any meeting of the Audit Committee held during the term of office of the Auditors. Questions arising at any meeting of the Audit Committee shall be decided by a majority of the votes cast. Decisions may be taken by written consent signed by all of the members of the Audit Committee. The Auditors of the Trust or a member of the Audit Committee may call a meeting of the Audit Committee on not less than 48 hours' notice.

11.4 Compensation and Governance Committee

The Trustees shall appoint a compensation and governance committee (the "**Compensation and Governance Committee**") to consist of not less than three Trustees, all of whom shall be Independent Trustees. The duties of the Compensation and Governance Committee will be to review the governance of the Trust with responsibility over the Trust's corporate governance, human resources and compensation policies. Questions arising in any meeting of the Compensation and Governance Committee shall be decided by a majority of the votes cast. Decisions may be taken by written consent signed by all of the members of the Compensation and Governance Committee. Any member of the Compensation and Governance Committee may call a meeting of the Compensation and Governance Committee upon not less than 48 hours' notice. Where for any reason a member of the Compensation and Governance Committee is disqualified from voting on or participating in a decision, any other independent and disinterested Trustee not already a member of the Compensation and Governance Committee may be designated by the Trustees to act as an alternate. Notwithstanding the appointment of the Compensation and Governance Committee, the Trustees may consider and approve any matter which the Compensation and Governance Committee has the authority to consider or approve.

11.5 Procedure

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

ARTICLE 12 **AMENDMENT**

12.1 **Amendment**

The provisions of this Declaration of Trust, except where specifically provided otherwise, may only be amended by Special Resolution; provided that the provisions of this Declaration of Trust may be amended by the Trustees, without the consent, approval or ratification of the Voting Unitholders or any other person, at any time for the purpose of:

- (a) ensuring continuing compliance with applicable laws (including the Tax Act and maintaining the Trust's status as a "real estate investment trust", "mutual fund trust" and a "registered investment" under the Tax Act), regulations, requirements or policies of any governmental or other authority having jurisdiction over the Trustees, the Trust or over the distribution of Trust Units;
- (b) providing additional protection, in the opinion of counsel to the Trustees, for the Voting Unitholders;
- (c) removing any conflicts or inconsistencies in this Declaration of Trust or making minor corrections including the rectification of any ambiguities, defective provisions, errors, mistakes or omissions which are, in the opinion of the Trustees, necessary or desirable and not prejudicial to the Voting Unitholders;
- (d) making any amendments which, in the opinion of the Trustees, are necessary or desirable as a result of changes in Canadian taxation laws or accounting standards; or
- (e) for any purpose (except one in respect of which a vote of Voting Unitholders is specifically otherwise required) if the Trustees are of the opinion that the amendment is not prejudicial to Unitholders and is necessary or desirable,

but notwithstanding the foregoing, no such amendment shall modify the right to vote attached to any Voting Unit or reduce the equal undivided interest in the property of the Trust or the entitlement to distributions from the Trust provided hereunder (including those provided for in Article 5 and Article 15) represented by any Trust Unit without the consent of the holder of such Trust Unit 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 12.1 without the consent of the holders of all of the Voting Units then outstanding.

12.2 **Amendments by Voting Unitholders**

Subject to Section 12.3 and Section 12.4, this Declaration of Trust may only be amended by the vote of a majority of the votes cast at a meeting of Voting Unitholders duly called for that purpose.

12.3 **Two-Thirds Unitholder Vote**

No amendment may be made to this Declaration of Trust which would relate to the duration or termination of the Trust, and the Trust shall not sell its assets as an entirety or substantially as an entirety (other than as part of an internal reorganization of the assets of the Trust as approved by the Trustees), except in each case with the approval of Voting Unitholders given by the affirmative vote of at least two-thirds of the votes cast at a meeting of Voting Unitholders duly called for that purpose. No amendments may be made to the Declaration of Trust which would modify the provision of Section 4.1 or the provisions

of subparagraphs (d), (f), (g), (h) and (i) of Section 4.2 except with the approval of Voting Unitholders given by the affirmative vote of at least two-thirds of the votes cast at a meeting of Voting Unitholders duly called for that purpose. The remaining provisions of Section 4.2 may be amended with the approval of a majority of the votes cast by Voting Unitholders duly called for that purpose.

12.4 Special Unitholder Vote

Notwithstanding Sections 12.1, 12.2 and 12.3, at all times the following amendments to this Declaration of Trust require the approval of two-thirds of the votes cast at a meeting of Voting Unitholders:

- (a) an exchange, reclassification or cancellation of all or part of the Trust Units or Special Voting Units;
- (b) the addition, change or removal of the rights, privileges, restrictions or conditions attached to the Trust 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 preemptive rights; or
 - (iii) the reduction or removal of a distribution preference or liquidation preference;
- (c) the creation of new rights or privileges attaching to certain of the Trust Units or Special Voting Units; or
- (d) the constraint on the issue, transfer or ownership of Trust Units or Special Voting Units or the change or removal of such constraint, except as otherwise provided herein.

12.5 Variation of Rights

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

ARTICLE 13 MEETINGS OF VOTING UNITHOLDERS

13.1 Annual and Special Meetings of Voting Unitholders

Annual meetings of the Voting Unitholders shall be called, commencing in 2003, on a day on or before June 1 in each year, at a time and at a place in Canada set by the Trustees. The business transacted at such meetings shall include the presentation of the audited financial statements of the Trust for the immediately preceding fiscal year, the appointment of the Trustees for the ensuing year in accordance with Article 9, the appointment of Auditors and the transaction of such other business as Voting Unitholders may be entitled to vote upon as hereinafter provided in this Article 13 or as the Trustees may determine. Special meetings of the Voting Unitholders may be called at any time by the Trustees and must (subject to Section 13.11) be called by the Trustees upon a written request of Voting Unitholders holding

in the aggregate not less than 5% of the Voting Units then outstanding, such request specifying in reasonable detail the business proposed to be transacted at the meeting. The chairperson of any annual or special meeting shall be the Chairman of the Trustees or any other Trustee specified by resolutions of the Trustees or, in the absence of any Trustee, any person appointed as chairperson of the meeting by the Voting Unitholders present. The Trustees, the officers of the Trust, the Auditors and any other person approved by the Trustees, the chairperson of the meeting or by resolution passed by a majority of the votes cast by Voting Unitholders represented at the meeting may attend meetings of the Voting Unitholders.

13.2 Notice of Meetings

Notice of all meetings of Voting Unitholders shall be given by unregistered mail, postage prepaid, addressed to each Voting Unitholder at his or her last address on the books of the Trust, mailed at least 21 days and not more than 50 days before the meeting. Such notice shall specify the time when, and the place where, such meeting is to be held and shall specify the nature of the business to be transacted at such meeting in sufficient detail to permit a 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. Any adjourned meeting, other than a meeting adjourned for lack of a quorum under Section 13.6(b), may be held as adjourned without further notice. The accidental omission to give notice or the non-receipt of such notice by a Voting Unitholder shall 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 (unless the Voting Unitholder or other person attends the meeting for the purpose of objecting to the transaction of any business on the grounds that the meeting is not properly called) or those not so present or represented have waived notice. Any 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, and such waiver, whether given before or after the meeting, shall cure any default in the giving of such notice.

13.3 Quorum

At any meeting of the Voting Unitholders, subject as hereinafter provided, a quorum shall consist of two or more individuals present in person either holding personally or representing as proxies not less in aggregate than 25% of the vote 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, shall be terminated and, if otherwise called, shall stand adjourned to such day being not less than 14 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 shall form a quorum, and any business may be brought before or dealt with at such an adjourned meeting which might have been brought before or dealt with at the original meeting in accordance with the notice calling the same.

13.4 Voting Rights of Voting Unitholders

Only Voting Unitholders of record shall be entitled to vote. On a poll vote at any meeting of Voting Unitholders, each Trust Unit shall entitle the holder or holders of that Trust Unit to one vote, and each Special Voting Unit shall entitle the holder or holders of that Special Voting Unit to the number of votes determined in accordance with Section 3.1(e). Every question submitted to a meeting, other than a Special Resolution, shall, unless a poll vote is demanded, be decided by a show of hands, on which every person present and entitled to vote shall be entitled to one vote. At any meeting of Voting Unitholders, any holder of Voting Units entitled to vote thereat may vote by proxy and a proxy need not be a Voting Unitholder, provided that no proxy shall be voted at any meeting unless it shall have been received by the

Transfer Agent for verification at least 24 hours prior to the commencement of such meeting, unless otherwise determined by the Trustees. 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 shall be present at such meeting in person or by proxy, and such joint owners or their proxies so present disagree as to any vote to be cast, such vote purporting to be executed by or on behalf of a Voting Unitholder shall be deemed valid unless challenged at or prior to its exercise, and the burden of proving invalidity shall rest on the challenger.

13.5 Matters on which Unitholders must Vote

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

- (a) subject to Sections 9.5, 9.6 and 9.7, the election or removal of Trustees;
- (b) except as provided in Article 18, the appointment or removal of auditors of the Trust;
- (c) any amendment to the Declaration of Trust (except as provided in Section 4.5 or Article 12);
- (d) the sale of the assets of the Trust as an entirety or substantially as an entirety, other than as part of an internal reorganization of the assets of the Trust as approved by the Trustees; or
- (e) the termination of the Trust.

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

13.6 Meaning of “Special Resolution”

- (a) The expression “**Special Resolution**” when used in this Declaration of Trust means, subject to this Article 13, 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 two or more individuals present in person either holding personally or representing as proxies not less in aggregate than 25% of the number of votes attached to Voting Units then outstanding and passed by the affirmative votes of the holders of more than 66 $\frac{2}{3}$ % of the Voting Units represented at the meeting and voted on a poll upon such resolution.
- (b) Notwithstanding Section 13.3, if at any meeting at which a Special Resolution is proposed to be passed the holders of 25% 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 dissolved, but in any other case it shall stand adjourned to such date, being not less than 21 nor more than 60 days later and to such place and time as may be appointed by the chairperson of the meeting. Not less than 10 days prior notice shall be given of the time and place of such adjourned meeting in the manner provided in Section 13.2. 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 Section 13.6(a) shall be a Special Resolution within the meaning of this Declaration of Trust, notwithstanding that the holders of less than 25% of the aggregate number of Voting Units then outstanding are present in person or by proxy at such adjourned meeting.

- (c) Votes on a Special Resolution shall always be given on a poll and no demand for a poll on a Special Resolution shall be necessary.
- (d) For the purpose of a separate vote by the holders of Trust 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 Trust Units or Special Voting Units, as the case may be, at which meeting the provisions of this Article 13 shall apply *mutatis mutandis*.

13.7 Meaning of "Outstanding"

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

- (a) when a new certificate has been issued in substitution for a Unit Certificate which has been lost, stolen, mutilated or destroyed, only one of such Unit Certificates shall be counted for the purposes of determining the number of Voting Units outstanding; and
- (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, the Partnership or any affiliate thereof shall be disregarded, except that:
 - (i) for the purpose of determining whether the Trustees shall be protected in relying on any such vote, consent, requisition or other instrument or action only the Voting Units which the Trustees know are so owned shall be so disregarded; and
 - (ii) Voting Units so owned which have been pledged in good faith other than to the Trust, the Partnership or an affiliate thereof shall not be so disregarded if the pledgee shall establish, to the satisfaction of the Trustees, the pledgee's right to vote such Voting Units in his or her discretion free from the control of the Trust, the Partnership or any affiliate thereof;
- (c) for the purposes of Section 13.7(b), the Partnership shall provide a certificate which will state the number of Voting Units and the certificate numbers of certificates, if certificates are issued, held by the Trust or any affiliate thereof. The Trustees shall be entitled to rely on such certificate in order to disregard the votes of any of the parties mentioned above.

13.8 Record Date for Voting

For the purpose of determining the Voting Unitholders who are entitled to vote or act at any meeting or any adjournment thereof, the Trustees may fix a date not more than 60 days and not less than 21 days prior to the date of any meeting of Voting Unitholders as a record date for the determination

of Voting Unitholders entitled to vote at such meeting or any adjournment thereof, and any Voting Unitholder who was a Voting Unitholder at the time so fixed shall be entitled to receive notice of and vote at such meeting or any adjournment thereof even though the Voting Unitholder has since that time disposed of his or her Voting Units, and no Voting Unitholder becoming such after that time shall be so entitled to vote at such meeting or any adjournment thereof. In the event that the Trustees do not fix a record date for any meeting of Voting Unitholders, the record date for such meeting shall be the date upon which notice of the meeting is given as provided under Section 13.2.

13.9 Proxies

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 must be in writing and either substantially in a form which may be approved by the Trustees acting reasonably or as may be satisfactory to the chairman of the meeting at which it is sought to be exercised. The instrument of proxy must be executed by the Voting Unitholder giving the proxy or his or her agent duly authorized in writing and, if given on behalf of joint holders, must be executed by all of them and may be revoked by any of them, and, if given by a Voting Unitholder which is a body corporate, must be executed on its behalf by a person duly authorized in writing. Any person may be appointed a proxy, whether or not that person is a 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 Transfer Agent for verification at least 24 hours prior to the commencement of the applicable meeting, unless otherwise determined by the Trustees.

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

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

13.10 Personal Representatives

If a Voting Unitholder is deceased, his personal representative, upon filing with the secretary of the meeting such proof of his appointment as the secretary considers sufficient, shall be entitled to exercise the same voting rights at any meeting of Voting Unitholders as the Voting Unitholder would have been entitled to exercise if the Voting Unitholder were 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 13.4 relating to joint holders shall apply.

13.11 Appointment of Inspector

The Trustees shall call a meeting of Voting Unitholders upon the written request of Voting Unitholders holding in the aggregate not less than 25% of the Voting Units then outstanding for the purpose of considering the appointment of an inspector to investigate the performance by the Trustees of their

responsibilities and duties in respect of the Trust. An inspector may be appointed for such purpose, at the expense of the Trust, at such meeting by a resolution approved by a majority of the votes cast at the meeting.

13.12 Resolutions in Writing

Notwithstanding any other provision of this Declaration of Trust, a resolution in writing executed by Voting Unitholders holding a proportion of the outstanding Voting Units equal to the proportion required to vote in favour thereof at a meeting of Voting Unitholders to approve that resolution is valid as if it had been passed at a meeting of Voting Unitholders.

ARTICLE 14 CERTIFICATES, REGISTRATION AND TRANSFER OF UNITS

14.1 No Alteration

- (a) The provisions of this Article 1Article 14 shall not in any way alter the nature of Trust Units or the relationships of a Unitholder to the Trustees and of one Unitholder to another but are intended only to facilitate the issuance of certificates evidencing the ownership of Trust Units if desirable to issue them to Unitholders and the recording of all transactions in respect of Trust Units and Unit Certificates whether by the Trust, securities dealers, stock exchanges, transfer agents, registrars or other persons. Trust Units shall be issued in the form of electronically using Direct Registration System (“DRS”) or the Unit Certificate provided, however, that a global Unit Certificate (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 purchaser of Trust Units represented by a Global Unit Certificate will be entitled to a certificate or other instrument from the Trust or the Depository evidencing that purchaser’s ownership thereof except in the circumstances where the Depository resigns or is removed from its responsibilities as depository and the Trustee 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 Trust Units between CDS Participants shall occur in accordance with the Depository’s rules and procedures.
- (b) All references herein to actions by, notices given or payments made to Unitholders shall, where such Trust 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 Unitholders evidencing a specified percentage of the aggregate Trust Units outstanding, such direction or consent may be given by Unitholders acting through the Depository and the CDS Participants owning Trust Units evidencing the requisite percentage of the Trust Units. The rights of a Unitholder whose Trust 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 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.

- (c) For so long as Trust Units are held through the Depository, if any notice or other communication is required to be given to Unitholders, the Trustees and the Transfer Agent will give all such notices and communications to the Depository.
- (d) If the Depository resigns or is removed from its responsibilities as depository and the Trustee is unable or does not wish to locate a qualified successor, the Depository shall surrender the Global Unit Certificate to the Transfer Agent with instructions from the Depository for registration of Trust Units in the name and in the amounts specified by the Depository and the Trust shall issue and the Trustee and Transfer Agent shall execute and deliver the aggregate number of Trust Units then outstanding in the form of definitive Unit Certificates representing such Trust Units.

14.2 Unit Certificates

- (a) Unit Certificates shall, subject to the provisions hereof, be in such form as is authorized from time to time by the Trustees.
- (b) If issued, Unit Certificates are issuable only in fully registered form.
- (c) The definitive form of the Unit Certificates shall:
 - (i) be in the English language;
 - (ii) be dated as of the date of issue thereof;
 - (iii) contain the CUSIP number for the Trust Units; and
 - (iv) contain such distinguishing letters and numbers as the Trustees shall prescribe.
- (d) In the event that the Unit Certificate is translated into the French language and any provision of the Unit Certificate in the French language shall be susceptible of an interpretation different from the equivalent provision in the English language, the interpretation of such provision in the English language shall be determinative.
- (e) Each Unit Certificate shall be signed on behalf of the Trustees and the Transfer Agent of the Trust. The signature of the Trustees required to appear on such certificate may be printed, lithographed or otherwise mechanically reproduced thereon and, in such event, certificates so signed are as valid as if they had been signed manually.

14.3 Contents of Unit Certificates

- (a) Until otherwise determined by the Trustees, each Unit Certificate shall legibly set forth on the face thereof, *inter alia*, the following:
 - (i) the name of the Trust and the words "A trust governed under the laws of the Province of Alberta created by a Declaration of Trust made the 2nd day of January, 2002, as amended from time to time" or words of like effect;
 - (ii) the name of the person to whom the Unit Certificate is issued as Unitholder;
 - (iii) the number of Trust Units represented thereby and whether or not the Trust Units represented thereby are fully paid;

- (iv) that the Trust Units represented thereby are transferable and the Unit Certificate shall state the transfer restrictions, if any;
- (v) “The Trust Units represented by this certificate are issued upon the terms and subject to the conditions of the Declaration of Trust, which Declaration of Trust is binding upon all holders of Trust Units and, by acceptance of this certificate, the holder assents to the terms and conditions of the Declaration of Trust. A copy of the Declaration of Trust, pursuant to which this certificate and the Units represented thereby are issued may be obtained by a Unitholder on demand and without fee from the head office of the Trust” or words of like effect; and
- (vi) “For information as to personal liability of a Unitholder, see the reverse side of this certificate” or words of like effect.

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

- (i) “The Declaration of Trust provides that no Unitholder shall be subject to any personal liability whatsoever, in tort, contract or otherwise, to any person in connection with the assets of the Trust or the obligations or the affairs of the Trust and all such persons shall look solely to the assets of the Trust for satisfaction of claims of any nature arising out of or in connection therewith and the assets of the Trust only shall be subject to levy or execution”, or words of like effect; and
- (ii) appropriate forms of notice of exercise of the right of redemption and of powers of attorney for transferring Trust Units.

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

14.4 Register of Unitholders

A register (the “**Register**”) shall be kept at the principal stock transfer office in Calgary, Alberta of the Transfer Agent, which Register shall contain the names and addresses of the Unitholders, the respective numbers of Units held by them, the certificate numbers of certificates representing such Units and a record of all transfers and redemptions thereof. Branch transfer registers shall be maintained at such other offices of the Transfer Agent as the Trustees may from time to time designate. Only Unitholders whose certificates are so recorded shall be entitled to receive distributions or to exercise or enjoy the rights of Unitholders hereunder. The Trustees shall have the right to treat the person registered as a Unitholder on the Register as the owner of such Trust Units for all purposes, including, without limitation, payment of any distribution, giving notice to Unitholders and determining the right to attend and vote at meetings of Voting Unitholders.

14.5 Limitation of Non-Resident Ownership

- (a) At no time may Non-Residents be the beneficial owners, directly or indirectly, of more than 49% of all outstanding Trust Units. The Trustees may require declarations as to the jurisdictions in which beneficial owners of Trust Units are resident. If the Trustees become aware that the beneficial owners of 49% of the Trust Units then outstanding are, or may be, Non-Residents or that such a situation is or may be imminent, the Transfer Agent shall make a public announcement thereof and shall not accept a subscription for Trust Units

from or issue or register a transfer of Trust Units to a person unless the person provides a declaration in form and content satisfactory to the Trustees that the person is not a Non-Resident. If, notwithstanding the foregoing, the Trustees determine that more than 49% of the Trust Units are held or beneficially-owned by Non-Residents, the Trustees may send a notice to Non-Resident holders of Trust Units, chosen in inverse order to the order of acquisition or registration of their Trust Units or in such other manner as the Trustees may consider equitable and practicable, requiring them to sell or redeem their Trust Units or a portion thereof within a specified period of not less than 60 days. If the Unitholders receiving such notice have not sold or redeemed the specified number of Trust Units or provided the Trustees with satisfactory evidence that they are not Non-Residents within such period, the Trust may, on behalf of such Unitholders, sell or redeem such Trust Units and, in the interim, shall suspend the voting and distribution rights attached to such Trust Units. Upon such sale or redemption, the affected holders shall cease to be holders of Trust Units and their rights shall be limited to receiving the net proceeds of sale or redemption upon surrender of the certificates representing such Trust Units.

- (b) Subject to Section 10.2, unless and until the Trustees shall have been required to do so under the terms hereof, the Trustees shall not be bound to do or take any proceeding or action with respect to this Section 14.5 by virtue of the powers conferred on them hereby. The Trustees shall not be deemed to have notice of any violation of this Section 14.5 unless and until they have been given written notice of such violation and shall act only as required by this Declaration of Trust once an indemnity is provided. The Trustees shall not be required to actively monitor the holdings of Non-Residents in the Trust. It is acknowledged that the Trustees cannot monitor the Non-Resident holders of Trust Units that are or may be registered in the name of CDS. The Trustees shall not be liable for any violation of the non-resident ownership restriction which may occur during the term of the Trust.
- (c) Special Voting Units may not be held by Non-Residents. In the event a holder of Special Voting Units becomes a Non-Resident, then such holder shall be deemed to have exercised at that time, without any further act or notice by such holder, his or her right of redemption in accordance with the provisions of Section 7.2.
- (d) Where the exercise of the Exchange Right in respect of Class B LP Units by a holder thereof would result in more than 49% of the Trust Units being held or beneficially owned by Non-Residents or otherwise jeopardize the Trust's status as a "unit trust", "mutual fund trust" or registered investment under the Tax Act, the Trust shall issue the Trust Units to be distributed by the Partnership to the holder of Class B LP Units in satisfaction of such holder's exercise of the Exchange Right in the name of the Partnership and then immediately sell such Trust Units on behalf of the Partnership and pay the proceeds of such sale to, or to the direction of, the Partnership in full satisfaction of the Trust's obligations in respect of the exercise of the Exchange Right by the holder of Class B LP Units in respect of such Class B LP Units.
- (e) The Trustees shall have the sole right and authority to make any determination required or contemplated under this Section 14.5. The Trustees shall make all determinations necessary for the administration of the provisions of this Section 14.5 and, without limiting the generality of the foregoing, if the Trustees consider that there are reasonable grounds for believing that a contravention of the Non-Resident ownership restriction has occurred or will occur, the Trustees shall make a determination with respect to the matter. Any such determination shall be conclusive, final and binding except to the extent modified by any subsequent determination by the Trustees. Notwithstanding the foregoing, the Trustees

may delegate, in whole or in part, their power to make a determination in this respect to any officer of the Trust.

14.6 Lost Certificates

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

14.7 Take-Over Bid

(a) In this Section 14.7:

- (i) **“Dissenting Unitholder”** means a Unitholder who does not accept an Offer referred to in subsection 14.7(c) and includes any assignee of the Trust Unit of a Unitholder to whom such an Offer is made, whether or not such assignee is recognized under this Declaration of Trust;
- (ii) **“Offer”** means an offer to acquire outstanding Trust Units where, as of the date of the offer to acquire, the Trust Units that are subject to the offer to acquire, together with the Offeror’s Trust Units, constitute in the aggregate 20% or more of all outstanding Trust Units;
- (iii) **“offer to acquire”** includes an acceptance of an offer to sell;
- (iv) **“Offeror”** means a person, or two or more persons acting jointly or in concert, who make an Offer;
- (v) **“Offeror’s Notice”** means the notice described in subsection 14.7(d); and
- (vi) **“Offeror’s Trust Units”** means Trust Units beneficially owned, or over which control or direction is exercised, on the date of an Offer by the Offeror, any affiliate or associate of the Offeror or any person or company acting jointly or in concert with the Offeror.

(b) In the event an Offer for all of the outstanding Trust Units is made, any holder of Exchangeable Securities may, unless prohibited by the terms and conditions of the Exchangeable Security, convert, exercise or exchange such Exchangeable Security, as applicable, for the purpose of tendering Trust Units to such Offer on the condition that such Trust Units are taken up under such Offer, unless an identical offer (in terms of price per Trust Unit issuable upon the conversion, exercise or exchange of the Exchangeable Security and percentage of outstanding securities to be taken up exclusive of securities owned immediately prior to the offer by the Offeror, or associates or affiliates of the Offeror and in all other material respects) is made concurrently by the Offeror to purchase the Exchangeable Securities, which identical offer has no condition attached other than the right not to take up and pay for securities tendered if no securities are purchased pursuant

to the Offer for Trust Units. In the event that a holder of Exchangeable Securities elects to conditionally convert, exercise or exchange such Exchangeable Securities for the purpose of tendering Trust Units to such Offer, the tendering of a certificate issued by the Trust indicating that the Trust Unit is issuable upon and subject to completion of the Offer shall be good delivery under such Offer and after payment of the consideration therefor to the former holder of the Exchangeable Security such holder shall cease to have any rights as a holder of Exchangeable Securities, Special Voting Units or Trust Units to the extent that the Trust Units issuable upon the conversion, exercise or exchange of such Exchangeable Securities have been taken up by the Offeror. For the purposes of the remainder of this Section 14.7, unless the identical Offer referred to above is made, a reference to "Trust Units" will be deemed to include Trust Units issuable upon the conversion of Exchangeable Securities.

(c) If an Offer for all of the outstanding Trust Units (other than Trust Units held by or on behalf of the Offeror or an affiliate or associate of the Offeror) is made and, by such Offer, the Offeror agrees to be bound by the provisions of this Section 14.7, and:

- (i) within the time provided in the Offer for its acceptance or within 45 days after the date the Offer is made, whichever period is the shorter, the Offer is accepted by Unitholders representing at least 90% of the outstanding Trust Units, other than the Offeror's Trust Units;
- (ii) the Offeror is bound to take up and pay for, or has taken up and paid for the Trust Units of the Unitholders who accepted the Offer; and
- (iii) the Offeror complies with subsections 14.7(d) and 14.7(f);

the Offeror is entitled to acquire, and the Dissenting Unitholders are required to sell to the Offeror, the Trust Units held by the Dissenting Unitholders for the same consideration per Trust Unit payable or paid, as the case may be, under the Offer.

(d) Where an Offeror is entitled to acquire Trust Units held by a Dissenting Unitholder pursuant to subsection 14.7(c), and the Offeror wishes to exercise such right, the Offeror shall send by registered mail within 30 days after the date of termination of the Offer a notice (the "**Offeror's Notice**") to each Dissenting Unitholder stating that:

- (i) Unitholders holding at least 90% of the Trust Units of all Unitholders, other than Offeror's Trust Units, have accepted the Offer;
- (ii) the Offeror is bound to take up and pay for, or has taken up and paid for, the Trust Units of the Unitholders who accepted the Offer;
- (iii) Dissenting Unitholders must transfer their respective Trust Units to the Offeror on the terms on which the Offeror acquired the Trust Units of the Unitholders who accepted the Offer within 21 days after the date of the sending of the Offeror's Notice; and
- (iv) Dissenting Unitholders must send their respective Unit Certificate(s) (or, in the case of Exchangeable Securities, the certificates representing such Exchangeable Securities) to the Trust within 21 days after the date of the sending of the Offeror's Notice.

- (e) A Dissenting Unitholder to whom an Offeror's Notice is sent pursuant to Section 14.7(d), shall, within 21 days after the sending of the Offeror's Notice, send his or her Unit Certificate(s) (or, in the case of Exchangeable Securities, the certificates representing such Exchangeable Securities) to the Trust, duly endorsed for transfer, if such certificate has been provided.
- (f) Within 21 days after the Offeror sends an Offeror's Notice pursuant to subsection 14.7(d), the Offeror shall pay or transfer to the Trustees, or to such other person as the Trustees may direct, the cash or other consideration that is payable to Dissenting Unitholders pursuant to subsection 14.7(b).
- (g) The Trustees, or the person directed by the Trustees, shall hold in trust for the Dissenting Unitholders the cash or other consideration it receives under subsection 14.7(f), but such cash or other consideration shall not form any part of the Trust's property. The Trustees, or such persons, shall deposit cash in a separate account in a Canadian chartered bank, and shall place other consideration in the custody of a Canadian chartered bank or similar institution for safekeeping.
- (h) Within 30 days after the date of the sending of an Offeror's Notice pursuant to subsection 14.7(d), the Trustees, if the Offeror has complied with subsection 14.7(f), shall:
 - (i) do all acts and things and execute and cause to be executed all instruments as in the Trustees' opinion may be necessary or desirable to cause the transfer of the Trust Units of the Dissenting Unitholders to the Offeror;
 - (ii) send to each Dissenting Unitholder who has complied with subsection 14.7(e) the consideration to which such Dissenting Unitholder is entitled under this Section 14.7; and
 - (iii) send to each Dissenting Unitholder who has not complied with subsection 14.7(e) a notice stating that:
 - (A) his or her Trust Units have been transferred to the Offeror;
 - (B) the Trustees or some other person designated in such notice are holding in trust the consideration for such Trust Units; and
 - (C) the Trustees, or such other person, will send the consideration to such Dissenting Unitholder as soon as practicable after receiving such Dissenting Unitholder's Unit Certificate(s) or such other documents as the Trustees or such other person may require in lieu thereof,

and the Trustees are hereby appointed the agents and attorneys of the Dissenting Unitholders for the purposes of giving effect to the foregoing provisions.

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

The Trust shall cause the terms, conditions, restrictions, rights and obligations of Exchangeable Securities to contain corresponding provisions as may be reasonably necessary or desirable to give effect to this

Section 14.7 with respect to holders of Exchangeable Securities, including, without limitation, provisions to effect the automatic conversion, exercise or exchange of Exchangeable Securities by a non-tendering Offeree holder thereof or redemption by the issuer of such Exchangeable Securities.

ARTICLE 15 **TERMINATION**

15.1 Term of the Trust

Subject to the other provisions of this Declaration of Trust, the Trust shall continue for a term ending December 31, 2099. For the purpose of terminating the Trust by such date, the Trustees shall commence to wind-up the affairs of the Trust on such date as may be determined by the Trustees, being not more than two years prior to the end of the term of the Trust.

15.2 Termination with the Approval of Voting Unitholders

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

15.3 Procedure Upon Termination

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

15.4 Powers of the Trustees Upon Termination

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

15.5 Sale of Investments

After the date referred to in Section 15.3, the Trustees shall proceed to wind-up the affairs of the Trust as soon as may be reasonably practicable and for such purpose shall, subject to any direction to the contrary in respect of a termination authorized under Section 15.2, sell and convert into money all the Trust's property in one transaction or in a series of transactions at public or private sales and do all other acts appropriate to liquidate the Trust, and shall in all respects act in accordance with the directions, if any, of the Unitholders (in respect of a termination authorized under Section 15.2). If the Trustees are unable to sell all or any of the assets which comprise part of the Trust by the date set for termination, the Trustees may, subject to obtaining all necessary regulatory approvals, distribute the remaining shares or other assets directly to the Unitholders in accordance with their *pro rata* interests.

15.6 Distribution of Proceeds or Assets

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

15.7 Further Notice to Unitholders

In the event that less than all of the Unitholders have surrendered their Trust Units for cancellation within six months after the time specified in the notice referred to in Section 15.3, the Trustees shall give further notice to the remaining Unitholders to surrender their Trust Units for cancellation and if, within one year after the further notice, all the Trust Units shall not have been surrendered for cancellation, such remaining Trust Units shall be deemed to be cancelled without prejudice to the rights of the holders of such Trust Units to receive their *pro rata* share of the remaining property of the Trust, and the Trustees may either take appropriate steps, or appoint an agent to take appropriate steps, to contact such Unitholders (deducting all expenses thereby incurred from the amounts to which such Unitholders are entitled as aforesaid) or, in the discretion of the Trustees, may pay such amounts into court.

15.8 Responsibility of the Trustees after Sale and Conversion

The Trustees shall be under no obligation to invest the proceeds of any sale of investments or other assets or cash forming part of the Trust's property after the date referred to in Section 15.3 and, after such sale, the sole obligation of the Trustees under this Declaration of Trust shall be to hold such proceeds or assets in trust for distribution under Section 15.6.

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 directed in accordance with the provisions hereof, execute and deliver indentures or instruments supplemental hereto which thereafter shall form part hereof, for any one or more or all of the following purposes:

- (a) modifying or amending any provisions of this Declaration of Trust in the circumstances set forth in Section 12.1 where the Trustees may do so without the consent, approval or ratification of the Unitholders or any other person; and
- (b) modifying or amending any provisions of this Declaration of Trust where the modification or amendment has been approved by the requisite majority of Voting Unitholders.

ARTICLE 17 GENERAL

17.1 Notices

- (a) Any notice or other document required to be given or sent to Voting Unitholders under this Declaration of Trust shall be given or sent through ordinary post addressed to each

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

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

17.2 Failure to Give Notice

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

17.3 Joint Holders

Service of a notice or document on any one of several joint holders of Voting Units shall 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 shall, notwithstanding the death or bankruptcy of such Voting Unitholder, and whether or not the Trustees have notice of such death or bankruptcy, be deemed to have been fully served and such service shall be deemed sufficient service on all persons having an interest in the Voting Units concerned.

17.5 Information Available to Voting Unitholders

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

- (a) an effort to influence the voting of the holders of Voting Units;
- (b) an offer to acquire Trust Units; or
- (c) any other matter relating to the Voting Units or the affairs of the Trust,

obtain a list of the Voting Unitholders for the aforesaid purposes.

17.6 **Fiscal Year and Taxation Year**

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

17.7 Financial Disclosure

The Trust will send only to Registered and Beneficial Voting Unitholders who elect to receive such financial statements pursuant to a request form sent to such Voting Unitholders by the Trust annually in accordance with applicable securities laws;

- (a) within 90 days of the end of each fiscal year and at least 21 days prior to the date of each annual meeting of Unitholders, the annual financial statements of the Trust for the fiscal year ended immediately prior to such annual meeting, together with comparative financial statements for the preceding fiscal year, if any, and the report of the Auditors thereon referred to in Section 18.4; and
- (b) within 45 days 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 shall be prepared in accordance with generally accepted accounting principles in Canada as recommended from time to time in the Handbook of the Canadian Institute of Chartered Accountants; provided that such statements and the obligation to deliver such statements may vary from such principles to the extent required to comply with applicable securities laws or securities regulatory requirements or to the extent permitted by applicable securities regulatory authorities.

17.8 Voting Unitholder Meeting Information

Prior to each meeting of Voting Unitholders, the Trustees 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 30 in each year or such other date as may be prescribed for the purposes of the Tax Act, the Trust will provide to Unitholders who received distributions from the Trust in the prior calendar year, such information regarding the Trust required by Canadian law to be submitted to such

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

17.10 Trust Property to be Kept Separate

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

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

Deloitte & Touche LLP are confirmed as the Auditors of the Trust, to hold such office until the next annual meeting of the Unitholders. The Auditors will be selected at each succeeding annual meeting of Unitholders. The Auditors will receive such remuneration as may be approved by the Trustees.

18.3 Change of Auditors

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

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

IN WITNESS WHEREOF each of the parties has caused these presents to be executed as of the 5th day of May, 2016.

(Signed) Douglas H. Mitchell

Douglas H. Mitchell, Q.C.

(Signed) Todd R. Cook

Todd R. Cook

(Signed) Daniel Drimmer

Daniel Drimmer

(Signed) Kevin E. Grayston

Kevin E. Grayston

(Signed) Dennis J. Hoffman

Dennis J. Hoffman

(Signed) Christine McGinley

Christine McGinley

(Signed) Terrance L. McKibbon

Terrance L. McKibbon

(Signed) Graham Rosenberg

Graham Rosenberg

(Signed) Scott Thon

Scott Thon