

**SUMMIT INDUSTRIAL INCOME REIT**

**FIFTH AMENDED AND RESTATED DECLARATION OF TRUST**

**MADE AS OF DECEMBER 19, 2017**

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## SUMMIT INDUSTRIAL INCOME REIT

**THIS DECLARATION OF TRUST** made as of November 4, 2005, as amended and restated as of April 23, 2010, as further amended and restated as of December 9, 2010, as further amended and restated as of September 25, 2012 and as further amended and restated as of November 9, 2012.

**WHEREAS** the Trust was established on November 4, 2005 for the principal purpose of providing persons who may become Unitholders with an opportunity to participate in the indirect acquisition of a business engaged in the business of, among other activities, leasing real estate and other fixed assets;

**AND WHEREAS** on November 4, 2005, one initial Unit was issued to Laxus Holdings Inc. (the “Settlor”);

**AND WHEREAS** the Trustees desire that the Trust shall continue to qualify as a “unit trust” and as a “mutual fund trust” pursuant to paragraph 108(2)(a) and subsection 132(6) of the *Income Tax Act* (Canada);

**AND WHEREAS** the Trust first amended this Declaration of Trust on April 23, 2010 upon receipt of approval by the Voting Unitholders for such amendment at a meeting of Voting Unitholders held on April 21, 2010;

**AND WHEREAS** the Trustees further amended and restated this Declaration of Trust on December 9, 2010 after receiving Voting Unitholder consent, approval which was received by way of a resolution in writing executed by Voting Unitholders holding Voting Units representing more than 66 2/3% of the votes attached to all outstanding Voting Units;

**AND WHEREAS** the Trustees further amended and restated this Declaration of Trust on September 25, 2012 after receiving Voting Unitholder consent, approval which was received by way of a resolution in writing executed by Voting Unitholders holding Voting Units representing more than 66 2/3% of the votes attached to all outstanding Voting Units;

**AND WHEREAS** effective October 3, 2012 the Trust changed its name from “Proventure Income Fund” to “Summit Industrial Income REIT” pursuant to Section 2.3(b) of the Declaration of Trust after adoption of the new name was approved by the Trustees during a meeting of the Trustees held on September 25, 2012;

**AND WHEREAS** the Trustees further amended and restated this Declaration of Trust on November 9, 2012 pursuant to Section 11(d) hereof in order to remove certain conflicts or inconsistencies and rectify certain ambiguities in the Declaration of Trust which pertained to, among other things, the change of the name of the Trust to “Summit Industrial Income REIT”;

**AND WHEREAS** the Trustees further amended and restated this Declaration of Trust on December 19, 2017 pursuant to Section 11(d) hereof in order to remove certain conflicts or inconsistencies and rectify certain ambiguities in the Declaration of Trust which pertained to, among other things, borrowing by the Trust;

**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 created hereby;

**NOW THEREFORE THIS DECLARATION WITNESSETH THAT** in consideration of the premises and the mutual and respective covenants and agreements contained herein, the Trustees declare, covenant and agree with the holders of Units, Special Voting Units and Preferred Units, and the holders of Units, Special Voting Units and Preferred Units covenant and agree with the Trustees, as follows:

## **ARTICLE 1 INTERPRETATION**

### **1.1 Definitions**

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

- (a) **“Adjusted Unitholders’ Equity”** means, at any time, the aggregate of Unitholders’ equity and the amount of accumulated depreciation and amortization recorded on the books and records of the Trust in respect of its properties and assets, calculated in accordance with GAAP.
- (b) **“Affiliate”** means an **“affiliated entity”** within the meaning of Section 1.2 of Ontario Securities Commission Rule 45-501 – Exempt Distributions promulgated under the *Securities Act* (Ontario), as in effect on the date hereof;
- (c) **“Associate”** has the meaning ascribed thereto in the *Securities Act* (Ontario) as in effect on the date hereof;
- (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;
- (e) **“Business Day”** means a day which is not a Saturday, Sunday or holiday in the City of Toronto, in the Province of Ontario;
- (f) **“Cash Flow of the Trust”** has the meaning ascribed thereto in 5.1(a);
- (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) **“Counsel”** means a barrister or solicitor or firm of barristers and solicitors or other lawyers in an appropriate jurisdiction retained by the Trust;
- (j) **“Depository”** has the meaning specified in subsection 13.1(a);
- (k) **“Distributable Cash Flow”** has the meaning ascribed thereto in Section 5.1(b);
- (l) **“Distribution Payment Dates”** means on or about the last Business Day of the month immediately following the end of each Distribution Period or such other date or dates as may be selected or determined by the Trustees from time to time;

- (m) **“Distribution Period”** means such period as may be selected or determined by the Trustees from time to time;
- (n) **“Distribution Record Date”** means the last Business Day of each Distribution Period;
- (o) **“DRIP”** means any Distribution Reinvestment Plan of the Trust in such form as may be approved by the Trustees of the Trust from time to time;
- (p) **“Exchangeable Security”** or **“Exchangeable Securities”** means a unit or units, a share or shares or other security or securities which are convertible into or exchangeable for Unit(s) (directly or indirectly) without the payment by the holder of additional consideration therefor, whether or not issued by the Trust;
- (q) **“GAAP”** means generally accepted accounting principles in Canada as recommended from time to time in the Handbook of the Canadian Institute of Chartered Accountants;
- (r) **“Global Unit Certificate”** has the meaning specified in subsection 13.1(a);
- (s) **“Gross Book Value”** means from time to time the book value of the assets of the Trust and its consolidated subsidiaries, as shown on its then most recent consolidated balance sheet, plus accumulated depreciation and amortization on assets and excluding the amount of any receivable reflecting interest rate subsidies on any debt assumed by the Trust, or, if approved by a majority of the Trustees, the most recently appraised value of the assets of the Trust and its consolidated subsidiaries may be used instead of book value;
- (t) **“Income of the Trust”** has the meaning ascribed thereto in Section 5.2(a);
- (u) **“Initial Contribution”** means the amount of \$15.00 paid by the Settlor to the Trustees for the purpose of settling the Trust governed by this Declaration of Trust;
- (v) **“Manager”** means the manager of the Trust as appointed by the Trustees from time to time in accordance with this Declaration of Trust and any duly appointed successor.
- (w) **“Net Realized Capital Gains”** has the meaning ascribed thereto in Section 5.2(b);
- (x) **“non-tendering offeree”** means, where a take-over bid is made for all of the Units (including Units issuable upon conversion, exercise or exchange of Exchangeable Securities) other than those held by or issuable to the offeror, a holder of Units or Exchangeable Securities who does not accept the take-over bid; and includes a subsequent holder of that Unit or Exchangeable Security who acquires it from the first mentioned holder;
- (y) **“Preferred Units”** means the preferred units of any series of the Trust, as more particularly described in Section 3.4 hereof, with such designation, rights, privileges, restrictions and conditions attached thereto as determined by the Trustees and which are issued from time to time in accordance with the provisions hereof;
- (z) **“Redemption Price”** has the meaning ascribed thereto in Section 6.3(a);



- (aa) **“Resident Canadian”** means a person resident in Canada, or a partnership that is a Canadian partnership, for purposes of the Tax Act.
- (bb) **“Settlor”** means Laxus Holdings Inc.;
- (cc) **“SIFT Trust”** means a “SIFT trust” as defined in the Tax Act.
- (dd) **“Special Resolution”** shall have the meaning attributed thereto in Section 12.6;
- (ee) **“Special Voting Units”** means the units of the Trust, other than Units and Preferred Units, referred to in Section 3.1(a) authorized and issued hereunder;
- (ff) **“Subsidiary”** means a subsidiary entity for purposes of Section 1.1 of Ontario Securities Commission Rule 45-501 – Exempt Distributions promulgated under the *Securities Act* (Ontario), as in effect on the date hereof;
- (gg) **“Tax Act”** means the *Income Tax Act* R.S.C. 1985 (5th Supp) c.1, as amended and the regulations thereunder;
- (hh) **“this Declaration of Trust”, “this Declaration”, “hereto”, “herein”, “hereof”, “hereby”, “hereunder”** and similar expressions refer to this instrument and not to any particular Article, section or portion hereof, and include any and every instrument supplemental or ancillary hereto;
- (ii) **“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 Units, Special Voting Units and/or Preferred Units, together with any sub-transfer agent duly appointed by the Transfer Agent, and in the absence of any such appointment shall mean the Trust and its duly appointed representatives;
- (jj) **“Trust”** means the trust constituted pursuant to the terms of the Declaration of Trust;
- (kk) **“Trust Assets”**, at any time, means such of the following monies, properties and other assets as are at such time held by the Trust or by the Trustees on behalf of the Trust:
  - (i) the Initial Contribution;
  - (ii) all funds or property derived from the issuance or sale of Units and Preferred Units or other cash received by the Trust;
  - (iii) any securities and/or obligations held by the Trust;
  - (iv) any proceeds of disposition of any of the foregoing property but not Units in the case of a redemption thereof to which Section 6.5 applies;
  - (v) all income, interest, profit, return of capital, gains and accretions and additional substituted assets, rights and benefits of any kind or nature whatsoever arising directly or indirectly from or in connection with or accruing to such foregoing property or such proceeds of disposition; and
  - (vi) such other property and assets as may properly be held by the Trust from time to time;

- (ll) “**Trust Liabilities**” has the meaning ascribed thereto in Section 2.7(a);
- (mm) “**Trust Option Plan**” means any trustee, director, officer, employee and consultant incentive trust unit option plan of the Trust in such form as may be approved by the Trustees of the Trust from time to time;
- (nn) “**Trustee**”, at any time, means a person 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 persons each of whom is at that time a Trustee;
- (oo) “**Unit Certificate**” means a certificate, in the form approved by the Trustees, evidencing one or more Units, issued and certified in accordance with the provisions hereof;
- (pp) “**Unitholders**” means at any time the holders at that time of one or more Units, as shown on the register of such holders maintained by the Transfer Agent or by the Trustees on behalf of the Trust;
- (qq) “**Units**” means the units of the Trust, other than Special Voting Units and Preferred Units, authorized and issued hereunder as such and for the time being outstanding and entitled to the benefits hereof;
- (rr) “**Voting Unitholders**” means at any time the holders at that time of one or more Voting Units, as shown on the register of such holders maintained by the Transfer Agent on behalf of the Trust; and
- (ss) “**Voting Units**” means the Units, the Special Voting Units and the Preferred Units of any series the terms of which provide for voting rights in the applicable circumstance.

## 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 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**

In this Declaration of Trust, any reference to the Tax Act shall refer to the Tax Act as amended from time to time applicable with respect thereto. 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 Headings for Reference Only**

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

#### **1.6 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. This section is not applicable to Sections 5.1, 5.2, 5.3 and 5.4.

#### **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 certificates representing the Units, Special Voting Units and Preferred Units shall be construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and shall be treated in all respects as Ontario contracts. The parties hereto hereby irrevocably submit and attorn to the jurisdiction of the courts of the Province of Ontario.

## **ARTICLE 2 DECLARATION OF TRUST**

#### **2.1 Initial Contribution, Acceptance and Trust Property**

On November 4, 2005, the Settlor irrevocably transferred the Initial Contribution to the Trustees for the purpose of establishing the Trust. Receipt of the Initial Contribution was acknowledged by the Trustees and in consideration thereof the Settlor was thereby issued one initial Unit of the Trust. The Settlor thereby fully and finally, unconditionally and irrevocably, divested itself of the Initial Contribution and of any other property which is to be comprised within the Trust Assets and further fully and finally, unconditionally and irrevocably, divested itself of all rights of ownership, possession, enjoyment or administration of the Trust Assets and the Trustees thereby accepted the Initial Contribution and all other property or assets which may become the Trust Assets on behalf of and for the benefit of the Unitholders, subject to the terms and provisions hereof (including any discretionary rights and powers granted the Trustees) such acceptance to include not merely the receipt or future receipt of the Trust Assets but also the acceptance for the benefit of the Unitholders pursuant to the terms hereof, of all rights of ownership, possession, use, enjoyment and administration of the said Trust Assets as referred to in the definition of Trust Assets herein.

#### **2.2 Establishment of Trust**

The Trustees hereby accept the Trust hereby constituted and agree to hold the Trust Assets transferred to them in trust from time to time for the use and benefit of the holders of Units and Preferred Units, their permitted assigns and personal representatives upon the trust and subject to the

terms and conditions hereinafter set forth, such trust to constitute the Trust hereunder. The Trustees acknowledge that the Trust results from this Declaration of Trust, the transfer by the Settlor hereby made of the Initial Contribution from its patrimony to the patrimony of the Trust hereby constituted by the Settlor which the Settlor has appropriated to the particular purposes set forth herein, and each of the Trustees hereby undertakes and accepts to hold and administer such trust patrimony in accordance with the provisions hereof. Each of the Settlor and the Trustees confirms that the patrimony of the Trust has been hereby transferred in trust and constitutes a patrimony by appropriation, autonomous and distinct from that of the Settlor, the Trustees or any Unitholder. By the original Declaration of Trust, the Settlor appointed the initial Trustees as Trustees. Article 8 hereof provides the mode of appointment and replacement of the Trustees of the Trust, from time to time. Subject to the provisions hereof, each of the Trustees elected or appointed pursuant to this Declaration of Trust shall have all of the powers set forth herein. The Units, Special Voting Units and Preferred Units shall be issued upon the terms and subject to the conditions of the Declaration of Trust, and this Declaration of Trust shall be binding upon all holders of Units, Special Voting Units and/or Preferred Units and by acceptance of the certificate representing any such Units, Special Voting Units and Preferred Units, the holders of such Units, Special Voting Units and/or Preferred Units shall be deemed to agree to be bound by this Declaration of Trust.

### 2.3 **Name of Trust**

- (a) The Trust shall be known and designated as “SUMMIT INDUSTRIAL INCOME REIT” 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 such place in Canada as the Trustees may from time to time designate.

### 2.5 **Nature of the Trust**

The Trust is an unincorporated open-end mutual fund trust, established for the purpose specified in Section 4.1. 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 holders of Units, Special Voting Units and/or Preferred Units or any of them or any person be, or be deemed to be, treated in any way whatsoever as liable or responsible hereunder as partners or joint venturers. The Trustees are not and shall not be, or be deemed to be, agents of the holders of Units, Special Voting Units and/or Preferred Units. The relationship of the holders of Units, Special Voting Units and/or Preferred Units to the Trustees shall be solely that of beneficiaries of the Trust, to the extent applicable, and their rights shall be limited to those conferred upon them by this Declaration of Trust.

### 2.6 **Rights of Security Holders**

- (a) The rights of each holder of Units, Special Voting Units and/or Preferred Units 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 holder of Units, Special Voting Units and/or Preferred Units shall be entitled to call for any partition or division of the Trust Assets or for a distribution of any particular asset forming part of the Trust Assets or of any particular monies or funds received by the Trustees. The legal ownership of the assets of the Trust and the right to conduct the activities of the Trust are vested exclusively in the Trustees, and no holder of Units, Special Voting Units and/or Preferred Units has or is deemed to have any right of ownership in any of the assets of the Trust, except as specifically provided herein. The Units, Special Voting Units and Preferred 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.

- (b) Except as specifically provided herein, no holder of Units, Special Voting Units and/or Preferred Units 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.

## 2.7

### **Liability of Security Holders**

- (a) No holder of Units, Special Voting Units and/or Preferred Units or annuitant under a plan of which a holder of Units, Special Voting Units and/or Preferred Units acts as trustee or carrier, in its capacity as such, shall incur or be subject to any liability, direct or indirect, absolute or contingent, in contract or in tort or of any other kind to any person in connection with (i) the Trust Assets or the ownership, use, operation, acquisition or disposition thereof or exercise or enjoyment of the rights, privileges, conditions or benefits attached thereto, associated therewith or derived therefrom; (ii) the obligations or the activities or affairs of the Trust; (iii) any actual or alleged act or omission of the Trustees or any of them or by any other person in respect of the activities or affairs of the Trust (whether or not authorized by or pursuant to this Declaration of Trust) (iv) any act or omission of the Trustees or any of them or any other person in the performance or exercise, or purported or attempted performance or exercise, of any obligation, power, discretion or authority conferred upon the Trustees or any of them or such other person in respect of the activities or affairs of the Trust (whether or not authorized by or pursuant to this Declaration of Trust); (v) any transaction entered into by the Trustees or any of them or by any other person in respect of the activities or affairs of the Trust (whether or not authorized by or pursuant to this Declaration of Trust); or (vi) any taxes, levies, imposts or charges or fines, penalties or interest in respect thereof payable by the Trust or by the Trustees or any of them or by any other person on behalf of or in connection with the activities or affairs of the Trust (collectively, "Trust Liabilities") but rather the assets of the Trust are intended to be subject to levy or execution for satisfaction of such Trust Liabilities.
- (b) No holder of Units, Special Voting Units and/or Preferred Units in its capacity as such shall be liable to indemnify the Trustees or any of them or any other person with respect to any Trust Liabilities.
- (c) To the extent that, notwithstanding the provisions of this Section 2.7, any holder of Units, Special Voting Units and/or Preferred Units, in its capacity as such, may be determined by a judgement of a court of competent jurisdiction to be subject to or liable in respect of any Trust Liabilities, such judgement and any writ of execution or similar process in respect thereof, shall be enforceable only against, and shall be satisfied only out of, such

holder's share of the Trust Assets represented by the certificates representing such holder's Units, Special Voting Units and/or Preferred Units.

## **2.1 Indemnity**

The Trust agrees to indemnify and hold harmless each holder of Units, Special Voting Units and/or Preferred Units from any cost, damages, liabilities, expenses, charges and losses suffered by a holder of Units, Special Voting Units and/or Preferred Units in its capacity as such in connection with the Trust Liabilities.

## **ARTICLE 3 ISSUE AND SALE OF SECURITIES**

### **3.1 Nature of Securities**

- (a) The beneficial interests in the Trust shall be divided into interests of three classes, described and designated as "Units", "Special Voting Units" and "Preferred Units", which shall be entitled to the rights and subject to the limitations, restrictions and conditions set out herein, and the interest of each holder of Units, Special Voting Units and/or Preferred Units shall be determined by the number of Units, Special Voting Units and Preferred Units registered in the name of such holder.
- (b) Subject to the rights of the holders of the Preferred Units, each Unit represents an equal undivided interest in the Trust. Subject to the rights of the holders of the Preferred Units, all Units outstanding from time to time shall be entitled to participate pro rata in any distributions by the Trust and, in the event of termination or winding-up of the Trust, in the net assets of the Trust. All Units shall rank among themselves equally and rateably without discrimination, preference or priority.
- (c) No Special Voting Unit shall be entitled to any interest or share in the distributions or net assets of the Trust. Special Voting Units may be issued in series and shall only be issued in connection with or in relation to Exchangeable Securities on such terms and conditions as may be determined by the Trustee. A Special Voting Unit shall be issued in conjunction with Exchangeable Securities issued. Each Special Voting Unit shall entitle the holder(s) 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 Units into which the Exchangeable Securities to which such Special Voting Unit relates are, directly or indirectly, exchangeable or convertible (other than in respect of Exchangeable Securities which have been so exchanged or converted and are held by the Trust or an affiliate thereof). Special Voting Units shall not be separately transferable from the Exchangeable Security to which they relate and are automatically redeemed and cancelled upon the exercise or conversion of such Exchangeable Security. For greater certainty, holders of Special Voting Units shall not be entitled to any distributions of any nature whatsoever from the Trust or have any beneficial interests in any assets of the Trust on termination or winding-up of the Trust. Concurrently with the issuance of any Exchangeable Securities and associated Special Voting Units, the Trust shall enter into such agreements, including voting and exchange trust agreements and exchangeable security support agreements, as may be necessary or desirable to properly provide for the terms of the Exchangeable Securities, including to provide for voting of such Special Voting Units.

- (d) In addition to the Units and Special Voting Units, the Trust is authorized to issue an unlimited number of Preferred Units which, as a class, have attached thereto the following attributes:
- (i) the Preferred Units may from time to time be issued in one or more series, and the Trustees may fix from time to time before such issue the number of Preferred Units which is to comprise each series and the designation, rights, privileges, restrictions and conditions attaching to each series of Preferred Units including, without limiting the generality of the foregoing, any voting rights, the rate or amount of distributions or the method of calculating distributions, the dates of payment thereof, the allocation of income and losses, the terms and conditions of redemption, purchase and conversion, if any, and any sinking fund or other provisions; provided however that the rights, privileges, restrictions and conditions attaching to each series of Preferred Units shall allow the Trust to continue to qualify as a “mutual fund trust” under the Tax Act; and
  - (ii) if the Trustees so determine at the time of the creation of any series of Preferred Units, the Preferred Units of any series may, with respect to the payment of distributions and the distribution of assets or return of capital in the event of liquidation, dissolution or winding-up of the Trust, whether voluntary or involuntary, or any other return of capital or distribution of assets of the Trust for the purpose of winding-up its affairs, be entitled to preference over the Units, and over any other units of the Trust ranking by their terms junior to that series of Preferred Units. The Preferred Units of any series may also be given such other preferences, not inconsistent with this Declaration of Trust, over the Units, and any other units of the Trust ranking by their terms junior to the Preferred Units as may be fixed in accordance with sub-clause (a) above.
- (e) Further, the Trustees may, from time to time and without the approval of the Voting Unitholders or the approval of any series of Preferred Units, make any amendments to the Declaration of Trust as the Trustees deem necessary or desirable to make the terms of the Declaration of Trust consistent with the designation, rights, privileges, restrictions and conditions attaching to any series of Preferred Units created by the Trustees from time to time pursuant Section 3.1(d).

### 3.2 Authorized Number of Securities

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

### 3.3 Issue of Securities

- (a) Units, Special Voting Units and Preferred Units may be issued by the Trust at the times, to the persons, for the consideration and on the terms and conditions that the Trustees determine, including without limitation, pursuant to the DRIP (if any) and the Trust Option Plan (if any) or any restricted unit plan and, without limiting the generality of the foregoing, the Trustees may authorize the Trust to pay a reasonable commission to any person in consideration of such person purchasing or agreeing to purchase Units, Special Voting Units and/or Preferred Units from the Trust or from any other person or procuring or agreeing to procure purchasers for Units, Special Voting Units and/or Preferred Units.

- (b) The Trustees may create and issue rights, warrants (including so-called “special warrants” or “subscription receipts” which may be exercisable for no additional consideration), convertible or exchangeable securities (including Units issuable upon the exchange of securities of other issuers, including Exchangeable Securities) or options (including all types of share compensation or incentive programs) to subscribe for Units or Preferred Units, which rights, warrants, convertible or exchangeable securities or options may be exercisable at such subscription price or prices and at such time or times and on such terms or conditions as the Trustees may determine. The rights, warrants, convertible or exchangeable securities or options so created may be issued for such consideration, or for no consideration, all as the Trustees may determine. A right, warrant, convertible or exchangeable security or option will not be a Unit or a Preferred Unit and the holder thereof will not be a Unitholder.
- (c) Units, Special Voting Units and Preferred Units are only to be issued as fully paid in money, property, including an obligation to pay consideration in instalments, or past services that are not less in value than the fair equivalent of the money that the Trust would have received if the Units, Special Voting Units and Preferred Units had been issued for money, and are not to be subject to future calls or assessment, except that Units, Special Voting Units and Preferred Units to be issued under an offering may be issued for a consideration payable in instalments and the Trust may take a security interest over such Units, Special Voting Units and Preferred Units for unpaid instalments.
- (d) Units, Special Voting Units and Preferred Units may not be issued by the Trust or the Trustees other than:
- (i) pursuant to subsection 3.3(a);
  - (ii) pursuant to Section 5.7;
  - (iii) as contemplated in respect of an Exchangeable Security,
  - (iv) pursuant to the Trust Option Plan (if any), any Unitholder rights plans, distribution reinvestment plans and Unit purchase plans, incentive option plans or other compensation plans, if any, established by the Trust or any of its affiliates,
  - (v) in order to acquire and as consideration for securities, including securities of or issued by subsidiaries of the Trust,
  - (vi) upon the exercise of any rights, warrants, convertible or exchangeable securities or options to acquire Units or Preferred Units issued by the Trust or other issuers, including upon the exercise of any rights of exchange or conversion set out in any Exchangeable Securities,
  - (vii) pursuant to Section 3.5;
  - (viii) in satisfaction of any indebtedness of or borrowing by the Trust, and
  - (ix) making non-cash distributions to Unitholders, including pursuant to distribution reinvestment plans, if any, established by the Trust.



### 3.4 **No Fractional Securities**

Fractions of Units, Special Voting Units and Preferred Units shall not be issued, except pursuant to distributions of additional Units to all Unitholders pursuant to Section 5.7. No certificates will be issued for fractional Units, Special Voting Units or Preferred Units. Fractional Units, Special Voting Units or Preferred Units shall not, except to the extent that they may represent in the aggregate one or more whole Units, entitle the holder thereof to notice of, or to attend or to vote at meetings of Unitholders. Subject to the foregoing, fractions of Units, Special Voting Units or Preferred Units will carry the rights and be subject to the provisions hereof applicable to whole Units, Special Voting Units or Preferred Units, as applicable, in the proportion that they bear to one Units, Special Voting Units or Preferred Units, as applicable.

### 3.5 **Re-Purchase of Units by Trust**

The Trust may, from time to time, purchase Units (or other securities of the Trust which may be issued and outstanding from time to time) for cancellation in accordance with the requirements of applicable securities legislation and the rules prescribed from time to time under applicable stock exchange or regulatory policies.

### 3.6 **Consolidation of Units**

Immediately after any pro rata distribution of additional Units to all Unitholders pursuant to Section 5.7, the number of the outstanding Units will be consolidated such that each Unitholder will hold after the consolidation the same number of Units as the Unitholder held before the distribution of additional Units, except where tax is required to be withheld. In this case, each Unit Certificate representing a number of Units prior to the distribution of additional Units is deemed to represent the same number of Units after the distribution of additional Units and the consolidation. Notwithstanding the foregoing, where tax is required to be withheld in respect of a Unitholder's share of a distribution, the Trust shall withhold from the cash portion of such distribution, if any, or the Unitholder shall make a cash payment to the Trust, of an amount equal to the amount of tax required to be remitted to the appropriate taxation authority by the Trust, or, if such withholding cannot be made by the Trust or such payment is not made by the Unitholder the consolidation will result in such Unitholder holding that number of Units equal to the product of (i) the sum of the number of Units held by such Unitholder prior to the distribution and the number of Units received by such Unitholder in connection with the distribution (net of Units withheld by the Trust to satisfy the Trust's withholding obligations) and (ii) a fraction, the numerator of which is the aggregate number of Units outstanding prior to the distribution and the denominator of which is the aggregate number of Units that would be outstanding following the distribution and before the consolidation if no withholding were required in respect of any part of the distribution payable to any Unitholders. Any Units so withheld shall either be delivered to the appropriate taxation authority or sold, in which case the net proceeds shall be remitted to the appropriate taxation authority. Such Unitholder will be required to surrender the Unit Certificates, if any, representing such Unitholder's original Units in exchange for a Unit Certificate representing such Unitholder's post-consolidation Units. This provisions shall apply with necessary modification to Preferred Units.

### 3.7 **No Pre-Emptive Rights**

No person shall be entitled, as a matter of right, to subscribe for or purchase any Units, Special Voting Units or Preferred Units.

**ARTICLE 4**  
**INVESTMENTS AND OPERATIONS OF TRUST**

**4.1 Investment Guidelines**

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

- (a) subject to the remainder of this Section 4.1, the Trust may only invest, directly or indirectly, in:
  - (i) interests (including fee ownership and leasehold interest) in income-producing real property;
  - (ii) corporations, trusts, partnerships or other persons which principally have interests (including the ownership of leasehold interests) in income-producing real property (or activities relating or ancillary thereto); and
  - (iii) such other activities, properties or assets as are consistent with the other investment guidelines of the Trust or as may be approved by Unitholders in accordance with the terms of this Declaration of Trust;
- (b) the Trust may, directly or indirectly, invest in a joint venture arrangement for the purposes of owning interests or investments otherwise permitted to be held by the Trust; provided that such joint venture arrangement contains terms and conditions which, in the opinion of the Trustees, are commercially reasonable, including without limitation such terms and conditions relating to restrictions on transfer and the acquisition and sale of the Trust's and any joint venturer's interest in the joint venture arrangement, provisions to provide liquidity to the Trust, such as buy-sell mechanisms and provisions that limit the liability of the Trust to third parties. For purposes of this Section 4.1, a joint venture arrangement is an arrangement between the Trust and one or more other persons ("joint venturers") pursuant to which the Trust, directly or indirectly, conducts an undertaking for one or more of the purposes set out above and in respect of which the Trust may hold its interest jointly or in common or in another manner with others either directly or through the ownership of securities of a corporation or other entity (a "joint venture entity"), including without limitation a general partnership, limited partnership or limited liability company;
- (c) except for temporary investments held in cash, deposits with a Canadian chartered bank or trust company registered under the laws of Canada or of a province of Canada, short-term government debt securities, or receivables under instalment receipt agreements or money market instruments of, or guaranteed by, a Schedule I Canadian bank maturing within one year from the date of issue or except as permitted pursuant to Sections 4.1(a), 4.1(b), 4.1(e), 4.1(g) and 4.1(g)(i), the Trust may not hold securities other than (i) securities of any issuer referred to in Section 4.1(a), (ii) securities of a joint venture entity, (iii) securities of an entity wholly-owned by the Trust, which has been formed and operated solely for the purpose of holding a particular real property or real properties; and (iv) securities of persons described in Section 4.1(e) and provided further that, notwithstanding anything contained in the Declaration of Trust to the contrary, the Trust may acquire securities of other real estate investment trusts;

- (d) 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;
- (e) notwithstanding the provisions of Section 4.1(c) or any other provision to the contrary, but subject to the provisions of Section 4.3, the Trust may invest in operating businesses which are ancillary to the Trust's ownership of real property or acquire interests in limited partnerships or corporations which may operate businesses related to the Trust's real estate investments;
- (f) the Trust shall not invest directly in raw land for development and ownership or for other development projects, except:
  - (i) for the purpose of renovating or expanding existing properties or facilities on adjacent properties; or
  - (ii) for the purpose of developing new properties which will be or are expected to be, upon completion, income producing, provided that the aggregate value of investments in raw land for such purpose will not, after giving effect to the proposed investment, exceed 10% of the Adjusted Unitholders' Equity;
- (g) the Trust shall invest in a mortgage or a mortgage bond (including a participating or convertible mortgage) only where:
  - (i) the real property which is security therefor is income-producing real property which otherwise meets the investment guidelines of the Trust contained in this Section 4.1; and
  - (ii) the aggregate value of the investments of the Trust in mortgages and mortgage bonds, after giving effect to the proposed investment, will not exceed 20% of the Adjusted Unitholders' Equity;
- (h) notwithstanding any of the provisions of Section 4.1(g) hereof, the Trust may invest in any mortgage which is not a first ranking mortgage, including mezzanine financings, for purposes of providing, directly or indirectly, financing in connection with a transaction in which the Trust is the vendor or with the intention of using such mortgage as part of a method for subsequently acquiring an interest in or control of a property or a portfolio of properties that would otherwise meet the investment guidelines of the Trust; provided that the aggregate value of the investments of the Trust in these mortgages, after giving effect to the proposed investments, will not exceed 20% of the Gross Book Value; and
- (i) the Trust may invest, from time to time, an amount (which, in the case of an amount invested to acquire real property, is the purchase price less the amount of any indebtedness assumed or incurred by the Trust and secured by a mortgage on such property) up to 15% of the Adjusted Unitholders' Equity in investments which do not comply with one or more of subsections 4.1(c) or (f).

For the purpose of the foregoing guidelines, the assets, liabilities and transactions of a corporation or other entity wholly or partially owned by the Trust will be deemed to be those of the Trust on a proportionate consolidated basis. In addition, any references in the foregoing to investment in real property will be deemed to include an investment in a joint venture entity. For greater certainty, Sections 4.1(a) through (i) are intended to set out generally the parameters under which subsidiaries in which the

Trust is permitted to invest will be empowered under their constating documents to re-invest. Further, any determinations in respect of the investment restrictions that are determinations reserved to the Trustees, where the actual activity is carried on by a subsidiary, will be made by the trustees or directors of the relevant subsidiary. Nothing in Section 4.1(a) and paragraphs (b) through (i) empowers or entitles the Trust or the Trustees to carry on business or to otherwise undertake any activity that would violate Section 4.3.

#### 4.2 Operating Policies

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

- (a) the Trust shall not purchase, sell, market or trade in currency or interest rate futures contracts otherwise than for hedging purposes where, for the purposes hereof; the term “hedging” shall have the meaning ascribed thereto by National Instrument 81-102 adopted by the Canadian Securities Administrators, as amended from time to time;
- (b) (i) any written instrument creating an obligation which is or includes the granting by the Trust of a mortgage, and (ii) to the extent management of the Trust determines to be practicable, any written instrument which is, in the judgment of management of the Trust, a material obligation, shall contain a provision or be subject to an acknowledgement in the form substantially provided for in Section 9.10;
- (c) the Trust may engage (i) in construction or development of real property in order to maintain its real properties in good repair and/or to enhance the income-producing potential of properties in which the Trust has an interest; and (ii) in the development of raw land and/or other development projects, provided that investments by the Trust in such development are within the investment guidelines set out in Section 4.1;
- (d) title to each real property shall be held by and registered in the name of the Trust, the Trustees or in the name of a corporation or other entity owned, directly or indirectly, by the Trust or jointly-owned, directly or indirectly, by the Trust, with joint venturers or a corporation which is a nominee of the Trust or a corporation or other entity owned, directly or indirectly, by the Trust with joint venturers, which holds registered title to such real property pursuant to a nominee agreement with the Trust or a corporation or other entity owned, directly or indirectly, by the Trust or jointly-owned, directly or indirectly, by the Trust or with joint ventures;
- (e) the Trust may directly or indirectly guarantee indebtedness or liabilities of a third party, provided that such guarantee is related to the direct or indirect ownership or acquisition by the Trust of real property that would otherwise comply with the investment guidelines and operating policies contained in Sections 4.1 and 4.2;
- (f) the Trust will not incur or assume any indebtedness if, after giving effect to the incurrence or assumption of such indebtedness, the total indebtedness of the Trust would be more than 65% of Gross Book Value;
- (g) the Trust will obtain an independent appraisal, or otherwise satisfy itself of the value, of each property that it intends to acquire;

- (h) the Trust shall obtain and maintain at all times insurance coverage in respect of potential liabilities of the Trust and the accidental loss of value of the assets of the Trust from risks, in amounts, with such insurers, and on such terms as the Trustees consider appropriate, taking into account all relevant factors including the practices of owners of comparable properties and the cost of such coverage; and
- (i) the Trust shall obtain or review a Phase I environmental audit of each real property to be acquired by it, dated within 12 months of the proposed date of acquisition, and, if the Phase I environmental audit report recommends or recommended a Phase II environmental audit be obtained, the Trust shall obtain or review a Phase II environmental audit, in each case prepared by an independent environmental consultant.

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

#### 4.3 Tax Status

Notwithstanding anything else contained in this Declaration of Trust, the Trust (a) shall not make any investment, take any action or omit to take any action that would result in the Trust failing or ceasing to qualify as a “mutual fund trust” within the meaning of the Tax Act and (b) shall use its reasonable best efforts not to be a SIFT Trust, except where the Trustees determine that the Trust’s status as a SIFT Trust would be temporary in nature and would not have adverse tax consequences to holders of Units.

#### 4.4 Application of Investment Guidelines and Operating Guidelines

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

#### 4.5 Regulatory Matters

If at any time a regulatory authority having jurisdiction over the Trust or any property of the Trust shall enact any law, regulation or requirement which is in conflict with any investment guideline of the Trust then in force, such guideline in conflict shall, if the Trustees so resolve, be deemed to have been amended to the extent necessary to resolve any such conflict, and, notwithstanding anything to the

contrary herein contained, any such resolution of the Trustees shall not require the prior approval of Voting Unitholders.

## **ARTICLE 5 DISTRIBUTIONS**

### **5.1 Computation of Distributable Cash Flow of the Trust**

- (a) The Cash Flow of the Trust, for any Distribution Period, shall be determined pursuant to the following provisions:
  - (i) all amounts which are received by the Trust in the Distribution Period, including, without limitation, interest, dividends, redemption proceeds, purchase for cancellation proceeds, returns of capital and repayments of indebtedness, shall be included in the calculation;
  - (ii) the following amounts shall be deducted in the calculation:
    - (A) all costs and expenses of the Trust which, in the opinion of the Trustees, may reasonably be considered to have accrued and become owing in respect of, or which relate to, such Distribution Period or a prior Distribution Period if not accrued in such prior period; and
    - (B) all amounts which relate to the redemption of Units or Preferred Units and which have become payable in cash by the Trust in such Distribution Period.
  - (iii) the proceeds and issuance costs from the sale of any Units or Preferred Units by the Trust shall not be included in the Cash Flow of the Trust.
- (b) The Distributable Cash Flow for, or in respect of, a Distribution Period shall be the Cash Flow of the Trust for such Distribution Period less any amount which the Trustees may reasonably consider to be necessary to provide for the payment of any costs which have been or will be incurred in the activities and operations of the Trust and to provide for the payments of any income tax liability of the Trust.

### **5.2 Computation of Income of the Trust and Net Realized Capital Gains for the purposes of the Tax Act**

- (a) The Income of the Trust for any year shall be the net income determined pursuant to the provisions of the Tax Act having regard to the provisions thereof which relate to the calculation of income of a trust, and taking into account such adjustments thereto as are determined by the Trustees in respect of dividends received from taxable Canadian corporations, amounts paid or payable by the Trust to holders of Units and/or Preferred Units and such other amounts as may be determined in the discretion of the Trustees; provided, however, that capital gains and capital losses shall be excluded.
- (b) The Net Realized Capital Gains of the Trust for any year shall be determined as the amount, if any, by which the aggregate of the capital gains of the Trust in the year exceeds the aggregate of the capital losses of the Trust in the year, excluding any capital gains or losses which are realized by the Trust as a result of any redemption of Units

pursuant to Article 6 or Preferred Units pursuant to the terms thereof, and the amount determined by the Trustees in respect of any net capital losses for prior years which the Trust is permitted by the Act to deduct in computing the taxable income of the Trust for the year.

### 5.3 Distributions of Distributable Cash Flow

Subject to the rights of the holders of the Preferred Units, the Trustees shall, on or before any Distribution Record Date, declare payable to the Unitholders on such Distribution Record Date, all or any part of the Distributable Cash Flow for the Distribution Period which includes such Distribution Record Date as the Trustees determine to distribute to the Unitholders.

### 5.4 Other Distributions

- (a) Subject to the rights of the holders of the Preferred Units, in addition to the distributions which are made payable to Unitholders pursuant to Section 5.3, the Trustees may declare to be payable and make distributions, from time to time, out of the Income of the Trust, Net Realized Capital Gains, the capital of the Trust or otherwise, in any year, in such amount or amounts, and on such dates as the Trustees may determine.
- (b) Having regard to the present intention of the Trustees to allocate, distribute and make payable to Unitholders all of the Income of the Trust, a sufficient amount of the Net Realized Capital Gains and any other applicable amounts so that the Trust will not have any liability for tax under Part I of the Tax Act in any taxation year (other than tax on Net Realized Capital Gains that would be recoverable by it with respect to the relevant taxation year or, in the event that the Trust is not a mutual fund trust at any time in the relevant taxation year, tax under Division E.1 of Part I of the Tax Act) (the “taxation distribution amount”), the following amounts will, unless the Trustees in their absolute discretion have otherwise determined to not distribute such taxation distribution amount but in lieu thereof to distribute another specified amount, be due and payable to Unitholders of record at the close of business on December 31 in each year:
  - (i) the amount of Income of the Trust for such year not previously paid or made payable to Unitholders in such year, provided that if the Trust is a SIFT Trust, the aggregate amount so payable for the year shall be reduced by such amount as is necessary to provide for the tax payable by the Trust; and
  - (ii) the amount of Net Realized Capital Gains for such year not previously paid or made payable to Unitholders in such year, except to the extent of Net Realized Capital Gains in respect of which the tax payable by the Trust would be refunded as a “capital gains refund” as defined in the Tax Act for such year, provided that if the Trust is a SIFT Trust, the aggregate amount so payable for the year shall be reduced by such amount as is necessary to provide for the tax payable by the Trust by reason of the Trust being a SIFT Trust.
- (c) For greater certainty, if the Trustees have exercised their absolute discretion to not distribute the taxation distribution amount in respect of any year, the difference between amounts actually declared as distributions and the taxation distribution amount in respect of such year shall not be payable to Unitholders. Moreover, the Trustees, in their absolute discretion, may at any time refute the intention referred to above to distribute taxation distribution amounts in respect of any year or future year.

Any distribution made pursuant to this Article 5 will be payable to each Unitholder of record on the applicable Distribution Record Date, or on December 31 in the year of distribution in respect of a distribution pursuant to Section 5.4(b), pro rata in proportion to the number of Units held of record by such Unitholder on such applicable record date or December 31 in the year of such distribution, as the case may be.

- (d) Subject to Section 6.5, the proportionate share of each issued and outstanding Unit of the amount of any distribution made pursuant to this Article 5 shall be determined by dividing such amount by the number of issued and outstanding Units on the applicable Distribution Record Date or December 31 in the year of such distribution, as the case may be. Each Unitholder's share of the amount of any such distribution shall be an amount equal to the proportionate share of each Unit of such amount multiplied by the number of Units owned of record by each such Unitholder on such applicable record date or December 31 in the year of such distribution, as the case may be. Subject to Section 5.7, amounts which have been declared to be payable to Unitholders pursuant to Section 5.4(a) shall be paid in cash on the Distribution Payment Date which immediately follows the applicable record date in respect of the distribution.

### **5.5 Character of Distributions**

Distributions payable to Unitholders pursuant to this Article 5 shall be deemed to be distributions of Income of the Trust, Net Realized Capital Gains, trust capital or other items in such amounts as the Trustees shall, in their absolute discretion, determine. For greater certainty, it is hereby declared that any distribution of Net Realized Capital Gains shall include the non-taxable portion of the capital gains of the Trust which are encompassed in such distribution.

### **5.6 Designation of Taxable Dividends, Taxable Capital Gains and Foreign Source Income**

In accordance with and to the extent permitted by the Tax Act, the Trustees in each year shall make designations in respect of the amounts payable to Unitholders for such amounts that the Trustees consider to be reasonable in all of the circumstances, including, without limitation, designations relating to taxable dividends received by the Trust in the year on shares of taxable Canadian corporations, net taxable capital gains realized by the Trust in the year and foreign source income of the Trust for the year.

### **5.7 Method of Payment of Distributions**

- (a) Distributions shall be made by cheque payable to or to the order of the Unitholder or by such other manner of payment as approved by the Trustees from time to time.
- (b) Where the Trustees determine that the Trust does not have cash in an amount sufficient to make payment of the full amount of any distribution which has been declared to be payable pursuant to this Article on the due date for such payment, or otherwise determines that a distributions shall be made other than in cash, the payment may, at the option of the Trustees, include the issuance of additional Units, or fractions of Units, if necessary, having a value equal to the difference between the amount of such distribution and the amount of cash which has been determined by the Trustees to be payable on such distribution.
- (c) The value of each Unit which is issued pursuant to Section 5.7(b) shall be the market price (as defined in Section 6.3) of the Units on the applicable Distribution Record Date



in respect of a distribution pursuant to Section 5.3, on the applicable Distribution Record Date in respect of a distribution under Section 5.4(a), provided that if the particular date is not a Business Day then the market price (as defined in Section 6.3) shall be determined on the last Business Day which precedes such particular date.

#### 5.8 **Withholding Taxes**

The Trustees shall deduct or withhold from distributions payable to any Unitholder all amounts required by law to be withheld from such distribution.

#### 5.9 **Definitions**

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

#### 5.10 **Payments of Cash**

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

### **ARTICLE 6 REDEMPTION OF UNITS**

#### 6.1 **Right of Redemption**

Each Unitholder shall be entitled to require the Trust to redeem at any time or from time to time at the demand of the Unitholder all or any part of the Units registered in the name of the Unitholder 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 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) If the Book-Entry System is being used for the Units, a Beneficial Unitholder who desires to redeem Units shall do so by causing a CDS Participant to deliver to CDS on behalf of the Beneficial Unitholder a written notice of the Beneficial Unitholder's intention to redeem Units, which notice shall then be provided to the Transfer Agent and the Trust.

The form of redemption notice shall be substantially in the form set forth on the Unit Certificate. By causing a CDS Participant to deliver to CDS a notice of the Beneficial Unitholder's intention to redeem Units, a Beneficial Unitholder will be deemed to have irrevocably surrendered the applicable Units for redemption and appointed such CDS Participant to act as his or her exclusive settlement agent with respect to the exercise of the redemption privilege and the receipt of payment in connection with the settlement of obligations arising from such exercise. Any redemption notice that CDS determines to be incomplete, not in proper form or not duly executed will for all purposes be void and of no effect, and the redemption privilege to which it relates will be considered for all purposes not to have been exercised thereby. A failure by CDS or a CDS Participant to exercise redemption privileges or to give effect to the settlement thereof in accordance with the Beneficial Unitholder's instructions will not give rise to any obligations or liability on the part of the Trust or the Trustees to the CDS Participant or to the Beneficial Unitholder. A Beneficial Unitholder will have no direct redemption rights as against the Trust or the Trustees, and any such redemption effected by such Beneficial Unitholder will, insofar as the Trust or the Trustees are concerned, be deemed to be on the part of the registered Unitholder.

- (c) As of the close of business on the date when the Units are surrendered for redemption, the Unitholder will cease to be the Unitholder of record in respect of such Units, such Units will cease to be entitled to share in the income or any participation in the assets of the Trust (other than the receipt of the redemption proceeds), and the Unitholder (or Beneficial Unitholder) thereof will not be entitled to exercise any of the rights of holders of Units in respect thereof.
- (d) Upon receipt by the Trust of the notice to redeem Units, the Unitholder shall thereafter cease to have any rights with respect to the 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. 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) Upon receipt by the Trust of the notice to redeem Units in accordance with Section 6.2, the holder of the Units tendered for redemption shall be entitled to receive a price per Unit (hereinafter called the "Redemption Price") equal to the lesser of:
  - (i) 90% of the "market price" of the Units on the principal market on which the Units are quoted for trading during the 10 trading day period commencing immediately after the date on which the Units were surrendered to the Trust for redemption; and
  - (ii) 100% of the "closing market price" on the principal market on which the Units are quoted for trading on the date on which the Units were surrendered to the Trust for redemption.

For the purposes hereof, "market price" shall be an amount equal to the weighted average of the closing price of the 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 Units traded on a particular day, the “market price” shall be an amount equal to the weighted 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 10 trading days, the “market price” shall be the weighted average of the following prices established for each of the 10 trading days: the weighted average of the last bid and last ask prices for each day on which there was no trading; the closing price of the 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 Units for each day that there was trading, if the market provides only the highest and lowest prices of Units traded on a particular day. For the purposes of Section 6.3(a)(ii), the “closing market price” shall be: an amount equal to the closing price of the 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 Units if there was trading and the exchange or other market provides only the highest and lowest trading prices of Units traded on a particular day; and the weighted average of the last bid and last ask prices if there was no trading on the date. During the period of time, if any, after the date on which the Units were surrendered to the Trust for redemption, that the Units issued are subject to payment of an instalment of the issue price and are represented by instalment receipts, unless a market for trading in the Units (other than those so represented by instalment receipts) develops which the Trustees consider fairly reflects the market value of the Units, the “market price” for purposes of Section 6.3(a)(i) and the “closing market price” for purposes of Section 6.3(a)(ii) shall equal the aggregate of the “market price” or “closing market price” for such instalment receipts (calculated as aforesaid as if the instalment receipts were Units) plus the amount of the unpaid instalment of the issue price per Unit.

- (b) Subject to Sections 6.4 and 6.5, the Redemption Price payable in respect of the Units tendered for redemption during any month shall be paid by cheque, drawn on a Canadian chartered bank or a trust company in lawful money of Canada, payable at par to or to the order of the Unitholder who exercised the right of redemption on or before the last day of the calendar month following the month in which the Units were tendered for redemption. 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 and/or any party having a security interest 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 Units redeemed.

#### 6.4 No Cash Redemption in Certain Circumstances

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

- (a) the total amount payable by the Trust pursuant to Section 6.3 in respect of such Units and all other Units tendered for redemption prior thereto in the same calendar month exceeds \$25,000 (“Monthly Limit”); provided that the Trustees may, in their sole discretion, waive such limitation in respect of all Units tendered for redemption in any calendar month. In the absence of such a waiver, Units tendered for redemption in any calendar month in which the total amount payable by the Trust pursuant to Section 6.3(b) exceeds the Monthly Limit will be redeemed for cash pursuant to Section 6.3(b) 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 Units are tendered for redemption, the outstanding Units (or, as applicable, instalment receipts) are not listed for trading or quoted on any stock exchange or market

which the Trustees consider, in their sole discretion, provides representative fair market value prices for the Units (or, as applicable, instalment receipts); or

- (c) the normal trading of the outstanding Units (or, as applicable, instalment receipts) is suspended or halted on any stock exchange on which the Units (or, as applicable, instalment receipts) are listed for trading or, if not so listed, on any market on which the Units (or, as applicable, instalment receipts) are quoted for trading, on the date that such Units tendered for redemption were tendered to the Trust for redemption or for more than five trading days during the 10 trading day period commencing immediately after the date on which such Units tendered for redemption were tendered to the Trust for redemption.

## 6.5 In Specie Redemption

If, pursuant to Section 6.4, Section 6.3(b) is not applicable to Units tendered for redemption by a Unitholder, the Redemption Price per Unit specified in Section 6.3 to which the Unitholder would otherwise be entitled shall, subject to receipt of all necessary regulatory approvals, be paid and satisfied, at the option of the Trust, by way of the issuance and delivery by the Trust to each holder of Units tendered for redemption who is not entitled to receive cash in respect thereof on the Redemption Date of:

- (i) a promissory note of the Trust (a “Fund Note”) in a principal amount equal to the Redemption Price, as determined by the Trustees of the Trust in their sole discretion acting reasonably; or
- (ii) securities and/or obligations of any other entity held by the Trust in an amount equal to the Redemption Price, as determined by the Trustees of the Trust in their sole discretion acting reasonably.

Each Fund Note will mature on the 20<sup>th</sup> anniversary of the initial payment date, will be redeemable at the option of the Trust and will bear interest at a rate equal to the yield prevailing on the initial payment date for similar obligations, as determined by the Trustees of the Trust in their sole discretion acting reasonably.

The Redemption Price payable pursuant to this Section 6.5 in respect of Units tendered for redemption during any month shall, subject to receipt of all necessary regulatory approvals, be paid by the transfer, to or to the order of the Unitholder who exercised the right of redemption, on the last day (the “Transfer Date”) of the calendar month following the month in which the Units were tendered for redemption, of the number of securities and/or obligations (each in the principal amount of \$100) determined as aforesaid. The Trust shall be entitled to all interest paid or accrued and unpaid on the obligations being transferred and distributions paid on the securities being transferred 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 such securities and/or obligations by registered mail in a postage prepaid envelope addressed to the former Unitholder. Upon such payment, the Trust shall be discharged from all liability to the former Unitholder in respect of the Units so redeemed.

No fractional securities/or obligations in a principal amount less than \$100 will be distributed and where the number of securities and/or obligations 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 of securities and/or obligations on a redemption of Units as a result of the operation of Section 6.4(b) or

6.4(c) the Trustees shall determine the fair market value of the redeemed Units and securities and/or obligations issued to satisfy the Redemption Price. Where the Trust makes a distribution of securities and/or obligations on a redemption of Units pursuant to this subsection, the Trustees may, in their sole discretion, designate to the redeeming Unitholders any capital gain realized by the Trust as a result of the distribution of such securities to the Unitholder.

#### **6.6 Cancellation of all Redeemed Units**

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

#### **6.7 Retraction of Special Voting Units**

At such time as no Exchangeable Securities (other than Exchangeable Securities owned by the Trust and its affiliates) relating to a Special Voting Unit are outstanding, and no shares of stock, debt, options or other securities or agreements which could give rise to the issuance of any such Exchangeable Securities to any person (other than the Trust and its affiliates) exist, the applicable Special Voting Unit shall automatically be redeemed by the Trust and cancelled. Upon any such redemption or other purchase or acquisition of a Special Voting Unit by the Trust, such Special Voting Unit shall be deemed retired and cancelled and may not be reissued.

### **ARTICLE 7 TRUSTEES**

#### **7.1 Number of Trustees**

The Trustees shall consist of not more than nine nor less than three Trustees, with the number of Trustees from time to time within such range being fixed by resolution of the Trustees, provided that until otherwise so determined by resolution, the number of Trustees shall be five. A majority of the Trustees shall be Resident Canadians.

#### **7.2 Calling and Notice of Meetings**

Meetings of the Trustees shall be called and held at such time and at such place as the Trustees, the chairman of the Trustees or any two Trustees may determine, and any one Trustee or officer of the Trust may give notice of meetings when directed or authorized by such persons. Notice of each meeting of the Trustees shall be given to each Trustee not less than 48 hours before the time when the meeting is to be held, provided that if a quorum of Trustees is present, the Trustees may without notice hold a meeting immediately following an annual meeting of 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. Notice of a meeting may be waived by the Trustees at or after a meeting which is held and the meeting shall be deemed to have been duly held in such event. A Trustee who attends a meeting of Trustees is deemed to have waived notice of the meeting except when such Trustee attends for the express purpose of objecting to the transaction of any business on the grounds that proper notice of the meeting was not given.

### 7.3 **Place of Meetings**

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

### 7.4 **Meetings by Telephone**

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

### 7.5 **Quorum**

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

### 7.6 **Chairman**

The chairman of any meeting of the Trustees shall be the Trustee present at the meeting who holds the office of Chairman of the Trustees or if such person is not present, the Trustees present shall choose one of their number to be chairman.

### 7.7 **Action by the Trustees**

At all meetings of the Trustees every question shall be decided by a majority of the votes cast on the question. In the case of equality of votes, the chairman of the meeting shall not be entitled to a second or casting vote. The powers of the Trustees may be exercised by resolution passed at a meeting at which a quorum is present or by resolution in writing signed by all Trustees who would be entitled to vote on that resolution at a meeting of the Trustees. Resolutions in writing may be signed in counterparts each of which shall be deemed to be an original and all originals together shall be deemed to be one and the same instrument.

### 7.8 **Adjourned Meeting**

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

### 7.9 **Remuneration and Expenses**

The Trustees shall be paid such remuneration for their services as may from time to time be determined by the Trustees, acting reasonably. The Trustees shall also be entitled to be reimbursed for reasonable travelling and other expenses properly incurred by them in attending meetings of the Trustees

or any committee thereof or in connection with their services as Trustees. A Trustee shall not be precluded from serving the Trust in any other capacity and receiving remuneration therefore. Trustees shall be entitled to participate in any Trust Option Plan adopted by the Trustees.

#### 7.10 **Officers**

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

### **ARTICLE 8 APPOINTMENT, RESIGNATION AND REMOVAL OF TRUSTEES**

#### 8.1 **Qualification of Trustees**

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

- (a) anyone who is less than eighteen years of age;
- (b) anyone who is of unsound mind and has been so found by a Court in Canada or elsewhere;
- (c) a person who is not an individual; and
- (d) a person who has the status of bankrupt.

#### 8.2 **Appointment of Trustees**

Except as otherwise provided herein, Trustees shall be appointed (including the reappointment of incumbent Trustees) at each annual meeting of Trust, and may be appointed at a special meeting of Voting Unitholders, in each case to hold office, subject to Section 8.5, for a term expiring at the close of the next annual meeting of Voting Unitholders following such an appointment. Any such appointment shall be made either by a resolution approved by a majority of the votes cast at a meeting of Voting Unitholders or shall be made by resolution in writing in the manner set out in Section 12.10. Notwithstanding the foregoing:

- (a) if no Trustees are appointed at the annual meeting of Trust held immediately before the term of office of such Trustees expires, such Trustees shall continue to hold the office of Trustee under this Declaration of Trust until successors have been appointed; and
- (b) the Trustees may, between annual meetings of the Trust 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 after the expiration of the immediately preceding annual meeting of Voting Unitholders.

### 8.3 Consent to Act

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

“To:                   SUMMIT INDUSTRIAL INCOME REIT (the “Trust”)  
And to:               The Trustees thereof

The undersigned hereby consents to act as a Trustee of the Trust and hereby agrees, upon the later of the date of this consent and the date of the undersigned’s appointment as a Trustee of the Trust, to thereby become a party, as a Trustee, to the Declaration of Trust dated as of November 4, 2005, as amended and restated as of April 23, 2010, as further amended and restated as of December 9, 2010, as further amended and restated as of September 25, 2012, as further amended and restated as of November 9, 2012, as further amended and restated as of December 19, 2017 and as may be further amended or amended and restated from time to time, constituting the Trust.

Dated:

\_\_\_\_\_  
[Signature]

\_\_\_\_\_  
[Print Name]”

- (b) Upon the later of a person being appointed a trustee hereunder and executing and delivering to the Trust and the Trustees, a consent substantially as set forth in subsection 8.3(a), such person shall become a Trustee hereunder and shall be deemed to be a party (as a Trustee) to this Declaration of Trust, as amended and restated as of April 23, 2010, as further amended and restated as of December 9, 2010, as further amended and restated as of September 25, 2012, as further amended and restated as of November 9, 2012, as further amended and restated as of December 19, 2017 and as may be further amended or amended and restated from time to time.

### 8.4 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.

### 8.5 Ceasing to Hold Office

A Trustee ceases to hold office when:



- (a) he or she dies or resigns;
- (b) he or she is removed in accordance with Section 8.6; or
- (c) he or she is disqualified from being a Trustee as provided under Section 8.1.

A resignation of a Trustee becomes effective at the time a written resignation is sent to the Trust and the other Trustees 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.

Upon a Trustee ceasing to hold office as such hereunder, such Trustee shall cease to be a party, as a Trustee, to this Declaration of Trust; provided, however, that such Trustee shall continue to be entitled to be paid any amounts owing by the Trust to the Trustee and to the benefits of the indemnity provided in Section 9.9.

#### **8.6 Removal of Trustee**

The Voting Unitholders may remove any Trustee or Trustees from office by resolution approved by a majority of the votes cast at a meeting of Voting Unitholders called for that purpose. A vacancy created by the removal of a Trustee may be filled at the meeting of Voting Unitholders at which the Trustee is removed or, if not so filled, may be filled as set forth in Section 8.7.

#### **8.7 Filling Vacancies**

Subject to Section 8.2, a quorum of Trustees may fill a vacancy among the Trustees, except a vacancy resulting from an increase in the number of Trustees or from a failure 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 there has been a failure to elect the minimum number of Trustees required by or pursuant to this Declaration of Trust, the Trustees then in office 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 Section 8.5, until the close of the next annual meeting of the Voting Unitholders.

#### **8.8 Validity of Acts**

All acts of a Trustee are valid notwithstanding any irregularity in the appointment of the Trustee or any defect in the qualifications of the Trustee.

### **ARTICLE 9 CONCERNING THE TRUSTEES**

#### **9.1 Powers of the Trustees**

Subject to the terms and conditions of this Declaration of Trust, the Trustees may exercise from time to time in respect of the Trust Assets and the investments and affairs of the Trust full, absolute and exclusive power control and authority over the Trust Assets and appears to the same extent as if the Trustees were the legal and beneficial owners thereof.

## 9.2 Specific Powers and Authorities

Subject only to the express limitations contained in this Declaration of Trust and in addition to any other powers and authorities conferred by this Declaration of Trust or which the Trustees may have by virtue of any present or future statute or rule of law, the Trustees without any action or consent by the Voting 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 their sole judgement and discretion and in such manner and upon such terms and conditions as they may from time to time determine proper including the following powers and authorities:

- (a) to supervise the activities and manage the investments and affairs of the Trust;
- (b) to maintain records and provide reports to holders of Units, Special Voting Units and Preferred Units;
- (c) to collect, sue for and receive all sums of money coming due to the Trust;
- (d) to effect payment of distributions to the Unitholders as provided in Article 5 or to holders of Preferred Units in accordance with the terms of such Preferred Units;
- (e) to invest funds of the Trust as provided in Article 4;
- (f) to possess and exercise all the rights, powers and privileges pertaining to the ownership of securities and/or obligations held by the Trust from time to time 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;
- (g) 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;
- (h) 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;
- (i) 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 Trustee'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;
- (j) to grant broad discretion to a third party, including the Manager, to administer and manage the day-to-day operations of the Trust and to make executive decisions which

conform to the general guidelines, policies and principles set forth in this Declaration of Trust or otherwise established by the Trustees from time to time;

- (k) to arrange for insurance contracts and policies insuring the Trust, its assets, the business of any entity in which it holds a substantial equity interest, and/or any or all of the Trustees or the holders of Units, Special Voting Units and/or Preferred Units, 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 the holders of Units, Special Voting Units and/or Preferred Units or otherwise;
- (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 a Trustee is interested therein; provided, however, that should legal title to any of the Trust Assets be held by and/or in the name of any person or persons other than a Trustee or the Trust, the Trustees shall require such person or persons to execute a trust agreement acknowledging that legal title to such assets is held in trust for the benefit of the Trust;
- (m) to ensure that the restrictions on Non-Resident ownership referred to herein are met;
- (n) to issue Units, Special Voting Units and/or Preferred Units (including Exchangeable Securities) for such consideration as the Trustees may advise the Trustees, such issuance to be subject to the terms and conditions of the Declaration of Trust;
- (o) to enter into and perform the obligations of the Trust under the contracts of the Trust, the DRIP (if any) and the Trust Option Plan (if any) and any restricted unit plan;
- (p) to use their best efforts to ensure that the Trust qualifies at all times as a “unit trust” pursuant to paragraph 108(2)(a) of the Tax Act and a “mutual fund trust” pursuant to subsection 132(6) of the Tax Act and that the Units do not constitute “foreign property” for purposes of the Tax Act;
- (q) to issue convertible unsecured subordinated debentures, or securities exchangeable to or into convertible unsecured subordinated debentures notwithstanding Section 9.4 hereof;
- (r) to guarantee the obligations of any of its Subsidiaries or Affiliates and to charge, pledge, hypothecate or grant any security interest, mortgage or encumbrance over or with respect to any or all of the Trust Assets in connection with any such guarantee or any other indebtedness existing as at the date hereof or incurred hereafter; and
- (s) to do all such other acts and things as are incidental to the foregoing, and to exercise all powers which are necessary or useful to carry on the purpose and activities of the Trust, to promote any of the purposes for which the Trust is formed and to carry out the provisions of this Declaration of Trust.

### 9.3 **Voting of Securities and/or Obligations Held by the Trust**

The securities and/or obligations held from time to time by the Trustees as part of the Trust Assets may be voted by the Trustees at any and all meetings at which the holders of such securities and/or obligations are entitled to vote.

#### 9.4 **Restrictions on Trustee's Powers**

Notwithstanding Section 9.2:

- (a) The Trustees shall not, without the approval of the Voting Unitholders by way of resolution passed by a majority of the votes cast by Voting Unitholders represented at a meeting, appoint or change the auditors of the Trust;
- (b) The Trustees shall not, without the approval of the Voting Unitholders by way of a Special Resolution:
  - (i) authorize the termination, liquidation or winding up of the Trust, other than as described herein;
  - (ii) amend this Declaration of Trust, other than as described herein;
  - (iii) authorize or approve the combination, arrangement or merger of the Trust with any other person or entity.
- (c) Subject to Article 4 and sections 9.2(q) and (r) hereof, the Trustees shall have no power to borrow, incur any indebtedness or give any guarantee on behalf of the Trust or any other person or to charge, pledge, hypothecate or grant any security interest, mortgage or encumbrance over or with respect to any or all of the Trust Assets; provided that the Trust may from time to time incur indebtedness, which may be reborrowed after repayment, in whole or in part, for the sole purpose of paying the amounts required for the redemption of Units pursuant to Article 6 or the redemption of Preferred Units in accordance with their terms, provided that such indebtedness is repaid in full from income received by the Trust prior to making any distribution on or before the next following Distribution Record Date.
- (d) The Trustees shall have no power to sell all or substantially all of the Trust Assets, except with the approval of the Voting Unitholders by Special Resolution at a meeting of Voting Unitholders called for that purpose.
- (e) Notwithstanding the foregoing, the Trustees may take any action without the approval of the Voting Unitholders to effect an internal reorganization of the direct or indirect assets of the Trust as a result of which the Trust has the same interest, whether direct or indirect, in the assets as the interest, whether direct or indirect, that it had prior to the reorganization.

#### 9.5 **Banking**

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

authorize from time to time and shall be transacted on the Trust's behalf by one or more officers of the Trust or Trustees as the Trustees may designate, appoint or authorize from time to time.

#### **9.6 Standard of Care and Duties**

The Trustees shall act honestly and in good faith with a view to the best interests of the Trust and in connection therewith shall exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. A Trustee shall not be liable in carrying out his or her duties under this Declaration of Trust except in cases where a Trustee fails to act honestly and in good faith with a view to the best interests of the Trust or to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. The duties and standard of care of the Trustees provided as aforesaid are intended to be similar to, and not to be any greater than, those imposed on a director of a corporation governed by the *Business Corporations Act* (Ontario). Unless otherwise required by law, a Trustee shall not be required to give bond surety or security in any jurisdiction for the performance of any duties or obligations hereunder. No Trustee, in his or her capacity as trustee, shall be required to devote his or her entire time to the investments or business or affairs of the Trust.

#### **9.7 Fees and Expenses**

As part of the expenses of the Trust, the Trustees may pay or cause to be paid reasonable fees, costs and expenses incurred in connection with the administration and management of the Trust, including (without, limitation) fees of auditors, accountants, lawyers, appraisers and other agents, consultants and professional advisors employed by or on behalf of the Trust and the cost of reporting or giving notices to the holders of Units, Special Voting Units and/or Preferred Units. All costs, charges and expenses properly incurred by the Trustees on behalf of the Trust shall be payable out of the Trust Assets.

#### **9.8 Limitations on Liability of Trustees**

None of the Trustees or the officers or agents of the Trust shall be liable to any holder of Units, Special Voting Units and/or Preferred Units for any action taken in good faith in reliance on any documents that are, *prima facie* properly executed; for any depreciation of, or loss to, the Trust incurred by reason of the sale of any security; for the loss or disposition of monies or securities; or for any other action or failure to act including, without limitation, the failure to compel in any way any former trustee to redress any breach of trust, except for a breach of the standard of care, diligence and skill as set out in Section 9.6 or a breach of Section 9.4. If the Trustees have retained an appropriate expert or advisor with respect to any matter connected with their duties under this Declaration of Trust, the Trustees may act or refuse to act based on the advice of such expert or advisor and, notwithstanding any provision of this Declaration of Trust, including, without limitation, the standard of care, diligence and skill set out in Section 9.6 hereof, the Trustees shall not be liable for any action or refusal to act based on the advice of any such expert or advisor which it is reasonable to conclude is within the expertise of such expert or advisor to give.

#### **9.9 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 Assets in respect of any and all taxes, penalties or interest in respect of unpaid taxes or other governmental charges imposed upon the Trustee or officer in consequence of his or her performance of his or her duties hereunder and in respect of any and all costs, charges and expenses, including amounts paid to settle an action or satisfy a judgement, 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, a director or officer of an affiliate or associate of the Trust including the general partner of any limited partnership actively engaged in operating a business, or any successor thereto, or any Subsidiary thereof, provided that a Trustee, former Trustee, officer or former officer shall not be indemnified out of the Trust Assets 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 his or her failure to act honestly and in good faith with a view to the best interests of the holders of Units, Special Voting Units and/or Preferred Units. 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 Assets, and no holder of Units, Special Voting Units and/or Preferred Units or other Trustee or officer shall be personally liable to any person with respect to any claim for such indemnity or reimbursement as aforesaid.

#### 9.10 Contractual Obligations of 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 none of the holders of Units, Special Voting Units and/or Preferred Units or the Trustees have any personal liability or obligations in respect thereof, substantially in the following form:

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

The omission of such statement from any such instrument will not render any Trustee, any Unitholder, Special Voting Unitholder, Preferred Unitholder or manager, officer, consultant, agent or employee of the Trust liable to any person, nor will any Trustee, any Unitholder, Special Voting Unitholder or any Preferred Unitholder or any manager, officer, consultant, agent or employee of the Trust be liable to any person for such omission. If, notwithstanding this provision, any Trustee, Unitholder, Special Voting Unitholder, Preferred Unitholder or any manager, officer, consultant, agent or employee of the Trust is held liable to any other person by reason of the omission of such statement from any such agreement, undertaking or obligation, such Trustee, Unitholder, Special Voting Unitholder, Preferred Unitholder or manager, officer, consultant, agent or employee will be entitled to indemnity out of the Trust Assets to the full extent of such liability and the costs of any litigation or other proceedings in

which such liability has been determined, including without limitation, the fees and disbursements of counsel.

#### **9.11 Conflicts of Interest**

A Trustee or an officer of the Trust who is a party to, or is a director or officer of, or has a material interest in any person who is a party to a material contract or proposed material contract with the Trust shall disclose in writing to the Trust or request to have entered in the minutes of meetings of the Trustees the nature and extent of such interest, and shall not vote on any resolutions to approve the contract, unless the contract is one relating primarily to his or her remuneration as a Trustee or officer, one for indemnity or insurance in respect of him or her and, for greater certainty, a Trustee complying with this Section 9.11, shall not be subject to any liability to the Trust or the holders of Units, Special Voting Units and/or Preferred Units with respect to such contract or proposed material contract as aforesaid.

### **ARTICLE 10 COMMITTEES OF TRUSTEES**

#### **10.1 Delegation**

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

#### **10.2 Procedure**

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

### **ARTICLE 11 AMENDMENT**

#### **11.1 Amendment**

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, regulations, requirements or policies of any governmental or other authority having jurisdiction over the Trustees or the Trust;

- (b) making all changes deemed necessary or advisable to ensure that the Trust has not been established nor maintained primarily for the benefit of non-residents of Canada as defined in the Tax Act;
- (c) providing, in the opinion of the Trustees, additional protection for or of benefit to the holders of Units, Special Voting Units and/or Preferred Units;
- (d) removing any conflicts or inconsistencies in this Declaration of Trust or making corrections, including the correction or 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 holders of Units, Special Voting Units and/or Preferred Units; or
- (e) making amendments which, in the opinion of the Trustees, are necessary or desirable as a result of changes in GAAP (including accounting principles) or taxation or other laws or the administration or enforcement thereof.

## 11.2 Notification of Amendment

As soon as shall be practicable after the making of any amendment pursuant to this Article 11, the Trustees shall furnish written notification of the substance of such amendment to each holder of Units, Special Voting Units and/or Preferred Units.

## 11.3 Variation of Rights

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

## 11.4 Internal Restructuring

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

## 11.5 No Termination

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

# ARTICLE 12 MEETINGS OF VOTING UNITHOLDERS

## 12.1 Annual and Special Meetings of Voting Unitholders

Annual meetings of the Voting Unitholders shall be called on a day on or before June 30 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 annual financial statements of the Trust for the prior fiscal year, the appointment of Trustees for the ensuing year in accordance with Article 8, 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 12 or as the Trustees may determine. Special meetings of the Voting Unitholders may be called at any time by the Trustees and shall be called by the Trustees upon a written request of Voting Unitholders holding in the aggregate Voting Units to which are attached not less in aggregate than 10% of the votes attached to all Voting Units together then outstanding, such request specifying the purpose or purposes for which such meeting is to be called. The chairman of any annual or special meeting shall be the Chairman of the Trustees or any other Trustee specified by resolution of the Trustees or, in the absence of any Trustee, any person appointed as chairman 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 chairman 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.

## **12.2 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 60 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 reasonable judgement thereon, together with the text of any Special Resolution, at the time of mailing of the notice, proposed to be passed. Any adjourned meeting, other than a meeting adjourned for lack of a quorum under Section 12.6(b), may be held as adjourned without further notice. The accidental omission to give notice or the non-receipt of such notice by a 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 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.

## **12.3 Quorum**

At any meeting of the Voting Unitholders, subject as hereinafter provided, a quorum shall consist of one or more individuals present in person either holding personally or representing as proxies Voting Units to which are attached not less in aggregate than 5% of the votes attached to all outstanding Voting Units. In the event of such quorum not being present at the appointed place on the date for which the meeting is called within 30 minutes after the time fixed for the holding of such meeting, the meeting, if called by request of Voting Unitholders, 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 chairman 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.

## **12.4 Voting Rights of Voting Unitholders**

Only Voting Unitholders of record shall be entitled to vote. Each Unit shall entitle the holder or holders of that Unit to one vote on a poll vote at any meeting of Voting Unitholders. 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 vote, 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. 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 of 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.

## 12.5 Resolutions Binding the Trustees

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

- (a) the appointment or removal of a Trustee as provided in Article 8;
- (b) the appointment or removal of Auditors as provided in Article 17;
- (c) the appointment of an Inspector as provided in Section 12.9;
- (d) amendments of this Declaration of Trust as provided in Section 11.1;
- (e) the termination of the Trust as provided in Section 14.2; and
- (f) the sale of the Trust Assets as an entirety or substantially as an entirety.

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

## 12.6 Meaning of "Special Resolution"

- (a) The expression "Special Resolution" when used in this Declaration of Trust means, subject to Article 11, 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 Article at which two or more individuals present in person either holding personally or representing as proxies not less in aggregate than 10% of the number of Voting Units together then outstanding and passed by the affirmative votes of the holders of Voting Units to which are attached more than 66 2/3% of the votes attached to all Voting Units represented at the meeting and cast on a poll upon such resolution.
- (b) Notwithstanding Section 12.3, if at any meeting at which a Special Resolution is proposed to be passed the holders of Voting Units to which are attached 10% of the aggregate number of votes attached to all Voting Units together 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 chairman. Not less than ten days prior notice shall be given of the time and place of such adjourned meeting in the manner provided in Section 12.2. Such notice shall state that at the adjourned meeting the Voting Unitholders present in person or by proxy shall form a quorum but it shall not be necessary to set forth the purposes for which the meeting was originally called or any other particulars. At the adjourned meeting, the Voting Unitholders present in person or by proxy shall form a quorum and may transact the business for which the meeting was originally convened and a resolution proposed at such adjourned meeting and passed by the requisite vote as provided in subsection 12.6(a) shall be a Special Resolution within the meaning of this Declaration of Trust, notwithstanding that the holders of Voting Units to which are attached less than 10% of the aggregate number of votes attached to all Voting Units then outstanding are present in person or by proxy at such adjourned meeting.

- (c) Unless the Trustees determine otherwise, votes on a Special Resolution shall always be given on a poll and no demand for a poll on a Special Resolution shall be necessary.

#### 12.7 **Meaning of “Outstanding”**

Every Voting 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;
- (b) for the purpose of any provision of this Declaration of Trust entitling holders of outstanding Voting Units to vote, sign consents, requisitions or other instruments or take any action under this Declaration of Trust, Voting Units owned directly or indirectly, legally or equitably, by the Trust or any 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 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 or any Affiliate thereof.

#### 12.8 **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 30 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 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 12.2.

#### 12.9 **Appointment of Inspector**

The Trustees shall call a meeting of Voting Unitholders upon the written request of Voting Unitholders holding Voting Units to which are attached in the aggregate not less than 10% of the votes attached to all 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.

#### 12.10 **Resolutions in Writing**

Notwithstanding any other provision of this Declaration of Trust, a resolution in writing executed by Voting Unitholders holding Voting Units to which are attached more than 66 2/3% of the votes attached to all outstanding Voting Units at any time shall be as valid and binding for all purposes of this Declaration of Trust as if such Voting Unitholders had exercised at that time all of the voting rights to which they were then entitled under Section 12.5 or 12.6 in favour of such resolution at a meeting of Voting Unitholders duly called for the purpose.

### **ARTICLE 13 CERTIFICATES, REGISTRATION AND TRANSFER OF UNITS**

#### 13.1 **Nature of Voting Units**

- (a) The provisions of this Article 13 shall not in any way alter the nature of Units or the relationships of a Unitholder to the Trustees and of one Unitholder to another but are intended only to facilitate the issuance of certificates evidencing the ownership of Units if desirable to issue them to Unitholders and the recording of all transactions in respect of Units and Unit Certificates whether by the Trust, securities dealers, stock exchanges, transfer agents, registrars or other persons. The Units may be issued in the form of one global Unit Certificate (the "Global Unit Certificate"). The Global Unit Certificate will 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 the Global Unit Certificate and registered by the Transfer Agent in the name of the Depository or its nominee. No purchaser of Units represented by the 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 Trustees are unable or do not wish to locate a qualified successor. Beneficial interests in the Global Unit Certificate will be represented only through the Book-Based System. Transfers of 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 Units are held through the Depository, refer to actions taken by, or notices

given or payments made to, the Depositary upon instruction from the CDS Participants in accordance with the Depositary's rules and procedures. For the purposes of any provision hereof requiring or permitting actions with the consent of or at the direction of Trust evidencing a specified percentage of the aggregate votes attached to the Units outstanding, such direction or consent may, with respect to the Units, be given by Unitholders acting through the Depositary and the CDS Participants owning Units evidencing the relevant portion of the requisite percentage of the Units. The rights of a Unitholder shall be exercised only through the Depositary and the CDS Participants and shall be limited to those established by law and agreements between such Unitholders and the Depositary and/or the CDS Participants or upon instruction from the CDS Participants. Each of the Transfer Agent and the Trustees may deal with the Depositary for all purposes (including the making of payments) as the authorized representative of the respective Unitholders and such dealing with the Depositary shall constitute satisfaction or performance, as applicable, towards their respective obligations hereunder.

- (c) For so long as the Units are held through the Depositary, 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 Depositary.
- (d) If the Depositary resigns or is removed from its responsibilities as depositary and the Trustees are unable or do not wish to locate a qualified successor, the Depositary shall surrender the Global Unit Certificate to the Transfer Agent with instructions from the Depositary for registration of Units in the name and in the amounts specified by the Depositary and the Trust shall issue and the Trustees and Transfer Agent shall execute and deliver the aggregate number of Units then outstanding in the form of definitive Unit Certificates representing such Units.

### 13.2 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; and
  - (i) contain such distinguishing letters and numbers as the Trustees shall prescribe.
- (d) In the event that the Unit Certificate is translated in the French language, and any provision of the Unit Certificates 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 such Units. Signatures of the Trustees required to appear on such certificate may be printed, lithographed or otherwise mechanically reproduced thereon and, in such event, certificates so signed are as valid as if they had been signed manually.

### 13.3 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 created under the laws of the Province of Ontario by a Declaration of Trust dated as of November 4, 2005, as amended and restated as of April 23, 2010, as further amended and restated as of December 9, 2010, as further amended and restated as of September 25, 2012, as further amended and restated as of November 9, 2012, as further amended and restated as of December 19, 2017 and as may be further amended and restated from time to time” or words of like effect;
  - (ii) the name of the person to whom the Unit Certificate is issued as Unitholder;
  - (iii) the number of Units represented thereby and whether or not the Units represented thereby are fully paid;
  - (iv) that the Units represented thereby are transferable;
  - (v) “The Units represented by this certificate are issued upon the terms and subject to the conditions of the Declaration of Trust, which Declaration of Trust is binding upon all holders of Units and, by acceptance of this certificate, the holder assents to the terms and conditions of the Declaration of Trust. A copy of the Declaration of Trust pursuant to which this certificate and the Units represented 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 face or 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 Units.
  - (iii) The Unit Certificates may be engraved, printed or lithographed, or partly in one form and partly in another, as the Trustees may determine.

### 13.4 Register of Security Holders

A register may be kept at the principal corporate trust office in Toronto, Ontario of the Transfer Agent with respect to the Units, Special Voting Units and Preferred Units, which, if maintained, shall contain the names and addresses of the holders of Units, Special Voting Units and Preferred Units, the respective numbers of Units, Special Voting Units and Preferred Units held by them, the certificate numbers of certificates representing such Units, Special Voting Units and Preferred Units and a record of all transfers and redemptions thereof. Branch transfer registers shall be maintained at such other offices as the Trustees may from time to time designate. Only holders of Units, Special Voting Units and Preferred Units whose certificates are so recorded shall be entitled to receive distributions or to exercise or enjoy the rights of holders of Units, Special Voting Units and Preferred Units hereunder. The Trustees shall have the right to treat the person registered as a holder of Units, Special Voting Units and/or Preferred Units on the register of the Trust as the owner of such Units, Special Voting Units and/or Preferred Units for all purposes, including, without limitation, payment of any distribution, giving notice to holders of Units, Special Voting Units and Preferred Units and determining the right to attend and vote at meeting of Voting Unitholders.

### 13.5 Limitation of Non-Resident Ownership

At no time may non-residents of Canada (“Non-residents”) within the meaning of the *Tax Act* be the beneficial owners of that number of Units, Special Voting Units and Preferred Units (on both a non-diluted basis and a fully diluted basis, including all Units issuable upon the exercise of Exchangeable Securities) entitling them to more than 49% of the votes attached to all outstanding Voting Units. The Trustees may require declarations as to the jurisdictions in which beneficial owners of Voting Units are resident. If the Trustees become aware that the beneficial owners of either or both of the Voting Units entitling the holders to 45% of the votes attached to all outstanding Voting Units or may be non-resident or that such a situation is imminent, the Trustee may make a public announcement thereof and shall not accept a subscription for Voting Units from or issue or register a transfer of Voting 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 a majority of the Voting Units are held by Non-residents, the Trustees may send a notice to Non-resident holders of Voting Units, chosen in inverse order to the order of acquisition or registration or in such other manner as the Trustees may consider equitable and practicable, requiring them to sell their Voting Units or a portion thereof within a specified period of not less than 60 days. If the Voting Unitholders receiving such notice have not sold the specified number of Voting Units or provided the Trustees with satisfactory evidence that they are not Non-residents within such period, the Trustees, may on behalf of such Voting Unitholders, sell such Voting Units and, in the interim, shall suspend the voting and distribution rights attached to such Units or voting rights attached to such Special Voting Units, as applicable. Upon such sale the affected holders shall cease to be holders of the Voting Units so sold and their rights shall be limited to receiving the net proceeds of sale upon surrender of the certificates representing such Trust.

### 13.6 Transfer of Units

- (a) Subject to the provisions of this Article 13, the Units shall be fully transferable without charge as between persons, but no transfer of Units shall be effective as against the Trustees or shall be in any way binding upon the Trustees until the transfer has been recorded on the register or one of the branch transfer registers maintained by the Trustees, the Trust or the Transfer Agent. No transfer of a Unit shall be recognised unless such transfer is of a whole Unit.

- (b) Subject to the provisions of this Article 13, Units shall be transferable on the register or one of the branch transfer registers only by the Unitholders of record thereof or their executors, administrators or other legal representatives or by their agents or attorneys duly authorized in writing, and only upon delivery to the Trust or to the Transfer Agent of the 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 authorisation 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 Trust Units not transferred shall be issued to the transferor.
- (c) Any person becoming entitled to any Units as a consequence of the death, bankruptcy or mental incompetence of any Unitholder, or otherwise by operation of law, shall be recorded as the holder of such Units and shall receive a new certificate therefor only upon production of evidence satisfactory to the Trustees or the Transfer Agent and delivery of the existing certificate to the Trustees or the Transfer Agent, but until such record is made the Unitholder of record shall continue to be and be deemed to be the holder of such Units for all purposes whether or not the Trustees or the Transfer Agent shall have actual or other notice of such death or other event.
- (d) Unit Certificates representing any number of Units may be exchanged without charge for Unit Certificates representing an equivalent number of Units in the aggregate. Any exchange of Unit Certificates may be made at the offices of the Trust or the Transfer Agent where registers are maintained for Unit Certificates pursuant to the provisions of this Article 13. Any Unit Certificates tendered for exchange shall be surrendered to the Trustees or appropriate and then shall be cancelled.

### 13.7 **Securities Held Jointly or in a Fiduciary Capacity**

Except as herein provided, the Trustees may treat two or more persons holding any Units, Special Voting Units and/or Preferred Units as joint owners 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 Units, Special Voting Units and Preferred Units; provided, however, that any person recorded as a holder of Units, Special Voting Units and/or Preferred Units may, subject to the provisions hereinafter contained, be described in the register or on any certificate as a fiduciary of any kind and any customary words may be added to the description of the holder to identify the nature of such fiduciary relationship.

### 13.8 **Performance of Trust**

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



### 13.9 **Lost Certificates**

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

### 13.10 **Death of a Security Holder**

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

### 13.11 **Unclaimed Interest or Distribution**

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

### 13.12 **Take-Over Bids**

- (a) In the event of a take-over bid for Units, 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 Units to such take-over bid on the condition that such Units are taken up under such bid, unless an identical offer (in terms of price per 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 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 Units to such take-over bid, the tendering of a certificate issued by the Trust indicating that the Unit is issuable upon and subject to completion of the take-over bid shall be good delivery under

such bid 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 or Units to the extent that the Units issuable upon the conversion, exercise or exchange of such Exchangeable Securities have been taken up.

- (b) If, within 120 days after the date of a take-over bid for all of the outstanding Units (including Units issuable upon conversion, exercise or exchange of Exchangeable Securities), the bid is accepted by the holders of not less than 90% of the aggregate of outstanding Units and the Units issuable upon the conversion, exercise or exchange of the Exchangeable Securities, other than outstanding Units and Exchangeable Securities held by or on behalf of, or issuable to, the offeror or an affiliate or associate of the offeror on the date of the take-over bid, the offeror is entitled, on complying with this Section 13.2, to acquire the Units and Exchangeable Securities held by the non-tendering offerees.
- (c) An offeror may acquire Units and Exchangeable Securities held by a non-tendering offeree by sending by registered mail within 60 days after the date of termination of the take-over bid and in any event within 180 days after the date of the take-over bid, an offeror's notice to each non-tendering offeree stating that:
  - (i) offerees holding not less than 90% of the outstanding Units and the Units issuable upon the conversion, exercise or exchange of the Exchangeable Securities which the bid relates accepted the take-over bid;
  - (ii) the offeror has taken up and paid for the Units and Exchangeable Securities of the offerees who accepted the take-over bid;
  - (iii) a non-tendering offeree is required to transfer its Units and/or Exchangeable Securities to the offeror on the terms on which the offeror acquired the Units and Exchangeable Securities of the offerees who accepted the take-over bid; and
  - (iv) a non-tendering offeree which does not transfer its Units and/or Exchangeable Securities in accordance with Section 13.12(b) within 20 days after it receives the offeror's notice is deemed to have elected to transfer, and to have transferred, its Units on the same terms that the offeror acquired the Units and/or Exchangeable Securities from the offerees who accepted the takeover bid.
- (d) Concurrently with sending the offeror's notice under Section 13.12(c), the offeror shall send to the Trust a notice of adverse claim disclosing the name and address of the offeror and the name of the non-tendering offeree with respect to each Unit and/or Exchangeable Security held by a non-tendering offeree.
- (e) A non-tendering offeree to whom an offeror's notice is sent under Section 13.12(c) shall, within 20 days after it receives that notice, cause its Units and/or Exchangeable Securities to be sent to the Trust, or, if Unit Certificates have been issued to the nontendering offeree, send the certificates representing such securities, duly endorsed for transfer, to the Trust.
- (f) Within 20 days after the offeror sends an offeror's notice under Section 13.12(c), the offeror shall pay or transfer to the Trust the amount of money or other consideration that the offeror would have had to pay or transfer to a non-tendering offeree if the nontendering offeree had tendered under the take-over bid.

- (g) The Trust is deemed to hold on behalf of the non-tendering offeree the money or other consideration it receives under Section 13.12(f), and the Trust shall deposit the money in a separate account in a bank or other body corporate any of whose deposits are insured by the Canada Deposit Insurance Corporation (or any successor thereof), and shall place the other consideration in the custody of a bank or such other body corporate for safekeeping. No such monies or other consideration shall form any part of the Trust Assets.
- (h) Within 30 days after the date of the sending of an offeror's notice under Section 13.12(c), the Trust, if the offeror has complied with Section 13.12(f), shall:
  - (i) do all acts and things and execute and cause to be executed all instruments as in the Trust's opinion may be necessary or desirable to cause the transfer of the Units and/or Exchangeable Securities of the non-tendering offerees to the offeror;
  - (ii) send to each non-tendering offeree who has complied with Section 13.12(e) the consideration to which such non-tendering offeree is entitled under this Section 13.12; and
  - (iii) send to each non-tendering offeree who has not complied with Section 13.12(e) a notice stating that:
    - (A) his or her Units and/or Exchangeable Securities have been transferred to the offeror;
    - (B) the Trust or some other person designated in such notice are holding in trust the consideration for such Units and/or Exchangeable Securities; and
    - (C) the Trust, or such other person, will send the consideration to such non-tendering offeree as soon as practicable after receiving such nontendering offeree's Unit Certificate(s) or certificate(s) representing Exchangeable Securities (subject to the use of a Global Unit Certificate as contemplated in Article 13) or such other documents as the Trustee or such other person may require in lieu thereof;

and the Trustees, or any one of them, are hereby appointed the agent and attorney of the non-tendering offerees for the purposes of giving effect to the foregoing provisions.

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 13.12, including, without limitation, provisions to effect the automatic conversion, exercise or exchange of Exchangeable Securities by a non-tendering offeree holder thereof.

### 13.13 Power of Attorney

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

- (a) this Declaration of Trust, any amendment to this Declaration of Trust and any other instrument required or desirable to qualify, continue and keep in good standing the Trust as a mutual fund trust;
- (b) any instrument, deed, agreement or document in connection with carrying on the activities and affairs of the Trust as authorized in this Declaration of Trust;
- (c) all conveyances and other documents required in connection with the dissolution or liquidation of the Trust in accordance with the terms of this Declaration of Trust;
- (d) any and all elections, determinations or designations whether jointly with third parties or otherwise, under the Tax Act or any other taxation or other legislation or similar laws of Canada or of any other jurisdiction in respect of the affairs of the Trust or of a Unitholder's interest in the Trust; and
- (e) all transfers, conveyances and other documents required to facilitate the acquisition of Units and/or Exchangeable Securities of non-tendering offerees pursuant to Section 13.12.

The Power of Attorney granted herein is irrevocable and will survive the bankruptcy of the holder of Units, Special Voting Units and/or Preferred Units or the assignment by the holder of Units, Special Voting Units and/or Preferred Units of all or part of his or her interest in the Trust and will extend to and bind the successors and assigns of the holder of Units, Special Voting Units and/or Preferred Units.

## **ARTICLE 14 TERMINATION**

### **14.1 Term of Trust**

Subject to the other provisions of this Declaration of Trust, the Trust shall continue for a term ending 21 years after the date of death of the last surviving issue of Her Majesty, Queen Elizabeth II, alive on November 4, 2005. For the purpose of terminating the Trust by such date, the Trustees shall commence to wind-up the affairs of the Trust on such date as may be determined by the Trustees, being not more than two years prior to the end of the term of the Trust.

### **14.2 Termination with the Approval of 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. Such Special Resolution may contain such directions to the Trustees as the Voting Unitholders determine, including a direction to distribute the assets of the Trust, held by the Trust, or any combination of the foregoing, in specie.

### **14.3 Automatic Termination**

If all such securities and/or obligations comprising part of the Trust Assets have been distributed to Unitholders or have been repaid or otherwise cease to exist, the Trust shall automatically terminate and, subject to obtaining all necessary regulatory approvals, the Trustees will distribute to the Unitholders on a pro rata basis the remaining property of the Trust.

#### **14.4 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 holders of Units, Special Voting Units and Preferred Units, which notice shall designate the time or times at which holders of Units, Special Voting Units and Preferred Units may surrender their Units, Special Voting Units and Preferred Units for cancellation and the date at which the registers of Units, Special Voting Units and Preferred Units of the Trust shall be closed.

#### **14.5 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 carry on no activities except for the purpose of winding-up the affairs of the Trust as hereinafter provided and, for this purpose, the Trustees shall continue to be vested with and may exercise all or any of the powers conferred upon the Trustees under this Declaration of Trust.

#### **14.6 Sale of Investments**

After the date referred to in Section 14.4, the Trustees shall proceed to wind-up the affairs of the Trust as soon as may be reasonably practicable and for such purpose shall, subject to any direction to the contrary in respect of a termination authorized under Section 14.2, sell and convert into money the assets comprising the Trust in one transaction or in a series of transactions at public or private sales and do all other acts appropriate to liquidate the Trust, and shall in all respects act in accordance with the directions, if any, of the Voting Unitholders (in respect of a termination authorized under Section 14.2). If the Trustees are unable to sell all or any of the assets which comprise part of the Trust by the date set for termination, the Trustees may, subject to obtaining all necessary regulatory approvals, distribute the remaining assets directly to the Unitholders in accordance with their pro rata shares (subject to the rights of the holders of the Preferred Units) and to the holders of the Preferred Units in accordance with their terms.

#### **14.7 Distribution of Proceeds**

After paying, retiring or discharging or making provision for the payment, retirement or discharge of all known liabilities and obligations of the Trust and providing for indemnity against any other outstanding liabilities and obligations, the Trustees shall, subject to obtaining all necessary regulatory approvals, distribute the remaining part of the proceeds of the sale of the assets together with any cash forming part of the Trust Assets among the Unitholders in accordance with their pro rata shares (subject to the rights of the holders of the Preferred Units) and to the holders of the Preferred Units in accordance with their terms.

#### **14.8 Further Notice to Security Holders**

In the event that less than all of the holders of Units, Special Voting Units and Preferred Units have surrendered their Units, Special Voting Units and Preferred Units for cancellation within six (6) months after the time specified in the notice referred to in Section 14.4, the Trustee shall give further notice to the remaining holders of Units, Special Voting Units and Preferred Units to surrender their Units, Special Voting Units and Preferred Units for cancellation and if, within one (1) year after the further notice, all the Units, Special Voting Units and Preferred Units shall not have been surrendered for cancellation, such remaining Units, Special Voting Units and Preferred Units shall be deemed to be cancelled without prejudice to the rights of the holders of such Units, Special Voting Units and Preferred Units to receive their share of the remaining Trust Assets, and the Trustees may either take appropriate steps, or appoint an agent to take appropriate steps, to contact such holders of Units, Special Voting Units

and Preferred Units (deducting all expenses thereby incurred from the amounts to which such holders of Units, Special Voting Units and Preferred Units are entitled as aforesaid) or, in the discretion of the Trustees, may pay such amounts into court.

#### **14.9 Responsibility of the Trustees after Sale and Conversion**

The Trustees shall be under no obligation to invest the proceeds of any sale of investments or other assets or cash forming part of the Trust Assets after the date referred to in Section 14.4 and, after such sale, the sole obligation of the Trustees under this Declaration of Trust shall be to hold such proceeds in trust for distribution under Section 14.7.

### **ARTICLE 15 SUPPLEMENTAL INDENTURES**

#### **15.1 Provision for Supplemental Indentures for Certain Purposes**

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

- (a) modifying or amending any provisions of this Declaration of Trust in the circumstances set forth in Section 11.1 where the Trustees may do so without the consent, approval or ratification of the Trust or any other person; and
- (b) modifying or amending any provisions of this Declaration of Trust where the modification or amendment has been approved by Special Resolution or, if required, with the consent of the holders of all of the Voting Units.

### **ARTICLE 16 GENERAL**

#### **16.1 Notices**

- (a) Any notice or other document required to be given or sent to holders of Units, Special Voting Units and Preferred Units 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, 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 cable, telegram, telex or other means of prepaid, transmitted or recorded communication.

## 16.2 **Failure to Give Notice**

The failure by the Trustees, by accident or omission or otherwise unintentionally, to give any holder of Units, Special Voting Units and/or Preferred Units 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 holder of Units, Special Voting Units and/or Preferred Units for any such failure.

## 16.3 **Joint Holders**

Service of a notice or document on any one of several joint holders of Units, Special Voting Units and/or Preferred Units shall be deemed effective service on the other joint holders.

## 16.4 **Service of Notice**

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

## 16.5 **Information Available to Security Holders**

Each holder of Units, Special Voting Units and/or Preferred Units shall have the right to obtain, on demand and without fee, from the head office of the Trust a copy of this Declaration of Trust and any amendments thereto relating to Units, Special Voting Units and/or Preferred Units held by that holder and shall be entitled to inspect and, on payment of a reasonable fee therefor, obtain a list of the holders of Units, Special Voting Units and Preferred Units for purposes connected with the Trust.

## 16.6 **Income Tax: Obligations of the Trustees**

The Trustees shall satisfy, perform and discharge all obligations and responsibilities of the Trustees under the Tax Act (including any obligations of the Trust under Part XIII of the Tax Act) and neither the Trust nor the Trustees shall be accountable or liable to any Unitholder by reason of any act or acts of the Trustees consistent with any such obligations or responsibilities.

## 16.7 **Income Tax: Election**

In respect of the first taxation year of the Trust, the Trust shall elect pursuant to subsection 132(6.1) of the Tax Act that the Trust be deemed to be a mutual fund trust for the entire year.

**16.8 [Intentionally Deleted]****16.9 Fiscal Year**

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

**16.10 Financial Disclosure**

The Trust will furnish to holders of Units, Special Voting Units and Preferred Units such financial statements (including the unaudited quarterly and audited annual financial statements) and other reports as are from time to time required by applicable securities legislation, in the manner and within the time set out in that legislation. In the absence of any specific requirements under applicable securities legislation, the Trust will prepare and provide to holders of Units, Special Voting Units and/or Preferred Units upon request:

- (a) within 140 days after the end of each fiscal year, the annual financial statements of the Trust for the fiscal year ended immediately prior to such annual meeting, together with comparative financial statements for the preceding fiscal year, if any, and the report of the Auditors thereon referred to in Section 17.4; and
- (b) within 60 days after the end of each fiscal quarter of the Trust (other than the fourth quarter of each year), 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 may vary from such principles to the extent required to comply with applicable securities laws or securities regulatory requirements or to the extent permitted by applicable securities regulatory authorities.

**16.11 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.

**16.12 Taxation Information**

On or before March 31 in each year, the Trust will provide to holders of Units, Special Voting Units and/or Preferred Units who received distributions from the Trust in the prior calendar year, such information and forms as may be needed by such holders in order to complete their tax returns in respect of the prior calendar year under the Tax Act and equivalent provincial legislation in Canada.



## **ARTICLE 17 AUDITORS**

### **17.1 Qualification of Auditors**

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

### **17.2 Appointment of Auditors**

The Auditors will be selected at each succeeding annual meeting of Voting Unitholders. The Auditors will receive such remuneration as may be approved by the Trustees.

### **17.3 Change of Auditors**

The Auditors may at any time be removed by the Trustees with the approval of a majority of the votes cast by Voting Unitholders at a meeting of Voting 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.

### **17.4 Report of Auditors**

The Auditors shall audit the accounts of the Trust at least once in each year and a report of the Auditors with respect to the annual financial statements of the Trust shall be provided to each Voting Unitholder with the annual financial statements referred to in Section 16.10.

## **ARTICLE 18 MISCELLANEOUS**

### **18.1 Successors and Assigns**

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

### **18.2 Counterparts**

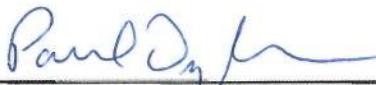
This Declaration of Trust may be simultaneously executed in several counterparts, each of which when executed shall be deemed to be an original, and such counterparts, together, shall constitute but one and the same instrument, which shall be sufficiently evidenced by any such original counterparts.

### **18.3 Severability**

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.

**IN WITNESS WHEREOF** each of the parties has caused these presents to be executed as of December 19, 2017.

  
\_\_\_\_\_  
Witness

  
\_\_\_\_\_  
**PAUL DYKEMAN**  
Solely in my capacity as a Trustee of the Trust and not in my personal capacity, recourse only to the assets of the Trust

\_\_\_\_\_  
Witness

\_\_\_\_\_  
**LOUIS J. MAROUN**  
Solely in my capacity as a Trustee of the Trust and not in my personal capacity, recourse only to the assets of the Trust

\_\_\_\_\_  
Witness

\_\_\_\_\_  
**JAMES TADESON**  
Solely in my capacity as a Trustee of the Trust and not in my personal capacity, recourse only to the assets of the Trust

\_\_\_\_\_  
Witness

\_\_\_\_\_  
**SAUL SHULMAN**  
Solely in my capacity as a Trustee of the Trust and not in my personal capacity, recourse only to the assets of the Trust

\_\_\_\_\_  
Witness

\_\_\_\_\_  
**LARRY MORASSUTTI**  
Solely in my capacity as a Trustee of the Trust and not in my personal capacity, recourse only to the assets of the Trust

\_\_\_\_\_  
Witness

\_\_\_\_\_  
**MICHAEL CATFORD**  
Solely in my capacity as a Trustee of the Trust and not in my personal capacity, recourse only to the assets of the Trust

**IN WITNESS WHEREOF** each of the parties has caused these presents to be executed as of December 19, 2017.

\_\_\_\_\_  
Witness



\_\_\_\_\_  
Witness

\_\_\_\_\_  
**PAUL DYKEMAN**

Solely in my capacity as a Trustee of the Trust and not in my personal capacity, recourse only to the assets of the Trust



\_\_\_\_\_  
**LOUIS J. MAROUN**

Solely in my capacity as a Trustee of the Trust and not in my personal capacity, recourse only to the assets of the Trust

\_\_\_\_\_  
Witness

\_\_\_\_\_  
**JAMES TADESON**

Solely in my capacity as a Trustee of the Trust and not in my personal capacity, recourse only to the assets of the Trust

\_\_\_\_\_  
Witness

\_\_\_\_\_  
**SAUL SHULMAN**

Solely in my capacity as a Trustee of the Trust and not in my personal capacity, recourse only to the assets of the Trust

\_\_\_\_\_  
Witness

\_\_\_\_\_  
**LARRY MORASSUTTI**

Solely in my capacity as a Trustee of the Trust and not in my personal capacity, recourse only to the assets of the Trust

\_\_\_\_\_  
Witness

\_\_\_\_\_  
**MICHAEL CATFORD**

Solely in my capacity as a Trustee of the Trust and not in my personal capacity, recourse only to the assets of the Trust

**IN WITNESS WHEREOF** each of the parties has caused these presents to be executed as of December 19, 2017.

\_\_\_\_\_  
Witness

\_\_\_\_\_  
**PAUL DYKEMAN**

Solely in my capacity as a Trustee of the Trust and not in my personal capacity, recourse only to the assets of the Trust

\_\_\_\_\_  
Witness

\_\_\_\_\_  
**LOUIS J. MAROUN**

Solely in my capacity as a Trustee of the Trust and not in my personal capacity, recourse only to the assets of the Trust

*Karen Reynolds*  
\_\_\_\_\_  
Witness

  
\_\_\_\_\_  
**JAMES TADESON**

Solely in my capacity as a Trustee of the Trust and not in my personal capacity, recourse only to the assets of the Trust

\_\_\_\_\_  
Witness

\_\_\_\_\_  
**SAUL SHULMAN**

Solely in my capacity as a Trustee of the Trust and not in my personal capacity, recourse only to the assets of the Trust

\_\_\_\_\_  
Witness

\_\_\_\_\_  
**LARRY MORASSUTTI**

Solely in my capacity as a Trustee of the Trust and not in my personal capacity, recourse only to the assets of the Trust

*Karen Reynolds*  
\_\_\_\_\_  
Witness

  
\_\_\_\_\_  
**MICHAEL CATFORD**

Solely in my capacity as a Trustee of the Trust and not in my personal capacity, recourse only to the assets of the Trust

**IN WITNESS WHEREOF** each of the parties has caused these presents to be executed as of December 19, 2017.

\_\_\_\_\_  
Witness

\_\_\_\_\_  
**PAUL DYKEMAN**

Solely in my capacity as a Trustee of the Trust and not in my personal capacity, recourse only to the assets of the Trust

\_\_\_\_\_  
Witness

\_\_\_\_\_  
**LOUIS J. MAROUN**

Solely in my capacity as a Trustee of the Trust and not in my personal capacity, recourse only to the assets of the Trust

\_\_\_\_\_  
Witness

\_\_\_\_\_  
**JAMES TADESON**

Solely in my capacity as a Trustee of the Trust and not in my personal capacity, recourse only to the assets of the Trust

*Christine Harasiewicz*  
\_\_\_\_\_

Witness

*Paul*  
\_\_\_\_\_  
**SAUL SHULMAN**

Solely in my capacity as a Trustee of the Trust and not in my personal capacity, recourse only to the assets of the Trust

\_\_\_\_\_  
Witness

\_\_\_\_\_  
**LARRY MORASSUTTI**

Solely in my capacity as a Trustee of the Trust and not in my personal capacity, recourse only to the assets of the Trust

\_\_\_\_\_  
Witness

\_\_\_\_\_  
**MICHAEL CATFORD**

Solely in my capacity as a Trustee of the Trust and not in my personal capacity, recourse only to the assets of the Trust

**IN WITNESS WHEREOF** each of the parties has caused these presents to be executed as of December 19, 2017.

\_\_\_\_\_  
Witness

\_\_\_\_\_  
**PAUL DYKEMAN**

Solely in my capacity as a Trustee of the Trust and not in my personal capacity, recourse only to the assets of the Trust

\_\_\_\_\_  
Witness

\_\_\_\_\_  
**LOUIS J. MAROUN**

Solely in my capacity as a Trustee of the Trust and not in my personal capacity, recourse only to the assets of the Trust

\_\_\_\_\_  
Witness

\_\_\_\_\_  
**JAMES TADESON**

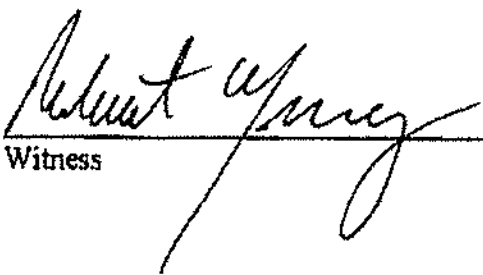
Solely in my capacity as a Trustee of the Trust and not in my personal capacity, recourse only to the assets of the Trust

\_\_\_\_\_  
Witness

\_\_\_\_\_  
**SAUL SHULMAN**

Solely in my capacity as a Trustee of the Trust and not in my personal capacity, recourse only to the assets of the Trust

\_\_\_\_\_  
Witness



\_\_\_\_\_  
**LARRY MORASSUTTI**

Solely in my capacity as a Trustee of the Trust and not in my personal capacity, recourse only to the assets of the Trust

\_\_\_\_\_  
Witness

\_\_\_\_\_  
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Solely in my capacity as a Trustee of the Trust and not in my personal capacity, recourse only to the assets of the Trust