

**A&W REVENUE ROYALTIES INCOME FUND**

---

**AMENDED AND RESTATED DECLARATION OF TRUST**

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**May 1, 2018**

## TABLE OF CONTENTS

<b>ARTICLE 1 INTERPRETATION</b> .....	<b>2</b>
1.1    Definitions .....	2
1.2    References to Acts Performed by the Trust .....	5
1.3    Tax Act .....	6
1.4    Number and Gender.....	6
1.5    Headings for Reference Only.....	6
1.6    Day Not a Business Day .....	6
1.7    Time of the Essence.....	6
1.8    Governing Law .....	6
<b>ARTICLE 2 DECLARATION OF TRUST</b> .....	<b>6</b>
2.1    Establishment of Trust .....	6
2.2    Name of Trust .....	7
2.3    Head Office.....	7
2.4    Nature of the Trust.....	7
2.5    Rights of Trust Unitholders .....	7
2.6    Ownership of Assets of the Trust.....	7
2.7    Liability of Trust Unitholders.....	8
<b>ARTICLE 3 ISSUE AND SALE OF TRUST UNITS</b> .....	<b>8</b>
3.1    Nature of Trust Units .....	8
3.2    Authorized Number of Trust Units .....	9
3.3    Issue of Trust Units.....	9
3.4    No Fractional Trust Units .....	10
3.5    Consolidation of Trust Units.....	10
3.6    No Pre-Emptive Rights .....	10
3.7    Distribution Reinvestment and Trust Unit Purchase Plan .....	10
<b>ARTICLE 4 INVESTMENTS OF TRUST</b> .....	<b>11</b>
4.1    Purpose of the Trust.....	11
4.2    Investments .....	11
<b>ARTICLE 5 DISTRIBUTIONS</b> .....	<b>12</b>
5.1    Computation of Distributable Cash Flow of the Trust.....	12
5.2    Computation of Income and Net Realized Capital Gains .....	12
5.3    Distributions of Distributable Cash Flow .....	13
5.4    Other Distributions .....	13
5.5    Character of Distributions and Designations .....	13
5.6    Enforceability of Right to Receive Distributions.....	14
5.7    Method of Payment of Distributions.....	14
5.8    Withholding Taxes.....	14
5.9    Definitions .....	15
5.10   Payments to Trust Unitholders.....	15
<b>ARTICLE 6 REDEMPTION OF TRUST UNITS</b> .....	<b>15</b>
6.1    Right of Redemption.....	15
6.2    Exercise of Redemption Right.....	16
6.3    Cash Redemption.....	16

6.4	No Cash Redemption in Certain Circumstances.....	17
6.5	<i>In Specie</i> Redemption .....	17
6.6	Cancellation of all Redeemed Trust Units .....	18
<b>ARTICLE 7 TRUSTEES .....</b>		<b>18</b>
7.1	Number of Trustees .....	18
7.2	Calling and Notice of Meetings .....	18
7.3	Place of Meetings.....	19
7.4	Meetings by Telephone.....	19
7.5	Quorum .....	19
7.6	Chairman.....	19
7.7	Action by the Trustees .....	19
7.8	Adjourned Meeting.....	19
7.9	Remuneration and Expenses .....	20
7.10	Officers .....	20
<b>ARTICLE 8 APPOINTMENT, RESIGNATION AND REMOVAL OF THE TRUSTEES.....</b>		<b>20</b>
8.1	Qualification of Trustees.....	20
8.2	Appointment of Trustees .....	20
8.3	Consent to Act .....	21
8.4	Failure to Appoint Minimum Number of Trustees .....	21
8.5	Ceasing to Hold Office .....	22
8.6	Removal of Trustees .....	22
8.7	Filling Vacancies .....	22
8.8	Validity of Acts.....	22
8.9	Successor and Additional Trustee.....	23
<b>ARTICLE 9 CONCERNING THE TRUSTEES .....</b>		<b>23</b>
9.1	Powers of the Trustees.....	23
9.2	Specific Powers and Authorities .....	23
9.3	Common Shares Held by the Trust.....	27
9.4	Restrictions on Trustee’s Powers.....	27
9.5	Banking.....	27
9.6	Standard of Care and Duties .....	28
9.7	Fees and Expenses .....	28
9.8	Limitations on Liability of Trustees .....	28
9.9	Indemnification of Trustees .....	29
9.10	Contractual Obligations of Trust .....	29
9.11	Conflicts of Interest .....	30
9.12	Conditions Precedent.....	30
<b>ARTICLE 10 COMMITTEES OF TRUSTEES.....</b>		<b>31</b>
10.1	Delegation.....	31
10.2	Procedure .....	31
<b>ARTICLE 11 AMENDMENT .....</b>		<b>31</b>
11.1	Amendment.....	31
11.2	Notification of Amendment .....	32
11.3	No Interference with Limited Voting Units and Exchangeable Securities .....	32

<b>ARTICLE 12 MEETINGS OF TRUST UNITHOLDERS.....</b>	<b>32</b>
12.1 Voting Rights of Holder of Exchangeable Securities .....	32
12.2 Annual and Special Meetings of Trust Unitholders .....	32
12.3 Notice of Meetings.....	33
12.4 Quorum .....	33
12.5 Voting Rights of Trust Unitholders and Holders of Exchangeable Securities.....	34
12.6 Resolutions Binding the Trustees .....	34
12.7 Meaning of “Special Resolution” .....	35
12.8 Meaning of “Outstanding” .....	36
12.9 Record Date for Voting.....	37
12.10 Appointment of Inspector .....	37
12.11 Resolutions in Writing .....	37
<b>ARTICLE 13 CERTIFICATES, REGISTRATION AND TRANSFER OF TRUST UNITS .....</b>	<b>37</b>
13.1 Nature of Trust Units .....	37
13.2 Trust Unit Certificates .....	38
13.3 Contents of Trust Unit Certificates .....	39
13.4 Register of Trust Unitholders and Holders of Exchangeable Securities.....	40
13.5 Limitation of Non-Resident Ownership.....	40
13.6 Transfer of Trust Units .....	41
13.7 Trust Units Held Jointly or in a Fiduciary Capacity .....	42
13.8 Performance of Trust .....	42
13.9 Lost Certificates .....	42
13.10 Death of a Trust Unitholder .....	42
13.11 Unclaimed Distribution.....	42
13.12 Take-Over Bids.....	43
13.13 Conversion of Limited Voting Units .....	45
<b>ARTICLE 14 TERMINATION.....</b>	<b>45</b>
14.1 Term of Trust.....	45
14.2 Termination with the Approval of Trust Unitholders .....	45
14.3 Procedure Upon Termination.....	45
14.4 Powers of the Trustees Upon Termination .....	46
14.5 Sale of Investments.....	46
14.6 Distribution of Proceeds or Assets.....	46
14.7 Further Notice to Trust Unitholders.....	46
14.8 Responsibility of the Trustees after Sale and Conversion .....	46
<b>ARTICLE 15 SUPPLEMENTAL INDENTURES .....</b>	<b>47</b>
15.1 Provision for Supplemental Indentures for Certain Purposes .....	47
<b>ARTICLE 16 GENERAL.....</b>	<b>47</b>
16.1 Notices .....	47
16.2 Failure to Give Notice.....	48
16.3 Joint Holders.....	48
16.4 Service of Notice .....	48
16.5 Information Available to Trust Unitholders .....	48
16.6 Fiscal Year .....	48
16.7 Financial Disclosure .....	48

16.8	Meeting Information .....	49
16.9	Taxation Information .....	49
<b>ARTICLE 17 AUDITORS .....</b>		<b>49</b>
17.1	Qualification of Auditors .....	49
17.2	Appointment of Auditors .....	49
17.3	Change of Auditors .....	49
17.4	Report of Auditors .....	50
<b>ARTICLE 18 MISCELLANEOUS .....</b>		<b>50</b>
18.1	Counterparts .....	50
18.2	Severability .....	50
18.3	Language .....	50

## **A&W REVENUE ROYALTIES INCOME FUND**

THIS AMENDED AND RESTATED DECLARATION OF TRUST (the “**Declaration of Trust**”) dated the 1<sup>st</sup> day of May, 2018 is made BY **HUGH R. SMYTHE**, resident in the Province of British Columbia, and **JOHN R. McLERNON**, resident in the Province of British Columbia, and **RICHARD McKERRACHER**, resident in the Province of British Columbia, all of whom are the current trustees of the trust constituted on the terms of this Declaration of Trust, and each person who after the date hereof becomes a trustee of the trust as herein provided (each person, while a trustee of the trust as herein provided, hereinafter called a “**Trustee**”) and amends and restates the Declaration of Trust dated December 18, 2001 made by Don A. James, Conrad A. Pinette and John R. McLernon (the “**Original Trustees**”) and A&W TRADE MARKS INC. (the “**Original Declaration of Trust**”), as subsequently amended or amended and restated on May 3, 2011, December 22, 2010 and April 23, 2004.

**WHEREAS** the trust as herein provided was established for investment purposes, including investing in securities and notes of A&W Trade Marks Inc. (the “**Company**”);

**AND WHEREAS** the Trustees have agreed to hold all amounts under this Declaration of Trust or in respect of the investment of the assets of the Trust in accordance with the provisions hereinafter set forth (the “**Trust**”);

**AND WHEREAS** pursuant to a reorganization (the “**Reorganization**”) of the Fund and the Company approved by holders of Units of the Fund at the Annual General Meeting of the Fund held on May 4, 2010, the Company continued under the British Columbia *Business Corporations Act* and altered its share capital on December 22, 2010 by creating Non Voting Common Shares with Par Value;

**AND WHEREAS** as part of the Reorganization: (i) the unpaid principal amount of the 10.75% unsecured, subordinated notes (the “**A&W Notes**”) issued by the Company pursuant to the note indenture dated as of February 1, 2002 between the Company and Computershare Trust Company of Canada were exchanged for Non Voting Common Shares with Par Value; (ii) the issued and outstanding Class A Shares of the Company were exchanged for Non Voting Common Shares without Par Value; (iii) the issued and outstanding Class B Shares of the Company were exchanged for Non Voting Common Shares with Par Value; and (iv) the Non Voting Common Shares without Par Value issued and outstanding prior to the Reorganization were exchanged for Voting Common Shares.

**AND WHEREAS** the parties hereto desire to set out the agreements, terms and conditions which shall govern their mutual and respective rights, powers and obligations with respect to the settlement and administration of the Trust.

**AND WHEREAS** the Trust Unitholders have, by a special resolution passed at the Annual General Meetings of Unitholders held on May 1, 2018, May 3, 2011, May 4, 2010 and April 23, 2004 authorized amendments to the Original Declaration of Trust, and such amendments are incorporated into this Declaration of Trust;

**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 Trust Unitholders, that the Original Declaration of Trust is amended and restated as follows:

## ARTICLE 1 INTERPRETATION

### 1.1 Definitions

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

- (a) “**affiliate**” has the meaning that would be ascribed thereto in Rule 45-501 of the Ontario Securities Commission as it is constituted as of December 18, 2001;
- (b) “**annuitant**” means the annuitant of a registered retirement savings plan, a registered retirement income fund, a registered education savings plan or a deferred profit sharing plan, all as defined in the Tax Act, or any other plan of which a Trust Unitholder acts as trustee or carrier;
- (c) “**associate**” has the meaning ascribed thereto in the *Securities Act* (Ontario), as amended from time to time;
- (d) “**Auditors**” means the firm of chartered accountants appointed as the auditors of the Trust from time to time in accordance with the provisions hereof and, initially, means PricewaterhouseCoopers LLP, Chartered Accountants;
- (e) “**Book-Entry System**” means the record-entry securities transfer and pledge system known, as of the date hereof, by such name, which is administered by CDS in accordance with the operating rules and procedures of the Securities Settlement Service of CDS in force from time to time, or any successor system which CDS may offer from time to time;
- (f) “**Business Day**” means a day, other than a Saturday, Sunday or statutory holiday, when banks are generally open in the city of Vancouver, British Columbia, for the transaction of banking business;
- (g) “**Cash Flow of the Trust**” has the meaning ascribed thereto in Section 5.1(a);
- (h) “**CDS**” means The Canadian Depository for Securities Limited and its successors;
- (i) “**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;
- (j) “**Common Shares**” means the Non Voting Common Shares with Par Value, the Non Voting Common Shares without Par Value and the Voting Common Shares;
- (k) “**Company**” means A&W Trade Marks Inc., a corporation existing under the laws of British Columbia;
- (l) “**Counsel**” means a barrister or solicitor or firm of barristers and solicitors or other lawyers in an appropriate jurisdiction retained by the Trust;
- (m) “**Depository**” has the meaning specified in Section 13.1(a);

- (n) “**Distributable Cash Flow**” has the meaning ascribed thereto in Section 5.1(b);
- (o) “**Distribution Payment Date**” in respect of a Distribution Period means on or about, but no later than, the last day of the month of the Distribution Period or, if such day is not a Business Day, the next following Business Day or such other date determined from time to time by the Trustees;
- (p) “**Distribution Period**” means each month in each calendar year from and including the first day thereof and to and including the last day thereof;
- (q) “**Distribution Record Date**” means the 15th day of each Distribution Period;
- (r) “**Exchangeable Security**” means a unit, share, note or other security issued by the Company and convertible into or exchangeable for Trust Unit(s) without the payment of additional consideration therefor, and any other unit, share, note or other security convertible into or exchangeable for Trust Unit(s) and designated by the Trustees as an Exchangeable Security for purposes of this Declaration of Trust and whether or not any such unit, share, note, or other security is exchanged, converted, substituted or redeemed on condition that the holder of such unit, share, note or other security subscribe for another unit, share, note or other security that is so convertible into or exchangeable for Trust Units or whether such unit, share, note or other security is itself so convertible or exchangeable or is convertible or exchangeable as part of a unit consisting of such unit, share, note or other security together with another of such unit, share, note or other security, in which case such unit is an Exchangeable Security;
- (s) “**Food Services**” means A & W Food Services of Canada Inc., a corporation existing under the laws of Canada;
- (t) “**Governance Agreement**” means the amended and restated governance agreement dated December 22, 2010 with respect to the Company among the Trust, the Company, Food Services and the Related Parties, as defined therein as amended and supplemented from time to time and in effect;
- (u) “**Global Unit Certificate**” has the meaning specified in Section 13.1(a);
- (v) “**Income of the Trust**” has the meaning ascribed thereto in Section 5.2(a);
- (w) “**Initial Contribution**” means the amount of \$10.00 paid by the Company as the initial unitholder to the Trustees on December 18, 2001 for the purpose of settling the trust constituted by the Trust;
- (x) “**Initial Trustees**” means those persons named as the first trustees of the Trust;
- (y) “**Issue Expenses**” means amounts payable by the Trust in respect of the Offering as contemplated by the Prospectus;
- (z) “**Limited Voting Units**” means the class of Trust Units described in Section 3.1 as “**Limited Voting Units**” authorized and issued hereunder as such and for the time being outstanding and entitled to the benefits hereof;



- (aa) “**Limited Voting Certificate**” means a certificate, in form approved by the Trustees, evidencing one or more Limited Voting Units, issued and certified in accordance with the provisions hereof;
- (bb) “**Net Realized Capital Gains**” has the meaning ascribed thereto in Section 5.2(b);
- (cc) “**Non-resident**” has the meaning specified in Section 13.5;
- (dd) “**Non Voting Common Shares with Par Value**” means the Non Voting Common Shares with a par value of \$10.00 per share in the capital of the Company and any shares into which such shares may be converted, exchanged, subdivided, consolidated or otherwise changed from time to time and any shares of any successor corporation to the Company that such shares may become as a result of any amalgamation;
- (ee) “**Non Voting Common Shares without Par Value**” means the Non Voting Common Shares without par value in the capital of the Company and any shares into which such shares may be converted, exchanged, subdivided, consolidated or otherwise changed from time to time and any shares of any successor corporation to the Company that such shares may become as a result of any amalgamation;
- (ff) “**Partnership**” means “**A&W Trade Marks Limited Partnership**”, a limited partnership formed under the laws of British Columbia;
- (gg) “**Prospectus**” means the (final) prospectus of the Trust dated February 8, 2002;
- (hh) “**Redemption Price**” has the meaning ascribed thereto in Section 6.3(a);
- (ii) “**Special Resolution**” has the meaning attributed thereto in Section 12.7;
- (jj) “**Tax Act**” means the *Income Tax Act*, R.S.C. 1985 (5th Supp.) c. 1 and the regulations thereunder;
- (kk) “**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;
- (ll) “**Transfer Agent**” means such company as may from time to time be appointed by the Trust to act as registrar and transfer agent of the Trust Units, together with any sub-transfer agent duly appointed by the Transfer Agent;
- (mm) “**Trust**” means the trust constituted by this Declaration of Trust;
- (nn) “**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 Trust Units or other cash received by the Trust;
  - (iii) securities of the Company;

- (iv) any proceeds of disposition of any of the foregoing property; and
- (v) all income, interest, profit, return of capital, gains and accretions and all substituted assets, rights and benefits of any kind or nature whatsoever arising directly or indirectly from or in connection with or accruing to such foregoing property or such proceeds of disposition;
- (oo) “**Trust Liabilities**” has the meaning ascribed thereto in Section 2.7(a);
- (pp) “**Trust Unit Certificate**” means a certificate, in the form approved by the Trustees, evidencing one or more Trust Units of any class, issued and certified in accordance with the provisions hereof;
- (qq) “**Trust Unitholders**” means at any time the holders at that time of one or more Trust Units, as shown on the register of such holders maintained by the Transfer Agent on behalf of the Trust, provided that for the purposes of Article 12 of this Declaration of Trust, the holders of the Exchangeable Securities shall be treated as if they are the holders of record of the number and class of Trust Units that they would be entitled to receive on the relevant date if the conversion or exchange of all of the Exchangeable Securities held by them had occurred;
- (rr) “**Trust Units**” means the Units and the Limited Voting Units of the Trust authorized and issued hereunder as such and for the time being outstanding and entitled to the benefits hereof;
- (ss) “**Trustee**”, at any time, means an individual who is, in accordance with the provisions hereof, a trustee of the Trust at that time including, without limitation so long as each remains a trustee, each of the Initial Trustees, and “**Trustees**” means, at any time, all of the individuals, each of whom is at that time a trustee;
- (tt) “**Units**” means the class of Trust Units described in Section 3.1 as “**Units**” authorized and issued hereunder as such and for the time being outstanding and entitled to the benefits hereof;
- (uu) “**Unit Certificate**” means a certificate, in form approved by the Trustees, evidencing one or more Units, issued and certified in accordance with the provisions hereof; and
- (vv) “**Voting Common Shares**” means the Voting Common Shares without par value in the capital of the Company and any shares into which such shares may be converted, exchanged, subdivided, consolidated or otherwise changed from time to time and any shares of any successor corporation to the Company that such shares may become as a result of any amalgamation.

## 1.2 **References to Acts Performed by the Trust**

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

purposes to refer to actions, rights or obligations of the Trustees in their capacity as Trustees of the Trust, and not in their other capacities, unless the context otherwise requires.

**1.3 Tax Act**

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

**1.4 Number and Gender**

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

**1.5 Headings for Reference Only**

The division of this Declaration of Trust into 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 Trust Unit Certificates shall be construed in accordance with the laws of the Province of British Columbia and the laws of Canada applicable therein and shall be treated in all respects as British Columbia contracts. The parties hereto hereby irrevocably submit and attorn to the jurisdiction of the courts of the Province of British Columbia.

**ARTICLE 2  
DECLARATION OF TRUST**

**2.1 Establishment of Trust**

The Trustees hereby declare and agree to hold the Trust Assets in trust for the use and benefit of the Trust Unitholders, their successors, permitted assigns and personal representatives, and

subject to the terms and conditions hereinafter declared and set forth, such trust constitutes the Trust hereunder.

## **2.2 Name of Trust**

- (a) The Trust shall be known and designated as the “**A&W REVENUE ROYALTIES INCOME FUND**” and, whenever practicable, lawful and convenient, the property of the Trust shall be held and the affairs of the Trust shall be conducted and transacted under that name.
- (b) If the Trustees determine that the use of such name is not practicable, legal or convenient, the Trust may use such other designation or may adopt such other name as the Trustees deem appropriate, and the Trust may hold property and conduct and transact its affairs under such other designation or name.

## **2.3 Head Office**

The head office of the Trust hereby created shall be located at such place in Vancouver, British Columbia or such other place or places in Canada as the Trustees may from time to time designate.

## **2.4 Nature of the Trust**

The Trust is a trust that is an unincorporated open ended limited purpose trust, established for the purposes specified in Section 4.1. The Trust is not, 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 Trust Unitholders or any of them or any person be, or be deemed to be, treated in any way whatsoever as liable or responsible hereunder as partners or joint venturers. The Trustees are not and shall not be, or be deemed to be, agents of the Trust Unitholders. The relationship of the Trust Unitholders to the Trustees shall be solely that of beneficiaries of the Trust and their rights shall be limited to those conferred upon them by this Declaration of Trust.

## **2.5 Rights of Trust Unitholders**

The rights of each Trust Unitholder to call for a distribution or division of assets, monies, funds, income and capital gains held, received or realized by the Trustees are limited to those contained herein and, except as provided herein, no Trust Unitholder shall be entitled to call for any partition or division of the Trust Assets or for a distribution of any particular asset forming part of the Trust Assets or of any particular monies or funds received by the Trustees.

## **2.6 Ownership of Assets of the Trust**

The legal ownership of the assets of the Trust and the right to conduct the activities of the Trust are vested exclusively in the Trustees, and no Trust Unitholder has or is deemed to have any right of ownership in any of the assets of the Trust, except as specifically provided herein. Except as specifically provided herein, no Trust Unitholder or Trust Unitholders shall be entitled to interfere with or give any direction to the Trustees with respect to the affairs of the Trust or in connection with the exercise of any powers or authorities conferred upon the Trustees under this Declaration of Trust. The Trust Units shall be personal property and shall confer upon the holders thereof only the interest and rights specifically set forth in this Declaration of Trust.

## 2.7 Liability of Trust Unitholders

- (a) No Trust Unitholder, 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 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 other person in the performance or exercise, or purported or attempted performance or exercise, of any obligation, power, discretion or authority conferred upon the Trustees or such other person in respect of the activities or affairs of the Trust (whether or not authorized by or pursuant to this Declaration of Trust); (v) any transaction entered into by the Trustees or by any other person in respect of the activities or affairs of the Trust (whether or not authorized by or pursuant to this Declaration of Trust); or (vi) any taxes, levies, imposts or charges or fines, penalties or interest in respect thereof payable by the Trust or by the Trustees or by any other person on behalf of or in connection with the activities or affairs of the Trust (collectively, “**Trust Liabilities**”).
- (b) No Trust Unitholder in its capacity as a Trust Unitholder shall be liable to indemnify the Trustees or any other person with respect to any Trust Liabilities.
- (c) To the extent that, notwithstanding the provisions of this Section 2.7, any Trust Unitholder, in its capacity as such, may be determined by a judgment of a court of competent jurisdiction to be subject to or liable in respect of any Trust Liabilities, such judgment and any writ of execution or similar process in respect thereof, shall be enforceable only against, and shall be satisfied only out of, the Trust Unitholder’s share of the Trust Assets represented by its Trust Unit Certificates.
- (d) If any Trust Asset should be distributed or declared to be distributable to Trust Unitholders contrary to the provisions of any subordination agreement (each, a “**Subordination Agreement**”) between the Trust and the persons entitled to enforce any of the indebtedness of the Company other than the Trust, then the persons entitled to enforce such Subordination Agreements or subordination provisions shall be entitled to pursue whatever remedies may be available to them to enforce such Subordination Agreements or provisions and the limitations in Section 2.7(c) shall not apply to any judgment in respect of (and to the extent only based on) such contrary distribution and no Trust Unitholder shall have the right to enforce any distribution contrary to such Subordination Agreements or provisions.

## ARTICLE 3 ISSUE AND SALE OF TRUST UNITS

### 3.1 Nature of Trust Units

- (a) The beneficial interests in the Trust shall be divided into interests designated as “**Trust Units**”, of two classes, designated as “**Units**” and “**Limited Voting Units**”, respectively and which shall be entitled to the rights and subject to the limitations, restrictions and conditions set out herein, and the interest of each Trust Unitholder shall be determined by

the number of Trust Units or Units or Limited Voting Units registered in the name of the Trust Unitholder.

- (b) Each Trust Unit of any class outstanding from time to time shall be entitled to an equal share 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.
- (c) Each Trust Unit of any class shall entitle the holder of record thereof to one vote at all meetings of Trust Unitholders and holders of Exchangeable Securities, except that, notwithstanding any other provision of this Declaration of Trust, holders of Limited Voting Units and Exchangeable Securities, as such, are not entitled in the aggregate to cast more than 40% of the votes cast upon a resolution for the appointment or removal of a Trustee as provided in Article 8, or subject to Section 11.3, to cast any votes upon a resolution to amend this Declaration of Trust in respect of the limitation upon the voting rights of the holders of the Limited Voting Units and Exchangeable Securities.
- (d) Each Trust Unit of any class represents an equal undivided beneficial interest in any distribution from the Trust (whether of Income of the Trust, Net Realized Capital Gains or other amounts) and in any net assets of the Trust in the event of termination or winding-up of the Trust. All Trust Units, regardless of class, shall rank among themselves equally and rateably without discrimination, preference or priority.
- (e) Concurrently with the issuance of any Exchangeable Securities and the rights to acquire associated Trust 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 Trust Units, coattail provisions for the Trust Units in the event of a non-exempt take-over bid for the Exchangeable Securities and the conversion, exercise, redemption or exchange of such Exchangeable Securities for Trust Units, including without limitation the conditional and automatic conversion, exercise, redemption or exchange of such Exchangeable Securities in the event of a take-over bid for the Trust Units as provided in Section 13.12.

### **3.2 Authorized Number of Trust Units**

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

### **3.3 Issue of Trust Units**

- (a) Trust Units of any class 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 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 Trust Units from the Trust or from any other person or procuring or agreeing to procure purchasers for Trust Units or may allow discounts to persons in consideration of their subscribing or agreeing to subscribe, whether absolutely or conditionally, for Trust Units or of their agreeing to produce or obtain subscriptions therefor, whether absolute or conditional. Without limitation of the foregoing, the Trustees may create and issue rights, warrants (including so-called “**special warrants**” which may be exercisable for no additional consideration) or options to subscribe for

Trust Units of any class which rights, warrants or options may be exercisable at such subscription price or prices and at such time or times as the Trustees may determine. The rights, warrants or options so created may be issued for such consideration or for no consideration, all as the Trustees may determine. A right, warrant or option shall not be a Trust Unit and the holder thereof shall not be a Trust Unitholder.

- (b) Trust Units are only to be issued as fully paid in money, property (including an obligation to pay consideration in instalments), or past services, and are not to be subject to future calls or assessments, except that Trust 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 Trust Units for unpaid instalments.
- (c) Notwithstanding Section (a), subsequent to the issue of Units under the Offering, the Trustees will consider issuing Trust Units in the class, to the persons, for the consideration and on the terms and conditions (including options, rights or warrants to acquire or otherwise purchase Trust Units) from time to time in accordance with one or more requests received by the Trustees from time to time from the Company, signed by a person purporting to be a senior officer of the Company and having attached thereto a copy of a resolution of the board of directors of the Company resolving to request the Trustees to issue Trust Units and setting forth particulars with respect to the class and number of Trust Units, and the persons to whom such Trust Units are to be issued and the consideration for which, and the terms and conditions upon which, such Trust Units are to be issued. If the Trustees complete any issuance of Trust Units in accordance with such request, the Trustees shall not have any responsibility with respect to the issuance of such Trust Units.

### **3.4 No Fractional Trust Units**

Fractions of Trust Units shall not be issued, except pursuant to distributions of additional Trust Units to all Trust Unitholders pursuant to Section 5.7.

### **3.5 Consolidation of Trust Units**

Immediately after any pro rata distribution of additional Trust Units to all Trust Unitholders pursuant to Section 5.7, the number of the outstanding Trust Units will be consolidated such that each Trust Unitholder will hold after the consolidation the same number of Trust Units as the Trust Unitholder held before the distribution of additional Trust Units. In this case, each Trust Unit Certificate representing a number of Trust Units prior to the distribution of additional Trust Units is deemed to represent the same number of Trust Units after the non-cash distribution of additional Trust Units and the consolidation.

### **3.6 No Pre-Emptive Rights**

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

### **3.7 Distribution Reinvestment and Trust Unit Purchase Plan**

Subject to any required regulatory approvals, the Trustees may, acting in their sole discretion, establish one or more distribution reinvestment plans, Trust Unit purchase plans or Trust Unit option plans at any time and from time to time.

## **ARTICLE 4 INVESTMENTS OF TRUST**

### **4.1 Purpose of the Trust**

The Trust is a limited purpose trust and its operations and activities shall be restricted to:

- (a) investing in securities including those issued by the Company;
- (b) temporarily holding cash in interest bearing accounts, short-term government debt or investment grade corporate debt for the purposes of paying the expenses of the Trust, paying amounts payable by the Trust in connection with the redemption of any Trust Units, and making distributions to Trust Unitholders;
- (c) issuing Trust Units (i) for cash or in satisfaction of any non-cash distribution or in order to acquire securities including those issued by the Company, (ii) upon the conversion or exchange of Exchangeable Securities or other securities or debt obligations issued by the Trust, the Company or any other person; or (iii) in satisfaction of any indebtedness of or borrowings by the Trust;
- (d) issuing debt securities or borrowing funds;
- (e) guaranteeing the obligations of the Company or any affiliate of the Trust pursuant to any good faith debt for borrowed money incurred by the Company or the affiliate, as the case may be;
- (f) pledging securities issued by the Company as security for the debt securities or borrowed funds referred to in subsection (d) or the guarantees referred to in subsection (e);
- (g) issuing rights and Trust Units pursuant to any Trust Unitholder rights plan adopted by the Trust;
- (h) purchasing securities pursuant to any issuer bid made by the Trust; and
- (i) undertaking such other activities, or taking such actions, including investing in securities as shall be approved by the Trustees from time to time provided that the Trust shall not undertake any activity, take any action, or make any investment which would result in the Trust not being considered a “mutual fund trust” for purposes of the Tax Act.

### **4.2 Investments**

To the extent that any monies or other property received by the Trust or the Trustees are not to be immediately used by the Trustees for the purpose of making distributions under Article 5 hereof, the Trustees are hereby authorized and, where prudent to do so, shall invest such monies in: (i) debt obligations of or guaranteed by the Government of Canada or a province of Canada; (ii) short term commercial paper obligations of a corporation whose short term commercial paper is rated R-1 (or higher by Dominion Bond Rating Service Limited or A-1 or higher by CBRS Inc.); or (iii) interest-bearing accounts and certificates of deposit issued or guaranteed by one of the six largest (in terms of total assets) Canadian chartered banks. The Trustees shall not purchase or authorize the purchase of any investment which is “foreign property” under Section 206(1) of the Tax Act if such purchase would result in the Trust exceeding the foreign property limitations contained in the Tax Act. For the purpose hereof, “short



term” shall mean having a date of maturity or call for payment not more than 60 days from the date on which the investment is made.

## **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, proceeds from the disposition of securities, 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;
    - (B) all amounts which relate to the redemption of Trust Units and which have become payable in cash by the Trust in such Distribution Period; and
    - (C) any other interest expenses incurred by the Trust between distributions;
  - (iii) the proceeds of the Offering or any other issuance of Trust Units and the Issue Expenses shall not be included in the calculations of Cash Flow of the Trust in respect of any Distribution Period.
- (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 and Net Realized Capital Gains**

- (a) The Income of the Trust for any taxation year of the Trust shall be the net income for the year 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 Trust Unitholders 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 from the computation of net income.

- (b) The Net Realized Capital Gains of the Trust for any taxation year of the Trust shall be determined as the amount, if any, by which the aggregate of the capital gains of the Trust in the year exceeds (i) the aggregate of the capital losses of the Trust in the year, (ii) any capital gains which are realized by the Trust as a result of a redemption of Trust Units pursuant to Article 6, and (iii) the amount determined by the Trustees in respect of any net capital losses for prior taxation years which the Trust is permitted by the Tax Act to deduct in computing the taxable income of the Trust for the year.

### **5.3 Distributions of Distributable Cash Flow**

The Trustees may, on or before each Distribution Record Date, declare payable to the Trust Unitholders on such Distribution Record Date, all or any part of the Distributable Cash Flow for the Distribution Period determined by the Trustees to be available for distribution by the Trust for such Distribution Period. The proportionate share of each Trust Unit of the amount of such Distributable Cash Flow shall be determined by dividing such amount by the number of issued and outstanding Trust Units on such Distribution Record Date. Each Trust Unitholder's share of such Distributable Cash Flow shall be an amount equal to the proportionate share of each Trust Unit of such Distributable Cash Flow multiplied by the number of Trust Units owned of record by each such Trust Unitholder on such Distribution Record Date. Subject to Section 5.7, Distributable Cash Flow which has been declared to be payable to Trust Unitholders in respect of a Distribution Period shall be paid in cash on the Distribution Payment Date in respect of such Distribution Period.

### **5.4 Other Distributions**

- (a) In addition to the distributions which are made payable to Trust Unitholders pursuant to Section 5.3, the Trustees may declare to be payable and make distributions, from time to time, out of 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) The proportionate share of each Trust Unit of the amount of any distribution made pursuant to Section 5.4(a) shall be determined by dividing such amount by the number of issued and outstanding Trust Units on the applicable record date in respect of a distribution pursuant to Section 5.4(a). Each Trust Unitholder's share of the amount of any such distribution shall be an amount equal to the proportionate share of each Trust Unit of such amount multiplied by the number of Trust Units owned of record by each such Trust Unitholder on such applicable record date. Subject to Section 5.7, amounts which have been declared to be payable to Trust 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 a distribution pursuant to Section 5.4(a).
- (c) In addition to the distributions which are made payable to Trust Unitholders, the Trustees may designate any capital gain realized by the Trust as a result of the redemption of Trust Units pursuant to Section 6.5 to the redeeming Trust Unitholders in accordance with that Section.

### **5.5 Character of Distributions and Designations**

In accordance with and to the extent permitted by the Tax Act, the Trustees in each year shall make designations in respect of the amounts payable to Trust 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 capital gains realized by the Trust in the year and foreign source income of the Trust for the year, as well as elect under Sections 104(13.1) and/or (13.2) of the Tax Act that income be taxed to the Trust, rather than to the Trust Unitholders. Distributions payable to Trust 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 Enforceability of Right to Receive Distributions**

Subject to Section 2.7(d), for greater certainty, it is hereby declared that each Trust Unitholder shall have the legal right to enforce payment of any amount payable to such Trust Unitholder as a result of any distribution which is declared payable to such Trust Unitholder pursuant to this Article.

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

- (a) Where the Trustees determine that the Trust does not have available cash in an amount sufficient to make payment of the full amount of any distribution which has been declared to be payable pursuant to this Article on the due date for such payment, the payment may, at the option of the Trustees, include the issuance of additional Trust Units, or fractions of Trust Units, if necessary, having a value equal to the difference between the amount of such distribution and the amount of cash which has been determined by the Trustees to be available for the payment of such distribution.
- (b) In the event of the issuance of additional Trust Units, or fractions of Trust Units, under Section 5.7(a), Units will be issued to Trust Unitholders that hold Units and Limited Voting Units will be issued to Trust Unitholders that hold Limited Voting Units.
- (c) The value of each Trust Unit which is issued pursuant to Section 5.7(a) shall be the market price (as defined in Section 6.3) of the Trust 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 may deduct or withhold from distributions payable to any Trust Unitholder all amounts required by law to be withheld from such distribution. Trust Unitholders who are non-residents of Canada will be required to pay all withholding taxes payable in respect of any distributions of income by the Trust, whether such distributions are in the form of cash or additional Trust Units. In the event a Trust Unitholder who is a non-resident of Canada fails to pay all withholding taxes payable in respect of any distribution in the form of additional Trust Units, the Trustees may sell Trust Units of such Trust Unitholder to pay such withholding taxes and the Trustees shall have the power of attorney of such Trust Unitholder to do so.

## **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 to Trust Unitholders**

Any cash payment required hereunder to be made to a Trust Unitholder shall be paid in Canadian dollars by cheque or bank draft to the order of the registered Trust Unitholder and may be mailed by ordinary mail to the last address appearing on the books of the Trust but may also be paid in such other manner as the Trust Unitholder has designated to the Trustees and the Trustees have accepted. In the case of joint registered Trust Unitholders, any cash payment required hereunder to be made to a Trust Unitholder shall be deemed to be required to be made to such Trust Unitholders jointly and shall be paid by cheque or bank draft but may also be paid in such other manner as the joint registered Trust Unitholders or any one of the joint registered Trust Unitholders has designated to the Trustees and the Trustees have accepted. For greater certainty, a Trust Unitholder or any one of the joint Trust Unitholders may designate and the Trustees may accept that any payment required to be made hereunder shall be made by deposit to an account of such Trust Unitholder or to a joint account of such Trust Unitholder and any other person or in the case of joint registered Trust Unitholders to an account of joint registered Trust Unitholders or to an account of any one of the joint registered Trust Unitholders. A cheque or bank draft shall, unless the joint registered Trust Unitholders otherwise direct, be made payable to the order of all of the said joint registered Trust Unitholders, and if more than one address appears on the books of the Trust in respect of such joint unitholding, the cheque or bank draft or payment in other acceptable manner as aforesaid shall satisfy and discharge all liability of the Trustees or the Trust for the amount so required to be paid unless the cheque or bank draft is not paid at par on presentation at Vancouver, British Columbia, or at any other place where it is by its terms payable. In the event of non-receipt of any such cheque or bank draft by the person to whom it was mailed, the Trustees on proof of the non-receipt and upon satisfactory indemnity being given to it and to the Trust, shall issue to the person a replacement cheque or bank draft for a like amount.

The receipt of any payment not mailed or paid in another acceptable manner in accordance with this Section 5.10 by the registered Trust Unitholder shall be a valid and binding discharge to the Trust and to the Trustees for any payment made in respect of the registered Trust Units and if several persons are registered as joint registered Trust Unitholders or, in consequence of the death, bankruptcy or incapacity of a Trust Unitholder, one or several persons are entitled so to be registered in accordance with this Declaration of Trust, respectively, receipt of payment by any one of them shall be a valid and binding discharge to the Trust and to the Trustees for any such payment.

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

### **6.1 Right of Redemption**

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

## 6.2 Exercise of Redemption Right

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

## 6.3 Cash Redemption

- (a) Upon receipt by the Trust of the notice to redeem Trust Units in accordance with Section 6.2, the holder of the Trust Units tendered for redemption shall be entitled to receive a price per Trust Unit (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 on the trading day immediately subsequent to the date on which the Trust Units were surrendered to the Trust for redemption (the "**Redemption Date**"); and
  - (ii) 100% of the "closing market price" on the principal market on which the Units are quoted for trading on the Redemption Date.

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 20 consecutive trading days on which there was a closing price ending on the 20<sup>th</sup> trading day immediately subsequent to the Redemption Date; 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 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 ten of the 20 trading days, the "**market price**" shall be the average of the following prices established for each of the 20 trading days: the average of the last bid and last asking prices of the Units 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 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 hereof, 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 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; or the average of the last bid and last asking prices of the Units if there was no trading on the date.

- (b) Subject to Sections 6.4 and 6.5, the Redemption Price payable in respect of the Trust Units surrendered for redemption during any calendar month shall be satisfied by way of cash payment no later than the last day of the calendar month following the month in which the Trust 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 Trust Unitholder unless such cheque is dishonoured upon presentment. Upon such payment, the Trust shall be discharged from all liability to the former Trust Unitholder in respect of the Trust Units so redeemed.

#### **6.4 No Cash Redemption in Certain Circumstances**

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

- (a) the total amount payable by the Trust pursuant to Section 6.3 in respect of such Trust Units and all other Trust Units tendered for redemption in the same calendar month exceeds \$50,000 (the “**Monthly Limit**”); provided that the Trustees may, in their sole discretion, waive such limitation in respect of all Trust Units tendered for redemption in any calendar month. Trust Units tendered for redemption in any calendar month in which the total amount payable by the Trust pursuant to Section 6.3(b) exceeds the Monthly Limit will be redeemed for cash pursuant to Section 6.3(b) and by delivery of promissory notes as contemplated in Section 6.5 or, subject to any applicable regulatory approvals, by a distribution *in specie* of securities of the Company under Section 6.5 on a pro rata basis;
- (b) at the time the Trust 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 Trust 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 Trust Units tendered for redemption were tendered to the Trust for redemption or for more than ten trading days during the 20-day trading period commencing immediately after the date on which such Trust 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 Trust Units tendered for redemption by a Trust Unitholder, the Redemption Price per Trust Unit specified in Section 6.3 to which the Trust Unitholder would otherwise be entitled shall, subject to receipt of all necessary regulatory approvals (which the Trust shall use reasonable commercial efforts to obtain forthwith), be paid and satisfied by the delivery to holders of Trust Units tendered for redemption of a promissory note of the Trust in the amount of the Redemption Price payable without interest on the third anniversary of the

Redemption Date or, at the option of the Trustees, by way of a distribution *in specie* to such Trust Unitholder, of a number of Common Shares (which may be in such numbers of Non Voting Common Shares with Par Value, Non Voting Common Shares without Par Value or Voting Common Shares as is determined by the Trustees in their discretion) on the basis, for such Trust Units tendered for redemption, equal to the product of the number of Trust Units tendered for redemption multiplied by two. The Redemption Price payable pursuant to this Section 6.5 in respect of Trust 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 Trust Unitholder who exercised the right of redemption, on the last day (the “**Transfer Date**”) of the calendar month following the month in which the Trust Units were tendered for redemption, of the promissory note of the Trust or, at the option of the Trustees, the number of Common Shares determined as aforesaid. The Trust shall be entitled to all dividends declared but unpaid on the Common Shares 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 the promissory note or the securities of the Company by registered mail in a postage prepaid envelope addressed to the former Trust Unitholder and/or any party having a security interest. Upon such payment, the Trust shall be discharged from all liability to the former Trust Unitholder and any party having a security interest in respect of the Trust Units so redeemed. No fractional Common Shares will be distributed and where the number of securities of the Company, to be received by the former Trust Unitholder includes a fraction, such number shall be rounded to the next lowest number. Where the Trust makes a distribution *in specie* of a pro rata number of securities of the Company on a redemption of Trust Units pursuant to this Section, the Trustees may, in their sole discretion, designate to the redeeming Trust Unitholders any capital gain realized by the Trust as a result of the distribution of such securities to the Trust Unitholder.

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

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

### **ARTICLE 7 TRUSTEES**

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

The Trustees shall consist of not less than three and no more than ten 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 three.

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

Meetings of the Trustees shall be called and held at such time and at such place as the Trustees, the Chairman of the Trustees or any two Trustees may determine, and any one Trustee or officer of the Trust may give notice of meetings when directed or authorized by such persons. Notice of each meeting of the Trustees shall be given to each Trustee not less than 48 hours before the time when the meeting is to be held, provided that if a quorum of Trustees is present, the Trustees may without notice hold a meeting immediately following an annual meeting of Trust Unitholders and holders of Exchangeable Securities. 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.

**7.3 Place of Meetings**

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

**7.4 Meetings by Telephone**

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, 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 the 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 reasonable remuneration for their services as the Trustees may from time to time determine. The Trustees shall also be entitled to be reimbursed for reasonable travelling and other expenses properly incurred by them in attending meetings of the Trustees or any committee thereof or in connection with their services as Trustees. Nothing herein contained shall preclude any Trustee from serving the Trust in any other capacity and receiving remuneration therefor.

## **7.10 Officers**

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

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

## **8.1 Qualification of Trustees**

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

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

## **8.2 Appointment of Trustees**

The Initial Trustees are hereby appointed as the initial Trustees of the Trust for an initial term of office which, subject to Section 8.5, shall expire (subject to further appointment) at the close of the first annual meeting of Trust Unitholders and holders of Exchangeable Securities. Except as otherwise provided herein, Trustees shall be appointed (including the reappointment of incumbent Trustees) at each annual meeting of Trust Unitholders and holders of Exchangeable Securities, and may be appointed at a special meeting of Trust Unitholders and holders of Exchangeable Securities, in each case to hold office, subject to Section 8.5, for a term expiring at the close of the next annual meeting of Trust Unitholders and holders of Exchangeable Securities 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 Trust Unitholders and holders of Exchangeable Securities or shall be made by resolution in writing in the manner set out in Section 12.11. Notwithstanding the foregoing:

- (a) if no Trustees are appointed at the annual meeting of Trust Unitholders and holders of Exchangeable Securities held immediately before the term of office of the existing Trustees expires, such existing Trustees shall continue to hold the office of Trustees

under this Declaration of Trust until successors have been appointed or they cease to hold office;

- (b) the Trustees may, between annual meetings of Trust Unitholders and holders of Exchangeable Securities, appoint one or more additional Trustees for a term to expire (subject to further appointment) at the close of the next annual meeting of Trust Unitholders and holders of Exchangeable Securities, but the number of additional Trustees so appointed shall not at any time exceed one-third of the number of Trustees who held office immediately at the expiration of the immediately preceding annual meeting of Trust Unitholders and holders of Exchangeable Securities; and
- (c) holders of Limited Voting Units and Exchangeable Securities, as such, are not entitled in the aggregate to cast more than 40% of the votes cast upon such a resolution.

**8.3 Consent to Act**

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

“To:                   A&W Revenue Royalties Income Fund (the “**Trust**”)  
And to:               The Trustees thereof

The undersigned hereby consents to act as a Trustee of the Trust and hereby agrees, upon the later of the date of this consent and the date of the undersigned’s appointment as a Trustee of the Trust, to thereby become a party, as a Trustee, to the Amended and Restated Declaration of Trust dated as of the 1<sup>st</sup> day of May, 2018, as amended and supplemented 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 a consent substantially as set forth in Section 8.3(a), such person shall become a Trustee hereunder and shall be deemed to be a party (as a Trustee) to this Declaration of Trust, as amended from time to time.

**8.4 Failure to Appoint Minimum Number of Trustees**

If a meeting of Trust Unitholders and holders of Exchangeable Securities fails to appoint the minimum number of Trustees required by this Declaration of Trust by reason of the disqualification or death of any nominee, the Trustees appointed at the meeting may exercise all of the powers of the Trustees if the number of Trustees so appointed constitutes a quorum.

## **8.5 Ceasing to Hold Office**

A 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 ceases to be duly qualified to act as a Trustee as provided under Section 8.1.

A resignation of a Trustee becomes effective 30 days from the time a written resignation is sent to the Trust, 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 Trustees**

The Trust Unitholders and holders of Exchangeable Securities may remove any Trustee or Trustees from office, by resolution approved by a majority of the votes cast at a meeting of Trust Unitholders and holders of Exchangeable Securities called for that purpose except that holders of Limited Voting Units and Exchangeable Securities, as such, shall not be entitled in the aggregate to cast more than 40% of the votes cast upon such a resolution. A vacancy created by the removal of a Trustee may be filled at the meeting of Trust Unitholders and holders of Exchangeable Securities at which the Trustee is removed or, if not so filled, may be filled as set forth in Section 8.7.

## **8.7 Filling Vacancies**

A quorum of Trustees may fill a vacancy among the Trustees, except a vacancy resulting from an increase in the number of Trustees or from a failure to appoint the minimum number of Trustees fixed by or pursuant to this Declaration of Trust. If there is not a quorum of Trustees, or if there has been a failure to appoint the minimum number of Trustees required by or pursuant to this Declaration of Trust, the Trustees then in office shall forthwith call a special meeting of Trust Unitholders and holders of Exchangeable Securities 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 Trust Unitholder or any holder of an Exchangeable Security. A Trustee appointed to fill a vacancy holds office, subject to Section 8.5, until the close of the next annual meeting of Trust Unitholders and holders of Exchangeable Securities.

## **8.8 Validity of Acts**

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

## **8.9 Successor and Additional Trustee**

The rights of the Trustees to control and exclusively administer the Trust and to have the title to the Trust Assets drawn up in their names or in the name of any other successor and all other rights of the Trustees at law shall vest automatically in any person who may hereafter become a Trustee upon such person's due appointment and qualification without any further act and such person shall thereupon have all the rights, privileges, powers, authorities, obligations and immunities of a Trustee hereunder.

## **ARTICLE 9 CONCERNING THE TRUSTEES**

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

Subject to the terms and conditions of this Declaration of Trust, the Trustees may exercise from time to time in respect of the Trust Assets and the investments and affairs of the Trust any and all rights, powers and privileges that could be exercised by a legal and beneficial owner thereof. Subject to the specific limitations contained in this Declaration of Trust, the Trustees shall have, without further or other action or consent, and free from any power of control on the part of the Trust Unitholders and the holders of Exchangeable Securities, full, absolute and exclusive power, control and authority over the Trust Assets and over the affairs of the Trust to the same extent as if the Trustees were the sole and absolute beneficial owner of the Trust Assets in their own right, to do all such acts and things as in their sole judgment and discretion are necessary or incidental to, or desirable for, carrying out the trust created hereunder. In construing the provisions of this Declaration of Trust, presumption shall be in favour of the granted powers and authority to the Trustees. The enumeration of any specific power or authority herein (including pursuant to Section 9.2) shall not be construed as limiting the general powers or authority or any other specified power or authority conferred herein on the Trustees. To the maximum extent permitted by law the Trustees shall, in carrying out investment activities, not be in any way restricted by the provisions of the laws of any jurisdiction limiting or purporting to limit investments which may be made by trustees.

### **9.2 Specific Powers and Authorities**

Subject only to Section 4.1 and any other 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 Trust Unitholders or the holders of Exchangeable Securities shall have and may exercise at any time and from time to time the following powers and authorities which may or may not be exercised by the Trustees in such manner and upon such terms and conditions as it 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 Trust Unitholders and the holders of Exchangeable Securities;
- (c) to open, operate and close accounts and other similar credit, deposit and banking arrangements and to negotiate and sign banking and financing contracts and agreements;
- (d) to borrow money upon the credit of the Trust and the Trust Assets;

- (e) to issue, reissue, sell or pledge debt obligations of the Trust and to make, accept, endorse, negotiate or otherwise deal with bonds, debentures, cheques, drafts, notes, orders for the payment of money, bills of exchange, bills of lading, acceptances and other similar instruments and obligations as may be necessary or useful to carry out the purpose of the Trust;
- (f) to give a guarantee on behalf of the Trust to secure performance of an obligation of another person;
- (g) to mortgage, hypothecate, pledge or otherwise create a security interest in all or any movable or personal, immovable or real or other property of the Trust, owned or subsequently acquired, to secure any obligation of the Trust;
- (h) to obtain security, including encumbrances on assets, to secure the full payment of monies owed to the Trust and the performance of obligations in favour of the Trust, and to exercise all of the rights of the Trust, and to perform all of the obligations of the Trust, under such security;
- (i) to exercise and enforce any and all rights of foreclosure, to bid on property on sale or foreclosure, to take a conveyance *in lieu* of foreclosure with or without paying a consideration therefor and in connection therewith to revive the obligation on the covenants secured by such security and to exercise and enforce in any action, suit or proceeding at law or in equity any rights or remedies with respect to any such security or guarantee;
- (j) to establish places of business of the Trust;
- (k) to manage the Trust Assets;
- (l) to invest, hold shares, trust units, beneficial interests, partnership interests, joint venture interests or other interests in any person necessary or useful to carry out the purpose of the Trust;
- (m) to cause title to any of the Trust Assets to be drawn up in the name of such person on behalf of the Trust or, to the extent permitted by applicable law, in the name of the Trust, as the Trustees shall determine;
- (n) to determine conclusively the allocation to capital, income or other appropriate accounts of all receipts, expenses and disbursements;
- (o) to enter into any agreement or instrument to create or provide for the issue of Trust Units (including any firm or best efforts underwriting agreement), to cause such Trust Units to be issued for such consideration as the Trustees, in their sole discretion, may deem appropriate and to do such things and prepare and sign such documents, including the Prospectus and any registration rights agreement, to qualify such Trust Units for sale in whatever jurisdictions they will be sold or offered for sale;
- (p) to enter into any agreement in connection with, or to facilitate, the issuance of Exchangeable Securities;

- (q) to make or cause to be made application for the listing or quotation on any stock exchange or market of any Trust Units or other securities of the Trust, and to do all things which in the opinion of the Trustees may be necessary or desirable to effect or maintain such listing or listings or quotation;
- (r) to determine conclusively the value of any or all of the Trust Assets from time to time and, in determining such value, to consider such information and advice as the Trustees in their sole judgment, may deem material and reliable;
- (s) to collect, sue for and receive all sums of money due to the Trust;
- (t) to effect payment of distributions to the Trust Unitholders as provided in Article 5 but not contrary to any provisions of any Subordination Agreement;
- (u) to invest funds of the Trust as provided in Article 4;
- (v) if the Trustees become aware by written notice that the beneficial owners of 49% of the Trust Units then outstanding are, or may be, Non-residents (as defined below) or that such situation is imminent, the Trustees shall ensure that the limitations on non-resident ownership as provided in Section 13.5 are met;
- (w) to possess and exercise all the rights, powers and privileges pertaining to the ownership of securities of the Company 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;
- (x) 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;
- (y) 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;
- (z) to engage in, intervene in, prosecute, join, defend, compromise, abandon or adjust, by arbitration or otherwise, any actions, suits, disputes, claims, demands or other litigation or proceedings, regulatory or judicial, relating to the Trust, the assets of the Trust or the Trust's affairs, to enter into agreements therefor, whether or not any suit or proceeding is commenced or claim asserted and, in advance of any controversy, to enter into agreements regarding the arbitration, adjudication or settlement thereof;
- (aa) to arrange for insurance contracts and policies insuring the Trust, its assets, the business of the Company and/or any or all of the Trustees or the Trust Unitholders, including against any and all claims and liabilities of any nature asserted by any person arising by reason of any action alleged to have been taken or omitted by the Trust or by the Trustees or Trust Unitholders;

- (bb) to cause legal title to any of the assets of the Trust to be held by and/or in the name of a Trustee, or except as prohibited by law, by and/or in the name of the Trust or any other custodian or person, on such terms, in such manner, with such powers in such person as the Trustees may determine and with or without disclosure that the Trust or the Trustee is interested therein; provided, however, that should legal title to any of the Trust 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;
- (cc) to issue Trust Units of any class for such consideration as the Trustees may deem appropriate in their sole discretion, such issuance to be subject to the terms and conditions of the Declaration of Trust;
- (dd) the Trustees shall use their best efforts to ensure that the Trust qualifies at all times as a “mutual fund trust” pursuant to Section 132(6) of the Tax Act;
- (ee) in addition to the mandatory indemnification provided for in Section 9.9 to the extent permitted by law to indemnify, or enter into agreements with respect to the indemnification of, any Person with whom the Trust has dealings including, without limitation, the Trustees, the Depository, registrar and transfer agent or escrow agent, to such extent as the Trustees shall determine;
- (ff) with the approval or confirmation of Trust Unitholders, enact and from time to time amend or repeal by-laws not inconsistent with this Declaration of Trust containing provisions relating to the Trust, the Trust Assets and the conduct of the affairs of the Trust, but not in conflict with any provision of this Declaration of Trust;
- (gg) to pay all taxes or assessments, of whatever kind or nature, whether within or outside Canada, imposed upon or against the Trustees in connection with the Trust Assets, undertaking or income of the Trust, or imposed upon or against the Trust Assets, undertaking or income of the Trust, or any part thereof and to settle or compromise disputed tax liabilities and for the foregoing purposes to make such returns, take such deductions, and make such designations, elections and determinations in respect of the Income of the Trust or Net Realized Capital Gains distributed to Trust Unitholders in the year and any other matter as shall be permitted under the Tax Act (provided that to the extent necessary the Trustees will seek the advice of the Trust’s counsel or the Auditor), and do all such other acts and things as may be deemed by the Trustees in their sole discretion to be necessary, desirable or convenient;
- (hh) to guarantee the obligations of the Company or any affiliate of the Trust pursuant to any good faith debt for borrowed money incurred by the Company or the affiliate, as the case may be, and pledging securities issued by the Company or the affiliate, as the case may be, as security for such guarantee; and
- (ii) 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 Common Shares Held by the Trust**

Subject to the provisions hereof and the Governance Agreement, the Common Shares held from time to time by the Trustees as part of the Trust Assets may be voted by the Trustees at any and all meetings of shareholders of the Company, or any and all meetings of shareholders of the Company at which the holders of such Common Shares are entitled to vote in such manner as the Trustees, in their sole discretion consider to be in the best interests of the Trust Unitholders.

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

- (a) Notwithstanding Section 9.3, the Trustees may not under any circumstances whatsoever vote the Common Shares to authorize:
  - (i) any sale, lease or other disposition of, or any interest in, all or substantially all of the assets of the Company, except in conjunction with an internal reorganization or a pledge in accordance with Section 9.2(hh);
  - (ii) any amalgamation, arrangement or other merger of the Company with any other corporation except in conjunction with an internal reorganization; or
  - (iii) any material amendment to the articles of the Company to change the authorized share capital in a manner which may be prejudicial to the Trust;

without the approval of the Trust Unitholders and holders of Exchangeable Securities by Special Resolution at a meeting of Trust Unitholders and holders of Exchangeable Securities called for that purpose.

- (b) Except pursuant to a pledge in accordance with Section 9.2(hh) hereof, the Trustees shall have no power to sell or otherwise dispose of any Common Shares, (except pursuant to an *in specie* redemption under Section 6.5), or to sell all or substantially all of the Trust Assets or cause the Company to sell all or substantially all of its assets, except with the approval of the Trust Unitholders and holders of Exchangeable Securities by Special Resolution at a meeting of Trust Unitholders and holders of Exchangeable Securities called for that purpose or except as part of an internal reorganization of the direct or indirect assets of the Trust as a result of which the Trust has the same interest, whether direct or indirect, in the assets as the interest, whether direct or indirect, that it had prior to the 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 the Company as the Trustees may designate, appoint or authorize from time to time.



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

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

## **9.7 Fees and Expenses**

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

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

- (a) Subject to the standard of care set forth in Section 9.6, none of the Trustees nor any officer, employee or agent thereof shall be liable to any Trust Unitholder or holder of Exchangeable Securities for any action taken in good faith in reliance on any documents that are, *prima facie*, properly executed; for any depreciation of, or loss to, the Trust incurred by reason of the sale of any security; for the loss or disposition of monies or securities; or for any other action or failure to act including, without limitation, the failure to compel in any way any former trustee to redress any breach of trust or any failure by the Company to perform obligations or pay monies owed to the Trust, except for a breach of the standard of care, diligence and skill as set out in Section 9.6 or a breach of Section 9.4. If the Trustees have retained an appropriate expert or advisor with respect to any matter connected with their duties under this Declaration of Trust, the Trustees may act or refuse to act based on the advice of such expert or advisor and, notwithstanding any provision of this Declaration of Trust, including, without limitation, the standard of care, diligence and skill set out in Section 9.6 hereof, the Trustees shall not be liable for any action or refusal to act based on the advice of any such expert or advisor which it is reasonable to conclude is within the expertise of such expert or advisor to give.
- (b) Subject to the standard of care set forth in Section 9.6, none of the Trustees nor any officer, employee or agent thereof shall be subject to any liability whatsoever in tort, contract or otherwise, in connection with Trust Assets or the affairs of the Trust, including, without limitation, in respect of any loss or diminution in value of any Trust Assets, to the Trust or to the Trust Unitholders or to any other person for anything done or permitted to be done by the Trustees. The Trustees shall not be subject to any personal liability for any debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses against or with respect to the Trust arising out of anything done or permitted

or omitted to be done in respect of the execution of the duties of the office of Trustees for or in respect to the affairs of the Trust. No property or assets of the Trustees, owned in their personal capacity or otherwise, will be subject to any levy, execution or other enforcement procedure with regard to any obligations under this Declaration of Trust or under any other related agreements. No recourse may be had or taken, directly or indirectly, against the Trustees in their personal capacity or against any incorporator, shareholder, director, officer, employee or agent of the Trustees or any successor of the Trustees. The Trust shall be solely liable therefor and resort shall be had solely to the Trust Assets for payment or performance thereof.

## **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 such person's performance of such person's duties hereunder and in respect of any and all costs, charges and expenses, including amounts paid to settle an action or satisfy a judgment, reasonably incurred in respect of any civil, criminal or administrative action or proceeding to which the Trustee, former Trustee, officer or former officer is made a party by reason of being or having been a Trustee or officer of the Trust or, at the request of the Trust, a director or officer of the Company 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 Trust Unitholders. 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 Trust Unitholder or other Trustee or officer shall be personally liable to any person with respect to any claim for such indemnity or reimbursement as aforesaid.

## **9.10 Contractual Obligations of Trust**

- (a) All reasonable efforts shall be made to ensure that every contract entered into by or on behalf of the Trust, whether by the Trustees, or otherwise, shall (except as the Trustees may otherwise expressly agree in writing with respect to personal liability of the Trustees) include a provision substantially to the following effect:

“The parties hereto acknowledge that the Trustees are entering into this agreement solely in their capacity as Trustees or as agent, as the case may be, on behalf of A&W Revenue Royalties Income Fund (the “**Fund**”) and the obligations of the Fund hereunder shall not be personally binding upon the Trustees, or any of the Trust Unitholders of the Fund or any annuitant under a plan of which a Trust Unitholder is a trustee or carrier (an “**annuitant**”) and that any recourse against the Fund, the Trustees, or any Trust Unitholder or annuitant in any manner in respect of any indebtedness, obligation or liability of the Fund 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, shall be limited to, and satisfied only out of, the Trust Assets as defined in the Amended and Restated Declaration of Trust dated as of May 1, 2018, as amended and supplemented from time to time and in effect.”

This provision shall be held in trust and enforced by the Trustees for the benefit of the Trust Unitholders and annuitants. The omission of such a provision from any such written agreement shall not operate to impose personal liability on the Trustees or any Trust Unitholder or annuitant.

- (b) If, contrary to the foregoing provisions, any Trust Unitholder or annuitant shall be held personally liable as such to any other person in respect of any debt, liability or obligation incurred by or on behalf of the Trust, or any action taken on behalf of the Trust, such Trust Unitholder or annuitant shall be entitled to indemnity and reimbursement out of the Trust Assets to the full extent of such liability and to the costs of any litigation or other proceedings in which such liability shall have been determined, including, without limitation, the fees and disbursements of counsel. The rights accruing to a Trust Unitholder or annuitant under this Section 9.10 shall not exclude any other rights to which such Trust Unitholder or annuitant may be lawfully entitled, nor shall anything herein contained restrict the right of the Trustees to indemnify or reimburse a Trust Unitholder or annuitant out of the Trust Assets in any appropriate situation even though not specifically provided herein, but, for greater certainty, the Trustees shall have no liability to reimburse Trust Unitholders or annuitants for taxes assessed against them by reason of their ownership of Trust Units, nor for any losses suffered by reason of changes in the market value of investments forming part of the Trust Assets.

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

- (a) 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 the nature and extent of such interest, and shall not vote on any resolution to approve the contract, unless the contract is one relating primarily to remuneration as a Trustee or officer, one for indemnity or insurance, or one with the Company and, for greater certainty, a Trustee complying with this Section 9.11(a), shall not be subject to any liability to the Trust or the Trust Unitholders with respect to such contract or proposed material contract as aforesaid.
- (b) Subject to Section 9.11(a), each Trustee, in his or her personal capacity or any other capacity, may buy, lend upon and deal in securities of the Trust and generally may contract and enter into any financial transactions with the Trust without being liable to account for any profit made thereby.

#### **9.12 Conditions Precedent**

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

**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.

**10.2 Procedure**

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

**ARTICLE 11  
AMENDMENT**

**11.1 Amendment**

Subject to Section 11.3, the provisions of this Declaration of Trust, except where specifically provided otherwise, may only be amended by 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 Trust Unitholders or the holders of Exchangeable Securities, or any other person:

- (a) prior to Closing; or
- (b) at any time for the purpose of:
  - (i) ensuring continuing compliance with applicable laws, regulations, requirements or policies of any governmental authority having jurisdiction over the Trustees or the Trust;
  - (ii) providing additional protection, in the opinion of counsel to the Trustees, for the Trust Unitholders;
  - (iii) removing any conflicts or inconsistencies in this Declaration of Trust or making minor corrections which are, in the opinion of the Trustees, necessary or desirable and not prejudicial to the Trust Unitholders or the holders of Exchangeable Securities; or
  - (iv) making amendments which, in the opinion of the Trustees, are necessary or desirable as a result of changes in Canadian taxation laws or accounting standards,

but notwithstanding the foregoing, no such amendment shall modify the voting rights in this Declaration of Trust or reduce the fractional undivided interest in the Trust Assets represented by any Trust Unit without the consent of the holder of such Trust Unit and no amendment shall reduce the percentage of votes required to be cast at a meeting of the Trust Unitholders and the holders of Exchangeable Securities for the purpose of this Section 11.1 without the consent of the holders of all of the Trust Units or Exchangeable Securities, respectively then outstanding.

### **11.2 Notification of Amendment**

As soon as shall be practicable after the making of any amendment pursuant to this Article 11, the Trustees shall furnish written notification of the substance of such amendment to each Trust Unitholder and holders of Exchangeable Securities.

### **11.3 No Interference with Limited Voting Units and Exchangeable Securities**

The holders of Limited Voting Units and the holders of Exchangeable Securities, as such, shall be entitled to vote separately as one class upon any resolution to amend this Declaration of Trust that would prejudice or interfere with any of the rights, privileges, restrictions or conditions attached to the Limited Voting Units or the Exchangeable Securities, and no such resolution to amend this Declaration of Trust shall be effective without a separate resolution passed by the affirmative votes of the holders of more than 66 2/3% of the total of the Limited Voting Units then outstanding and the Trust Units issuable upon conversion, exercise or exchange of Exchangeable Securities then outstanding represented at the meeting and voted on a poll upon such resolution.

## **ARTICLE 12 MEETINGS OF TRUST UNITHOLDERS**

### **12.1 Voting Rights of Holder of Exchangeable Securities**

For all purposes of this Article 12, holders of Exchangeable Securities (other than the Trust or any subsidiary of the Trust to the extent any such entity shall hold Exchangeable Securities) shall be entitled to exercise all rights of Trust Unitholders to the same extent and in the same manner as if all of the Trust Units issuable upon conversion, exercise or exchange of the Exchangeable Securities had been issued to the holders of the Exchangeable Securities and were outstanding as of the record date established for the doing or taking of any act or action under this Article 12 and the holders of the Exchangeable Securities had been registered on the books of the Trust as the holder of the Trust Units to which they would respectively be entitled, as of such record date, including, without limitation: the right to request a meeting under Section 12.2, to receive notice of meetings under Section 12.3, to be included in a quorum under Sections 12.4 and 12.7(b), to vote under Section 12.5 and to sign a resolution in writing under Section 12.11.

### **12.2 Annual and Special Meetings of Trust Unitholders**

Annual meetings of the Trust Unitholders and holders of Exchangeable Securities shall be called, commencing in 2003, 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 audited financial statements of the Trust for the immediately preceding fiscal year, the appointment of the Trustees for the ensuing year in accordance with Article 8, the appointment of Auditors and the transaction of such other business as the Trust Unitholders and holders of Exchangeable Securities may be entitled to vote upon as hereinafter provided in this Article 12 or as the Trustees may determine.

Special meetings of the Trust Unitholders and holders of Exchangeable Securities may be called at any time by the Trustees and shall be called by the Trustees upon a written request of Trust Unitholders and/or holders of Exchangeable Securities holding in the aggregate not less than 10% of the total of the Trust Units then outstanding and the Trust Units issuable upon conversion, exercise or exchange of Exchangeable Securities, such request specifying in reasonable detail the business proposed to be transacted at the meeting. The chairperson of any annual or special meeting shall be the Chairman of the Trustees or any other Trustee specified by resolutions of the Trustees or, in the absence of any Trustee, any person appointed as chairperson of the meeting by the Trust Unitholders and holders of Exchangeable Securities present. The Trustees, the officers of the Trust, the Auditors and any other person approved by the Trustees, the chairperson of the meeting or by resolution passed by a majority of the votes cast by Trust Unitholders and holders of Exchangeable Securities represented at the meeting may attend meetings of the Trust Unitholders and holders of Exchangeable Securities.

### **12.3 Notice of Meetings**

- (a) Notice of all meetings of Trust Unitholders and holders of Exchangeable Securities shall be given by unregistered mail, postage prepaid, addressed to each Trust Unitholder and holders of Exchangeable Securities at his or her last address on the books of the Trust, mailed at least 21 days and not more than 50 days before the meeting. Such notice shall specify the time when, and the place where, such meeting is to be held and shall specify the nature of the business to be transacted at such meeting in sufficient detail to permit a Trust Unitholder and holders of Exchangeable Securities to form a reasoned judgment thereon, together with the text of any Special Resolution, at the time of mailing of the notice, proposed to be passed. Any adjourned meeting, other than a meeting adjourned for lack of a quorum under Section 12.7(b), may be held as adjourned without further notice. The accidental omission to give notice or the non-receipt of such notice by a Trust Unitholder and holders of Exchangeable Securities shall not invalidate any resolution passed at any such meeting. Notwithstanding the foregoing, a meeting of Trust Unitholders and holders of Exchangeable Securities may be held at any time without notice if all the Trust Unitholders and holders of Exchangeable Securities are present or represented thereat or those not so present or represented have waived notice. Any Trust Unitholder or holder of Exchangeable Securities (or a duly appointed proxy of a Trust Unitholder or holder of Exchangeable Securities) 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.
- (b) For certainty and notwithstanding any other provision of this Declaration of Trust, the Trust shall be permitted to utilize the “notice and access” delivery procedures set out in National Instrument 54-101 – *Communication with Beneficial Owners of Securities of a Reporting Issuer*, as replaced or amended from time to time, for the purposes of providing notice of a meeting of Trust Unitholders and holders of Exchangeable Securities and for purposes of delivery of such other meeting materials required to be delivered to Trust Unitholders and holders of Exchangeable Securities pursuant to Section 16.8 and applicable Canadian securities laws in effect from time to time.

### **12.4 Quorum**

At any meeting of the Trust Unitholders and holders of Exchangeable Securities, subject as hereinafter provided, a quorum shall consist of two or more individuals present in person either holding personally or representing as proxies not less in aggregate than 5% of the votes attached to the total of the Trust Units then outstanding and the Trust Units issuable upon the conversion, exercise or exchange of

Exchangeable Securities except that holders of Limited Voting Units and Exchangeable Securities, as such, will not be included in a quorum in respect of a resolution to appoint or remove the Trustees of the Trust. 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 Trust Unitholders or holders of Exchangeable Securities, shall be terminated and, if otherwise called, shall stand adjourned to such day being not less than 14 days later and to such place and time as may be appointed by the chairperson of the meeting. If at such adjourned meeting a quorum as above defined is not present, the Trust Unitholders and holders of Exchangeable Securities 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.

### **12.5 Voting Rights of Trust Unitholders and Holders of Exchangeable Securities**

Only Trust Unitholders and holders of Exchangeable Securities of record shall be entitled to vote and each Trust Unit shall entitle the holder or holders of that Trust Unit to one vote on a poll vote at any meeting of Trust Unitholders and holders of Exchangeable Securities except holders of Limited Voting Units and Exchangeable Securities, as such, are not entitled in the aggregate to cast more than 40% of the votes cast upon a resolution for the appointment or removal of a Trustee as provided in Article 8, or subject to Section 11.3, to cast any votes upon a resolution to amend this Declaration of Trust in respect of the limitation upon the voting rights of the holders of the Limited Voting Units and the holders of Exchangeable Securities. 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 Trust Unitholders and holders of Exchangeable Securities, any holder of Trust Units or Exchangeable Securities entitled to vote thereat or upon a resolution may vote by proxy and a proxy need not be a Trust Unitholder or a holder of Exchangeable Securities, provided that no proxy shall be voted at any meeting unless it shall have been received by the Transfer Agent for verification at least 24 hours prior to the commencement of such meeting. When any Trust Unit or Exchangeable Security is held jointly by several persons, any one of them may vote at any meeting in person or by proxy in respect of such Trust Unit or Exchangeable Security, but if more than one of them shall be present at such meeting in person or by proxy, and such joint owners or their proxies so present disagree as to any vote to be cast, such vote purporting to be executed by or on behalf of a Trust Unitholder or holder of Exchangeable Securities shall be deemed valid unless challenged at or prior to its exercise, and the burden of proving invalidity shall rest on the challenger.

### **12.6 Resolutions Binding the Trustees**

Trust Unitholders and holders of Exchangeable Securities shall be entitled to pass resolutions that will bind the Trust only with respect to the following matters:

- (a) the appointment or removal of a Trustee as provided in Article 8 except that Trust Unitholders holding Limited Voting Units and holders of Exchangeable Securities, as such, shall not be entitled in the aggregate to cast more than 40% of the votes cast upon such a resolution;
- (b) the appointment or removal of Auditors as provided in Article 17;
- (c) the appointment of an inspector as provided in Section 12.10;

- (d) amendments of this Declaration of Trust as provided in Section 11.1, except that, subject to Section 11.3, only Trust Unitholders holding Units as such shall be entitled to vote upon any Special Resolution to amend this Declaration of Trust in respect of the limitation upon the voting rights of the holders of the Limited Voting Units and the holders of Exchangeable Securities;
- (e) the termination of the Trust as provided in Section 14.2;
- (f) the sale of all or substantially all of the Trust Assets;
- (g) the exercise of certain voting rights attached to the voting securities of the Company held by the Trust as provided in Section 9.4(a); and
- (h) the dissolution of the Trust prior to the end of its term.

Except with respect to the above matters set out in this Section 12.6, no action taken by the Trust Unitholders and/or holders of Exchangeable Securities or any resolution of the Trust Unitholders and holders of Exchangeable Securities at any meeting shall in any way bind the Trustees. Any action taken or resolution passed in respect of any matter at a meeting of Trust Unitholders and holders of Exchangeable Securities 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 12.6(a), 12.6(b) and 12.6(g) above which matters may be dealt with by a resolution passed by a majority of the total of the votes cast by Trust Unitholders and holders of Exchangeable Securities represented at the meeting.

#### **12.7 Meaning of “Special Resolution”**

- (a) The expression “**Special Resolution**” when used in this Declaration of Trust means, subject to Article 12, a resolution proposed to be passed as a special resolution at a meeting of Trust Unitholders and holders of Exchangeable Securities (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 25% of the total of the Trust Units then outstanding and the Trust Units issuable upon conversion, exercise or exchange of Exchangeable Securities then outstanding and entitled to vote upon such resolution and passed by the affirmative votes of the holders of more than 66 2/3% of the total of the Trust Units then outstanding and the Trust Units issuable upon conversion, exercise or exchange of Exchangeable Securities then outstanding represented at the meeting and voted on a poll upon such resolution.
- (b) Notwithstanding Section 12.4, if at any meeting at which a Special Resolution is proposed to be passed the holders of 25% of the aggregate number of Trust Units then outstanding and the Trust Units issuable upon conversion, exercise or exchange of Exchangeable Securities then outstanding entitled to vote upon such resolution, without restriction, 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 Trust Unitholders and/or holders of Exchangeable Securities, shall be dissolved; but in any other case it shall stand adjourned to such date, being not less than 21 nor more than 60 days later and to such place and time as may be appointed by the chairperson of the meeting. Not less than 10 days prior notice shall be given of the time and place of such adjourned meeting in the manner provided in Section 12.3. Such notice shall state that at



the adjourned meeting the Trust Unitholders and holders of Exchangeable Securities entitled to vote upon such resolution, without restriction, 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 Trust Unitholders and holders of Exchangeable Securities entitled to vote upon such resolution, without restriction, present in person or by proxy shall form a quorum and may transact the business for which the meeting was originally convened and a resolution proposed at such adjourned meeting and passed by the requisite vote as provided in Section 12.7(a) shall be a Special Resolution within the meaning of this Declaration of Trust, notwithstanding that the holders of less than 25% of the aggregate number of Trust Units then outstanding and the Trust Units issuable upon conversion, exercise or exchange of Exchangeable Securities then outstanding entitled to vote, upon such resolution, without restriction, are present in person or by proxy at such adjourned meeting.

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

## **12.8 Meaning of “Outstanding”**

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

- (a) when a new certificate has been issued in substitution for a Trust Unit Certificate which has been lost, stolen, mutilated or destroyed, only one of such Trust Unit Certificates shall be counted for the purposes of determining the number of Trust Units outstanding; and
- (b) for the purpose of any provision of this Declaration of Trust entitling holders of outstanding Trust Units and/or and holders of Exchangeable Securities to vote, sign consents, requisitions or other instruments or take any action under this Declaration of Trust, Trust Units and/or Exchangeable Securities owned directly or indirectly, legally or equitably, by the Trust, the Company or any affiliate thereof shall be disregarded, except that:
  - (i) for the purpose of determining whether the Trustees shall be protected in relying on any such vote, consent, requisition or other instrument or action only the Trust Units and/or Exchangeable Securities which the Trustees know are so owned shall be so disregarded; and
  - (ii) Trust Units and/or Exchangeable so owned which have been pledged in good faith other than to the Trust, the Company or an affiliate thereof shall not be so disregarded if the pledgee shall establish to the satisfaction of the Trustees the pledgee’s right to vote such Trust Units and/or Exchangeable Securities in his or her discretion free from the control of the Trust, the Company or any affiliate thereof.
- (c) for the purposes of Section 12.8(b), the transfer agent for the Trust may provide a certificate which will state the number of Trust Units and the certificate numbers of certificates, if certificates are issued, held by the Trust, the Company or any affiliate

thereof. The Trustees shall be entitled to rely on such certificate in order to disregard the votes of any of the parties mentioned above.

**12.9 Record Date for Voting**

For the purpose of determining the Trust Unitholders and holders of Exchangeable Securities who are entitled to vote or act at any meeting or any adjournment thereof, the Trustees may fix a date not more than 60 days and not less than 21 days prior to the date of any meeting of Trust Unitholders and holders of Exchangeable Securities as a record date for the determination of Trust Unitholders or holders of Exchangeable Securities entitled to vote at such meeting or any adjournment thereof, and any Trust Unitholder or holder of Exchangeable Securities who was a Trust Unitholder or holder of Exchangeable Securities at the time so fixed shall be entitled to vote at such meeting or any adjournment thereof even though the Trust Unitholder or holder of Exchangeable Securities has since that time disposed of his or her Trust Units and/or Exchangeable Securities, and no Trust Unitholder or holder of Exchangeable Securities 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 Trust Unitholders and holders of Exchangeable Securities, the record date for such meeting shall be the date upon which notice of the meeting is given as provided under Section 12.3.

**12.10 Appointment of Inspector**

The Trustees shall call a meeting of Trust Unitholders and holders of Exchangeable Securities upon the written request of Trust Unitholders and holders of Exchangeable Securities holding in the aggregate not less than 25% of the total of the Trust Units then outstanding and the Trust Units issuable upon conversion, exercise or exchange of Exchangeable Securities 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.

**12.11 Resolutions in Writing**

Notwithstanding any other provision of this Declaration of Trust, a resolution in writing executed by Trust Unitholders and holders of Exchangeable Securities holding more than 66 2/3% of the total of the Trust Units then outstanding and the Trust Units issuable upon conversion, exercise or exchange of Exchangeable Securities then outstanding entitled to vote upon such resolution, without restriction, at any time shall be as valid and binding for all purposes of this Declaration of Trust as if such Trust Unitholders and holders of Exchangeable Securities had exercised at that time all of the voting rights to which they were then entitled under Section 12.6 or 12.7 in favour of such resolution at a meeting of Trust Unitholders and holders of Exchangeable Securities duly called for the purpose.

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

**13.1 Nature of Trust Units**

- (a) The provisions of this Article 13 shall not in any way alter the nature of Trust Units or the relationships of a Trust Unitholder to the Trustees and of one Trust Unitholder to another but are intended only to facilitate the issuance of certificates evidencing the ownership of Units if desirable to issue them to Trust 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 shall be issued in the form of the Unit Certificate. A Global Unit Certificate (a “**Global Unit Certificate**”) may be issued in the name of and deposited by the Transfer Agent with, or on behalf of, CDS or a successor (collectively, the “**Depository**”), as custodian of such Global Unit Certificate and registered by the Transfer Agent in the name of the Depository or its nominee. No purchaser of Units represented by a Global Unit Certificate will be entitled to a certificate or other instrument from the Trust or the Depository evidencing that purchaser’s ownership thereof except in the circumstances where the Depository resigns or is removed from its responsibilities as depository and the Trustees are unable or does not wish to locate a qualified successor. Beneficial interests in a Global Unit Certificate will be represented only through the Book-Entry System. Transfers of Units between CDS Participants shall occur in accordance with the Depository’s rules and procedures.

- (b) All references herein to actions by, notices given or payments made to Trust Unitholders shall, where such Units are held through the Depository, refer to actions taken by, or notices given or payments made to, the Depository upon instruction from the CDS Participants in accordance with the Depository’s rules and procedures. For the purposes of any provision hereof requiring or permitting actions with the consent of or at the direction of Trust Unitholders evidencing a specified percentage of the aggregate Units outstanding, such direction or consent may be given by Trust Unitholders acting through the Depository and the CDS Participants owning Units evidencing the requisite percentage of the Units. The rights of a Trust Unitholder whose Units are held through the Depository shall be exercised only through the Depository and the CDS Participants and shall be limited to those established by law and agreements between such Trust Unitholders and the Depository and/or the CDS Participants or upon instruction from the CDS Participants. Each of the Transfer Agent and the Trustees may deal with the Depository for all purposes (including the making of payments) as the authorized representative of the respective Trust Unitholders and such dealing with the Depository shall constitute satisfaction or performance, as applicable, towards their respective obligations hereunder.
- (c) For so long as Units are held through the Depository, if any notice or other communication is required to be given to Trust Unitholders, the Trustees and the Transfer Agent will give all such notices and communications to the Depository.
- (d) If the Depository resigns or is removed from its responsibilities as depository and the Trustees are unable or do not wish to locate a qualified successor, the Depository shall surrender the Global Unit Certificate to the Transfer Agent with instructions from the Depository for registration of Units in the name and in the amounts specified by the Depository and the Trust shall issue and the Trustees and Transfer Agent shall execute and deliver the aggregate number of Units then outstanding in the form of definitive Unit Certificates representing such Units.

### **13.2 Trust Unit Certificates**

- (a) Trust 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, Trust Unit Certificates are issuable only in fully registered form.
- (c) The definitive form of the Trust Unit Certificates shall:

- (i) be in the English language;
  - (ii) be dated as of the date of issue thereof;
  - (iii) contain the CUSIP number for the Units; and
  - (iv) contain such distinguishing letters and numbers as the Trustees shall prescribe.
- (d) In the event that the Trust Unit Certificate is translated into the French language and any provision of the Trust 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 Trust Unit Certificate shall be signed on behalf of the Trustees and the Transfer Agent of such Trust Units. The signature of the Trustees required to appear on such certificate may be printed, lithographed or otherwise mechanically reproduced thereon and, in such event, certificates so signed are as valid as if they had been signed manually.

### **13.3 Contents of Trust Unit Certificates**

- (a) Until otherwise determined by the Trustees, each Trust 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 British Columbia by a Declaration of Trust dated as of the 1st day of May, 2018” or words of like effect;  
  
“The Trust Units represented by this certificate are issued upon the terms and subject to the conditions of the Declaration of Trust, which Declaration of Trust is binding upon all holders of Trust Units and, by acceptance of this certificate, the holder assents to the terms and conditions of the Declaration of Trust. A copy of the Declaration of Trust pursuant to which this certificate and the Trust Units represented thereby are issued may be obtained by a Trust Unitholder on demand and without fee from the head office of the Trust” or words of like effect; and  
  
“For information as to personal liability of a Trust Unitholder, see the reverse side of this certificate” or words of like effect.
  - (ii) the name of the person to whom the Trust Unit Certificate is issued as Trust Unitholder;
  - (iii) the number and class of Trust Units represented thereby and whether or not the Trust Units represented thereby are fully paid; and
  - (iv) that the Trust Units represented thereby are transferable.
- (b) Until otherwise determined by the Trustees, each such certificate shall legibly set forth on the face or the reverse side thereof, inter alia, the following:

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

The Trust 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 Trust Unitholders and Holders of Exchangeable Securities**

A register may be kept at the principal stock transfer office in Vancouver, British Columbia of the Transfer Agent, which register, if maintained, shall contain the names and addresses of the Trust Unitholders, the holders of Exchangeable Securities, the respective numbers of Trust Units and Exchangeable Securities held by them and of the number of each class of Trust Units into which the Exchangeable Securities may be converted or exchanged, the certificate numbers of certificates representing such Trust Units and a record of all transfers and redemptions thereof. Branch transfer registers shall be maintained at such other offices of the Transfer Agent as the Trustees may from time to time designate. Only Trust Unitholders whose certificates are so recorded shall be entitled to receive distributions and only Trust Unitholders and holders of Exchangeable Securities whose certificates or other information is so recorded shall be entitled to exercise or enjoy the rights applicable to Trust Unitholders and holders of Exchangeable Securities hereunder. The Trustees shall have the right to treat the person registered as a Trust Unitholder or holder of an Exchangeable Security on the register of the Trust as the owner of such Trust Units and Exchangeable Securities for all purposes, including, without limitation, payment of any distribution, giving notice to Trust Unitholders and holders of Exchangeable Securities and determining the right to attend and vote at meetings of Trust Unitholders and holders of Exchangeable Securities.

### **13.5 Limitation of Non-Resident Ownership**

At no time may non-residents of Canada within the meaning of the Tax Act (“**Non-residents**”) be the beneficial owners of more than 50% of the Trust Units. The Trustees may require declarations as to the jurisdictions in which beneficial owners of Trust Units are resident. If the Trustees become aware that the beneficial owners of 49% of the Trust Units then outstanding are, or may be, Non-residents or that such a situation is imminent, the Transfer Agent or registrar shall make a public announcement thereof and shall not accept a subscription for Trust Units from or issue or register a transfer of Trust Units to a person unless the person provides a declaration in form and content satisfactory to the Trustees that the person is not a Non-resident. If notwithstanding the foregoing, the Trustees determine that a majority of the Trust Units are held by Non-residents, the Trustees may send a notice to Non-resident holders of Trust Units, chosen in inverse order to the order of acquisition or registration or in such other manner as the Trustees may consider equitable and practicable, requiring them to sell their Trust Units or a portion thereof within a specified period of not less than 60 days. If the Trust Unitholders receiving such notice have not sold the specified number of Trust Units or provided the Trustees with satisfactory evidence that they are not Non-residents within such period, the Trustees may on behalf of such Trust Unitholders sell such Trust Units and, in the interim, shall suspend the voting and distribution rights attached to such Trust Units. Upon such sale the affected holders shall cease to be

holders of Trust Units and their rights shall be limited to receiving the net proceeds of sale upon surrender of the certificates representing such Trust Units. Subject to Section 9.6, unless and until the Trustees shall have been required to do so under the terms hereof, the Trustees shall not be bound to do or take any proceeding or action with respect to this Section 13.5 by virtue of the powers conferred on them hereby. The Trustees shall not be deemed to have notice of any violation of this Section 13.5 unless and until they have been given written notice of such violation and shall act only as required by this declaration once an indemnity is provided. The Trustees shall not be required to actively monitor the foreign holdings of the Trust. It is acknowledged that the Trustees cannot monitor the Non-resident holders of the Trust Units given that the Trust Units are registered in the name of CDS. The Trustees shall not be liable for any violation of the non-resident ownership restriction which may occur during the term of the Trust.

### **13.6 Transfer of Trust Units**

- (a) Subject to the provisions of this Article 13, the Trust Units shall be fully transferable without charge as between persons, but no transfer of Trust Units shall be effective as against the Trustees or shall be in any way binding upon the Trustees until the transfer has been recorded on the register or one of the branch transfer registers maintained by the Trustees, the Trust or the Transfer Agent. No transfer of a Trust Unit shall be recognized unless such transfer is of a whole Trust Unit.
- (b) Subject to the provisions of this Article 13, Trust Units shall be transferable on the register or one of the branch transfer registers only by the Trust 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 authorization and other matters that may reasonably be required by the Trustees or the Transfer Agent. Upon such delivery the transfer shall be recorded on the register or branch transfer registers and a new certificate for the Trust Units shall be issued to the transferee and a new certificate for the balance of Trust Units not transferred shall be issued to the transferor.
- (c) Any person becoming entitled to any Trust Units as a consequence of the death, bankruptcy or mental incompetence of any Trust Unitholder, or otherwise by operation of law, shall be recorded as the holder of such Trust 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 Trust Unitholder of record shall continue to be and be deemed to be the holder of such Trust Units for all purposes whether or not the Trustees or the Transfer Agent shall have actual or other notice of such death or other event.
- (d) Trust Unit Certificates representing any number of Trust Units of a particular class may be exchanged without charge for Trust Unit Certificates representing an equivalent number of Trust Units of the same class in the aggregate. Any exchange of Trust Unit Certificates may be made at the offices of the Trust or the Transfer Agent where registers are maintained for Trust Unit Certificates pursuant to the provisions of this Article 13. Any Trust Unit Certificates tendered for exchange shall be surrendered to the Trustees or appropriate Transfer Agent and then shall be cancelled.

### **13.7 Trust Units Held Jointly or in a Fiduciary Capacity**

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

### **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 Trust Units or any interest therein are or may be subject, or to ascertain or enquire whether any transfer of any such Trust Units or interests therein by any such Trust Unitholder or by his or her personal representatives is authorized by such trust, pledge, or equity, or to recognize any person as having any interest therein except for the person recorded as Trust Unitholder.

### **13.9 Lost Certificates**

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

### **13.10 Death of a Trust Unitholder**

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

### **13.11 Unclaimed Distribution**

In the event that the Trustees shall hold any distributable amount which is unclaimed or which cannot be paid for any reason, the Trustees shall be under no obligation to invest or reinvest the same but shall only be obliged to hold the same in a current interest bearing account pending payment to the person or persons entitled thereto. The Trustees shall, as and when required by law, and may at any time prior to such required time, pay all or part of such distributable amount so held to the Public Guardian and Trustees (or other 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 or Limited Voting Units may, unless prohibited by the terms and conditions of the Exchangeable Security or Limited Voting Unit, as the case may be, convert, exercise or exchange such Exchangeable Security and Limited Voting Unit, 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 Limited Voting Unit 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 and Limited Voting Units, 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 or Limited Voting Units elects to conditionally convert, exercise or exchange such Exchangeable Securities or Limited Voting Units 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 or Limited Voting Unit such holder shall cease to have any rights as a holder of Exchangeable Securities or Units or Limited Voting Units to the extent that the Units issuable upon the conversion, exercise or exchange of such Exchangeable Securities or Limited Voting Units 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 or Limited Voting Units), the bid is accepted by the holders of not less than 90 percent of the outstanding Units and entitlements to Units issuable upon the exchange, conversion or exercise of the outstanding Exchangeable Securities and Limited Voting Units, taken together, other than outstanding Units, Exchangeable Securities and Limited Voting Units 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 13.12, to acquire the Units held by the non-tendering offerees and the Units issuable upon conversion, exercise or exchange of any outstanding Exchangeable Securities or Limited Voting Units.
- (c) An offeror may acquire Units and Units underlying outstanding Exchangeable Securities and Limited Voting Units 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 more than 90% of the outstanding Units and entitlements to Units issuable upon the exchange, conversion or exercise of the outstanding Exchangeable Securities and Limited Voting Units, taken together, to which the bid relates accepted the take-over bid;



- (ii) the offeror has taken up and paid for the Units and Units issuable upon the conversion, exercise or exchange of the outstanding Exchangeable Securities and Limited Voting Units of the offerees who accepted the take-over bid;
  - (iii) a non-tendering offeree is required to transfer his Units and/or Units issuable pursuant to outstanding Exchangeable Securities and Limited Voting Units to the offeror on the terms on which the offeror acquired the Units of the offerees who accepted the take-over bid; and
  - (iv) a non-tendering offeree who does not transfer his Units and/or Units issuable upon the exchange, conversion or exercise or exchange of outstanding Exchangeable Securities and Limited Voting Units 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 and, if a holder of Exchangeable Securities or Limited Voting Units, shall be deemed to have converted, exercised or exchanged such Exchangeable Securities and Limited Voting Units and to have elected to transfer, and to have transferred, the underlying Units to the offeror on the same terms that the offeror acquired the Units and/or Units issuable upon the exchange, conversion or exercise of the outstanding Exchangeable Securities or Limited Voting Shares from the offerees who accepted the take-over 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 or Limited Voting Unit 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, send its Units and/or Units issuable upon the conversion, exercise or exchange of outstanding Exchangeable Securities or Limited Voting Units, or cause its Units and/or Units issuable pursuant to outstanding Exchangeable Securities or Limited Voting Units to be sent 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 non-tendering 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.

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 and Limited Voting Units by a non-tendering offeree holder thereof or redemption by the issuer of such Exchangeable Securities and Limited Voting Units.

### **13.13 Conversion of Limited Voting Units**

In the event of the sale of a Limited Voting Unit by the holder thereof, the holder of such Limited Voting Unit may convert the Limited Voting Unit into a Unit on a one for one basis for the purpose of delivering a Unit to the purchaser on the transfer of such Limited Voting Unit. For the purpose of delivering Units to such purchaser, the tendering of a certificate by the Trust indicating that the Units into which the Limited Voting Units may be converted will be issued upon and subject to the completion of the transfer shall be good delivery under such sale, and after the payment of the consideration therefor to the former holder of the Limited Voting Unit, such former holder of the Limited Voting Units shall cease to have any rights as a Trust Unitholder in respect of the Limited Voting Units that are so sold to the extent that the Units issuable upon such conversion are acquired by the purchaser.

Upon surrender to the Trust or the Transfer Agent of a certificate or certificates representing such Limited Voting Units, together with such other documents and instruments as may be required to effect a transfer of Limited Voting Units under the laws applicable to the Trust and this Declaration of Trust, and such additional documents and instruments as the Trust may reasonably require, the purchaser of such Limited Voting Unit represented by the surrendered certificate or certificates shall be entitled to receive in exchange therefor, and the Trust shall deposit or cause to be deposited with CDS a Global Unit Certificate for the benefit of such purchaser representing the Units to which such purchaser is entitled, provided that if at such time the Trust has previously terminated the registration of the Units through the Book-Entry System, certificates for Units in respect of such Limited Voting Units in fully registered form will be issued to each such purchaser or its nominees.

## **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 December 1, 2001. 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 Trust Unitholders**

The Trust Unitholders may vote by Special Resolution to terminate the Trust at any meeting of Trust Unitholders and holders of Exchangeable Securities duly called by the Trustees for the purpose considering termination of the Trust, following which the Trustees shall commence to wind up the affairs of the Trust. Such Special Resolution may approve the plan of liquidation or winding up and distributions proposed by the Trustees.

### **14.3 Procedure Upon Termination**

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

#### **14.4 Powers of the Trustees Upon Termination**

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

#### **14.5 Sale of Investments**

After the date referred to in Section 14.3, the Trustees shall proceed to wind up the affairs of the Trust as soon as may be reasonably practicable and for such purpose shall, subject to any direction to the contrary in respect of a termination authorized under Section 14.2, sell and convert into money the Common Shares and all other 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 Trust Unitholders (in respect of a termination authorized under Section 14.2). If the Trustees are unable to sell all or any of the Common Shares or other assets which comprise part of the Trust by the date set for termination, the Trustees may, subject to obtaining all necessary regulatory approvals, distribute the remaining shares or other assets directly to the Trust Unitholders in accordance with their pro rata interests.

#### **14.6 Distribution of Proceeds or Assets**

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

#### **14.7 Further Notice to Trust Unitholders**

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

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

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

**ARTICLE 15  
SUPPLEMENTAL INDENTURES**

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

The Trustees may, without approval of the Trust Unitholders and the holders of Exchangeable Securities 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 Unitholders or holders of Exchangeable Securities 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 Trust Units.

**ARTICLE 16  
GENERAL**

**16.1 Notices**

- (a) Any notice or other document required to be given or sent to Trust Unitholders or holders of Exchangeable Securities 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 c/o the Transfer Agent with a copy to 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.

**16.2 Failure to Give Notice**

The failure by the Trustees, by accident or omission or otherwise unintentionally, to give any Trust Unitholder or holder of an Exchangeable Security 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 Trust Unitholder or holder of an Exchangeable Security for any such failure.

**16.3 Joint Holders**

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

**16.5 Information Available to Trust Unitholders**

Each Trust Unitholder shall have the right to obtain, on demand and without fee, from the head office of the Trust a copy of this Declaration of Trust and any amendments thereto relating to Trust Units held by that Trust Unitholder and shall be entitled to inspect and, on payment of a reasonable fee therefor and after delivering to the Trustees a statutory declaration stating the name and address of the person requiring the Trustees to furnish the list of Trust Unitholders and, if the person is a body corporate, the address for service thereof, and that the list will not be used except in connection with (a) an effort to influence the voting of the holders of Trust Units, (b) an offer to acquire Trust Units, or (c) any other matter relating to the Trust Units or the affairs of the Trust, obtain a list of the Trust Unitholders for the aforesaid purposes.

**16.6 Fiscal Year**

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

**16.7 Financial Disclosure**

The Trust will send to Trust Unitholders and holders of Exchangeable Securities:

- (a) at least 21 days prior to the date of each annual meeting of Trust Unitholders and holders of Exchangeable Securities, 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 and the obligations to deliver such statements may vary from such principles to the extent required to comply with applicable securities laws or securities regulatory requirements or to the extent permitted by applicable securities regulatory authorities.

#### **16.8 Meeting Information**

Prior to each meeting of Trust Unitholders and holders of Exchangeable Securities, the Trustees will provide to each Trust Unitholder and holder of an Exchangeable Security, together with the notice of the meeting:

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

#### **16.9 Taxation Information**

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

### **ARTICLE 17 AUDITORS**

#### **17.1 Qualification of Auditors**

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

#### **17.2 Appointment of Auditors**

PricewaterhouseCoopers LLP are appointed as the initial auditors of the Trust, to hold such office until the first annual meeting of the Trust Unitholders and holders of Exchangeable Securities. The Auditors will be selected at each succeeding annual meeting of Trust Unitholders and holders of Exchangeable Securities. 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 Trust Unitholders and holders of Exchangeable Securities at a meeting of Trust Unitholders and holders of Exchangeable Securities 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 Trust Unitholders and holders of Exchangeable Securities 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 Trust Unitholder and holder of an Exchangeable Security with the annual financial statements referred to in Section 16.7.

**ARTICLE 18  
MISCELLANEOUS**

**18.1 Counterparts**

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

**18.2 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.

**18.3 Language**

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

IN WITNESS WHEREOF each of the parties has caused these presents to be executed as of May 1, 2018.

“Hugh R. Smythe”  
Hugh R. Smythe

“John R. McLernon”  
John R. McLernon

“Richard McKerracher”  
Richard McKerracher