

SIR ROYALTY INCOME FUND

AMENDED AND RESTATED DECLARATION OF TRUST

October 12, 2004

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SIR ROYALTY INCOME FUND

AMENDED AND RESTATED DECLARATION OF TRUST

This Amended and Restated Declaration of Trust (the “**Declaration of Trust**”) dated October 12, 2004 among Peter Fowler, Ken Fowler, William Rogers, John McLaughlin and Peter Luit (the “**Trustees**”) and SIR Corp. (the “**Initial Unitholder**”).

RECITALS:

- (a) Pursuant to the original declaration of trust (the “**Original Declaration of Trust**”) made effective August 23, 2004 among the Trustees and the Initial Unitholder, the Initial Unitholder created a trust for investment purposes;
- (b) for the purpose of settling the trust created under the Original Declaration of Trust and referred to as the Fund, the Initial Unitholder paid to the Trustees an amount of \$10.00 in lawful money of Canada (the “**Initial Contribution**”);
- (c) the Trustees have agreed to hold in trust the Initial Contribution and all amounts and assets subsequently received under this Declaration of Trust or in respect of the investment of the assets of the Fund in accordance with the provisions of this Declaration of Trust;
- (d) the Initial Unitholder and the Trustees desire that the beneficiaries of the Fund, including the Initial Unitholder, shall be the holders of Units, each of which shall rank equally in all respects with every other Unit (except that the Initial Unitholder’s Unit shall be repurchased immediately prior to the issuance of any new Units);
- (e) Units are being offered for sale to the public pursuant to a final prospectus (the “**Prospectus**”) to be dated on or about the date hereof;
- (f) it is intended that the Fund qualify as a “**mutual fund trust**” for purposes of the *Income Tax Act* (Canada);
- (g) pursuant to Section 10.1 of the Original Declaration of Trust, the Trustees desire to amend and restate the Original Declaration of Trust as provided herein;
- (h) SIR Corp. will be the initial holder of all Class A GP Units following Closing; and

- (i) 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 Fund.

In consideration of the foregoing and the mutual and respective covenants and agreements contained herein (the receipt and sufficiency of which are acknowledged), the parties agree as follows:

ARTICLE 1 INTERPRETATION

Section 1.1 Definitions.

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

"affiliate" means an "affiliated entity" within the meaning of section 1.2 of OSC Rule 45-501 under the *Securities Act* (Ontario);

"Auditors" means the firm of chartered accountants appointed as the auditors of the Fund from time to time in accordance with the provisions hereof and, initially, means PricewaterhouseCoopers LLP;

"Beneficial Unitholder" means the beneficial owner of a Unit where the Book-Entry System is being used for the Units;

"Book-Entry System" means the record-entry securities transfer and pledge system known, as of the date hereof, by such name, which is administered by CDS in accordance with the operating rules and procedures of the Securities Settlement Service of CDS in force from time to time, or any successor system which CDS may offer from time to time;

"Business Day" means any day on which the Toronto Stock Exchange (including its successors or assigns) or such other marketplace designated by the Trustees from time to time, is open for business, other than a Saturday, Sunday or other day on which major banks are not open for business in the City of Toronto;

"Cash Flow" has the meaning specified in Section 5.1(1);

"CDS" means The Canadian Depository for Securities Limited, and includes its successors;

"CDS Participant" means a participant in the Book-Entry System;

“**Class A GP Units**” means Class A general partner units of the Partnership;

“**Class C GP Units**” means Class C general partner units of the Partnership;

“**Closing**” means the completion of the issue of Units pursuant to the Offering;

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

“**Counsel**” means a barrister or solicitor or firm of barristers and solicitors or other lawyers in an appropriate jurisdiction retained by the Fund, who may be counsel for SIR Corp. or any other person;

“**Declaration of Trust**” means this amended and restated declaration of trust, as the same may be further supplemented, amended or restated from time to time; and “**hereto**”, “**herein**”, “**hereof**”, “**hereby**”, “**hereunder**” and similar expressions refer to this instrument and not to any particular Article, Section or portion hereof and the expressions “**Article**” and “**Section**” followed by a number mean and refer to the specified Article or Section of this Declaration of Trust;

“**Distributable Cash**” has the meaning specified in Section 5.1(2);

“**Distribution Payment Date**” means, in respect of a Distribution Period, the last Business Day of the month immediately following the end of the Distribution Period, or such other date as may be determined from time to time by the Trustees;

“**Distribution Period**” means each calendar month from and including the first day thereof and to and including the last day thereof;

“**Distribution Record Date**” means, in respect of a Distribution Period, such day as may be determined from time to time by the Trustees;

“**Exchange Agreement**” means the exchange agreement entered or to be entered into between the Fund, the Holdings Trust, the Partnership, SIR GP and SIR Corp. under which the Fund and the Partnership will grant rights in connection with certain of the Partnership Units, including the Class A GP Units and the Class C GP Units of the Partnership;

“**Exchange Rights**” means the rights of a holder of Class A GP Units or Class C GP Units provided for under the Exchange Agreement;

“**Fund**” means the SIR ROYALTY INCOME FUND, which is the trust constituted by this Declaration of Trust;

“Fund Administration Agreement” means the administration agreement with respect to the Fund entered or to be entered into among the Fund and the Partnership, as it may be amended from time to time;

“Fund Assets” means, at any particular time, the properties and assets held by the Fund or by the Trustees on behalf of the Fund, including if applicable the SIR Loan, Holdings Trust Units and Holdings Notes;

“Fund Income” has the meaning specified in Section 5.2(1);

“Fund Liabilities” has the meaning specified in Section 2.7(1);

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

“Global Unit Certificate” has the meaning specified in Section 12.2;

“Governance Agreement” means the governance agreement entered or to be entered into among the Fund, the Holdings Trust, the Partnership, SIR GP, SIR Corp. and others in respect of the affairs of SIR GP;

“Holdings Declaration of Trust” means the declaration of trust, as it may be amended from time to time, of the Holdings Trust;

“Holdings Note Indenture” means the note indenture entered or to be entered into by the Holdings Trust and the Holdings Note Trustee;

“Holdings Note Trustee” means the trustee under the Holdings Note Indenture, initially SIR GP;

“Holdings Trust” or the **“Trust”** means the SIR Holdings Trust, as it may be amended from time to time, and any successors thereto;

“Holdings Trust Assets” means, at any particular time, the properties and assets held by the Holdings Trust or by the Holdings Trustees on behalf of the Holdings Trust, including if applicable Partnership Units;

“Holdings Trust Notes” or **“Trust Notes”** means the notes issued from time to time by the Holdings Trust under the Holdings Note Indenture, and designated as either Series 1 Trust Notes or Series 2 Trust Notes;

“Holdings Trustees” means the trustees from time to time of the Holdings Trust;

“Holdings Trust Units” means the units of the Holdings Trust, each of which is designed to represent an equal and undivided interest in the Holdings Trust and any and all distributions therefrom, and includes if the Trustees so desire a fractional interest therein;

“Initial Contribution” means the amount of \$10.00 paid by the Initial Unitholder to the Trustees effective August 23, 2004 for the purpose of settling the Fund;

“Issue Expenses” means all reasonable expenses of the Fund, the Holdings Trust, the Partnership, SIR GP and SIR Corp. associated with the transactions contemplated by the Offering and the SIR Loan Acquisition Agreement (including in respect of fees and expenses relating to the SIR Loan);

“Internal Reorganization” means an amalgamation, continuation, arrangement, capital reorganization or other reorganization of, between or among the Fund, the Holdings Trust and/or the Partnership and/or their respective subsidiaries which would not reasonably be expected to be prejudicial to the Fund;

“Limited Partnership Agreement” means the limited partnership agreement entered or to be entered into among SIR Corp., SIR GP and the Holdings Trust pursuant to which the Partnership is governed, as the same may be amended from time to time;

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

“Net Realized Capital Gains” has the meaning specified in Section 5.2(2);

“Non-residents” means non-residents of Canada within the meaning of the Tax Act and partnerships other than Canadian partnerships within the meaning of the Tax Act;

“Offering” means the initial public offering of Units;

“Original Declaration of Trust” has the meaning specified in the recitals to this Declaration of Trust;

“Partnership” means the SIR Royalty Limited Partnership, a limited partnership formed under the laws of the Province of Ontario pursuant to the Limited Partnership Agreement;

“Partnership Units” means the units in the capital of the Partnership, including the Class A GP Units and the Class C GP Units;

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

“Preliminary Prospectus” means the preliminary prospectus of the Fund dated August 27, 2004 as filed with all of the Canadian securities regulatory authorities in connection with the Offering;

“Prospectus” means the final prospectus of the Fund to be filed with all of the Canadian securities regulatory authorities in connection with the Offering;

“Redemption Price” has the meaning specified in Section 6.3(1), subject to Section 6.5;

“Register” has the meaning specified in Section 12.7;

“Registration Rights Agreement” means the registration rights agreement entered or to be entered into between the Fund and SIR Corp. pursuant to which SIR Corp. will be granted demand and “piggy-back” registration rights by the Fund which will enable SIR Corp. to require the Fund to file a prospectus and otherwise assist with a public offering of Units on the terms prescribed therein, as amended.

“Resident Canadian” means an individual who is not a non-resident of Canada within the meaning of the Tax Act;

“Series 2 Trust Notes” means the interest bearing Series 2 unsecured subordinated notes of the Holdings Trust issued under the Holdings Note Indenture;

“SIR Corp.” means SIR Corp., and its successors and permitted assigns;

“SIR GP” means SIR GP Inc., and its successors and permitted assigns;

“SIR Lender” means the Canadian chartered bank affiliate of the BMO Nesbitt Burns Inc.;

“SIR Loan” means the loan to SIR Corp. in the aggregate principal amount of \$40 million, which will be acquired by the Fund, including replacements and refinancings thereof.

“SIR Loan Acquisition Agreement” means the loan acquisition agreement entered into or to be entered into among the Fund, the SIR Lender, SIR Corp. and others, pursuant to which the Fund will acquire from the SIR Lender all of its right, title and interest in and to the SIR Loan;

“Special Resolution” shall, subject to Section 11.10, have the meaning specified in Section 11.6;

“Subordination Agreement” has the meaning specified in Section 2.7(5);

“Tax Act” means the Income Tax Act (Canada) and the regulations thereunder;

“Transfer Agent” means any registrar and transfer agent of the Fund as may from time to time be appointed by the Fund to act as registrar and transfer agent of the Units, which initially shall be Computershare Investor Services Inc., together with any sub-transfer agent duly appointed by the Transfer Agent;

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

“TSX” means the Toronto Stock Exchange (or its successors or assigns);

“Underwriters” means BMO Nesbitt Burns Inc., CIBC World Markets Inc., TD Securities Inc., Canaccord Capital Corporation and Dundee Securities Corporation;

“Underwriting Agreement” means the underwriting agreement entered into between the Fund, SIR Corp., the Partnership and the Underwriters in connection with the Offering;

“Unitholders” means, at any time, the holders at that time of one or more Units, as shown on the Fund’s Register of Unitholders;

“Unit Certificate” means a certificate, in the form approved by the Trustees, evidencing one or more Units, issued and certified in accordance with the provisions hereof, and includes if applicable the Global Unit Certificate(s); and

“Units” has the meaning specified in Section 3.1(1).

Section 1.2 References to Acts Performed by the Fund.

Any reference in this Declaration of Trust to an act to be performed by the Fund or to an obligation or right of the Fund, 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 Fund or an obligation assumed by or imposed upon, or a right of, the Trustees in their capacity as trustees of the Fund, as the case may be.

Section 1.3 References to Contracts.

Except as otherwise specifically provided herein, reference in this Declaration of Trust to any contract, agreement or any other instrument will be deemed to include references to the same as varied, amended, supplemented, restated or replaced from time to time. Except as otherwise specifically provided herein, any reference in this Declaration of Trust to a statute or regulations, rules, policies or instruments thereunder will be deemed to be a reference to such statute or regulation, rule, policy or instrument as amended, re-enacted or replaced from time to time, and reference to specific parts, paragraphs or sections thereof will include all amendments, re-enactments or replacements. Where there are proposals for amendments to the Tax Act that have not been enacted into law or proclaimed into force on or before the date on which such proposals are to become effective, the Trustees may take such proposals into consideration and if consider appropriate by them apply the provisions thereof as if such proposals had been enacted into law and proclaimed into force.

Section 1.4 Gender and Number.

Any reference in this Declaration of Trust to gender includes all genders, and words importing the singular number only shall include the plural and vice versa.

Section 1.5 Headings, etc.

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

Section 1.6 Currency.

All references in this Declaration of Trust to dollars, unless otherwise specifically indicated, are expressed in Canadian currency.

Section 1.7 Certain Phrases, etc.

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

Section 1.8 Accounting Principles.

All accounting terms not specifically defined in this Declaration of Trust shall be interpreted in accordance with GAAP. Where the character or amount of any asset or liability or item of revenue or expense or amount of equity is required to be determined, or any consolidation or other accounting computation is required to be made, for the purpose of this Declaration of Trust, such determination or calculation shall, to the extent applicable and except as otherwise specified herein or as otherwise determined by the Trustees, be made in accordance with GAAP.

Section 1.9 Day Not a Business Day.

If any day on which any amount is to be determined or any action is required to be taken hereunder is not a Business Day, then such amount shall be determined or such action shall be required to be taken at or before the requisite time, if any, on the next succeeding day that is a Business Day. This Section is not applicable to Sections 5.1 through 5.4, inclusive.

Section 1.10 Amendment and Restatement.

Effective October 12, 2004, the terms, conditions and provisions of this Amended and Restated Declaration of Trust amend, restate and supersede in their entirety the terms, conditions and provisions of the Original Declaration and this Amended and Restated Declaration of Trust shall govern the Fund.

**ARTICLE 2
AMENDED AND RESTATED DECLARATION OF TRUST**

Section 2.1 Establishment of Fund.

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

Section 2.2 Initial Contribution.

The Initial Unitholder paid, upon the execution of the Original Declaration of Trust, the Initial Contribution to the Trustees for the purpose of settling the Fund, and the Initial Unitholder was at that time issued one Unit in the Fund.

Section 2.3 Name of Fund.

- (1) The Fund shall be known and designated in English as the “**SIR ROYALTY INCOME FUND**” and, whenever practicable, lawful and convenient, the property of the Fund shall be held and the affairs of the Fund shall be conducted and transacted under that name.

- (2) If the Trustees determine that the use of such name is not practicable, legal or convenient, the Fund may use such other designation or may adopt such other name as the Trustees deem appropriate, and the Fund may hold property and conduct and transact its affairs under such other designation or name.
- (3) The Fund may approve and use a French language or foreign language version of any name or designation used by the Fund.

Section 2.4 Principal Office.

The principal office of the Fund shall be located at 5360 South Service Road, Suite 200, Burlington, Ontario L7L 5L1, or at such other place or places in Canada as the Trustees may from time to time designate.

Section 2.5 Nature of the Fund.

The Fund is established for the purposes specified in Section 4.1. The Fund is not, shall not be deemed to be and shall not be treated as, a partnership, limited partnership, society, syndicate, association, joint venture, company, corporation or joint stock company, nor shall the Trustees or any individual Trustee or the Unitholders or any holder of Class A GP Units or any of them or any person be, or be deemed to be, treated in any way whatsoever as liable or responsible hereunder as partners, joint venturers or as that of principal and agent or as members of a society, syndicate, association, partnership or limited partnership or shareholders of a corporation or other joint stock company. The relationship of the Unitholders to the Trustees shall be solely that of beneficiaries of the Fund.

Section 2.6 Rights of Unitholders.

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

by this Declaration of Trust. The holders from time to time of the Class A GP Units shall have solely the rights set forth herein.

Section 2.7 Liability of Unitholders.

- (1) No Unitholder or Beneficial Unitholder, in its capacity as such, and no holder of Class A GP Units, 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 Fund 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, liabilities, activities or affairs of the Fund; (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 Fund (whether or not authorized by or pursuant to this Declaration of Trust); (iv) any actual or alleged act or omission of the Trustees or any other person in the performance or exercise, or purported or attempted performance or exercise, of any obligation, power, discretion or authority conferred upon the Trustees or such other person in respect of the activities or affairs of the Fund (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 Fund (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 Fund or by the Trustees or by any other person (except the Unitholder or Beneficial Unitholder or holder of Class A GP Units to the extent required by applicable tax laws) on behalf of or in connection with the activities or affairs of the Fund (collectively, "**Fund Liabilities**").
- (2) No Unitholder or Beneficial Unitholder in its capacity as such, and no holder of Class A GP Units, shall be liable to indemnify the Trustees or any other person with respect to any Fund Liabilities.
- (3) To the extent that, notwithstanding the provisions of this Section 2.7, any Unitholder or Beneficial Unitholder, in its capacity as such, or any holder of Class A GP Units, may be determined by a judgment of a court of competent jurisdiction to be subject to or liable in respect of any Fund 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 Units held by such Unitholder or Beneficial Unitholder, or the Class A GP Units held by such holder of Class A GP Units, as applicable.
- (4) If contrary to the provisions of this Section 2.7, any Unitholder or Beneficial Unitholder, or any holder of Class A GP Units, shall be held personally liable

as such to any other person in respect of any Fund Liabilities, such Unitholder or Beneficial Unitholder, or such holder of Class A GP Units, shall be entitled to indemnity and reimbursement out of the Fund Assets to the full extent of such liability and for all costs of any litigation or other proceedings in which such liability shall have been determined, including, without limitation, all fees and disbursements of counsel. The rights accruing to a Unitholder or Beneficial Unitholder or to a holder of Class A GP Units, under this Section 2.7(4) shall not exclude any other rights to which such Unitholder or Beneficial Unitholder, or holder of Class A GP Units, may be lawfully entitled, nor shall anything herein contained restrict the right of the Trustees to indemnify or reimburse a Unitholder or Beneficial Unitholder, or a holder of Class A GP Units, out of the Fund Assets in any appropriate situation even though not specially provided herein but, for greater certainty, the Trustees shall have no liability to reimburse Unitholders or Beneficial Unitholders, or holders of Class A GP Units, for taxes assessed against them by reason of their ownership of Units or Class A GP Units.

- (5) If any Fund Asset should be distributed or declared to be distributable to Unitholders contrary to the provisions of any subordination agreement between the Fund and the persons entitled to enforce any of the indebtedness of the Fund or any affiliate (other than SIR Corp. or its subsidiaries, but including the Partnership) (each a **"Subordination Agreement"**), then the persons entitled to enforce such Subordination Agreements or provisions will 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(3) will not apply to any judgment in respect of (and only to the extent based on) such contrary distribution, and no Unitholder will have the right to enforce any distribution that is contrary to such Subordination Agreements or provisions.

ARTICLE 3 ISSUE AND SALE OF UNITS

Section 3.1 Nature of Units.

- (1) The beneficial interests in the Fund shall be divided into interests of one class (the **"Units"**), which shall be entitled to the rights and subject to the limitations, restrictions and conditions set out herein.
- (2) Each Unit represents an equal undivided beneficial interest in the Fund, in any distribution from the Fund (whether of Fund income, net realized capital gains or other amounts) and in any net assets of the Fund in the event of the termination or winding-up of the Fund. Following the purchase of the Unit issued as part of the Initial Contribution, all Units shall rank among

themselves equally and rateably without discrimination, preference or priority.

- (3) For greater certainty, no Class A GP Unit will be entitled to any interest or share in the Fund, in any distribution from the Fund (whether of Fund Income, Net Realized Capital Gains or other amounts) or in any net assets of the Fund in the event of the termination or winding-up of the Fund. Each issued and outstanding Class A GP Unit will entitle the holder of record thereof from time to time to that number of votes on a ballot vote at all meetings of Unitholders and holders of Class A GP Units or in respect of any written resolution of Unitholders and holders of Class A GP Units that is equal to the number of Units for which the Class A GP Units are, directly or indirectly, exchangeable.
- (4) Issued and outstanding Units may be subdivided or consolidated from time to time by the Trustees, provided that no subdivision or consolidation to the Units shall be made unless a corresponding subdivision or consolidation is made to the Class A GP Units.

Section 3.2 Authorized Number of Units.

The number of Units that is authorized and that may be issued hereunder is unlimited.

Section 3.3 Issue of Units.

- (1) Units may be allotted and issued by the Fund at such times, to such persons, for such consideration and on such terms and conditions as the Trustees may determine. Without limiting the foregoing, the Trustees may authorize the Fund to pay a reasonable commission to any person in consideration of such person purchasing or agreeing to purchase, whether absolutely or conditionally, Units from the Fund or from any other person or procuring or agreeing to procure purchasers, whether absolute or conditional, for Units.
- (2) The Trustees may create and issue rights, warrants (including so-called "special warrants" which may be exercisable for no additional consideration), convertible securities (including rights to acquire Units issuable upon the exchange of securities of other issuers) or options (including all types of incentive programs) to subscribe for Units, which rights, warrants, convertible securities or options may be exercisable at such subscription price or prices and at such time or times and on such terms or conditions as the Trustees may determine. The rights, warrants, convertible securities or options so created may be issued for such consideration, or for no consideration, all as the Trustees may determine. A right, warrant,

convertible security or option will not be a Unit and the holder thereof will not be a Unitholder.

- (3) Units are only to be issued as fully paid in money, property or in past services that are not less in value than the fair equivalent of the money that the Fund would have received if the Units had been issued for money, and are not to be subject to future calls or assessments, except that Units to be issued under an offering following the Offering may be issued for a consideration payable in instalments, and the Fund may take a security interest over such Units or other property for unpaid instalments.
- (4) For greater certainty, Units and other securities of the Fund may be issued by the Fund (i) as contemplated by this Section 3.3, (ii) pursuant to Section 5.7, (iii) as contemplated by the Exchange Agreement and the Underwriting Agreement, (iv) pursuant to any Unitholder rights plans, distribution reinvestment plans and Unit purchase plans, incentive option plans or other compensation plans, if any, established by the Fund, (v) in order to acquire securities, including the Holdings Trust Units and the Trust Notes and other securities of or issued by the Holdings Trust, SIR GP or the Partnership, (vi) upon the exercise of any rights, warrants, convertible securities or options to acquire Units or other securities issued by the Fund or other issuers, including upon the exercise of any rights of exchange or conversion set out in the Class A GP Units, (vii) pursuant to Section 3.6, and (viii) in satisfaction of any indebtedness of or borrowing by the Fund.

Section 3.4 Fractional Units.

Fractions of Units may be issued, including pursuant to distributions of additional Units to all Unitholders pursuant to Section 5.7. Fractions of Units will carry and be subject to the provisions hereof applicable to whole Units in the proportion that they bear to one Unit, except that no certificates will be issued for fractional Units and no holder of a fraction of a Unit, as such, will be entitled to notice of, or to attend, or to vote at, meetings of Unitholders and holders of Class A GP Units.

Section 3.5 Re-Purchase of Initial Unit by Fund.

At the Closing, the Fund will purchase the initial Unit from the Initial Unitholder, and the Initial Unitholder shall sell the initial Unit to the Fund, for a purchase price of \$10.00 and, upon the completion of such purchase and sale, the initial Unit shall be cancelled and shall no longer be outstanding for any of the purposes of this Declaration of Trust.

Section 3.6 Consolidation of Units.

Unless the Trustees determine otherwise, and subject to any necessary regulatory approvals, immediately after any *pro rata* distribution of additional Units to all Unitholders pursuant to Section 5.7, the number of the outstanding Units will be consolidated such that each Unitholder will hold after the consolidation the same number of Units as the Unitholder held immediately before the distribution of such additional Units. In such case, each Unit Certificate representing a number of Units immediately before the distribution of additional Units will be deemed to represent the same number of Units after the distribution of additional Units and the consolidation. Notwithstanding the foregoing, where tax is required to be withheld in respect of a Unitholder's share of a distribution, the consolidation will result in such Unitholder holding that number of Units equal to the product of (i) the number of Units held by such Unitholder immediately before the distribution plus the number of Units received by such Unitholder in connection with the distribution (net of Units withheld by the Fund to satisfy the Fund's withholding obligations), multiplied by (ii) the quotient obtained by dividing the aggregate number of Units outstanding immediately before the distribution by the aggregate number of Units that would be outstanding following the distribution and before the consolidation if no withholding were required in respect of any part of the distribution payable to any Unitholders. Such Unitholder will be required to surrender the Unit Certificates, if any, representing such Unitholder's original pre-consolidation Units, in exchange for a Unit Certificate representing such Unitholder's post-consolidation Units.

Section 3.7 No Pre-Emptive Rights.

No Unitholder shall be entitled, as a matter of right, to any pre-emptive right to acquire any Units, unless otherwise expressly agreed to in writing by the Fund.

**ARTICLE 4
INVESTMENTS OF THE FUND**

Section 4.1 Activities of the Fund.

The operations and activities of the Fund shall be restricted to the following:

- (a) investing in or acquiring or disposing of securities, including those issued by the Trust and SIR GP and their affiliates, and lending or investing funds, including acquiring and holding the SIR Loan;
- (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 Fund, paying amounts payable by the

Fund in connection with the redemption of any Units or other securities, and making distributions to Unitholders;

- (c) issuing Units (or rights, warrants, convertible securities or options in respect thereof) as contemplated by this Declaration of Trust;
- (d) issuing debt securities or borrowing (including letters of credit, bank guarantees and bankers acceptances);
- (e) guaranteeing (as guarantor, surety or co-principal obligor) the payment or performance of any indebtedness, liability or obligation of the Holdings Trust, SIR GP or the Partnership or their affiliates (other than SIR Corp. and its subsidiaries other than the Partnership), and mortgaging, pledging, charging, granting a security interest in or otherwise encumbering all or any part of the Fund Assets therefor, and where considered appropriate postponing or subordinating its rights under the SIR Loan or other rights;
- (f) issuing or redeeming rights to acquire Units pursuant to any Unitholder rights plan adopted by the Fund;
- (g) redeeming or purchasing securities issued by the Fund;
- (h) entering into and performing its obligations under the Fund Administration Agreement, the Registration Rights Agreement, the Governance Agreement, the Exchange Agreement and the Underwriting Agreement; and
- (i) undertaking such other activities, or taking such actions (including investing in or disposing of securities), as are related to or in connection with the foregoing or as are contemplated by this Declaration of Trust or as may be approved by the Trustees from time to time, provided that the Fund shall not undertake any operation or activity, take any action, or make any investment that would result in the Trust not being or ceasing to be a “**mutual fund trust**” for purposes of the Tax Act or that would result in the Units constituting foreign property to Unitholders for the purposes of Part XI of the Tax Act.

Section 4.2 Investment of Proceeds of Offering.

On Closing, the Fund shall use the net proceeds from the sale of Units issued on the Offering to acquire the SIR Loan, Holdings Trust Units and Series 1 Trust Notes.

Section 4.3 Other Investments

To the extent that any monies or other property received by the Fund are not to be immediately used by the Fund, the Trustees are hereby authorized and, where prudent to do so, shall invest such monies in: (i) debt obligations of or guaranteed by the Government of Canada or a province of Canada; (ii) commercial paper obligations of a corporation or other person whose short term commercial paper is rated investment grade by Dominion Bond Rating Service Limited or its successors or assigns or by Standard & Poor's or its successors or assigns; (iii) interest-bearing accounts and short term certificates of deposit issued or guaranteed by a Canadian chartered bank or trust company; (iv) money market mutual funds; (v) other short term debt obligations approved by the Trustees from time to time; or (vi) any combination thereof. Notwithstanding the foregoing, the Trustees may not purchase or authorize the purchase of any investment if such purchase would result in the Units of the Fund becoming foreign property to Unitholders for purposes of the Tax Act. For the purpose hereof, "**short term**" shall mean having a date of maturity or call for payment not more than 90 days from the date on which the investment is made.

ARTICLE 5 DISTRIBUTIONS

Section 5.1 Computation of Distributable Cash of the Fund.

- (1) The cash flow of the Fund for any Distribution Period (the "**Cash Flow**") shall be equal to:
 - (a) all cash amounts which are received by the Fund in or in respect of such Distribution Period, including all income, interest, distributions, proceeds from the disposition of securities, returns of capital and repayments of indebtedness, as well as all cash amounts received by the Fund in a prior period to the extent not previously distributed;
 - (b) less, all costs and expenses of the Fund 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;
 - (c) less, all amounts payable in cash which relate to the redemption or repurchase of Units and which have become payable by the Fund in such Distribution Period; and
 - (d) less, any interest expense incurred by the Fund between distributions;

provided that, any funds borrowed by the Fund, the proceeds of the Offering and any other issuance of Units or other securities of the Fund, the Issue Expenses, and related transactions in connection therewith shall not be included in the calculations of Cash Flow in respect of any Distribution Period.

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

Section 5.2 Computation of Income and Net Realized Capital Gains.

- (1) The income of the Fund (the “**Fund Income**”) for any taxation year of the Fund shall be the income for such year computed in accordance with the provisions of the Tax Act, other than paragraph 82(1)(b) and subsection 104(6) thereof, regarding the calculation of income for the purposes of determining the “**taxable income**” of the Fund; provided, however, that capital gains and capital losses and any income realized by the Fund as a result of a redemption of Units pursuant to Article 6 and which is payable to redeeming Unitholders pursuant to Section 6.5(3) shall be excluded from the computation of Fund Income and, if an amount has been designated by the Fund under subsection 104(19) of the Tax Act, such designation shall be disregarded.
- (2) The net realized capital gains of the Fund (the “**Net Realized Capital Gains**”) for any taxation year of the Fund shall be determined as the amount, if any, by which the aggregate of the capital gains of the Fund realized in such year exceeds (i) the aggregate of the capital losses of the Fund realized in such year, (ii) any capital gains which are realized by the Fund as a result of a redemption of Units pursuant to Article 6 and which are payable to redeeming Unitholders pursuant to Section 6.5(3), and (iii) each amount determined by the Trustees in respect of any net capital loss for a prior taxation year which the Fund is permitted by the Tax Act to deduct in computing the taxable income of the Fund for such year multiplied by the reciprocal of the fraction applicable in determining the proportion of a capital gain for such prior taxation year that is a taxable capital gain.

Section 5.3 Distributions of Distributable Cash Flow.

The Trustees may, in their sole discretion, in respect of each Distribution Period, on or before each Distribution Record Date, declare payable to the Unitholders of record at the close of business on such Distribution Record Date all or any part (or none) of the Distributable Cash Flow for the Distribution Period. Any such distribution shall be payable to each Unitholder of record on such Distribution Record Date *pro rata* in proportion to the number of Units held as of record by such Unitholder on such Distribution Record Date. Subject to Section 5.7, any Distributable Cash Flow which has been declared to be payable to Unitholders in respect of a Distribution Period shall be paid in cash on the Distribution Payment Date in respect of such Distribution Period.

Section 5.4 Other Distributions.

- (1) In addition to the distributions which are declared payable to Unitholders pursuant to Section 5.3, the Trustees may allocate, declare payable and/or make distributions, from time to time, out of Fund Income, Net Realized Capital Gains, the capital of the Fund or otherwise, in any year, in such amount or amounts, and on such dates and to Unitholders of record on such dates, as the Trustees may determine.
- (2) Having regard to the present intention of the Trustees to allocate, distribute and make payable to Unitholders all of the Fund Income, a sufficient amount of the Net Realized Capital Gains and any other applicable amounts so that the Fund will not have any liability for tax under Part I of the Tax Act in any taxation year (other than tax on Net Realized Capital Gains that would be recoverable by it with respect to the relevant taxation year), the following amounts shall, without any further actions on the part of the Trustees, be due and payable to Unitholders of record at the close of business on December 31 in each year:
 - (a) the amount of Fund Income for such year not previously paid or made payable to Unitholders in such year; and
 - (b) the amount of Net Realized Capital Gains for such year not previously paid or made payable to Unitholders in such year, except to the extent of Net Realized Capital Gains in respect of which the tax payable by the Fund would be refunded as a "capital gains refund" as defined in the Tax Act for such year.
- (3) Any distribution made pursuant to this Section 5.4 shall be payable to each Unitholder of record on the applicable record date in respect of a distribution pursuant to Section 5.4(1), or on December 31 in the year of distribution in respect of a distribution pursuant to Section 5.4(2), *pro rata* in proportion to

the number of Units held of record by such Unitholder on such applicable record date or December 31 in the year of such distribution, as the case may be. Subject to Section 5.7, amounts which have been declared to be payable to Unitholders pursuant to Section 5.4(1) shall be paid in cash on the Distribution Payment Date determined by the Trustees in respect of such distribution and amounts that are payable pursuant to Section 5.4(2) shall be paid not later than January 31 of the following year.

- (4) As contemplated in Section 6.5(3), the Trustees may designate as payable to redeeming Unitholders any capital gain and/or income realized by the Fund as a result of the redemption of Units pursuant to Section 6.5.

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 paid or payable to Unitholders for such amounts that the Trustees consider to be reasonable in all of the circumstances, including designations relating to taxable dividends received by the Fund in the year on shares of taxable Canadian corporations, net capital gains realized by the Fund in the year and foreign source income of the Fund for the year, as well as elect under subsection 104(13.1) and/or subsection 104(13.2) of the Tax Act that income be taxed to the Fund, rather than to the Unitholders. Distributions paid or payable to Unitholders pursuant to this Article 5 shall be deemed to be distributions of Fund Income, Net Realized Capital Gains, the capital of the Fund 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 Fund which are encompassed in such distribution.

Section 5.6 Enforceability of Right to Receive Distributions.

Subject to Section 2.7(5) and notwithstanding any other provision of this Article 5, each Unitholder shall have the legal right to enforce payment on December 31 of each year of any amount payable in that year to such Unitholder as a result of any distribution declared or otherwise made payable pursuant to this Article 5 on or before December 31 of that year, as the case may be, to, and not yet received by, such Unitholder pursuant to this Article 5.

Section 5.7 Method of Payment of Distributions.

- (1) Where the Trustees determine that the Fund does not have available cash in an amount sufficient to make payment of the full amount of any distribution which has been declared payable, or otherwise made payable, pursuant to this Article on the due date for such payment, the payment may, at the option of the Trustees, include the issuance of additional Units, or fractions of Units, if necessary or desirable, having a value equal to the difference between the

amount of such distribution declared to be payable and the amount of cash which has been determined by the Trustees to be available for the payment of such distribution.

- (2) The value of each Unit which is issued pursuant to Section 5.7(1) shall be the Market Price of the Units on the principal marketplace on which the Units are quoted for trading during the 10 trading day period ending on the trading day immediately prior to (i) the applicable Distribution Record Date in respect of a distribution pursuant to Section 5.3, (ii) the applicable record date in respect of a distribution under Section 5.4(1), or (iii) December 31 in respect of a distribution under Section 5.4(2).
- (3) Any rights distributed to Unitholders pursuant to a rights offering under Section 3.3(2) may in the discretion of the Trustees be treated, to the extent possible, as a distribution of Fund Income.

Section 5.8 Withholding Taxes.

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

Section 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.

Section 5.10 Payments of Cash.

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

replacement cheque to the Unitholder. Notwithstanding the foregoing, the Fund may, in lieu of forwarding or causing to be forwarded a cheque to a Unitholder pursuant to this Article 5, enter into an agreement with a Unitholder or with a representative thereof or a person for whom such Unitholder is acting as nominee providing for the payment to such Unitholder of the amounts to which such Unitholder is entitled, from time to time, hereunder by electronic funds transfer or by any other method at a place or places other than the place or places specified herein as the place or places for such payment. Any payment made hereunder or in connection with this Declaration of Trust that is made pursuant to any such agreement will, notwithstanding any other provision of this Declaration of Trust, be valid and binding on the Fund and the relevant Unitholder.

Section 5.11 Unclaimed Distributions.

In the event that the Trustees shall hold any distributable amount which is unclaimed or which cannot be paid for any reason, the Trustees shall be under no obligation to invest or reinvest the same, but shall only be obliged to hold the same in a current interest-bearing account pending payment with interest earned (and less applicable taxes) 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 appropriate government official or agency, whose receipt shall be a good discharge and release of the Trustees.

Section 5.12 Distribution Reinvestment and Unit Purchase Plan.

Without limiting the generality of any other provision of this Declaration of Trust, but subject to any required regulatory approvals, the Trustees may, in their sole discretion, establish one or more Unitholder rights plans, distribution reinvestment plans, Unit purchase plans, Unit option plans or other compensation plans at any time and from time to time.

**ARTICLE 6
REDEMPTION OF UNITS**

Section 6.1 Right of Redemption.

Each Unitholder shall be entitled to require the Fund to redeem at any time or from time to time at the demand of the Unitholder all or any part of the Units registered in the name of the Unitholder at the prices determined and payable in accordance with this Article 6.

Section 6.2 Exercise of Redemption Right.

- (1) Units may be surrendered at any time to the Transfer Agent for redemption by presentation to the Transfer Agent of a written request for redemption from the Unitholder or CDS, as the case may be, in a form acceptable to the

Transfer Agent and approved by the Trustees, specifying the number of Units to be redeemed and accompanied by the Unit Certificate(s), representing the Units to be redeemed. Any expense associated with the preparation and delivery of redemption notices will be for the account of the Unitholder exercising the redemption privilege. Such surrender will be irrevocable except with respect to any Units surrendered for redemption in respect of which the redemption proceeds are not paid by the Fund on or before the date on which such payment is due and except as otherwise provided herein.

- (2) If the Book-Entry System is being used for the Units, a Beneficial Unitholder who desires to redeem Units must do so by causing a CDS Participant to deliver to CDS on behalf of the Beneficial Unitholder a written notice of the Beneficial Unitholder's intention to redeem Units. The form of redemption notice should be available from a CDS Participant, the Fund or the Transfer Agent. By causing a CDS Participant to deliver to CDS a notice of the Beneficial Unitholder's intention to redeem Units, a Beneficial Unitholder shall be deemed to have irrevocably surrendered the applicable Units for redemption and appointed such CDS Participant to act as his, her or its exclusive settlement agent with respect to the exercise of the redemption privilege and the receipt of payment in connection with the settlement of obligations arising from such exercise. Any redemption notice which CDS determines to be incomplete, not in proper form or not duly executed shall for all purposes be void and of no effect and the redemption privilege to which it relates shall be considered for all purposes not to have been exercised thereby. A failure by CDS or a CDS Participant to exercise redemption privileges or to give effect to the settlement thereof in accordance with the Beneficial Unitholder's instructions will not give rise to any obligations or liability on the part of the Fund or the Trustees to the CDS Participant or to the Beneficial Unitholder. A Beneficial Unitholder shall have no direct rights as against the Fund or the Trustees, and any such redemption effected by such Beneficial Unitholder shall insofar as the Fund and the Trustees are concerned be deemed to be on the part of the actual (registered) Unitholder.
- (3) As of the close of business on the date the Units are surrendered for redemption, the Unitholder shall cease to be the Unitholder of record in respect of such Units, such Units shall cease to be entitled to share in the income or any participation in the assets of the Fund (other than the receipt of the redemption proceeds) and the Unitholder (or Beneficial Unitholder) thereof shall not be entitled to exercise any of the rights of holders of Units in respect thereof (other than the right to receive the redemption proceeds).

Section 6.3 Cash Redemption.

- (1) Upon receipt by the Fund of a notice to redeem Units in accordance with Section 6.2 and surrender of the relevant Unit Certificate, the Unitholder of the Units tendered for redemption shall, subject to the terms of this Declaration of Trust, be entitled to receive a price per Unit (the "**Redemption Price**") equal to the lesser of:
 - (a) 90% of the Market Price of the Units on the principal marketplace on which the Units are traded during the 10 trading day period immediately preceding the date on which the applicable Units were surrendered for redemption; and
 - (b) 100% of the Closing Market Price of the Units on the principal marketplace on which the Units are traded on the date that the Units were surrendered for redemption.

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

- (2) Subject to Section 6.4 and Section 6.5, the aggregate Redemption Price payable in respect of the Units surrendered for redemption during any calendar month shall be satisfied by way of cash payment no later than the last day of the calendar month following the calendar month in which the Units were tendered for redemption. Payments made by the Fund of the cash portion of the Redemption Price are conclusively deemed to have been made

upon the mailing by or on behalf of the Fund of a cheque in a postage prepaid envelope addressed to the former Unitholder at his, her or its address appearing in the Register unless such cheque is dishonoured upon presentment. Upon such payment, the Fund shall be discharged from all liability to the former Unitholder in respect of the redeemed Units; provided, however, that if such cheque is lost or destroyed then, upon the presentation of evidence satisfactory to the Trustees of such loss or destruction, together with such indemnity as the Trustees may reasonably require, the Fund may issue a replacement cheque to the former Unitholder.

Section 6.4 No Cash Redemption in Certain Circumstances.

Section 6.3(2) shall not be applicable to Units tendered for redemption by a Unitholder, if:

- (a) the total amount payable by the Fund pursuant to Section 6.3 in respect of such Units and all other Units tendered for redemption in the same calendar month exceeds \$50,000 (the “**Monthly Limit**”), provided that the Trustees may, in their sole discretion, waive such limitation in respect of all Units tendered for redemption in any calendar month;
- (b) on the date the Units are tendered for redemption, the outstanding Units are not traded on the TSX or another marketplace which the Trustees consider, in their sole discretion, is one which provides representative fair market value prices for the Units;
- (c) the normal trading of the outstanding Units is suspended or halted on any marketplace on which the Units are traded on the date that such Units tendered for redemption were tendered to the Fund for redemption, or for more than five trading days during the 10 trading day period commencing immediately after the date on which such Units were tendered for redemption; or
- (d) the payment would be in violation of any obligation of the Fund to creditors (whether of the Fund or any affiliate).

Section 6.5 In Specie Redemption.

- (1) If, pursuant to Section 6.4, Section 6.3(2) is not applicable to Units tendered for redemption by a Unitholder, the aggregate Redemption Price for such Units specified in Section 6.3 to which the Unitholder would otherwise be entitled shall be the fair market value thereof as determined by the Trustees in their sole discretion and shall, subject to receipt of all applicable regulatory approvals (which the Fund shall use reasonable commercial efforts to obtain), be paid and satisfied as follows:

- (a) as to a portion (if any, determined by the Trustees in their sole discretion) of such aggregate Redemption Price, by way of a cash payment equal to such Unitholder's pro rata share of the Monthly Limit based upon the aggregate number of Units tendered for redemption in the applicable calendar month; and
- (b) as to the balance of such aggregate Redemption Price, and subject to Section 6.5(5), by way of a distribution in specie to such Unitholder of securities of the Holdings Trust.

In such circumstances, if applicable, the Fund will be required to transfer to the Holdings Trust, in respect of each Unit to be redeemed, a *pro rata* portion of the outstanding SIR Loan owed to the Fund in consideration for Holdings Trust Units and Trust Notes; the Holdings Trust Units and/or Trust Notes owned by the Fund having a value equal to the applicable portion of the Redemption Price will then be required to be redeemed by the Holdings Trust in consideration of the issuance to the Fund of Series 2 Trust Notes; and the Series 2 Trust Notes will then be distributed in satisfaction of the applicable portion of the Redemption Price, rounded down to the nearest \$10.00, with any balance under \$10.00 to be paid in cash or by cheque.

- (2) The Redemption Price payable pursuant to this Section 6.5 in respect of Units tendered for redemption during any month shall, subject to receipt of all applicable regulatory approvals (which the Fund shall use reasonable commercial efforts to obtain) and subject to Section 6.5(5), be paid on the last day (the "**Transfer Date**") of the calendar month following the month in which the Units were tendered for redemption, by the payment of cash, if any, and the transfer to or to the order of the Unitholder who exercised the right of redemption, of the assets (including, if applicable, Series 2 Trust Notes) determined in accordance with Section 6.5(1). The Fund shall be entitled to all interest paid on the Trust Notes (including the Series 2 Trust Notes), if any, and all distributions paid on the Holdings Trust Units on or before the Transfer Date. Payments by the Fund of the non-cash portion of the Redemption Price are conclusively deemed to have been made upon the mailing of the relevant securities by registered mail in a postage prepaid envelope addressed to the former Unitholder. Upon such payment, the Fund shall be discharged from all liability to the former Unitholder in respect of the redeemed Units; provided, however, that if such securities are lost or destroyed in the mail then, upon the presentation of evidence satisfactory to the Trustees of such loss or destruction, together with such indemnity as the Trustees may reasonably require, the Fund may issue replacement securities to the former Unitholder.

- (3) Where the Fund makes a distribution in specie of Series 2 Trust Notes pursuant to this Section, the Trustees may, in their sole discretion, allocate to the redeeming Unitholders as part of the Redemption Price any capital gain or income realized by the Fund as a result of the redemption of Holdings Trust Units and/or Trust Notes, the transferring of an interest in the SIR Loan by the Fund to the Holdings Trust and the distribution of Series 2 Trust Notes to the Unitholder. Any interest on Series 2 Trust Notes distributed to a Unitholder on a redemption of Units pursuant to this Section 6.5 shall, to the extent that such interest has accrued to the Transfer Date but not been paid, be treated as an amount of Fund Income payable to such Unitholder.
- (4) If any Series 2 Trust Notes are to be distributed in specie hereunder, the Fund shall, to the extent required by law, first cause a replacement trustee (which may include the Transfer Agent) to be appointed as Holdings Note Trustee under the Holdings Note Indenture.
- (5) Notwithstanding anything to the contrary contained in this Declaration of Trust, in the event that the Fund has, pursuant to Section 4.1, granted security on any of its assets (including, if applicable, Series 2 Trust Notes), then such assets may be distributed directly or indirectly (including via another entity) in such manner as is considered appropriate by the Trustees so as to preserve such security interest while giving redeeming Unitholders directly or indirectly the *pro rata* interest they are entitled to.

Section 6.6 Cancellation of all Redeemed Units.

All Units which are redeemed under this Article 6 shall be cancelled and such Units shall no longer be outstanding.

ARTICLE 7 TRUSTEES

Section 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 five. At least three-quarters of the Trustees must be Resident Canadians, and a majority of the Trustees must be independent of SIR Corp. within the meaning of Multilateral Instrument 52-110 made under the *Securities Act* (Ontario).

Section 7.2 Calling and Notice of Meetings.

Meetings of the Trustees shall be called and held from time to time at such time and at such place in Canada as the Trustees, the Chairman of the Trustees or

any two Trustees may determine, and any one Trustee, or any officer of the Fund or of any affiliate of the Fund, may give notice of meetings when directed or authorized by such persons. Notice of each meeting of the Trustees shall be given to each Trustee not less than 48 hours before the time when the meeting is to be held, provided that if a quorum of Trustees is present, the Trustees may without notice hold a meeting immediately following an annual meeting of Unitholders and holders of Class A GP Units. Notice of a meeting of the Trustees may be given verbally, in writing or by telephone or facsimile or electronic mail. A notice of a meeting of Trustees need not specify the purpose of or the business to be transacted at the meeting. Notwithstanding the foregoing, the Trustees may by resolution from time to time fix a day or days in any month or months for regular meetings of the Trustees at a place and hour to be named, in which case, provided that a copy of such resolution is sent to each Trustee forthwith after being passed and forthwith after each Trustee's appointment, no other notice shall be required for any such regular meeting.

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

Section 7.4 Meetings by Telephone.

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

Section 7.5 Quorum.

The quorum for the transaction of business at any meeting of the Trustees shall consist of the greater of two Trustees and 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, provided that the Trustees shall not transact business at a meeting of Trustees unless a majority of Trustees present are Resident Canadians. Notwithstanding anything to the contrary contained in this Declaration of Trust, if there is no quorum then in office, then the Trustees then in office may comply with Section 8.7 hereof.

Section 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 (as appointed by the Trustees under Section 7.10) or, if such person is not participating in the meeting, the Trustees participating in the meeting shall choose one of their number to be chairman.

Section 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; provided that no decision that has not been approved by a majority of Resident Canadian Trustees shall be valid or binding. In the case of an 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 a resolution in writing signed by all Trustees who would be entitled to vote on that resolution at a meeting of the Trustees. Resolutions in writing may be signed in counterparts (including by facsimile), each of which shall be deemed to be an original and all originals together shall be deemed to be one and the same instrument.

Section 7.8 Adjourned Meeting.

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

Section 7.9 Remuneration and Expenses.

The Trustees shall be paid such remuneration for their services as the Trustees may from time to time determine. The Trustees shall also be entitled to be reimbursed for reasonable travel and other out of pocket 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 Fund in any other capacity and receiving remuneration therefor.

Section 7.10 Officers.

The Trustees from time to time may appoint one or more officers of the Fund, including without limitation a Chairman and a Secretary of the Trustees, and, without prejudice to rights under any employment contract, may remove any officer of the Fund. The powers and duties of each officer of the Fund 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.

Section 7.11 Committees.

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

Section 7.12 Committee Procedure.

Unless otherwise determined by the Trustees, a quorum for meetings of any committee shall be a majority of its members, provided that a majority of the Trustees comprising such quorum shall be Resident Canadians, each committee shall have the power to appoint its chairman and the rules for calling, holding, conducting, transacting business at 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 8

APPOINTMENT, RESIGNATION AND REMOVAL OF THE TRUSTEES

Section 8.1 Qualification of Trustees.

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

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

Section 8.2 Appointment of Trustees.

The initial Trustees, being Peter Fowler, Ken Fowler, William Rogers, John McLaughlin and Peter Luit, each of whom is a Resident Canadian, have been

appointed as the Trustees of the Fund 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 Unitholders and holders of Class A GP Units. Except as otherwise provided herein, Trustees shall be appointed (including the reappointment of incumbent Trustees) at each annual meeting of Unitholders and holders of Class A GP Units, and may be appointed at a special meeting of Unitholders and holders of Class A GP Units, in each case to hold office, subject to Section 8.5, for a term expiring at the close of the next annual meeting of Unitholders and holders of Class A GP Units following such an appointment. Any such appointment (other than by the Trustees as contemplated by this Section 8.2 and Section 8.7) shall be made either by a resolution approved by a majority of the votes cast at a meeting of Unitholders and holders of Class A GP Units or shall be made by Special Resolution in writing. Notwithstanding anything else contained herein:

- (a) if no Trustees are appointed at the annual meeting of Unitholders and holders of Class A GP Units 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, before the first annual meeting or between annual meetings of the Unitholders and holders of Class A GP Units, appoint one or more additional Trustees for a term to expire (subject to further appointment) at the close of the next annual meeting of Unitholders and holders of Class A GP Units, but, except as expressly provided in this Section 8.2, the number of additional Trustees so appointed shall not at any time exceed one-third of the number of Trustees who held office at the date hereof (in the case of any appointment before the first annual meeting) or immediately at the expiration of the immediately preceding annual meeting of Unitholders and holders of Class A GP Units, as the case may be; and
- (c) in the event that three-quarters of the Trustees are not Resident Canadians and/or a majority of the Trustees are not independent of SIR Corp. within the meaning of Multilateral Instrument 52-110 made under the *Securities Act* (Ontario), then the Trustees then in office shall appoint such number of Resident Canadian Trustees and/or independent Trustees as may be necessary so that three-quarters of the Trustees are Resident Canadians and/or a majority of the Trustees are independent of SIR Corp. within the meaning of Multilateral Instrument 52-110 made under the *Securities Act* (Ontario).

Section 8.3 Consent to Act.

- (1) A person who is appointed a Trustee hereunder, other than the initial Trustees whose consent to act is given by their signatures hereto, shall not become a Trustee until such person has, either before or after such appointment, consented in writing to do so. Without limiting the form of such consent, the execution and delivery to the Fund of a consent substantially as follows shall satisfy such requirement:

“To: SIR Royalty Income Fund (the “Fund”)

And to: The Trustees thereof

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

Dated: _____

Signature:

Name: “

- (2) Upon the later of a person being appointed a Trustee hereunder and executing and delivering to the Fund a consent in writing as contemplated in Section 8.3(1), such person shall become a Trustee hereunder and shall be deemed to be a party (as a Trustee) to this Declaration of Trust, as amended from time to time. The rights of the Trustees to control and exclusively administer the Fund and to have the title to the Fund Assets drawn up in their names or in the name of any other successor and all other rights of the Trustees at law will 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 will immediately thereupon have all the rights, privileges, powers, authorities, obligations and immunities of a Trustee hereunder.

Section 8.4 Failure to Elect Minimum Number of Trustees.

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

Section 8.5 Ceasing to Hold Office.

- (1) A Trustee ceases to hold office when:
 - (a) he or she dies or resigns;
 - (b) he or she is removed in accordance with Section 8.6; or
 - (c) he or she ceases to be duly qualified to act as a Trustee as provided under Section 8.1.
- (2) A resignation of a Trustee becomes effective thirty (30) days after a written resignation is received by the Fund, or at the time specified in the resignation, whichever is later.
- (3) Upon the resignation or removal of any Trustee, or upon a Trustee otherwise ceasing to be a Trustee, the Trustee will cease to have the rights, privileges and powers of a Trustee hereunder and will cease to be a party (as a Trustee) to this Declaration of Trust; provided, however, that such Trustee will continue to be entitled to be paid any amounts owing by the Fund to the Trustee and to the benefits of the limitations of liability and the indemnity provided, including in Section 9.9. Upon the resignation or removal of any Trustee, or upon a Trustee otherwise ceasing to be a Trustee, the Trustee must (and failing which shall be deemed to have done so) execute and deliver such documents as the remaining Trustees may require for the conveyance of any Fund Assets held in that Trustee's name, if any, must account to the remaining Trustees as they may require for all property which that Trustee holds as Trustee, must resign from all representative or other positions held by such Trustee on behalf of the Fund, including as a director or officer of any person in which the Fund owns any securities (directly or indirectly), and will thereupon be discharged as Trustee.
- (4) Upon the incapacity or death of any Trustee, his or her legal representative must execute and deliver on his or her behalf such documents as the remaining Trustees may require under Section 8.5(3). In the event that a Trustee or his or her legal representatives, as applicable, are unable or unwilling to execute and deliver such required documents, each of the remaining Trustees is hereby appointed as the attorney of such Trustee for

the purposes of executing and delivering such required documents. This power of attorney granted to each of the remaining Trustees is intended to be a continuing power of attorney within the meaning of the *Substitute Decisions Act, 1992* (Ontario), exercisable during a Trustee's incapacity to manage property, or any similar power of attorney under equivalent legislation in any of the provinces or territories of Canada (a "CPOA"). The execution of this power of attorney will not terminate any CPOA granted by the Trustee previously and will not be terminated by the execution by the Trustee in the future of a CPOA, and the Trustee hereby agrees not to take any action in future which results in the termination of this power of attorney.

Section 8.6 Removal of Trustees.

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

Section 8.7 Filling Vacancies.

A quorum of Trustees may fill a vacancy among the Trustees, except a vacancy resulting (i) from an increase in the number of Trustees other than as provided in Section 8.2(b), or (ii) from a failure to elect the minimum number of Trustees fixed by this Declaration of Trust other than as provided in Section 8.4. If there is not a quorum of Trustees, or if there has been a failure to elect the minimum number of Trustees required by or pursuant to this Declaration of Trust other than as provided in Section 8.4, the Trustees then in office shall forthwith call a special meeting of Unitholders and holders of Class A GP Units to fill the vacancy and, if they fail to call a meeting or if there are no Trustees then in office, the meeting may be called by any Unitholder or holder of Class A GP Units. A Trustee appointed to fill a vacancy holds office, subject to Section 8.5, until the close of the next annual meeting of the Unitholders and the holders of Class A GP Units. For greater certainty, the Fund can only be terminated pursuant to Article 14 and shall not terminate if, at any time, there are no Trustees then in office.

Section 8.8 Validity of Acts.

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

ARTICLE 9 CONCERNING THE TRUSTEES

Section 9.1 Powers of the Trustees.

Subject to the terms and conditions of this Declaration of Trust, the Trustees are hereby vested with and shall have, without other or further authorization, continuing, full, absolute and exclusive power, control, and authority and discretion over, and management of, the Fund Assets and the affairs and undertaking of the Fund, to the same extent as would the sole legal and beneficial owner of such property, and may, in respect of the Fund Assets, exercise any and all rights, powers and privileges that could be exercised by a legal and beneficial owner thereof without the necessity of applying to any court for leave to do so. Without restricting or limiting the generality of the foregoing, such powers of the Trustees shall include the powers enumerated in the ensuing sections of this Article 9 and elsewhere in this Declaration of Trust and the Prospectus.

Section 9.2 Specific Powers and Authorities.

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

- (a) to supervise the activities and manage the investments and affairs of the Fund;
- (b) to maintain records and provide reports to Unitholders;
- (c) to open, operate and close accounts and other similar credit, deposit and banking arrangements and to negotiate and sign banking and financing contracts and agreements;
- (d) to obtain security, including encumbrances on assets, to secure the payment of monies owed to the Fund and the performance of all obligations in favour of the Fund, and to exercise all of the rights of the Fund, and to perform all of the obligations of the Fund, under such security;
- (e) 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 thereof 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;

- (f) to collect, sue for and receive all sums of money or other property or items that are believed due to the Fund;
- (g) to exercise and enforce any and all rights of the Fund;
- (h) to effect payment of distributions to the Unitholders as provided in Article 5;
- (i) to invest and/or lend funds of the Fund as provided in Article 4 and to supervise the administration of the SIR Loan;
- (j) to possess and exercise all the rights, powers and privileges pertaining to the ownership of all or any part of the Fund Assets, including Holdings Trust Units and Trust Notes and securities of SIR GP Inc. and the Partnership, to the same extent that any person 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;
- (k) to vote for the nominees of the Fund to serve as Holdings Trustees and directors of SIR GP (and to vote to remove any Holdings Trustees and to fill any vacancy in accordance with the Holdings Declaration of Trust);
- (l) where reasonably required, to engage, employ, contract with or retain on behalf of the Fund any persons as agents, representatives, employees or independent contractors (including, without limitation, investment advisors, registrars, underwriters, accountants (including SIR Corp.'s or any other person's or Unitholder's accountants), lawyers (including Sir Corp.'s or any other person's or Unitholder's lawyers), appraisers, brokers, consultants, technical advisors, depositaries, custodians, transfer agents or otherwise) in one or more capacities;
- (m) except as prohibited by law, pursuant to the Fund Administration Agreement or otherwise, to delegate from time to time to the Fund's officers, employees, consultants, agents and other persons the doing of such things and the exercise of such powers hereunder as the Trustees

may from time to time deem expedient, so long as any such delegation is not inconsistent with any of the provisions of this Declaration of Trust and subject at all times to the general control and supervision of the Trustees as provided for herein;

- (n) 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 Fund, the Fund Assets or the Fund'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;
- (o) to arrange for insurance contracts and policies insuring the Fund, the Trustees, the Fund Assets, the business of the Holdings Trust, the Partnership or SIR GP, any or all of the Trustees or the Unitholders, consultants, officers, employees, representatives or agents of the Fund or any person with whom the Fund has dealings in such amounts as the Trustees deem appropriate and which may cover any and all claims and liabilities of every nature arising by reason of holding or having held Units or Class A GP Units of the Partnership or of holding, being or having held any such office or position, including any and all claims and liabilities of any nature asserted by any person arising by reason of any action alleged to have been taken or omitted by the Fund or by the Trustees or Unitholders, including any action taken or omitted that may be determined to constitute negligence;
- (p) to cause legal title to any of the Fund Assets to be held by and/or in the name of a Trustee, or except as prohibited by law, by and/or in the name of the Fund or any other custodian or person, on such terms, in such manner, and with such powers in such person as the Trustees may determine, and with or without disclosure that the Fund or the Trustee is interested therein;
- (q) to issue Units (or rights, warrants, convertible securities, options or other securities) or to effect the payment of the redemption or repurchase price for the Units;
- (r) to establish places of business of the Fund;
- (s) to determine conclusively the allocation to capital, income or other appropriate accounts of all receipts, expenses and disbursements;

- (t) to execute, deliver, enter into and exercise the rights of and perform the obligations of the Fund under the Fund Administration Agreement, the SIR Loan Acquisition Agreement, the Exchange Agreement, the Underwriting Agreement and such other agreements as are contemplated by the Prospectus or the Offering or are ancillary thereto, and to do all such acts and things and execute all such agreements and instruments as are necessary to complete the Offering or as are contemplated by the Prospectus;
- (u) to execute, deliver, enter into and perform the obligations of the Fund under subordination and other banking arrangements involving persons in which the Fund has directly or indirectly invested (including without limitation the Holdings Trust, the Partnership and SIR GP), and to do all such acts and things and execute and deliver all such agreements and instruments as are necessary to effect such arrangements;
- (v) to use their reasonable efforts to seek to ensure that: (i) the Fund qualifies at all times as a **“mutual fund trust”** for purposes of the Tax Act; (ii) the Units do not constitute foreign property to Unitholders for the purposes of Part XI of the Tax Act;
- (w) in addition to the mandatory indemnification provided for in Section 2.7 and Section 9.9, to indemnify, or enter into agreements with respect to the indemnification of, any person with whom the Fund has dealings, including without limitation, the Trustees, any depository, registrar, transfer agent or escrow agent (including CDS and the Transfer Agent), to such extent as the Trustees shall determine;
- (x) without the approval or confirmation of Unitholders, to enact and from time to time amend or repeal binding by-laws not inconsistent with this Declaration of Trust containing provisions relating to the Fund, the Fund Assets and the conduct of the affairs of the Fund;
- (y) without limit as to amount, to issue any type of debt securities or convertible debt securities and to borrow money or incur any other form of indebtedness for the purpose of carrying out the purposes of the Fund or for payment of expenses incurred in connection with the Fund, and for such purposes may draw, make, execute and issue promissory notes and other negotiable and non-negotiable instruments or securities and evidences of indebtedness, secure the payment of sums so borrowed or indebtedness incurred and mortgage, pledge, assign or grant a security interest in any money owing to or other

property of the Fund or engage in any other means of financing the Fund;

- (z) to pay or satisfy out of the Fund Assets any debts of or claims against the Fund or the Fund Assets, and to incur and to pay out of the Fund Assets any charges or expenses (including those incurred by others prior to the creation of the Fund) that, in the opinion of the Trustees, are or were appropriate, necessary or desirable for the creation or the affairs of the Fund and that are for the account of the Fund;
- (aa) 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 Fund Assets, undertaking or income of the Fund, or imposed upon or against the Fund Assets in connection with the undertaking or income of the Fund, 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, allocations and determinations in respect of Net Income or Net Realized Capital Gains distributed to Unitholders in the year and any other matter as shall be permitted under the Tax Act and analogous provincial legislation, and to do all such other acts and things as may be deemed by the Trustees in their sole discretion to be necessary, desirable or convenient;
- (bb) to guarantee the payment or performance of any indebtedness, liability or obligation of the Holdings Trust, the Partnership, SIR GP or their respective affiliates (other than SIR Corp. or its subsidiaries other than the Partnership), and to mortgage, pledge, charge, grant a security interest in or otherwise create an encumbrance upon all or any part of the Fund Assets, including debt or equity securities issued by the Holdings Trust, the Partnership, SIR GP or their respective affiliates (other than SIR Corp. or its subsidiaries other than the Partnership), as the case may be, as security for such guarantee; and
- (cc) to do all such other acts and things and execute all such agreements and other instruments as are incidental to the foregoing, or as are necessary or desirable to give effect to the Offering and the transactions described or contemplated by the Prospectus, and to exercise all powers that are necessary or useful to carry on the purpose and activities of the Fund, to promote or advance any of the purposes or objectives for which the Fund is formed and to carry out the provisions of this Declaration of Trust whether or not herein specifically mentioned.

Section 9.3 Holdings Trust Units and Trust Notes and SIR GP Shares Held by the Fund.

- (1) Subject to the provisions hereof, Holdings Trust Units and Trust Notes and SIR GP common shares held from time to time by the Trustees as part of the Fund Assets may be voted by the Trustees on any matter upon which the holders of such securities or instruments are entitled to vote.
- (2) In addition to the restrictions contained in the second paragraph of Section 10.1, the Trustees must not, without the approval of the Unitholders and the Class A GP Units by Special Resolution, vote Holdings Trust Units, Series 1 Trust Notes or SIR GP common shares to authorize:
 - (a) any amalgamation or other merger of the Partnership with any entity, except in conjunction with an Internal Reorganization;
 - (b) any sale, lease or other disposition of all or substantially all of the direct or indirect assets of the Trust (except for greater certainty, Section 4.2 of the Holdings Declaration of Trust) or SIR GP, except in conjunction with an Internal Reorganization or a charge, pledge or lien contemplated by this Declaration of Trust or pursuant to any guarantee of any obligation of the Holdings Trust, the Partnership, or SIR GP Inc.;
 - (c) any material amendment to the Holdings Note Indenture, other than in contemplation of a further issue of Trust Notes of any series (which, for greater certainty, shall not include any waiver exercised pursuant to Section 9.12(e) of the Holdings Note Indenture, or any increase in the quantum of the Trust Notes or any other immaterial change made pursuant to Section 9.12 of the Holdings Note Indenture or otherwise); or
 - (d) any material amendment to the Holdings Declaration of Trust or the Limited Partnership Agreement which would reasonably be expected to be prejudicial to the Fund.
- (3) The Trustees shall have no power to sell or otherwise dispose of (but may grant security over) all or substantially all the Fund's common shares of SIR GP, its Holdings Trust Units or its Holdings Trust Notes (except pursuant to an *in specie* redemption under Section 6.5), or to sell all or substantially all of the Fund Assets (except pursuant to a redemption of Fund Units) or cause the Fund to sell all or substantially all of the Fund Assets, except with the approval of the Unitholders and the Class A GP Units by Special Resolution or except as part of an Internal Reorganization (or except as provided in Section 4.2).

Section 9.4 Banking.

The banking activities of the Fund, or any part thereof, including, but without restricting the generality of the foregoing: the operation of the Fund's accounts; the making, signing, drawing, accepting, endorsing, negotiating, lodging, depositing or transferring of any cheques, promissory notes, drafts, acceptances, bills of exchange and orders for the payment of money; the giving of receipts for orders relating to any property of the Fund; the execution of any agreement relating to any property of the Fund; 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 Fund's behalf to facilitate such banking activities; shall be transacted with such banks, trust companies, or other firms or corporations carrying on a banking or similar business as the Trustees may designate, appoint or authorize from time to time, and shall be transacted on the Fund's behalf by one or more officers of the Fund, the Holdings Trust, the Partnership or SIR GP or other persons (which may include Trustees) as the Trustees may designate, appoint or authorize from time to time.

Section 9.5 Standard of Care and Duties.

The Trustees shall be obliged to act honestly and in good faith with a view to the best interests of the Fund and to exercise that degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. A Trustee shall not be liable in carrying out his or her duties under this Declaration of Trust except in cases where the Trustee fails to act honestly and in good faith with a view to the best interests of the Fund 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*.

Section 9.6 No Bond or Securities; Other Activities.

Unless otherwise required by law, the Trustees shall not be required to give surety bond 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, business or affairs of the Fund.

Section 9.7 Fees and Expenses.

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

properly incurred by the Trustees on behalf of the Fund will be payable out of the Fund Assets.

Section 9.8 Limitations on Liability of Trustees.

- (1) Except for a breach of Section 9.5, none of the Trustees nor any officers of the Fund shall be liable to the Fund or to any Unitholder or former Unitholder (in each case whether registered or beneficial), or to any current or former holder of Class A GP Units (in each case whether registered or beneficial), 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 Fund incurred by reason of the sale of any security; for the loss or disposition of monies or securities; for any other action or failure to act including, without limitation, the failure to compel in any way any former or acting Trustee to redress any breach of trust; or for any failure by any affiliate of the Fund, the Holdings Trust, the Partnership, SIR GP, SIR Corp. or of any their respective affiliates, to perform obligations or pay monies owed to the Fund. If the Trustees have retained an appropriate expert or advisor (or other person whose profession lends credibility to a statement made by the professional person) with respect to any matter connected with their duties under this Declaration of Trust, the Trustees may in good faith act or refuse to act based on the advice of such expert or advisor or professional person and, notwithstanding any provision of this Declaration of Trust, including, without limitation, the standard of care, diligence and skill set out in this Declaration of Trust, the Trustees shall not be liable for any action or refusal to act in good faith based on the advice of any such expert or advisor or professional person which it is reasonable to conclude is within the expertise of such expert or advisor or professional person to give.
- (2) The Trustees and officers of the Fund in incurring any debts, liabilities or obligations, or taking or omitting any other actions for or in connection with the affairs of the Fund are, and shall conclusively deemed to be, acting for and on behalf of the Fund, and not in their own personal capacities. Except for a breach of Section 9.5, none of the Trustees nor any officer of the Fund shall be subject to any liability in their personal capacities for any debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses (including legal expenses) against or with respect to the Fund or in respect to the affairs of the Fund. Other than the Fund Assets, no property or assets of the Trustees, owned in their personal capacity or otherwise, will be subject to any levy, execution or other enforcement procedure with regard to any obligations of the Fund 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 successor, heir, executor, administrator or legal representative of the Trustees.

The Fund shall be solely liable therefor and resort shall be had solely to the Fund Assets for payment or performance thereof.

Section 9.9 Indemnification of Trustees.

- (1) Subject to (2) below, in addition to and without limiting any other protection hereunder or otherwise by law of each person who is, or shall have been, a Trustee, an officer of the Fund, or a trustee, officer or director (if any) of the Fund and/or any of the Holdings Trust, the Partnership, SIR GP or of any their respective affiliates (other than SIR Corp. or its subsidiaries other than the Partnership) (collectively, the "**Indemnified Persons**"), the Fund hereby agrees to indemnify, defend and save harmless the Indemnified Persons out of the Fund Assets, from and against any and all liabilities, losses, claims, damages, penalties, fines, actions, suits, demands, levies, assessments, costs, charges, expenses and disbursements (whether or not involving a third party claim), including legal expenses and including amounts paid to settle an action or satisfy a judgment (collectively, "**Damages**"), which may at any time be suffered by, imposed upon, incurred by or asserted against any of the Indemnified Persons (i) in respect of any civil, criminal or administrative action or proceeding to which the Indemnified Person is made a party by reason of being or having been a Trustee or officer of the Fund or, at the request of the Fund, a trustee, officer or director (if any) of the Holdings Trust, the Partnership, SIR GP or of any their respective affiliates (other than SIR Corp. or its subsidiaries other than the Partnership), and/or (ii) in respect of any and all taxes, penalties or interest in respect of unpaid taxes or other governmental charges imposed upon the Indemnified Person in consequence of his or her performance of his or her duties hereunder. An Indemnified Person shall not be entitled to satisfy any right of indemnity or reimbursement granted herein, or otherwise existing under law, except out of the Fund Assets, and no Unitholder or holder of Class A GP Units or other Trustee or officer shall be personally liable to any person with respect to any claim for such indemnity or reimbursement.
- (2) An Indemnified Person shall not be indemnified under (1) above in respect of unpaid taxes or other governmental charges or Damages 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 Fund. In the case of Damages incurred by an Indemnified Person that arise out of or as a result of proceedings by or on behalf of Unitholders or other proceedings against such Indemnified Person, such Indemnified Person shall not be indemnified under (1) above unless such Indemnified Person acted honestly and in good faith with a view to the best interests of the Fund and either (i) such Indemnified Person is not judged by a court or other competent authority to have committed any fault or omitted to do anything that the Indemnified Person

ought to have done or (ii) the Fund has the approval of a court to indemnify such Indemnified Person.

- (3) The Holdings Trust, the Partnership, SIR GP and SIR Corp. may also agree to indemnify the Trustees.

Section 9.10 Exculpatory Clauses in Instruments.

The Trustees intend to use reasonable means where practicable to inform all persons having dealings with the Fund of the limitation of liability set forth in Section 9.8 and Section 2.7, and intend to use reasonable means where practicable to cause to be inserted in any written agreement, undertaking or obligation made or issued on behalf of the Fund an appropriate statement of the disavowal and limitation of liability as set forth in Section 9.8 and Section 2.7, but the omission of such statement from any such instrument will not render any Trustee, any Unitholder, any holder of Class A GP Units or any officer of the Fund liable to any person, nor will any Trustee or any Unitholder, holder of Class A GP Units or any officer of the Fund be liable to any person for such omission. If, notwithstanding this provision, any Trustee, Unitholder, holder of Class A GP Units or officer of the Fund is held liable to any other person by reason of the omission of such statement from any such agreement, undertaking or obligation, such Trustee, Unitholder, holder of Class A GP Units or officer will be entitled to indemnity out of the Fund Assets to the full extent of such liability and the costs of any litigation or other proceedings in which such liability has been determined, including without limitation, the fees and disbursements of counsel.

Section 9.11 Conflicts of Interest.

- (1) A Trustee or an officer of the Fund who is a party to, or who is a trustee, director or officer of or has a material interest in any person who is a party to, a material contract or transaction or proposed material contract or transaction with the Fund shall disclose in writing to the Fund the nature and extent of such interest, and shall not vote on any resolution to approve the material contract or transaction, unless the material contract or transaction is one relating primarily to his or her remuneration as a Trustee or officer, one for indemnity or insurance, or one with the Holdings Trust, the Partnership or, SIR GP, and, for greater certainty, a Trustee complying with this Section 9.11 shall not be subject to any liability to the Fund or the Unitholders or the holders of Class A GP Units with respect to such contract or proposed material contract as aforesaid.
- (2) For the purposes hereof, a general notice to the Trustees by a Trustee or an officer of the Fund disclosing that he or she is a director or officer or an individual acting in a similar capacity of, or has a material interest in, any person and is to be regarded as interested in any material contract made or

any material transaction entered into with that person is a sufficient disclosure of interest in relation to any contract so made or transaction entered into.

- (3) Notwithstanding anything to the contrary contained herein, a Trustee or officer of the Fund, acting honestly and in good faith, is not accountable to the Fund or to the Unitholders or the holders of Class A GP Units for any profit or gain realized from any material contract or transaction, and such material contract or transaction will not be void or voidable and may not be set aside, if:
 - (a) the material contract or transaction was reasonable and fair to the Fund at the time it was approved or entered into;
 - (b) the material contract or transaction is confirmed or approved at a meeting of Unitholders and holders of Class A GP Units; and
 - (c) the nature and extent of the Trustee's or officer's interest in such material contract or transaction is disclosed in reasonable detail in the notice calling the meeting of Unitholders and holders of Class A GP Units.
- (4) Subject to (1) above, each Trustee, in his or her personal capacity or any other capacity, may buy, lend upon and deal in securities of the Fund and generally may contract and enter into any financial transactions with the Fund without being liable to account for any profit made thereby.

Section 9.12 Conditions Precedent.

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

Section 9.13 Execution of Instruments and Apparent Authority.

- (1) Subject to Section 16.8, any instrument executed in the name of the Fund or on behalf of the Fund by any one or more of the Trustees and/or officers of

the Fund shall constitute and shall be deemed to constitute a valid obligation of the Fund enforceable in accordance with its terms. In addition, the Trustees may from time to time direct the manner in which and the person or persons by whom any particular instrument or class of instruments may or shall be signed.

- (2) Any person dealing with the Fund in respect of any matters pertaining to the Fund Assets and any right, title or interest therein, or to the Fund or to the Units or the Class A GP Units, shall be entitled to rely on a certificate, statutory declaration or resolution executed or certified by a Trustee as to the capacity, power and authority of the Trustees, an officer, a consultant, advisor or agent of the Fund or any other person to act for and on behalf of and in the name of the Fund. No person dealing with a Trustee or any officer, consultant, advisor or agent of the Fund, shall be bound to see to the application of any funds or property passing into the hands or control of such Trustee, officer, consultant, advisor or agent of the Fund. The receipt of a Trustee or of authorized officers, consultants, advisors or agents of the Fund, for moneys or other consideration, shall be binding upon the Fund.

ARTICLE 10 AMENDMENTS AND MATTERS NOT REQUIRING UNITHOLDER APPROVAL

Section 10.1 Amendments.

The provisions of this Declaration of Trust may only be amended by the Trustees upon approval 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 Unitholders or the holders of Class A GP Units or any other person:

- (a) prior to Closing; or
- (b) at any time for the purpose of:
 - (i) ensuring continuing compliance and conformity of this Declaration of Trust with applicable laws, regulations, requirements or policies of any governmental authority having jurisdiction over the Trustees or the Fund or its subsidiary entities, or any marketplace;
 - (ii) providing additional protection, in the opinion of Counsel to the Trustees, for the Unitholders and/or the holders of Class A GP Units;

- (iii) removing any conflicts or inconsistencies in this Declaration of Trust or making minor changes or corrections that are, in the opinion of the Trustees, necessary or desirable and not prejudicial to the Unitholders and/or the holders of Class A GP Units;
- (iv) making amendments that, in the opinion of the Trustees, are necessary or desirable as a result of changes in taxation laws or policies of any governmental authority having jurisdiction over the Trustees or the Fund;
- (v) providing added benefits to Unitholders; or
- (vi) for the purpose of ensuring that the Fund continues to qualify as a “mutual fund trust” under the Tax Act.

For greater certainty, no amendment to this Declaration of Trust may be made by the Trustees, except with approval of the Unitholders and the Class A GP Units by Special Resolution, that would modify the voting rights of Unitholders or holders of Class A GP Units or (for greater certainty, except via the issuance of new Units or a subdivision thereof or distribution of Units) reduce the fractional undivided interest in the Fund Assets represented by any Unit.

Section 10.2 Notification of Amendment.

As soon as practicable after the making of any amendment pursuant to this Article 10, the Trustees will send written notification of the substance of such amendment to each Unitholder and to each holder of Class A GP Units.

Section 10.3 Protection for Holders of Class A GP Units.

Subject to section 10.4, no amendment may be made to this Declaration of Trust that would adversely affect the rights of holders of Class A GP Units to vote together with the Unitholders without the written consent of the holders of a majority of the Class A GP Units.

Section 10.4 Matter Not Requiring Unitholder Approval.

For greater certainty, the Trustees may cause or permit the Holdings Trust to issue additional Trust Notes or Holdings Trust Units without the consent, approval or ratification of the Unitholders, the holders of Class A GP Units or any other person.

ARTICLE 11 MEETINGS OF UNITHOLDERS

Section 11.1 Annual and Special Meetings of Unitholders.

Annual and special meetings of the Unitholders (together with the holders of Class A GP Units) may be called at a time and at a place in Canada set by the Trustees. The business transacted at annual meetings shall include the presentation of the audited financial statements of the Fund for the immediately preceding fiscal year, the appointment of the Trustees for the ensuing year in accordance with Article 8, the appointment of Auditors, and the transaction of such other business as the Unitholders (together with the holders of Class A GP Units) may be entitled to vote upon as herein provided or as may properly be brought before the meeting or as the Trustees may determine. Special meetings of the Unitholders (together with the holder of Class A GP Units) may be called at any time by the Trustees and shall be called by the Trustees upon a written request of one or more Unitholders or holders of Class A GP Units holding in the aggregate not less than 10% of the Units (together with the Class A GP Units) then outstanding, such request specifying in reasonable detail the business proposed to be transacted at the meeting. The chairperson of any annual or special meeting shall be the Chairman of the Trustees or any other Trustee or other person specified by a resolution of the Trustees or, in the absence of any such resolution, any person appointed as chairperson of the meeting by the Unitholders (together with the holders of Class A GP Units) present. The Trustees, the officers of the Fund, 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 the Unitholders (together with the holders of Class A GP Units) represented at the meeting may attend meetings of the Unitholders and the holders of Class A GP Units.

Section 11.2 Notice of Meetings.

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

or holder of Class A GP Units (or a duly appointed proxy of either) may waive any notice required to be given under the provisions of this Section 11.2, and such waiver, whether given before or after the meeting, shall cure any default in the giving of such notice.

Section 11.3 Quorum.

At any meeting of the Unitholders and holders of Class A GP Units, a quorum shall consist of one or more individuals present in person either holding personally or representing as proxies Voting Units not less in aggregate than 25% of the Voting Units outstanding entitled to vote at such meeting. In this Section 11.3, “**Voting Units**” means Units and Class A GP Units. In the event of such quorum not being present at the appointed place on the date for which the meeting is called within 30 minutes after the time fixed for the holding of such meeting, the meeting, if called by request of Unitholders or holders of Class A GP Units, shall be terminated (and not adjourned) and, if otherwise called, shall stand adjourned to such day being not less than 7 days later and to such place and time as may be appointed by the chairperson of the meeting and notified by news release of the Fund. If at such adjourned meeting a quorum as above defined is not present, the Unitholders and holders of Class A GP Units 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.

Section 11.4 Voting Rights of Unitholders and Holders of Class A GP Units.

Only Unitholders and holders of Class A GP Units of record shall be entitled to vote, and each Unit and Class A GP Unit shall entitle the holder or holders of that Unit or Class A GP Unit to one vote on a ballot vote at any meeting of Unitholders and holders of Class A GP Units. Voting shall, unless a ballot vote is demanded, be by a show of hands vote. A Unitholder or holder of Class A GP Units or proxyholder may demand a ballot vote either before or after any vote by show of hands. At any meeting of Unitholders and holders of Class A GP Units, any holder of Units or Class A GP Units entitled to vote at such meeting may vote by proxy and a proxy need not be a Unitholder, provided that, unless otherwise determined by the Trustees, no proxy shall be voted at any meeting unless it shall have been received by the Transfer Agent (or if none, the Fund) for verification at least 24 hours prior to the commencement of such meeting. When any Unit or Class A GP Unit is held jointly by several persons, any one of them may vote at any meeting in person or by proxy in respect of such Unit or Class A GP Unit, but if more than one of them shall be present at such meeting in person or by proxy they shall vote as one on the Units or and Class A GP Units jointly held by them. Notwithstanding the foregoing, the Trustees may establish rules for voting at a meeting of Unitholders and holders of Class A GP Units to be carried out by means of telephone, electronic or other communication facility. For purposes of determining the ownership of

record of Class A GP Units, the Fund may rely on notice from the Partnership to such effect.

Section 11.5 Resolutions Binding the Trustees.

Unitholders and holders of Class A GP Units shall be entitled to pass resolutions that will bind the Fund only with respect to the following matters:

- (a) the election or removal of a Trustee as provided in Article 8 (subject to the provisions of Section 8.2 and Section 8.7);
- (b) the appointment or removal of Auditors as provided in Article 17;
- (c) the appointment of an inspector as provided in Section 11.9;
- (d) amendments of this Declaration of Trust as provided in Section 10.1;
- (e) the termination of the Fund as provided in Section 14.2; and
- (f) subject to and as contemplated in Section 9.3, the exercise of certain voting rights attached to the securities of the Partnership, common shares of SIR GP, Trust Notes and Holdings Trust Units held directly or indirectly by the Fund or the sale of all or substantially all of the Fund Assets.

Except with respect to the matters set out in this Section 11.5, no action taken by the Unitholders and the holders of Class A GP Units or any resolution of the Unitholders and the holders of Class A GP Units at any meeting shall in any way bind the Fund or the Trustees. Any action taken or resolution passed in respect of any matter at a meeting of Unitholders and holders of Class A GP Units shall be by Special Resolution, except for the matters set out in subsections (a) and (b) above, which matters may be dealt with by a resolution passed by a majority of the votes cast at the meeting in person or by proxy or unless the contrary is otherwise expressly provided under any specific provision of this Declaration of Trust. Despite the foregoing, the Unitholders and the holders of Class A GP Units may ratify any acts of the Trustees or the Fund and may vote on such other business as the Trustees may determine or as may properly be brought before the Unitholders and the holders of Class A GP Units, including without limitation any other matters required by securities legislation, stock exchange or other marketplace rules or other laws or regulations to be submitted to Unitholders and/or holders of Class A GP Units for their approval. In all cases (except as expressly otherwise required by this Declaration of Trust or by securities legislation, stock exchange or other marketplace rules or other laws or regulations), Units and Class A GP Units shall be voted together.

Section 11.6 Meaning of “Special Resolution”.

The expression “**Special Resolution**” when used in this Declaration of Trust means, subject to Section 11.10, a resolution proposed to be passed as a special resolution at a meeting of Unitholders and holders of Class A GP Units (including an adjourned meeting) duly convened for that purpose and held in accordance with the provisions of this Article at which a quorum is present, which resolution is passed by a majority of not less than 66 2/3% of the votes cast, either in person or by proxy, by holders of the Units and Class A GP Units represented at the meeting.

Section 11.7 Meaning of “Outstanding”.

Every Unit issued, certified and delivered hereunder shall be deemed to be outstanding until it shall be cancelled or delivered to the Trustees or Transfer Agent for cancellation, provided that when a new certificate has been issued in substitution for a Unit Certificate which has been lost, stolen, mutilated or destroyed, only the later of such Unit Certificates shall be counted for the purposes of determining the number of Units outstanding.

Section 11.8 Record Date for Voting.

For the purpose of determining the persons who are entitled to receive notice of and vote or act at any meeting or any adjournment thereof or for the purpose of any other action, the Trustees may fix a date as a record date for the determination of Unitholders entitled to receive notice of or to vote at such meeting or any adjournment thereof or to be treated as Unitholders of record for purposes of such other action, and any Unitholder who was a Unitholder at the time so fixed shall be entitled to receive notice of and vote at such meeting or any adjournment thereof or to be treated as Unitholders for purposes of such other action even though the Unitholder has since that time disposed of his or her Units, and no Unitholder becoming such after that time shall be so entitled to vote at such meeting or any adjournment thereof or to be treated as Unitholders for purposes of such other action. In the event that the Trustees do not fix a record date for any meeting of Unitholders and holders of Class A GP Units, the record date for receiving notice of and voting at such meeting shall be the date upon which notice of the meeting is given as provided under Section 11.2. This Section 11.8 is subject to Section 6.2(3). Class A GP Units shall be treated similarly to Units.

Section 11.9 Appointment of Inspector.

The Trustees shall call a meeting of Unitholders and holders of Class A GP Units upon the written request of Unitholders and/or holders of Class A GP Units holding in the aggregate not less than 25% of the Units and Class A GP Units then outstanding for the purpose of considering the appointment of an inspector to investigate the performance by the Trustees of their responsibilities and duties in respect of the Fund. An inspector may be appointed for such purpose, at the expense of the Fund, at such meeting by a resolution approved by a majority of the votes cast

at the meeting. Any such inspector shall on reasonable notice have reasonable access during normal business hours to (i) all books, records and accounts of the Fund and (to the extent reasonably possible) its affiliates (other than SIR Corp. and its subsidiaries), (ii) the Trustees, directors, officers and senior management of the Fund and (to the extent reasonably possible) its affiliates (other than SIR Corp. and its subsidiaries) and (iii) such financial and operating data and other information with respect to the Fund and (to the extent reasonably possible) its affiliates (other than SIR Corp. and its subsidiaries) as the inspector may reasonably request.

Section 11.10 Resolutions in Writing.

Notwithstanding any other provision of this Declaration of Trust, a resolution in writing executed by Unitholders and holders of Class A GP Units holding not less than 66 2/3% of the outstanding Units (taken together with the Class A GP Units) entitled to be voted on such resolution at any time shall be as valid and binding for all purposes of this Declaration of Trust as if such Unitholders had exercised at that time all of the voting rights to which they were then entitled under Section 11.5 or Section 11.6 in favour of such resolution at a meeting of Unitholders and holders of Class A GP Units duly called for the purpose.

Section 11.11 Binding Effect of Resolutions.

Every resolution passed in accordance with the provisions of this Declaration of Trust at a meeting of Unitholders will be binding upon all of the Unitholders, whether present at or absent from such meeting, and each and every Unitholder will be bound to give effect accordingly to every such resolution.

ARTICLE 12

CERTIFICATES AND REGISTRATION OF UNITS

Section 12.1 Nature of Units.

The provisions of this Article 12 shall not in any way alter the nature of the Units or the relationship of a Unitholder to the Trustees or the relationship of one Unitholder to another, but are intended only to facilitate the issuance of certificates evidencing the ownership of Units if desirable to issue them to Unitholders and the recording of all transactions in respect of Units and Unit Certificates whether by the Fund, securities dealers, stock exchanges, transfer agents, registrars or other persons.

Section 12.2 Book-Entry System.

- (1) Subject to Section 12.5 and Section 12.7, registration of interests in and transfers of the Units will be made only through the Book-Entry System. On the Closing Date and subject to Section 12.5, on any other date upon which

Units will be issued, the Fund will deliver to CDS one or more Unit Certificates evidencing the aggregate number of Units subscribed for, registered in the name of CDS, or as CDS may otherwise direct (each, a "**Global Unit Certificate**"). Beneficial interests in Units must be purchased, transferred and surrendered for repurchase or redemption through a CDS Participant. All rights of a Beneficial Unitholder of Units must be exercised through, and all payments or other property to which such Beneficial Unitholder is entitled will be made or delivered by, CDS or the CDS Participant through which the Beneficial Unitholder holds such Units. Upon purchase of any Units, the Beneficial Unitholder will receive only the customary confirmation, and no Beneficial Unitholder will receive definitive certificate(s) representing such Beneficial Unitholder's interest therein except as provided in 12.5.

- (2) No Beneficial Unitholder of Units represented by a Global Unit Certificate will be entitled to a certificate or other instrument from the Fund or CDS evidencing that Beneficial Unitholder's ownership thereof, except as provided in Section 12.5.
- (3) Unless and until definitive certificates have been issued to the Beneficial Unitholder pursuant to Section 12.5:
 - (a) All references herein to actions by, notices given to or by or payments made to Unitholders shall refer to actions taken by, or notices given to or by or payments made to CDS, where applicable, upon instruction from the CDS Participants;
 - (b) For the purposes of any provision hereof requiring or permitting actions with the consent of or at the direction of Unitholders evidencing a specified percentage of the aggregate Units outstanding, such direction or consent may be given by Beneficial Unitholders acting through CDS and the CDS Participants owning Units evidencing the requisite percentage of the Units;
 - (c) The rights of a Beneficial Unitholder shall be exercised only through CDS and the CDS Participants and shall be limited to those established by law and agreements between such Beneficial Unitholders and CDS and/or the CDS Participants or upon instruction from the CDS Participants; and
 - (d) Each of the Transfer Agent and the Trustees may deal with CDS for all purposes (including the making of distributions) as the sole holder of the Global Unit Certificate(s) and authorized representative of the respective Beneficial Unitholders and such dealing with CDS shall

constitute satisfaction or performance, as applicable, towards their respective obligations hereunder.

- (e) A Beneficial Unitholder shall have no direct rights as against the Fund or the Trustees, who may treat CDS as the sole Unitholder.

Section 12.3 Notice to Clearing Agency.

Whenever a notice of other communication is required to be provided to Unitholders, unless and until definitive certificate(s) have been issued to such Unitholders pursuant to Section 12.5, the Trustees and the Transfer Agent shall provide all such notices and communications to CDS and CDS shall deliver or cause to be delivered such notices and communications to the owners of such Units in accordance with the Securities Act (Ontario) and other applicable securities laws (including rules and regulations thereunder). For greater certainty, copies of all notices and communications to Unitholders shall also be sent contemporaneously to holders of Class A GP Units.

Section 12.4 Liability.

The Fund, the Trustees and the Transfer Agent will not have any liability for:

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

Section 12.5 Unit Certificates.

- (1) If CDS advises the Fund that it is no longer willing or able to discharge properly its responsibilities as depository with respect to the Units and the Fund is unable to locate a qualified successor, or the Fund advises CDS in writing that it has elected to terminate the Book-Entry System for the Units, the Trustees shall so notify CDS and request that CDS notify all Beneficial Unitholders of the occurrence of any such event and of the availability to Beneficial Unitholders of definitive unit certificate(s). As soon as is reasonably practicable thereafter, upon the surrender by CDS to the Trustees of the Global Unit Certificate(s), the Fund shall execute and the Transfer Agent shall certify and deliver definitive Unit Certificates, register such certificates in the names of the Beneficial Unitholders (or in such names as the Beneficial Unitholders may instruct) and deliver such certificates in accordance with the instructions of the Beneficial Unitholders and cause the

names of such Beneficial Unitholders (or such other persons as the Beneficial Unitholders have instructed) to be entered on the Register. Failing instructions from the Beneficial Unitholder, Units will be registered in the name of the CDS Participant holding such Units on behalf of the Beneficial Unitholder. Neither the Fund nor the Trustees shall be liable for any delay in delivery of such instructions. Upon the issuance of Unit Certificate(s), the Trustees and the Transfer Agent shall recognize the registered holders of the Unit Certificate(s) as holders of Units.

- (2) Unit Certificates shall, subject to the provisions hereof, be in such form as is authorized from time to time by the Trustees.
- (3) If issued, Unit Certificates are issuable only in fully registered form.
- (4) The definitive form of the Unit Certificates shall:
 - (a) be in the English language (or in both the English or French language);
 - (b) be dated as of the date of issue thereof;
 - (c) contain the CUSIP number for the Units; and
 - (d) contain such distinguishing letters and numbers as the Trustees shall prescribe.
- (5) In the event that the form of Unit Certificate is translated into the French language and any provision of Unit Certificates in the French language 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.
- (6) Each Unit Certificate shall be signed by one or more Trustees on behalf of the Trustees and the Transfer Agent of such Units. The signature of any of the Trustees required to appear on such certificate may be printed, lithographed or otherwise mechanically reproduced thereon and, in such event, certificates so signed are as valid as if they had been signed manually.
- (7) Notwithstanding that any person signing on behalf of the Fund (including without limitation any officer of the Fund or any Trustee) whose signature, either manual or in facsimile, may appear on the Unit Certificates is no longer, at the date of this Declaration of Trust or at the date of the Unit Certificates or at the date of the certification and delivery thereof, the holder of the office indicated, any such Unit Certificates shall be valid and binding upon the Fund and entitled to the benefits of this Declaration of Trust.

Section 12.6 Contents of Unit Certificates.

- (1) Until otherwise determined by the Trustees, each Unit Certificate shall legibly set forth on the face thereof, inter alia, the following:
 - (a) the name of the Fund and the words "A trust governed under the laws of the Province of Ontario by an Amended and Restated Declaration of Trust dated October 12, 2004, as further amended or amended and restated", or words of like effect;
 - (b) the name of the person to whom the Unit Certificate is issued as Unitholder;
 - (c) the number of Units represented thereby, and that the Units represented thereby are fully paid;
 - (d) that the Units represented thereby are transferable;
 - (e) "The Units represented by this certificate are issued upon the terms and subject to the conditions of the Amended and Restated Declaration of Trust, which Declaration of Trust is binding upon all holders of Units and, by acceptance of this certificate, the holder assents to the terms and conditions of the Declaration of Trust. A copy of the Amended and Restated Declaration of Trust pursuant to which this certificate and the Units represented hereby are issued may be obtained by a Unitholder on demand and without fee from the head office of the Fund", or words of like effect.
 - (f) "For information as to personal liability of a Unitholder, see the reverse side of this certificate", or words of like effect.

- (2) Until otherwise determined by the Trustees, each such certificate shall legibly set forth on the face or the reverse side thereof, inter alia, the following:
 - (a) "The Amended and Restated Declaration of Trust provides that no Unitholder shall be subject to any personal liability whatsoever, in tort, contract or otherwise, to any person in connection with the assets of the Fund or the obligations or the affairs of the Fund, and all such persons shall look solely to the assets of the Fund for satisfaction of claims of any nature arising out of or in connection therewith, and the assets of the Fund only shall be subject to levy or execution. The liability of the trustees is also limited", or words of like effect; and

- (b) appropriate forms of notice of exercise of the right of redemption and of powers of attorney for transferring Units (which may request the jurisdiction of residence of the beneficial transferees).
- (3) The Unit Certificates may be engraved, printed or lithographed, or partly in one form and partly in another, as the Trustees may determine.
- (4) Notwithstanding that any person signing on behalf of the Fund (including without limitation any officer of the Fund or any Trustee) whose signature, either manual or in facsimile, may appear on the Unit Certificates is no longer, at the date of this Declaration of Trust or at the date of the Unit Certificates or at the date of the certification and delivery thereof, the holder of the office indicated, any such Unit Certificates shall be valid and binding upon the Fund and entitled to the benefits of this Declaration of Trust.

Section 12.7 Register of Unitholders.

A register of holders of Units (the "**Register**") shall be kept on behalf of the Fund which shall contain the names and addresses of the holders of Units, the respective numbers of Units held by them, the certificate numbers of certificates, if any, representing such Units, and a record of all transfers and redemptions thereof. This Register shall also contain the names and addresses of the holders of Class A GP Units, the respective number of Class A GP Units held by them, the certificate numbers of certificates, if any, representing such Class A GP Units, and the record of all transfers and redemptions thereof. For purposes of determining such information, the Fund may rely on notice from the Partnership to such effect. Registers shall be maintained at such office or offices of the Transfer Agent as the Trustees may from time to time designate. Only Unitholders whose Units are so recorded on the Register shall be entitled to receive distributions or to exercise or enjoy the rights of Unitholders hereunder. The Trustees shall have the right to treat the person registered as a Unitholder on the Register as the owner of such Units for all purposes, including, without limitation, payment of any distribution, giving notice to Unitholders and determining the right to attend and vote at meetings of Unitholders (and holders of Class A GP Units). The Trustees shall not be bound to recognize any transfer or attempted transfer, pledge or other disposition of a Unit, or any equitable or other claim with respect thereto, whether or not the Trustees shall have actual or other notice thereof, until such Unit(s) shall have been transferred on the Register as herein provided. Notwithstanding the foregoing, in the event Units are issued in the Book-Entry System, the provisions of Section 12.2 and Section 12.3 shall apply in respect thereof.

Section 12.8 Transfer Agents and Registrars.

The Trustees shall enter into a registrar and transfer agency agreement with the Transfer Agent according to which the Transfer Agent shall agree to act as

transfer agent and registrar for the Units and the Trustees may provide for the transfer of Units in one or more places within or outside Canada (provided that if such appointments are made, there shall be a transfer agent and registrar within the Province of Ontario). Such Transfer Agent shall perform those functions and duties usually performed by transfer agents and registrars of shares of corporations having share capital, including maintaining the Register and all other necessary or appropriate books and records (which may be kept on a computer or similar device) for recording original issues and registering and transferring and redeeming the Units, and shall to the extent practicable monitor the jurisdiction of residence of the beneficial owners of Units as set out in Section 13.1. In the event that the agreement with the Transfer Agent is terminated in accordance with its terms, the Trustees may appoint one or more chartered banks or banking institutions, trust companies or other persons to act as registrar and transfer agent upon terms satisfactory to the Trustees. In the case of an original issue of Units, the Transfer Agent may rely and act upon the written instruction of the Trustees without inquiry into the receipt by the Fund of, or the sufficiency of, the consideration for such original issue. The Trustees shall cause similar registers to be created and maintained by or on behalf of the Fund for other securities issued by the Fund, where appropriate. The Trustees shall have no liability for any actions of the Transfer Agent and the Trustees, in relying in good faith upon the Transfer Agent, shall be deemed to have complied with the obligations under Section 9.5.

Section 12.9 Lost Certificates.

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

ARTICLE 13 OWNERSHIP AND TRANSFER OF UNITS

Section 13.1 Limitation of Non-Resident Ownership.

At no time may Non-residents be the beneficial owners of more than 50% of the Units in the aggregate. The Trustees may require a declaration as to the jurisdictions in which a beneficial owner of Units is resident and if a partnership as to its status as a Canadian partnership. If the Trustees become aware that the

beneficial owners of 40% of the Units then outstanding are, or may be, Non-residents, or that such a situation is imminent, the Trustees may direct the Transfer Agent or the Fund to make a public announcement thereof and shall not accept a subscription for Units from or issue or register a transfer of Units to a person unless that 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, at any time, that more than 40% of the Units are beneficially held by Non-residents, the Trustees may direct the Transfer Agent or the Fund to send a notice to Non-resident beneficial owners of Units, chosen in inverse order to the order of acquisition or registration or in such other manner as the Trustees may in their discretion consider equitable or practicable, requiring such Non-resident owners of Units to sell the beneficial interest in their Units or a portion thereof to persons who are not Non-residents within a specified period of not less than 60 days. If a beneficial owner of Units receiving such notice has not sold the specified number of Units or provided the Trustees with satisfactory evidence that the beneficial owner of the applicable Units is not a Non-resident within such period, the Trustees may, on behalf of such beneficial owner of Units, cause the sale of such Units and, in the interim, shall suspend the voting and distribution rights attaching to such Units. Upon such sale, the affected beneficial owner of Units shall cease to be the beneficial owner of such Units and his or her rights shall be limited to receiving the net proceeds of such sale upon surrender of the certificates, if any, representing such Units. The Trustees shall have no liability for the amount received provided they act in accordance with Section 9.5. Subject to Section 9.5, unless and until the Trustees shall have been required to do so under the terms hereof, neither the Trustees nor the Transfer Agent shall be bound to do or take any proceeding or action with respect to this Section 13.1 by virtue of the powers conferred on them hereby. The Trustees shall not be deemed to have notice of any violation of this Section 13.1 unless and until they have been given written notice of such violation, and shall not be required to act as required by this Declaration of Trust unless an indemnity is provided. The Trustees shall not be required to actively monitor the Non-resident holdings of the Fund. It is acknowledged that the Trustees cannot readily monitor the Non-resident beneficial holders of the Units given that the Units are registered in the name of CDS. The Trustees shall not be liable for any violation of the Non-resident ownership restrictions which may occur during the term of the Fund. In addition, registered Unitholders shall be obliged to co-operate upon request in dealing with Beneficial Unitholders for whom they hold title in connection with Article 13.

Section 13.2 Transfer of Units.

- (1) Units shall be, for all purposes of the Fund and this Declaration of Trust, personal and moveable property, and shall, subject to Section 13.1, be transferable at any time and from time to time. Transfers shall be recorded on

the Register and shall only become effective when so recorded. If Units are issued in the Book-Entry System, the provisions of Section 12.2 shall apply.

- (2) No transfer of a Unit shall be recognized unless such transfer is of a whole Unit, unless otherwise determined by the Trustees.
- (3) Subject to the provisions of this Article 13, Units shall be transferable on the Register only by the Unitholders of record thereof or their executors, administrators or other legal representatives or by their agents or attorneys duly authorized in writing, and only upon delivery to the Fund or to the Transfer Agent of the Unit Certificate therefor, properly endorsed or accompanied by a duly executed instrument of transfer or power of attorney and accompanied by all necessary transfer or other taxes imposed by law that are required to be collected and remitted to applicable authorities by the Fund, the Trustees or the Transfer Agent, if any, together with such evidence of the genuineness of such endorsement, execution and authorization and other matters that may reasonably be required by the Trustees or the Transfer Agent. Upon such delivery the transfer shall be recorded on the Register and a new Unit Certificate for the Units transferred shall be issued to the transferee and a new Unit Certificate for the balance of Units not transferred shall be issued to the transferor.
- (4) Subject to the provisions of this Article 13, any person becoming entitled to any Units as a consequence of the death, bankruptcy or incompetence of any Unitholder, or otherwise by operation of law, shall be recorded as the holder of such Units and shall receive a new Unit Certificate therefor only upon production of evidence satisfactory to the Trustees or the Transfer Agent and delivery of the existing Unit Certificate to the Trustees or the Transfer Agent, but until such record is made the Unitholder of record shall continue to be and be deemed to be the holder of such Units for all purposes whether or not the Fund, the Trustees or the Transfer Agent shall have actual or other notice of such death or other event.
- (5) Unit Certificates representing any number of Units may be exchanged without charge for Unit Certificates representing an equivalent number of Units in the aggregate. Any exchange of Unit Certificates may be made at the offices of the Fund or the Transfer Agent where the Register is maintained pursuant to the provisions of this Article 13. Any Unit Certificates tendered for exchange shall be surrendered to the Trustees or Transfer Agent and then shall be cancelled.

Section 13.3 Units Held Jointly or in a Fiduciary Capacity.

Except as herein provided, the Trustees may treat two or more persons holding any Units as joint owners of the entire interest therein, and no entry shall be

made in the Register or on any certificate that any person is in any manner entitled to any future, limited or contingent interest in any Unit; provided, however, that any person recorded as a Unitholder may, subject to the provisions herein contained, be described in the Register or on any certificate as a fiduciary of any kind and any customary words may be added to the description of the holder to identify the nature of such fiduciary relationship, but as set forth in Section 13.4 the same shall not bind the Fund, the Trustees or the Transfer Agent.

Section 13.4 Performance of Trust.

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

Section 13.5 Death or Disability of a Unitholder.

The death or disability of a Unitholder during the continuance of the Fund shall not terminate the Fund or any of the mutual or respective rights and obligations created by or arising under this Declaration of Trust nor give such Unitholder's personal representatives a right to an accounting or to take any action in court or otherwise against other Unitholders or the Trustees or the Fund Assets. The death of a Unitholder shall merely entitle the personal representatives of the deceased Unitholder to demand and subject to Section 12.2, receive pursuant to the provisions hereof, a new certificate for Units in place of the certificate held by the deceased Unitholder, if any, and upon the acceptance thereof such personal representatives shall succeed to all rights of the deceased Unitholder under this Declaration of Trust.

Section 13.6 Offer for Units.

(1) In this Section 13.6:

- (a) **"affiliate"** and **"associate"** shall have the respective meanings given to such terms in the *Securities Act* (Ontario), as constituted on the date hereof;
- (b) **"Dissenting Unitholder"** means a Unitholder to whom an Offer is made who does not accept the Offer in respect of any portion of the Units registered in its name, and includes any person who subsequently acquires a Unit that is the subject of the Offer;

- (c) **“Offer”** means an offer made to Unitholders to acquire directly or indirectly all of the issued and outstanding Units (including any Units issuable upon the exchange of Class A GP Units) where, as of the date of the offer to acquire, the Units that are the subject of the offer to acquire, together with the Offeror’s Units, constitute in the aggregate 20% or more of all outstanding Units;
 - (d) **“offer to acquire”** includes an acceptance of an offer to sell;
 - (e) **“Offeror”** means a person, or two or more persons acting jointly or in concert, who make an Offer;
 - (f) **“Offeror’s Notice”** means the notice described in Section 13.6(3); and
 - (g) **“Offeror’s Units”** means Units beneficially owned, or over which control or direction is exercised, on the date of an Offer by the Offeror, any affiliate or associate of the Offeror or any person or company acting jointly or in concert with the Offeror.
- (2) If an Offer is made and, by such Offer, the Offeror agrees to be bound by the provisions of this Article 13, and:
- (a) within 60 days after the date the Offer is completed, the Offer is accepted by Unitholders in respect of at least 90% of the Units (on a fully-diluted basis, including any Units issuable upon the exchange of Class A GP Units pursuant to the Exchange Agreement), other than the Offeror’s Units; and
 - (b) the Offeror has taken up and paid for the Units of the Unitholders who accepted the Offer;

then the Offeror is entitled to acquire, and the Dissenting Unitholders are required to sell to the Offeror, the Units held by the Dissenting Unitholders for the same consideration per Unit paid under the Offer; provided that the Offeror complies with Section 13.6(3) and Section 13.6(5). In such circumstances, the Offeror shall also have the right to acquire (and shall if it exercises its rights hereunder to acquire Units also acquire) from SIR Corp. (or its subsidiaries) all of the Partnership Units (other than any Class C GP Units) owned by it for, in the case of Class A GP Units, the price per Class A GP Unit that represents the number of Units which are issuable upon the exercise of the Class A GP Unit multiplied by the price per Unit under the Offer, on the same basis as provided hereunder in respect of Units, *mutatis mutandis*. The balance (after “converting” any applicable Class B GP Units) of SIR Corp.’s (or its subsidiaries’) Class B GP Units and Ordinary GP Units shall in such circumstances be transferred for \$60.00 in aggregate.

- (3) Where an Offeror is entitled to acquire Units held by a Dissenting Unitholder pursuant to Section 13.6(2), and the Offeror wishes to exercise such right, the Offeror shall send by registered mail before the date that is 60 days after the date of termination of the Offer a notice (the “Offeror’s Notice”) to each Dissenting Unitholder stating that:
 - (a) Unitholders holding at least 90% of the Units (on a fully-diluted basis, including any Units issuable upon the exchange of Class A GP Units pursuant to the Exchange Agreement), other than the Offeror’s Units, have accepted the Offer;
 - (b) the Offeror has taken up and paid for the Units of the Unitholders who accepted the Offer;
 - (c) a Dissenting Unitholder must transfer his, her or its respective Units to the Offeror on the terms on which the Offeror acquired the Units of the Unitholders who accepted the Offer within 21 days after the date of the sending of the Offeror’s Notice; and
 - (d) Dissenting Unitholders must send their respective Unit Certificate(s) to the Fund, duly endorsed for transfer, within 21 days after the date of the sending of the Offeror’s Notice.
- (4) A Dissenting Unitholder to whom an Offeror’s Notice is sent pursuant to Section 13.6(3), shall, within 21 days after the sending of the Offeror’s Notice, send his, her or its Unit Certificate(s) to the Fund, duly endorsed for transfer.
- (5) Within 21 days after the Offeror sends an Offeror’s Notice pursuant to Section 13.6(3), the Offeror shall pay or transfer to the Trustees, or to such other person as the Trustees may direct, the cash or other consideration that the Offeror would have had to pay to the Dissenting Unitholders had they accepted the Offer in respect of the Units which they continue to hold.
- (6) The Trustees, or the person directed by the Trustees, shall hold in trust for the Dissenting Unitholders the cash or other consideration received under Section 13.6(5), but such cash or other consideration shall not form any part of the Fund Assets. The Trustees, or such persons, shall deposit such cash in a separate account in a Canadian chartered bank, and shall place such other consideration in the custody of a Canadian chartered bank or similar institution, for safekeeping.
- (7) Within 30 days after the date of the sending of an Offeror’s Notice pursuant to Section 13.6(3), the Trustees, if the Offeror has complied with Section 13.6(5), shall:

- (a) do or cause to be done all acts and things and execute and cause to be executed all instruments as in the Trustees' opinion may be necessary or desirable to cause the transfer of the Units of the Dissenting Unitholders to the Offeror;
- (b) send or cause to be sent to each Dissenting Unitholder who has complied with Section 13.6(4) the consideration to which such Dissenting Unitholder is entitled under this Section 13.6; and
- (c) send or cause to be sent to each Dissenting Unitholder who has not complied with Section 13.6(4) a notice stating that:
 - (i) his, her or its Units have been transferred to the Offeror;
 - (ii) the Trustees or some other person designated in such notice are holding in trust the consideration for such Units; and
 - (iii) the Trustees, or such other person, will send the consideration to such Dissenting Unitholder as soon as practicable after receiving such Dissenting Unitholder's Unit Certificate(s) or such other documents as the Trustees or such other person may require in lieu thereof,

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

- (8) Subject to applicable law, an Offeror cannot make an Offer for Units unless, concurrent with the communication of the Offer to any Unitholder, a copy of the Offer is provided to the Fund.
- (9) In the event of a merger, plan of arrangement, reorganization or business combination involving all or substantially all of the Partnership Units, all or substantially all of the assets of the Partnership, all or substantially all of the direct or indirect assets of the Fund, or all or substantially all of the securities of the Holding Trust that is completed which results in the redemption or transfer to a purchaser of all outstanding Units and which is approved by a Special Resolution, the right of the Offeror set out in the last sentence of Section 13.6(2) shall also be available to the Fund or such purchaser in respect of the Partnership Units (other than the Class C GP Units) owned by SIR Corp., or its subsidiaries, *mutatis mutandis*.

ARTICLE 14 TERMINATION

Section 14.1 Term of Fund.

Subject to the other provisions of this Declaration of Trust, the Fund shall commence on the date of the Original Declaration and shall continue until the Fund is terminated in accordance with the provisions hereof.

Section 14.2 Termination with the Approval of Unitholders.

The Unitholders (together with the holders of the Class A GP Units) may vote by Special Resolution to terminate the Fund at any meeting of Unitholders and holders of the Class A GP Units duly called by the Trustees for the purpose of considering termination of the Fund, following which the Trustees shall commence to wind-up the affairs of the Fund. Such Special Resolution may contain such directions to the Trustees as the Unitholders and the holders of the Class A GP Units determine, including a direction to distribute Holdings Trust Units and Trust Notes *in specie*, subject to compliance with any securities or other laws applicable to such distributions.

Section 14.3 Procedure Upon Termination.

Following a Special Resolution by the Unitholders and the holders of the Class A GP Units to terminate the Fund, the Trustees shall give notice thereof to the Unitholders and holders of the Class A GP Units, which notice shall designate the time or times at which Unitholders shall surrender their Units for cancellation and the date at which the Register shall be closed.

Section 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 Fund, the Trustees shall undertake no activities with respect to the Fund except for the purpose of winding-up the affairs of the Fund 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.

Section 14.5 Sale of Investments.

Following a Special Resolution by the Unitholders and holders of the Class A GP Units to terminate the Fund, the Trustees shall proceed to wind-up the affairs of the Fund as soon as may be reasonably practicable, and for such purpose may, subject to any direction to the contrary in respect of a termination authorized under Section 14.2, cause the Fund to fulfil or discharge the contracts of the Fund, perform or cause the Auditor to perform any final audit of the Fund Assets, cause the Fund to collect its assets, sell, convey, assign, exchange, transfer or otherwise dispose of all or any part of the remaining Fund Assets to one or more persons in one transaction or a series of transactions at public or private sale for consideration which may

consist in whole or in part of cash, securities or other property of any kind, discharge or pay its liabilities, and do all other acts appropriate to liquidate the Fund, and , whenever reasonable to do so, shall in all respects act in accordance with the directions, if any, of the Unitholders and holders of the Class A GP Units (given in respect of a termination authorized under Section 14.2), subject to compliance with applicable laws.

Section 14.6 Distribution of Proceeds or Assets.

After causing the Fund to pay, retire or discharge or make provision for the payment, retirement or discharge of all known liabilities and obligations of the Fund and to provide 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 its assets, together with any cash forming part of the assets of the Fund, among the Unitholders in accordance with their *pro rata* interests. If the Fund is unable to sell all or any of the assets of the Fund by the date set for termination, the Trustees may, subject to obtaining all necessary regulatory approvals and subject to Section 6.5(5), distribute the remaining assets directly to the Unitholders in accordance with their *pro rata* interests. Despite the foregoing, in the event that the Fund has granted security on any of its assets (including, if applicable, the Trust Units and/or Trust Notes), then, in the event of *in specie* distributions, such assets may be distributed directly or indirectly (including via another entity) in such manner as is considered appropriate by the Trustees so as to preserve such security interest while giving Unitholders, directly or indirectly, the *pro rata* interests they are entitled to. The Trustees shall have no liability to the Fund or any Unitholder for any amounts received by the Fund or the Unitholders in connection with the liquidation of the Fund, provided that the Trustees act honestly and in good faith in accordance with Section 9.5.

Section 14.7 Further Notice to Unitholders.

In the event that less than all of the Unitholders have surrendered their Units for cancellation within six months after the time specified in the notice referred to in Section 14.3, the Trustees shall give further notice to the remaining Unitholders to surrender their Units for cancellation and if, within one year after the further notice, all the Units shall not have been surrendered for cancellation, such remaining Units shall be deemed to be cancelled without prejudice to the rights of the holders of such Units to receive their *pro rata* share of the remaining Fund Assets, and the Trustees may either take appropriate steps, or appoint an agent to take appropriate steps, to contact such Unitholders (deducting all expenses thereby incurred from the amounts to which such Unitholders are entitled as aforesaid) or, in the discretion of the Trustees, may comply with applicable laws or may pay such amounts into court, and/or deposit such amounts in an account in a chartered bank or similar institution in Canada in the name of such Unitholder for delivery against receipt of Units for

cancellation, and the Fund, the Trustees and any representative thereof shall thereupon be released from any and all further liability with respect to such property and thereafter the Unitholder shall have no rights as against the Fund, the Trustees or any representative thereof in respect of such property or an accounting therefor.

Section 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 Fund Assets after the date referred to in Section 14.3 and, after such sale, the sole obligation of the Trustees under this Declaration of Trust shall be to hold such proceeds or assets in trust for distribution under Section 14.6 or Section 14.7.

**ARTICLE 15
SUPPLEMENTAL INDENTURES**

Section 15.1 Provision for Supplemental Indentures for Certain Purposes.

The Trustees may, without approval of the Unitholders or the holders of the Class A GP Units 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 or amending and restating any provisions of this Declaration of Trust in the circumstances set forth in Section 10.1; or
- (b) modifying or amending or amending and restating any provisions of this Declaration of Trust where the modification or amendment or amendment and restatement has been approved by Unitholders and holders of the Class A GP Units.

**ARTICLE 16
GENERAL**

Section 16.1 Notices.

- (1) Any notice or other document required to be given or sent to Unitholders or holders of Class A GP Units under this Declaration of Trust and any and all other communications to Unitholders or holders of Class A GP Units shall be deemed to have been duly given if sent through ordinary post addressed to each Unitholder or holder of Class A GP Units at his or her address of record on the Register or by such other method designed to give reasonable general

notice thereof as is determined by the Trustees, which may include publication in a newspaper having circulation in Toronto, Canada. Any notice so given shall be deemed to have been given on the day following that on which the notice or other communication was posted or, in the case of notice being given by another method determined by the Trustees, on the day specified by the Trustees. In proving notice was posted, it shall be sufficient to prove that such letter or circular was properly addressed, stamped and posted.

- (2) Any notice, direction or other communication to be given or sent to the Fund shall be in writing and given by delivering or sending it by facsimile to the head office of the Fund or in such other manner as the Trustees may direct. Any such communication shall be deemed to have been validly and effectively given (i) if personally delivered, on the date of delivery, (ii) if mailed, five days from the date of mailing, (iii) if transmitted by facsimile, on the Business Day following the date of confirmation of transmission, and [(iv) if sent by some other manner as directed by the Trustees upon receipt by the Fund.] 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. (Toronto time) on the day following the resumption of normal mail service.

Section 16.2 Failure to Give Notice.

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

Section 16.3 Joint Holders.

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

Section 16.4 Service of Notice.

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

Section 16.5 Information Available to Unitholders.

Each Unitholder shall have the right to obtain, on demand and without fee, from the head office of the Fund a copy of this Declaration of Trust and any amendments thereto, and shall be entitled to examine a list of Unitholders. Any person, on payment of a reasonable fee therefor and after delivering to the Trustees a statutory declaration stating the name and address of such person and that the list will not be used except in connection with (a) an effort to influence the voting of the holders of Units, (b) an offer to acquire Units, or (c) any other matter relating to the Units or the affairs of the Fund, may require the Trustees to furnish a basic list setting out the names of the Unitholders, the number of Units held by them and the address of each Unitholder.

Section 16.6 Fiscal Year.

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

Section 16.7 Taxation Information.

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

Section 16.8 Power of Attorney.

The Trustees hereby grant to SIR GP Inc. a power of attorney constituting SIR GP Inc., with full power of substitution, as their true and lawful attorney to act on behalf of the Fund with full power and authority in their name, place and stead, and to execute, under seal or otherwise, swear to, acknowledge, deliver, make or file or record when, as and where required, and to perform the obligations of the Fund and exercise the rights of the Fund under, any instrument, deed, agreement or document in connection with carrying out the activities of the Fund in connection with the Offering including, without limitation, to execute and deliver, on the Fund's behalf, the Preliminary Prospectus, the Prospectus, the SIR Loan Acquisition Agreement, the Fund Administration Agreement, the Underwriting Agreement, the Exchange Agreement and such other agreements, documents, certificates and other writings as are required or contemplated by the Prospectus, the Offering or this Declaration of Trust.

ARTICLE 17 AUDITORS

Section 17.1 Qualification of Auditors.

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

Section 17.2 Appointment of Initial Auditors.

PricewaterhouseCoopers LLP are appointed as the initial auditors of the Fund, to hold such office until the first annual meeting of the Unitholders and the holders of the Class A GP Units. The Auditors will be selected at each succeeding annual meeting of Unitholders and holders of Class A GP Units. The Auditors will be entitled to receive such remuneration as may be approved by the Trustees from time to time.

Section 17.3 Change of Auditors.

The Auditors may at any time resign or be removed by the Trustees for good reason or with the approval of a majority of the votes cast at a meeting of Unitholders and holders of Class A GP Units duly called for the purpose and, upon the resignation or upon the removal of Auditors as aforesaid, new Auditors may be appointed by a majority of votes cast at a meeting duly called for the purpose or, in the absence of such meeting, by the Trustees.

Section 17.4 Report of Auditors.

The Auditors shall audit the accounts of the Fund, and a report of the Auditors with respect to the annual financial statements of the Fund shall be provided to each Unitholder with the annual financial statements.

ARTICLE 18 MISCELLANEOUS

Section 18.1 Counterparts.

This Declaration of Trust may be executed in several counterparts (including by facsimile), and all such counterparts taken together shall be deemed to constitute but one and the same instrument.

Section 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.

Section 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.

Section 18.4 Governing Law.

This Declaration of Trust shall be governed by and interpreted and enforced in accordance with the laws of Ontario and the federal laws of Canada applicable therein. Each of the parties irrevocably attorns and submits to the non-exclusive jurisdiction of the Ontario courts.

IN WITNESS WHEREOF the parties have executed this Amended and Restated Declaration of Trust.

TRUSTEES:

Lori Colasanti ("Signed")
Witness

Peter Fowler ("Signed")
Peter Fowler

Jamie Farrar ("Signed")
Witness

Ken Fowler ("Signed")
Ken Fowler

Susan Walker ("Signed")
Witness

William Rogers ("Signed")
William Rogers

Lori Colasanti ("Signed")
Witness

John McLaughlin ("Signed")
John McLaughlin

Susan Pellizzari ("Signed")
Witness

Peter Luit ("Signed")
Peter Luit

INITIAL HOLDER OF ALL OF THE CLASS A GP UNITS:

SIR CORP.

By: Peter Fowler ("Signed")
Name: Peter Fowler
Title: President

INITIAL UNITHOLDER:

SIR CORP.

By: Peter Fowler ("Signed")
Name: Peter Fowler
Title: President