

SIR ROYALTY INCOME FUND

and

SIR CORP.

and

SIR GP INC.

and

SIR ROYALTY LIMITED PARTNERSHIP

and

SIR HOLDINGS TRUST

and

KEN FOWLER ENTERPRISES LIMITED

and

PETER FOWLER ENTERPRISES LTD.

and

KEN FOWLER

and

PETER FOWLER

GOVERNANCE AGREEMENT

October 12, 2004

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GOVERNANCE AGREEMENT

This Governance Agreement is made the 12th day of October, 2004 between SIR Royalty Income Fund (the "**Fund**"), SIR Holdings Trust (the "**Trust**"), SIR Corp., an Ontario corporation ("**SIR**"), SIR Royalty Limited Partnership, an Ontario limited partnership (the "**Partnership**"), SIR GP Inc., an Ontario corporation and the managing general partner of the Partnership ("**SIR GP**"), Ken Fowler Enterprises Limited, an Ontario corporation ("**KF Enterprises**"), Peter Fowler Enterprises Ltd., an Ontario corporation ("**PF Enterprises**"), Ken Fowler ("**KF**") and Peter Fowler ("**PF**");

RECITALS:

- (a) The authorized capital of SIR GP consists of an unlimited number of Common Shares of which 100 Common Shares are issued and outstanding and owned, as to 80 Common Shares, by the Fund, and as to 20 Common Shares, by SIR;
- (b) SIR GP is the managing general partner of the Partnership and SIR is a general partner of the Partnership;
- (c) The interests in the Partnership are divided into and represented by Ordinary GP Units, Class A GP Units, Class B GP Units, Class C GP Units, Ordinary LP Units, Class A LP Units and Class C LP Units (as hereafter defined) (collectively, the "**Partnership Securities**"), of which the Partnership has issued as of the date hereof: (i) 99 Ordinary GP Units (representing 99% of the Ordinary GP Units) to SIR GP; (ii) 1 Ordinary GP Unit, 595,185 Class A GP Units, 100,000,000 Class B GP Units and 4,000,000 Class C GP Units (representing all of the Class A GP Units, Class B GP Units and Class C GP Units and 1% of the Ordinary GP Units) to SIR, and (iii) 5,356,667 Ordinary LP Units (representing all of the Ordinary LP Units) to the Trust;
- (d) No Class A LP Units or Class C LP Units are issued and outstanding as of the date hereof;
- (e) The parties desire to enter into this Agreement to provide for, among other things, (i) certain matters related to the conduct of the business and affairs of SIR GP, (ii) certain restrictions on the transfer of the Partnership Securities, and (iii) certain other matters as provided for herein; and
- (f) KF Enterprises, PF Enterprises, KF and PF, as Related Parties, have agreed to become parties to this Agreement for the limited purpose of agreeing to provide certain rights to the Partnership and/or the Fund in the event of a Change of Control (as defined below) of SIR.

NOW THEREFORE THIS AGREEMENT WITNESSES THAT, in consideration of the mutual covenants herein contained and other good and valuable consideration, the receipt of which is hereby acknowledged by each of the parties hereto, the parties agree as follows.

ARTICLE 1 DEFINITIONS

Section 1.1 Definitions

In this Agreement, unless there is something in the subject matter or context inconsistent therewith, the following terms shall have the respective meanings set out below and grammatical variations of such terms shall have corresponding meanings:

"Acquisition" means the purchase by the Partnership of the SIR Rights pursuant to the Acquisition Agreement;

"Acquisition Agreement" means the acquisition agreement between SIR and the Partnership dated October 12, 2004, as it may be amended from time to time;

"Affiliate" has the meaning set out in Ontario Securities Commission Rule 45-501;

"Approval of the Fund" means such approval of the Trustees as is required by the Declaration of Trust;

"Agreement" means this Governance Agreement, as it may be amended from time to time;

"Associate" has the meaning ascribed thereto in the Securities Act;

"Board of Directors" or **"Board"** means the Directors of SIR GP from time to time, and **"Director"** means an individual who is a director of SIR GP;

"Business Day" means a day, other than a Saturday, Sunday or statutory holiday, when banks are generally open in the city of Toronto, Ontario for the transaction of banking business;

"Buyer" has the meaning ascribed thereto in Section 4.5(2);

"Buyer's Notice" has the meaning ascribed thereto in Section 4.5(2);

"CBCA" means the *Canada Business Corporations Act*, as amended;

"Certificate" means a certificate which has been signed by an authorized signatory of the entity delivering the certificate;

"Change of Control" has the meaning ascribed thereto in Section 4.1;

"Class A GP Units" means the Class A general partner units of the Partnership having the rights, privileges, restrictions and conditions set out in the Partnership Agreement;

"Class A LP Units" means the Class A limited partner units of the Partnership, having the rights, privileges, restrictions and conditions set out in the Partnership Agreement;

“Class B GP Units” means the Class B general partner units of the Partnership, having the rights, privileges, restrictions and conditions set out in the Partnership Agreement;

“Class C GP Units” means the Class C general partner units of the Partnership, having the rights, privileges, restrictions and conditions set out in the Partnership Agreement;

“Class C LP Units” means the Class C limited partner units of the Partnership, having the rights, privileges, restrictions and conditions set out in the Partnership Agreement;

“Closing Date” means the closing date of the Offering;

“Common Shares” means the common shares in the capital of SIR GP and any shares into which such shares may be converted, exchanged, subdivided, consolidated or otherwise changed from time to time and any shares of any successor corporation to SIR GP that such shares may become as a result of any amalgamation;

“Declaration of Trust” means the amended and restated declaration of trust dated October 12, 2004 by which the Fund is governed, as it may be further amended from time to time;

“Exchange Agreement” means the agreement dated the date hereof among SIR, the Fund, the Trust, the Partnership and SIR GP providing for, among other things, the Exchange Rights, as it may be amended from time to time;

“Exchange Rights” means the right of SIR (or a Related Party to which SIR has transferred such Partnership Securities in accordance with this Agreement) to: (i) exchange its Class A GP Units for Units of the Fund, on a 1:1 basis, by delivering such Class A GP Units to the Trust in exchange for Units of the Fund which the Trust would obtain from the Fund, whereupon the Class A GP Units would also be cancelled and exchanged with the Partnership for the same number of new Class A LP Units to be held by the Trust; or (ii) transfer Class C GP Units to the Trust in exchange for the assumption by the Trust of (and the concurrent release of SIR of its obligations with respect to) an amount of indebtedness under the SIR Loan equal to \$10.00 per Class C GP Unit to be transferred, whereupon the Class C GP Units would also be cancelled and exchanged with the Partnership for the same number of new Class C LP Units to be held by the Trust, all in accordance with the Exchange Agreement;

“Exchangeable Securities” means the Class A GP Units and the Class C GP Units of the Partnership issued and outstanding from time to time;

“Fund” means SIR Royalty Income Fund, a trust created under the laws of the Province of Ontario and governed by the Declaration of Trust;

“Fund Nominees” has the meaning ascribed thereto in Section 2.4(b);

“Fund Take-over Bid Call Right” has the meaning ascribed thereto in Section 3.1(1);

“Fund Take-over Bid Call Price” has the meaning ascribed thereto in Section 3.1(2);

“Governance Committee” means the committee of the Board of Directors called the “Governance Committee”;

“Governmental Authority” means the Government of Canada or a province, territory, state or other geographic or political subdivision thereof and any court, securities regulatory authority or other entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government in Canada or any province, territory, state or other geographic or political subdivision thereof, and any stock exchange on which the Fund Units are listed;

“Holdings Declaration of Trust” means the declaration of trust dated October 1, 2004 by which the Trust is governed, as it may be amended from time to time;

“Holdings Trustees” means the persons appointed and acting as trustees of the Trust pursuant to the Holdings Declaration of Trust from time to time;

“Licence and Royalty Agreement” means the agreement dated the date hereof between the Partnership and SIR providing for, inter alia, the licence by the Partnership to SIR of the use of the SIR Rights, and the payment by SIR to the Partnership of a royalty as specified therein for the use of the SIR Rights (as it may be amended from time to time);

“Limited Partnership Agreement” means the limited partnership agreement governing the Partnership, as it may be amended from time to time;

“NI 52-110” means National Instrument 52-110 - Audit Committees of the Canadian Securities Administrations, as amended from time to time;

“Note Indenture” means the note indenture dated October 12, 2004 providing for the issuance of the Notes by the Trust and made between the Trust and the Note Trustee;

“Note Trustee” means the trustee from time to time under the Note Indenture, initially SIR GP;

“OBCA” means the *Business Corporations Act* (Ontario), as amended from time to time;

“Offering” means the public offering of Units of the Fund pursuant to the Prospectus;

“Operative Documents” means the Declaration of Trust, the Holdings Declaration of Trust, this Agreement, the Exchange Agreement, the Partnership Agreement, the Registration Rights Agreement, the SIR Agreements and the Note Indenture;

“Partnership General Security Agreement” means, collectively, (i) the general security agreement to be granted to the Partnership by SIR Corp. over all of its present and after acquired property (with certain exceptions), including, without limitation, all amounts payable to SIR by SIR subsidiaries, to secure payment of the Royalty and all of the obligations of SIR under the License and Royalty Agreement, and (ii) a guarantee and general security agreement to be granted by each subsidiary of SIR that carries on business or owns property in Canada over all of their present and after acquired property (with certain exceptions) to secure the obligations of SIR under the License and Royalty Agreement;

“Partnership Securities” means, collectively, the Ordinary LP Units, Ordinary GP Units, Class A GP Units, Class A LP Units, Class B GP Units, Class C GP Units and Class C LP Units in the capital of the Partnership;

“party” means a party to this Agreement;

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

“Permitted Indebtedness” means Permitted Indebtedness as defined in the general security agreement to be granted to the Partnership by SIR Corp. over all of its present and after acquired property (with certain exceptions), including, without limitation, all amounts payable to SIR by SIR subsidiaries, to secure payment of the Royalty and all of the obligations of SIR under the License and Royalty Agreement;

“Prospectus” means the final prospectus for the initial public offering of Units of the Fund dated October 1, 2004;

“Registration Rights Agreement” means the agreement dated the date hereof between SIR and the Fund whereby the Fund agrees to file a prospectus and otherwise assist SIR with a resale by public offering of Units of the Fund, as it may be amended from time to time;

“Related Parties” means, collectively, KF Enterprises, PF Enterprises, Ken Fowler and Peter Fowler, or any corporation or other entity in which any of them or any of their affiliates or associates (or other family members), alone or together, has a direct or indirect equity interest of 50% or greater, or any associate or affiliate of any of them, any trust of which any of them is a trustee or beneficiary, or any of their respective heirs, executors, personal legal representatives and successors;

“ROFO Notice” has the meaning ascribed thereto in Section 4.5(1);

"Securities Act" means the *Securities Act* (Ontario), and the rules, regulations and policies made thereunder, as amended from time to time;

"Security Interest" means any security interest, mortgage, deed of trust, pledge, hypothecation, assignment, charge, encumbrance or lien (statutory or other) designed to secure payment or performance of an obligation;

"Seller" has the applicable meaning set forth in Section 4.5(1);

"SIR" means SIR Corp., a corporation incorporated under the laws of the province of Ontario;

"SIR Agreements" means the Acquisition Agreement, the SIR Loan Acquisition Agreement and the Licence and Royalty Agreement;

"SIR General Security Agreement" means, collectively, (i) the general security agreement to be granted to the Fund by SIR over all of its present and after acquired property (with certain exceptions), including, without limitation, all amounts payable to SIR by SIR subsidiaries, to secure payment under the SIR Loan and all obligations of SIR under the SIR Loan, and (ii) a guarantee and general security agreement to be granted by each subsidiary of SIR that carries on business or owns property in Canada over all of their present and after acquired property (with certain exceptions) to secure payment of the obligations of SIR under the SIR Loan;

"SIR GP" means SIR GP Inc., a corporation incorporated under the laws of the province of Ontario;

"SIR Loan" means the loan to SIR in the aggregate principal amount of \$40 million which will be acquired by the Fund from the Bank of Montreal on the Closing Date, as it may be amended from time to time, including extensions, replacements and refinancings thereof, whether with Bank of Montreal, the Fund or another lender;

"SIR Loan Acquisition Agreement" means, the agreement dated the date hereof among, inter alia, SIR, the Fund and Bank of Montreal pursuant to which the Fund will acquire the SIR Loan from Bank of Montreal, as it may be amended from time to time;

"SIR Nominees" has the meaning ascribed thereto in Section 2.4(b);

"SIR Restaurants" has the meaning attributed to such term in the License and Royalty Agreement;

"SIR Rights" has the meaning attributed to such term in the License and Royalty Agreement;

"Subject Property" has the meaning ascribed thereto in Section 4.5(1);

“Subsidiary” means, in respect of a person or company, another person or company that would be considered to be a “subsidiary entity” of such person or company for the purposes of Ontario Securities Commission Rule 45-501;

“Successor” has the meaning ascribed thereto in Section 5.1;

“Take-over Bid Call Right Notice” has the meaning ascribed thereto in Section 3.1(2);

“Take-over Bid Call Right Purchase Date” has the meaning ascribed thereto in Section 3.1(3);

“Tax Act” means the *Income Tax Act* (Canada) and the regulations thereunder, as amended from time to time;

“Transfer” of any property includes any sale, exchange, transfer, assignment, gift, pledge, encumbrance, hypothecation, alienation, creation of a security interest or other transaction, whether voluntary, involuntary or by operation of law, whether or not the registered or beneficial ownership of such property passes from one person to another, whether or not for value (other than, in any such case, as a result of the transmission of securities from a deceased or incompetent person to a legal representative of such person for so long as such property continues to be held by such legal representative).

“Trust” means SIR Holdings Trust, a trust created under the laws of the Province of Ontario and governed by the Holdings Declaration of Trust;

“Trust Unit” means a unit of the Trust, each unit representing an equal undivided beneficial interest therein;

“Trustees” means the persons appointed and acting as trustees of the Fund pursuant to the Declaration of Trust from time to time;

“Unitholder” means a registered holder from time to time of Units of the Fund;

“Unit” or **“Unit of or the Fund”** means a unit of the Fund;

“Voting Unitholders” means at any time the Unitholders, together with the holders of the Class A GP Units, voting together; and

“Voting Units” means the Units, together with the voting rights at the Fund level provided to the holders of Class A GP Units, voting together.

Section 1.2 Interpretation Not Affected by Headings, etc.

The division of this Agreement into Articles, Sections and other portions and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation hereof. Unless otherwise indicated, all references to an **“Article”** or **“Section”** followed by a number and/or a letter refer to the specified Article or

Section of this Agreement. The terms “**this Agreement**”, “**hereof**”, “**herein**” and “**hereunder**” and similar expressions refer to this Agreement (including the Schedules hereto) and not to any particular Article, Section or other portion hereof and include any agreement or instrument supplementary or ancillary hereto.

Section 1.3 Number, etc.

Unless the context otherwise requires, words importing the singular shall include the plural and vice versa and words importing any gender shall include all genders.

Section 1.4 Date for Any Action

In the event that any date on which any action is required to be taken hereunder by any of the parties hereto is not a Business Day, such action shall be required to be taken on the next succeeding day that is a Business Day.

Section 1.5 References to Acts Performed by the Fund or the Trust

For greater certainty, where any reference is made in this Agreement to an act to be or not to be performed by the Fund or the Trust, such reference shall be construed and applied for all purposes as if it referred to an act to be or not to be performed by the Trustees on behalf of the Fund or by the Holdings Trustees on behalf of the Trust, as the case may be, or, in each case, by the Partnership as the administrator for each of the Fund and the Trust.

Section 1.6 Liability of the Partnership, Trustees, Holdings Trustees and Unitholders

The parties hereto acknowledge that in addition to entering into this Agreement in its own capacity, the Partnership is also entering into this agreement on behalf of the Fund and the Trust as the administrator of each, and:

- (a) the obligations of the Fund hereunder shall not be personally binding upon any of the Trustees, the Partnership, any registered or beneficial Unitholder or any beneficiary under a plan of which such Unitholder acts as a trustee or carrier, and that resort shall not be had to, nor shall recourse be sought from, any of the foregoing or the private property of any of the foregoing in respect of any indebtedness, obligation or liability of the Fund arising hereunder or arising in connection herewith or from the matters to which this Agreement relates, and recourse shall be limited to, and satisfied only out of, the Fund Assets (as defined in the Declaration of Trust);
- (b) the obligations of the Trust hereunder shall not be personally binding upon any of the Holdings Trustees, the Partnership, any registered or beneficial holder of Trust Units or any beneficiary under a plan of which such holder acts as a trustee or carrier, and that resort shall not be had to, nor shall recourse be sought from, any of the foregoing or the private property of any of the foregoing in respect of any indebtedness, obligation or liability of the Trust arising hereunder or arising in connection herewith or from the matters to which this Agreement relates, and recourse shall be limited to, and satisfied only out of, the Trust Assets (as defined in the Holdings Declaration of Trust).; and

- (c) no limited partner shall have any liability as a general partner of the Partnership.

ARTICLE 2 GOVERNANCE MATTERS

Section 2.1 Scope and Purpose

The purpose of this Article 2 is, among other things, to regulate the rights and obligations of the shareholders of SIR GP among and between themselves and the other parties hereto; to regulate the election of directors of SIR GP; and such other matters as are contained herein. Accordingly, this Article 2 shall constitute a “**Unanimous Shareholders Agreement**” for the purposes of the OBCA.

Section 2.2 Covenants of the Fund and SIR

The Fund and SIR covenant and agree:

- (a) to vote or cause to be voted all Common Shares held by each of them respectively, or provide consent where necessary, to accomplish, give effect to and fully implement the terms and conditions of this Agreement, including the election to the Board of Directors of those individuals nominated in accordance with this Article 2; and
- (b) not to vote or cause to be voted any Common Shares held by each of them respectively, or refuse consent where such consent is necessary, or exercise rights hereunder or as a shareholder, in any manner which would result in a breach by the Fund or SIR of any of their obligations under this Agreement or any of the Operative Documents;
- (c) that, in the event of any conflict between the provisions of this Agreement and the articles and/or the by-laws of SIR GP, the provisions of this Agreement shall govern, and to vote or cause to be voted all Common Shares registered in their names, or consent where required, so as to cause the articles and/or by-laws SIR GP to be amended to resolve any such conflict in favour of the provisions of this Agreement; and
- (d) not to vote or cause to be voted any Common Shares so as to alter in any way the articles and/or by-laws of SIR GP (including without limitation an alteration that would change the number of Directors fixed for SIR GP) in any manner contrary to the terms of this Agreement without the prior written consent of the other of them.

Section 2.3 Acknowledgement by SIR GP, the Fund and SIR

Each of the Fund, SIR GP and SIR acknowledges that it has actual notice of the terms of this Agreement, consents hereto and covenants and agrees with each other and with the other parties hereto that it will at all times during the term of this Agreement be governed by the terms and provisions hereof in carrying out its affairs, and shall give or cause to be given such notices and execute or cause to be executed such documents and do or cause to

be done such acts, matters and things as may from time to time be necessary or required to carry out the terms and intent hereof, and conduct its affairs so that it is able to comply with and observe the terms and conditions of this Agreement and the other Operative Documents.

Section 2.4 Board of Directors and Committees of SIR GP

Unless otherwise agreed to by the Fund and by SIR:

- (a) the number of directors of SIR GP shall be a minimum of one and a maximum of ten and, until otherwise determined by agreement of the Fund and SIR, the number of directors of SIR GP shall be five;
- (b) subject to Section 2.4(a) above, each of the Fund and SIR agree to vote or cause to be voted any and all Common Shares held by or on behalf of each of them to consent to resolutions of shareholders of SIR GP, and otherwise to take all such actions and proceedings as may reasonably be required, to cause the Board of Directors to be comprised at all times of five Directors. Subject to Section 2.4(e), three of such Directors shall be qualified nominees of the Fund, which nominees shall be independent of SIR within the meaning of NI 52-110 (the "**Fund Nominees**") and two of such Directors shall be qualified nominees of SIR (the "**SIR Nominees**"). Each Fund Nominee may be a Trustee and/or a Holdings Trustee;
- (c) each of the Fund and SIR agree to seek to cause the Fund Nominees and SIR Nominees, respectively, to consent to such resolutions of the Board of Directors, and otherwise take all such actions and proceedings as may reasonably be required:
 - (i) to establish the Governance Committee; and
 - (ii) to cause the Governance Committee to be comprised at all times solely of the Fund Nominees;
- (d) if for any reason a Director ceases to be a Director, including without limitation any resignation of a Director or any incapacity or inability on the part of any Director to serve as a Director or removal for cause of any Director, the Fund and SIR shall forthwith vote in favour of the requisite resolution or instruct their respective nominees as Directors to vote to appoint as a Director in place of such former Director, a qualified individual designated in writing by the party whose nominee has so ceased to be a Director;
- (e) the obligations of the Fund pursuant to this Article 2 concerning the Directors and SIR Nominees shall immediately terminate if SIR ceases to hold, or ceases to be entitled to hold, upon exercise of the Exchange Rights, together with its subsidiaries and the Related Parties, directly or indirectly, at least 10% of the total of the issued and outstanding Units after exercise of such Exchange Rights; and

- (f) the Governance Committee shall have such responsibilities in respect of the Partnership as may be determined by the Board of Directors, including:
 - (i) overseeing the operations of the Partnership, including payments to be made by SIR to the Partnership under the License and Royalty Agreement;
 - (ii) considering, and providing a recommendation on, any material conflict of interest involving SIR and SIR GP or the Partnership (including any matter involving the Acquisition Agreement, the Governance Agreement, the License and Royalty Agreement, the SIR Rights, the Class A GP Units, the Class B GP Units and the Partnership General Security Agreement, the SIR General Security Agreement and the subordination provisions of the Limited Partnership Agreement) before such material conflict of interest is approved by the board of directors of SIR GP;
 - (iii) annually reviewing:
 - (A) the operations of SIR, including its business plans and prospects for the ensuing year, and
 - (B) the performance of the management of SIR, and any adjustments to be made pursuant to the License and Royalty Agreement;
 - (C) adjustments to be made pursuant to the License and Royalty Agreement;
 - (iv) developing SIR GP's approach to corporate governance issues and compliance with applicable laws, regulations, rules, policies and orders with respect to such issues;
 - (v) advising the board in filling vacancies on the board and advising the Trustees in filling vacancies among the Trustees; and
 - (vi) periodically reviewing the composition and effectiveness of the board and Trustees and the contribution of individual directors and Trustees.

Upon the termination of the obligations of the Fund pursuant to Section 2.4(e), the Fund may immediately vote or cause to be voted the Common Shares or otherwise act to remove the SIR Nominees as Directors, to replace such Directors with qualified individuals who are Fund Nominees and to otherwise elect, remove and replace Directors as provided for in the OBCA.

Section 2.5 Notice of Directors' Meetings

At least 48 hours notice of any meeting of the Board shall be given to the Directors by SIR GP or a Director by written notice sent by personal delivery, mail, fax or email to each Director at the address provided to SIR GP or by telephone or by any other means of communication in common usage, unless all of the Directors shall consent to any shorter period of notice. Such notice shall state the time when and the place where the meeting is to be held and shall state briefly the general nature of the business to be transacted thereat and it shall not be necessary for any such notice to set out the terms of any resolution to be proposed.

Section 2.6 Voting

Except as otherwise required by this Agreement, all questions arising at any meeting of the Board of Directors or otherwise required to be determined or approved by the Board of Directors shall be decided by a majority of the Directors present and entitled to vote on the resolution at a meeting or by written resolution signed by all Directors. Any proposed resolution not approved in accordance with the foregoing shall be deemed to have been defeated. Each Director shall be entitled to a single vote and the chairman of any meeting of the Board of Directors shall not be entitled to a second or casting vote in the event of a tie.

Section 2.7 Quorum

At any meeting of the Board, a quorum shall consist of a majority of Directors present in person or by conference telephone, at least one of whom is a SIR Nominee and at least two of whom are Fund Nominees (unless the termination event described in Section 2.4(e) shall have occurred, in which case, the presence of the SIR Nominee shall not be required). If a quorum of the Board shall not be present within 30 minutes from the time fixed for holding any meeting, the meeting shall be adjourned to the same time and place on the next Business Day and notice shall be given to the Directors with respect to such adjourned meeting. At the adjourned meeting, the Directors present in person or by conference telephone shall form a quorum and may transact the business for which the meeting was originally convened notwithstanding that a SIR Nominee (if the termination event described in Section 2.4(e) has not yet occurred) is not but provided that at least one Fund Nominee is, present in person or by conference telephone at such meeting. Any business may be brought before or dealt with at an adjourned meeting which might have been brought before or dealt with at the original meeting in accordance with the notice calling the same. No business shall be transacted at any meeting unless the required quorum is present at the commencement of the meeting and when business is considered.

Section 2.8 Meeting by Telephonic, Electronic or Other Communication Facility.

A Director may participate in a meeting of the Board of Directors by means of a telephonic, electronic or other communication facility. A Director participating in a meeting by such means is deemed to be present at the meeting. Any consent is effective whether given before or after the meeting to which it relates and may be given with respect to all meetings of the Board of Directors.

Section 2.9 Compensation

Except as otherwise provided for herein, without the approval of the Fund, the Directors shall not be entitled to receive any compensation or reimbursement of expenses from SIR GP for acting as a Director or attending at meetings of the Directors or any Committee of Directors. The Partnership may: (i) compensate Directors or members of committees of the Board (other than a Director who is a director or officer of SIR) which compensation shall initially be set at an annual retainer of \$7,500 and a fee of \$1,000 for attending each regularly scheduled monthly meeting of the Board of Directors and \$500 per Director for each extraordinary meeting of the Board of Directors or a Committee of the Board of Directors (in each case, except where the Director attends a meeting of the Trustees or Holding Trustees on the same day and for which compensation is paid); (ii) pay to each Director his or her reasonable costs and expenses, including those relating to attendance at Directors' meetings and committee meetings of the Board of Directors; (iii) acquire a policy of directors' and officers' liability insurance for the benefit of the Directors and officers of SIR GP against the risks, to the limits, subject to the deductions and otherwise on the terms approved by the Governance Committee; and (iv) indemnify and save harmless the Directors for all costs, damages and expenses that they or any of them may incur as a Director, and enter into indemnity agreements for such purpose.

Section 2.10 Indemnity/Insurance

- (1) To the fullest extent permitted by law, the Partnership and SIR GP shall jointly and severally indemnify all Directors, officers, former directors and former officers of SIR GP, all Trustees and former trustees of the Fund, all Holdings Trustees and former trustees of the Trust and all persons who act or acted at SIR GP's, the Partnership's, the Trust's or the Fund's request as a director or officer of a body corporate of which any such entity is or was a shareholder or creditor, and his or her heirs and legal personal representatives, against all costs, charges and expenses, including any amount paid to settle any action or satisfy a judgement, reasonably incurred in respect of any civil, criminal or administrative action or proceeding to which the relevant person is made a party by reason of being or having been a director or officer of SIR GP or such body corporate or a trustee of the Fund or the Trust if (i) he or she acted honestly and in good faith with a view to the best interests of SIR GP, such body corporate, the Fund or the Trust, as the case may be, and (ii) in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, he or she had reasonable grounds for believing that his or her conduct was lawful. The intention of this provision is that all persons referred to above shall have all benefits provided under the indemnification provisions of the OBCA to the fullest extent permitted by law.
- (2) The Partnership and SIR GP shall use commercially reasonable efforts to obtain and maintain appropriate trustees', directors' and officers' liability insurance for the trustees, directors and officers of SIR GP and its Subsidiaries and the Trust and the Fund. This policy of insurance may also provide customary reimbursement coverage. The aggregate limit of liability coverage may be shared among SIR GP, the Fund, the Trust and their respective directors and officers and trustees.

Section 2.11 Management Agreement

SIR agrees with the Partnership not to amend the terms or provisions of the confidentiality, non-solicitation and non-competition covenants contained in the management agreement entered into between SIR and PF on the date hereof without the consent of the Partnership, and to enforce these covenants at the request of the Partnership in a commercially reasonable manner.

Section 2.12 Certain Duties and Waiver of Certain Fiduciary Duties

SIR, in its capacity as a holder of Common Shares, acknowledges and agrees that the primary duty of the Directors nominated by the Fund is to protect the best interests of the Fund without regard to the interests of SIR, and by being or becoming a party to this Agreement, hereby irrevocably waives any claim it may have for breach of fiduciary duty of such Directors if such Directors act in any manner so intended.

Section 2.13 Transfer of Common Shares

Except as provided herein, and other than a Transfer to the Fund, the Trust or the Partnership or in connection with Permitted Indebtedness to the extent permitted by the general security agreement between the Partnership and SIR of even date herewith, relating to pledges or other grants of security, or realizations thereof, neither SIR nor the Fund shall Transfer any of its Common Shares without the consent of the other parties.

ARTICLE 3 TAKE-OVER BIDS

Section 3.1 Fund Call Rights on Take-Over Bid

- (1) The Fund shall have the right (the “**Fund Take-over Bid Call Right**”) (but not the obligation) to acquire all Partnership Securities (other than the Class C GP Units) then held by SIR, in the event that:
 - (a) a take-over bid is made for all of the issued and outstanding Units, including the rights to the Units issuable upon exercise of the Exchange Rights, and not less than 90% of the Units on a fully-diluted basis, including Units issuable upon exercise of the Exchange Rights but other than Units held on the date of the take-over bid by or on behalf of the offeror or Associates or Affiliates of the offeror or persons acting in concert (“**acting in concert**” as defined in the Securities Act at the date of this Agreement) with the offeror, are taken up and paid for by the offeror upon the closing of the take-over bid; or
 - (b) a proposal is made for a take-over bid, merger, amalgamation, plan of arrangement or other business combination or reorganization involving all or substantially all of the Partnership Securities, 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 Trust, and such proposal is approved by the affirmative vote of the holders of not less than 66^{2/3} of the total of the Voting Units then outstanding represented and voted on such proposal.

- (2) To exercise the Fund Take-over Bid Call Right, the Fund must notify SIR within 60 days after the completion of a transaction referred to in Section 3.1(1)(a) or Section 3.1(1)(b), of the Fund's intention to exercise (the "**Take-over Bid Call Right Notice**") the Fund Take-over Bid Call Right, on payment by the Fund in accordance with Section 3.1(3) below to SIR of an aggregate amount for all Partnership Securities (other than the Class C GP Units) then held by SIR (the "**Fund Take-over Bid Call Price**") equal to:
- (a) the price paid per Unit pursuant to such take-over bid or the value of the consideration per Unit received by holders of Units as a result of a transaction referred to in Section 3.1(1)(a); or
 - (b) the value of the consideration per Unit as a result of a transaction referred in Section 3.1(1)(b);

multiplied by the number of Units which SIR would be entitled to receive if SIR had exercised all of its Exchange Rights in respect to Class A GP Units on the date of such purchase by the Fund. In the event of the exercise of the Fund Take-over Bid Call Right by the Fund, SIR shall be obligated to sell all Partnership Securities (other than Class C GP Units) then held by SIR to the Fund on payment by the Fund to SIR in cash of the Fund Take-over Bid Call Price. In connection with the purchase of such Partnership Securities pursuant to the exercise of the Fund Take-over Bid Call Right, the Fund shall provide SIR a Certificate of the Fund setting forth the calculation of the Fund Take-over Bid Call Price.

- (3) For the purposes of completing the purchase of such Partnership Securities held by SIR pursuant to the Fund Take-over Bid Call Right, the Fund shall cause to be delivered on or before the date provided for in the Take-over Bid Call Right Notice (the "**Take-over Bid Call Right Purchase Date**") (which may not be a date that is later than seven Business Days from the date the Take-over Bid Call Right Notice is given) a certified cheque or bank draft drawn upon a Canadian chartered bank, or a wire transfer of immediately available funds to the account of SIR, in the amount of the Fund Take-over Bid Call Price, less any amounts withheld pursuant to Section 3.2. Provided that the Fund has complied with the immediately preceding sentence, on and after the Take-over Bid Call Right Purchase Date, the rights of SIR will be limited to receiving, without interest, the total Fund Take-over Bid Call Price payable by the Fund upon presentation and surrender by SIR of certificates representing the Partnership Securities (other than the Class C GP Units) held by SIR.

Section 3.2 Withholding Rights

The Fund and SIR GP shall be entitled to deduct and withhold from any consideration otherwise payable under this Agreement to SIR such amounts as the Fund or SIR GP is required to deduct and withhold with respect to such payment under the Tax Act or any provision of provincial, state, local or foreign tax law, or would be permitted to withhold if an equal amount were remitted to the appropriate taxing authority. To the extent that amounts are so withheld, such withheld amounts shall be treated for all

purposes as having been paid to the holder of the securities in respect of which such deduction and withholding was made, provided that such withheld amounts are actually remitted to the appropriate taxing authority. To the extent that the amount so required to be deducted or withheld from any payment to a holder exceeds the cash portion of the consideration otherwise payable to SIR, the Fund and SIR GP are hereby authorized to sell or otherwise dispose of such portion of the consideration as is necessary to provide sufficient funds to the Fund or SIR GP, as the case may be, to enable it to comply with such deduction or withholding requirement, and the Fund or SIR GP shall notify SIR thereof and remit to SIR any unapplied balance of the net proceeds of such sale.

ARTICLE 4 RESTRICTIONS OF TRANSFERS

Section 4.1 Definition of Change of Control

For the purposes of this Article 5, “**Change of Control**” means:

- (a) the direct or indirect acquisition by any person or persons (other than one or more Related Parties) acting jointly or in concert, of beneficial ownership (“**acting jointly or in concert**” and “**beneficial ownership**” within the meaning of the Securities Act as at the date of this Agreement) of fifty percent (50%) or more of SIR’s then outstanding voting shares; or
- (b) the approval by shareholders of SIR of: (i) an amalgamation involving SIR; or (ii) a complete liquidation or dissolution of SIR or the sale or other disposition of all or substantially all of the assets of SIR if immediately after the completion of a transaction referred to in (i) or (ii) any person or persons (other than one or more Related Parties), acting jointly or in concert, acquire fifty percent (50%) or more of the then outstanding voting shares of the corporation resulting from such amalgamation or the corporation that then owns the assets or undertaking previously owned by SIR,

However, a Change of Control shall be deemed not to occur solely because 50% or more of SIR’s then outstanding voting shares are acquired by: (a) one or more Related Parties or any of the family or the estate of one or more Related Parties; (b) a trustee or other fiduciary holding securities for the benefit of one or more Related Parties or any of the family or the estate of one or more Related Parties; or (c) any corporation which, immediately prior to such acquisition, is controlled directly or indirectly by one or more Related Parties or any of the family or the estate of one or more Related Parties, provided, in each case, that the acquiree agrees to become party to and be bound thereafter by the restrictions contained in this Agreement to which the Related Party is subject.

Section 4.2 Restrictions on Transfer of Partnership Securities

Except as permitted or required by this Agreement, the Partnership Agreement or the Exchange Agreement, without the prior written consent of all of the partners of the Partnership first being obtained:

- (a) the Partnership shall not issue any Partnership Securities;
- (b) SIR GP will not issue any shares of any class of SIR GP;
- (c) SIR will not Transfer any of its Partnership Securities except:
 - (i) in accordance with the Limited Partnership Agreement;
 - (ii) in the event of a take-over bid for all of the Units in which the offeror acquires 90% of all of the issued and outstanding Units (including Units issuable upon exercise of the Exchange Rights);
 - (iii) in the event of a take-over bid, merger, amalgamation, plan of arrangement or other business combination or reorganization involving all or substantially all of the Partnership Securities, 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 Trust;
 - (iv) by the creation of a Security Interest, as security for a bona fide loan to the Partnership or SIR or any subsidiary of SIR (or any direct or indirect shareholder of either), to a bank or other financial institution, provided that the holder of such Security Interest (if not already a party hereto) enters into an agreement with the Fund and the Partnership no later than the time such Security Interest is created agreeing to become a party to and to be bound by and observe the terms of this Agreement and the subordination provisions of the Limited Partnership Agreement, in the event of, and in respect of the period following, realization, in the same manner as SIR was prior to such realization of such Security Interest;
 - (v) to the Fund, the Trust, the Partnership or a subsidiary of any of them;
 - (vi) subject to Section 4.3, to a Related Party;
 - (vii) for greater certainty, by the creation of a Security Interest in favour of the Fund and the Partnership to secure SIR's obligations under the Licence and Royalty Agreement or the SIR Loan or with respect to Permitted Indebtedness to the extent permitted by the general security agreement of even date herewith between SIR and the Partnership;
 - (viii) in accordance with the Limited Partnership Agreement, License and Royalty Agreement, Exchange Agreement, or this Agreement; or
 - (ix) with the prior written consent of the Fund; or
 - (x) in connection with the liquidation of the Fund or the Partnership.

- (d) The Trust will not Transfer any of its Partnership Securities except with the prior written consent of SIR or as may be required pursuant to the SIR Loan.

Section 4.3 Transfers to Subsidiaries and Related Parties

In the event of a Transfer of Partnership Securities by SIR to a Related Party pursuant to Section 4.2(c)(vi), if, at the time of such Transfer, such Related Party is not party to this Agreement, at or prior to the time of such Transfer, such Related Party shall be required to enter into an agreement in writing with the other parties hereto whereby such Related Party will be party to this Agreement and thereafter be bound by SIR's obligations under this Agreement.

Section 4.4 Signatories Jointly and Severally Liable

SIR will at all times be and remain jointly and severally liable with each Related Party to whom it makes a Transfer referred to in Section 4.3 who is a Party to the Agreement (whether as an original signatory hereof or pursuant to an agreement entered into pursuant to Section 4.3 for the observance and performance of the obligations under this Agreement, the Partnership Agreement and the Exchange Agreement), and SIR will indemnify the other parties hereto against any loss, liability, damage, cost or expense incurred as a result of any failure by such Related Party to comply with the provisions of this Agreement, the Partnership Agreement or the Exchange Agreement. If SIR or one or more Related Parties hold Partnership Securities, or two or more Related Parties hold Partnership Securities, such holders will take all actions, deliver all notices and give or withhold all approvals to be taken, delivered or given hereunder and under the Partnership Agreement and the Exchange Agreement as a single party (except in the event of pledges or any realizations thereunder of any such Partnership Securities).

Section 4.5 Change of Control of SIR

- (1) If either SIR or any Related Party (in this Section 4.5 called the "**Seller**") desires or proposes to enter into an agreement which, if completed, would result in a Change of Control of SIR, then SIR or such Related Party, as the case may be, before entering into such an agreement, will be required to give the Fund or the Partnership notice in writing (such notice in this Section 4.5 called the "**ROFO Notice**") of the consideration to be paid for the shares of SIR held directly and indirectly by the Related Party or for the assets and undertaking of SIR related to the SIR Restaurants (as defined in the License and Royalty Agreement) (in this Section 4.5, such shares or such assets and undertaking are referred to as the "**Subject Property**"), and a summary of the terms of the proposed transaction by which the Seller desires or proposes to effect a Change of Control.
- (2) The Partnership or the Fund, as applicable, will have the right, at its election, exercisable at any time up to and including but not after the 30th day after the date on which it receives the ROFO Notice, to inform SIR in writing that the Partnership or the Fund, as the case may be, either directly or through a subsidiary at its option, desires to purchase the Subject Property for the price and on the other terms stated in the ROFO Notice by giving to the Seller notice in writing (in this Section 4.5(2) called the "**Buyer's Notice**") of such election, and if the Partnership or the Fund (the party which delivers the Buyer's Notice being the "**Buyer**") delivers such election,

the Seller and the Buyer will then attempt to negotiate the terms of an agreement for the purchase of the Subject Property on the terms set forth in the ROFO Notice.

- (3) If, within 30 days after the receipt of the ROFO Notice, the Fund or the Partnership does not deliver the Buyer's Notice to SIR or, within 30 days after the Buyer delivers the Buyer's Notice to SIR, the Buyer does not enter into an agreement with SIR or the Related Party, as the case may be, for the purchase of the Subject Property then, subject to Section 4.5(4), SIR or the Related Party may enter into any agreement which, if completed, would result in a Change of Control of SIR. If the Seller does not enter into such an agreement within 210 days after the date the ROFO Notice was given to the Fund or the Partnership by SIR in respect of such transaction, or a transaction giving effect to a Change of Control permitted by the foregoing is not completed by the first anniversary of the date of the ROFO Notice, then neither SIR nor the Related Party may enter into an agreement which, if completed, would result in a Change of Control, unless the Fund or the Partnership are again provided with the opportunity to acquire the Subject Property in accordance with this Section 4.5.
- (4) The Seller will not be permitted to enter into any agreement with a party other than the Fund or the Partnership pursuant to Section 4.5(3) which, if completed, would result in a Change of Control, or complete any transaction that results in a Change of Control if:
 - (a) the amount of consideration that would be received by SIR or the Related Party upon completion of the transaction contemplated by such agreement or such transaction, after taking into account the amount of income taxes that would be payable under the Tax Act by SIR or the Related Party if the consideration payable in respect of the transaction that results in such Change of Control were immediately distributed to, or paid to, the Related Party, is less than the amount of such consideration set forth in the ROFO Notice; or
 - (b) the non-price terms of the transaction as contained in such agreement, when considered as a whole in a commercially reasonable manner having regard to the nature of the transaction and the summary of the proposed transaction as contained in the ROFO Notice, are materially less favourable to SIR and/or the Related Party, as the case may be, than the summary of the terms of the proposed transaction contained in the ROFO Notice; or
 - (c) on or before the completion of the transaction as contained in such agreement, the purchaser or other party to such agreement does not enter into an agreement with the Partnership and the Fund agreeing to guarantee the performance of the obligations following completion of the transaction of SIR under this Agreement, and the operating covenants of SIR contained in Article 6 and Article 9 of the Licence and Royalty Agreement.
- (5) If SIR has complied with its obligations under this Section 4.5, then the Partnership and the Fund, acting in good faith, will, upon the request of SIR, confirm to SIR, or to such other Person or Persons as may be designated by SIR, that SIR has complied

with the provisions of this Section 4.5 and that the Fund and the Partnership have no rights with respect to the Change of Control contemplated by or resulting from the compliance by SIR of its obligations under this Section 4.5.

Section 4.6 Acquisition of Pledged Shares

- (1) The provisions of Section 4.5 shall not apply to a Change of Control resulting from or related to a pledge by a Related Party of shares of SIR (the “**Pledged Shares**”) to (or indirectly held by) a bank or other financial institution (a “**Pledgee**”), or the direct or indirect realization thereof by the Pledgee, including any related voting trust arrangements, provided that, if the Pledgee realizes on any pledge and any such realization would otherwise have resulted in a Change of Control, then the provisions of this Section 4.6 shall apply.
- (2) If a Pledgee desires or proposes to, directly or indirectly, realize on a pledge made to the Pledgee by a Related Party of shares of SIR which, if completed, would result in a Change of Control of SIR, then the Pledgee may, in its discretion, before realizing on such pledge, give to the Fund and the Partnership notice in writing (such notice in this Section 4.6 called the “**Pledgee Notice**”) of such realization, which Pledgee Notice shall stipulate the consideration in cash that would be accepted by the Pledgee in exchange for the Pledged Shares.
- (3) The Partnership and/or the Fund, will have the right, at their election, exercisable at any time up to and including but not after the 30th day after the date on which it receives the Pledgee Notice, to inform the Pledgee and SIR in writing that the Partnership and/or the Fund (either directly or through a subsidiary at its option), as the case may be, desires to purchase the Pledged Shares for the consideration stated in the Pledgee Notice by giving to the Pledgee notice in writing (the “**Purchase Notice**”) of such election, and if the Partnership and/or the Fund (the party which delivers the Purchase Notice being the “**Purchaser**”) delivers such election, the Pledgee and the Purchaser will then attempt to negotiate the terms of an agreement for the purchase of the Pledged Shares on the terms set forth in the Pledgee Notice.
- (4) If, within 30 days after the receipt of the Pledgee Notice, the Fund or the Partnership does not deliver the Purchaser Notice to SIR or, within 30 days after the Purchaser delivers the Purchaser Notice to SIR, the Purchaser does not enter into an agreement with the Pledgee for the purchase of the Pledged Shares or such agreement is entered into but subsequently terminated within such period, then subject to Section 4.7, the Pledgee may realize on its security interest in the Pledged Shares.

Section 4.7 Acquisition of Restaurant Assets

- (1) If a Pledgee desires or proposes to, directly or indirectly, realize on a pledge made to the Pledgee by a Related Party of shares which, if completed, would result in a Change of Control of SIR, and the Pledgee elects not to provide a Pledgee Notice pursuant to Section 4.6(2), the Pledgee shall provide notice thereof to the Fund and the Partnership and the Fund and the Partnership shall have the right, exercisable for 30 days following the later of (i) the determination of the fair market value therefore, and (ii) the receipt by the Related Party of notice from the Pledgee, to acquire all of

the assets and undertaking of SIR related to the SIR Restaurants (the “**Restaurant Assets**”) at their fair market value as negotiated between SIR and the Fund or the Partnership (or, absent such agreement, as determined as provided in (2) below).

- (2) If the parties are unable to agree upon the fair market value of the Restaurant Assets within 30 days following the receipt of notice from the Pledgee under (1) above, they shall submit the issue of fair market value of the Restaurant Assets for determination by an independent qualified valuation firm mutually agreed to by the parties (and, failing such agreement between the parties within a further period of 5 days, such an independent firm shall be LECG Canada Inc., or if such firm is unable to act, DMCT LLP). The determination of such firm shall be final and binding upon the parties and shall not be subject to appeal, absent manifest error. Such firm shall be deemed to be acting as experts and not as arbitrators.

Section 4.8 Restrictions on Transfer of Units.

SIR covenants to the Fund and the Trust that, except as otherwise provided herein, it will not sell, without the prior written consent of the Fund, Units acquired upon exercise of the Exchange Rights if the sale of such Units would result in SIR holding less than a 10% interest (assuming the exchange of all Class A GP Units into Units) of the outstanding Units until after the third anniversary of the Closing, provided that the provisions of this Section 4.8 do not apply to the sale of Units in connection with a take-over bid, merger or similar business combination, or pursuant to a pledge or the direct or indirect realization thereof.

ARTICLE 5 FUND SUCCESSORS

Section 5.1 Certain Requirements in Respect of Combination, etc.

As long as any outstanding Partnership Securities are owned by SIR or any Related Party, neither the Fund nor the Trust shall consummate any transaction (whether by way of reconstruction, reorganization, consolidation, arrangement, merger, transfer, dissolution, sale, lease, business combination or otherwise) whereby all or substantially all of its undertaking, property and assets would become the property of any other Person or, in the case of a merger, of the continuing entity resulting therefrom, unless such other Person or continuing entity (the “**Successor**”) by operation of law, becomes, without more, bound by the terms and provisions of this Agreement and, if not so bound, executes, prior to or contemporaneously with the consummation of such transaction, an agreement supplemental hereto and such other instruments (if any) as are reasonably necessary or advisable to evidence the assumption by the Successor of liability for all moneys payable and property deliverable hereunder and the covenant of such Successor to pay and deliver or cause to be delivered the same and its agreement to observe and perform all the covenants and obligations of the Fund or the Trust, as the case may be, under this Agreement

Section 5.2 Vesting of Powers in Successor

Whenever the conditions of Section 5.1 have been duly observed and performed, the parties, if required by Section 5.1, shall execute and deliver the supplemental agreement

provided for in Section 5.1 and thereupon the Successor shall possess and from time to time may exercise each and every right and power of the Fund or the Trust, as the case may be, under this Agreement in the name of the Fund or the Trust, as the case may be, or otherwise, and any act or proceeding by any provision of this Agreement required to be done or performed by the Trustees or the Holdings Trustees, as the case may be, may be done and performed with like force and effect by the trustees, directors or officers, as the case may be, of such Successor.

ARTICLE 6 REPRESENTATIONS AND WARRANTIES

Section 6.1 General Representations and Warranties

Each party to this Agreement represents and warrants as follows and acknowledges that each other party is relying upon such representations and warranties in connection with the transactions contemplated hereby and by the other Operative Documents:

- (a) if applicable, it is validly subsisting under the laws of its jurisdiction of incorporation or formation and is duly registered to carry on business in each jurisdiction where the failure to be so registered could reasonably be expected to have a material adverse effect on its business, properties or condition (financial or otherwise) or its ability to consummate the transactions contemplated hereby;
- (b) it has all requisite power and authority to conduct its business as is presently being conducted and to execute, deliver and perform this Agreement and the other Operative Documents to which it is or is to be a party;
- (c) the execution, delivery and performance by it of this Agreement have been duly authorized by all necessary corporate or other action and do not require the consent or approval of any other Person;
- (d) this Agreement has been duly executed and delivered by it and constitutes its legal, valid and binding obligations, enforceable against it in accordance with its terms, except as such enforceability may be affected by bankruptcy, insolvency, arrangement, moratorium or other laws affecting the enforcement of creditors' rights generally and the availability of equitable remedies may be limited by equitable principles of general applicability;
- (e) the execution and delivery by it of this Agreement and the performance by it of its obligations hereunder do not require any authorization under any applicable law and are not inconsistent with and do not contravene any provision of or constitute a default under (i) its constituting documents or by-laws, as applicable; (ii) any judgment, injunction, decree or order applicable to it or any of its properties; (iii) any applicable law or authorization applicable to it or any of its properties; or (iv) any indenture, mortgage, contract or other instrument to which it is a party or by which it or its property may be bound or affected; except (in each case) such authorizations

as are required pursuant to applicable laws regarding the issuance of securities;

- (f) neither the execution and delivery by it of this Agreement nor the performance by it of its obligations hereunder will subject any of its property or assets to any Security Interest;
- (g) it is a resident of Canada for the purposes of the Tax Act and is not a non-Canadian for the purposes of the *Investment Canada Act*; and
- (h) there is no action, suit, investigation or proceeding pending (or, to its knowledge, threatened) against it before any Governmental Authority which, individually or in the aggregate, if determined adversely to its interests, could reasonably be expected to adversely affect the consummation of the transactions contemplated hereby or by the Operative Documents to which it is a party or the performance by it of its obligations hereunder or thereunder, nor is it in default with respect to any order of any Governmental Authority which default could reasonably be expected to adversely affect the consummation of the transactions contemplated hereby or by the Operative Documents to which it is a party or the performance by it of its obligations hereunder or thereunder.

Section 6.2 Specific Representations and Warranties of the Fund and the Trust

Each of the Fund and the Trust represents and warrants as follows as to itself and acknowledges that the other parties hereto are relying on such representations and warranties in connection with the transactions contemplated hereby and by the other Operative Documents:

- (a) each of the Fund and the Trust is a trust formed pursuant to the Declaration of Trust or the Holdings Declaration of Trust, as the case may be;
- (b) the Units and the Trust Units which have been issued have been issued as fully paid and non-assessable on account of the subscription price therefor; and
- (c) immediately following the consummation of the transactions contemplated hereby and by the other Operative Documents, the capitalization of the Fund and the Trust shall be as set forth in the Prospectus.

Section 6.3 Survival

The representations and warranties of the parties contained in this Agreement or any document or certificate given pursuant hereto shall survive the Closing and shall continue in full force and effect for a period of twelve months. No action may be brought for any misrepresentation contained herein after twelve months from the Closing.

ARTICLE 7
ADDITIONAL COVENANTS

Section 7.1 Information

- (1) Each of the Partnership, the Trust and SIR acknowledge that the Fund will be a reporting issuer under applicable laws regarding securities and in that regard will have continuous and other disclosure obligations. Each of the Partnership, the Trust and SIR shall provide to the Fund on a timely basis all information related to its respective business and its operations, results of operations and condition (financial or otherwise) and events which may reasonably be expected to have a significant effect on the value or price of the Units so as to enable the Fund to comply with such obligations, including:
 - (a) a report of any material change that occurs in the affairs of the Partnership or the Trust, respectively, in form and content that it would file with applicable regulatory authorities if it were a reporting issuer;
 - (b) all financial statements that the Partnership and the Trust, respectively, would be required to file with applicable regulatory authorities if they were reporting issuers under applicable securities laws;
 - (c) all financial statements and material change reports required to be filed by SIR pursuant to undertakings delivered to the applicable Governmental Authorities (including any securities regulatory authority);
 - (d) upon request, all such other information as the Partnership and the Trust, respectively, would be required to provide or disclose if it were a reporting issuer under applicable securities laws; and
 - (e) such additional information regarding the financial position of SIR as the Fund may reasonably request in order to comply with any continuous or other disclosure requirements which now, or in the future, may apply to the Fund under applicable securities or other legislation or in order to include in a disclosure document to be delivered to Unitholders or as required by any governmental Authority or applicable marketplace.
- (2) The Fund will provide an undertaking to certify, on an annual basis, its compliance with all undertakings made by it pursuant to the Prospectus and will file such certificate on SEDAR concurrently with the filing of its annual financial statements.
- (3) For as long as the Fund is a reporting issuer, SIR will (i) file "insider trading reports"; and (ii) obtain undertakings from directors and senior officers of SIR and all "material subsidiaries" of SIR (based on their representing more than 10% of the pro forma consolidated assets or consolidated revenues of SIR) to file "insider trading reports" in respect of trades in Units in accordance with applicable securities laws.

Section 7.2 Further Assurances

Each party shall (i) do and execute all such things and documents as may be necessary or advisable in connection with the implementation of the transactions contemplated by this Agreement and the other Operative Documents; (ii) use reasonable efforts to take all such actions as may be necessary or desirable in order to obtain any authorizations which may be required in connection with the consummation of the transactions contemplated by this Agreement and the other Operative Documents and (iii) with reasonable promptness notify each of the other parties hereto of the occurrence of any fact or event which may reasonably be expected to hinder or prevent the consummation of the transactions contemplated hereby and by the other Operative Documents, provided that nothing contained in this Section 7.2 shall obligate a party to do or execute any such thing or document which would require it to assume any greater obligations or forego any benefit to which it may be entitled under the Operative Documents.

ARTICLE 8 GENERAL

Section 8.1 Term

This Agreement shall come into force and be effective as of the date hereof and shall terminate and be of no further force and effect at such time as no Partnership Securities (or securities or rights convertible into or exchangeable for or carrying rights to acquire Partnership Securities) are held by any Person other than the Fund, SIR GP, the Trust or any of their Affiliates other than SIR.

Section 8.2 Changes in Capital of the Fund and the Partnership

At all times after the occurrence of any event contemplated pursuant to Section 2.5 of the Exchange Agreement or otherwise, as a result of which either the Units or the Exchangeable Securities or both are in any way changed, this Agreement shall forthwith be amended and modified as necessary in order that it shall apply with full force and effect, *mutatis mutandis*, to all new securities into which Units or the Exchangeable Securities or both are so changed and the parties hereto shall execute and deliver an agreement in writing giving effect to and evidencing such necessary amendments and modifications.

Section 8.3 Legend

Certificates representing Partnership Securities issued to SIR shall bear the following legend:

“The securities represented by this certificate are subject to the provisions of the Governance Agreement and the Limited Partnership Agreement dated October 12, 2004 which contain restrictions on the sale, transfer or other disposition of the securities represented by this certificate and provisions relating to the management of THE SIR ROYALTY LIMITED PARTNERSHIP and are entitled to the benefits of the Exchange Agreement dated October 12, 2004.”

Section 8.4 Severability

If any term or other provision of this agreement is invalid, illegal or incapable of being enforced by any rule or law, or public policy, all other conditions and provisions of this agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the fullest extent possible.

Section 8.5 Amendments, Modifications

No amendment or modification or waiver of any of the provisions of this Agreement otherwise permitted hereunder shall be effective unless made in writing and signed by all of the applicable parties hereto.

Section 8.6 Enurement

This Agreement shall be binding upon and enure to the benefit of the parties hereto and their respective successors and assigns.

Section 8.7 Notices to Parties

(1) All notices and other communications between the parties to this Agreement shall be in writing and shall be deemed to have been given if delivered personally or by confirmed telecopy to the parties at the following addresses (or at such other address for any such party as shall be specified in like notice):

- (a) SIR Royalty Income Fund or
SIR Holdings Trust
c/o SIR Corp.
5360 South Service Road
Suite 200
Burlington, Ontario L7L 5L1

Attention: Trustees
Facsimile No.: 905-681-5178

- (b) SIR Corp.
c/o SIR Corp.
5360 South Service Road
Suite 200
Burlington, Ontario L7L 5L1

Facsimile No.: 905-681-5178

- (c) SIR Royalty Limited Partnership or
SIR GP Inc.
c/o SIR Corp.

5360 South Service Road
Suite 200
Burlington, Ontario L7L 5L1

Attention: Trustees
Facsimile No.: 905-681-5178

- (d) Ken Fowler Enterprises Limited
110 Hannover Drive
Suite 203B
P.O. Box 24091
St. Catharines, Ontario L2R 7P7

Attention: Ken Fowler
Facsimile No.: 905-688-3060

- (e) Ken Fowler
110 Hannover Drive
Suite 203B
P.O. Box 24091
St. Catharines, Ontario L2R 7P7

Facsimile No.: 905-688-3060

- (f) Peter Fowler Enterprises Limited
c/o SIR Corp.
5360 South Service Road
Suite 200
Burlington, Ontario L7L 5L1

Attention: Peter Fowler
Facsimile No.: 905-681-0394

- (g) Peter Fowler
c/o SIR Corp.
5360 South Service Road
Suite 200
Burlington, Ontario L7L 5L1

Facsimile No.: 905-681-0394

- (2) Any notice or other communication given personally shall be deemed to have been given and received upon delivery thereof and if given by telecopy shall be deemed to have been given and received on the date of confirmed receipt thereof unless such day is not a Business Day, in which case it shall be deemed to have been given and received upon the immediately following Business Day.

Section 8.8 Counterparts

This Agreement may be executed in counterparts (including by facsimile), each of which shall be deemed an original, and all of which taken together shall constitute one and the same instrument.

Section 8.9 Governing Law

This Agreement shall be construed and enforced in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein. The parties hereto hereby submit and attorn to the non-exclusive jurisdiction of the courts of the Province of Ontario.

Section 8.10 Authorship

The parties hereto agree that the terms and language of this Agreement and all agreements contemplated hereby were the result of negotiations between the parties and, as a result, there shall be no presumption that any ambiguity in this Agreement shall be resolved against either party.

Section 8.11 Waiver

The failure of any party to insist on the strict performance of any provision of this Agreement or to exercise any right, power or remedy upon a breach hereof shall not constitute a waiver of the provision or limit the party's rights thereafter to enforce any provision or exercise any right, power or remedy. No waiver of any of the provisions of this Agreement shall be deemed to be or shall constitute a waiver of any other provision, nor shall any such waiver constitute a continuing waiver unless otherwise expressly stated.

Section 8.12 Remedies

Each party acknowledges that its failure to observe or perform its covenants and agreements herein contained may result in damages to another party which could not be adequately compensated for by a monetary award, and accordingly each party hereto agrees that in addition to all other remedies available to a party at law or in equity in the event another party fails to observe or perform its covenants herein, a party will be entitled as a matter of right to apply to a court of competent jurisdiction for such relief by way of restraining order, injunction, decree of specific performance or otherwise, as may be appropriate to ensure compliance by each party with this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

SIR ROYALTY INCOME FUND by its Administrator, **SIR ROYALTY LIMITED PARTNERSHIP**, by its managing general partner, **SIR GP INC.**

By: Peter Fowler ("Signed")

Authorized Signing Officer

SIR ROYALTY LIMITED PARTNERSHIP, by its managing general partner, **SIR GP INC.**

By: Peter Fowler ("Signed")

Authorized Signing Officer

SIR GP INC.

By: Peter Fowler ("Signed")

Authorized Signing Officer

SIR HOLDINGS TRUST by its Administrator, **SIR ROYALTY LIMITED PARTNERSHIP**, by its managing general partner, **SIR GP INC.**

By: Peter Fowler ("Signed")

Authorized Signing Officer

KEN FOWLER ENTERPRISES LIMITED

By: Ken Fowler ("Signed")
Authorized Signing Officer

PETER FOWLER ENTERPRISES LTD.

By: Peter Fowler ("Signed")
Authorized Signing Officer

Lori Colasanti ("Signed")
Witness

Lori Colasanti ("Signed")
Witness

Ken Fowler ("Signed")
Ken Fowler

Peter Fowler ("Signed")
Peter Fowler

SIR CORP.

By: Peter Fowler ("Signed")
Authorized Signing Officer