

# **PORT RENFREW DEVELOPMENT TRUST**

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**DEED OF TRUST**

---

**January 17, 2012**

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**PORT RENFREW DEVELOPMENT TRUST**

**THIS DEED OF TRUST** is made as of the 17<sup>th</sup> day of January, 2012.

**BETWEEN:**

**Jason Brown** (the “**Initial Trustee**”) of the trust constituted by this Deed of Trust,

- and -

**Maria V. Nathanail**, an individual resident in Canada (hereinafter called the “**Settlor**” or the “**Initial Unitholder**” as the context requires) and all Persons who after the date hereof become holders of Units of the Fund as herein provided (each Person who at any time is, at that time, a holder of a Unit of the Fund as herein provided, hereinafter called a “**Unitholder**”).

**WHEREAS** the Settlor desires to create a Fund for the purpose of benefiting the Unitholders and acquiring and holding Securities and other investments;

**AND WHEREAS** the Settlor is delivering to the Initial Trustee the Initial Contribution for the purpose of settling the Fund created hereunder;

**AND WHEREAS** the Initial Trustee has agreed to hold the Initial Contribution and all amounts and assets subsequently received pursuant to this Deed of Trust in accordance with the provisions hereinafter set forth;

**AND WHEREAS** the Settlor and the Initial Trustee desire that the beneficiaries of the Fund, including the Initial Unitholder, shall be the holders of Units evidenced by certificates therefor as provided in this Deed of Trust;

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

**NOW THEREFORE THIS DEED OF TRUST WITNESSETH THAT**, in consideration of the premises and the mutual and respective covenants and agreements contained herein, the Initial Trustee declares, covenants and agrees with the Settlor and the Initial Unitholder, and the Settlor and the Initial Unitholder covenant and agree with the Initial Trustee as follows:

**ARTICLE 1**  
**INTERPRETATION**

**1.1 Definitions**

In this Deed of Trust (including the recitals hereto) and in the Unit Certificates, the following terms when capitalized shall have the following meanings:

- (a) **“Affiliate”** shall have the meaning ascribed thereto in the Securities Act;
- (b) **“Applicable Laws”** means all applicable provisions of law, domestic or foreign, including, without limitation, the Securities Act;
- (c) **“Approvals”** means any directive, order, consent, exemption, waiver, consent order or consent decree of or from, or notice to, action by or filing with, any Governmental Authority;
- (d) **“Associate”** shall have the meaning ascribed thereto in the Securities Act;
- (e) **“Auditors”** means the firm of chartered accountants appointed as the auditors of the Fund from time to time in accordance with the provisions hereof;
- (f) **“Bid Units”** shall have the meaning ascribed thereto in Section 12.10(a);
- (g) **“Business Day”** means a day which is not a Saturday, Sunday or statutory holiday in the City of Calgary, in the Province of Alberta;
- (h) **“Canadian Partnership”** means a Canadian partnership within the meaning of subsection 102(1) of the Tax Act;
- (i) **“Cash Flow of the Fund”** shall have the meaning ascribed thereto in Section 5.1(a);
- (j) **“Cash Redemption Price”** shall have the meaning ascribed thereto in Section 6.3(a);
- (k) **“Convertible Securities”** shall have the meaning ascribed thereto in 3.4(a);
- (l) **“Deed”** or **“Deed of Trust”** means this deed of trust establishing Port Renfrew Development Trust;
- (m) **“Distributable Income”** shall have the meaning ascribed thereto in Section 5.1(b);
- (n) **“Distribution Payment Date”** means a date on which the Trustee have determined to make a distribution of Distributable Income, which date shall be on or about the 15<sup>th</sup> day of the month following the end of a Distribution Period or, if

any such day is not a Business Day, the next following Business Day or such other date as may be determined from time to time by the Trustee;

- (o) **“Distribution Period”** means the period between two consecutive Distribution Record Dates commencing from and including the day next following the first Distribution Record Date to and including the second Distribution Record Date;
- (p) **“Distribution Record Date”** means December 31 of each year commencing on December 31, 2012 or such other dates as may be determined from time to time by the Trustee;
- (q) **“Fund”** means the Port Renfrew Development Trust, a trust constituted by this Deed of Trust, as the same may be amended, supplemented or restated from time to time;
- (r) **“Fund Assets”**, at any time, means all monies, properties and other assets as are at such time held by the Trustee on behalf of the Fund including, without limitation:
  - (i) the Initial Contribution;
  - (ii) all funds or property realized from the issuance or sale of Units or any other Securities of the Fund or cash received from time to time;
  - (iii) all Securities held by the Trustee on behalf of the Fund;
  - (iv) investments permitted pursuant to Section 4.1;
  - (v) any Securities issued to the Fund as distributions in respect of the Securities held by the Trustee on behalf of the Fund;
  - (vi) any proceeds of disposition of any of the foregoing property; and
  - (vii) all income, interest, dividends, returns of capital, profit, gains and accretions and all substituted assets, rights and benefits of any kind or nature whatsoever arising directly or indirectly from or in connection with or accruing to such foregoing property or such proceeds of disposition;
- (s) **“Fund Liabilities”** shall have the meaning ascribed thereto in Section 2.7(a);
- (t) **“Governmental Authority”** shall mean: (i) any nation, province, state, county, city or other jurisdiction; (ii) any federal, provincial, state, local, municipal, foreign or other government; (iii) any governmental or quasi-governmental authority of any nature (including any agency, branch, department, board, commission, court, tribunal or other entity exercising governmental or quasi-governmental power); (iv) any body exercising, or entitled or purporting to exercise, any administrative, executive, judicial, legislative, regulatory or taxing authority or power; or (v) any official of the foregoing;

- (u) **“Income of the Fund”** shall have the meaning ascribed thereto in Section 5.2(a);
- (v) **“Initial Contribution”** means the sum of \$10,00 cash delivered by the Settlor to the Initial Trustee on the date hereof for the purpose of settling the trust constituted by the Fund;
- (w) **“Initial Trustee”** means Jason Brown, as the first trustee of the Fund;
- (x) **“Initial Unitholder”** means Maria Nathanail, as the initial Unitholder of the Fund;
- (y) **“Inspector”** shall have the meaning ascribed thereto in Section 12.9;
- (z) **“Net Realized Capital Gains”** shall have the meaning ascribed thereto in Section 5.2(b);
- (aa) **“Non-Resident”** means: (i) a Person who is not a Resident; and (ii) a partnership other than a Canadian Partnership;
- (bb) **“Offeree”** means a Person to whom a take-over bid is made;
- (cc) **“Offeror”** means a Person, other than an agent, who makes a take-over bid, and includes two or more Persons who, directly or indirectly, make a take-over bid jointly or in concert;
- (dd) **“Outstanding”** shall have the meaning ascribed thereto in Section 11.7;
- (ee) **“Partnership”** means Port Renfrew Management LP, a limited partnership formed under the laws of the Province of Alberta, and includes any successor thereto;
- (ff) **“Person”** means any individual, company, corporation, limited partnership, general partnership, firm, joint venture, syndicate, trust, joint stock company, limited liability corporation, association, bank, pension fund, business trust or other organization, whether or not a legal entity, and any government agency or political subdivision thereof or any other form of entity or organization;
- (gg) **“Pro Rata Share”** of any particular amount in respect of a Unitholder at any time shall be the product obtained by multiplying the number of Units that are outstanding and are owned by that Unitholder at that time by the amount obtained when the particular amount is divided by the total number of all Units that are issued and outstanding at that time;
- (hh) **“Redemption Date”** shall have the meaning ascribed thereto in Section 6.2(b);
- (ii) **“Redemption Notes”** means subordinated promissory notes issued, in series or otherwise, by the Fund pursuant to a note indenture or otherwise and issued to redeeming Unitholders in principal amounts equal to the in specie Redemption

Price of the Units to be redeemed and having the following terms and conditions (and such other terms and conditions as the Trustee may determine);

- (jj) “**Resident**” means a Person (other than a partnership) who is not a non-resident of Canada for purposes of the Tax Act and a partnership that is a Canadian Partnership;
- (kk) “**Securities**” means bonds, debentures, notes or other evidence or instruments of indebtedness, shares, stocks, options, warrants, special warrants, installment receipts, subscription receipts, rights, subscriptions, partnership interests, units or other evidence of title to or interest in the capital, assets, property, profits, earnings or royalties, of any Person;
- (ll) “**Securities Act**” means the *Securities Act*, R.S.A. 2000, c. S4, as amended from time to time, together with all regulations, rules, policy statements, rulings, notices, orders or other instruments promulgated thereunder;
- (mm) “**Settlor**” means the Maria V. Nathanail as settlor of the Fund;
- (nn) “**Special Resolution**” shall have the meaning ascribed thereto in Section 11.6(a);
- (oo) “**Subsidiary**” shall have the meaning ascribed thereto in the Securities Act;
- (pp) “**Take-over Bid**” shall have the meaning ascribed thereto in the Securities Act;
- (qq) “**Tax Act**” means the *Income Tax Act*, R.S.C. 1985 (5<sup>th</sup> Supp.), c.1 and the *Income Tax Regulations* applicable with respect thereto, as amended from time to time;
- (rr) “**this Deed of Trust**”, “**this Deed**”, “**hereto**”, “**herein**”, “**hereof**”, “**hereby**”, “**hereunder**” and similar expressions refer to this instrument and not to any particular Article, Section or portion hereof, and include any and every instrument supplemental or ancillary hereto;
- (ss) “**Transfer Agent**” means such Person as may from time to time be appointed by the Fund to act as registrar and transfer agent for the Units together with any sub-transfer agent duly appointed by the Transfer Agent;
- (tt) “**Trustee**” means, at any time, a Person who is, in accordance with the provisions hereof, a trustee of the Fund at that time including, without limitation, so long as it remains as trustee of the Fund, the Initial Trustee; and “Trustee” means, at any time, all of the persons each of whom is at that time a trustee of the Fund;
- (uu) “**Trust Expenses**” means all expenses incurred by the Fund including any management fee, custodial fees, Trustee fees, taxes legal, audit and valuation fees, reporting costs, registrar and transfer agency costs, printing and mailing costs, salaries, benefits, advertising, consulting fees, marketing and any other administrative expenses and all costs incurred in connection with the Fund

(including any initial expenses) and all amounts paid on account of the indebtedness of the Fund;

- (vv) **“Unit Certificate”** means a certificate, in the form approved by the Trustee, evidencing one or more Units, issued and certified in accordance with the provisions hereof;
- (ww) **“Unitholders”** means at any time the Persons who are the holders of record at that time of one or more Units, as shown on the registers of such holders maintained by the Fund or by the Transfer Agent on behalf of the Fund; and
- (xx) **“Units”** means the trust units of the Fund referred to herein and authorized and issued hereunder as such and for the time being outstanding and entitled to the benefits hereof and which shall represent beneficial interests in the Fund Assets.

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

Any reference in this Deed of Trust to an act to be performed or which may not be performed by the Fund shall be construed and applied for all purposes as if it referred to an act to be performed or which may not be performed by the Trustee on behalf of the Fund or by some other Person duly authorized to do so by the Trustee or pursuant to the provisions hereof. Any reference in this Deed of Trust to actions, rights or obligations of the Trustee, or any one of them, shall be construed and applied for all purposes to refer to actions, rights or obligations of the Trustee in their capacity as Trustee of the Fund, and not in any other capacity, unless the context otherwise requires.

## **1.3 Tax Act**

Any reference in this Deed of Trust to a particular provision of the Tax Act shall include a reference to that provision as it may be renumbered or amended from time to time. If there are proposals for amendments to the Tax Act which have not been enacted into law or proclaimed into force on or before the date on which such proposals are to become effective, the Trustee may take such proposals into consideration and apply the provisions hereof as if such proposals had been enacted into law and proclaimed into force. Any reference in this Deed of Trust to a particular provision of the Tax Act shall, to the extent applicable, also include a reference to any applicable and corresponding provision of the income tax laws of a province or territory of Canada.

## **1.4 Number and Gender**

In this Deed of Trust, unless otherwise expressly provided or unless the context otherwise requires, words importing the singular number include the plural and vice versa, and words importing a gender shall include the feminine, masculine and neuter genders.

### **1.5 Headings for Reference Only**

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

### **1.6 Day Not a Business Day**

If any day on which any determination is to be made or any action is required to be taken hereunder is not a Business Day, then such determination shall be made or such action shall be required to be taken at or before the requisite time on the next succeeding day that is a Business Day. This Section 1.6 is not applicable to Sections 5.1, 5.2, 5.3, 5.4, 5.7 and 5.10 and to defined terms used in such Sections.

### **1.7 Currency**

All references in this Deed of Trust to “dollars” or “\$” are to Canadian dollars, unless otherwise noted.

### **1.8 Time of the Essence**

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

### **1.9 Governing Law; Attornment**

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

## **ARTICLE 2 DEED OF TRUST**

### **2.1 Establishment of the Fund**

The Initial Trustee hereby declares and agrees to act as trustee of the Fund and to hold and administer the Fund Assets in trust for the use and benefit of the Unitholders, their successors, permitted assigns and personal representatives upon the trusts and subject to the terms and conditions hereinafter declared and set forth, such trust to constitute the Fund hereunder.

### **2.2 Initial Contribution**

The delivery by the Settlor, concurrent with the execution of this Deed of Trust, of the Initial Contribution to the Initial Trustee for the purpose of settling the Fund is hereby confirmed.

### **2.3 Name of the Fund**

- (a) The Fund shall be known and designated as “Port Renfrew Development Trust” and, whenever lawful and convenient, the Fund Assets shall be held and the affairs of the Fund shall be conducted and transacted under that name.
- (b) If the Trustee determines 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 Trustee deem appropriate, and the Fund may hold the Fund Assets and conduct and transact its affairs under such other designation or name.
- (c) The Trustee may approve and use a version of any name or designation used by the Fund in any language other than English.
- (d) Without limiting the foregoing, the Trustee or any other duly authorized Person may enter into agreements and other documents for and on behalf of the Fund under the name “Port Renfrew Development Trust” and the Trustee hereby acknowledge and confirm that any such agreements or other documents so entered into under the name “Port Renfrew Development Trust” shall for all purposes be and be deemed to have been entered into by, and be binding on, the Trustee, as Trustee for and on behalf of the Fund.

### **2.4 Head Office**

The head office of the Fund hereby created shall be located at the head office of 96 Gleneagles View, Cochrane, Alberta, T4C 1P2, or such other place or places in Canada as the Trustee may from time to time designate.

### **2.5 Nature of the Fund**

The Fund is an unincorporated, open-ended trust established for the purposes specified in Section 4.1. The Fund is not, is not intended to be, shall not be deemed to be and shall not be treated as, a general partnership, limited partnership, society, syndicate, association, joint venture, company, corporation or joint stock company, nor shall the Trustee or any Trustee or the Unitholders or any of them or any Person be, or be deemed to be, treated in any way whatsoever as liable or responsible hereunder as partners or joint venturers, The Trustee shall not be, or be deemed to be, the agents of the Unitholders. The relationship of the Unitholders to the Trustee shall be solely that of beneficiaries of the Fund and their rights shall be limited to those conferred upon them by this Deed of Trust. Except as provided herein, the Trustee will have sole responsibility for the conservation and protection of the Fund Assets, Unitholders will have no responsibility for the conservation or protection of the Fund Assets, and nothing herein will have the effect of constituting the Unitholders as associates in a joint enterprise for the conduct of business.

### **2.6 Rights of Unitholders**

- (a) The rights of each Unitholder (including the right, if any, to call for a distribution or division of assets, monies, funds, income or capital gains held, received or

realized by the Trustee) 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 Trustee.

- (b) The legal ownership of the Fund Assets and the right to conduct the activities of the Fund are vested, except as provided herein, exclusively in the Trustee, or such other persons as the Trustee may determine, and no Unitholder has or is deemed to have any right of ownership in, or any other interest in, any of the Fund Assets, except as specifically provided herein. Except as specifically provided herein, no Unitholder shall be entitled to interfere with or give any direction to the Trustee with respect to the affairs of the Fund or in connection with the exercise of any powers or authorities conferred upon the Trustee under this Deed of Trust.
- (c) The Units shall be personal property and shall confer upon the holders thereof only the interest and rights specifically set forth in this Deed of Trust.

## **2.7 Liability of Unitholders**

- (a) No Unitholder, in its capacity as such, shall incur or be subject to any liability, direct or indirect, absolute or contingent, in contract or in tort or of any other kind to any Person in connection with:
  - (i) the Fund Assets or the ownership, use, operation, acquisition or disposition thereof or the exercise or enjoyment of the rights, privileges, conditions or benefits attached thereto, associated therewith or derived therefrom;
  - (ii) the obligations or the activities or affairs of the Fund;
  - (iii) any actual or alleged act or omission of the Trustee or by any other Person in respect of the activities or affairs of the Fund (whether or not authorized by or pursuant to this Deed of Trust);
  - (iv) any act or omission of the Trustee 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 Trustee or such other Person in respect of the activities or affairs of the Fund (whether or not authorized by or pursuant to this Deed of Trust);
  - (v) any transaction entered into by the Trustee or by any other Person in respect of the activities or affairs of the Fund (whether or not authorized by or pursuant to this Deed of Trust); or
  - (vi) except as provided in Section 5.8, any taxes, levies, imposts or charges or fines, penalties or interest in respect thereof or in addition thereto payable by the Fund or by the Trustee or by any other Person on behalf of or in connection with the activities or affairs of the Fund,

(collectively, the “**Fund Liabilities**”),

- (b) No Unitholder, in its capacity as such, shall be liable to indemnify the Trustee or any other Person with respect to any Fund Liabilities.
- (c) To the extent that, notwithstanding the provisions of this Section 2.7, any Unitholder, in its capacity as such, may be determined by a judgment of a court of competent jurisdiction to be subject to or liable in respect of any 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, that Unitholder’s Pro Rata Share of the Fund Assets represented by its Units.
- (d) Notwithstanding the provisions of this Section 2.7, nothing shall preclude the enforcement of a loan or subordination agreement by a lender or creditor against a Unitholder for amounts wrongly paid to such Unitholder in contravention of such loan or subordination agreement.

## **2.8 Unitholders Bound**

This Deed of Trust shall be binding upon all persons who become Unitholders from time to time, including the holders of other Securities issued by the Fund, if applicable. By the acceptance of an original or a photocopy of the Unit Certificate representing Units, or, during use of a book-entry system for the Units, upon completion of the purchase or acquisition of Units, the Unitholder thereof shall be deemed to have agreed to be bound, and shall so be bound, by this Deed of Trust,

## **ARTICLE 3**

### **CREATION, ISSUE AND SALE OF UNITS**

#### **3.1 Nature of Units**

- (a) The beneficial interests in the Fund shall be divided into interests of one class, described and designated as “Units”. Each holder of a Unit shall be entitled to the rights and subject to the limitations, restrictions and conditions set out herein, and the interest of each Unitholder shall be determined by the number of Units registered in the name of such Unitholder,
- (b) Each Unit is transferable and represents an equal undivided beneficial interest in any distribution from the Fund and in any of the Fund Assets net of the Fund Liabilities or any other net assets of the Fund in the event of the termination or winding-up of the Fund.
- (c) All Units shall rank among themselves equally and rateably without discrimination, preference or priority.
- (d) Each Unit shall entitle the holder thereof to one vote at all meetings of Unitholders or in respect of any written resolution of Unitholders.

- (e) The issued and outstanding Units may be subdivided or consolidated from time to time by the Trustee without notice to or approval from the Unitholders.
- (f) No Units of, of other investments in, or Securities of, the Fund or any other securities which derive all or substantially all of their value from Securities issued by the Fund, shall, at any time, be listed on a stock exchange or other market, including for greater certainty, any organized listing or quotation system that supports over-the-counter trading

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

The aggregate number of Units which are authorized and may be issued hereunder is unlimited.

### **3.3 Issue of Trust Unit to Initial Unitholder**

- (a) Concurrently with the execution and delivery of this Deed of Trust by the parties hereto, the Initial Trustee shall execute and issue to the Initial Unitholder, in consideration for the payment of \$10.00, a Unit Certificate for one (1) Unit and the Initial Trustee shall enter the Initial Unitholder on the register of the Fund as the holder of one (1) Unit and countersign the Unit Certificate and deliver it to the Initial Unitholder,
- (b) On the date of the first issuance of Units subsequent to the date hereof and immediately following such first issuance, the Fund shall repurchase the initial one (1) Unit from the Initial Unitholder, and the Initial Unitholder shall sell the initial one (1) Unit to the Fund for a purchase price of \$10.00 and, upon the completion of such purchase and sale, the initial one (1) Unit shall be cancelled and shall no longer be outstanding for any of the purposes of this Deed of Trust.

### **3.4 Issue of Units**

- (a) Subject to the terms of this Deed of Trust, Units and other Securities of the Fund may be created, issued and sold by the Fund at the times, to the Persons, for the consideration and on the terms and conditions that the Trustee determines and, without limiting the generality of the foregoing, the Trustee may authorize the Fund to pay any commission which the Trustee determines to be reasonable to any Person in consideration of such Person purchasing or agreeing to purchase Units or other Securities from the Fund or from any other Person procuring or agreeing to procure purchasers for Units or other Securities, At the option of the Trustee and subject to Applicable Laws and the receipt of all necessary Approvals, Units may be issued in satisfaction of any distribution of the Fund to Unitholders on a Pro Rata Share basis. The Trustee may create and issue installment receipts, subscription receipts, rights, warrants (including so-called "special warrants" which may be exercisable for no additional consideration) or options to subscribe for Units or debt instruments that are convertible into or exchangeable for Units (collectively, "**Convertible Securities**") which Convertible Securities may be exercisable at any subscription price or prices and

at any time or times as the Trustee may determine. The Convertible Securities so created may be issued for any consideration or for no consideration, all as the Trustee may determine. A Convertible Security shall not be a Unit and the holder of that Convertible Security shall not be a Unitholder,

- (b) Units are to be issued only as fully paid in money, property (including an obligation to pay consideration in installments), or past services, and are not to be subject to future calls or assessments; provided however that Units may be issued for a consideration payable in installments and that the Fund may take security over such Units to be issued under any such offering as security for unpaid installments. In determining whether property or past services are the fair equivalent of monetary consideration, the Trustee may take into account reasonable charges and expenses of organization and reorganization and payments for property and past services reasonably expected to benefit the Fund, and the resolution of the Trustee allotting and issuing those Units shall express the fair equivalent in money of the non-cash consideration received.

### **3.5 No Fractional Units**

Fractions of Units shall not be issued, except pursuant to distributions of additional Units to all Unitholders pursuant to Section 5.7, as a consequence of a consolidation under Section 3.7 or pursuant to a plan described in Section 5.11.

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

Subject to the rights granted under any Convertible Securities, no Person shall be entitled, as a matter of right, to subscribe for or purchase any Units. Except as set forth in this Deed of Trust, there are no conversion, retraction, redemption or pre-emptive rights attaching to the Units.

### **3.7 Consolidation of Units**

- (a) Unless otherwise determined by the Trustee, immediately after any Pro Rata Share distribution of additional Units to all Unitholders pursuant to Section 5.7, the number of the outstanding Units will automatically be consolidated such that each Unitholder will hold after the consolidation the same number of Units as the Unitholder held before the distribution of additional Units. In such circumstances, each Unit Certificate representing a number of Units prior to the distribution of additional Units is deemed to represent the same number of Units after the distribution of additional Units and the consolidation. Such consolidation shall not constitute a redemption or cancellation of Units so consolidated and a Unitholder whose Units are consolidated shall not receive, and shall not be entitled to receive, any proceeds of disposition in respect thereof
- (b) Notwithstanding Section 3.7(a), if tax is required to be withheld from a Unitholder's share of the distribution, the consolidation will result in that Unitholder holding that number of Units equal to (i) the number of Units held by the Unitholder prior to the distribution plus the number of Units received by the

Unitholder in connection with the distribution (net of the number of whole and partial Units withheld on account of withholding taxes in accordance with Section 5.8) multiplied by (ii) the fraction obtained by dividing the aggregate number of Units outstanding prior to 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 Unitholder. Each such Unitholder will be required to surrender the Unit Certificates representing that Unitholder's original Units, and will be entitled to receive in exchange therefor, a Unit Certificate representing that Unitholder's post-consolidation Units in accordance with the terms of Section 12.1.

#### **ARTICLE 4**

#### **PURPOSE AND INVESTMENTS OF THE FUND**

##### **4.1 Purpose of the Fund**

The Fund is hereby created for the following purposes:

- (a) acquiring, investing in, holding, transferring, disposing of and otherwise dealing with, directly or indirectly, any of the Securities issued by the Partnership and Port Renfrew Business Trust, and borrowing funds for that purpose;
- (b) investing in any other Securities and in any other business or investments as the Trustee may determine, and borrowing funds for that purpose;
- (c) temporarily holding cash in interest-bearing accounts and short-term investments for the purposes of:
  - (i) making investments;
  - (ii) paying the expenses and the liabilities of the Fund;
  - (iii) paying amounts payable by the Fund in connection with the redemption of any Units or other Securities of the Fund; and
  - (iv) making distributions to Unitholders;
- (d) issuing Units, Convertible Securities or other Securities for the purpose of:
  - (i) obtaining funds to conduct any of the activities of the Fund;
  - (ii) completing any acquisition of Securities or any other assets for the benefit of the Fund;
  - (iii) implementing distribution reinvestment plans, Unit purchase plans, incentive option plans or other incentive or compensation plans, if any, established by the Trustee for the benefit of the Fund; and

- (iv) making non-cash distributions to Unitholders as contemplated by this Deed of Trust, including pursuant to distribution reinvestment plans, Unit purchase plans, incentive option plans or other incentive or compensation plans, if any, established by the Trustee for the benefit of the Fund;
- (e) issuing debt securities (including debt securities convertible into, or exchangeable for, Units or other Securities of the Fund), provided recourse shall be limited to the Fund Assets, or otherwise borrowing and mortgaging, pledging, charging, granting a security interest in or otherwise encumbering any of the Fund Assets as security;
- (f) guaranteeing (as guarantor, surety or co-principal obligor) the payment of any indebtedness, liability or obligation of the Partnership, Port Renfrew Business Trust or any subsidiary of the Fund and mortgaging, pledging, charging, granting a security interest in or otherwise encumbering all or any part of the Fund Assets including Securities issued by the Partnership, Port Renfrew Business Trust or any subsidiary of the Fund, as security for that guarantee;
- (g) disposing of all or any part of the Fund Assets;
- (h) issuing or redeeming rights and/or Units pursuant to any Unitholder rights plan adopted by the Fund;
- (i) repurchasing, redeeming or otherwise acquiring Securities of the Fund, including pursuant to any issuer bid made by the Fund;
- (j) satisfying the obligations, liabilities or indebtedness of the Fund;
- (k) performing all acts necessary, incidental, ancillary or related to any of the foregoing subsections (a) to (j); and
- (l) undertaking such other activities or taking such other actions to conduct the business of the Fund as shall be approved by the Trustee from time to time.

## **ARTICLE 5**

### **DISTRIBUTIONS**

#### **5.1 Computation of Distributable Income of the Fund**

- (a) The “**Cash Flow of the Fund**”, for, or in respect of, any Distribution Period, shall be equal to:
  - (i) the sum of all cash amounts which are received by the Fund for, and in respect of, the Distribution Period, including, without limitation, interest (including prepayments of interest), dividends, distributions, proceeds from the disposition of Securities, returns of capital and repayments of indebtedness and all amounts received by the Fund in any prior

Distribution Period to the extent those amounts were not included in the calculation of Cash Flow of the Fund in that prior Distribution Period and were not previously distributed;

- (ii) less the sum of:
  - (A) all costs, expenses, liabilities, obligations or amounts of the Fund which, in the opinion of the Trustee, may reasonably be considered to have accrued and become owing by the Fund in respect of, or which relate to, such Distribution Period or a prior Distribution Period if not accrued or deducted in determining the Cash Flow of the Fund in that prior period, including, without limitation, any interest payable by the Fund on any indebtedness of the Fund and any tax liabilities of the Fund;
  - (B) all amounts which relate to the redemption or repurchase of Units or other Securities of the Fund by the Fund and which have been paid or became payable in cash by the Fund in such Distribution Period; and
  - (C) the net proceeds of any issuance of Units or Securities of the Fund or borrowings by the Fund after deducting any associated expenses or commissions,

(b) The “**Distributable Income**” for, or in respect of, a Distribution Period shall be

the Cash Flow of the Fund for such Distribution Period less any amount which the Trustee may reasonably consider to be necessary to:

- (c) provide for the payment of any costs, expenses, liabilities, obligations or amounts which are reasonably expected to be incurred by the Fund;
- (d) be retained by the Fund to comply with such limits or restrictions as may be agreed to between the Trustee and any lender(s) of the Fund or contained in any loan agreement(s) entered into by the Fund or any subsidiary or affiliate of the Fund;
- (e) retain for a reserve to stabilize distributions;
- (f) make allowances for contingencies or for working capital, investments or acquisitions; and
- (g) provide for the payment of any income tax liability of the Fund.

## **5.2 Computation of Income and Net Realized Capital Gains**

- (a) The “**Income of the Fund**” for any taxation year of the Fund shall be the income for the year determined pursuant to the provisions of the Tax Act (other than

subsection 104(6) and paragraph 82(1)(b)) having regard to the provisions thereof which relate to the calculation of taxable income of a trust, and taking into account such adjustments thereto as are determined by the Trustee in respect of dividends received or deemed to be received from taxable Canadian corporations, amounts paid or payable by the Fund to Unitholders, any income of the Fund designated in accordance with Section 5.5 to Unitholders whose Units have been redeemed and such other amounts as may be determined in the discretion of the Trustee; provided, however, that capital gains and capital losses shall be excluded from the computation of income.

- (b) The “**Net Realized Capital Gains**” of the Fund 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 in the year exceeds the total of:
- (i) the aggregate of the capital losses of the Fund calculated in accordance with the Tax Act in the 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 have been designated, to the Unitholders whose Units have been redeemed;
  - (iii) the amount determined by the Trustee in respect of any net capital losses for prior taxation years which the Fund is permitted by the Tax Act to deduct in computing the taxable income of the Fund for the year; and
  - (iv) any amount in respect of which the Fund is entitled to a capital gains refund under the Tax Act, as determined by the Trustee,

provided that, at the discretion of the Trustee, the Net Realized Capital Gains of the Fund for a year may be calculated without subtracting the full amount of the net capital losses for the year and/or without subtracting the full amount of the net capital losses of the Fund carried forward from previous years.

### **5.3 Distributions of Distributable Income**

The Trustee shall, on or before each Distribution Record Date, declare payable, to the Unitholders of record on such Distribution Record Date, such percentage of the Distributable Income for the Distribution Period which includes such Distribution Record Date as the Trustee determine in their discretion. The proportionate share of each Unit of the amount of such percentage of Distributable Income shall be determined by dividing such amount by the number of issued and outstanding Units on such Distribution Record Date. Each Unitholder’s share of such percentage of Distributable Income shall be an amount equal to the proportionate share of each Unit of such percentage of Distributable Income multiplied by the number of Units owned of record by each such Unitholder on such Distribution Record Date. Subject to Sections 5.4 and 5.7, Distributable Income which has been declared to be payable to Unitholders of record in respect of a Distribution Period shall be paid in cash on the Distribution Payment Date in respect of such Distribution Period.

**5.4 Other Distributions**

- (a) In addition to the distributions which are made to Unitholders pursuant to Section 5.3, the Trustee may declare to be payable and make distributions, from time to time, out of Income of the Fund, Net Realized Capital Gains, the capital of the Fund or otherwise, in any year, in such amount or amounts, and on such dates as the Trustee may determine, to Unitholders at the record date for the distribution.
- (b) Having regard to the present intention of the Trustee to allocate, distribute and make payable to Unitholders all of the Income of the Fund, 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, the following amounts shall, unless otherwise determined by the Trustee, without any further actions on the part of the Trustee, be due and payable to Unitholders of record on December 31 in each such year:
  - (i) an amount equal to the amount, if any, by which the Income of the Fund for such year exceeds the aggregate of the portions, if any, of each distribution paid or payable by the Fund pursuant to Section 5.3 and Section 5.4(a) which have been determined by the Trustee, pursuant to Section 5.5, to have been payable by the Fund out of the Income of the Fund for such year; and
  - (ii) an amount equal to the amount, if any, by which the Net Realized Capital Gains of the Fund for such year exceeds the aggregate of the portions, if any, of each distribution paid or payable by the Fund pursuant to Section 5.3 and Section 5.4(a) which have been determined by the Trustee, pursuant to Section 5.5, to have been payable by the Fund out of Net Realized Capital Gains for such year.
- (c) The proportionate share of each Unit of the amount of any distribution made pursuant to either or both of Sections 5.4(a) and (b) shall be determined by dividing such amount by the number of Units issued and outstanding on the applicable record date in respect of a distribution pursuant to Section 5.4(a) and on December 31 in respect of a distribution pursuant to Section 5.4(b). Each Unitholder's share of the amount of any such distribution shall be an amount equal to the proportionate share of each Unit of such amount multiplied by the number of Units 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 either Section 5.4(a) and (b) shall be paid in cash no later than the Distribution Payment Date which immediately follows the applicable record date in respect of a distribution pursuant to Section 5.4(a) and, in respect of a distribution pursuant to Section 5.4(b), such amount shall be payable on December 31 in the applicable year in respect of the

distribution and shall be paid forthwith, and in no event later than January 30 of the following year, subject always to Section 5.6.

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

In accordance with and to the extent permitted by the Tax Act, the Trustee in each year shall make designations and elections in respect of the amounts payable to Unitholders for such amounts that the Trustee consider to be reasonable in all of the circumstances, including, without limitation, designations relating to taxable dividends received or deemed to be 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 and foreign taxes paid by the Fund for the year, as well as elections under subsections 104(13.1) and/or 104(13.2) of the Tax Act that income be taxed to the Fund, rather than to the Unitholders. Distributions payable to Unitholders pursuant to this Article 5 shall be deemed to be distributions of Income of the Fund, Net Realized Capital Gains, capital of the Fund or other items in such amounts as the Trustee 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.

### **5.6 Enforceability of Right to Receive Distributions**

Each Unitholder shall have the legal right to enforce payment of any amount payable to such Unitholder as a result of any distribution which is declared or made payable to such Unitholder pursuant to this Article 5 as of the date on which those amounts become payable.

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

- (a) If the Trustee 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 to be payable pursuant to this Article 5 on the due date for such payment, or if any cash distribution should be contrary to any agreement to which the Fund is a party, the payment may, at the option of the Trustee and subject to any Applicable Laws and the receipt of necessary Approvals, include:
  - (i) the Pro Rata Share issuance of additional Units or fractions of Units, if necessary;
  - (ii) the Pro Rata Share distribution of Fund Assets; and/or
  - (iii) the Pro Rata Share issuance of demand unsecured promissory notes, including promissory notes that are exchangeable for Units,

having a value equal to the difference between the amount of such distribution and the amount of cash which has been determined by the Trustee to be available for the payment of such distribution, subject to the receipt of all necessary Approvals.

- (b) The value of each Unit which is issued pursuant to Section 5.7(a) shall be the Cash Redemption Price of the Units on the applicable Distribution Record Date in

respect of a distribution pursuant to Section 5.3 or Section 5.4(a) or December 31 in respect of a distribution under Section 5.4(b).

- (c) The value of any Fund Assets which are distributed pursuant to Section 5.7(a) shall be the fair market value thereof as determined by the Trustee, acting reasonably and in good faith.
- (d) The value of each demand unsecured promissory note which is issued pursuant to Section 5.7(a) shall be the principal amount of indebtedness represented by such note.

## **5.8 Withholding Taxes**

The Trustee may deduct or withhold from distributions payable to any Unitholder all amounts required by Applicable Law to be withheld from such distributions, whether those distributions are in the form of cash, additional Units or otherwise. All withheld amounts shall be remitted to the appropriate Governmental Authority. To the extent that an amount is so deducted or withheld, such amount shall be treated for all purposes as having been paid to the Unitholder in respect of which such deduction and withholding was made. Any amount so required to be deducted or withheld shall first be deducted or withheld from the cash, if any, payable to the Unitholder in respect of the distribution. In the event the amount so required to be deducted or withheld exceeds the cash, if any, payable to the Unitholder in respect of the distribution, the Trustee may sell the Units, Fund Assets and/or unsecured promissory notes payable to the Unitholder in respect of the distribution to obtain the funds to pay such additional amount required to be deducted or withheld and to pay all of the Trustee's reasonable expenses with regard thereto and the Trustee shall have the power of attorney of the Unitholder to do so. No liability shall accrue to the Fund or the Trustee if Units or other assets sold or disposed of pursuant to this Section 5.8 are sold at a loss to such affected Unitholder or the beneficial owner of such Units or if the Units or other assets so sold or disposed of are sold or disposed of for an amount which may be less than might otherwise have been obtained if sold or disposed of at a different point in time or in different circumstances. Upon completion of any sale of Units, Fund Assets and/or unsecured promissory notes or other property in accordance with this Section 5.8, the affected Unitholder shall cease to be a holder of the Units, Fund Assets and/or unsecured promissory notes or other property sold.

## **5.9 Tax Act Definitions**

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

## **5.10 Payments of Cash**

- (a) Any payments of cash by the Fund to a Unitholder pursuant to this Article 5 or pursuant to any other provision of this Deed of Trust will be conclusively deemed to have been made upon mailing of a cheque or bank draft payable to the Unitholder in a postage pre-paid envelope, addressed to the Unitholder at the Unitholder's address appearing in the register of Unitholders, unless such cheque

or bank draft is dishonoured upon presentment, In the case of a Unit registered in the name of two or more Unitholders, any payment of cash by the Fund to such Unitholders shall be deemed to be made to such Persons jointly and will be conclusively deemed to have been made upon mailing of a cheque or bank draft payable to all of such Unitholders in a postage pre-paid envelope, addressed to any one of such Unitholder, at that Unitholder's address appearing in the register of Unitholders, unless such cheque or bank draft is dishonoured upon presentment. Upon making any such payment, the Fund and the Trustee shall be discharged from all liability or obligation to the Unitholders in respect of such payment unless any such cheque or bank draft is lost or destroyed, in which case the Trustee, upon proof of loss or destruction and upon satisfactory indemnity being given to them and to the Fund, shall issue a replacement cheque or bank draft for a like amount.

- (b) A Unitholder may designate and the Trustee may accept, that any payment of cash by the Fund to such Unitholder shall be made by deposit, including by wire transfer, to an account of such Unitholder or to a joint account of such Unitholder and any other Person and any one of the joint registered Unitholders of a Unit may designate, and the Trustee may accept, that any payment of cash by the Fund to such joint registered Unitholders shall be made by deposit to an account of such joint registered Unitholders or to an account of any one of such joint registered Unitholders. A cheque or bank draft shall, unless the joint registered Unitholders otherwise direct, be payable to the order of all of the said joint registered Unitholders, and if more than one address appears on the books of the Fund in respect of such joint unitholding to any such addresses, the cheque or bank draft payment in such manner shall satisfy and discharge all liability of the Fund and the Trustee for the amount so paid.

#### **5.11 Rights Plans, Distribution Reinvestment and Unit Purchase Plan**

Subject to any required Approvals (and any Unitholder approval imposed by Applicable Laws), the Trustee may establish one or more Unitholder rights plans, distribution reinvestment plans and Unit purchase plans, Unit option plans or other compensation, benefit or incentive plans at any time and from time to time,

#### **5.12 Unclaimed Distributions**

In the event that the Trustee hold any distributable amount that is unclaimed or that cannot be paid for any reason, the Trustee will be under no obligation to invest or reinvest the same, but will only be obliged to hold the same in a current interest or non-interest bearing account pending payment with interest earned (and less applicable taxes, including withholding taxes) to the Person or Persons entitled thereto, The Trustee will, as and when required by Applicable Law, and may at any time prior to such required time, pay all or part of such distributable amount so held to the appropriate Governmental Authority, whose receipt shall be a good and sufficient discharge and release of the Trustee.

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

**6.1 Right of Redemption**

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

**6.2 Exercise of Redemption Right**

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

**6.3 Cash Redemption**

- (a) Subject to Section 6.4, upon receipt by the Fund of the notice to redeem Units in accordance with Section 6.2, the holder of the Units tendered for redemption shall be entitled to receive a price per Unit in cash (hereinafter called the "**Cash Redemption Price**") equal to 95% of the fair market value of such Units as determined by the Trustee acting reasonably and in good faith in their sole discretion, having reference to financial statements and such other information as they may consider appropriate.
  
- (b) The Cash Redemption Price payable in respect of the Units surrendered for redemption during any calendar month shall be paid by cheque, drawn on a Canadian chartered bank or a trust company in lawful money of Canada, payable

at par to or to the order of the Unitholder who exercised the right of redemption no later than the last day of the calendar month following the month in which the Redemption Date falls. Payments made by the Fund of the Cash Redemption Price are conclusively deemed to have been made upon the mailing of a cheque in a postage prepaid envelope addressed to the former Unitholder unless such cheque is dishonoured upon presentment. Upon such payment, the Fund shall be discharged from all liability to the former Unitholder in respect of the Units so redeemed, except with respect to any outstanding payments in respect of such Units pertaining to distributions declared payable thereon to such former Unitholders of record on a date which was prior to the Redemption Date.

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

Section 6.3 shall not be applicable to Units tendered for redemption by a holder of Units, if 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 \$10,000 (the “**Monthly Limit**”); provided that the Trustee may, in its sole discretion, waive such limitation in respect of all Units tendered for redemption in any calendar month; Units tendered for redemption in any calendar month in which the total amount payable by the Trust pursuant to Section 6.3 exceeds the Monthly Limit will be redeemed for cash pursuant to Section 6.3 and, unless any applicable Approvals are required, by a distribution in specie under Section 6.5, on a pro rata basis.

#### **6.5 In Specie Redemption**

If, pursuant to Section 6.4, Section 6.3 is not applicable to Units tendered for redemption by a holder of Units, then such holder of Units shall, instead of the Cash Redemption Price per Unit specified in Section 6.3, be entitled to receive a price per Unit (the “**in specie Redemption Price**”) equal to 95% of the fair market value of a Unit as determined by the Trustee in its discretion, and the in specie Redemption Price shall, subject to all necessary Approvals, be paid and satisfied, at the discretion of the Trustee by way of:

- (a) the issuance to or to the order of the redeeming Unitholder such aggregate amount of Redemption Notes as is equal to the aggregate in specie Redemption Price payable to such Unitholder as determined in the discretion of the Trustee;
- (b) the distribution, tender or transfer to or to the order of the redeeming Unitholder of Fund Assets, the value of which is equal to the aggregate in specie Redemption Price payable to such Unitholder as determined in the discretion of the Trustee; or
- (c) by any combination of the issuance of Redemption Notes, the distribution of Fund Assets and cash payment (by way of cheque), to or to the order of the redeeming Unitholder, the value of which, taken together, is equal to the aggregate in specie Redemption Price payable to such Unitholder as determined in the discretion of the Trustee.

Each Redemption Note issued to a redeeming Unitholder shall be in the principal amount of \$100. No fractional Redemption Notes shall be distributed and where the number of

Redemption Notes to be received upon redemption by a redeeming Unitholder would otherwise include a fraction, that number shall be rounded down to the next lowest whole number.

In respect of any Fund Assets being transferred in payment of the in specie Redemption Price, the Fund shall be entitled to all interest paid or accrued and unpaid in respect of such Fund Assets (including any instruments on which interest is accruing), to and including the date of transfer thereof.

The in specie Redemption Price payable in respect of the Units tendered for redemption during any calendar month shall be paid within five Business Days after the end of the calendar month in which the Units were tendered for redemption.

Payments by the Fund of the in specie Redemption Price are conclusively deemed to have been made upon the mailing of the Redemption Notes, the documents evidencing ownership of the Fund Assets distributed and/or a cheque in the lawful money of Canada for any cash payment, as the case may be, 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 Trust Units so redeemed to the extent of the amount of such Redemption Notes, Fund Assets and/or cash payment, as the case may be.

#### **6.6 Purchase for Cancellation**

The Fund may from time to time purchase for cancellation some or all of the Units (or other Securities of the Fund which may be issued and outstanding from time to time) by private agreement or pursuant to tenders received by the Fund upon request for tenders addressed to all holders of record of Units, provided in each case that the Trustee have determined that such purchases are in the best interests of the Fund.

#### **6.7 Cancellation of Unit Certificates for all Redeemed Units**

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

### **ARTICLE 7**

#### **APPOINTMENT RESIGNATION AND REMOVAL OF TRUSTEE**

##### **7.1 Appointment of Trustee and Trustee's Term of Office**

Jason Brown is hereby appointed as the Initial Trustee of the Fund. The Initial Trustee shall be entitled to appoint additional Trustees. Except as otherwise provided in this Deed of Trust, Trustees shall be appointed to hold the office of Trustee under this Deed until the successor Trustee has been appointed or they cease to hold office.

##### **7.2 Resignation of Trustee**

The Trustee may resign from the office of trustee hereunder on giving not less than 90 days' notice in writing to the Trustees; provided that no such resignation shall be effective until

(i) the appointment of, and acceptance of such appointment by, a new Trustee in the place of the resigning Trustee has been made in the manner set out in Section 7.1, and (ii) the legal and valid assumption by the new Trustee of all obligations of the Trustee related hereto in the same capacities as the resigning Trustee.

**7.3 Consent to Act**

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

“To: Port Renfrew Development Trust (the “Fund”)  
And to: The Trustees thereof

The undersigned hereby consents to act as a Trustee of the Fund and hereby agrees upon the later of the date of this consent and the date of the undersigned’s appointment as a Trustee of the Fund, to thereby become a party, as a Trustee, to the Deed of Trust dated as of \_\_\_\_\_, 20\_\_\_, as amended from time to time, constituting the Fund.

Dated: \_\_\_\_\_, \_\_\_\_\_.

I am a resident of: \_\_\_\_\_.

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

\_\_\_\_\_  
[Print Name]

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

**7.4 Removal of Trustee**

Any Trustee or Trustees may be removed from office for cause by resolution passed by not less than two-thirds of the remaining Trustees. Any removal of a Trustee shall take effect immediately following the aforesaid vote or resolution, and any Trustee so removed shall be so notified by the chair or another officer of the Fund forthwith following such removal. A vacancy created by such removal of a Trustee may be filled as set forth in Section 7.8.

**7.5 Ceasing to Hold Office**

- (a) A Trustee ceases to hold office when:

- (i) he or she dies or resigns;
- (ii) he or she is removed in accordance with Section 8.5;
- (iii) he or she is disqualified for any of the reasons specified in Section 8.1; or
- (iv) he or she ceases to be a Resident, unless at the time he or she ceases to be a Resident a majority of the Trustees, including the Trustee that has ceased to be a Resident, are Residents.

(b) A resignation of a Trustee becomes effective at the time a written resignation is sent to the other Trustees, or at the time specified in the resignation, whichever is later, provided that if, upon the resignation becoming effective, the number of remaining Trustees would be less than the number necessary to constitute a quorum for a meeting of Trustees or the majority of Trustees would be Non-Residents, the resignation is not effective until the resigning Trustee's successor is duly appointed as a Trustee. Upon a Trustee ceasing to hold office as such hereunder, such Trustee shall cease to be a party (as a Trustee) to this Deed of Trust; provided however that such Trustee shall continue to be entitled to be paid any amounts owing by the Fund to the Trustee and to the benefits of the indemnity provided in Section 9.8.

(c) Upon the resignation or removal of any Trustee, or upon a Trustee otherwise ceasing to be a Trustee, the Trustee shall (i) cease to have the rights, privileges and powers of a Trustee under this Deed of Trust, (ii) execute and deliver all documents that the remaining Trustees shall require for the conveyance of any Fund Assets held in that Trustee's name and to provide for or facilitate the transition of the Fund's activities and affairs to a successor trustee, (iii) account to the remaining Trustees as they may require for all property which that Trustee holds as Trustee, and (iv) 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 shall then be discharged as Trustee. Upon the incapacity or death of any Trustee, his or her legal representative shall execute and deliver on his or her behalf all documents as the remaining Trustees may require as provided in this Section 8.4. If a Trustee or his or her legal representative, as applicable, is unable or unwilling to execute and deliver such required documents, each of the remaining Trustees is hereby appointed as the attorney of the Trustee for the sole purpose of executing and delivering such required documents.

## **7.6 Qualifications of Trustee**

The Trustee and any successor to the Trustee or new Trustee appointed under this Article 7 shall be an individual or a corporation and shall be a resident of Canada for the purposes of the Tax Act. In the event that a corporation is appointed as a Trustee, such corporation must at all times, when it is the Trustee, be registered under the laws of the Province of Alberta to carry on the business of a trust company and must have undertaken in writing to discharge all of the obligations and responsibilities of the Trustee under this Deed of Trust.

## **7.7 Continuing Obligations of the Trust**

Upon the resignation or removal of the Trustee, or the Trustee otherwise ceasing to be the Trustee, it shall:

- (a) Cease to have rights, privileges, powers and authorities of the Trustee hereunder;
- (b) Execute and deliver such documents as the Fund shall reasonably require for the conveyance of any of the Fund Assets held in the Trustee's name; and
- (c) Account to the Fund, as the Fund may require, for all property which the Trustee holds as Trustee.

Upon the Trustee ceasing to hold office as provided in this Article 7, the Trustee shall cease to be a party to this Deed of Trust; provided however, that the Trustee shall continue to be entitled to payments of any amounts owing by the Fund to the Trustee which had accrued prior to the Trustee ceasing to hold office and provided further that the Trustee and each of its directors, officers, employees, shareholders and agents shall continue to be entitled to the benefit of any indemnity and limitation provisions contained in this Deed of Trust,

#### **7.8 Vacancies**

No vacancy among the Trustees shall operate to annul this Deed of Trust or affect the continuity of the Fund. Until vacancies are filled, the remaining Trustees (even if less than a quorum) may exercise the powers of the Trustees hereunder so long as a majority of the remaining Trustees are Residents. The remaining Trustees may fill a vacancy among the Trustees. A Trustee appointed to fill a vacancy holds office, subject to Section 7.1, indefinitely. 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 shall vest automatically in any person who may, after the date of this Deed of Trust, become a Trustee upon that person's due appointment and qualification without any further act, and that person shall then have all the rights, privileges, powers, authorities, obligations and immunities of a Trustee under this Deed of Trust whether conveyancing documents have been executed and delivered pursuant to Section 7.1 or otherwise.

#### **7.9 Successor and Additional Trustee**

The rights of the Trustee to control and exclusively administer the Trustee and to have the title to the Fund Assets and all other rights of the Trustee at law shall vest automatically in any person who may hereafter become the Trustee upon its due appointment and qualification without any further act and it shall thereupon have all the rights, privileges, powers, obligations and immunities of the Trustee hereunder, Such rights shall vest in the Trustee whether or not conveyancing or transfer documents have been executed and delivered pursuant to Section 7.7 or otherwise,

#### **7.10 Validity of Acts**

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

## **ARTICLE 8 CONCERNING THE TRUSTEE**

### **8.1 Powers of the Trustee**

Subject to the specific limitations contained in this Deed of Trust, the Trustee shall have, without further or other action or consent, and free from any power or control on the part of the Unitholders full, absolute and exclusive power, control and authority over the Fund Assets and over the affairs of the Fund to the same extent as if the Trustee was the sole and absolute beneficial owner of the Fund Assets in its own right, to do all acts and things as in its sole judgment and discretion are necessary or incidental to, or desirable for, carrying out the trust created under this Deed of Trust. In construing the provisions of this Deed of Trust, there shall be a presumption in favour of the powers and authority granted to the Trustee. The enumeration of any specific power or authority in this Deed of Trust shall not be construed as limiting the general powers or authority or any other specified power or authority conferred in this Deed of Trust on the Trustee. To the maximum extent permitted by Applicable Law, the Trustee shall, in carrying out investment activities, not be in any way restricted by the provisions of the Applicable Laws of any jurisdiction limiting or purporting to limit investments which may be made by trustees. Without limiting the generality of the foregoing, but subject to any express limitations contained in this Deed of Trust, the Trustee may make any investments without being required to adhere to all or any particular portion of the investment criteria or diversification requirements set forth in the *Trustee Act* (Alberta), as amended from time to time, and may delegate management and authority to discretionary managers of investment funds as the Trustee in its discretion determines appropriate.

### **8.2 Specific Powers and Authorities**

Without limiting the generality of Section 8.1, the Trustee, without any action or consent by the Unitholders, shall have the following powers and authorities which may be exercised by it from time to time or delegated by it, as herein provided, in its sole judgment and discretion and in such manner and upon such terms and conditions as it may from time to time deem proper:

- (a) to appoint additional Trustees of the Fund;
- (b) to accept subscriptions for Units and to issue Units pursuant thereto;
- (c) to maintain books and records;
- (d) to provide timely reports to Unitholders in accordance with the provisions hereof;
- (e) to effect payment of distributions to Unitholders;
- (f) to deposit funds of the Trust in interest-bearing accounts and short-term investments for the purposes of making investments, paying the expenses and the liabilities of the Fund, paying amounts payable by the Fund in connection with the redemption of any Units or other Securities of the Fund and making distributions to Unitholders;

- (g) to enter into any other obligations on behalf of the Fund; to enter into any subordination agreement on behalf of the Trust or any other person; to assign, charge, pledge, hypothecate, convey, transfer, mortgage, subordinate, and grant any security interest, mortgage or encumbrance over or with respect to all or any and all assets, property and undertaking of the Fund, including the Fund Assets; to subordinate and postpone the interests of the Fund in the Fund Assets to any other person; and any agreement in connection with any of the foregoing entered into by the Trustee shall be binding upon, and enforceable in accordance with its terms, against the Fund;
- (h) to possess and exercise all the rights, powers and privileges pertaining to the ownership of all or any part of the assets of the Fund, including, without limitation, the Fund Assets, to the same extent that a natural 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 power of attorney may be for meetings or action generally or for any particular meeting or action and may include the exercise of discretionary power;
- (i) where reasonably required, to engage or employ any persons as agents, representatives, employees, administrators, consultants or independent contractors (including, without limitation, investment advisers, registrars, underwriters, accountants, lawyers, engineers, appraisers, brokers or otherwise) in one or more capacities;
- (j) to collect, sue for and receive all sums of money coming due to the Fund, and to engage in, intervene in, prosecute, join, defend, compromise, abandon or adjust, by arbitration or otherwise, any actions, suits, proceedings, disputes, claims, demands or other litigation relating to the Fund, the assets of the Fund or the Fund's affairs, to enter into agreements therefor, whether or not any suit is commenced or claim accrued or asserted and, in advance of any controversy, to enter into agreements regarding the arbitration, adjudication or settlement thereof;
- (k) to arrange for insurance contracts and policies insuring the assets of the Fund against any and all risks and insuring the Fund and/or any or all of the Trustee or the Unitholders against any and all claims and liabilities of any nature asserted by any person arising by reason of any action alleged to have been taken or omitted by the Fund or by the Trustee or Unitholders;
- (l) to cause legal title to any of the assets of the Fund to be held by and/or in the name of the Trustee, or except as prohibited by law, by and/or in the name of the Fund, or any other person, on such terms, in such manner, with such powers in such person as the Trustee may determine and with or without disclosure that the Fund or the Trustee is interested therein, provided that should legal title to any of the assets of the Fund be held by and/or in the name of any person other than the Trustee or the Fund, the Trustee shall require such person to execute a trust

agreement acknowledging that legal title to such assets is held in trust for the benefit of the Fund;

- (m) to make, execute, acknowledge and deliver any and all deeds, contracts, waivers, releases or other documents of transfer and any and all other instruments in writing necessary or proper for the accomplishment of any of the powers herein granted,
- (n) to pay out of the Fund Assets the Fund Expenses;
- (o) except as prohibited by law, to delegate any or all of the management and administrative powers and duties of the Trustee to any one or more agents, representatives, officers, employees, independent contractors or other persons without liability to the Trustee except as provided in this Deed of Trust;
- (p) guaranteeing (as guarantor, surety or co-principal obligor) the payment of any indebtedness, liability or obligation of the Partnership, Port Renfrew Business Trust or any subsidiary of the Fund and mortgaging, pledging, charging, granting a security interest in or otherwise encumbering all or any part of the Fund Assets including Securities issued by the Partnership, Port Renfrew Business Trust or any subsidiary of the Fund, as security for that guarantee;
- (q) to enter into on behalf of the Fund and observe and perform its obligations and the obligations of the Fund under any agreements with any lender, including, without limitation, compliance with any provisions thereof which may restrict the powers of the Trustee hereunder or preclude the Trustee from acting in certain circumstances on resolutions of the Unitholders as might otherwise be provided for hereunder, and each such agreement entered into by the Trustee shall be binding upon, and enforceable in accordance with its terms against, the Fund;
- (r) without limit as to amount, cost, or conditions of reimbursement, 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 other 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 the Fund or engage in any other means of financing the Fund;
- (s) notwithstanding any other specific provision of this Deed of Trust, to issue Units in settlement of the Fund; and
- (t) to do all such other acts and things as are incidental to this Section 8.2, and to exercise all powers which are necessary or useful to carry on the business of the Fund, to promote any of the purposes for which the Fund is formed and to carry out the provisions of this Deed of Trust.

### **8.3 Standard of Care**

The Trustee shall exercise its powers and carry out its functions hereunder as Trustee honestly, in good faith and in the best interests of the Fund and the Unitholders and in connection therewith, shall exercise that degree of care, diligence and skill that a reasonably prudent trustee would exercise in comparable circumstances. Unless otherwise required by law, the Trustee shall not be required to give bond, surety or security in any jurisdiction for the performance of any duties or obligations hereunder. The Trustee shall not be required to devote its entire time to the business and affairs of the Fund.

### **8.4 Indemnification of Trustee**

The Fund (to the extent of the Fund Assets) is liable to, and shall indemnify and save harmless the Trustee and each of its directors, officers, employees, shareholders and agents in respect of:

- (a) any liability and all losses, damages, costs, charges and expenses sustained or incurred in respect of any action, suit or proceeding that is proposed or commenced against the Trustee or against such directors, officers, employees, shareholders or agents, as the case may be, for or in respect of any act, omission or error in respect of the Fund and the Trustee's execution of all duties and responsibilities and exercise of all powers and authorities pertaining thereto;
- (b) all other liability, losses, damages, costs, charges, expenses, taxes, penalties and interest in respect of unpaid taxes or other tax matters; and
- (c) all other expenses and liabilities sustained or incurred by the Trustee in respect of the administration or termination of the Fund;

in each case including the aggregate amount paid in reasonable settlement of any actions, suits, proceedings, investigations or claims and the reasonable fees and expenses of counsel to the indemnified parties that may be incurred in obtaining advice with respect to and defending any action, suit, proceedings, investigation or claim that may be made or threatened against any indemnified party, or that may be incurred in enforcing this indemnity, unless and to the extent any of the foregoing arise principally and directly out of the gross negligence, willful default or fraud of the Trustee or any of its directors, officers, employees, shareholders or agents.

### **8.5 Apparent Authority**

No purchaser, transfer agent or other person dealing with the Trustee or with any officer, employee or agent of the Trustee shall be bound to make any inquiry concerning the validity of any transaction purporting to be made by the Trustee or by such officer, employee or agent or make inquiry concerning, or be liable for, the application of money or property paid, lent or delivered to or on the order of the Trustee or of such officer, employee or agent. Any person dealing with the Trustee in respect of any matter pertaining to the Fund Assets and any right, title or interest therein shall be entitled to rely on a certificate, statutory declaration or resolution executed or certified on behalf of the Trustee as to the capacity, power and authority of any officer, employee or any other person to act for and on behalf and in the name of the Fund.

## **8.6 Survival of Indemnities**

All indemnities, all limitations of liability and all other provisions for the protection of the Trustee provided for in this Deed of Trust shall survive the termination of this Deed of Trust and the removal or resignation of the Trustee.

## **8.7 Limitations on Liability of Trustee**

- (a) Subject to the standard of care, diligence and skill set forth in Section 8.3, none of the Trustee nor any director, officer, employee or agent thereof shall be liable to any Unitholder 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; or for any other action or failure to act including, without limitation, the failure to compel in any way any former trustee to redress any breach of trust or any failure by Affiliates of the Fund to perform obligations or pay monies owed to the Fund, except for a breach of the standard of care, diligence and skill as set out in Section 8.3. If the Trustee has retained an appropriate expert or advisor with respect to any matter connected with its duties under this Deed of Trust, the Trustee may act or refuse to act based on the advice of such expert or advisor and, notwithstanding any provision of this Deed of Trust, including, without limitation, the standard of care, diligence and skill set out in Section 8.3 hereof, the Trustee shall not be liable for any action or refusal to act based on the advice of any such expert or advisor which it is reasonable to conclude is within the expertise of such expert or advisor to give.
  
- (b) Subject to the standard of care, diligence and skill set forth in Section 8.3, none of the Trustee nor any officer, director, employee or agent thereof shall be subject to any liability whatsoever in tort, contract or otherwise, in connection with Fund Assets or the affairs of the Fund , including, without limitation, in respect of any loss or diminution in value of any Fund Assets, to the Fund or to the Unitholders or to any other person for anything done or permitted to be done by the Trustee. The Trustee shall not be subject to any personal liability for any debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses against or with respect to the Fund arising out of anything done or permitted or omitted to be done in respect of the execution of the duties of the office of Trustee for or in respect to the affairs of the Fund . No property or assets of the Trustee, owned in its personal capacity or otherwise, will be subject to any levy, execution or other enforcement procedure with regard to any obligations under this Deed of Trust or under any other related agreements. No recourse may be had or taken, directly or indirectly, against the Trustee in its personal capacity. The Fund shall be solely liable therefor and resort shall be had solely to the Fund Assets for payment or performance thereof.

## **8.8 Voting of Securities Held by the Fund**

- (a) Subject to Sections 8.8(b) and Section 8.9, the Securities held from time to time by the Trustee as part of the Fund Assets may be voted by the Trustee at any and all meetings of securityholders of such Persons in which the Fund holds Securities, at which the holders of such Securities are entitled to vote, in such manner as the Trustees, in their sole discretion, consider to be in the best interests of the Unitholders.
- (b) With respect to any voting rights afforded to the Fund in connection with its direct or indirect ownership in Securities of the Port Renfrew Management LP, or any other Affiliate of the Fund, the Fund shall provide a copy of any materials with respect to any matter to be voted upon by holders of such Securities to the Unitholders by mail at the address shown on the Register and, in accordance with the remainder of this Section 8.8(b), shall follow the instructions of Unitholders with respect to voting in respect of any such matter. With respect to all meetings of holders of Securities of Port Renfrew Management LP or any Affiliate of the Fund at which such holders are entitled to vote and with respect to all written consents sought by such entities from its securityholders, each Unitholder shall be entitled to instruct the Fund to cast and exercise, in the manner instructed, such number of votes in respect of Port Renfrew Management LP or the Affiliate of the Fund (and to which the Fund is directly or indirectly entitled) as corresponds to the same proportion of Units held by such Unitholder to the total number of Units outstanding, in each case, as at the record date established by such entity for such meeting or consent. Any voting rights in respect of Securities of Port Renfrew Management LP any Affiliate of the Fund held by the Fund and which correspond to Investment Units for which no instructions as to voting have been received from a Unitholder shall not be voted by the Fund in respect of such meeting or consent.

## **8.9 Banking**

The banking activities of the Fund, or any part thereof, shall be transacted with such bank, trust company, or other firm or corporation carrying on a banking business as the Trustee may designate, appoint or authorize from time to time and all such banking activities, or any part thereof, shall be transacted on the Fund's behalf by one or more officers of the Fund or the Trustee as the Trustee may designate, appoint or authorize from time to time including, but without limiting 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.

**ARTICLE 9**  
**DELEGATION**

**9.1 General Delegation of Powers**

Except as prohibited by Applicable Law, the Trustee may delegate such authority as the Trustee may in its sole discretion deem necessary or desirable to effect the administration of the duties of the Trustee under this Deed of Trust, without regard to whether such authority is normally granted or delegated by Trustee, In accordance with the foregoing, the Trustee may grant broad discretion to administer and manage the day-to-day operations of the Fund, to act as agent for the Fund, to execute documents on behalf of the Fund and to make executive decisions for and on behalf of the Fund, Such Person shall have the powers and duties delegated thereto and in any administration or management agreement including, without limitation, the power to retain and instruct such appropriate experts or advisors to perform those duties and obligations granted or delegated to the Person which it is not qualified to perform,

**9.2 Sub-Delegation**

In respect to any delegation by the Trustee of any of their powers and authorities, as permitted hereunder, to any Person whomsoever, the Trustee, in their absolute discretion, shall be permitted to authorize a delegate to further sub-delegate any such powers and authorities.

**9.3 Liability of Trustee**

The Trustee shall have no liability or responsibility for any acts or omissions of any administrator (or any sub-delegate thereof) arising hereunder or under any administration or management agreement and the Trustee, in delegating to and relying upon an administrator, or any sub-delegate thereof (as the case may be), shall be deemed to have complied with their obligations under this Article 9,

**ARTICLE 10**  
**AMENDMENT**

**10.1 Amendment**

The provisions of this Deed of Trust, except where specifically provided otherwise, may be amended by the Trustee only with the consent of the Unitholders evidenced by a Special Resolution; provided that the provisions of this Deed of Trust may be amended by the Trustee, at any time and from time to time, without the consent, approval or ratification of the Unitholders or any other Person at any time for the purpose of:

- (a) making amendments which, in the opinion of the Trustee, are necessary in order for the Fund to qualify or continue to qualify as a "mutual fund trust" for the purposes of the Tax Act;
- (b) appointing additional Trustees to act as trustees of the Fund;

- (c) making amendments which, in the opinion of the Trustee, are necessary and desirable in order for the Fund not to qualify or cease to qualify as a "SIFT trust" within the meaning of section 122.1 of the Tax Act;
- (d) ensuring continuing compliance with Applicable Laws (including the Tax Act), regulations, requirements or policies of any Governmental Authority having jurisdiction over the Trustee or the Fund;
- (e) making amendments which, in the opinion of the Trustee, provide additional protection or added benefits for the Unitholders;
- (f) removing any conflicts or inconsistencies in this Deed of Trust or making minor changes or corrections including the correction or rectification of any ambiguities, defective provisions, errors, mistakes or omissions, which are, in the opinion of the Trustee, necessary or desirable and not prejudicial to the Unitholders;
- (g) making amendments which, in the opinion of the Trustee, are necessary or desirable and in the interests of the Unitholders as a result of changes in taxation laws or policies of any Governmental Authority having jurisdiction over the Trustee or the Fund;
- (h) for any purpose (except one in respect of which a vote by Unitholders is specifically otherwise required) if the Trustee are of the opinion that the amendment is not prejudicial to Unitholders and is necessary or desirable; or
- (i) to provide for the electronic delivery by the Fund to the Unitholders of documents relating to the Fund (including annual and quarterly reports and financial statements and proxy-related materials) in accordance with Applicable Laws from time to time.

but, notwithstanding the foregoing, no such amendment shall be adopted which causes the Fund to fail to qualify as a "mutual fund trust" under the Tax Act or constitute a "SIFT trust" under the Tax Act without the consent of the Unitholders given as set out above. In addition, no such amendment shall modify the right to one vote per Unit or reduce the fractional undivided interest in the Fund Assets represented by any Unit without the consent of the holder of such Unit and no amendment shall reduce the percentage of votes required to be cast at a meeting of the Unitholders for the purpose of this Section 10.1 without the unanimous consent of the Unitholders,

## **ARTICLE 11**

### **MEETINGS OF UNITHOLDERS**

#### **11.1 Annual and Special Meetings of Unitholders**

Annual meetings of the Unitholders shall be held, commencing in 2013, on or before September 30 in each year, or otherwise as required by Applicable Laws, at a time and at a place in Canada set by the Trustee. Special meetings of the Unitholders may be called at any time

by the Trustee and shall be called by the Trustee upon a written request of Unitholders holding in the aggregate not less than 25% of all votes entitled to be voted at any meetings of the Unitholders, such request to be sent to the Trustee at the head office of the Fund specifying in reasonable detail the purpose or purposes for which such meeting is to be called. The chairman of any annual or special meeting shall be the Trustee. The Trustee, the officers of the Fund, the Auditors and any other Person approved by the Trustee may attend meetings of the Unitholders. Upon receiving the requisition described above, the Trustee will call a meeting of the Unitholders to transact the business referred to in the requisition, unless:

- (a) a record date for a meeting of Unitholders has been fixed;
- (b) the Trustee have called a meeting of Unitholders and have given notice thereof pursuant to Section 11.2; or
- (c) in connection with the business as stated in the requisition:
  - (i) it clearly appears that the matter covered by the requisition is (1) submitted by the Unitholder primarily for the purpose of enforcing a personal claim or redressing a personal grievance against one or more Trustees, the Fund, any of its subsidiaries or affiliates or one or more of the Unitholders, or (2) does not relate in a significant way to the business or affairs of the Fund;
  - (ii) the Fund, at the Unitholders' request, included a matter covered by a requisition in an information circular relating to a meeting of the Unitholders held within two years preceding the receipt of such request and the Unitholder failed to present the matter, in person or by proxy, at the meeting;
  - (iii) substantially the same matter covered by the requisition was submitted to Unitholders in an information circular relating to a meeting of the Unitholders held within two years preceding the receipt of the Unitholder's request and the matter covered by the requisition was defeated; or
  - (iv) the rights conferred by this Section 11.1 are being abused to secure publicity.

If the Trustee does not, within 30 days after receiving the requisition, call a meeting, any Unitholder who signed the requisition may call the meeting in accordance with the provisions of this Article 11, *mutatis mutandis*. If there are no Trustees, the officers of the Fund will promptly call a special meeting of the Unitholders for the election of successor Trustees, failing which any interested Person (including a Unitholder) may apply to a court of competent jurisdiction to appoint replacement Trustee. The phrase "**meeting of the Unitholders**" wherever it appears in this Deed of Trust will mean both annual meetings and any other meetings of the Unitholders.

## **11.2 Notice of Meetings**

Notice of all meetings of Unitholders shall be delivered to each Unitholder 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, subject to Applicable Law. Such notice shall specify the time when, and the place where, such meeting is to be held and shall specify the nature of the business to be transacted at such meeting in sufficient detail to permit a Unitholder to form a reasoned judgment thereon, together with the text of any Special Resolution, at the time of mailing of the notice, proposed to be passed. Any adjourned meeting, other than a meeting adjourned for lack of quorum under Section 11.3, may be held as adjourned without further notice. The accidental omission to give notice or the non-receipt of such notice by a Unitholder shall not invalidate any resolution passed at any such meeting. Notwithstanding the foregoing, a meeting of Unitholders may be held at any time without notice if all the Unitholders are present or represented thereat or those not so present or represented have waived notice. Any Unitholder (or a duly appointed proxy of a Unitholder) 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.

## **11.3 Quorum**

At any meeting of the Unitholders, subject as hereinafter provided, a quorum shall consist of two or more individuals present in person either holding personally or representing as proxies in aggregate not less than 25% of all votes entitled to be voted at the meeting. If such quorum is not 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, shall be terminated and, if otherwise called, shall stand adjourned to such day being not less than 14 days later and to such place and time as may be designated by the chairman of the meeting. If at such adjourned meeting a quorum as above defined is not present, the Unitholders present either personally or represented 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.

## **11.4 Voting Rights of Unitholders**

Only Unitholders of record on the applicable record date shall be entitled to vote. Every question submitted to a meeting, other than a Special Resolution, shall, unless a poll vote is demanded, be decided by a show of hands vote, on which every Person present and entitled to vote shall be entitled to one vote. On a poll vote at any meeting of Unitholders, each Unit shall be entitled to the number of votes set out in Section 3.1. At any meeting of Unitholders, any holder of Units may vote by proxy and a proxyholder need not be a Unitholder, provided that no proxy shall be voted at any meeting unless it shall have been received by the Transfer Agent for verification at least 24 hours prior to the commencement of such meeting or such earlier time as the chairman of the meeting may determine. When any 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, but if more than one of them shall be present at such meeting in person or represented by proxy, and such joint owners or their proxies so present disagree as to any vote to be cast, the joint owner

present or represented whose name appears first in the register maintained pursuant to Section 12.4 shall be entitled to cast such vote.

Unitholders may revoke a proxy by depositing an instrument in writing (which includes another proper form of proxy with a later date), at any time up to and including the last Business Day preceding the day of the meeting, or by depositing it with the chairman of the meeting on the day of the meeting.

### **11.5 Resolutions Binding the Trustee**

Unitholders shall be entitled to pass resolutions that will bind the Trustee or the Fund only with respect to the following matters:

- (a) the consent to amendments of this Deed of Trust proposed by the Trustee other than as provided in Section 10.1;
- (b) the appointment of an Inspector as provided in Section 11.9;
- (c) the termination of the Fund as provided in Section 13.2;
- (d) the ratification of any Unitholder rights plan, distribution reinvestment plan, distribution reinvestment and Unit purchase plan, Unit option plan or other compensation plan contemplated herein requiring Unitholder approval under Applicable Laws; and
- (e) any other matters required by Applicable Laws to be submitted to Unitholders for their approval.

Except with respect to the above matters set out in this Section 11.5, no action taken by the Unitholders or any resolution of the Unitholders at any meeting shall in any way bind the Trustee. Any action taken or resolution passed in respect of any matter at a meeting of Unitholders shall be by Special Resolution, unless the contrary is otherwise expressly provided under any specific provision of this Deed of Trust.

### **11.6 Meaning of "Special Resolution"**

- (a) The expression "**Special Resolution**" when used in this Deed of Trust means a resolution proposed to be passed as a special resolution at a meeting of Unitholders (including an adjourned meeting) duly convened for that purpose and held in accordance with the provisions of this Article 11 at which two or more individuals are present in person either holding personally or representing by proxy in aggregate not less than 25% of all votes entitled to be voted at the Meeting and passed by the affirmative votes of the holders of more than 66 ⅔% of the votes cast by the Unitholders entitled to vote on such resolution and represented at the meeting and voted on a poll upon such resolution or approved in writing in one or more counterparts by Unitholders holding at least 66 ⅔% of the votes represented by the Units entitled to vote on such resolution.

- (b) Notwithstanding Section 11.3, if at any meeting at which a Special Resolution is proposed to be passed, the quorum requirements described in Section 11.3 are not met within 30 minutes after the time appointed for the meeting, then the meeting, if convened by or on the requisition of Unitholders, shall be dissolved; but in any other case it shall stand adjourned to such date, being not less than 21 nor more than 60 days later and to such place and time as may be appointed by the chairman of the meeting. Not less than 10 days prior notice shall be given of the time and place of such adjourned meeting in the manner provided in Section 11.2. Such notice shall state that at the adjourned meeting the Unitholders present in person or represented by proxy shall form a quorum but it shall not be necessary to set forth the purposes for which the meeting was originally called or any other particulars. At the adjourned meeting, the Unitholders present in person or represented by proxy shall form a quorum and may transact the business for which the meeting was originally convened and a resolution proposed at such adjourned meeting and passed by the requisite vote as provided in subsection (a) of this Section 11.6 shall be a Special Resolution within the meaning of this Deed of Trust, notwithstanding that the quorum requirements described in Section 11.6(a) are not met at such adjourned meeting.
- (c) Votes on a Special Resolution shall always be given on a poll and no demand for a poll on a Special Resolution shall be necessary.

#### **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 Trustee or Transfer Agent for cancellation provided that:

- (a) if a new Unit Certificate has been issued in substitution for a Unit Certificate which has been lost, stolen, mutilated or destroyed, only one of such Unit Certificates shall be counted for the purposes of determining the number of Units outstanding;
- (b) for the purpose of any provision of this Deed of Trust entitling holders of outstanding Units to vote, sign consents, requisitions or other instruments or take any action under this Deed of Trust, Units owned directly or indirectly, legally or equitably, by the Fund or a direct or indirect wholly-owned subsidiary of the Fund, shall be disregarded, except that:
  - (i) for the purpose of determining whether the Trustee shall be protected in relying on any such vote, consent, requisition or other instrument or action only the Units which the Trustee know are so owned shall be so disregarded; and
  - (ii) Units so owned which have been pledged in good faith other than to the Fund or a direct or indirect wholly-owned subsidiary of the Fund shall not be so disregarded if the pledgee shall establish to the satisfaction of the

Trustee the pledgee's right to vote such Units in his or her discretion free from the control of the Fund or a direct or indirect wholly-owned subsidiary of the Fund,

For the purposes of this Section 11.7, the Transfer Agent shall provide a certificate which will state the number of Units and the certificate numbers of certificates held by the Fund, the Fund, the Partnership or any subsidiary of the Fund. The Trustee shall be entitled to rely on such certificate in order to disregard the votes of any of the parties mentioned above.

#### **11.8 Record Date for Voting**

For the purpose of determining the Unitholders who are entitled to receive notice of and to vote or act at any meeting or any adjournment thereof, the Trustee may fix a date not more than 60 days and not less than 21 days prior to the date of any meeting of Unitholders as a record date for the determination of Unitholders entitled to receive notice of and to vote at such meeting or any adjournment thereof. Any Unitholder who was a Unitholder at the time so fixed shall be entitled to receive notice of and to vote at such meeting or any adjournment thereof even though the Unitholder has since that time disposed of his or her Units, except to the extent that the transferee of those Units produces properly endorsed Unit Certificates or otherwise establishes that he or she owns the Units, and demands, not later than 10 days before the meeting that his or her name be included in the list of Unitholders before the meeting, in which case the transferee will be entitled to receive notice of and to vote his or her Units at the meeting or any adjournment thereof. In the event that the Trustee does not fix a record date for any meeting of Unitholders, the record date for such meeting shall be the date upon which notice of the meeting is given as provided under Section 11.2.

#### **11.9 Appointment of Inspector**

The Trustee shall call a meeting of Unitholders upon the written request of Unitholders holding in the aggregate not less than 25% of all votes entitled to be voted at the meeting for the purpose of considering the appointment of an inspector to investigate the performance by the Trustee of their responsibilities and duties in respect of the Fund (the "Inspector"). If the Trustee does not call a meeting within 30 days after receiving a valid written request, any Unitholder who signed the request may call such a meeting. 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. The Inspector shall not have any powers that are inconsistent with this Deed of Trust as may be conferred upon him or her at the meeting at which the Inspector is appointed, but in all events shall not have any powers to act in any capacity as the Trustee or in place or instead of the Trustee in any manner under this Deed of Trust.

#### **11.10 Resolutions in Writing**

Notwithstanding any other provision of this Deed of Trust, a resolution in writing executed by Unitholders holding a proportion of Units equal to or greater than the proportion of Units required to vote in favour thereof at a meeting of the Unitholders to approve that resolution is valid and binding for all purposes of this Deed of Trust as if such Unitholders had exercised at

that time all of the voting rights to which they were then entitled in favour of such resolution at a meeting of Unitholders duly called for the purpose.

#### **11.11 Binding Effect of Resolutions**

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

#### **11.12 No Breach**

Notwithstanding any other provision of this Deed of Trust, Unitholders shall have no power to effect any amendment to this Deed of Trust which would require the Trustee to take any action or conduct the affairs of the Fund in a manner which would constitute a breach or default by the Fund or the Trustee under any agreement binding on, or obligation of the Fund or the Trustee.

### **ARTICLE 12**

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

##### **12.1 Nature of Units**

A Unit Certificate shall be issued to each Unitholder representing such holder's Units as described herein. Each Unitholder shall be entitled to a photocopy of the Unit Certificate and the original Unit Certificate shall be held on behalf of the Unitholder by the Fund at the head office of the Fund or by the Transfer Agent at the principal corporate trust office in Calgary, Alberta of the Transfer Agent. The provisions of this Article 12 shall not in any way alter the nature of Units or the relationships of a Unitholder to the Trustee and of one Unitholder to another but are intended only to facilitate the issuance of Unit Certificates evidencing the ownership of Units 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. The Units shall be issued in the form of Unit Certificates,

##### **12.2 Unit Certificates**

- (a) Unit Certificates shall, subject to the provisions hereof, be in such form as is authorized from time to time by the Trustee.
- (b) Unit Certificates are issuable only in fully registered form.
- (c) The definitive form of the Unit Certificates shall:
  - (i) be in the English language;
  - (ii) be dated as of the date of issue thereof; and

- (iii) contain such distinguishing letters and numbers as the Trustee shall prescribe,
- (d) Each Unit Certificate shall be signed on behalf of the Trustee and the Transfer Agent for the Units. Signatures of the Trustee or the Transfer Agent 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. Any Unit Certificate which has one manual signature as provided above shall be valid notwithstanding that one or more persons whose signature is printed, lithographed or mechanically reproduced no longer holds office at the date of issuance of that Unit Certificate.

### **12.3 Contents of Unit Certificates**

Until otherwise determined by the Trustee, 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 created under the laws of the Province of Alberta by a Deed of Trust dated as of January 17, 2012, as amended or amended and restated from time to time" 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;
- (d) the date of issue thereof,
- (e) that the Units represented thereby are transferable;
- (f) the words "The Units represented by this certificate are issued upon the terms and subject to the conditions of the Deed of Trust, which Deed 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 Deed of Trust. A copy of the Deed of Trust pursuant to which this certificate and the Units represented thereby are issued may be obtained by a Unitholder on demand and without fee from the head office of the Fund" or words of like effect; and
- (g) the words "For information as to the personal liability of a Unitholder, see the reverse side of this certificate" or words of like effect,

Until otherwise determined by the Trustee, each such Unit Certificate shall legibly set forth on the face or the reverse side thereof, *inter alia*, the following:

- (h) "The Deed 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”, or words of like effect; and

- (i) appropriate forms of notice of exercise of the right of redemption and of powers of attorney for transferring Units,

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

#### **12.4 Register of Unitholders**

A register for the Units shall be kept at the head office of the Fund or at the principal corporate trust office in Calgary, Alberta of the Transfer Agent, which register shall contain the names and addresses of the Unitholders, the respective numbers of Units held by them, the certificate numbers of the Unit Certificates representing such Units and a record of all transfers and redemptions thereof. Branch transfer registers shall be maintained at such other offices of the Transfer Agent as the Trustee may from time to time designate. Only Unitholders whose Unit Certificates are so recorded shall be entitled to receive distributions or to exercise or enjoy the rights of Unitholders hereunder. The Trustee shall have the right to treat the Person registered as a Unitholder on the register of the Fund 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.

#### **12.5 Transfer of Units**

- (a) Subject to the provisions of this Article 12, the Units shall be fully transferable without charge as between Persons, but no transfer of Units shall be effective as against the Trustee or the Fund or shall be in any way binding upon the Trustee or the Fund until the transfer has been recorded on the register or one of the branch transfer registers maintained by the Trustee, the Fund or the Transfer Agent. No transfer of a Unit shall be recognized unless such transfer is of a whole Unit.
- (b) Subject to the provisions of this Article 12, Units shall be transferable on the register or one of the branch transfer registers only by the Unitholders of record thereof or their executors, administrators or other legal representatives or by their agents or attorneys duly authorized in writing, and only upon delivery to the Fund or to the Transfer Agent, if any, of the original 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 Applicable Law, together with such evidence of the genuineness of such endorsement, execution and authorization and other matters that may reasonably be required by the Trustee or the Transfer Agent. Upon such delivery, the transfer shall be recorded on the register or branch transfer registers 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. The Trustee or the Transfer Agent shall upon request by the

Unitholder provide the original Unit Certificate to the Unitholder for endorsement of the transfer pursuant to this Section 12.5.

- (c) Any Person becoming entitled to any Units as a consequence of the death, bankruptcy or mental incompetence of any Unitholder, or otherwise by operation of law, shall be recorded as the holder of such Units and shall receive a new Unit Certificate therefor only upon production of evidence satisfactory to the Trustee or the Transfer Agent and delivery of the existing Unit Certificate to the Trustee 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 Trustee or the Transfer Agent shall have actual or other notice of such death or other event.
- (d) Unit Certificates representing any number of Units may be exchanged without charge for Unit Certificates representing an equivalent number of Units in the aggregate. Any exchange of Unit Certificates may be made at the offices of the Fund or the Transfer Agent where registers are maintained for Unit Certificates pursuant to the provisions of this Article 12. Any Unit Certificates tendered for exchange shall be surrendered to the Trustee or appropriate Transfer Agent and then shall be cancelled,

#### **12.6 Units Held Jointly or in a Fiduciary Capacity**

The Trustee may treat two or more Persons holding any Units as joint owners of the entire interest therein unless their ownership is expressly otherwise recorded on the register of the Fund, but no entry shall be made in the register or on any Unit Certificate that any Person is in any other manner entitled to any future, limited or contingent interest in any Units; provided, however, that any Person recorded as a Unitholder may, subject to the provisions hereinafter contained, be described in the register or on any Unit 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, The Fund shall not be required to recognize a Person as having any interest in a Unit, if that Person is not recorded on a register maintained pursuant to Section 12.4.

#### **12.7 Performance of Trusts**

The Trustee, the Unitholders, the Transfer Agent or any other agent of the Fund shall not be bound to be responsible for or otherwise inquire into or ensure the performance of any trust, express, implied or constructive, or of any pledge or equity to which any of the Units or any interest 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 representative is authorized by any such trust, pledge, or equity, or to recognize any Person as having any interest therein except for the Person recorded as Unitholder.

#### **12.8 Lost Unit Certificates**

If any Unit Certificate is lost, stolen, destroyed or mutilated, while in the possession of the Fund, the Transfer Agent or the Unitholder, as the case may be, the Trustee or the Transfer Agent may authorize the issuance of a new Unit Certificate for the same number of Units in lieu

thereof. The Trustee or the Transfer Agent may in their or its discretion, before the issuance of such new Unit Certificate, require the owner of the lost, stolen, destroyed or mutilated Unit Certificate, or the legal representative of the owner, to make an affidavit or statutory declaration setting forth such facts as to the loss, theft, destruction or mutilation as the Trustee or the Transfer Agent may deem necessary and to surrender any mutilated Unit Certificate, and may require the applicant to supply to the Fund a "lost certificate bond" or a similar bond in such reasonable sum as the Trustee or the Transfer Agent may direct indemnifying the Fund and the Transfer Agent for so doing.

### **12.9 Death of a Unitholder**

The death 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 Deed of Trust nor give such Unitholder's personal representative a right to an accounting or take any action in court or otherwise against other Unitholders or the Trustee or the Fund Assets, but shall merely entitle the personal representative of the deceased Unitholder to demand and receive, pursuant to the provisions hereof, a new Unit Certificate in place of the Unit Certificate held by the deceased Unitholder, and upon the acceptance thereof such personal representative shall succeed to all rights of the deceased Unitholder under this Deed of Trust.

### **12.10 Take-Over Bids**

- (a) If there is a take-over bid for all of the outstanding Units and, within 120 days after the date of such take-over bid, the bid is accepted by holders holding not less than 90% of the Units (such Units subject to the bid are herein referred to as the "Bid Units"), other than Bid Units held by or on behalf of, or issuable to, the offeror or an affiliate or associate of the offeror on the date of the take-over-bid, the offeror shall be entitled, on complying with this Section 12.10, to acquire the Bid Units held by the non-tendering offerees.
- (b) An offeror may acquire Bid Units held by a non-tendering offeree by sending by registered mail within 60 days after the date of termination of the take-over bid and in any event within 180 days after the date of the take-over bid, an offeror's notice to each non-tendering offeree stating that:
  - (i) offerees holding not less than 90% of the Bid Units accepted the take-over bid;
  - (ii) the offeror has taken up and paid for the Bid Units of the offerees who accepted the take-over bid;
  - (iii) the non-tendering offeree is required to transfer his Bid Units to the offeror on the terms on which the offeror acquired the Bid Units of the offerees who accepted the take-over bid; and
  - (iv) a non-tendering offeree who is a Unitholder and who does not transfer his Bid Units within 20 days after it receives the offeror's notice hereunder is deemed to have elected to transfer, and to have transferred, his Bid Units

on the same terms that the offeror acquired Bid Units from the offerees who accepted the take-over bid,

- (c) Concurrent with sending the offeror's notice under Section 12.10(b), the offeror shall send to the Fund a notice of adverse claim disclosing the name and address of the offeror and the name of the non-tendering offeree with respect to each Bid Unit held by a non-tendering offeree.
- (d) A non-tendering offeree to whom an offeror's notice is sent under Section 12.10(b) shall, within 20 days after it receives that notice, send its Bid Units, or cause same to be sent, to the Fund.
- (e) Within 20 days after the offeror sends an offeror's notice under Section 12.10(b), the offeror shall pay or transfer to the Fund the amount of money or other consideration that the offeror would have had to pay or transfer to a non-tendering offeree if the non-tendering offeree had tendered under the take-over bid.
- (f) The Fund is deemed to hold on behalf of the non-tendering offeree the money or other consideration it receives under Section 12.10(e), and the Fund shall deposit the money in a separate account in a bank or other body corporate any of whose deposits are insured by the Canada Deposit Insurance Corporation (or any successor thereof), and shall place the other consideration in the custody of a bank or such other body corporate. No such monies or other consideration shall form any part of the Fund Assets.
- (g) If the money or other consideration is deposited with the Fund as required by Section 12.10(e) above, then:
  - (i) (with respect to each of those non-tendering offerees who have complied with Section 12.10(d), Bid Units held by a non-tendering offeree shall be transferred to the offeror and the Fund shall, without delay upon being satisfied that the Bid Units have been received by or transferred to the Fund in accordance with Section 12.10(d), send to such non-tendering offeree the portion of the money or other consideration deposited with the Fund as required by Section 12.10(e) above and to which such non-tendering offeree is entitled; and
  - (ii) with respect to each of those non-tendering offerees who have not complied with Section 12.10(d), send to each such non-tendering offeree a notice stating that:
    - (A) his or her Bid Units have been transferred to the offeror;
    - (B) the Trustee or some other person designated in such notice are holding in trust the consideration for such Bid Units; and
    - (C) the Trustee, or such other Persons will send the consideration to such non-tendering offeree as soon as practicable after receiving

such non-tendering offeree's Bid Units, together with such other documents as the Trustee or such other person may require;

and the Trustee are hereby appointed the agent and attorney of the non-tendering offerees for the purposes of giving effect to the foregoing provisions,

#### **12.11 Power of Attorney**

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

- (a) this Deed of Trust, any amendment or supplement to this Deed of Trust and any other instrument required or desirable to qualify, continue and keep in good standing the Fund as a mutual fund trust;
- (b) any instrument, deed, agreement or document in connection with carrying on the activities and affairs of the Fund as authorized in this Deed of Trust, including all conveyances, transfers and other documents required to facilitate any sale or disposition of Units required herein;
- (c) all conveyances and other documents required in connection with the dissolution or liquidation of the Fund in accordance with the terms of this Deed of Trust;
- (d) any and all elections, determinations or designations, whether jointly with third parties or otherwise, under the Tax Act or any other taxation or other legislation or similar laws of Canada or of any other jurisdiction in respect of the affairs of the Fund or of a Unitholder's interest in the Fund;
- (e) any instrument, certificate and other documents necessary or appropriate to reflect and give effect to any amendment to this Deed of Trust which is authorized from time to time as contemplated by Article 8; and
- (f) all transfers, conveyances and other documents required to facilitate the acquisition of Units of non-tendering offerees pursuant to Section 12.10.

The power of attorney granted herein is irrevocable, is a power coupled with an interest, and will survive the death, mental incompetency, incapacity, disability or bankruptcy of the Unitholder or the assignment by the Unitholder of all or part of his or her interest in the Fund and will extend to and bind the heirs, executors, administrators and other legal representatives and successors and assigns of the Unitholder. This power of attorney may be exercised by the Trustee on behalf of each Unitholder in executing any instrument by a facsimile signature or by listing all of the Unitholders and executing such instrument with a single signature as attorney and agent for all of them. Each Unitholder agrees to be bound by any representations or actions made or taken by the Trustee pursuant to this power of attorney and hereby waives any and all

defences which may be available to contest, negate or disaffirm any actions taken by the Trustee in good faith under this power of attorneys The Trustee may require, in connection with the subscription for, or any transfer of, Units, that the subscription form or transfer form be accompanied by a certificate of legal advice signed by a lawyer or that the execution of the subscription form or transfer form be witnessed as may be required by an Applicable Laws. This power of attorney shall continue in respect of the Initial Trustee so long they are the Trustee of the Fund, and shall also continue in respect of new Trustee as if the new Trustee were the Initial Trustee hereunder.

## **ARTICLE 13**

### **TERMINATION**

#### **13.1 Term of the Fund**

Subject to the other provisions of this Deed of Trust, the Fund shall continue for a term ending 21 years after the date of death of the last surviving issue of Her Majesty, Queen Elizabeth II, alive on January 17, 2012. For the purpose of terminating the Fund by such date, the Trustee shall commence winding-up the affairs of the Fund on such date as may be determined by the Trustee, being not more than two years prior to the end of the term of the Fund.

#### **13.2 Termination with the Approval of Unitholders**

The Unitholders may vote by Special Resolution to terminate the Fund at any meeting of Unitholders duly called by the Trustee for the purpose of considering termination of the Fund, following which the Trustee shall commence winding-up the affairs of the Fund as soon as is reasonably practicable. Such Special Resolution may contain such directions to the Trustee as the Unitholders determine, including a direction to distribute the Securities held by the Fund, or all of them, *in specie*.

#### **13.3 Procedure Upon Termination**

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

#### **13.4 Powers of the Trustee Upon Termination**

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

### **13.5 Sale of Investments**

After the date referred to in Section 13.4 the Trustee shall proceed to wind-up the affairs of the Fund as soon as may be reasonably practicable and for such purpose shall, subject to any direction to the contrary in respect of a termination authorized under Section 13.2, sell and convert into money all Fund Assets in one transaction or in a series of transactions at public or private sales and do all other acts appropriate to liquidate the Fund, and shall in all respects act in accordance with the directions, if any, of the Unitholders (in respect of a termination authorized under Section 13.2). If the Trustee is unable to sell all or any of the Securities or other assets which comprise part of the Fund Assets by the date set for termination, the Trustee may distribute the remaining Securities or other assets directly to the Unitholders in accordance with their Pro Rata Share, subject to Applicable Law and receipt of necessary Approvals. Any Income of the Fund or Net Realized Capital Gains arising from the sale of such Securities shall be allocated, paid or made payable in accordance with Article 5.

### **13.6 Distribution of Proceeds or Assets**

After paying, retiring or discharging or making provision for the payment, retirement or discharge of all known liabilities and obligations of the Fund and providing for indemnity against any other outstanding liabilities and obligations, the Trustee shall, subject to Applicable Laws and after obtaining all necessary Approvals, distribute the remaining part of the proceeds of the sale of the Securities and other assets together with any cash forming part of the Fund Assets among the Unitholders in accordance with their Pro Rata Share,

### **13.7 Further Notice to Unitholders**

If 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 13.3, the Trustee 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 proportionate share of the remaining Fund Assets, and the Trustee 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 Trustee, may pay such amounts into Court.

### **13.8 Responsibility of the Trustee after Sale and Conversion**

The Trustee 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 13.4 and, after such sale, the sole obligation of the Trustee under this Deed of Trust shall be to hold such proceeds in trust for distribution under Section 13.6.

**13.9 Termination of the Fund**

The Fund shall terminate when all of the Fund Assets have been sold or otherwise disposed of and all other known debts, liabilities and obligations of the Fund have been paid, retired, discharged or provided for.

**ARTICLE 14**

**SUPPLEMENTAL DEEDS OF TRUST**

**14.1 Provision for Supplemental Deed for Certain Purposes**

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

- (a) modifying or amending any provisions of this Deed of Trust in the circumstances set forth in Section 10.1 where the Trustee may do so without the consent, approval or ratification of the Unitholders or any other Person; and
- (b) modifying or amending any provisions of this Deed of Trust where the modification or amendment has been approved by Special Resolution or, if required, with the consent of the Unitholders as required under the terms of this Deed of Trust,

and any such deed or instrument supplemental to this Deed of Trust shall be binding on all parties, including without limitation, all Unitholders on the later of (i) the date of execution of such deed or instrument, and (ii) the effective date of any required approval by Unitholders.

**ARTICLE 15**

**GENERAL**

**15.1 Notices**

- (a) Any notice or other document required to be given or sent to Unitholders under this Deed of Trust shall be given or sent: (i) by personal delivery; (ii) through ordinary post addressed to the registered Unitholder at his, her or its last address appearing on the register; provided that if there is a general discontinuance of postal service due to strike, lockout or otherwise, such notice may be given by publication twice in the Report on Business section of the National Edition of *The Globe and Mail*, the Financial Post section of the *National Post* or similar section of any other newspaper having national circulation in Canada; provided further that if there is no newspaper having national circulation, then by publishing twice in the business section of a newspaper in each city where the register or a branch register is maintained; or (iii) by electronic or telecommunications device. Any notice so given shall be deemed to have been given: (i) on the day of delivery, if

by personal delivery; (ii) on the day following that on which the letter or document was posted, if mailed, or, in the case of notice being given by publication, after publishing such notice twice in the designated newspaper or newspapers; or (iii) on the date of delivery, if by electronic or telecommunications device. In proving notice was posted, it shall be sufficient to prove that such letter or document was properly addressed, stamped and posted.

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

## **15.2 Failure to Give Notice**

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

## **15.3 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.

## **15.4 Service of Notice**

Any notice or document sent by post to or left at the address of a Unitholder pursuant to this Article 15 shall, notwithstanding the death, bankruptcy or mental incompetence of such Unitholder, and whether or not the Trustee have notice of such death, bankruptcy or mental incompetence, 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.

## **15.5 Information Available to Unitholders**

Each Unitholder shall have the right to obtain, on demand and without any fee, from the head office of the Fund a copy of this Deed of Trust and any amendments thereto, together with any financial statements with respect to the Fund or Port Renfrew Management LP.

## **15.6 Income Tax: Obligations of the Trustee**

The Trustee shall satisfy, perform and discharge all obligations and responsibilities of the Trustee under the Tax Act (including any obligations of the Fund under Part XIII and Part

XIII.2 of the Tax Act) and neither the Fund nor the Trustee shall be accountable or liable to any Unitholder by reason of any act or acts of the Trustee consistent with any such obligations or responsibilities

**15.7 Income Tax: Election**

In respect of the first taxation year of the Fund, the Fund shall elect pursuant to subsection 132(6.1) of the Tax Act, in the prescribed manner and within the prescribed time, that the Fund be deemed to be a mutual fund trust for the entire year.

**15.8 Income Tax: Deductions**

Subject to Article 5, the Trustee shall claim the maximum deductions available to the Fund or such lesser amounts as the Trustee may determine to be in the best interests of the Unitholders for the purposes of computing its income pursuant to the provisions of the Tax Act to the extent required to reduce the taxable income of the Fund to nil.

**15.9 Fiscal Year**

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

**15.10 Financial Disclosure**

The Fund will send to Unitholders at least 21 days prior to the date of each annual meeting of Unitholders and, in any event, on or before any earlier date prescribed by Applicable Laws, annual financial information of the Partnership for the fiscal year ended immediately prior to such annual meeting.

**15.11 Unitholder Meeting Information**

Prior to each meeting of Unitholders, the Trustee will provide to each Unitholder, together with the notice of the meeting:

- (a) a form of proxy which can be used by a Unitholder to appoint a proxy, who need not be a Unitholder, to attend and act at the meeting on behalf of the Unitholder, in the manner and to the extent authorized by the proxy; and
- (b) all information required by Applicable Laws and this Deed of Trust.

**15.12 Taxation Information**

Within the time required under the Tax Act, the Fund will provide to Unitholders who received distributions from the Fund in the prior calendar year, such information and forms as may be needed by such Unitholders in order to complete their tax returns in respect of the prior calendar year under the Tax Act and equivalent provincial legislation in Canada.

**15.13 Execution of Instruments**

The Trustee shall have the authority to sign in the name of and on behalf of the Fund all instruments in writing and any instruments in writing so signed shall be binding upon the Fund without any further authorization or formality. For greater certainty, the foregoing shall not limit in any way the power of the Trustee to delegate to any Person or Persons the authority to sign in the name of and on behalf of the Fund any specific instrument or instruments in writing or instruments in writing generally.

**ARTICLE 16**

**AUDITORS**

**16.1 Qualification of Auditors**

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

**16.2 Appointment of Auditors**

The Trustee in its absolute discretion may appoint auditors of the Fund to hold such office. The Auditors will receive such remuneration as may be approved by the Trustee.

**16.3 Change of Auditors**

The Auditors may at any time be removed by the Trustee and, upon the resignation or the removal of the Auditors, new auditors may be appointed by the Trustee.

**16.4 Waiver of Auditors**

The Trustee may in their absolute discretion waive the appointment of auditors of the Fund and appoint accounting advisors for the purpose of a review engagement.

**ARTICLE 17**

**MISCELLANEOUS**

**17.1 Successors and Assigns**

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

**17.2 Counterparts**

This Deed of Trust may be simultaneously executed in several counterparts, each of which when executed shall be deemed to be an original, and such counterparts, together, shall

constitute but one and the same instrument, which shall be sufficiently evidenced by any such original counterpart.

**17.3 Severability**

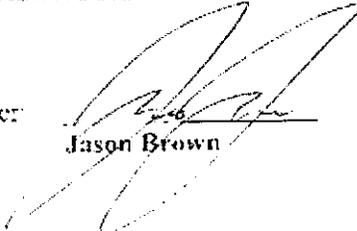
If any provision of this Deed of Trust shall be held invalid or unenforceable in any jurisdiction, such invalidity or unenforceability shall attach only to such provision in such jurisdiction and shall not in any manner affect or render invalid or unenforceable such provision in any other, jurisdiction or any other provision of this Deed of Trust in any jurisdiction.

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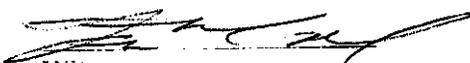
IN WITNESS WHEREOF the Initial Trustee and the Settlor have executed this Deed of Trust effective as of this 17th Day of January, 2012.

INITIAL TRUSTEE:

JASON BROWN

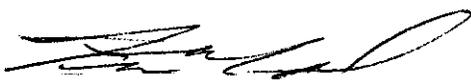
Per:   
Jason Brown

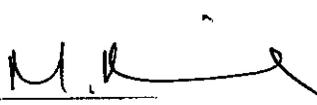
SETTLOR:

  
Witness

  
Maria V. Nathanail

INITIAL UNITHOLDER:

  
Witness

  
Maria V. Nathanail