

EXECUTION VERSION

CRIUS ENERGY TRUST

SECOND AMENDED AND RESTATED TRUST INDENTURE

Made as of May 29, 2018

TABLE OF CONTENTS

ARTICLE 1 INTERPRETATION.....	2
1.1 Definitions.....	2
1.2 References to Acts Performed by the Trust	11
1.3 Interpretation.....	12
1.4 Statutory References	12
1.5 Accounting Principles	12
1.6 Headings for Reference Only.....	12
1.7 Day Not a Business Day	12
1.8 Time of the Essence	13
1.9 Governing Law	13
1.10 Currency.....	13
1.11 Applications to Court.....	13
ARTICLE 2 DECLARATION OF TRUST.....	13
2.1 Declaration of Trust	13
2.2 Initial Unitholder.....	13
2.3 Name of the Trust	13
2.4 Situs, Mind and Management and Head Office	14
2.5 Nature of the Trust.....	14
2.6 Mutual Fund Trust Election	14
2.7 Rights of Unitholders and Ownership of Assets of the Trust	14
2.8 Unitholders Bound	14
ARTICLE 3 CREATION, ISSUE AND SALE OF UNITS.....	15
3.1 Nature of Units.....	15
3.2 Authorized Number of Trust Securities	16
3.3 Issue of Securities	16
3.4 Units Fully Paid and Non-Assessable.....	16
3.5 No Conversion, Retraction, Redemption or Pre-Emptive Rights	17
3.6 Re-Purchase of Initial Unit	17
3.7 Consolidation of Units	17
3.8 Non-Resident Ownership Constraint	17
3.9 Declaration as to Beneficial Owner and U.S. Tax Certifications.....	21
3.10 Unit Certificates	21
3.11 Global Unit Certificate.....	21
3.12 Dealings with Unitholders in Book-Entry System.....	21
3.13 Termination of Book-Entry System.....	22
3.14 Unit Certificates for Jointly or Commonly Held Units	22
3.15 Execution of Unit Certificates.....	22
3.16 Certificate Fee	22
3.17 Form of Unit Certificate.....	22
3.18 Fractional Units.....	23
3.19 Unit Register and Transfer Ledgers to be Maintained	23
3.20 Entry on Register	24
3.21 Transfer of Units	24
3.22 Successors in Interest to Unitholders	24

3.23	Units Held Jointly or in Fiduciary Capacity	25
3.24	Performance of Trusts	25
3.25	Lost Unit Certificates	25
3.26	Death of Unitholders	25
3.27	Unclaimed Payments	26
3.28	Repurchase of Securities	26
3.29	Take-Over Bids	26
3.30	Power of Attorney	30
ARTICLE 4 PURPOSE AND INVESTMENTS OF THE TRUST		31
4.1	Purpose of the Trust	31
4.2	Investments	32
4.3	Investment Restrictions	32
ARTICLE 5 DISTRIBUTIONS		33
5.1	Distributable Cash Flow	33
5.2	Computation of Income and Net Realized Capital Gains	33
5.3	Regular Distributions	33
5.4	Other Distributions	34
5.5	Character of Distribution	35
5.6	Tax Matters	35
5.7	Enforceability of Right to Receive Distributions	35
5.8	Method of Payment of Distributions	36
5.9	Withholding Taxes	36
5.10	Unit Plans	36
ARTICLE 6 REDEMPTION		37
6.1	Right of Redemption by Unitholders	37
6.2	Exercise of Redemption Right	37
6.3	Cash Redemption Price	37
6.4	Payment of Cash Redemption Price	38
6.5	No Cash Redemption in Certain Circumstances	39
6.6	In Specie Redemption	39
6.7	Redemption of Units from Non-certifying Unitholders	40
6.8	Cancellation of Certificates for all Redeemed Units	41
ARTICLE 7 TRUSTEE		42
7.1	Number and Term	42
7.2	Qualifications of the Trustee	42
7.3	Resignation and Removal of the Trustee	42
7.4	Vacancies	43
7.5	Appointment/Election of Successor Trustee	43
7.6	Right of Successor Trustee	45
7.7	Compensation and Other Remuneration	45
7.8	Trustee Not Bound to Act	45

ARTICLE 8 TRUSTEE'S POWERS AND DUTIES..... 45

8.1 General Powers 45
8.2 Specific Powers and Authorities 46
8.3 Further Powers of the Trustee..... 50
8.4 Restrictions on the Trustee's Powers and their Exercise 50
8.5 Standard of Care 51
8.6 Reliance Upon the Trustee..... 52
8.7 Determinations Binding 52
8.8 Banking..... 52
8.9 Fees and Expenses 53
8.10 Payments to Unitholders 53
8.11 Conditions Precedent 54
8.12 Trustee to Declare Interest..... 54
8.13 Documents Held by Trustee..... 54

ARTICLE 9 AMENDMENTS TO THE TRUST INDENTURE..... 54

9.1 Amendment..... 54
9.2 Amendment without Approval..... 54
9.3 Further Restrictions on Amendments 55
9.4 Notification of Amendment 56
9.5 Further Acts Regarding Amendment 56

ARTICLE 10 MEETINGS OF UNITHOLDERS..... 56

10.1 Annual Meeting 56
10.2 Other Meetings..... 57
10.3 Notice of Meeting of Unitholders 58
10.4 Quorum; Chairman 58
10.5 Voting 58
10.6 Record Dates..... 59
10.7 Proxies..... 59
10.8 Mandatory Solicitation of Proxies 59
10.9 Resolution in Lieu of Meeting 60
10.10 Voting of Units by Administrator 60
10.11 Binding Effect of Resolutions..... 60
10.12 No Breach 60
10.13 Resolutions Binding the Trustee 60
10.14 Nomination of Administrator Directors..... 61
10.15 Unitholder Proposals..... 63
10.16 Court Requisitioned Meetings 65

ARTICLE 11 TERMINATION..... 65

11.1 Term of the Trust 65
11.2 Termination with the Approval of Unitholders..... 65
11.3 Procedure Upon Termination..... 66
11.4 Powers of the Trustee Upon Termination 66
11.5 Sale of Investments 66
11.6 Distribution of Proceeds..... 66

11.7	Further Notice to Unitholders	66
11.8	Responsibility of the Trustee after Sale and Conversion	67
ARTICLE 12 LIABILITY OF TRUSTEE, ADMINISTRATOR AND UNITHOLDERS AND OTHER MATTERS		67
12.1	Acting on Behalf of the Trust	67
12.2	General Limitations of Liability	67
12.3	Limitation of Liability and Indemnity of Trustee	68
12.4	Limitation of Liability and Indemnity of Administrator	68
12.5	No Beneficiary Liability	69
12.6	Indemnification and Reimbursement	70
12.7	Further Limitation on Indemnification	70
12.8	Force Majeure	71
12.9	Extended Meanings	71
12.10	Exculpatory Clauses in Instruments	71
12.11	Execution of Instruments and Apparent Authority	72
12.12	Interests of Consultants and Agents	72
ARTICLE 13 DELEGATION AND MATTERS PERTAINING TO THE ADMINISTRATOR.....		72
13.1	Right to Delegate	72
13.2	Specific Present Delegation of Power and Authority to Administrator	73
13.3	Standard of Care	74
13.4	Grant of Power and Authority	74
13.5	Terms and Conditions Pertaining to Performance of Duties	74
13.6	Determinations of the Administrator Binding	74
13.7	Performance of Obligations	75
13.8	No Partnership or Joint Venture	75
13.9	Termination of Administrator as a Party Hereto	75
ARTICLE 14 SUPPLEMENTAL INDENTURES		76
14.1	Provision for Supplemental Indentures	76
ARTICLE 15 NOTICES		76
15.1	Notices to Unitholders	76
15.2	Notice to the Trustee or Administrator:	77
15.3	Failure to Give Notice	78
15.4	Joint Holders	78
15.5	Service of Notice	78
ARTICLE 16 RECORDS AND FINANCIAL INFORMATION		78
16.1	Records	78
16.2	Information Available to Unitholders	78
16.3	Fiscal Year	78
16.4	Financial Disclosure	78
16.5	Taxation Information	79

ARTICLE 17 AUDITORS	79
17.1 Qualification of Auditors	79
17.2 Appointment of Auditors	79
17.3 Change of Auditors	79
17.4 Filling Vacancy	80
17.5 Reports of Auditors	80
ARTICLE 18 UNITHOLDER REMEDIES	80
18.1 Dissent and Appraisal Rights	80
18.2 Oppression Remedy	83
ARTICLE 19 GENERAL	85
19.1 Trust Property to be Kept Separate	85
19.2 Trustee May Not Hold Units	85
19.3 Privacy	85
19.4 U.S. Securities and Exchange Matters	86
19.5 Representation regarding Third Party Interests	86
19.6 Execution and Effect of Restated Trust Indenture	86
19.7 Consolidations	86
19.8 Severability	86
19.9 Successors and Assigns	87
19.10 Counterparts	87

CRIUS ENERGY TRUST

SECOND AMENDED AND RESTATED TRUST INDENTURE

THIS SECOND AMENDED AND RESTATED TRUST INDENTURE is dated as of the 29th day of May, 2018.

BETWEEN:

COMPUTERSHARE TRUST COMPANY OF CANADA, a trust company incorporated under the laws of Canada, with offices in the City of Toronto, in the Province of Ontario and the City of Calgary, in the Province of Alberta
(hereinafter called the "**Trustee**"),

OF THE FIRST PART

- and -

CRIUS ENERGY ADMINISTRATOR INC., a corporation incorporated under the laws of Ontario, with offices in the City of Toronto, in the Province of Ontario
(hereinafter called the "**Corporation**"),

OF THE SECOND PART

RECITALS

WHEREAS on September 7, 2012, the Corporation settled and established a trust for those purposes more particularly set forth in the Initial Trust Indenture (as hereafter defined) and for the benefit of Unitholders (as hereafter defined) on the terms and conditions set forth in the Initial Trust Indenture (as hereafter defined);

AND WHEREAS the Trustee and the Corporation entered into an amended and restated trust indenture dated June 20, 2016 (the "**First Amended and Restated Trust Indenture**") to amend and restate the Initial Trust Indenture;

AND WHEREAS pursuant to Section 9.1 of the First Amended and Restated Trust Indenture, the Trust Indenture may be amended by Special Resolution of Unitholders;

AND WHEREAS certain amendments to the Trust Indenture to provide additional rights and protections to Unitholders (the "**Governance Amendments**") were passed by Special Resolution of Unitholders at the annual and special meeting of Unitholders held on May 29, 2018;

AND WHEREAS the Trustee and the Corporation wish to effect the Governance Amendments by amending the First Amended and Restated Trust Indenture and entering into this Second Amended and Restated Trust Indenture;

AND WHEREAS the Trustee and the Corporation wish to reaffirm the terms of the First Amended and Restated Trust Indenture, save and except to the extent amended pursuant to the Governance Amendments, as reflected in this Second Amended and Restated Trust Indenture;

NOW THEREFORE THIS INDENTURE WITNESSES THAT, in consideration of the premises and the mutual and respective covenants and agreements contained herein, the Trustee declares, and covenants and agrees with and in favour of the Corporation (in its capacity as settler of the Trust), the Unitholders (being all persons who before, on or after the date hereof, become holders of Units, as herein provided) and the Administrator (as hereinafter defined) as follows:

ARTICLE 1 INTERPRETATION

1.1 Definitions

In this Trust Indenture and in the Unit Certificates, unless the context otherwise requires, the following words and phrases shall have the following meanings:

- (a) "**Accounting Principles**" has the meaning ascribed thereto in Section 1.5;
- (b) "**Administrative Services Agreement**" means the administrative services agreement to be entered into between the Administrator and the Trustee, as amended, supplemented or amended and restated from time to time, pursuant to which the Administrator will provide administrative services to the Trust;
- (c) "**Administrator**" means the person appointed as the administrator of the Trust from time to time in accordance with the terms of this Trust Indenture and, if applicable, the Administrative Services Agreement, initially being the Corporation;
- (d) "**Administrator Directors**" means the director or directors of the Administrator;
- (e) "**affiliate**" of a person means any other person controlling, controlled by, or under common control with, such person;
- (f) "**annuitant**" means an annuitant, subscriber, holder or beneficiary under a registered retirement savings plan, a registered retirement income fund, a registered education savings plan, a registered pension plan, a registered pension fund, a registered disability savings plan, a tax-free savings account or a deferred profit sharing plan, all as defined in the Tax Act, or an annuitant, subscriber, holder or beneficiary of any other plan, account or fund, of which a Unitholder, Beneficial Unitholder or holder of Other Trust Securities acts as trustee or carrier;
- (g) "**Applicable Laws**" means all laws, rules, regulations, codes, by-laws, statutes, ordinances, directives and orders, in effect from time to time, of all jurisdictions and Governing Authorities having jurisdiction with respect to the Trust and its affiliates;
- (h) "**associate**" means, in relation to another person (the "**Other Person**"):
 - (i) a person of which the Other Person beneficially owns or controls, directly or indirectly, voting securities entitling the Other Person to more than 10% of the voting rights attached to outstanding securities of the person;
 - (ii) any person who is a partner of the Other Person;

- (iii) any trust or estate in which the Other Person has a substantial beneficial interest or in respect of which the Other Person serves as trustee or in a similar capacity;
- (iv) in the case where the Other Person is an individual, a relative of that individual, including:
 - (A) the spouse or adult interdependent partner of that individual, if the relative has the same residence as that individual; or
 - (B) a relative of that individual's spouse or adult interdependent partner, if the relative has the same residence as that individual;
- (i) "**Auditors**" means any firm of chartered accountants appointed as the auditors of the Trust from time to time in accordance with the provisions hereof;
- (j) "**Beneficial Unitholder**" means the beneficial owner of a Unit;
- (k) "**Beneficiary**" has the meaning ascribed thereto in subsection 12.5(a);
- (l) "**Bid Units**" has the meaning ascribed thereto in subsection 3.29(a);
- (m) "**Board**" has the meaning ascribed thereto in subsection 10.14(a);
- (n) "**Book-Entry System**" means the record-entry securities transfer and pledge system known, as of the date hereof, by such name, which is administered by CDS in accordance with the operating rules and procedures of the trade, clearing and settlement service of CDS in force from time to time, or any successor system which CDS may offer from time to time;
- (o) "**Business Day**" means any day other than a Saturday, Sunday or a day on which the principal chartered banks located at Toronto, Ontario are not open for business;
- (p) "**Cash Redemption Price**" has the meaning ascribed thereto in Section 6.3;
- (q) "**Cdn Holdco**" means Crius Energy Holdings Inc., a corporation to be incorporated under the laws of the Province of Ontario, and a direct wholly-owned affiliate of the Trust;
- (r) "**Cdn Holdco Shares**" means the common shares in the capital of Cdn Holdco;
- (s) "**CDS**" means CDS Clearing and Depository Services Inc.;
- (t) "**Closing**" means the completion of the issue of Units to the public pursuant to the IPO and "**Closing Date**" means the date on which the Closing occurs;
- (u) "**closing market price**" has the meaning ascribed thereto in Section 6.3;
- (v) "**Commercial Trust**" means Crius Energy Commercial Trust, a trust to be established under the laws of the Province of Ontario, and a direct wholly-owned affiliate of the Trust;
- (w) "**Commercial Trust Units**" means the trust units of the Commercial Trust;

- (x) "**Compensation Plans**" means the incentive and compensation plan or plans to be entered into between the Trust and certain of the Administrator's and/or the Trust's affiliates' directors, officers, employees and consultants;
- (y) "**Complainant**" has the meaning ascribed thereto in subsection 18.2(a);
- (z) "**control**", and related terms including "**controlling**" and "**controlled**", shall mean the possession, directly or indirectly, by or on behalf of a person or group of persons acting jointly or in concert, of the following in respect of another person:
 - (i) in the case where the other person is a corporation or a company managed by a board of directors:
 - (A) ownership of more than 50% of the securities having ordinary voting rights for the election of directors of such corporation or company; or
 - (B) the right (whether pursuant to any agreement, contract or otherwise) to elect or appoint a majority of the directors of such corporation or company;
 - (ii) in the case where the other person is a limited partnership, the power to control the general partner of the limited partnership; and
 - (iii) in the case where the other person is other than a corporation or limited partnership:
 - (A) the power to exercise more than 50% of the voting rights in such person; or
 - (B) the right to receive more than 50% of the distributions made by that person;
- (aa) "**Counsel**" means a barrister and solicitor or firm of barristers and solicitors or other lawyers in an appropriate jurisdiction retained by the Trust;
- (bb) "**Credit Facilities**" means all credit facilities and agreements entered into by the Trust or any of its affiliates, from time to time, which set forth the terms and conditions of any debt financing obtained by the Trust, or by any of its affiliates, as the case may be, from any person or persons not affiliated with the Trust, and, for further certainty, shall include all agreements pertaining to issuances of debentures or other debt securities to the public;
- (cc) "**Depository**" has the meaning ascribed thereto in Section 3.11;
- (dd) "**Depository Participant**" means a broker, dealer, bank, other financial institution or other person who, directly or indirectly, from time to time, effects book-based transfers with the Depository and pledges of securities deposited with the Depository;
- (ee) "**discretion**" means the absolute and sole discretion of the party exercising same;
- (ff) "**Distributable Cash Flow**" has the meaning ascribed thereto in Section 5.1;

- (gg) **"Distribution Payment Date"** means such date or dates as may be determined from time to time by the Trustee or the Administrator on which Distributable Cash Flow is distributed to Unitholders (initially to be the 15th day of the calendar month which immediately follows the corresponding Distribution Record Date, or if such day is not a Business Day, the following Business Day);
- (hh) **"Distribution per Unit"** has the meaning ascribed thereto in subsection 5.3(c);
- (ii) **"Distribution Period"** means, in respect of the initial distribution, the period commencing on and including the Closing Date and ending on and including the last day of the month following the month in which the Closing occurs, and thereafter means each calendar month in each calendar year, or such other periods as may hereafter be determined from time to time by the Trustee or the Administrator;
- (jj) **"Distribution Record Date"** means, in respect of a Distribution Period, the last Business Day of the Distribution Period or such other dates as may be determined from time to time by the Trustee or the Administrator;
- (kk) **"Environmental Liabilities"** means all liabilities, losses, costs, charges, damages, expenses, and penalties (including costs and expenses of abatement and remediation of spills or releases of contaminants and all liabilities to third parties (including governmental agencies) in respect of bodily injuries, property damage, damage to or impairment of the environment or any other injury or damage, including foreseeable and unforeseeable consequential damages) sustained, suffered or incurred in connection with or as a result of:
 - (i) the administration of the Trust; or
 - (ii) the exercise or performance by the Trustee or the Administrator of any rights or obligations hereunder or under any other contracts, and which, in either case, result from or relate, directly or indirectly, to:
 - (A) the presence or release or threatened presence or release of any contaminants, by any means or for any reason, on or in respect of any properties of the Trust, whether or not such presence or release or threatened presence or release of the contaminants was under the control, care or management of the Trust or the Administrator or of a previous owner or operator of such property;
 - (B) any contaminant present on or released from any property adjacent to or in the proximate area of any properties of the Trust;
 - (C) the breach or alleged breach of any federal, provincial, state or municipal environmental law, regulation, by-law, order, rule or permit by the Trust or the Administrator, or an owner or operator of a property; or
 - (D) any misrepresentation or omission of a known fact or condition made by the Administrator relating to any property;
- (ll) **"Experts"** has the meaning ascribed thereto in subsection 12.2(a);

- (mm) "**First Amended and Restated Trust Indenture**" has the meaning ascribed thereto in the recitals to this Trust Indenture;
- (nn) "**foreign private issuer**" has the meaning ascribed thereto in the *United States Securities Act of 1933*, as amended from time to time;
- (oo) "**Global Unit Certificate**" means, following completion of the IPO, the certificate(s) representing Units and registered in the name of CDS or its nominee, as custodian thereof, to permit the use of the Book-Entry System;
- (pp) "**going private transaction**" means an arrangement, consolidation or other transaction involving the Trust, other than an acquisition pursuant to Section 3.29, that results in the interest of the holder of Units being terminated without the consent of the holder and without the substitution of an interest of equivalent value in participating securities of the Trust or of a person that succeeds to the business of the Trust, which participating securities have rights and privileges that are equal to or greater than the affected participating securities;
- (qq) "**Governance Amendments**" has the meaning ascribed thereto in the recitals to this Trust Indenture;
- (rr) "**Governing Authority**" means any stock exchange or any court or governmental department, regulatory agency or body, commission, board, bureau, agency, or instrumentality of Canada, or of any state, province, territory, county, municipality, city, town or other political jurisdiction whether domestic or foreign and whether now or in the future constituted or existing;
- (ss) "**Income of the Trust**" has the meaning ascribed thereto in subsection 5.2(a);
- (tt) "**Indemnified Party**" has the meaning ascribed thereto in subsection 12.6(a);
- (uu) "**Indenture Conferred Duties**" means all authorities, rights, powers, responsibilities and duties conferred upon, granted to or delegated to the Administrator pursuant to the terms of this Trust Indenture;
- (vv) "**Initial Contribution**" has the meaning ascribed thereto in the recitals to this Trust Indenture;
- (ww) "**Initial Trust Indenture**" means the Trust Indenture made as of September 7, 2012 between the Trustee, as trustee, and the Corporation, as settlor, providing for the establishment of the Trust;
- (xx) "**Initial Unit**" means the one Unit issued to the Corporation upon receipt by the Trustee of the Initial Contribution;
- (yy) "**in Specie Redemption Price**" has the meaning ascribed thereto in subsection 6.6(a);
- (zz) "**Internal Reorganization**" means the sale, lease, exchange or other transfer of the Trust Property (whether or not involving all or substantially all of the Trust Property), including, for greater certainty, pursuant to an amalgamation, arrangement or merger of the Trust and/or one or more of its affiliates with any entity or entities, as a result of

which the Trust has substantially the same interest, whether direct or indirect, in the Trust Property that it had prior to such sale, lease, exchange or other transfer of the Trust Property;

- (aaa) "**IPO**" means the initial distribution to the public of Units pursuant to the Prospectus, as described therein under the section entitled "Plan of Distribution";
- (bbb) "**market price**" has the meaning ascribed thereto in Section 6.3;
- (ccc) "**meeting of Unitholders**" shall mean and include, as the circumstances require, both an annual meeting of Unitholders and any other meeting of Unitholders called and conducted in accordance with the provisions of this Trust Indenture;
- (ddd) "**mutual fund trust**" means a "mutual fund trust" as defined in section 132 of the Tax Act;
- (eee) "**Net Realized Capital Gains**" has the meaning ascribed thereto in subsection 5.2(b);
- (fff) "**Nominating Unitholder**" has the meaning ascribed thereto in subsection 10.14(a);
- (ggg) "**Non-certifying Unitholder**" means a Unitholder or Beneficial Unitholder who, after 30 days from receipt of a request of the Trustee or Administrator under subsection 3.9(b), fails to comply with the request to furnish a Taxation Certification, or fails to use reasonable efforts to obtain a Taxation Certification from each Beneficial Unitholder beneficially owning Units registered or held in such Unitholder's name;
- (hhh) "**non-portfolio property**" means "non-portfolio property" as defined in section 122.1 of the Tax Act;
- (iii) "**Non-resident**" means a Beneficial Unitholder who:
 - (i) at the relevant time, for the purposes of the Tax Act, is not resident in Canada and is not deemed to be a resident in Canada, or
 - (ii) is a partnership that is not a "Canadian partnership" within the meaning of the Tax Act;
- (jjj) "**Non-resident Restriction**" has the meaning ascribed thereto in subsection 3.8(a)(i);
- (kkk) "**non-tendering offeree**" means, in the case of a take-over bid made for Bid Units, a holder of Bid Units who does not accept the take-over bid, and includes a subsequent holder of such Bid Units who acquires them from the first mentioned holder;
- (lll) "**Notice Date**" has the meaning ascribed thereto in subsection 10.14(c);
- (mmm) "**offeree**" means a person to whom a take-over bid is made;
- (nnn) "**Offering**" means any issuance or offering of Units or Other Trust Securities;
- (ooo) "**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;

- (ppp) "**Ordinary Resolution**" means:
- (i) a resolution passed by more than 50% of the votes cast by those Unitholders entitled to vote on such resolution, whether cast in person or by proxy, at a meeting of Unitholders, at which a quorum was present, called (at least in part) for the purpose of approving such resolution; or
 - (ii) subject to Section 10.9, a resolution approved in writing, in one or more counterparts, by holders of more than 50% of the votes represented by those Units entitled to be voted on such resolution;
- (qqq) "**Other Trust Securities**" means any type of securities of the Trust, other than Units, including notes (including Redemption Notes), options, rights, warrants or other securities convertible into or exercisable for Units or other securities of the Trust (including convertible debt securities, subscription receipts and installment receipts);
- (rrr) "**person**" includes individuals, corporations, limited partnerships, general partnerships, joint stock companies, limited liability companies, joint ventures, associations, companies, trusts, estates, banks, trust companies, pension funds, business trusts and other organizations, (whether or not legal entities) and governments and agencies and political subdivisions thereof;
- (sss) "**Proposal**" has the meaning ascribed thereto in section 10.15;
- (ttt) "**Prospectus**" means the final prospectus of the Trust relating to the IPO filed with various securities commissions or similar authorities in Canada to qualify the issue and distribution of the Units, and includes any amendment to such final prospectus;
- (uuu) "**public announcement**" has the meaning ascribed thereto in subsection 10.14(g);
- (vvv) "**Redemption Date**" has the meaning ascribed thereto in subsection 6.2(b);
- (www) "**Redemption Gains**" has the meaning ascribed thereto in subsection 5.2(c);
- (xxx) "**Redemption Income**" has the meaning ascribed thereto in subsection 5.2(c);
- (yyy) "**Redemption Notes**" means promissory notes issued in series, or otherwise, by the Trust pursuant to a note indenture, or otherwise, and having the following terms and conditions:
- (i) unsecured and bearing interest from and including the issue date of each such note at a market rate determined at the time of issuance, based on the advice of an independent financial advisor, and payable monthly in arrears (with interest after as well as before maturity, default and judgment, and interest on overdue interest at such rate);
 - (ii) subordinated and postponed to all Senior Indebtedness and which may be subject to specific subordination and postponement agreements entered into by the Trustee with holders of Senior Indebtedness;

- (iii) subject to earlier prepayment, being due and payable on the 5th anniversary of the date of issuance or such other date as is determined at the date of issuance; and
- (iv) such other terms and conditions as the Administrator may determine necessary or desirable;
- (zzz) "**Register**" and "**Registers**" have the meanings ascribed thereto in Section 3.19;
- (aaaa) "**Securities Act**" means the *Securities Act*, R.S.O. 1990, c. S.5, as amended from time to time, including the rules, regulations and instruments promulgated thereunder;
- (bbbb) "**security**", as applicable in the particular context, has the meaning ascribed thereto in the Securities Act, and "**securities**" has a corresponding meaning;
- (cccc) "**Senior Indebtedness**" shall mean, at any time, all indebtedness, liabilities and obligations of the Trust which, by the terms of the instrument creating or evidencing the same, is not expressed to rank in right of payment in subordination to, or *pari passu* with, the indebtedness evidenced by the Redemption Notes or any of them;
- (dddd) "**SIFT Rules**" means the provisions of the Tax Act that apply to a SIFT trust as defined in section 122.1 of the Tax Act;
- (eeee) "**SIFT trust**" means a "SIFT trust" as defined in section 122.1 of the Tax Act;
- (ffff) "**Special Resolution**" means:
 - (i) a resolution passed by more than 66 $\frac{2}{3}$ % of the votes cast by those Unitholders entitled to vote on such resolution, whether cast in person or by proxy, at a meeting of Unitholders, at which a quorum was present, called (at least in part) for the purpose of approving such resolution; or
 - (ii) subject to Section 10.9, a resolution approved in writing, in one or more counterparts, by holders of more than 66 $\frac{2}{3}$ % of the votes represented by those Units entitled to be voted on such resolution;
- (gggg) "**Standard of Care**" means, in respect of any person or company performing duties on behalf of the Trust, the obligation to:
 - (i) exercise the powers and discharge the duties of its office honestly, in good faith and in the best interests of the Trust and the Unitholders; and
 - (ii) exercise the degree of care, diligence and skill that a reasonably prudent trustee or administrator, as applicable, would exercise in the circumstances;
- (hhhh) "**Subsidiary**" has the meaning ascribed thereto in subsection 18.2(b);
- (iiii) "**Subsidiary Securities**" has the meaning ascribed thereto in subsection 8.2(bb);
- (jjjj) "**take-over bid**" has the meaning ascribed to such term in the Securities Act, but without reference to the jurisdiction of residence of the person to whom an offer to acquire securities is made;

- (kkkk) "**Tax Act**" means the *Income Tax Act*, R.S.C. 1985 (5th Supp.), C-1 and the *Income Tax Regulations* thereunder, each as amended from time to time;
- (llll) "**taxable Canadian property**" means "taxable Canadian property" as defined in subsection 248(1) of the Tax Act;
- (mmmm) "**Taxation Certification**" means: (i) a properly completed and duly executed United States Internal Revenue Service Form W-8BEN or W-9 (as applicable), or such successor form to such forms as the Internal Revenue Service shall adopt; and (ii) if the Unitholder or Beneficial Unitholder is a resident of a jurisdiction (other than the United States or Canada) that is determined by the Trustee or the Administrator not to have a tax treaty with the United States that fully exempts a United States payor from withholding obligations on interest payments made to residents in such jurisdiction, a properly completed and duly executed certification that such person does not beneficially own directly or indirectly 10% or more of the total issued and outstanding Units;
- (nnnn) "**Transfer Agent**" means such person as may from time to time be appointed by the Trust to act as registrar and transfer agent of the Units, together with any sub-transfer agent appointed by such Transfer Agent; provided that where the Trust has not appointed a person to act as registrar and transfer agent of the Units, then the Administrator, or failing that the Trustee, shall act as registrar and transfer agent of the Units;
- (oooo) "**Trust**" means Crius Energy Trust, as constituted by this Trust Indenture, and includes references to the Trustee acting in its capacity as trustee of the Trust;
- (pppp) "**Trust Indenture**", "**Indenture**", "**hereto**", "**herein**", "**hereof**", "**hereby**", "**hereunder**" and similar expressions refer to the Initial Trust Indenture, as amended and restated by the First Amended and Restated Trust Indenture and this Second Amended and Restated Trust Indenture, as the same may be amended, restated or modified from time to time, and includes every instrument supplemental or ancillary to or in implementation of this Trust Indenture and, except where the context otherwise requires, does not refer to any particular Article, Section, subsection or other portion hereof or thereof;
- (qqqq) "**Trust Liabilities**" has the meaning ascribed thereto in subsection 12.5(a);
- (rrrr) "**Trust Property**", at any time, means all of the money, properties and other assets of any nature or kind whatsoever as are, at such time, held by the Trust or by the Trustee on behalf of the Trust, and any reference to "**property**" or "**property of the Trust**" or "**assets**" or "**assets of the Trust**" includes, in each case, the Trust Property;
- (ssss) "**Trustee**" means at any time, a corporation that is, in accordance with the provisions hereof, the trustee of the Trust;
- (tttt) "**Trustee's Regulations**" has the meaning ascribed thereto in Section 8.3;
- (uuuu) "**Unit Certificate**" means a certificate, in the form approved by the Administrator from time to time, evidencing one or more Units, issued and certified in accordance with the provisions hereof, and includes a Global Unit Certificate;
- (vvvv) "**Unitholder**" means, at any time, a holder of one or more Units, as shown on any of the Registers;

- (www) "**Units**" means the trust units of the Trust created and designated as "**Units**" pursuant to subsection 3.1(a), having the rights, privileges, restrictions and conditions as provided for in this Indenture; and "**Unit**" means any Unit;
- (xxxx) "**U.S. Holdco**" means Crius Energy Corporation, a corporation to be formed pursuant to the laws of Delaware, and an indirect wholly-owned affiliate of the Trust;
- (yyyy) "**U.S. Holdco Notes**" means the subordinated unsecured promissory notes to be issued by U.S. Holdco, to be held by the Trust or any direct or indirect wholly-owned affiliate of the Trust;
- (zzzz) "**U.S. IRC**" means the *United States Internal Revenue Code of 1986*, and any accompanying regulations thereunder, as amended.
- (aaaa) "**U.S. Mergeco**" means Crius Energy, LLC, a limited liability company formed pursuant to the laws of Delaware, and, following the Closing and the completion of the transactions contemplated in the Prospectus, an indirect affiliate of the Trust;
- (bbbb) "**United States Person**" means a "United States Person" within the meaning of section 7701(a)(30) of the U.S. IRC.
- (cccc) "**U.S. Resident**" means a Beneficial Unitholder who at the relevant time, for purposes of the United States securities laws, is resident in the United States, as such residency may be determined for the purpose of establishing the Trust as a "foreign private issuer" under United States securities laws or in providing for an exemption for the Trust, the Commercial Trust and any of the Trust's affiliates from reporting under the *United States Securities Exchange Act of 1934*, as amended;
- (dddd) "**U.S. Residency Restriction**" has the meaning ascribed thereto in subsection 3.8(a)(ii); and
- (eeee) "**Voting Agreement**" means the voting agreement to be entered into among the Trustee, the Administrator and the shareholder of the Administrator to provide, among other things, the Unitholders, through the Trustee as agent, with control over the election of the Administrator Directors, as the same may be amended, supplemented or amended and restated from time to time.

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

For greater certainty, where any reference is made in this Trust Indenture to:

- (a) an act to be performed or not to be performed by the Trust or to rights of the Trust, such reference shall be construed and applied for all purposes to refer to (i) an act to be performed or not to be performed by the Trustee on behalf of the Trust or by some other person duly authorized to do so by the Trustee or pursuant to the provisions hereof or the Administrative Services Agreement; or (ii) rights of the Trustee, in its capacity as Trustee of the Trust, as the case may be; and
- (b) actions, rights or obligations of the Trustee, such reference shall be construed and applied for all purposes to refer to actions, rights or obligations of the Trustee in its capacity as Trustee of the Trust, and not in its other capacities unless the context requires otherwise,

and where any actions or obligations of the Trustee are delegated to the Administrator or some other person, then the Administrator or such other person shall also be entitled to the rights of the Trustee associated with such actions and obligations.

1.3 Interpretation

In this Trust Indenture, unless herein 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. Where the word "**including**" or "**includes**" is used in this Trust Indenture it means "**including without limitation**" or "**includes without limitation**", respectively. Any reference to any document shall include a reference to any schedule, amendment or supplement thereto or any agreement in replacement thereof, all as permitted under such document.

1.4 Statutory References

A reference herein to any statute includes every regulation (and other similar ancillary instrument having the force of law) made pursuant thereto, all amendments to the statute or to any such regulation (or other similar ancillary instrument) in force from time to time, and any statute or regulation (or other similar ancillary instrument) which supplements or supersedes such statute or regulation (or other similar ancillary instrument); and a reference to any section or provision of a statute includes all amendments to such section or provision, as made from time to time, and all sections or provisions which supplement or supersede such section or provision referred to herein.

1.5 Accounting Principles

Wherever in this Trust Indenture reference is made to International Financial Reporting Standards, generally accepted accounting principles or other similar terms ("**Accounting Principles**"), such reference shall be deemed to be to such Accounting Principles from time to time approved by the Canadian Institute of Chartered Accountants, or any successor institute, applicable to the Trust as at the date on which such calculation is made or required to be made in accordance with Accounting Principles. Where the character or amount of any asset or liability or item of revenue or expense is required to be determined, or any consolidation or other accounting computation is required to be made for the purpose of this Trust Indenture or any document, such determination or calculation shall, to the extent applicable and except as otherwise specified herein or as otherwise agreed in writing by the parties, be made in accordance with the applicable Accounting Principles applied on a consistent basis.

1.6 Headings for Reference Only

The division of this Trust Indenture 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 Trust Indenture. Unless something in the subject matter or context is inconsistent therewith, references herein to Articles, Sections and subsections are to Articles, Sections and subsections of this Trust Indenture.

1.7 Day Not a Business Day

Except as otherwise set out herein, in the event that any day on which any amount is to be determined or any other determination is to be made or any action is required to be taken hereunder is not a Business Day, then such amount shall be determined, or such other 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 is not applicable to Sections 5.2, 5.3, 5.4 and 5.8 and to defined terms used in such Sections (except with respect to the definition of, and action to be taken on, the determination of Distribution Payment Date in Section 5.3 and subsection 5.4(c)).

1.8 Time of the Essence

Time shall be of the essence in this Trust Indenture.

1.9 Governing Law

This Trust Indenture and the Unit Certificates shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein. The parties hereto hereby irrevocably submit and attorn to the jurisdiction of the courts of the Province of Ontario.

1.10 Currency

Unless otherwise specified, all references herein to currency shall be references to currency of Canada.

1.11 Applications to Court

As the rights (including the right to apply to a court) and remedies set out in Sections 3.29, 10.15, 10.16, 18.1 and 18.2 of this Trust Indenture are not statute-based, all references in this Trust Indenture to Unitholder rights (or the rights of any other person) that may be enforced by the court or to remedies that may be granted by the court are subject to the court, in its discretion, accepting jurisdiction to consider and determine any proceeding commenced by an eligible Unitholder (or other eligible person as contemplated herein) applying to the court under such sections.

ARTICLE 2
DECLARATION OF TRUST

2.1 Declaration of Trust

The Trustee hereby agrees to act as trustee on behalf of, and to hold legal title and use and administer the Trust Property in trust for the 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 Trust hereunder.

2.2 Initial Unitholder

Upon the settlement of the Trust, the Corporation delivered the Initial Contribution to the Trustee and the Trustee issued the Initial Unit to the Corporation.

2.3 Name of the Trust

The Trust shall be known and designated as "**Crius Energy Trust**" and, whenever lawful and convenient, the Trust Property shall be held and the affairs of the Trust shall be conducted and transacted under that name. The Trust may use such other designation or may adopt such other name as the Trustee (with the consent of the Administrator), or the Administrator alone, deems appropriate, and the Trust may hold property and conduct and transact its affairs under such other designation or name. The Trustee (with the consent of the Administrator), or the Administrator alone, may approve and use a version of any name or designation used by the Trust in any language other than English.

2.4 Situs, Mind and Management and Head Office

The situs, mind and management of the Trust shall be the Province of Ontario and the head office of the Trust shall be located at Toronto, Ontario, or such other place or places in Canada as the Administrator may from time to time designate, and will initially be located at 3400, One First Canadian Place, Toronto, Ontario, M5X 1A4.

2.5 Nature of the Trust

The Trust is an unincorporated limited purpose open-ended mutual fund trust, established for the purposes specified in Section 4.1. The Trust is not, is not intended to be, shall not be deemed to be and shall not be treated as, a general partnership, limited partnership, society, syndicate, association, joint venture, company, corporation or joint stock company; further, neither the Trustee, nor the Administrator, nor the Unitholders, nor any of them, shall be, or be deemed to be, treated in any way whatsoever as liable or responsible hereunder as partners or joint venturers. Except as expressly specified herein, neither the Trustee nor the Administrator shall be, or be deemed to be, agents of the Unitholders. The relationship of the Unitholders to the Trustee shall be solely that of beneficiaries of the Trust, and their rights shall be limited to those expressly conferred upon them by this Trust Indenture and Applicable Laws.

2.6 Mutual Fund Trust Election

In respect of the Trust's first taxation year, the Trust shall, in its tax return for that year, elect pursuant to subsection 132(6.1) of the Tax Act that the Trust be deemed to be a mutual fund trust for purposes of the Tax Act from the beginning of that year.

2.7 Rights of Unitholders and Ownership of Assets of the Trust

- (a) Except as otherwise expressly provided for herein, no Unitholder shall be entitled to interfere with, or give any direction to, the Trustee or the Administrator with respect to the affairs of the Trust or in connection with the exercise of any powers or authorities conferred upon the Trustee or the Administrator under, or by virtue of, this Trust Indenture or the Administrative Services Agreement.
- (b) The legal ownership of the Trust Property is vested exclusively in the Trustee and the right to conduct the affairs of the Trust is, subject to the terms hereof and of the Administrative Services Agreement, vested exclusively in the Trustee, or such other persons as the Trustee may determine or as are permitted in accordance with the terms hereof. The Unitholders shall have no interest or right of ownership in the Trust Property other than the interest specifically set forth in this Trust Indenture and they shall have no right to compel or call for any redemption of Units or any partition, division, dividend or distribution of the Trust Property, except as specifically provided herein.
- (c) Units shall be personal property and shall confer upon the holders thereof only the interest and rights as specifically set forth in this Trust Indenture.

2.8 Unitholders Bound

This Trust Indenture shall be binding upon all persons who have become or will become Unitholders from time to time. By acceptance of a Unit Certificate representing any Units or, during use of the Book-Entry System for any of the Units, upon completion of a purchase of any such Units (which may be evidenced by a confirmation of purchase), the Unitholder thereof shall be deemed to agree to be bound,

and shall be so bound, by this Trust Indenture. Furthermore, where applicable, this Trust Indenture shall be binding upon all persons who from time to time hold Other Trust Securities, and acceptance of a certificate or confirmation of purchase of such Other Trust Securities in whatever manner shall result in such holder of Other Trust Securities being deemed to agree to be bound, and shall be so bound, by the applicable provisions of this Trust Indenture.

ARTICLE 3 CREATION, ISSUE AND SALE OF UNITS

3.1 Nature of Units

- (a) The beneficial interests in the Trust shall be represented and constituted by one class of trust units described and designated as "Units". Each holder of a Unit shall be entitled to the rights and be subject to the limitations, restrictions and conditions pertaining to the Units as set out in this Trust Indenture, including those set forth in this Section 3.1, and the interest of each Unitholder shall be determined by the number of Units registered in the name of such holder.
- (b) Each Unit represents an equal, undivided beneficial interest in the Trust Property and all Units shall rank among themselves equally and rateably without discrimination, preference or priority.
- (c) In addition to the rights, privileges and restrictions set forth elsewhere herein, the Units shall have the following rights, privileges and restrictions:
 - (i) each Unit shall entitle the holder thereof to one vote at all meetings of Unitholders or in respect of written resolutions of the Unitholders;
 - (ii) each Unit shall entitle the holder thereof to participate equally with respect to any and all distributions made by the Trust respecting the Units, including distributions of Income of the Trust, Net Realized Capital Gains or other amounts pursuant to Article 5;
 - (iii) on liquidation or termination of the Trust, each Unit shall entitle the holder thereof to participate equally with respect to the distribution of the remaining Trust Property after payment of the Trust's debts, liabilities and liquidation or termination expenses;
 - (iv) there shall be no pre-emptive rights attaching to Units;
 - (v) there shall be no liability for future calls or assessments attaching to Units; and
 - (vi) each Unit shall entitle the holder thereof to require the Trust to redeem the Unit as provided for, and subject to the limitations, in Article 6.
- (d) The Trustee may, in its discretion at any time and from time to time but at all times subject to the provisions of this Trust Indenture:
 - (i) subdivide the Units outstanding at any time so that the number of outstanding Units may be increased, or

- (ii) consolidate the Units outstanding at any time so that the number of outstanding Units may be decreased.

3.2 Authorized Number of Trust Securities

The aggregate number of Units which are authorized and may be issued hereunder by the Trustee is unlimited. The aggregate number of Other Trust Securities which are authorized and may be issued hereunder by the Trustee is unlimited.

3.3 Issue of Securities

- (a) Such number of Units and/or Other Trust Securities as are qualified for distribution by the Prospectus, are hereby authorized for issuance by the Trustee on such terms and conditions as are approved by the Administrator Directors and as are set forth and described in the Prospectus, any related transaction documents, and an underwriting agreement (as applicable) to be entered into prior to the Closing with such brokers or dealers as may be determined by the Administrator, and the Administrator is hereby authorized to enter into such underwriting agreement in connection with the IPO on behalf of the Trust on such terms as the Administrator in its discretion may determine.
- (b) Subsequent to the issuances authorized in subsection 3.3(a) above, any Units or Other Trust Securities may be created, issued, sold and/or delivered at the times, to the persons (subject to Section 3.8), in the jurisdictions, for the consideration and on the terms and conditions that the Trustee or the Administrator determines, including pursuant to Unitholder rights plans, distribution reinvestment plans or Compensation Plans, and without limiting the generality of the foregoing, the Trustee or the Administrator may authorize the payment of a reasonable commission to any person in consideration of such person purchasing, or agreeing to purchase, Units or Other Trust Securities from the Trust or from any other person, or procuring or agreeing to procure purchasers for Units or Other Trust Securities or may allow for discounts to persons as consideration for such persons subscribing, or agreeing to subscribe, whether absolutely or conditionally, for Units or Other Trust Securities or as consideration for such persons agreeing to procure subscriptions for Units or Other Trust Securities, whether such subscriptions be absolute or conditional.

3.4 Units Fully Paid and Non-Assessable

Unless otherwise indicated in this Section 3.4, Units are only to be issued by the Trustee when fully paid in money, property or past services, provided however that:

- (a) Units may be issued for consideration payable in installments if the Trust takes security over any such Units as security for unpaid installments; and
- (b) the consideration for any Unit issued by the Trust shall be paid in money or in property or in past services that are not less in value than the fair equivalent of the money that the Trust would have received if the Unit had been issued for money, provided that property shall not include a promissory note or promise to pay given by the allottee. In determining whether property or past services are the fair equivalent of monetary consideration, the Trustee or the Administrator may take into account reasonable charges and expenses of organization and reorganization and payments for property and past services reasonably expected to benefit the Trust, and the resolution of the Trustee or

Administrator allotting and issuing those Units shall express the fair equivalent in money of the non-cash consideration received.

3.5 No Conversion, Retraction, Redemption or Pre-Emptive Rights

No person shall be entitled, as a matter of right, to subscribe for or purchase any Unit, and except as otherwise set forth in this Trust Indenture, there are no conversion, retraction, redemption or pre-emptive rights attaching to the Units.

3.6 Re-Purchase of Initial Unit

On or immediately after the completion of the IPO or such earlier time as the Trust may distribute Units, the Trustee may purchase the Initial Unit from the Corporation, and in such event the Corporation shall sell the Initial Unit to the Trust for a purchase price of \$10.00, and upon the completion of such purchase and sale the Initial Unit shall be cancelled and shall no longer be outstanding for any of the purposes of this Trust Indenture.

3.7 Consolidation of Units

Immediately after any distribution of additional Units to Unitholders pursuant to subsection 5.8(a), the number of the outstanding Units will be consolidated without further act or approval of the Trustee or Unitholders such that each Unitholder will hold after the consolidation the same number of Units as the Unitholder held before the distribution of such additional Units. In this case, each Unit Certificate representing a number of Units prior to the distribution of additional Units is deemed to represent the same number of Units after the distribution of such additional Units and the consolidation. Notwithstanding the foregoing, where the Trust is required to withhold tax in respect of a Unitholder's share of the distribution it shall comply with Section 5.9 and:

- (a) the consolidation of the Units held by such Unitholder will result in such Unitholder holding the number of Units that, but for the operation of this Section 3.7, would have been held by such Unitholder minus the number of Units sold because of withholding taxes payable by the Unitholder in respect of the distribution; and
- (b) in the event of a sale of Units on behalf of a Unitholder, such Unitholder will be required to surrender the Unit Certificates, if any, representing such Unitholder's original Units, in exchange for a Unit Certificate representing such Unitholder's post-consolidation Units.

3.8 Non-Resident Ownership Constraint

- (a) The following provisions of this subsection 3.8(a) shall apply: (i) with respect to U.S. Residents who hold of record, directly or indirectly, Units or Other Trust Securities that are "voting securities" within the meaning of U.S. securities laws, at all times prior to the Trust filing a registration statement in accordance with the *United States Securities Act of 1933*, as amended, or registering a class of securities under the *United States Securities Exchange Act of 1934*, as amended, other than, in either case, in reliance on the Multijurisdictional Disclosure System between Canada and the United States; and (ii) with respect to Non-residents, during any period in respect of which the Trustee, based on the advice of Counsel, determines that, as a result of the acquisition or ownership by the Trust of any taxable Canadian property, the Trust may not satisfy the terms of paragraph 132(7)(a) of the Tax Act; and in the event that the conditions in both (i) and (ii) above

apply at any particular time, the following provisions shall be read and applied in the most restrictive manner so as to meet the requirements of both (i) and (ii) below:

- (i) At no time may Non-residents be the beneficial owners of more than 49% of the outstanding Units, on either: (A) a non-diluted basis or fully-diluted basis (which includes, for greater certainty, Units which are issuable pursuant to outstanding Other Trust Securities), or (B) on a fair market value basis, and it shall be the responsibility solely of the Administrator to monitor compliance by the Trust with this Non-resident restriction (the "**Non-resident Restriction**") in accordance with the published policies of the relevant taxation authority, and to take all such actions as may reasonably be undertaken on behalf of the Trust to cause the Trust to retain its status as a mutual fund trust.
- (ii) At no time may more than 50% of the outstanding voting securities of the Trust be directly or indirectly owned of record by U.S. Residents, and it shall be the responsibility solely of the Administrator to monitor compliance by the Trust with this U.S. residency restriction (the "**U.S. Residency Restriction**"), and to take all such actions as may reasonably be undertaken on behalf of the Trust to cause the Trust to maintain its status as a foreign private issuer.
- (iii) Notwithstanding anything herein contained, the Administrator (or any delegate thereof) may (at the expense of the Trust), at any time and from time to time, take all such actions as it determines in its discretion are reasonable and practicable in the circumstances in order to ensure compliance by the Trust with the Non-resident Restriction and the U.S. Residency Restriction, including: (A) obtaining declarations from Unitholders, Beneficial Unitholders and holders of Other Trust Securities as to whether such securities held by them are held by or for the benefit of Non-residents or U.S. Residents, as applicable, or declarations from Unitholders, Beneficial Unitholders or holders of Other Trust Securities as to the jurisdictions in which beneficial owners of such securities of the Trust are resident for Canadian income tax purposes or U.S. securities law purposes; (B) performing residency searches of securityholder and beneficial holder mailing address lists to determine or estimate, to the extent practicable, the residence for Canadian income tax purposes or U.S. securities law purposes of Beneficial Unitholders and holders of Other Trust Securities; and (C) placing such limits on ownership of securities of the Trust by Non-residents and/or U.S. Residents, as applicable, as the Administrator may deem necessary in its discretion to maintain the Trust's status as a mutual fund trust and as a foreign private issuer, as applicable.
- (iv) If at any time the Administrator, in its discretion, determines that it is in the best interest of the Trust, the Administrator, may:
 - (A) require the Trust and the Transfer Agent, if one has been appointed by the Trust, to refuse to accept a subscription for securities of the Trust from, or issue or register a transfer of securities of the Trust to, a person unless the person provides a declaration to the Administrator and the Transfer Agent, if one has been appointed by the Trust, that the securities of the Trust to be issued or transferred to such person will not when issued or transferred be beneficially owned by a Non-resident or owned of record, directly or indirectly, by a U.S. Resident, as applicable;

- (B) send a notice to registered holders of securities of the Trust which are beneficially owned by Non-residents or to holders of record, directly or indirectly, who are U.S. Residents, as applicable, chosen in inverse order to the order of acquisition or registration of such securities beneficially owned by Non-residents or owned by U.S. Residents, respectively, or chosen in such other manner as the Administrator may consider equitable and practicable, requiring such Non-residents or U.S. Residents to sell their securities of the Trust, or a specified portion thereof, within a specified period of not less than 60 days or such shorter period as may be, in the Administrator's discretion, required to preserve the status of the Trust as a mutual fund trust and as a foreign private issuer, as applicable. The Administrator may also refuse the issuance of Units to facilitate a conversion or exchange of Other Trust Securities if to do so may, in the Administrator's discretion, cause the Trust to lose its status as a mutual fund trust or as a foreign private issuer. If the holders of securities of the Trust receiving such notice have not, within such period, sold the specified number of such securities or provided the Administrator and the Transfer Agent, if one has been appointed by the Trust, with evidence satisfactory to the Administrator that such securities are not beneficially owned by Non-residents or are not owned of record, directly or indirectly, by U.S. Residents, as applicable, the Administrator may, on behalf of such registered Unitholder, sell such securities and, in the interim and to the extent applicable, the voting and distribution rights attached to such securities of the Trust shall be deemed to have been suspended. Any such sale shall be made on any stock exchange on which the applicable securities of the Trust are then listed or in such other manner as the Administrator shall determine, and upon such sale, the affected securityholders shall cease to be holders of such securities so disposed of and their rights shall be limited to receiving the net proceeds of sale (net of applicable taxes, withholding taxes and costs of sale) upon surrender of the certificates representing such securities, if applicable;
 - (C) redeem Units in accordance with Article 6, *mutatis mutandis*;
 - (D) delist any listed securities of the Trust from any non-Canadian stock exchange; and
 - (E) take such other actions as the Administrator determines, in its discretion, may be appropriate in the circumstances that will reduce or limit the number of securities of the Trust held by Non-residents and/or U.S. Residents, as applicable, to ensure that the Trust maintains its status as a mutual fund trust and as a foreign private issuer, as applicable.
- (b) None of the Administrator, the Trustee or the Transfer Agent shall have any liability in connection with sales of securities of the Trust made pursuant to subsection 3.8(a), including in respect of the amounts received upon such sales and the costs incurred in connection with such sales.
 - (c) For greater certainty, in accordance with Article 12, none of the Administrator, the Trustee, the Transfer Agent or any of their respective directors, officers, employees or agents, or any Unitholder, Beneficial Unitholder or annuitant, shall be liable with respect

to a determination that the Trust is: (i) not a mutual fund trust; or (ii) not a foreign private issuer, as a result of an excess number of securities of the Trust being held by Non-residents or U.S. Residents, respectively, during the term of the Trust.

- (d) It is acknowledged that the ability of the Administrator to monitor compliance by the Trust with the Non-resident Restriction and the U.S. Residency Restriction may be limited due to the fact that the Units may be registered in the name of depositories and other non-beneficial holders, and in such case the Administrator shall be entitled to rely on information respecting the residency of Unitholders and Beneficial Unitholders provided by the Transfer Agent and Depository Participants and the Administrator may exercise its discretion in making any determination or taking any action under this Section 3.8, and any reasonable and bona fide exercise of such discretion shall be binding for the purpose of this Section 3.8.
- (e) Neither the Trustee nor the Administrator shall be deemed to have notice of any violation of this Section 3.8 unless and until it has been provided with written notice of such violation. The Trustee shall only be required to act in respect of this Section 3.8 upon first being provided with a satisfactory indemnity from the Trust in addition to that provided pursuant to Article 12.
- (f) Notwithstanding any other provision of this Trust Indenture, unless determined otherwise by the Administrator, Non-residents and U.S. Residents, whether registered holders or beneficial owners of securities of the Trust, shall not be entitled to vote in respect of any Special Resolution to amend this Section 3.8 to the extent such resolution relates to Non-residents or U.S. Residents, respectively.
- (g) Notwithstanding the foregoing subsections of this Section 3.8, the Trustee and the Administrator, as the case may be, shall not exercise any of the powers expressed therein, including restricting the beneficial ownership of Units by Non-residents or the direct or indirect ownership by U.S. Residents, make any public announcement in respect of the foregoing, or otherwise take any action required by subsection 3.8(a) if the Trustee or Administrator, as the case may be, has received a legal and/or other professional opinion, advance tax ruling, comfort letter of a relevant Governing Authority or any combination thereof, and based on such opinions and/or documentation, the Trustee or the Administrator, as the case may be, is of the view, acting reasonably, that the failure to exercise any of the powers provided in subsection 3.8(a) would not result in the Trust ceasing to be a mutual fund trust or a foreign private issuer, as applicable, at any time.
- (h) If the Tax Act is (or is proposed to be) amended in a manner which places new restrictions on Non-residents beneficially owning Units, the Trustee, upon the recommendation of the Administrator, acting reasonably, may take any action it considers necessary to ensure, to the extent practicable, that the Trust maintains its status as a mutual fund trust.
- (i) If there is any amendment or proposed amendment to applicable U.S. securities laws which would reasonably require new restrictions on U.S. Residents holding voting securities of the Trust, the Trustee, upon recommendation of the Administrator, acting reasonably, may take any action it considers necessary to ensure, to the extent practicable, that the Trust maintains its status as a foreign private issuer.

3.9 Declaration as to Beneficial Owner and U.S. Tax Certifications

The Trustee or Administrator may require any Unitholder as shown on the register of Unitholders to: (a) provide a declaration, in such form as prescribed by the Trustee or Administrator, as to the Beneficial Unitholder owning Units in such Unitholder's name and as to the jurisdiction in which such Beneficial Unitholder is resident for Canadian or United States income tax purposes; or (b) upon request of the Trustee or Administrator, furnish a Taxation Certification, and use reasonable efforts to obtain Taxation Certifications from each Beneficial Unitholder beneficially owning Units registered or held in such Unitholder's name, and the Unitholders and Beneficial Unitholders shall comply with any such request.

3.10 Unit Certificates

Subject to Section 3.11, each holder of Units shall be entitled to a Unit Certificate representing such holder's Units as described herein.

3.11 Global Unit Certificate

Unless and to the extent otherwise determined by the Trustee or the Administrator, Units to be distributed by the Trust in connection with the IPO at Closing and, subject to Section 3.12, any Units that are issued subsequently, will be represented in the form of one or more Global Unit Certificates representing, in aggregate, the number of Units so issued. Each such Global Unit Certificate shall be issued to and in the name of and deposited by the Transfer Agent with, or on behalf of, CDS or a nominee thereof (collectively, the "**Depository**"), as custodian of such Global Unit Certificate and be registered by the Transfer Agent in the name of the Depository or its nominee. No purchaser of Units represented by a Global Unit Certificate held by the Depository will be entitled to a certificate or other instrument from the Trust or the Depository evidencing such purchaser's ownership thereof except in the circumstances where the Depository resigns or is removed from its responsibilities as set forth in Section 3.13. Beneficial interests in a Global Unit Certificate will be represented only through the Book-Entry System. Transfers of Units between Depository Participants shall occur in accordance with the Depository's rules and procedures.

Notwithstanding anything to the contrary set out herein, all physical Unit Certificates or Global Unit Certificates issued to the Depository may be surrendered to the Transfer Agent for an electronic position on the register of Unitholders to be maintained by the Transfer Agent in accordance with Section 3.19. All Units maintained in such electronic position will be valid and binding obligations of the Trust, entitling the registered holders thereof to the same benefits as those registered holders who hold Units in physical form. This Indenture and the provisions contained herein will apply, *mutatis mutandis*, to such Units held in such electronic position.

3.12 Dealings with Unitholders in Book-Entry System

All references herein to actions by, notices given or payments made to, Unitholders shall, in the case of Unitholders where such Units are held through the Depository, refer to actions taken by, or notices given or payments made to, the Depository upon instruction from the Depository Participants in accordance with the Depository's rules and procedures. For the purposes of any provision hereof requiring or permitting actions with the consent of or at the direction of Unitholders representing a specified percentage of the aggregate votes attached to the Units outstanding, such direction or consent may be given in whole or in part by the beneficial Unitholders beneficially owning such number of Units representing the requisite percentage of the Units and acting through the Depository and the Depository Participants. The rights of a beneficial Unitholder whose Units are held through the Depository shall be exercised only through the Depository and the Depository Participants and shall be limited to those rights

established by law, by this Indenture and by agreements between such beneficial Unitholder and the Depository and/or the Depository Participants or upon instruction from Depository Participants. Each of the Administrator, the Transfer Agent and the Trustee may deal with the Depository for all purposes (including the making of payments) as the authorized representative of the respective beneficial Unitholders and such dealing with the Depository shall constitute satisfaction or performance, as applicable, of their respective obligations hereunder. For as long as any Units are held through the Depository, if any notice or other communication is required to be given to Unitholders, the Trustee and the Transfer Agent will give all such notices and communications to the Depository, and as otherwise required by Applicable Laws.

3.13 Termination of Book-Entry System

If the Depository resigns or is removed from its responsibilities as Depository and the Trust is unable or does not wish to locate a qualified successor, or if either of the Administrator or the Trust elects, or is required by law, to terminate the Book-Entry System with respect to the Units, including for the purpose of better permitting the enforcement of the Non-resident Restriction or U.S. Residency Restriction in Section 3.8, or if Unitholders representing more than 66 $\frac{2}{3}$ % of the aggregate votes entitled to be voted at a meeting of Unitholders vote to discontinue the Book-Entry System, the Depository shall surrender each Global Unit Certificate to the Transfer Agent with instructions from the Depository for registration of the Units, as represented by such Global Unit Certificate, in the names and in the amounts specified by the Depository and thereupon the Trustee shall issue, and the Trustee and Transfer Agent shall execute and deliver, definitive Unit Certificates representing the aggregate number of Units represented by each such Global Unit Certificate surrendered.

3.14 Unit Certificates for Jointly or Commonly Held Units

The Trustee is not bound to issue more than one Unit Certificate in respect of any Unit held jointly or in common by two or more persons, and delivery of a Unit Certificate to one of them shall be sufficient delivery to all.

3.15 Execution of Unit Certificates

Unit Certificates shall be signed on behalf of the Trust by the Trustee and the Administrator and by the Transfer Agent, if one has been appointed by the Trust. The signature of the Trustee and the Administrator required on Unit Certificates may be printed or otherwise mechanically reproduced thereon and Unit Certificates so signed are as valid as if they had been signed manually. If a Unit Certificate contains a printed or mechanically reproduced signature of a person, then the Trust may issue the Unit Certificate even though the person has ceased to be an authorized representative of the Trustee or the Administrator, as the case may be, and such Unit Certificate is as valid as if the person continued to be an authorized representative of the Trustee or the Administrator at the date of its issue. Provided a Transfer Agent has been appointed by the Trust, no Unit Certificates representing Units shall be valid unless countersigned manually by or on behalf of the applicable Transfer Agent.

3.16 Certificate Fee

The Transfer Agent may establish a reasonable fee to be charged for every Unit Certificate issued.

3.17 Form of Unit Certificate

Unit Certificates shall be in such form as is from time to time authorized by the Administrator. The definitive form(s) of the Unit Certificates for each class of Units may be in English only or, in the

discretion of the Administrator, in the English and French languages. Unit Certificates may be engraved, printed or lithographed, or partly in one form and partly in another, as the Administrator may determine and may have such letter, numbers or other marks of identification and such legends or endorsements placed thereon as may be required hereunder or as may be necessary to comply with Applicable Laws, or as may be determined by the Administrator.

Without limitation, and until otherwise determined by the Administrator, each Unit Certificate shall include on the face page thereof:

- (a) the name of the Trust and the words "A trust created under the laws of the Province of Ontario by a Trust Indenture dated as of September 7, 2012, as amended or amended and restated from time to time (the "**Trust Indenture**")" or words of like effect;
- (b) the words "The Units represented by this certificate are issued upon the terms and subject to the conditions of the Trust Indenture, which Trust Indenture is binding upon all holders of Units and, by acceptance of this certificate, the holder assents to the terms and conditions of the Trust Indenture. A copy of the Trust Indenture pursuant to which this certificate and the Units represented thereby are issued may be obtained by a Unitholder on demand and without fee from the head office of the Trust" or words of like effect; and
- (c) 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 Administrator, each Unit Certificate shall include on the reverse side thereof the words "The Trust Indenture provides that no Unitholder shall be subject to any personal liability whatsoever, in tort, contract or otherwise, to any person in connection with the assets of the Trust or the obligations or the affairs of the Trust and all such persons shall look solely to the assets of the Trust for satisfaction of claims of any nature arising out of or in connection therewith and the assets of the Trust only shall be subject to levy or execution", or words of like effect.

In connection with any removal, or request for removal, of any legend or endorsement on the Unit Certificates, the Trustee and/or Administrator shall be entitled to require, among other things, such declarations as to residency and such opinions, from appropriate persons (including Unitholders), as it considers prudent or necessary.

3.18 Fractional Units

If, as a result of any act of the Trustee hereunder, any person becomes entitled to a fraction of a Unit, such person shall not be entitled to receive a Unit Certificate therefor. Fractional Units shall not, except to the extent that they may represent in the aggregate one or more whole Units held by the same holder, entitle the holders thereof to notice of, or to attend or to vote at, meetings of Unitholders. Subject to the foregoing, such fractional Units shall have attached thereto the rights, restrictions, conditions and limitations attaching to whole Units in the proportion that they bear to a whole Unit.

3.19 Unit Register and Transfer Ledgers to be Maintained

A register (the "**Register**" and where more than one, the "**Registers**") shall be kept by, or on behalf and under the direction of, the Trustee, and each Register shall contain the names and addresses of Unitholders, the respective numbers of Units held by such Unitholders, the certificate numbers of the Unit Certificates held by them, and a record of all transfers and redemptions thereof.

A Transfer Agent shall be appointed to act as transfer agent and registrar for the Units and to provide for the transfer of Units in Ontario and at such other places in Canada as required by Applicable Laws and the Trustee may request and the Transfer Agent has offices. The Trustee shall designate which branch registers will be maintained, if any. The Trustee may, in its discretion, remove and replace the Transfer Agent for the Units.

A Transfer Agent so appointed shall keep all necessary registers and other books (which may be kept in a bound or loose-leaf book or may be entered or recorded by any system of mechanical or electronic data processing or any other information storage device) for recording original issues and registering and transferring those Units in respect of which it acts as registrar and transfer agent. Except as may otherwise be provided in this Trust Indenture, only persons whose Units are recorded on the Registers shall be entitled to vote or to receive distributions or otherwise exercise or enjoy the rights of Unitholders.

3.20 Entry on Register

Upon any issue of Units, the name of the subscriber or other person entitled to such Units shall be promptly entered on the appropriate Register as the owner of the number of Units issued to such subscriber or other person, or if the subscriber is already a Unitholder, the Register(s) shall be amended to include such subscriber's additional Units.

3.21 Transfer of Units

Subject to Section 3.8 and Applicable Laws, Units shall be transferable at any time and from time to time by the Unitholder through applicable Depository Participants while such Units are held through the Book-Entry System. In the event of the termination of the Book-Entry System, Units (including any Units which had been held through the Book-Entry System) shall be transferable at any time and from time to time by the Unitholder by endorsement and delivery of the Unit Certificates representing such Units, subject to Section 3.8 and Applicable Laws and to such provisions and conditions as may be prescribed by the Trustee from time to time. No such transfer shall be recorded on the Registers unless the transferor has executed the instrument of transfer as reproduced in the Unit Certificate, the transferor has satisfied any requirements of the Administrator pertaining to removal of legends or endorsements (if any), and the transferee has delivered to the Transfer Agent a Unit Certificate representing the Units so transferred and, if requested by the Trustee, a declaration as to residency status under the Tax Act, U.S. tax law, any applicable tax convention and/or U.S. securities law, in a form satisfactory to the Trustee. Subject to the foregoing, such transfers shall be recorded on the Registers and a new Unit Certificate for the Units so transferred shall be issued to the transferee and, in case of a transfer of only part of the Units represented by any Unit Certificate, a new Unit Certificate for the remaining Units shall be issued to the transferor.

3.22 Successors in Interest to Unitholders

Subject to Section 3.8 and Applicable Laws, upon a person becoming entitled to any Units as a consequence of the death, bankruptcy or incapacity of any Unitholder or otherwise by operation of law, and upon production by such person of such documentation as the Trustee may reasonably require in order to evidence such entitlement of such person, such person shall be recorded in the Registers as the holder of such Units and shall receive (but subject first to the Book-Entry System not being applicable to, or having been terminated in respect of, such Units), a new Unit Certificate therefor upon production of evidence of such entitlement satisfactory to the Trustee and delivery of the existing Unit Certificate to 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 Trust, the Trustee, the Administrator or the Transfer Agent shall have actual or other notice of such death, bankruptcy, incapacity or other event.

3.23 Units Held Jointly or in Fiduciary Capacity

The Trust may treat two or more persons holding any Unit as joint owners of the entire interest therein unless the ownership is expressly otherwise recorded on the Registers, but no entry shall be made in the Registers or on any Unit Certificate that any person is in any other manner entitled to any future, limited or contingent interest in any Unit; provided, however, that any person recorded in the Registers as a Unitholder may, subject to the provisions herein contained, be described in the Registers 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; provided further that none of the Trust, the Trustee, the Administrator or the Transfer Agent shall be required to recognize a person as having any interest in the Unit, other than the person recorded in the Registers as the holder of such Unit.

3.24 Performance of Trusts

None of the Trustee, the Administrator, the Unitholders, the Transfer Agent or other agent of the Trust shall have a duty to inquire into any claim that a transfer of a Unit was or would be wrongful or that a particular adverse person is the owner of or, subject to Section 3.29, has an interest in the Unit or any other adverse claim, or be bound to see to or ensure the performance of any trust, express, implied or constructive, or of any charge, pledge or equity to which any of the Units or any interest therein are or may be subject, or to ascertain or inquire whether any sale or transfer of any such Units or interest therein by any Unitholder or their personal representatives is authorized by such trust, charge, pledge or equity, or to recognize any person as having any interest therein, except for the person recorded as Unitholder of such Unit.

3.25 Lost Unit Certificates

In the event that any Unit Certificate is lost, stolen, destroyed or mutilated, the Transfer Agent may authorize the issuance of a new Unit Certificate for the same number of Units in lieu thereof and the Transfer Agent may in 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 such affidavit or statutory declaration, setting forth such facts as to the loss, theft, destruction or mutilation as the Transfer Agent deems necessary and shall require the applicant to supply to the Trust a "lost certificate" or similar bond in such reasonable amount as the Transfer Agent directs indemnifying the Trustee and the Transfer Agent for so doing. The Transfer Agent shall have the power to acquire from an insurer or insurers a blanket lost certificate security bond or bonds in respect of the replacement of lost, stolen, destroyed or mutilated Unit Certificates. The Trust shall pay all premiums and other sums of money payable for such purpose out of the property of the Trust with such contribution, if any, by those insured as may be determined by the Trustee or the Transfer Agent in their discretion. If such blanket lost certificate security bond is acquired, the Trustee may authorize and direct (upon such terms and conditions as it may from time to time impose) the Transfer Agent, or others to whom the indemnity of such bond extends, to take such action to replace such lost, stolen, destroyed or mutilated Unit Certificates without further action or approval by the Trustee.

3.26 Death of Unitholders

The death of a Unitholder during the continuance of the Trust shall not terminate the Trust or any of the mutual or respective rights and obligations created by or arising under this Indenture or give the personal representatives or the heirs of the estate of the deceased Unitholder a right to an accounting or to take any action in the courts or otherwise against other Unitholders or the Trustee, the Administrator or the Trust Property, but shall only entitle the personal representatives or the heirs of the estate or succession of the

deceased Unitholder, in accordance and upon compliance with the provisions of Section 3.22, to succeed to all rights of the deceased Unitholder under this Trust Indenture.

3.27 Unclaimed Payments

In the event that the Trustee shall hold any amount to be paid to any one or more Unitholders under this Trust Indenture, or otherwise, which is unclaimed or which cannot be paid for any reason, neither the Trustee nor any distribution disbursing agent shall be under any obligation to invest or reinvest the same and they shall only be obligated to hold the same in a current or other non-interest bearing account with a Canadian chartered bank or trust company, pending payment to the person or persons entitled thereto. The Trustee shall, as and when required by law, and may at any time prior to such required time, pay all or part of such amounts so held, net of any amount required to be withheld by the Tax Act, to a court in the province where the Trust has its head office (or to such other suitable government official or agency in the province where the Trust has its head office) whose receipt shall be a good release, acquittance and discharge of the obligations of the Trustee with respect thereto.

3.28 Repurchase of Securities

The Trust shall be entitled to offer, and upon acceptance of such offer, to purchase for cancellation, at any time, by private agreement or otherwise, the whole or from time to time any part of the outstanding Units, or Other Trust Securities, in respect of which the offer was accepted, at a price per security and on a basis as determined by the Trustee in its discretion but in compliance with Applicable Laws. For greater certainty, the Trust has the right to undertake and complete all purchases as may be necessitated as a result of subscribers exercising, in connection with any Offering (including the IPO), their statutory or contractual (as the case may be) rights of withdrawal or rescission. Units purchased by the Trust will be cancelled.

3.29 Take-Over Bids

- (a) If within 120 days after the date of a take-over bid for all of the outstanding Units (collectively, such Units subject to the bid are herein referred to as the "**Bid Units**") the bid is accepted by the holders of not less than ninety per cent of the Bid Units, other than Units held at the date of the take-over bid by or on behalf of the offeror or an affiliate of the offeror, the offeror is entitled, on complying with this Section 3.29, 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 more than ninety per cent of the Bid Units to which the bid relates accepted the take-over bid;
 - (ii) the offeror is bound to take up and pay for or has taken up and paid for the Bid Units of the offerees who accepted the take-over bid;
 - (iii) a non-tendering offeree is required to elect:
 - (A) 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, or

- (B) to demand payment of the fair value of his Bid Units in accordance with subsections 3.29(j) to (s) by notifying the offeror within 20 days after he receives the offeror's notice;
 - (iv) a non-tendering offeree who does not notify the offeror in accordance with subparagraph 3.29(d)(ii)(B) is deemed to have elected to transfer his Bid Units to the offeror on the same terms that the offeror acquired the Bid Units from the offerees who accepted the take-over bid; and
 - (v) a non-tendering offeree must send his Bid Units to which the take-over bid relates to the Trust within twenty days after he receives the offeror's notice.
- (c) Concurrently with sending the offeror's notice under subsection 3.29(b), the offeror shall send to the Trust a notice of adverse claim disclosing the name and address of the offeror and the name of the non-tendering offeree with respect to each Bid Unit held by a non-tendering offeree.
- (d) A non-tendering offeree to whom an offeror's notice is sent under subsection 3.29(b) shall, within 20 days after he receives that notice:
- (i) send the certificates representing the Bid Units of the class of Bid Units to which the take-over bid relates to the Trust; and
 - (ii) elect
 - (A) to transfer the 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; or
 - (B) to demand payment of the fair value of the Bid Units in accordance with subsections 3.29(j) to (s) by notifying the offeror within those 20 days.
- (e) A non-tendering offeree who does not notify the offeror in accordance with subsection 3.29(d)(ii)(B) is deemed to have elected to transfer the Bid Units to the offeror on the same terms on which the offeror acquired the Bid Units from the offerees who accepted the take-over bid.
- (f) Within 20 days after the offeror sends an offeror's notice under subsection 3.29(b), the offeror shall pay or transfer to the Trust the amount of money or other consideration that the offeror would have had to pay or transfer to a non-tendering offeree if the non-tendering offeree had elected to accept the take-over bid under subparagraph 3.29(d)(ii)(A).
- (g) (g) The Trust is deemed to hold in trust for the non-tendering offeree the money or other consideration it receives under subsection 3.29(f), and the Trust shall deposit the money in a separate account in a bank or other body corporate any of whose deposits are insured by the Canada Deposit Insurance Corporation or guaranteed by the Quebec Deposit Insurance Board and shall place the other consideration in the custody of a bank or such other body corporate.
- (h) (h) If the Trust is the offeror, it is deemed to hold in trust for the non-tendering offeree the money and other consideration that it would have had to pay or transfer to a

non-tendering offeree if the non-tendering offeree had elected to accept the take-over bid under subsection 3.29(d)(ii)(A) and the Trust shall, within 20 days after the offeror's notice is sent, 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 guaranteed by the Quebec Deposit Insurance Board, and shall place the other consideration in the custody of a bank or such other body corporate.

- (i) Within 30 days after the offeror sends an offeror's notice under subsection 3.29(b), the Trust shall:
 - (i) issue to the offeror a Bid Unit certificate in respect of the Bid Units that were held by non-tendering offerees;
 - (ii) give to each non-tendering offeree who elects to accept the take-over bid terms under subparagraph 3.29(d)(ii)(A) and who sends his Bid Unit certificates as required under subsection 3.29(d)(i), the money or other consideration to which he is entitled, disregarding fractional Bid Units, if any, which may be paid for in money, and
 - (iii) send to each non-tendering offeree who has not sent his Bid Unit certificates as required under subsection 3.29(d) a notice stating that:
 - (A) his Bid Units have been cancelled,
 - (B) the Trust or some designated person holds in trust for him the money or other consideration to which he is entitled as payment for or in exchange for his Bid Units, and
 - (C) the Trust will, subject to subsections 3.29(j) to (s), send that money or other consideration to him forthwith after receiving his Bid Units.
- (j) If a non-tendering offeree has elected to demand payment of the fair value of his Bid Units under subparagraph 3.29(d)(ii)(B), the offeror may, within 20 days after it has paid the money or transferred the other consideration under subsection 3.29(f), apply to a court to fix the fair value of the Bid Units of that dissenting offeree.
- (k) If an offeror fails to apply to a court under subsection 3.29(j), a non-tendering offeree may apply to a court for the same purpose within a further period of 20 days.
- (l) Where no application is made to a court under subsection 3.29(k) within the period set out in that subsection, a non-tendering offeree is deemed to have elected to transfer his Bid Units to the offeror on the same terms that the offeror acquired the Bid Units from the offerees who accepted the take-over bid.
- (m) An application under subsection 3.29(j) or (k) shall be made to a court having jurisdiction in the place where the Trust has its registered office.
- (n) A non-tendering offeree is not required to give security for costs in an application made under subsection 3.29(j) or (k).
- (o) On an application under subsection 3.29(j) or (k):

- (i) all non-tendering offerees referred to in subparagraph 3.29(d)(ii)(B) whose Bid Units have not been acquired by the offeror shall be joined as parties and shall be bound by the decision of the court; and
 - (ii) the offeror shall notify each affected dissenting offeree of the date, place and consequences of the application and of his right to appear and be heard in person or by counsel.
- (p) On an application to a court under subsection 3.29(j) or (k), the court may determine whether any other person is a non-tendering offeree who should be joined as a party, and the court shall then fix a fair value for the Bid Units of all non-tendering offerees.
- (q) A court may in its discretion appoint one or more appraisers to assist the court to fix a fair value for the Bid Units of a non-tendering offeree.
- (r) The final order of the court shall be made against the offeror in favour of each non-tendering offeree and for the amount for his Bid Units as fixed by the court.
- (s) In connection with proceedings under this section, a court may make any order it thinks fit and, without limiting the generality of the foregoing, it may:
- (i) fix the amount of money or other consideration that is required to be held in trust under subsection 3.29(g) or (h);
 - (ii) order that money or other consideration be held in trust by a person other than the Trust;
 - (iii) allow a reasonable rate of interest on the amount payable to each non-tendering offeree from the date he sends or delivers his Bid Unit certificates under subsection 3.29(d) until the date of payment; and
 - (iv) order that any money payable to an offeree who cannot be found be paid to the Receiver General.
- (t) If an offeree does not receive an offeror's notice under subsection 3.29(b), the offeree may:
- (i) within 90 days after the date of termination of the take-over bid; or
 - (ii) if the offeree did not receive an offer pursuant to the take-over bid, within 90 days after the later of:
 - (A) the date of termination of the take-over bid; and
 - (B) the date on which the offeree learned of the take-over bid, require the offeror to acquire those Bid Units.
- (u) If an offeree requires the offeror to acquire Units under subsection 3.29(t), the offeror shall acquire the Bid Units on the same terms under which the offeror acquired or will acquire the Bid Units of the offerees who accepted the take-over bid.

- (v) Subsections 3.29(a) to (u) inclusive shall apply mutatis mutandis to any class of Other Trust Securities that is the subject of a take-over bid, that are convertible into or exchangeable for Units.

3.30 Power of Attorney

Each Unitholder hereby grants to the Trustee, its successors and assigns, a power of attorney constituting the Trustee, with full power of substitution, as his true and lawful attorney to act on his behalf, with full power and authority in his name, place and stead, to execute, under seal or otherwise, swear to, acknowledge, deliver, make, file or record (and to take all requisite actions in connection with such matters), when, as and where required with respect to:

- (a) this Trust Indenture and any other instrument required or desirable to qualify, continue and keep in good standing the Trust as a mutual fund trust in all jurisdictions that the Trustee deems appropriate and to ensure that the Trust is not a SIFT trust in all jurisdictions that the Trustee deems appropriate;
- (b) any instrument, deed, agreement or document in connection with carrying on the affairs of the Trust as authorized in this Trust Indenture, including all conveyances, transfers and other documents required to facilitate any sale of Units or in connection with any disposition of Units required by the Trust Indenture;
- (c) all conveyances, transfers and other documents required in connection with the dissolution, liquidation or termination of the Trust in accordance with the terms of this Trust Indenture;
- (d) any and all elections, determinations or designations whether jointly with third parties or otherwise, under the Tax Act or any other taxation or other legislation or similar laws of Canada or of any other jurisdiction in respect of the affairs of the Trust or of a Unitholder's interest in the Trust;
- (e) any instrument, certificate and other documents necessary or appropriate to reflect and give effect to any amendment to this Trust Indenture which is authorized from time to time as contemplated by Article 9; and
- (f) all transfers, conveyances and other documents required to facilitate the acquisition of Bid Units or Other Trust Securities of non-tendering offerees pursuant to Section 3.29.

The power of attorney granted herein is, to the extent permitted by Applicable Laws, irrevocable, is a power coupled with an interest, and shall survive the death, mental incompetence, disability and any subsequent legal incapacity of the Unitholder and shall survive the assignment by the Unitholder of all or part of the Unitholder's interest in the Trust 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 for all of them. Each Unitholder agrees to be bound by any representations or actions made or taken by the Trustee or its delegate 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 or its delegate in good faith under this power of attorney. 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 any Applicable Laws.

ARTICLE 4 PURPOSE AND INVESTMENTS OF THE TRUST

4.1 Purpose of the Trust

The Trust is a limited purpose trust and the undertaking of the Trust is restricted to investing its funds in property (other than real property or an interest in real property or an immovable or a real right in an immovable) which is not non-portfolio property. The Trust is also subject to the restrictions set out in Section 4.3. Subject to the foregoing, the Trust may:

- (a) acquire, hold, transfer, dispose of, invest in, and otherwise deal with assets, securities (whether debt or equity) and other interests or properties of whatever nature or kind including securities of, or issued by: (i) Cdn Holdco or any associate or affiliate thereof, or any other business entity in which Cdn Holdco has an interest, direct or indirect; (ii) the Commercial Trust; or (iii) any other person involved, directly or indirectly, in the business of, or the ownership, lease or operation of assets or property in connection with, energy related businesses;
- (b) hold cash and other investments in connection with, and for the purposes of, the Trust's activities, including paying liabilities of the Trust, paying any amounts required in connection with the redemption of Units, and making distributions to Unitholders;
- (c) dispose of any part of the Trust Property or mortgage, pledge, charge, grant a security interest in or otherwise encumber all or any part of the Trust Property;
- (d) issue Units and Other Trust Securities for the purposes of: (i) conducting, or facilitating the conduct of, the activities and undertaking of the Trust (including for the purpose of raising funds for acquisitions); (ii) repayment of any indebtedness or borrowings of the Trust or any affiliate thereof; (iii) establishing and implementing Unitholder rights plans, distribution reinvestment plans, Unit purchase plans, and Compensation Plans of the Trust, if any; (iv) satisfying obligations to deliver securities of the Trust, including Units, pursuant to the terms of securities convertible into or exchangeable for such securities of the Trust, whether or not such convertible or exchangeable securities have been issued by the Trust; (v) carrying out any of the transactions contemplated by the Prospectus and satisfying all obligations in connection with such transactions; and (vi) making non-cash distributions to Unitholders, including *in specie* redemptions;
- (e) repurchase, redeem or otherwise acquire Units or Other Trust Securities, including pursuant to any issuer bid made by the Trust, subject to the provisions of this Trust Indenture and Applicable Laws;
- (f) guarantee any obligations or liabilities, present or future, direct or indirect, absolute or contingent, whether matured or not, of any person for, or in pursuit of, any of the purposes set forth in this Section 4.1, and pledge securities and other property of the Trust as security for any obligations of the Trust, including obligations under any such guarantees;

- (g) carry out any of the transactions, and enter into and exercise and perform any of the rights and obligations of the Trust under any agreements, contemplated by the Prospectus or in connection with pursuing the permitted activities and purposes of the Trust hereunder;
- (h) borrow funds and issue debt securities, provided recourse shall be limited to the Trust Property, including entering into hedges for purposes of managing the Trust's exposure to commodity prices, foreign exchange or interest rates, at any time and from time to time, for any of the purposes set forth in this Section 4.1;
- (i) enter into and perform its obligations under the Voting Agreement; and
- (j) engage in all activities ancillary or incidental to any of those activities set forth in subsections 4.1(a) through (i) above.

4.2 Investments

Money or other property received by the Trust or the Trustee on behalf of the Trust, including the net proceeds of any Offering, may be used at any time and from time to time for any purpose not inconsistent with this Trust Indenture (including making distributions and redemptions under Article 5 and Article 6 respectively).

4.3 Investment Restrictions

- (a) The Trustee shall ensure that the Trust:
 - (i) complies at all times with the requirements of subsections 132(6) and (7) of the Tax Act;
 - (ii) does not take any action, or acquire or hold any investment or other property, that would result in the Trust not being considered a mutual fund trust;
 - (iii) does not take any action, or acquire or hold any investment or other property, that would result in the Trust being a SIFT trust; and
 - (iv) does not acquire or hold any non-portfolio property.
- (b) The Trustee may consult with and receive direction from the Administrator with respect to any investment or activity to ensure compliance with the foregoing subsection 4.3(a) and may, prior to any investment or activity, request that the Administrator obtain an opinion of Counsel confirming that the investment or activity will not: (i) affect the Trust's status as a mutual fund trust; (ii) affect the Trust's ability to comply with the provisions of subsection 132(7) of the Tax Act; or (iii) constitute an investment in non-portfolio property.

ARTICLE 5 DISTRIBUTIONS

5.1 Distributable Cash Flow

The "**Distributable Cash Flow**" of the Trust in respect of a Distribution Period shall be equal to such amount as the Trustee may in its discretion determine.

5.2 Computation of Income and Net Realized Capital Gains

- (a) "**Income of the Trust**" for any taxation year shall be determined in accordance with the provisions of the Tax Act (other than paragraph 82(1)(b) and subsection 104(6) thereof) regarding the calculation of income for tax purposes and on the basis that all amounts available for deduction in the period will be deducted, provided, however, that capital gains or capital losses (other than business investment losses) shall be excluded.
- (b) The "**Net Realized Capital Gains**" of the Trust for any year shall equal the amount, if any, by which the capital gains realized by the Trust in the year exceeds the aggregate of: (i) the capital losses incurred by the Trust in the year; and (ii) the amount in respect of any net capital losses for prior taxation years which the Trust is permitted by the Tax Act to deduct in computing the taxable income of the Trust for the year.
- (c) Notwithstanding subsections 5.2(a) and (b), Income of the Trust and Net Realized Capital Gains shall not include any income ("**Redemption Income**") or capital gains ("**Redemption Gains**"), respectively, which are realized by, or allocated to, the Trust, in accordance with the Tax Act, in connection with a distribution of Trust Property to a Unitholder pursuant to an *in specie* redemption of the Unitholder's Units under Section 6.6.

5.3 Regular Distributions

- (a) Unitholders shall be entitled to receive non-cumulative distributions if, as and when declared by the Trustee in accordance with the provisions of this Section 5.3.
- (b) The Trustee, on behalf of the Trust, in respect of each Distribution Period, shall declare payable to Unitholders of record as at the close of business on the Distribution Record Date for such Distribution Period, all, any part or none of the Distributable Cash Flow for such Distribution Period.
- (c) Each Unit issued and outstanding on the Distribution Record Date for a particular Distribution Period shall be entitled, without preference or priority, to an equal share of the amount of the Distributable Cash Flow which is declared payable to Unitholders pursuant to subsection 5.3(b) above for such particular Distribution Period, which share shall be determined by dividing the amount of such Distributable Cash Flow declared payable by the number of issued and outstanding Units on such Distribution Record Date (the "**Distribution Per Unit**"). The share of such Distributable Cash Flow distributable to a particular Unitholder shall be an amount equal to the Distribution Per Unit multiplied by the number of Units owned of record by such Unitholder on such Distribution Record Date.

- (d) Subject to Section 5.8, any distributions which have been declared to be payable to Unitholders in respect of a Distribution Period shall be paid in cash on the Distribution Payment Date which immediately follows the Distribution Record Date for such Distribution Period.

5.4 Other Distributions

- (a) In addition to the distributions which are payable to Unitholders pursuant to Section 5.3, the Trustee may, in its discretion, declare to be payable and make distributions to Unitholders, from time to time, whether out of Income of the Trust, Net Realized Capital Gains, the capital of the Trust or otherwise, in any year, in such amount or amounts, and on such dates as the Trustee may determine.
- (b) To ensure the allocation and distribution to Unitholders of all of the Income of the Trust, Net Realized Capital Gains and any other applicable amounts so that the Trust will not have any liability for tax under Part I of the Tax Act in any taxation year, the following amounts will, without any further actions on the part of the Trustee, be due and payable to Unitholders of record immediately before the end of December 31 in each taxation year:
 - (i) the amount of Income of the Trust and Redemption Income for such taxation year not previously paid or made payable to Unitholders in such year, less the amount of any "non-capital losses" as defined in the Tax Act of the Trust that may be deducted in computing the taxable income of the Trust for such year; and
 - (ii) the amount of Net Realized Capital Gains and Redemption Gains for such taxation year not previously paid or made payable to Unitholders in such year, except to the extent of: (i) Net Realized Capital Gains that would not be subject to tax in the Trust by reason of the deduction of any loss of the Trust in such year or any "non-capital losses" as defined in the Tax Act of the Trust that may be deducted in computing the taxable income of the Trust for such year; and (ii) Net Realized Capital Gains in respect of which the tax payable by the Trust would be refunded as a "capital gains refund" as defined in the Tax Act for such year,

provided that before the end of December 31 in such year, the Trustee may exercise its discretion to reduce the amount of any such distribution as the Trustee may determine is appropriate in its discretion.

- (c) Each Unit's proportionate share of the amount of any distribution made pursuant to either or both of subsections 5.4(a) or (b) shall be determined by dividing the amount of such distribution by the number of issued and outstanding Units as at the close of business on the applicable Distribution Record Date in respect of a distribution pursuant to subsection 5.4(a) and as of immediately before the end of December 31 in respect of a distribution pursuant to subsection 5.4(b). The share of the amount of any such distribution distributable to a particular Unitholder shall be an amount equal to each Unit's proportionate share of such amount multiplied by the number of Units owned of record by such particular Unitholder on such applicable Distribution Record Date or December 31 in the year of such distribution, as the case may be. Subject to Section 5.8, amounts which have been declared to be payable to Unitholders pursuant to subsection 5.4(a) shall be paid in cash on the Distribution Payment Date which immediately follows the applicable Distribution Record Date in respect of a distribution

pursuant to subsection 5.4(a) and amounts which are to be distributed pursuant to subsection 5.4(b) shall be payable on December 31 in such year and shall be paid forthwith and in no event later than January 30 of the following year.

- (d) In addition to the distributions which are made payable to Unitholders otherwise hereunder, the Trustee shall allocate any Redemption Income and Redemption Gains realized by, or allocated to, the Trust in connection with the redemption of Units of a particular Unitholder, to that Unitholder, so that an amount equal to such Redemption Income and Redemption Gains shall be allocated to and shall be treated as an amount paid to the redeeming Unitholder. In addition, one-half (or any other proportion that may be provided for from time to time under section 38 of the Tax Act) of such Redemption Gains shall be designated as taxable capital gains of that Unitholder under subsection 104(21) of the Tax Act, and any portion of the Redemption Income and Redemption Gains in respect of that Unitholder as may be income from a source in a country other than Canada, within the meaning of subsection 104(22) of the Tax Act, shall be designated as that Unitholder's income from that source in accordance with that subsection.

5.5 Character of Distribution

Distributions or amounts paid or payable to Unitholders pursuant to this Article 5 or Article 6 shall be deemed to be distributions out of Income of the Trust, Net Realized Capital Gains, dividends, trust capital or other items, in such amounts as the Trustee shall, in its discretion, determine. For greater certainty, it is hereby declared that any distribution of Net Realized Capital Gains and Redemption Gains shall include the non-taxable portion of the capital gains of the Trust which are comprised in such distribution.

5.6 Tax Matters

- (a) In accordance with and to the extent permitted by the Tax Act, the Trustee in each year shall make designations, determinations and allocations for tax purposes of amounts or portions of amounts which the Trust has received, paid, declared payable or allocated to Unitholders as distributions or redemptions proceeds.
- (b) In accordance with and to the extent required or permitted by the U.S. IRC, the Trustee shall, on behalf of its Unitholders who are United States Persons, maintain capital accounts as required by the U.S. IRC, make such designations, determinations, allocations and elections as the Trustee in its discretion considers appropriate, appoint a representative of the Trust to represent the Trust in any audit proceeding with the United States Internal Revenue Service and to take any action (including making any permitted election) on behalf of the Trust in connection therewith, and cause the necessary United States federal income tax information to be delivered to each Unitholder who is a United States Person as soon as practicable after the end of each financial year of the Trust.

5.7 Enforceability of Right to Receive Distributions

For greater certainty, it is hereby declared that each Unitholder shall have the legal right to enforce payment of any amount payable to such Unitholder as a result of any distribution or amount which becomes payable to such Unitholder pursuant to this Article 5 or pursuant to Article 6, as of the date on which such amounts become payable.

5.8 Method of Payment of Distributions

- (a) The Trust shall make payment, in cash, of distributions which have been declared to be payable pursuant to this Article, provided that where the Administrator determines that the Trust does not have cash in an amount sufficient to make payment of the full amount of any distribution which has been declared to be payable pursuant to this Article on the due date for such payment, the payment may, at the option of the Administrator, include the issuance of additional Units, or fractions of Units, if necessary, having an aggregate value equal to the difference between the amount of the distribution in question and the amount of cash which has been determined by the Administrator to be available for the payment of such distribution.
- (b) The value of each Unit which is issued pursuant to subsection 5.8(a) shall be deemed to be the "market price" (as defined in Section 6.3) of a Unit on the applicable Distribution Record Date in respect of a distribution pursuant to Section 5.3, on the applicable Distribution Record Date in respect of a distribution pursuant to subsection 5.4(a), or on December 31 in respect of a distribution under subsection 5.4(b), provided that if the particular date is not a Business Day then the "market price" (as defined in Section 6.3) shall be determined on the last Business Day which precedes such particular date.

5.9 Withholding Taxes

The Trustee shall deduct or withhold from payments and distributions (including in respect of any redemptions) payable to any Unitholder all amounts required by Applicable Laws to be withheld from such payment or distribution, whether such payment or distribution is in the form of cash, additional Units or otherwise. To the extent that amounts are so deducted or withheld, such amounts shall be treated for all purposes as having been paid to the Unitholder in respect of which such deduction and withholding was made. In the event of a distribution in the form of additional Units, the Trustee shall sell all or a portion of the additional Units otherwise to be distributed to a Unitholder and the proceeds from such sale (less the Trustee's reasonable expenses) shall firstly be used to satisfy the Trust's withholding obligations under the Tax Act and shall be remitted to the appropriate taxation authority. The balance, if any, remaining shall be paid to such Unitholder. Any such sale shall be made on any stock exchange on which the Units are then listed and upon that sale, the affected Unitholder shall cease to be the holder of those Units. No liability shall accrue to the Trust, the Trustee or the Administrator if Units or other assets sold or disposed of pursuant to this Section 5.9 are sold at a loss to such affected Unitholder or the Beneficial Unitholder of such Units or if 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. For greater certainty, for purposes of all transactions that may be required with respect to this Section 5.9, the Trustee shall have the power of attorney of the Unitholder in accordance with the provisions of Section 3.30 and the provisions of Sections 3.27 and 6.4 shall also apply *mutatis mutandis* in this regard.

5.10 Unit Plans

Subject to any approvals required under Applicable Laws, the Trustee may, in its discretion and at any time and from time to time, establish and implement Unitholder rights plans, distribution reinvestment plans, Unit purchase plans, and Compensation Plans.

ARTICLE 6 REDEMPTION

6.1 Right of Redemption by Unitholders

Each Unitholder shall be entitled to require the Trust to redeem at any time or from time to time, on demand, all or any part of the Units registered in the name of the Unitholder at the price, with respect to each Unit so redeemed, as determined and payable in accordance with the terms and conditions hereinafter provided in this Article 6.

6.2 Exercise of Redemption Right

- (a) To exercise a Unitholder's right to require redemption of Units under this Article 6, a duly completed and properly executed notice requiring the Trust to redeem Units, in a form reasonably acceptable to the Trustee, shall be sent to the Trust at the head office of the Trust and to CDS (if a Global Unit Certificate has been issued by the Trust), together with written instructions as to the number of Units to be redeemed and together with any Unit Certificate or Unit Certificates, if any, representing the Units to be redeemed (if a Global Unit Certificate has not been issued by the Trust with respect to such Units). No form or manner of completion or execution of such notice and other documents 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 the tender of Units of a Unitholder for redemption, the Unitholder shall thereafter cease to have any rights with respect to the Units tendered for redemption (including no right to receive distributions in respect of Units where such distributions are declared payable to Unitholders of record on a date which is on or subsequent to the date upon which the Units of the Unitholder have been tendered for redemption), other than the right to receive the Cash Redemption Price or *in Specie* Redemption Price therefor, as the case may be, and the right to receive any distributions thereon which have been declared payable to Unitholders of record on a date which is prior to the date upon which the Units of the Unitholder have been tendered for redemption. Units shall be considered to be tendered for redemption on the date (the "**Redemption Date**") the Trust has, to the satisfaction of the Trustee, received the notice, Unit Certificates, if any, the written instructions as to the number of Units to be redeemed and all other required documents or evidence as aforesaid.

6.3 Cash Redemption Price

Subject to Section 6.5, upon the tendering for redemption of Units in accordance with Section 6.2, the holder of the Units tendered for redemption shall be entitled to receive a price per Unit (hereinafter called the "**Cash Redemption Price**") equal to the lesser of:

- (a) 90% of the "market price" of a Unit on the principal stock exchange on which the Units are listed (or, if the Units are not listed on any such exchange, on the principal market on which the Units are quoted for trading) as determined on the Redemption Date; and
- (b) 100% of the "closing market price" of a Unit on the principal stock exchange on which the Units are listed (or, if the Units are not listed on any such exchange, on the principal market on which the Units are quoted for trading) on the Redemption Date.

For the purposes of this Indenture, the "**market price**" of a Unit shall be: (a) an amount equal to the volume weighted average trading price of a Unit for each of the ten (10) consecutive trading days preceding the date of determination; (b) if the applicable exchange or market does not provide information necessary to compute a volume weighted average trading price, an amount equal to the volume weighted average of the closing prices of a Unit for each of the ten (10) consecutive trading days on which there was a closing price; provided that if the applicable exchange or market does not provide a closing price, but only provides the highest and lowest prices of the Units traded on a particular day, the "market price" shall be an amount equal to the volume weighted average of the average of the highest and lowest prices for each of the ten (10) consecutive trading days on which there was a trade; and (c) if there was trading on the applicable exchange or market for fewer than five (5) of the ten (10) consecutive trading days, the "market price" shall be the volume weighted average of the following prices established for each of the ten (10) consecutive trading days: (i) the average of the last bid and last asking prices for each day on which there was no trading; (ii) the closing price of the Units for each day that there was trading if the exchange or market provides a closing price; and (iii) the average of the highest and lowest prices of the Units for each day that there was trading, if the exchange or market provides only the highest and lowest prices of Units traded on a particular day.

For the purposes of this Indenture, "**closing market price**" shall be: (a) an amount equal to the volume weighted average trading price of a Unit on the Redemption Date, if the applicable exchange or market provides information necessary to compute a volume weighted average trading price on such date; (b) an amount equal to the closing price of a Unit if there was a trade on the Redemption Date, and the exchange or market provides only a closing price; (c) an amount equal to the simple average of the highest and lowest trading prices of Units if there was trading on the Redemption Date and the exchange or other market provides only the highest and lowest trading prices of Units traded on a particular day; or (d) the simple average of the last bid and last ask prices of the Units if there was no trading on the Redemption Date.

For the purposes hereof, the principal exchange or principal market on which Units are listed or quoted for trading shall be the exchange or market on which the greatest volume of Units were traded during the relevant period or, if such is not determinable, the exchange or market designated by the Administrator in its discretion. If the principal exchange or market on which the Units are listed or quoted for trading was not open for trading on the Redemption Date, then the reference date shall be the last day on which such principal exchange or market was open for trading.

6.4 Payment of Cash Redemption Price

Subject to Section 6.5, the Cash Redemption Price payable in respect of the Units tendered for redemption during any month shall be paid by cheque, drawn on a Canadian chartered bank or trust company in lawful money of Canada, payable to, or to the order of, the Unitholder who exercised the right of redemption, on or before the end of the calendar month following the calendar month in which the Units were tendered for redemption. Payments made by the Trust 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 at its last address appearing on the Registers unless such cheque is dishonoured upon presentment. Upon such payment, the Trust shall be discharged from all liability to the former Unitholder in respect of 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 Unitholder while still a Unitholder of record on a date which was prior to the Redemption Date (as defined in section 6.2) upon which such Units were tendered for redemption.

6.5 No Cash Redemption in Certain Circumstances

Section 6.4 shall not be applicable to Units tendered for redemption by a Unitholder if:

- (a) the total amount payable by the Trust pursuant to Section 6.3 in respect of such Units and all other Units tendered for redemption in the same calendar month exceeds \$100,000; provided that the Trustee may, in its discretion, waive such limitation in respect of Units tendered for redemption in any calendar month;
- (b) at the time such Units are tendered for redemption, the outstanding Units are not listed for trading on the Toronto Stock Exchange and are not traded or quoted on any other stock exchange or market which the Trustee considers, in its discretion, provides representative fair market value prices for the Units;
- (c) the normal trading of the outstanding Units is suspended or halted on any stock exchange on which the Units are listed for trading or, if not so listed, on any market on which the Units are quoted for trading, on the Redemption Date or for more than five trading days during the ten consecutive trading-day period immediately prior to the Redemption Date; or
- (d) the Trust or any affiliate thereof is, or after such redemption would be, in default under any of the Credit Facilities.

6.6 In Specie Redemption

- (a) If, pursuant to Section 6.5, Section 6.4 is not applicable to Units tendered for redemption by a Unitholder, then such Unitholder shall be entitled to receive, instead of the Cash Redemption Price per Unit specified in Section 6.3, a price per Unit (hereinafter called the "***in Specie Redemption Price***") equal to 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 regulatory approvals, be paid and satisfied by way of a distribution *in specie* of Trust Property (other than Cdn Holdco Shares, trust units of the Commercial Trust, US Holdco Notes, or any other securities or property of US Holdco) as determined in the discretion of the Trustee. To the extent that the Trust does not hold Trust Property (other than Cdn Holdco Shares, trust units of the Commercial Trust, US Holdco Notes, or other securities or property of US Holdco), having a sufficient amount outstanding to effect full payment of the *in Specie* Redemption Price the Trust may effect such payment by issuing Redemption Notes, to the Unitholders who exercise the right of redemption, having an aggregate principal amount equal to any such shortfall.
- (b) The *in Specie* Redemption Price payable in respect of Units tendered for redemption during any month shall be paid by the transfer of Trust Property or issuance of Redemption Notes, as applicable, determined as aforesaid, to or to the order of the Unitholder who exercised the right of redemption, on or before the end of the calendar month following the calendar month in which the Units were tendered for redemption. In respect of any Trust Property being transferred in payment of the *in Specie* Redemption Price, the Trust shall be entitled to all interest paid or accrued and unpaid in respect of such Trust Property (including on any instruments on which interest is accruing), to and including the date of transfer thereof. Payments by the Trust of the *in Specie* Redemption Price are conclusively deemed to have been made upon the mailing of the documents evidencing ownership of the Trust Property so distributed and/or Redemption Notes so

issued by registered mail in a postage prepaid envelope addressed to the former Unitholder at its last address appearing on the Registers. Upon such payment, the Trust shall be discharged from all liability to the former Unitholder in respect of the Units so redeemed.

- (c) Notwithstanding anything to the contrary contained in this Trust Indenture, if the Trust has, pursuant to Section 4.1, granted security on any of its assets, then such assets may be distributed directly or indirectly (including via another entity) in such manner as is considered appropriate by the Administrator so as to preserve such security interest while giving redeeming Unitholders directly or indirectly the *pro rata* interest they are entitled to.

6.7 Redemption of Units from Non-certifying Unitholders

- (a) At any time after a Unitholder or a Beneficial Unitholder becomes a Non-certifying Unitholder, the Trustee shall have the option, upon notice to the Trustee by the Administrator as provided below, to redeem the Units of such Non-certifying Unitholder as follows:
 - (i) If the Administrator elects to exercise the redemption option under this Section 6.7 with respect to a Non-certifying Unitholder, the Administrator shall, not later than the 30th day before the date fixed for redemption, give written notice of redemption to the Trustee and the Trustee shall send the Non-certifying Unitholder by registered or certified mail, postage prepaid, in the case of a registered Unitholder, at its last address designated on the Registers, or in case of a Beneficial Unitholder who owns Units in the name of a Unitholder, to the last address designated in the Registers of the Unitholder in which the Units of such Non-certifying Unitholder are registered. The notice shall be deemed to have been given when so mailed. The notice shall specify the number of Units being redeemed, the date fixed for redemption, the place of payment, that payment of the redemption price will be made upon surrender of the Unit Certificate or other documentation evidencing such Units being redeemed, and that on and after the date fixed for redemption no further allocations or distributions to which such Non-certifying Unitholder would otherwise be entitled in respect of the Units being redeemed will accrue, be made, or be otherwise payable.
 - (ii) The aggregate redemption price for Units shall be the Cash Redemption Price. The Cash Redemption Price shall be paid by cheque, drawn on a Canadian chartered bank or trust company in lawful money of Canada, payable to, or to the order of, the Unitholder whose Units are being redeemed (or the Unitholder in whose name the Units being redeemed are registered in respect of a Beneficial Unitholder), on or before the end of the calendar month immediately following the calendar month in which the notice of redemption was mailed. Payments made by the Trust 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 (or the Unitholder in whose name the Units being redeemed in respect of a Beneficial Unitholder), at its last address appearing on the Registers unless such cheque is dishonoured upon presentment. Upon such payment, the Trust shall be discharged from all liability to the former Unitholder (or the Unitholder in whose name the Units being redeemed are registered in respect of a Beneficial Unitholder), in respect of the Units so

redeemed, except with respect to any outstanding payments of such Units pertaining to distributions declared payable thereon to such former Unitholder while still a Unitholder of record on a date which was prior to the date fixed for redemption as provided in the notice of redemption.

- (iii) Units redeemed in respect of a Non-certifying Unitholder who is a Beneficial Unitholder owning Units in the name of a Unitholder shall be redeemed from the Unitholder owning the Units of record, and if the number of redeemed Units is less than the entire Unit ownership position of the Unitholder of record, the redemption shall be treated as a redemption of Units owned by such Unitholder of record only to the extent of the number of Units beneficially owned by the underlying Non-certifying Unitholder beneficially owning such Units, and the Trustee and the Administrator shall take such actions necessary to effect such partial redemption of Units.
 - (iv) Upon surrender by or on behalf of the Non-certifying Unitholder, at the place specified in the notice of redemption, of (A) with respect to any Units subject to redemption, if certificated, the Unit Certificate evidencing the Units being redeemed, duly endorsed in blank or accompanied by an assignment duly executed in blank or (B) with respect to any Units subject to redemption, if uncertificated, upon receipt of evidence satisfactory to the Administrator of the ownership of the Units, such Unitholder or its duly authorized representative shall be entitled to receive the payment therefor.
 - (v) After the redemption date, the Units held by or on behalf of such Non-certifying Unitholder shall no longer constitute issued and outstanding Units.
 - (vi) At any time prior to the date fixed for redemption as provided in the notice, the Administrator in its sole discretion shall have the right to withdraw and cancel a proposed redemption of Units for which notice has been given pursuant to this Section 6.7 by delivering written notice of such withdrawal and cancellation to the Trustee, whereupon the redemption of such Units notified for redemption pursuant to this Section 6.7 shall be cancelled with the effect of such Units remaining outstanding, and notice of such withdrawal and cancellation shall be sent by the Trustee to the persons receiving such redemption notice at addresses set forth in Section 6.7(a)(i).
- (b) Nothing in this Section 6.7 shall prevent the recipient of a notice of redemption from transferring its Units before the redemption date if such transfer is otherwise permitted under this Indenture. Upon receipt of notice of such a transfer, the Administrator shall instruct the Trustee to withdraw the notice of redemption, provided that the transferee of such Units provides a Taxation Certification to the Administrator and the Trustee within 30 days of such transfer. If the transferee fails to deliver such a Taxation Certification, such redemption shall be effected from the transferee on the original redemption date.

6.8 Cancellation of Certificates for all Redeemed Units

All Unit Certificates representing Units 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 TRUSTEE

7.1 Number and Term

There shall be one Trustee of the Trust. Computershare Trust Company of Canada is hereby appointed as the Trustee on the date hereof. The term of office of the Trustee hereunder commences from the date on which its election or appointment becomes effective and shall continue until the earlier of the date of the termination of the Trust, the effective date of the resignation of the Trustee in accordance with Section 7.3, the effective date of the removal of the Trustee by the Unitholders in accordance with Section 7.3, or the effective date of the removal of the Trustee by the Administrator in accordance with Section 7.3.

7.2 Qualifications of the Trustee

The Trustee shall be a body corporate, which shall at all times during which it is the Trustee:

- (a) be incorporated under the laws of Canada or of a province thereof;
- (b) be resident in Canada for the purposes of the Tax Act; and
- (c) be authorized and registered under the laws of the Province of Ontario or such other Province of Canada in which the head office of the Trust may from time to time be located, to carry on the business of a trust company.

7.3 Resignation and Removal of the Trustee

- (a) Subject to Section 7.8, the Trustee may resign from the office of trustee hereunder by giving to the Administrator not less than 90 days' prior written notice of such resignation, unless the Administrator agrees to a shorter period of notice.
- (b) The Trustee may be removed at any time with or without cause by Ordinary Resolution passed in favour of the removal of the Trustee.
- (c) The Trustee may also be removed at any time by the Administrator by notice in writing to the Trustee if, at any time:
 - (i) the Trustee shall no longer satisfy all of the requirements of Section 7.2;
 - (ii) the Trustee shall be declared bankrupt or insolvent or shall enter into liquidation, whether compulsory or voluntary, to wind up its affairs;
 - (iii) all of the assets of the Trustee, or a substantial part thereof, shall become subject to seizure or confiscation; or
 - (iv) the Trustee shall otherwise become incapable of performing or refuses to perform its responsibilities under this Trust Indenture, as determined in the discretion of the Administrator.
- (d) No resignation or removal pursuant to subsections 7.3(a), (b) or (c) shall take effect until the date upon which the last of the following occurs: (i) a successor Trustee is appointed or elected pursuant to Section 7.5; and (ii) the new successor Trustee has accepted such

election or appointment and has legally and validly assumed all obligations of the trustee hereunder.

- (e) Upon the taking effect of any resignation or removal of the Trustee under the terms of this Section 7.3, the outgoing Trustee shall:
 - (i) cease to have rights, privileges, powers and authorities of the Trustee hereunder;
 - (ii) execute and deliver such documents as the Administrator shall reasonably require for the conveyance, to a successor Trustee, of any Trust Property held in the outgoing Trustee's name, and provide for or facilitate the transition of the Trust's activities and affairs to such successor Trustee;
 - (iii) account to the Administrator, as the Administrator may require, for all property, including the Trust Property, which the outgoing Trustee held or then holds as trustee; and
 - (iv) cease to be a party to the Administrative Services Agreement and the Voting Agreement, and shall execute and deliver all such documents and instruments and do all such acts and things as the Administrator may reasonably request in order to effectively remove such outgoing Trustee as a party to such agreements and to assign its right, title and interest in such agreements to such successor Trustee as may be appointed or elected.
- (f) Upon the outgoing Trustee ceasing to hold office as such hereunder, the outgoing Trustee shall cease to be a party (as the Trustee) to this Trust Indenture provided, however, that such outgoing Trustee shall continue to be entitled to payment of any amounts owing by the Trust to the Trustee which accrued prior to vacating of the office of Trustee; and provided further that such outgoing Trustee and each of its directors, officers, employees and agents shall continue to be entitled, with respect to all liabilities relating to the period of time when the outgoing Trustee held office as trustee hereunder, to the benefit of any indemnity and limitation of liability provisions which are expressly set out herein and by their terms are for the benefit of the outgoing Trustee and its directors, officers, employees and agents (as the case may be).
- (g) The resignation or removal of the outgoing Trustee, or the outgoing Trustee otherwise ceasing to be the Trustee, shall not affect any liabilities of the outgoing Trustee in respect of or in any way arising under or out of this Indenture which have accrued prior to such resignation, removal or termination.

7.4 Vacancies

No vacancy of the office of the Trustee shall operate to annul this Trust Indenture or affect the continuity of the Trust.

7.5 Appointment/Election of Successor Trustee

- (a) A successor trustee to an outgoing Trustee which has been removed: (i) by an Ordinary Resolution of Unitholders under subsection 7.3(b); or (ii) by the Administrator under subsection 7.3(c), shall be appointed by an Ordinary Resolution at a meeting of

Unitholders duly called for that purpose, provided the successor meets the requirements of Section 7.2.

- (b) The Administrator may appoint a successor to any Trustee which has been removed: (i) by an Ordinary Resolution of Unitholders under subsection 7.3(b); or (ii) by the Administrator under subsection 7.3(c), if the Unitholders fail to do so at such meeting contemplated under subsection 7.5(a) above, provided the successor meets the requirements of Section 7.2.
- (c) Subject to Section 7.2, the Administrator may appoint a successor to any Trustee which has given a notice of resignation under subsection 7.3(a) or Section 7.8.
- (d) If no successor Trustee has been appointed or elected within 60 days of: (i) the Trustee's notice of resignation (whether deemed notice or otherwise) under subsection 7.3(a) or Section 7.8; (ii) the approval of the Ordinary Resolution referred to in subsection 7.3(b); or (iii) the giving of notice by the Administrator to remove the Trustee under subsection 7.3(c), as the case may be, any Unitholder, the Trustee, the Administrator or any other interested person may apply to a court of competent jurisdiction for the appointment of a successor trustee.
- (e) Notwithstanding anything herein contained, the election or appointment of the Trustee (other than the appointment of Computershare Trust Company of Canada as Trustee upon the execution of this Trust Indenture) shall not become effective unless and until such corporation has, either before or after such election or appointment, executed and delivered to the Trust an acceptance substantially as follows:

"To: Crius Energy Trust (the "**Trust**")

And to: The Administrator of the Trust

The undersigned hereby accepts its election or appointment as the Trustee of the Trust and hereby agrees, upon the later of the date of this acceptance and the date of the undersigned's election or appointment as the Trustee of the Trust, to thereby become a party, as the Trustee, to the Trust Indenture made as of September 7, 2012, as the same may be amended from time to time, governing the Trust (the "**Trust Indenture**"), and the undersigned further agrees to act as Trustee of the Trust in accordance with the terms of the Trust Indenture.

Dated: ●,●

Name of Company

[Print Name]

[Signature]"

- (f) Upon the later of a person being elected or appointed as the Trustee hereunder and executing and delivering to the Trust an acceptance substantially as set forth above, such corporation shall become the Trustee hereunder and shall be deemed to be a party (as the Trustee) to this Trust Indenture, as amended from time to time.

- (g) An act of any Trustee is valid notwithstanding an irregularity in the election or appointment of such Trustee or a defect in the qualifications thereof.

7.6 Right of Successor Trustee

The rights of the Trustee, subject to the terms hereof, to control and exclusively administer the Trust and to have the title to the Trust Property drawn up in its name and all other rights of the Trustee at law shall vest automatically in any person who may hereafter become the Trustee upon its due election or appointment and qualification, in accordance with the terms hereof, without any further act and it shall thereupon have all the rights, privileges, powers, authorities, 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 7.3 or otherwise.

7.7 Compensation and Other Remuneration

The Trustee shall be entitled to receive for its services as Trustee:

- (a) such reasonable compensation as shall be negotiated between the Administrator on behalf of the Trust and the Trustee;
- (b) reimbursement of the Trustee's reasonable out-of-pocket expenses incurred in acting as the Trustee, either directly or indirectly; and
- (c) fair and reasonable remuneration for services rendered to the Trust in any other capacity, which services may include services as the Transfer Agent.

A Trustee shall have a priority over distributions to Unitholders pursuant to Article 5 or Section 11.6 in respect of amounts payable or reimbursable to the Trustee pursuant to this Section 7.7.

7.8 Trustee Not Bound to Act

The Trustee shall retain the right not to act and shall not be liable for refusing to act if, due to a lack of information or for any other reason whatsoever, the Trustee, in its reasonable discretion, determines that such act might cause it to be in non-compliance with any applicable anti-money laundering or anti-terrorist legislation, regulation or guideline. Further, should the Trustee, in its reasonable discretion, determine at any time that its acting under this Indenture has resulted in its being in non-compliance with any applicable anti-money laundering or anti-terrorist legislation, regulation or guideline, then it shall have the right to resign on 10 days written notice, provided that:

- (a) the Trustee's written notice shall describe the circumstances of such non-compliance; and
- (b) if such circumstances are rectified to the Trustee's satisfaction within such 10 day period, then such resignation shall not be effective.

ARTICLE 8 TRUSTEE'S POWERS AND DUTIES

8.1 General Powers

- (a) The Trustee, subject only to the express limitations contained in this Trust Indenture and to any grant of powers to the Administrator contained in this Trust Indenture or in the

Administrative Services Agreement, 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 Trust Property and over the affairs of the Trust to the same extent as if the Trustee was the sole and absolute beneficial owner of the Trust Property in its own right, to do all such acts and things as in its discretion are necessary or incidental to, or desirable for, carrying out the trust created hereunder. The Trustee has no obligations to Unitholders beyond those set forth herein, except as may be mandated by law.

- (b) In construing the provisions of this Trust Indenture, presumption shall be in favour of the granted powers and authority to the Trustee. The enumeration of any specific power or authority herein (including pursuant to Section 8.2) shall not be construed as limiting the general powers or authority or any other specified power or authority conferred herein on the Trustee.
- (c) To the maximum extent permitted by law but subject to the express limitations contained in this Indenture, including for greater certainty Sections 4.1 and 4.3, the Trustee shall, in carrying out investment activities, not be in any way restricted by the provisions of the laws of any jurisdiction limiting or purporting to limit investments which may be made by trustees.

8.2 Specific Powers and Authorities

Subject only to the express limitations contained in, or contemplated by, this Trust Indenture and to any grant of powers to the Administrator contained in this Trust Indenture or in the Administrative Services Agreement, and in addition to any powers and authorities otherwise conferred on the Trustee or the Administrator by, or pursuant to the provisions of, this Trust Indenture (including the general powers set forth in Section 8.1) or which the Trustee may have by virtue of any present or future statute or rule of law or in equity, the Trustee, without any action or consent by the Unitholders, shall have and may exercise at any time and from time to time the following powers and authorities which may be exercised by it (or delegated by it) as herein provided, in its discretion and in such manner and upon such terms and conditions as it may from time to time deem proper:

- (a) to open, operate and close accounts and other similar credit, deposit and banking arrangements and to negotiate and sign banking and financing contracts and agreements;
- (b) to borrow money and request the issuance of letters of credit upon the credit of the Trust and the Trust Property;
- (c) to hold cash and other short term investments in connection with and for the purposes of the Trust's activities, including paying management, administration and other expenses of the Trust, paying any amounts required in connection with the redemption of Units and making distributions to Unitholders;
- (d) to issue, reissue, sell or pledge debt obligations of the Trust and to make, accept, endorse, negotiate or otherwise deal with bonds, debentures, cheques, drafts, notes, orders for the payment of money, bills of exchange, bills of lading, acceptances and other similar instruments and obligations as may be necessary or useful to carry out the purpose of the Trust;

- (e) to give a guarantee on behalf of the Trust to secure performance of an obligation of another person;
- (f) to mortgage, hypothecate, pledge or otherwise create a security interest in all or any movable or immovable, personal or real or other property of the Trust, owned or subsequently acquired, to secure any obligation of the Trust;
- (g) to enter into and perform its obligations under the Voting Agreement;
- (h) to obtain security, including encumbrances on assets, to secure the full payment of money owed to the Trust and the performance of obligations in favour of the Trust, and to exercise all of the rights of the Trust, and to perform all of the obligations of the Trust, under such security;
- (i) to renew or extend or participate in the renewal or extension of any security, upon such terms as may be deemed advisable, and to agree to an increase or reduction in the rate of interest (or to agree to a waiver of interest) on any security or to any other modification or change in the terms of any security or of any guarantee pertaining thereto, in any manner and to any extent that it may deem advisable; and to waive any default whether in performance of any covenant or condition of any security, or in the performance of any guarantee or to enforce the rights in respect of any such default in such manner and to such extent that it may deem advisable;
- (j) to exercise and enforce any and all rights of foreclosure, to bid on property on sale or foreclosure, to take a conveyance in lieu of foreclosure with or without paying a consideration therefor and in connection therewith to revive the obligation on the covenants secured by such security and to exercise and enforce in any action, suit or proceeding at law or in equity any rights or remedies with respect to any such security or guarantee;
- (k) to obtain or render services for or on behalf of the Trust necessary or useful to carry out the purposes of the Trust;
- (l) to obtain, prepare, compose, design, print, publish, issue and distribute marketing and public relations materials in connection with the Trust;
- (m) to establish places pursuant to which the Trust can carry out the activities referred to herein;
- (n) to manage the Trust Property;
- (o) to invest, hold shares, securities, units, beneficial interests, partnership interests, joint venture interests or other interests in any person necessary or useful to carry out the purpose of the Trust;
- (p) to cause legal title to any of the Trust Property to be held in the name of the Trustee or to be drawn up in the name of the Trustee or, to the extent permitted by Applicable Laws, in the name of the Trust;
- (q) to determine conclusively the allocation to capital, income or other appropriate accounts of all receipts, expenses and disbursements of the Trust;

- (r) to determine, among other things, the amount of Distributable Cash Flow, Income of the Trust and Net Realized Capital Gains for the purposes of distributions hereunder and to arrange for distributions to Unitholders pursuant to Article 5 and for redemptions of Units pursuant to Article 6;
- (s) to determine the amount and purposes of reserves to be maintained out of the Distributable Cash Flow, including for the purpose of undertaking future investments or other acquisitions of assets by the Trust or for payment of distributions;
- (t) to enter into any agreement or instrument to create or provide for the issue and sale of Units (including the Prospectus, any firm or best efforts underwriting agreement, and any registration rights agreement), to cause such Units or Other Trust Securities to be issued for such consideration (in cash or property in kind) as the Trustee in its discretion may deem appropriate, and to do all such things and take all such actions to qualify such Units or Other Trust Securities for sale in whatever jurisdictions they will be sold or offered for sale;
- (u) to enter into any agreement or instrument (including any firm or best efforts underwriting agreement, warrant agreement or other similar document) to create or provide for the issue of Other Trust Securities and such agreements or instruments may provide for any matter determined by the Trustee to be necessary or useful including provisions pertaining to securities certificates (form, manner of execution, and certification), maintenance of registers, use of book-based versus certificated system, repurchases, redemptions and transfers;
- (v) to cause Other Trust Securities to be issued and sold for such consideration as the Trustee, in its discretion, may deem appropriate, and to do all such things and take all such actions to qualify such Other Trust Securities for sale in whatever jurisdictions they are to be sold or offered for sale;
- (w) to adopt a Unitholder rights plan for the Trust which plan will be effective as of the date of such adoption if the Trustee determines in good faith that such action is appropriate;
- (x) to issue or provide for the issuance of Units on such terms and conditions and at such time or times as the Trustee may determine, including issuances in accordance with Section 5.8 and issuances in connection with Unitholder rights plans, Compensation Plans, and other plans established under Section 5.10;
- (y) to redeem or repurchase Units in accordance with the terms set forth in this Indenture;
- (z) to make or cause to be made application for the listing or quotation on any stock exchange or market of any Units or Other Trust Securities, and to do all things which in the opinion of the Trustee may be necessary or desirable to effect or maintain such listing or listings or quotation;
- (aa) to determine conclusively the value of any or all of the Trust Property from time to time and, in determining such value, to consider such information and advice as the Trustee in its sole judgment, may deem material and reliable;
- (bb) to possess and exercise all the rights, powers and privileges pertaining to the ownership of any securities held by the Trust ("**Subsidiary Securities**") to the same extent that an

individual might, unless otherwise limited herein and, without limiting the generality of the foregoing, to vote or give any consent, request or notice, or waive any notice, either in person or by proxy or power of attorney, with or without power of substitution, to one or more persons with respect to voting Subsidiary Securities, which proxies and powers of attorney may be for meetings or actions generally or for any particular meeting or action and may include the exercise of discretionary power;

- (cc) to pay, out of the Trust Property, all reasonable fees, costs and expenses incurred, from time to time, in the management and administration of the Trust, including those in connection with any Offering;
- (dd) where reasonably required, to engage or employ on behalf of the Trust any persons as administrators, managers, agents, advisors, representatives, employees, independent contractors or subcontractors (including the Administrator, investment advisors, registrars, underwriters, accountants, lawyers, engineers, appraisers, brokers or otherwise) in one or more capacities;
- (ee) to the extent not prohibited by Applicable Laws, to delegate any of the powers and duties of the Trustee to any one or more agents, representatives, officers, employees, independent contractors, subcontractors or other persons (including to the Administrator pursuant to the terms of the Administrative Services Agreement or otherwise) without liability to the Trustee except as provided in this Trust Indenture;
- (ff) to appear and respond to all orders issued by a Governing Authority or claims made by another person, to make all affidavits, sworn declarations and solemn affirmations with respect to such matters, to put in default, sue for and receive all sums of money or obligations due to the Trust, and to engage in, intervene in, prosecute, join, defend, compromise, abandon or adjust, by arbitration or otherwise, any actions, suits, disputes, claims, demands or other litigation or proceedings, regulatory or judicial, relating to the Trust, the Trust Property or the Trust's affairs, to enter into agreements therefor, whether or not any suit or proceeding is commenced or claim asserted and to enter into agreements regarding the arbitration, adjudication or settlement thereof;
- (gg) to arrange for insurance contracts and policies insuring the Trust, the Trust Property, and/or the Trustee or the Unitholders, including against any and all claims and liabilities of any nature asserted by any person arising by reason of any action alleged to have been taken or omitted to have been taken by the Trust, the Trustee, Administrator, Unitholders or otherwise, and to perform all of the obligations of the Trust under such insurance policies and contracts, the whole to the extent permitted by law;
- (hh) to do all such things and take all such action, and to negotiate, make, execute, acknowledge and deliver any and all deeds, instruments, contracts, waivers, releases or other documents, necessary or useful for the exercise or accomplishment of: (i) any of the powers herein granted to the Trustee; (ii) the purpose of the Trust as set forth in Section 4.1; and (iii) all of the rights and obligations of the Trustee hereunder; including the negotiation and execution of the Administrative Services Agreement, the Voting Agreement and agreements in connection with the Trust's acquisition of Subsidiary Securities, the IPO and all future Offerings;
- (ii) to postpone and subordinate, in right of payment, all present and future indebtedness, liabilities and obligations of a person owed to the Trust to payment in full of all present

and future indebtedness, liabilities and obligations of such person to lenders and other creditors of such person, and to enter into any agreement or instrument to create or provide for such postponement and subordination in favour of such lenders and creditors;

- (jj) to indemnify, out of the Trust Property, any person against any and all liabilities, claims, actions, causes of action, judgments, orders, damages (including foreseeable consequential damages), costs, expenses, fines, penalties and losses (including sums paid by such person in settlement of claims and all reasonable consultant, expert and legal fees and expenses) or any resulting damages, harm or injuries to such person or property of any third parties arising from the investments or activities carried on by the Trust;
- (kk) to provide or cause to be provided to any bank, creditor, financial institution or any other person such guarantees, indemnities, postponements and subordinations, acknowledgements, assurances or other credit support, in any form whatsoever, as the Trustee, in its discretion, deems necessary, useful or desirable in connection with the establishment or arrangement of any and all debt or equity financings of affiliates and associates of the Trust, including any extensions, renewals, refinancings or replacements thereof, and to enter into any agreement, indenture, instrument or other document on such terms and conditions as the Trustee, in its discretion, may deem appropriate in the circumstances in connection with such financings; and
- (ll) to do all such other acts and things as are necessary, useful, incidental or ancillary to the foregoing and to exercise all powers and authorities which are necessary, useful, incidental or ancillary to carry on the affairs of the Trust, to promote any purpose for which the Trust is formed and to carry out the provisions of this Trust Indenture, including the negotiation and execution of the Administrative Services Agreement and the Voting Agreement.

8.3 Further Powers of the Trustee

The Trustee shall have the power to prescribe any form of document or other instrument provided for or contemplated by this Trust Indenture and the Trustee may make, adopt, amend, or repeal regulations containing provisions relating to the conduct of the affairs of the Trust not inconsistent with law or with this Trust Indenture (the "**Trustee's Regulations**"). The Trustee shall also be entitled to make any reasonable decisions, designations or determinations not contrary to this Trust Indenture which it may determine are necessary or desirable in interpreting, applying or administering this Trust Indenture or in administering, managing or operating the Trust. Any Trustee's Regulations, decisions, designations or determinations made pursuant to this Section 8.3 shall be conclusive and binding upon all persons affected thereby. The Trustee shall also have such additional powers as may be approved by the Unitholders by Ordinary Resolution.

8.4 Restrictions on the Trustee's Powers and their Exercise

In addition to any other provisions set forth herein requiring the approval of Unitholders in respect to certain matters, or as a condition precedent to taking certain actions, it is agreed that:

- (a) the Trustee shall not, without the approval of the Unitholders by Ordinary Resolution, take any of the following actions:

- (i) as agent for the Unitholders, vote or instruct on the voting of any shares of the Administrator pursuant to the Voting Agreement, including with regard to the election of Administrator Directors; or
- (ii) except in the event of a voluntary resignation by the Auditors, appoint or change the Auditors;
- (b) the Trustee shall not, without the approval of the Unitholders by Special Resolution, take any of the following actions:
 - (i) amend this Trust Indenture, except as permitted in Article 9;
 - (ii) sell, lease, exchange or transfer all or substantially all of the Trust Property, other than (A) pursuant to *in specie* redemptions permitted hereunder, (B) in order to acquire Cdn Holdco Shares, Commercial Trust Units and/or US Holdco Notes in connection with pursuing the purpose of the Trust, or (C) in conjunction with an Internal Reorganization; or
 - (iii) authorize the termination, liquidation or winding-up of the Trust, other than in the circumstances set forth in Section 11.1; and
- (c) the following matters, in order to become effective after the Closing Date, must be approved by a majority of the Administrator Directors:
 - (i) a change to the Administrative Services Agreement, the Voting Agreement or any extension thereof;
 - (ii) any amendment to the terms of any constating document of any affiliate of the Trust; and
 - (iii) the terms of any agreement entered into by the Trust, or any of its affiliates, with the Administrator.

8.5 Standard of Care

The exclusive Standard of Care required of the Trustee in exercising its powers and carrying out its functions under this Trust Indenture is the Standard of Care, provided that:

- (a) unless otherwise required by Applicable Laws, the Trustee shall not be required to give bond, surety or security in any jurisdiction for the performance of any duties or obligations hereunder;
- (b) the Trustee in its capacity as Trustee shall not be required to devote its entire time to the affairs of the Trust; and
- (c) to the extent that authority and responsibility for the performance of certain duties and activities has been granted to the Administrator in this Trust Indenture or the Administrative Services Agreement, the Trustee shall be deemed to have satisfied the Standard of Care in respect of the performance thereof.

8.6 Reliance Upon the Trustee

Any person dealing with the Trust in respect of any matters pertaining to the Trust, the Trust Property or securities of the Trust shall be entitled to rely on a certificate or statutory declaration (including a certificate or statutory declaration as to the passing of a resolution of the Trustee or the Trust) executed by the Trustee or the Administrator or such other person as may be authorized by the Trustee as to the capacity, power and authority of the Trustee, the Administrator, or any other person, to act for and on behalf and in the name of the Trust. No person dealing with the Trustee shall be bound to see to the application of any money or property passing into the hands or control of the Trustee. The receipt by or on behalf of the Trustee of money or other consideration shall constitute receipt by the Trust and be binding thereon.

8.7 Determinations Binding

All determinations of the Administrator and the Trustee and any person to whom the Trustee has delegated duties (including the Administrator), whether delegated hereunder or pursuant to any other agreement (including the Administrative Services Agreement), where such determinations are made in good faith with respect to any matters relating to the Trust, including whether any particular investment or disposition meets the requirements of this Trust Indenture, shall be final and conclusive and shall be binding upon the Trust and all Unitholders, Beneficial Unitholders and, where the Unitholder or Beneficial Unitholder is a registered retirement savings plan, registered retirement income fund, registered education savings plan, deferred profit sharing plan, registered disability savings plan, tax-free savings account or registered pension fund or plan (all as defined in the Tax Act), or such other fund or plan registered under the Tax Act, upon past, present or future fund, plan or account beneficiaries and fund, plan or account holders, and Units shall be issued and sold on the condition and understanding that any and all such determinations shall be final, conclusive and binding as aforesaid.

8.8 Banking

Without limiting the generality of Sections 8.1 or 8.2, the banking activities of the Trust, 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 behalf of the Trust by the Trustee, the Administrator or such other person or persons as the Trustee may designate, appoint or authorize from time to time, including the following activities:

- (a) the operation of the accounts of the Trust;
- (b) the making, signing, drawing, accepting, endorsing, negotiation, lodging, depositing or transferring of any cheques, promissory notes, drafts, acceptances, bills of exchange and orders for the payment of money;
- (c) the giving of receipts for orders relating to any property of the Trust;
- (d) the execution of any agreement or instrument relating to any property of the Trust; and
- (e) the execution of any agreement relating to any such banking activities and defining the rights and powers of the parties thereto, and the authorizing of any officer of such banker to do any act or thing on the Trust's behalf to facilitate such banking activities.

8.9 Fees and Expenses

Without limiting the generality of Sections 8.1 or 8.2, the Trustee may pay or cause to be paid reasonable fees, costs, charges and expenses incurred in connection with the administration and management of the Trust and in connection with the discharge of any of the Trustee's duties herein, including fees, costs, charges and expenses of auditors, accountants, lawyers, appraisers and other professional advisors employed by, or on behalf of, the Trust (including the Administrator) and the cost of reporting and giving notices to Unitholders. All fees, costs, charges and expenses properly incurred by the Trustee on behalf of the Trust shall be payable out of the Trust Property.

8.10 Payments to Unitholders

- (a) Except as may be otherwise provided herein, any cash payment required under the terms of this Trust Indenture to be made to a Unitholder shall be paid in Canadian dollars, unless otherwise determined by the Trustee or the Administrator, with such payment to be by cheque, bank draft or wire transfer to the order of the registered Unitholder and may be mailed by ordinary mail to the last address appearing on the books of the Trust in respect of such Unitholder but may also be paid in such other manner as such Unitholder has designated to the Trustee and the Trustee has accepted. In the case of joint registered Unitholders, any cash payment required hereunder to be made to a Unitholder shall be deemed to be required to be made to such Unitholders jointly and shall be paid by cheque, bank draft or wire transfer but may also be paid in such other manner as the joint registered Unitholders or any one of the joint registered Unitholders has designated to the Trustee and the Trustee has accepted. For greater certainty, a Unitholder or any one of the joint Unitholders may designate and the Trustee may accept that any payment required to be made hereunder shall be made by deposit to an account of such Unitholder or to a joint account of such Unitholder and any other person or in the case of joint registered Unitholders to an account of joint registered Unitholders or to an account of any one of the joint registered Unitholders. A cheque, bank draft or wire transfer shall, unless the joint registered Unitholders otherwise direct, be made payable to the order of all of the said joint registered Unitholders, and if more than one address appears on the books of the Trust in respect of such joint unitholding, the cheque, bank draft, wire transfer or payment in other acceptable manner as aforesaid may be sent to the address of any one of the joint registered Unitholders whose name and address appears on the books of the Trust. All payments made in the aforesaid manner shall satisfy and be a valid and binding discharge of all liability of the Trustee or the Trust for the amount so required to be paid unless the cheque or bank draft is not paid at par on presentation at Toronto, Ontario, or at any other place where it is by its terms payable. In the event of non-receipt of any such cheque or bank draft by the person to whom it was sent, the Trustee on proof of the non-receipt and upon satisfactory indemnity being given to it and to the Trust, shall issue to the person a replacement cheque or bank draft for a like amount.
- (b) The receipt, by the registered Unitholder, of any payment not mailed or paid in accordance with this Section 8.10 shall nonetheless be a valid and binding discharge to the Trust and to the Trustee for any payment made in respect of the registered Units, and if several persons are registered as joint registered Unitholders or, in consequence of the death, bankruptcy or incapacity of a Unitholder, one or several persons are entitled so to be registered in accordance with Sections 3.22 and 3.23, respectively, receipt of payment by any one of them shall be a valid and binding discharge to the Trust and to the Trustee for any such payment.

8.11 Conditions Precedent

The obligation of the Trustee to commence or continue any act, action, suit or proceeding for the purpose of performing its duties under this Indenture or enforcing the rights of the Trustee and of the Unitholders shall, if required by notice in writing by the Trustee, be conditional upon the Administrator, Unitholders or any other person furnishing sufficient funds to commence or continue such act, action or proceeding and furnishing an indemnity (in each case only to the extent sufficient funds for such purpose are not available, or might reasonably be expected not to be available, in the Trust) satisfactory to the Trustee, acting reasonably, to protect and hold harmless the Trustee against the costs, charges, expenses and liabilities to be incurred thereby and any loss and damage it may suffer by reason thereof. None of the provisions contained in this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties or in the exercise of any of its rights or powers unless it is indemnified as aforesaid.

8.12 Trustee to Declare Interest

Forthwith upon the Trustee becoming aware that it, or an officer or director of the Trustee, is a party to, or is a director or officer of or has a material interest in any person who is a party to, a material contract or proposed material contract with the Trust, the Trustee shall disclose in writing to the Trust and the Administrator the nature and extent of the interest, and, for greater certainty, upon the Trustee complying with this Section 8.12, neither the Trustee nor the subject officer or director of the Trustee (as the case may be) shall be subject to any liability to the Trust or the Unitholders with respect to the Trust entering or having entered into such material contract or proposed material contract as aforesaid.

8.13 Documents Held by Trustee

Any securities, documents of title or other instruments that may at any time be held by the Trustee subject to the trusts hereof may be placed in the deposit vaults of the Trustee or of any chartered bank in Canada, including an affiliate of the Trustee, or deposited for safekeeping with any such bank.

ARTICLE 9 AMENDMENTS TO THE TRUST INDENTURE

9.1 Amendment

The provisions of this Trust Indenture may only be amended by Special Resolution except where specifically otherwise provided herein, including pursuant to Sections 9.2 and 9.3.

9.2 Amendment without Approval

Notwithstanding anything herein contained (but subject to Section 9.3), the provisions of this Trust Indenture may be amended by the Trustee at any time and from time to time, without the consent, approval or ratification of the Unitholders, any other person or any Governing Authority:

- (a) on or prior to the Closing, for any purpose by agreement between the Trustee and the Administrator; and
- (b) at any time for the purpose of:

- (i) ensuring continuing compliance, by the Trust, with Applicable Laws, regulations, requirements or policies of any Governing Authority having jurisdiction over the Trustee or the Trust;
- (ii) providing additional protection for the Unitholders or to obtain, preserve or clarify the provision of desirable tax treatment to the Trust and/or Unitholders;
- (iii) making amendments hereto which, in the opinion of the Trustee, based on the advice of Counsel, are necessary or desirable in the interests of the Unitholders as a result of changes in taxation laws or in their interpretation or administration;
- (iv) making corrections, or removing or curing any conflicts or inconsistencies between the provisions of this Indenture or any supplemental indenture and any other agreement of the Trust or any Offering document with respect to the Trust, or any Applicable Laws or regulation of any jurisdiction, provided that in the opinion of the Trustee, based on the advice of Counsel, the rights of the Unitholders are not materially prejudiced thereby;
- (v) providing for the electronic delivery by the Trust to Unitholders of documents relating to the Trust (including annual and quarterly reports, including financial statements, notices of Unitholder meetings and information circulars and proxy related materials) at such time as Applicable Laws have been amended to permit such electronic delivery in place of normal delivery procedures, provided that such amendments to the Indenture, based on the advice of Counsel, are not contrary to or do not conflict with such laws;
- (vi) curing, correcting or rectifying any ambiguities, defective or inconsistent provisions, errors, mistakes or omissions herein, provided that, in the opinion of the Trustee, based on the advice of Counsel, the rights of the Unitholders are not materially prejudiced thereby;
- (vii) making amendments hereto as are required to undertake an Internal Reorganization, provided that, in the opinion of the Trustee, based on the advice of Counsel, the rights of the Unitholders are not materially prejudiced thereby; and
- (viii) making amendments hereto for any purpose provided that, in the opinion of the Trustee, based on the advice of Counsel, the rights of the Unitholders are not materially prejudiced thereby.

9.3 Further Restrictions on Amendments

No amendment shall be made to this Trust Indenture:

- (a) to modify the voting rights attributable to any Unit or reduce the fractional undivided beneficial interest in the net assets of the Trust represented by any Unit without obtaining the consent of the holder of such Unit; and
- (b) to amend Sections 9.2 or 9.3, except with the approval of the Unitholders by Special Resolution.

9.4 Notification of Amendment

- (a) Following the making of any amendment pursuant to Section 9.2, the Trustee shall provide written notification of the substance of such amendment to each Unitholder, and such notification shall be delivered not later than concurrent with the next succeeding mailing of financial statements of the Trust (whether quarterly or annual financial statements) pursuant to Section 16.4.
- (b) For greater certainty, written notification of the substance of any amendment pursuant to Section 9.2 shall be deemed to have been provided to each Unitholder for the purposes of Section 9.4(a) by the Trustee having filed a news release containing the substance of such amendment on the System for Electronic Document Analysis and Retrieval at www.sedar.com.

9.5 Further Acts Regarding Amendment

When a vote of the Unitholders approves an amendment to this Trust Indenture, then the Trustee and the Administrator (as applicable) shall sign such documents, on behalf of the Trust, as may be necessary to effect such amendment, provided that nothing herein contained shall be construed so as to:

- (a) obligate the Trustee to give effect to any amendment to this Trust Indenture which has an effect on any of the Trustee's rights, protections and obligations hereunder which is adverse to the Trustee; or
- (b) obligate the Administrator, acting on its own behalf and for its own account, to agree to any amendment to this Trust Indenture which has an effect on any of the Administrator's rights, protections and obligations hereunder or under the Administrative Services Agreement which is adverse to the Administrator.

ARTICLE 10 MEETINGS OF UNITHOLDERS

10.1 Annual Meeting

There shall be an annual meeting of Unitholders, commencing in 2013, for the purpose of:

- (a) presentation of the financial statements of the Trust for the immediately preceding fiscal year;
- (b) appointing the Auditors of the Trust for the ensuing year;
- (c) directing and instructing the Trustee how to vote (or how to compel the voting), as agent for the Unitholders, pursuant to the Voting Agreement for the election of the Administrator Directors; and
- (d) transacting such other business as the Trustee or the Administrator may determine or as may properly be brought before the meeting.

The annual meeting of Unitholders shall be held in Canada after delivery to the Unitholders of the annual financial statements referred to in subsection 10.1(a) and, in any event, within 180 days after the end of each fiscal year of the Trust.

10.2 Other Meetings

- (a) *Called by the Trustee:* The Trustee shall have the power, at any time and for any purpose, to call special meetings of the Unitholders at such time and place in Canada as the Trustee may determine or the Administrator may request (and, for greater certainty, the Trustee shall call a special meeting of Unitholders upon request of the Administrator).
- (b) *Requisition by Unitholders:* Unitholders holding in the aggregate not less than 5% of all votes entitled to be voted at a meeting of Unitholders may requisition the Trustee to call a special meeting of Unitholders for the purposes stated in the requisition. The requisition shall (A) be in writing, (B) set forth the name and address of, and number of Units (and votes attached thereto which, in the aggregate, must not be less than 5% of all votes entitled to be voted at a meeting of Unitholders) held by, each person who is supporting the requisition, (C) state in reasonable detail the business to be transacted at the meeting, and (D) shall be sent to the Trustee at the Trustee's principal place of business in Ontario. Upon receiving a requisition complying with the foregoing, and receiving funding and being indemnified to its reasonable satisfaction by the Unitholder, the Trustee shall call a meeting of Unitholders to transact the business referred to in the requisition, unless:
 - (i) a record date for a meeting of Unitholders has been fixed and notice thereof has been given to each stock exchange in Canada on which the Units are listed for trading;
 - (ii) the Trustee has called a meeting of Unitholders and has given notice thereof pursuant to Section 10.3; or
 - (iii) in connection with the business as stated in the requisition:
 - (A) it clearly appears that a matter covered by the requisition is submitted by the Unitholder primarily for the purpose of enforcing a personal claim or redressing a personal grievance against the Trust, the Trustee, the Administrator (or any associate or affiliate of the Administrator), the Unitholders or any affiliate of the Trust, or primarily for the purpose of promoting general economic, political, racial, religious, social or similar causes or primarily for a purpose that does not relate in a significant way to the activities or affairs of the Trust;
 - (B) the Trust, at the Unitholder's request, had previously included a matter substantially the same as a matter covered by the requisition in an information circular relating to a meeting of Unitholders held within two years preceding the receipt of such requisition and the Unitholder failed to present the matter, in person or by proxy, at the meeting;
 - (C) substantially the same matter covered by the requisition was submitted to Unitholders in an information circular relating to a meeting of Unitholders held within two years preceding the receipt of such requisition and the matter covered by the requisition was defeated; or
 - (D) the rights conferred by this Section 10.2 are being abused to secure publicity.

- (c) *Failure to Call Meeting:* If there shall be no Trustee or if the Trustee does not, within 21 days after receiving the requisition, call a meeting (except where the grounds for not calling the meeting are one or more of those set forth in subsection 10.2(b) above), any Unitholder who signed the requisition or the Administrator, as the case may be, may call the meeting in accordance with the provisions of Article 10, *mutatis mutandis*.
- (d) *Reimbursement of Unitholder Expenses.* Unless the Unitholders resolve otherwise at a meeting called under subsection 10.2(b) above, the Trust shall reimburse the Unitholders for the expenses reasonably incurred by them in requisitioning, calling and holding such meeting.

10.3 Notice of Meeting of Unitholders

Notice of all meetings of the Unitholders shall be given or sent by the Trustee to:

- (a) each Unitholder at the address for such holder appearing in the applicable Register and given in the manner provided by Section 15.1; and
- (b) the Administrator, the Auditors and any other person required by Applicable Laws to be sent such notice,

provided that (notwithstanding the foregoing) such notice, in each case, is given in such manner as is prescribed by Applicable Laws and given not less than 21 nor more than 60 days before the meeting (or within such other time periods as required or permitted by Applicable Laws). The attendance of a Unitholder at a meeting (whether in person or by proxy) shall constitute a waiver of notice, or any defect therein, with respect to such meeting except where a Unitholder attends a meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting has not been lawfully called or convened. Notice of any meeting of Unitholders shall set out the time when, and the place where, such meeting is to be held and shall state the purposes of the meeting. Any adjourned meeting may be held as adjourned without further notice. The accidental omission to give notice to or the non-receipt of such notice by any Unitholders shall not invalidate any resolution passed at any such meeting.

10.4 Quorum; Chairman

A quorum for any meeting of Unitholders shall be two or more persons present in person and being Unitholders or representing, by proxy, Unitholders, and who hold in the aggregate not less than 25% of all votes entitled to be voted at the meeting. In the event of such quorum not being present at the appointed place on the date for which the meeting is called within 30 minutes after the time fixed for the holding of such meeting, the meeting, if convened on requisition of Unitholders, shall be terminated and, if otherwise called, shall stand adjourned to a day not less than 14 days later and to such place and time as may be determined by the chairman of the meeting. If at such adjourned meeting a quorum as above defined is not present, the Unitholders entitled to vote at such meeting and present either personally or by proxy shall form a quorum, and any business may be brought before or dealt with at such an adjourned meeting which might have been brought before or dealt with at the original meeting in accordance with the notice calling the same. The Trustee shall appoint the chairman of each meeting.

10.5 Voting

- (a) Only Unitholders of record shall be entitled to vote at a meeting of Unitholders, either in person or by proxy.

- (b) Every question submitted to a meeting, other than questions to be decided by Special Resolution, shall, unless a poll vote is demanded, be decided by a show of hands 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.
- (c) Any action taken or resolution passed in respect of any matter at a meeting of Unitholders shall be by Ordinary Resolution, unless the contrary is otherwise expressly provided under any specific provision of this Trust Indenture or required by Applicable Laws.
- (d) The chairman of any meeting of Unitholders shall not have a second or casting vote.

10.6 Record Dates

The Trustee may fix a date not more than 60 days prior to the date of any meeting of Unitholders or any distribution or any other action to be taken by the Trust, as a record date for the determination of Unitholders entitled to receive notice of and to vote at such meeting or any adjournment thereof or to receive such distribution or to be treated as Unitholders of record for purposes of such other action, as the case may be. Any Unitholder who was a Unitholder at the record date so fixed shall be entitled to receive notice of and vote at such meeting or any adjournment thereof, or to receive such distribution, or to be treated as a Unitholder of record for purposes of such other action, even though he has since that date disposed of his Units, and no person who becomes a Unitholder after that date shall be entitled to receive notice of and vote at such meeting or any adjournment thereof, or to receive such distribution, or to be treated as a Unitholder of record for purposes of such other action. 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 Business Day immediately preceding the date upon which notice of the meeting is given in accordance with Article 10.

10.7 Proxies

Whenever the vote or consent of Unitholders is required or permitted under this Trust Indenture, such vote or consent may be given either directly by the Unitholder or by a proxy in written form, electronic or other technologically enhanced form, or such other form as is acceptable to the Trustee acting reasonably. A proxy holder need not be a Unitholder.

If not contrary to Applicable Laws, the Trustee may adopt, amend or repeal such rules relating to proxies, including pertaining to the appointment of proxy holders and the solicitation, execution, validity, revocation and deposit of proxies, as it in its discretion from time to time determines and such rules may be contained in the Trustee's Regulations.

10.8 Mandatory Solicitation of Proxies

The Trustee shall solicit proxies from Unitholders in connection with all meetings of Unitholders. In connection therewith, the Trustee shall comply with all mandatory provisions of Applicable Laws applicable to the solicitation of proxies.

10.9 Resolution in Lieu of Meeting

A resolution signed in writing by Unitholders holding a proportion of all the outstanding votes entitled to be voted at a meeting of Unitholders, where such proportion is equal to or greater than the proportion of votes required to be voted in favour of such resolution at a meeting of Unitholders to approve that resolution, is as valid as if it had been passed at a meeting of Unitholders duly called and convened for the purpose of approving that resolution, provided that, if such written resolution is not a unanimous written resolution of the Unitholders, then in addition to the written resolution of the Unitholders, the Administrator Directors must have unanimously approved such resolution whether by written resolution or at a duly convened meeting of the Administrator Directors.

10.10 Voting of Units by Administrator

Nothing herein contained shall prevent or diminish the right of the Administrator or its affiliates or associates to vote any Units which may be beneficially owned by it or them in its or their own capacity in its or their discretion.

10.11 Binding Effect of Resolutions

Every Ordinary Resolution and every Special Resolution passed in accordance with the provisions of this Indenture at a meeting of Unitholders shall be binding upon all the Unitholders whether present at or absent from such meeting, and each and every Unitholder shall be bound to give effect to every such Ordinary Resolution and Special Resolution.

10.12 No Breach

Notwithstanding any provisions of this Indenture, the Unitholders shall not have the power to effect any amendment hereto which would require the Trustee to take any action or conduct the affairs of the Trust in a manner which would constitute a breach or default by the Trust or the Trustee under any agreement binding on or obligation of the Trust or the Trustee.

10.13 Resolutions Binding the Trustee

- (a) Unitholders shall be entitled to pass resolutions that will bind the Trustee only with respect to the following matters:
 - (i) the election, appointment or removal of the Trustee, in accordance with Sections 7.3 and 7.5;
 - (ii) as agent for the Unitholders, voting or instructing on the voting of any shares of the Administrator pursuant to the Voting Agreement, including with respect to the election, appointment or removal of the Administrator Directors;
 - (iii) the appointment or removal of the Auditors, in accordance with Article 17;
 - (iv) amendments of this Trust Indenture, in accordance with Article 9;
 - (v) the termination or dissolution of the Trust, in accordance with Section 11.2;
 - (vi) any matter referred to in subsection 8.4(b)(ii);

- (vii) the ratification of any Unitholder rights plan, distribution reinvestment plan, distribution reinvestment and Unit purchase plan or Compensation Plan, to the extent Unitholder approval is required under Applicable Laws; and
 - (viii) any other matter required by Applicable Laws to be submitted to Unitholders for approval.
- (b) Except with respect to the above matters set out in this Section 10.13, no action taken by the Unitholders or any resolution of the Unitholders at any meeting shall in any way bind the Trustee.
- (c) Any resolution of the type referred to in subsection 10.13(a) passed by Unitholders pertaining to, or otherwise directing, the manner in which any Subsidiary Securities are to be voted by the Trustee (or by the Administrator pursuant to the Administrative Services Agreement), or the manner in which the Trustee is to instruct on the voting of any shares of the Administrator, shall be deemed to be a direction to the Trustee (or, in the case of any Subsidiary Securities, to the Administrator, as applicable) to either: (i) vote (or cause to be voted) such Subsidiary Securities or shares of the Administrator, as applicable, in favour of or in opposition to; or (ii) to vote or withhold from voting (or cause to be voted or withheld from voting on) such Subsidiary Securities or shares of the Administrator, as applicable, in respect of, such matter in equal proportions to the votes cast by Unitholders in respect of the matter, and the Trustee (or the Administrator, as applicable) is hereby obligated to vote (or cause to be voted) or withhold from voting (or cause to be withheld from voting) the Subsidiary Securities or shares of the Administrator, as applicable, in favour of, in opposition to or in respect of such matter in accordance with such direction.

10.14 Nomination of Administrator Directors

- (a) Only persons who are nominated in accordance with the following procedures shall be eligible for election as Administrator Directors. Nominations of persons for election to the board of directors of the Administrator (the "**Board**") may be made at any annual meeting of Unitholders, or at any special meeting of Unitholders, if one of the purposes for which the special meeting was called was the election of Administrator Directors:
- (i) by or at the direction of the Board, including pursuant to a notice of meeting;
 - (ii) by or at the direction or request of one or more Unitholders pursuant to a requisition of the Unitholders made in accordance with the Trust Indenture; or
 - (iii) by any person (a "**Nominating Unitholder**") who (A) at the close of business on the date of the giving of the notice provided for below in this Section 10.14 and on the record date for notice of such meeting, is entered in the Register as a holder of one or more Units carrying the right to vote at such meeting or who beneficially owns Units that are entitled to be voted at such meeting; and (B) who complies with the notice procedures set forth below in this Section 10.14.
- (b) In addition to any other applicable requirements, for a nomination to be made by a Nominating Unitholder, the Nominating Unitholder must have given timely notice thereof to the Board in the manner prescribed by this Trust indenture. Furthermore, if such notice is made on a day which is not a Business Day or later than 5:00 p.m. (Toronto

Time) on a day which is a Business Day, then such notice shall be deemed to have been made on the subsequent day that is a Business Day.

- (c) To be timely, a Nominating Unitholder's notice to the Board must be made:
 - (i) in the case of an annual meeting of Unitholders, not less than 30 days prior to the date of the annual meeting of Unitholders; provided, however, that in the event that the annual meeting of Unitholders is to be held on a date that is less than 50 days after the date (the "**Notice Date**") on which the first public announcement of the date of the annual meeting was made, notice by the Nominating Unitholder may be made not later than the close of business on the tenth (10th) day following the Notice Date; and
 - (ii) in the case of a special meeting (which is not also an annual meeting) of Unitholders called for the purpose of electing Administrator Directors (whether or not called for other purposes), not later than the close of business on the fifteenth (15th) day following the day on which the first public announcement of the date of the special meeting of Unitholders was made.
- (d) To be in proper written form, a Nominating Unitholder's notice to the Board must set forth:
 - (i) as to each person whom the Nominating Unitholder proposes to nominate for election as an Administrator Director: (A) the name, age, business address and residential address of the person; (B) the principal occupation or employment of the person; (C) the class or series and number of Units which are controlled or which are owned beneficially or of record by the person as of the record date for the meeting of Unitholders (if such date shall then have been made publicly available and shall have occurred) and as of the date of such notice; and (D) any other information relating to the person that would be required to be disclosed in a dissident's proxy circular in connection with solicitations of proxies for election of Administrator Directors pursuant to applicable securities laws; and
 - (ii) as to the Nominating Unitholder giving the notice, any proxy, contract, arrangement, understanding or relationship pursuant to which such Nominating Unitholder has a right to vote any Units and any other information relating to such Nominating Unitholder that would be required to be made in a dissident's proxy circular in connection with solicitations of proxies for election of Administrator Directors pursuant to applicable securities laws.
- (e) No person shall be eligible for election as an Administrator Director unless nominated in accordance with the provisions of this Section 10.14; provided, however, that nothing in this Section 10.14 shall be deemed to preclude discussion by a Unitholder (as distinct from the nomination of Administrator Directors) at a meeting of Unitholders of any matter in respect of which it would have been entitled to submit to a vote pursuant to the terms and conditions contained in this Trust Indenture. The chairperson of the applicable meeting shall have the power and duty to determine whether a nomination was made in accordance with the procedures set forth in the foregoing provisions and, if any proposed nomination is not in compliance with such foregoing provisions, to declare that such defective nomination shall be disregarded.

- (f) For purposes of this Section 10.14, "public announcement" shall mean disclosure in a press release reported by a national news service in Canada, or in a document publicly filed by the Trust under its profile on the System of Electronic Document Analysis and Retrieval at www.sedar.com.
- (g) Notwithstanding the foregoing, the Board may, in its sole discretion, waive any requirement in this Section 10.14.

10.15 Unitholder Proposals

Subject to subsections (a) and (b), a registered holder or beneficial owner of Units may (i) submit written notice to the Trust of any matter that the person proposes to raise at an annual meeting of Unitholders (a "**Proposal**") and (ii) discuss at the meeting any matter with respect to which the person would have been entitled to submit a Proposal.

- (a) To be eligible to submit a Proposal, a person:
 - (i) must be, for at least the six-month period immediately before the day on which the person submits the Proposal, the registered holder or the beneficial owner of (i) at least 1% of the total number of outstanding Units, as of the day on which the person submits a Proposal, or (ii) Units whose fair market value, as determined at the close of business on the day before the person submits the Proposal, is at least \$2,000; or
 - (ii) must have the support of persons who, in the aggregate, and including or not including the person that submits the Proposal, have been, for at least the six-month period immediately before the day on which the person submits the Proposal, the registered holders or beneficial owners of (i) at least 1% of the total number of Units, as of the day on which the person submits the Proposal, or (ii) Units whose fair market value, as determined at the close of business on the day before the person submits the Proposal, is at least \$2,000.
- (b) A Proposal must be accompanied by the following information:
 - (i) the name and address of the person submitting the Proposal and the person's supporters, if applicable; and
 - (ii) the number of Units held or owned by the person submitting the Proposal and the person's supporters, if applicable, and the date the Units were acquired.
- (c) If requested by the Trust within 14 days of the receipt of the Proposal, a person who submits a Proposal must provide proof, within 21 days following the day on which the person receives the Trust's request, or if the request was mailed to the person, within 21 days after the postmark date stamped on the envelope containing the request, that the person meets the requirements set out in subsection 10.15(a).
- (d) The Trust shall set out the Proposal in its proxy circular delivered in connection with its annual meeting or attach the Proposal thereto.
- (e) If so requested by the person who submits the Proposal, the Trust shall include in, or attach to, its proxy circular delivered in connection with its annual meeting, a statement

in support of the Proposal by the person and the name and address of the person making the Proposal. The statement and Proposal so included must not exceed 500 words excluding the information required by subsection 10.15(b).

- (f) A Proposal may not include nominations for the election of Administrator Directors and a Unitholder shall not have the right to make nominations at the meeting, unless such nomination is made in accordance with the provisions of Section 10.14.
- (g) The Trust shall not be required to comply with subsections 10.15(d) and (e) if:
 - (i) the Proposal is submitted less than 90 days before the anniversary date of the notice of meeting that was sent to Unitholders in connection with the Trust's previous annual meeting of Unitholders;
 - (ii) it clearly appears that (A) the primary purpose of the Proposal is to enforce a personal claim or redress a personal grievance against the Trust, the Administrator, Administrator Directors, the officers of the Administrator, the Unitholders or other securityholders of the Trust, or (B) the Proposal does not relate in a significant way to the business or affairs of the Trust;
 - (iii) not more than two years preceding the receipt of such Proposal, the proposing person failed to present, in person or by proxy, at a meeting of Unitholders, a Proposal that, at the person's request, had been included in a proxy circular relating to a meeting of the Unitholders;
 - (iv) substantially the same proposal was submitted to Unitholders in a proxy circular relating to a meeting of the Unitholders held within five years preceding the receipt of the Proposal and the matter covered by the Proposal did not receive the required support at that meeting. For the purposes hereof, the required support for a Proposal is:
 - (A) 3% of the total number of Units voted, if the Proposal has been introduced at only one annual meeting of Unitholders;
 - (B) 6% of the total number of Units voted at the last meeting at which the matter was submitted to Unitholders, if the Proposal was introduced at two annual meetings of Unitholders; and
 - (C) 10% of the total number of Units voted at the last meeting at which the matter was submitted to Unitholders, if the Proposal was introduced at three or more annual meetings of Unitholders; or
 - (v) the rights conferred by this section are being abused to secure publicity.
- (h) If a person who submits a Proposal fails to continue to hold or own the number of Units referred to in subsection (a) up to and including the day of the meeting, the Trust is not required to set out in its proxy circular, or attach to it, any Proposal submitted by that person for any meeting held within two years following the date of the meeting.

- (i) Neither the Trust nor any person acting on its behalf will incur any liability to Unitholders or any other person by reason only of circulating a Proposal or statement in compliance with this Section 10.15.
- (j) If the Trust refuses to include a Proposal in its proxy circular, it shall, within 21 days of the later of receipt of the Proposal or proof of ownership under subsection 10.15(c), as the case may be, notify in writing the person submitting the Proposal of its intention to omit the Proposal from the Trust's proxy circular and of the reasons for the refusal.
- (k) On the application of a person submitting a Proposal who claims to be aggrieved by the Trust's refusal under subsection 10.15(j), a court may restrain the holding of the meeting to which the Proposal is sought to be presented and make any further order it thinks fit.
- (l) The Trust or any person claiming to be aggrieved by a Proposal may apply to a court for an order permitting the Trust to omit the Proposal from the proxy circular, and the court, if it is satisfied that subsection 10.15(g) applies, may make such order as it thinks fit.

10.16 Court Requisitioned Meetings

A Unitholder who is entitled to vote at a meeting of Unitholders may apply to a court to order a meeting of the Unitholders to be called, held, and conducted in the manner that the court directs, if: (i) it is impracticable to call the meeting within the time or in the manner in which those meetings are to be called pursuant to this Trust Indenture; (ii) it is impracticable to conduct the meeting in the manner required by this Trust Indenture; or (iii) the court thinks that the meeting should be called, held and conducted within the time or in the manner it directs for any other reason. Without restricting the generality of this Section 10.16, the court may order that the quorum required by this Trust Indenture be varied or dispensed with at a meeting called, held and conducted pursuant to this Section 10.16. A meeting called, held and conducted pursuant to this Section 10.16 is for all purposes a meeting of Unitholders duly called, held and conducted.

ARTICLE 11 TERMINATION

11.1 Term of the Trust

Subject to the other provisions of this Trust Indenture, the Trust shall continue for a term ending 21 years after the date of death of the last surviving issue of Her Majesty, Queen Elizabeth II, alive on September 7, 2012. For the purpose of terminating the Trust by such date, the Trustee shall commence to wind-up the affairs of the Trust 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 Trust.

11.2 Termination with the Approval of Unitholders

The Trust shall be wound-up or terminated if the Unitholders pass a Special Resolution, authorizing such wind-up or termination, at a meeting of Unitholders duly called for the purpose of considering the wind-up or termination of the Trust. As soon as is reasonably practicable following the passage of such Special Resolution, the Trustee shall commence to wind-up or terminate (as the case may be) the affairs of the Trust. Such Special Resolution may contain such directions to the Trustee as the Unitholders determine, including a direction to distribute Trust Property *in specie*.

11.3 Procedure Upon Termination

Forthwith upon being required to commence to wind-up or terminate the affairs of the Trust, the Trustee shall give notice of such wind-up or termination 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 of the Trust shall be closed.

11.4 Powers of the Trustee Upon Termination

After the date on which the Trustee is required to commence to wind-up or terminate the affairs of the Trust, the Trustee shall carry on no activities except for the purpose of winding-up or terminating (as the case may be) the affairs of the Trust 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 Trust Indenture.

11.5 Sale of Investments

After the date referred to in Section 11.4, the Trustee shall proceed to wind-up or terminate, as the case may be, the affairs of the Trust as soon as may be reasonably practicable and for such purpose shall, subject to any direction to the contrary in respect of a wind-up or termination authorized under Section 11.2, sell and convert into money the Trust Property and do all other acts appropriate to liquidate the Trust, and shall in all respects act in accordance with the directions, if any, of the Unitholders (in respect of a wind-up or termination authorized under Section 11.2). If the Trustee is unable to sell all or any of the Trust Property or other assets which comprise part of the Trust by the date set for wind-up or termination, the Trustee may distribute undivided interests in the remaining Trust Property or other assets directly to the Unitholders on a pro rata basis in accordance with their respective interest in the Trust as determined by the number of Units held by each such respective Unitholder, subject to Applicable Laws and receipt of necessary regulatory approvals.

11.6 Distribution of Proceeds

After paying, retiring or discharging or making provision for the payment, retirement or discharge of all known liabilities and obligations of the Trust and providing for an indemnity against any other outstanding liabilities and obligations, the Trustee shall distribute the remaining part of the proceeds of the sale of the Trust Property pro rata among the Unitholders in accordance with their respective interest in the Trust as determined by the number of Units held by each such respective Unitholder.

11.7 Further Notice to Unitholders

In the event that less than all of the Unitholders have surrendered their Units for cancellation within six (6) months after the time specified in the notice referred to in Section 11.3, the Trustee shall give further notice to the remaining Unitholders to surrender their Units for cancellation and if, within one (1) 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 the Units to receive their pro rata share of the remaining Trust Property, 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 may be entitled as aforesaid) or, in the discretion of the Trustee, the Trustee may pay such amounts into court in the province where the Trust has its head office (or to such other suitable government official or agency in the province where the Trust has its head office) whose receipt shall be a good release, acquittance and discharge of the obligations of the Trustee with respect to such amounts.

11.8 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 Trust Property after the date referred to in Section 11.4 and, after such sale, the sole obligation of the Trustee under this Trust Indenture shall be to collect, distribute and hold such proceeds in trust for distribution under this Article 11.

ARTICLE 12 LIABILITY OF TRUSTEE, ADMINISTRATOR AND UNITHOLDERS AND OTHER MATTERS

12.1 Acting on Behalf of the Trust

The Trustee, the Administrator and the directors, officers, employees, shareholders, consultants and agents of the Trust, the Trustee and the Administrator, as the case may be, in incurring any debts, liabilities or obligations, or taking or omitting any other actions for or in connection with the affairs of the Trust are, and shall be conclusively deemed to be, acting for and on behalf of the Trust, and not in their own personal capacities.

12.2 General Limitations of Liability

- (a) *Reliance on Experts:* The Trustee and Administrator shall be entitled to rely on, and shall not be liable for acting or failing to act, in good faith, in relation to any matter relating to the Trust where such action or failure to act is based upon, statements from, the opinion or advice of, or information from the Auditors, Counsel or any valuator, engineer, surveyor, appraiser or other expert (herein "**Experts**") where it is reasonable to conclude that the matter in respect of which such statements are made, or opinion or advice given, ought to be within the expertise of such Expert, provided that, with respect to the retention of Experts, the Trustee or Administrator have satisfied its Standard of Care.
- (b) *Good Faith Reliance:* Neither the Trustee nor the Administrator shall be liable to any Beneficiary or other persons in relying in good faith upon statements or information from, the opinion or advice of, or instruments or directions given by an officer, director, trustee, employee or agent of the Administrator or of an affiliate of the Trust or by a broker, a custodian or any Beneficiary, or by such other parties as may be authorized to give instructions or directions to the Trustee. If required by the Trustee, the Administrator shall file with the Trustee a certificate of incumbency setting forth the names and titles of parties authorized to give instructions or directions to the Trustee together with specimen signatures of such persons and the Trustee shall be entitled to rely on the latest such certificate of incumbency filed with it. The Trustee, the Administrator and each affiliate of the Trust and their respective directors, officers, trustees, shareholders, employees and agents shall not be liable to any Beneficiary or other persons for, and shall each be fully protected from liability in respect to, acting upon any instrument, certificate or paper believed by it, in good faith, to be genuine and signed or presented by the proper person or persons.
- (c) *Tax Matters:* None of the Trust, the Administrator, or the Trustee shall be accountable or liable to any Beneficiary by reason of any act or acts of any such person consistent with the carrying out of any obligations or responsibilities imposed upon any such person under the Tax Act.

12.3 Limitation of Liability and Indemnity of Trustee

- (a) *Limit on Liability:* In addition to those limits on the liability of the Trustee set forth in Section 12.2, the Trustee, as trustee of the Trust, shall to the greatest extent permitted by Applicable Laws, have no liability whatsoever (whether direct or indirect, absolute or contingent) in tort, contract or otherwise to any Beneficiary or any other person and no resort shall be had to its property or assets for satisfaction of any obligation, liability or claim against it as Trustee of the Trust, and the Trust Property shall only be subject to levy or execution in respect thereof, where such obligation, liability or claim arises out of or in connection with, directly or indirectly, the Trust Property or the conduct and undertaking of the activities and affairs of the Trust, including: (i) any action or failure to act by the Trustee in respect to its duties, responsibilities, powers, authorities and discretion under this Indenture (including failure to compel in any way any trustee to redress any breach of trust or any failure by the Administrator to perform its duties under, or delegated to it under, this Indenture, the Administrative Services Agreement, or any other contract); (ii) any error in judgment; (iii) any matters pertaining to the administration or termination of the Trust; (iv) any Environmental Liabilities; (v) any action or failure to act by the Administrator or any other person to whom the Trustee has, as permitted hereby, delegated any of its duties hereunder; and (vi) any depreciation of, or loss to, the Trust incurred by reason of the retention or sale of any Trust Property; unless any of the foregoing arises from or out of the willful misconduct, fraud or gross negligence by the Trustee, or, including for greater certainty, the breach by the Trustee of the Standard of Care (which for the purposes of this section 12.3 does not include ordinary inadvertence in the acts or omissions of the Trustee).
- (b) *Indemnity:* If, in circumstances where the Trustee is not liable pursuant to the provisions of Sections 12.2 and 12.3(a), the Trustee is held liable to any person, or its property or assets are subject to levy, execution or other enforcement resulting in personal loss to the Trustee, then the Trustee shall be entitled to indemnity and reimbursement out of the Trust Property, in accordance with Section 12.6, to the full extent of such liability and the costs of any action, suit or proceeding or threatened action, suit or proceeding, including the reasonable fees and disbursements of Counsel, and this indemnity shall survive the termination of this Indenture or the resignation of the Trustee.

12.4 Limitation of Liability and Indemnity of Administrator

- (a) *Limit on Liability:* In addition to those limits on the liability of the Administrator set forth in Section 12.2, the Administrator shall to the greatest extent permitted by Applicable Law, have no liability whatsoever (whether direct or indirect, absolute or contingent) in tort, contract or otherwise to any Beneficiary or any other person, and no resort shall be had to its property or assets for satisfaction of any obligation, liability or claim against it, and the Trust Property shall only be subject to levy or execution in respect thereof, where such obligation, liability or claim arises out of or in connection with, directly or indirectly, the Trust Property or the conduct and undertaking of the activities and affairs of the Trust, including: (i) any action or failure to act by the Administrator in respect to its duties, responsibilities, powers, authorities and discretion under this Indenture or the Administrative Services Agreement; (ii) any error in judgment; (iii) any matters pertaining to the administration or termination of the Trust; (iv) any Environmental Liabilities; (v) any action or failure to act by any person to whom the Administrator has, as permitted hereby, delegated any of its duties hereunder; and (vi) any depreciation of, or loss to, the Trust incurred by reason of the retention or sale of any Trust Property;

unless any of the foregoing arises from or out of the willful misconduct, fraud or gross negligence by the Administrator or the breach by the Administrator of the Standard of Care prescribed by Section 13.3.

- (b) *Indemnity*: If, in circumstances where the Administrator is not liable pursuant to the provisions of Sections 12.2 and 12.4(a), the Administrator is held liable to any person, or its property or assets are subject to levy, execution or other enforcement resulting in personal loss to the Administrator, then the Administrator shall be entitled to indemnity and reimbursement out of the Trust Property, in accordance with Section 12.6, to the full extent of such liability and the costs of any action, suit or proceeding or threatened action, suit or proceeding, including the reasonable fees and disbursements of Counsel.

12.5 No Beneficiary Liability

- (a) *No Beneficiary Liability*: No Unitholder, Beneficial Unitholder, holder of Other Trust Securities or annuitant (collectively, a "**Beneficiary**"), in its capacity as such, shall be subject to any liability whatsoever (whether direct or indirect, absolute or contingent) in tort, contract or otherwise, and no resort shall be had to, nor shall recourse or satisfaction be sought from, the private property of any Beneficiary for any liability whatsoever in connection with the following (collectively, "**Trust Liabilities**"): (i) the Trust Property 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, liabilities, activities or affairs of the Trust; (iii) any actual or alleged act or omission of the Trustee, the Administrator or any other person in respect of the activities or affairs of the Trust (whether or not authorized by or pursuant to this Trust Indenture); or (iv) except as otherwise provided in this Indenture, any taxes, levies, imposts or charges or fines, penalties or interest in respect thereof payable by the Trust, or by the Trustee or the Administrator (on behalf of the Trust), in connection with the activities or affairs of the Trust, provided that each Beneficiary is responsible for (and shall not be indemnified from) any liability for taxes assessed against him by reason of or arising out of his ownership of Units or Other Trust Securities, and liabilities in respect of the breach of investment and other restrictions related to ownership of the Units to which such Beneficiary may be subject as a result of Applicable Law, contract or otherwise, and other similar liabilities. No Beneficiary, in its capacity as such, shall be liable to indemnify the Trustee or any other person with respect to any Trust Liabilities. The Trustee hereby waives to the maximum extent possible any right to indemnification which it may have against any Beneficiary under any Applicable Laws.
- (b) *Indemnity*: If, in circumstances where there is to be no liability on a Beneficiary pursuant to the provisions of subsection 12.5(a), a Beneficiary, in its capacity as such, shall be held liable to any person, or its property or assets are subject to levy, execution or other enforcement resulting in loss to such Beneficiary, then the Beneficiary shall be entitled to indemnity and reimbursement out of the Trust Property, in accordance with Section 12.6, to the full extent of such liability and the costs of any action, suit or proceeding or threatened action, suit or proceeding, including the reasonable legal fees and disbursements of its Counsel.

12.6 Indemnification and Reimbursement

- (a) Each person who is, or shall have been a Trustee, an Administrator or a Beneficiary (collectively, an "**Indemnified Party**") shall be indemnified, saved harmless and reimbursed by the Trust out of the Trust Property (to the full extent thereof) in respect of any and all liabilities, costs, charges, damages and expenses (including judgments, fines, penalties, amounts paid in settlement, and reasonable legal fees and disbursements) incurred in connection with, or arising directly or indirectly out of, any action, suit or proceeding to which any such Indemnified Party may be subject or made a party to, if pursuant to subsections 12.3(b), 12.4(b) or 12.5(b) such Indemnified Party is entitled to indemnification. An Indemnified Party shall not be entitled to satisfaction of any right of indemnity or reimbursement granted herein, or otherwise existing at law, except out of the Trust Property, and no Beneficiary or Trustee or former Trustee shall be personally liable to any Indemnified Party with respect to any claim for such indemnity or reimbursement.
- (b) For purposes of this Article 12: (i) "action, suit or proceeding" shall include every action, suit or proceeding (whether civil, criminal or other), or other claim; (ii) the rights of indemnification conferred hereby shall extend to any threatened action, suit or proceeding; and (iii) advances in respect of the right to indemnification may be made by the Trustee, in its discretion, against costs, expenses and fees incurred in respect of the matter or matters as to which indemnification is claimed.
- (c) The foregoing right of indemnification shall not be exclusive of any other rights to which the Indemnified Party may be entitled as a matter of law or which may be lawfully granted to such person and the provisions of this Section 12.6 are severable, and if any provisions hereof shall for any reason be determined invalid or ineffective, the remaining provisions of this Indenture relating to indemnification and reimbursement shall not be affected thereby. This indemnity shall survive the resignation or replacement of the Trustee and the Administrator.

12.7 Further Limitation on Indemnification

Notwithstanding any other provisions of this Indenture:

- (a) There shall be no recourse to the Trust Property to reimburse any person for transfer or other taxes or fees payable on the transfer of Units or any income, fees or other taxes assessed against any person by reason of ownership or disposition of Units.
- (b) Whether any such losses or damages are foreseeable or unforeseeable, the Trustee shall not be liable under any circumstances whatsoever for any:
 - (i) breach by any other party of securities law or other rule of any securities regulatory authority;
 - (ii) lost profits of any party; or
 - (iii) special, indirect, incidental, consequential, exemplary, aggravated or punitive losses or damages incurred by any party.

12.8 Force Majeure

Except for the payment obligations of the Administrator contained herein, neither party shall be liable to the other, or held in breach of this Indenture, if prevented, hindered, or delayed in the performance or observance of any provision contained herein by reason of act of God, riots, terrorism, acts of war, epidemics, governmental action or judicial order, earthquakes, or any other similar causes (including, but not limited to, mechanical, electronic or communication interruptions, disruptions or failures). Performance times under this Indenture shall be extended for a period of time equivalent to the time lost because of any delay that is excusable under this Section.

12.9 Extended Meanings

For the purposes of Sections 12.2 to 12.6 (inclusive) references to the Trustee and the Administrator shall be deemed to include their respective directors, officers, shareholders, agents and employees; provided, for greater certainty, that for purposes of these provisions neither the Administrator nor any sub-delegate thereof shall be considered an agent of the Trustee.

12.10 Exculpatory Clauses in Instruments

In respect of any obligations or liabilities being incurred by the Trust, or the Trustee or the Administrator on behalf of the Trust, the Trustee and the Administrator shall make all reasonable commercial efforts to include as a specific term of such obligations or liabilities, except so far as the Trustee, Administrator or Beneficiary is entering into such obligations or liabilities in its personal capacity, a contractual provision substantially to the following effect:

The parties hereto acknowledge that the [Trustee/the Administrator] is entering into this agreement solely in its capacity as [trustee/administrator] on behalf of the Trust and the obligations of the Trust hereunder shall not be binding upon [the Trustee/Administrator] other than in its capacity as such nor shall it be binding upon any Unitholder, beneficial Unitholder or any "annuitant" as defined in the Trust Indenture of the Trust, such that any recourse against the Trust, the [Trustee/Administrator] or any Beneficiary in any manner in respect of any indebtedness, obligation or liability arising hereunder or arising in connection herewith or from the matters to which this agreement relates, including, without limitation, claims based on negligence or otherwise tortious behaviour, shall be limited to, and satisfied only out of, the Trust Property as defined in the Trust Indenture of the Trust made as of September 7, 2012, as from time to time amended, supplemented or restated.

The omission of such a provision from any such document or instrument shall not render the Trustee, the Administrator or a Beneficiary otherwise liable to any person, nor shall the Trustee, the Administrator or any Beneficiary be liable for such omission. If, notwithstanding this provision, the Trustee, the Administrator or any Beneficiary shall be held liable to any person by reason of the omission of such statement from any such agreement, undertaking or obligation such Trustee, the Administrator or Beneficiary shall be entitled to indemnity and reimbursement out of the Trust Property to the full extent of such liability.

12.11 Execution of Instruments and Apparent Authority

Any instrument executed in the name of the Trust, by the Trustee as trustee of the Trust, or on behalf of the Trust by the Administrator, shall constitute and shall be deemed to constitute a valid obligation of the Trust enforceable in accordance with its terms as if executed by the Trustee.

12.12 Interests of Consultants and Agents

Subject to any agreement to the contrary (including the Administrative Services Agreement) between the Trust and any consultant or agent of the Trust (including the Administrator), a consultant or agent of the Trust may, while so engaged and so long as it complies with this Indenture and any other applicable agreements:

- (a) acquire, hold and dispose of any property, real or personal, for its account even if such property is of a character which could be held by the Trust, and may exercise all rights of an owner of such property as if it were not a consultant or agent, as the case may be;
- (b) have business interests of any nature and may continue such business interests for its own account including the rendering of professional or other services and advice to other persons for gain; and
- (c) acquire, hold and sell Units or Other Trust Securities in its own capacity or as an affiliate of or fiduciary for any other person, and may exercise all rights of a holder thereof as if it were not a consultant or agent of the Trust, provided that it may not make use of any specific confidential or material undisclosed information for its own benefit or advantage that, if generally known, might reasonably be expected to significantly affect the market price of any of the Units or Other Trust Securities;

and such activities shall be deemed not to conflict with its duties as a consultant or agent of or to the Trust. Except as otherwise specifically agreed with the Trust, no consultant or agent of the Trust shall have any duty to present to the Trust any investment opportunity which it may receive in any capacity other than as consultant or agent of the Trust, and its failure to present to the Trust any such investment opportunity shall not make such consultant or agent liable in law or in equity, to pay, or account to the Trust, or to any Unitholder whether acting individually or on behalf of himself and other Unitholders as a class, for any benefit, profit or advantage derived therefrom.

ARTICLE 13

DELEGATION AND MATTERS PERTAINING TO THE ADMINISTRATOR

13.1 Right to Delegate

- (a) Except as expressly prohibited by law, the Trustee may in its discretion delegate to any person such authority and such powers of the Trustee as are granted to it hereunder, as is necessary or desirable to carry out and effect the actual management and administration of the duties of the Trustee under this Trust Indenture, without regard to whether such authority is normally delegated by trustees.
- (b) Without limiting the generality of the foregoing, the Trustee is hereby authorized to appoint the Administrator to act as the administrator of the Trust pursuant to the terms of the Administrative Services Agreement or any other instrument of appointment, and the Trustee may delegate to such person (and in addition to those matters specifically granted

or delegated to the Administrator in this Indenture) any of those duties of the Trustee hereunder that the Trustee deems appropriate. Without limiting the generality of the foregoing, the Trustee may grant broad discretion to the Administrator to administer and manage the day-to-day operations of the Trust, to act as agent for the Trust, to execute documents on behalf of the Trust, and to make decisions on behalf of the Trust. The Administrator shall have the powers and duties as may be expressly provided for herein and in the Administrative Services Agreement and may be given, without limitation, the power to further delegate management and administration of the Trust, as well as the power to retain and instruct such appropriate experts or advisors to perform those duties and obligations which it, in its opinion, is not best suited to perform. Notwithstanding any provision contained herein, the Trustee shall not have the authority to delegate to the Administrator its rights, powers, authorities and duties to act on behalf of the Trust and be responsible for:

- (i) the issue, certification, exchange or cancellation of Units on or after the Closing;
 - (ii) the maintenance of registers of Unitholders on or after the Closing;
 - (iii) making the distribution of payments or property to Unitholders and statements in respect thereof;
 - (iv) any mailings to Unitholders of materials which are to be so mailed;
 - (v) the execution of an amendment to the Trust Indenture or any amended and restated Trust Indenture following any amendment thereto; and
 - (vi) any matters ancillary or incidental to any of those set forth in paragraphs (i) through (v) above.
- (c) Notwithstanding any other provision of this Indenture or the Administrative Services Agreement, the Administrator shall be a body corporate, which shall at all times during which it is the Administrator:
- (i) be incorporated under the laws of Canada or of a Province of Canada; and
 - (ii) be resident in Canada for the purposes of the Tax Act.

13.2 Specific Present Delegation of Power and Authority to Administrator

The Trustee hereby delegates to the Administrator full and absolute right, power and authority to undertake, perform and provide, for and on behalf of the Trust, all acts, duties and responsibilities as the Administrator considers, in its discretion, necessary or desirable in connection with, or for completion of the IPO and the transactions contemplated by and disclosed in the Prospectus, including:

- (a) preparing, approving, executing and delivering, on behalf of the Trust, the Prospectus and any amendments to the Prospectus in such form as the Administrator considers necessary or desirable;
- (b) preparing, approving, executing and delivering on behalf of the Trust (1) the underwriting agreement, (2) all agreements relating to the acquisitions of, or other investments in, the assets and other properties that will comprise the Trust Property immediately following

Closing, and (3) all instruments, contracts and other documents determined by the Administrator to be necessary or desirable for execution by the Trust between the date hereof and the Closing Date, in each case in such form and containing such terms and conditions as the Administrator may approve; and

- (c) preparing, approving, executing and delivering such other contracts, documents, instruments and agreements, and making all applications and filings with any Governing Authorities (including any listing or other application with any stock exchange(s), any filings pursuant to the *Competition Act* (Canada), and all other documents or instruments relating to the foregoing), and taking such other actions as the Administrator considers appropriate.

13.3 Standard of Care

In carrying out all authorities, powers, rights, responsibilities and duties hereunder or under the Administrative Services Agreement, including the Indenture Conferred Duties, the Administrator shall discharge such authorities, powers, responsibilities and duties in accordance with the Standard of Care.

13.4 Grant of Power and Authority

The Administrator is hereby granted and, where applicable, delegated full and absolute right, power and authority to undertake, perform and provide, for and on behalf of the Trust, all of the Indenture Conferred Duties and to take and do, for and on behalf of the Trust, in connection with the provision of all such Indenture Conferred Duties, all such actions and all such things which the Administrator deems appropriate, in its discretion, including the right, power and authority to retain and instruct such appropriate experts or advisors to perform those duties and obligations granted to the Administrator which it, in its opinion, is not qualified to perform, to execute and deliver contracts, leases, licenses, and other documents, instruments and agreements, to make all applications and filings with Governmental Authorities, and to take such other actions as the Administrator considers appropriate, in the name of and on behalf of the Trust. The Administrator may execute, for and on behalf of the Trustee of the Trust, as its agent or attorney in fact, any instrument or document which the Administrator considers appropriate, in its discretion, in connection the provision of the Indenture Conferred Duties.

13.5 Terms and Conditions Pertaining to Performance of Duties

The terms, conditions and limitations applicable in respect to the exercise and performance, by the Administrator, of the Indenture Conferred Duties shall be supplemented by the Administrative Services Agreement, and the terms of the Administrative Services Agreement shall be deemed to have applied in all respects, from the effective date of this Indenture, to the Administrator in the exercise and performance of the Indenture Conferred Duties as fully as if such rights, restrictions and limitations were set forth herein. Subject to subsection 13.1(c), in the case of any conflict between the terms, conditions and limitations contained in this Indenture pertaining to the exercise and performance, by the Administrator, of the Indenture Conferred Duties and those contained in the Administrative Services Agreement, those contained in the Administrative Services Agreement shall govern.

13.6 Determinations of the Administrator Binding

All determinations of the Administrator which are made in good faith with respect to any Indenture Conferred Duties relating to the Trust shall be final and conclusive and shall be binding upon the Trust and all Unitholders, Beneficial Unitholders and, where the Unitholder or Beneficial Unitholder is a registered retirement savings plan, registered retirement income fund, registered education savings plan,

deferred profit sharing plan, registered disability savings plan, tax-free savings account, or registered pension fund or plan (all as defined in the Tax Act), or such other fund or plan registered under the Tax Act, upon past, present or future fund, plan or account beneficiaries and fund, plan or account holders), and Units shall be issued and/or sold on the condition and understanding that any and all such determinations shall be binding as aforesaid.

13.7 Performance of Obligations

In the event that the Administrator is unable or unwilling to perform its obligations hereunder or under the Administrative Services Agreement, or there is no Administrator, the Trustee shall either perform all obligations of the Administrator hereunder and thereunder or shall be entitled to engage another person that is duly qualified to perform such obligations.

13.8 No Partnership or Joint Venture

Neither the Trust, Trustee nor Unitholders are and they shall be deemed not to be partners or joint venturers with the Administrator or each other and nothing herein shall be construed so as to impose any liability as such on the Administrator. The Administrator shall perform the Indenture Conferred Duties as an independent contractor for and on behalf of the Trust (with its duties and obligations in respect thereto as expressly provided for herein and in the Administrative Services Agreement), and it is acknowledged and agreed that only where the Administrator undertakes execution of contracts or other instruments for and on behalf of the Trust may the Administrator then be acting as an agent of the Trust. In no circumstances shall the Administrator be, or be deemed to be, a fiduciary or trustee for any person, whether or not a party hereto, in connection with the discharge by the Administrator of such Indenture Conferred Duties except as expressly provided herein and in the Administrative Services Agreement.

13.9 Termination of Administrator as a Party Hereto

The Administrator shall continue as a party hereto for the purposes of providing the Indenture Conferred Duties as Administrator until the earlier of the date of termination of the Trust and such time as the Administrator ceases to be appointed as the administrator of the Trust, including through assignment or termination of the Administrative Services Agreement, at which time and without any further action required whatsoever on the part of the Trust, the Trustee, the Unitholders or the Administrator: (a) the Administrator shall immediately and unconditionally be deemed to have ceased to be a party hereto (as administrator hereunder) for all purposes; and (b) all obligations and duties of the Administrator, as Administrator hereunder shall immediately and unconditionally terminate and the Administrator shall be deemed to be released from all obligations and duties hereunder from and after such time (except in the case of an assignment to an affiliate of the Administrator, unless otherwise agreed to by the Administrator Directors); provided however that such Administrator, as outgoing Administrator, shall continue to be entitled to (i) payment of any amounts owing by the Trust to the Administrator, in its capacity as Administrator, which accrued prior to ceasing to be a party hereto, and (ii) the benefit of any indemnity and limitation of liability provisions, and other provisions which by their nature continue to have effect or application, whether set out herein or in the Administrative Services Agreement; and further provided that each of the Trust and the Trustee, at the Trust's cost, shall execute and deliver such further documents and instruments and do all such acts and things as the Administrator may reasonably request in order to effectively carry out, better evidence, give effect to or perfect the intent of this Section 13.9. The terms of this Section 13.9 shall not affect any liabilities of the Administrator, as Administrator in respect of or in any way arising under or out of this Indenture or the Administrative Services Agreement which have accrued prior to any cessation of the Administrator, as Administrator in respect of the Administrative Services Agreement or this Indenture. The provisions of this Section 13.9 shall apply *mutatis mutandis* to

any person who is a successor in the office of Administrator and who has become a party to this Indenture by virtue of the Administrative Services Agreement.

ARTICLE 14 SUPPLEMENTAL INDENTURES

14.1 Provision for Supplemental Indentures

The Trustee may, subject to the provisions hereof, and it shall, when so directed in accordance with the provisions hereof, execute and deliver indentures or instruments supplemental hereto, which thereafter shall form part hereof, for any one or more or all of the following purposes:

- (a) modifying or amending any provisions of this Trust Indenture in the circumstances set forth in Article 9 where the Trustee may do so without the consent, approval or ratification of the Unitholders, any other person or any Governing Authority; and
- (b) modifying or amending any provisions of this Trust Indenture where the modification or amendment has been consented to, approved or ratified by some or all of the Unitholders (as the case may be) to the extent required in accordance with the provisions of this Trust Indenture.

ARTICLE 15 NOTICES

15.1 Notices to Unitholders

- (a) Any notice, communication or other document required to be given or sent to Unitholders under this Trust Indenture or by Applicable Laws, shall be given or sent by personal service or through ordinary mail addressed to each registered holder at his or her last address appearing on the Registers or in any other manner from time to time permitted by Applicable Laws, including internet based or other electronic communications; provided that if any such notice or communication shall have been mailed and either prior to or subsequent to such mailing (but prior to delivery of such notice or communication) regular mail service shall have been interrupted by reason of a strike, lockout or other work stoppage, actual or threatened, involving postal employees, such notice or communication shall be deemed to have been received 48 hours after 12:01 a.m. (Toronto time) on the day following the resumption of normal mail service; provided further that during the period that regular mail service shall be interrupted, notice may be given by personal service, or by internet based or other electronic communication (provided done so in accordance with all requirements of Applicable Laws), or by publication twice in the Report on Business section of the National Edition of The Globe and Mail or similar section of any other newspaper having national circulation in Canada; provided further that if there is no newspaper having national circulation, then such notice may be given by publishing twice in the business section of a newspaper in each city where the Register(s) or a branch register is maintained.
- (b) For the avoidance of doubt, in connection with any notice, communication or other documents permitted by Applicable Laws to be given or sent by internet based or other electronic communication, the requirements of such Applicable Laws in respect of such delivery shall be complied with in all respects, including where required, receipt by the

Trust of the prior consent of the recipient to the delivery of such notice, communication or other document in electronic or other technologically enhanced format.

- (c) Any notice given in the manner provided in subsection 15.1(a) shall be deemed to have been given and delivered: (i) in the case of notice given by mail, at the end of the third day following that on which the letter or other document was mailed; or (ii) in the case of notice given by publication, after publication of such notice twice in the designated newspaper or newspapers; or (iii) in the case of notice given by internet based or other electronic communication, on the later of (A) the Business Day on which such notice is given and (B) the earliest day and at the earliest time (as applicable) as is permissible in accordance with the law permitting the giving of notice via such internet based or other electronic communication. In proving notice was mailed, it shall be sufficient to prove that such letter or other document was properly addressed, stamped and mailed.

15.2 Notice to the Trustee or Administrator:

Any notice or other document or written communication to be given to the Trustee or the Administrator shall be addressed and sent as follows:

If to the Trustee:

Computershare Trust Company of Canada
100 University Avenue, 9th Floor
Toronto, Ontario M5J 2Y1

Attention: Manager, Corporate Trust
Facsimile: (888) 453-0330

And notice shall also be sent to:

Computershare Trust Company of Canada
600, 530 – 8th Avenue S.W.
Calgary, Alberta T2P 3S8

Attention: Manager, Corporate Trust
Facsimile: (403) 267-6598

If to the Administrator:

Crius Energy Administrator Inc.
Suite 3400, One First Canadian Place
Toronto, Ontario M5X 1A4

Attention: President
Facsimile: (416) 863-1716

and shall be deemed to have been given on the date of delivery or, if mailed, five (5) days from the date of mailing or, if sent by facsimile transmission, shall be deemed to have been given on the first Business Day thereafter. If any such notice or communication shall have been mailed and if regular mail service shall be interrupted by reason of a strike, lockout or other work stoppage, actual or threatened, involving postal employees, such notice or communication shall be deemed to have been received 48 hours after

12:01 a.m. (Toronto time) on the day following the resumption of normal mail service, provided that during the period that regular mail service shall be interrupted any notice or other communication shall be delivered or given by personal delivery, facsimile transmission or other means of prepaid, transmitted or recorded communication.

15.3 Failure to Give Notice

The failure by the Trustee or Administrator, 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 neither the Trustee nor the Administrator shall be liable to any Unitholder, Beneficial Unitholder or Beneficiary for any such failure.

15.4 Joint Holders

Any notice, communication or other document given or sent, pursuant to this Article, to any one of several joint Unitholders shall be deemed to be effectively given or sent to the other joint holders.

15.5 Service of Notice

Any notice, communication or document given or sent to a Unitholder pursuant to this Article shall, notwithstanding the death, bankruptcy or incapacity of such Unitholder, and whether or not the Trustee has notice of such death, bankruptcy or incapacity, be deemed to have been fully given or sent and shall be deemed to have been sufficiently given or sent to all persons having an interest in the Units concerned.

ARTICLE 16 RECORDS AND FINANCIAL INFORMATION

16.1 Records

The Trustee shall prepare and maintain or cause to be prepared and maintained records containing (a) this Trust Indenture; (b) minutes of meetings and resolutions of Unitholders; (c) resolutions of the Trustee; and (d) the Registers. The Trust shall also prepare and maintain adequate accounting records. All such records shall be kept at the head office of the Trust or at such other place as the Trustee thinks fit.

16.2 Information Available to Unitholders

Each Unitholder has the right to obtain, on demand and without fee, from the head office of the Trust: (a) a copy of this Trust Indenture and any amendments thereto; and (b) the minutes of the meetings of Unitholders and any written resolutions of Unitholders passed in lieu of holding a meeting of Unitholders, and will also be entitled to examine a list of the Unitholders, subject to providing an affidavit to the Administrator, all to the same extent and upon the same conditions, *mutatis mutandis*, as those which apply to shareholders governed by the *Business Corporations Act* (Ontario).

16.3 Fiscal Year

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

16.4 Financial Disclosure

The Trustee will send (or make available if sending is not required by Applicable Laws) to Unitholders:

- (a) 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, the annual consolidated financial statements of the Trust for the fiscal year ended immediately prior to such annual meeting, together with comparative consolidated financial statements for the preceding fiscal year, if any, and the report of the Auditors thereon; and
- (b) notwithstanding the foregoing, if the Trust is a "reporting issuer" as defined in the Securities Act, the annual consolidated financial statements of the Trust together with comparative consolidated financial statements for the preceding fiscal year, if any, and the report of the Auditors thereon referred to in Section 17.5 on or before any date prescribed by Applicable Laws, and the unaudited quarterly consolidated financial statements of the Trust for a fiscal quarter, together with comparative consolidated financial statements for the same fiscal quarter in the preceding fiscal year, if any, on or before any date prescribed by Applicable Laws;

such financial statements shall be prepared in accordance with Accounting Principles; provided that such statements and the obligation to deliver such statements may vary from such principles to the extent required to comply with Applicable Laws or to the extent permitted by applicable securities regulatory authorities.

16.5 Taxation Information

On or before 90th day of each year, or such earlier date as may be required under Applicable Laws, the Trustee shall provide to Unitholders who received distributions from the Trust in the prior calendar year, such information regarding the Trust required by Canadian law to be submitted to Unitholders for income tax purposes to enable Unitholders to complete their tax returns in respect of the prior calendar year.

ARTICLE 17 AUDITORS

17.1 Qualification of Auditors

The Auditors shall be a recognized firm of chartered accountants which has an office in Canada and which is independent of the Trust, Trustee and the Administrator.

17.2 Appointment of Auditors

Ernst & Young LLP, Chartered Accountants, are hereby appointed as the initial Auditors of the Trust to hold such office until the first annual meeting of Unitholders. The Auditors will be appointed at each succeeding annual meeting of Unitholders by Ordinary Resolution. The Auditors will receive such remuneration as may be approved by the Trustee.

17.3 Change of Auditors

The Auditors may at any time be removed by the Trustee with the approval of Unitholders by way of Ordinary Resolution at a meeting of Unitholders duly called for that purpose and, upon such removal of the Auditors as aforesaid, new auditors may be appointed by the Trustee with the approval of the Unitholders by means of an Ordinary Resolution at a meeting duly called for that purpose. A vacancy created by the removal of the Auditors as aforesaid may be filled at the meeting of Unitholders at which the Auditors are removed or, if not so filled, may be filled pursuant to Section 17.4 below.

17.4 Filling Vacancy

The Administrator shall enter into agreements with the Auditors that will permit the Auditors to at any time voluntarily resign, and in such event the Trustee shall forthwith fill the vacancy with such new auditors as are approved by the Administrator, and such new auditors shall act as auditors of the Trust for the unexpired term of the predecessor auditors of the Trust.

17.5 Reports of Auditors

The Administrator shall enter into agreements with the Auditors that will require the Auditors to audit the accounts of the Trust at least once in each year and a report of the Auditors with respect to the annual financial statements of the Trust shall be provided to each Unitholder as set out in Section 16.4.

ARTICLE 18
UNITHOLDER REMEDIES

18.1 Dissent and Appraisal Rights

- (a) Subject to subsection 18.1(e), a Unitholder entitled to vote at a meeting of the Unitholders of the Trust who complies with this Section 18.1 may dissent if the Trust resolves to:
 - (i) sell, lease, exchange or transfer all or substantially all of the Trust Property;
 - (ii) carry out a going-private transaction; or
 - (iii) amend this Trust Indenture to:
 - (A) add, change or remove any provision restricting or constraining the issue, transfer or ownership of the Units;
 - (B) add, change or remove any restriction on the business that the Trust may carry on;
 - (C) add, change or remove the rights, privileges, restrictions or conditions attached to the Units;
 - (D) in the event that the Trust creates classes of Units, increase the rights or privileges of any class of Units having rights or privileges equal or superior to the class of Units held by the dissenting Unitholder;
 - (E) in the event that the Trust creates classes of Units, create a new class of Units equal to or superior to the class of Units held by the dissenting Unitholder;
 - (F) in the event that the Trust creates classes of Units, make any class of Units having rights or privileges inferior to the class of Units held by the dissenting Unitholder superior to that class; or
 - (G) in the event that the Trust creates classes of Units, effect an exchange or create a right of exchange in all or part of a class of Units into the class of Units held by the dissenting Unitholder.

- (b) In addition to any other right the Unitholder may have, a Unitholder who complies with this Section 18.1 is entitled, when the action approved by the resolution from which the Unitholder dissents becomes effective, to be paid by the Trust the fair value of the Units held by the Unitholder in respect of which the Unitholder dissents, determined as of the close of business on the day before the resolution was adopted.
- (c) A dissenting Unitholder may only claim under this Section 18.1 with respect to all the Units held by the dissenting Unitholder on behalf of any one beneficial owner and registered in the name of the dissenting Unitholder.
- (d) A dissenting Unitholder shall send to the Trust, at or before any meeting of Unitholders at which a resolution referred to in subsection 18.1(a) is to be voted on, a written objection to the resolution, unless the Trust did not give notice to the Unitholder of the purpose of the meeting and of the Unitholder's right to dissent.
- (e) The Trust shall, within 10 days after the Unitholders adopt the resolution, send to each Unitholder who has filed the objection referred to in subsection 18.1(d) notice that the resolution has been adopted, but such notice is not required to be sent to any Unitholder who voted for the resolution or who has withdrawn its objection.
- (f) A dissenting Unitholder shall, within 20 days after receiving a notice under subsection 18.1(e) or, if the Unitholder does not receive such notice, within 20 days after learning that the resolution has been adopted, send to the Trust a written notice containing:
 - (i) the Unitholder's name and address;
 - (ii) the number of, and class/series of, Units in respect of which the Unitholder dissents; and
 - (iii) a demand for payment of the fair value of such Units.
- (g) A dissenting Unitholder shall, within 30 days after the sending of a notice under subsection 18.1(f), send the certificates representing the Units in respect of which the Unitholder dissents to the Trust or its transfer agent.
- (h) A dissenting Unitholder who fails to comply with subsection 18.1(g) has no right to make a claim under this Section 18.1.
- (i) The Trust or its transfer agent shall endorse on any certificate received under subsection 18.1(g) a notice that the holder is a dissenting Unitholder under this Section 18.1 and shall return forthwith the certificates to the dissenting Unitholder.
- (j) On sending a notice under subsection 18.1(f), a dissenting Unitholder ceases to have any rights as a Unitholder other than the right to be paid the fair value of its Units as determined under this Section 18.1 except where:
 - (i) the Unitholder withdraws that notice before the Trust makes an offer under subsection 18.1(k);
 - (ii) the Trust fails to make an offer in accordance with subsection 18.1(k) and the dissenting Unitholder withdraws the notice; or

- (iii) the Trust revokes the resolution which gave rise to the dissent rights under this Section 18.1, and to the extent applicable, terminate the related agreements or abandon a sale, lease or exchange to which the resolution relates,

in which case the Unitholder's rights are reinstated as of the date the notice under subsection 18.1(f) was sent.

- (k) The Trust shall, not later than 7 days after the later of the day on which the action approved by the resolution is effective or the day the Trust received the notice referred to in subsection 18.1(f), send to each dissenting Unitholder who has sent such notice a written offer to pay for the dissenting Unitholder's Units in an amount considered by the Board to be the fair value, accompanied by a statement showing how the fair value was determined.
- (l) Every offer made under subsection 18.1(k) for Units of the same class or series shall be on the same terms.
- (m) The Trust shall pay for the Units of a dissenting Unitholder within 10 days after an offer made under subsection 18.1(k) has been accepted, but any such offer lapses if the Trust does not receive an acceptance thereof within 30 days after the offer has been made.
- (n) Where the Trust fails to make an offer under subsection 18.1(k), or if a dissenting Unitholder fails to accept an offer, the Trust may, within 50 days after the action approved by the resolution is effective or within such further period as a court may allow, apply to a court to fix a fair value for the Units of any dissenting Unitholder.
- (o) If the Trust fails to apply to a court under subsection 18.1(n), a dissenting Unitholder may apply to a court for the same purpose within a further period of 20 days or within such further period as a court may allow.
- (p) The court where an application under subsection 18.1(n) or 18.1(o) may be made is a court having jurisdiction in the place where the Trust has its registered office.
- (q) A dissenting Unitholder is not required to give security for costs in an application made under subsection 18.1(n) or 18.1(o).
- (r) On an application under subsection 18.1(n) or 18.1(o):
 - (i) all dissenting Unitholders whose Units have not been purchased by the Trust shall be joined as parties and bound by the decision of the court; and
 - (ii) the Trust shall notify each affected dissenting Unitholder of the date, place and consequences of the application and of the dissenting Unitholder's right to appear and be heard in person or by counsel.
- (s) On an application to a court under subsection 18.1(n) or 18.1(o), the court may determine whether any other person is a dissenting Unitholder who should be joined as a party, and the court shall fix a fair value for the Units of all dissenting Unitholders.
- (t) A court may in its discretion appoint one or more appraisers to assist the court to fix a fair value for the Units of the dissenting Unitholders.

- (u) The final order of a court in the proceedings commenced by an application under subsection 18.1(n) or 18.1(o) shall be rendered against the Trust in favour of each dissenting Unitholder and for the amount of the Units as fixed by the court.
- (v) A court may in its discretion allow a reasonable rate of interest on the amount payable to each dissenting Unitholder from the date the action approved by the resolution is effective until the date of payment.
- (w) If subsection 18.1(y) applies, the Trust shall, within ten days after the pronouncement of an order under subsection 18.1(u), notify each dissenting Unitholder that it is unable lawfully to pay dissenting Unitholders for their Units.
- (x) If subsection 18.1(y) applies, a dissenting Unitholder, by written notice delivered to the Trust within thirty days after receiving a notice under subsection 18.1(w), may
 - (i) withdraw their notice of dissent, in which case the Trust is deemed to consent to the withdrawal and the Unitholder is reinstated to their full rights as a Unitholder; or
 - (ii) retain a status as a claimant against the Trust, to be paid as soon as the Trust is lawfully able to do so or, in a liquidation, to be ranked subordinate to the rights of creditors of the Trust but in priority to its Unitholders.
- (y) A Trust shall not make a payment to a dissenting Unitholder under this Section 18.1 if there are reasonable grounds for believing that
 - (i) the Trust is or would after the payment be unable to pay its liabilities as they become due; or
 - (ii) the realizable value of the Trust's assets would thereby be less than the aggregate of its liabilities.

18.2 **Oppression Remedy**

- (a) Any registered holder or beneficial owner of Units or former registered holder or beneficial owner of Units or any securityholder, Administrator Director or officer of the Administrator or any other person who in the discretion of the court is a proper person to make an application (each, a "**Complainant**") may apply to a court under the provisions of this Section 18.2.
- (b) If, on application, the court is satisfied that, in respect of the Trust:
 - (i) any act or omission of the Trust effects a result;
 - (ii) the business or affairs of the Trust or any entity in which it directly or indirectly owns Subsidiary Securities ("**Subsidiary**") are or have been carried on or conducted in a manner; or
 - (iii) the powers of the Board or Administrator are or have been exercised in a manner that is oppressive or unfairly prejudicial to or that unfairly disregards the interests of any Unitholder, securityholder, creditor, Administrator Director or officer of

the Administrator, the court may make an order to rectify the matters complained of by the Complainant.

- (c) In connection with an application by a Complainant under subsection 18.2(a) and without limiting subsection 18.2(b), a court may make any interim or final order it thinks fit including, without limiting the generality of the foregoing,
 - (i) an order restraining the conduct complained of;
 - (ii) an order appointing a receiver or receiver-manager;
 - (iii) an order to regulate the affairs of the Trust or the Administrator or those of a Subsidiary by amending this Trust Indenture or the articles or by-laws of a Subsidiary;
 - (iv) an order directing an issue or exchange of securities;
 - (v) an order appointing Administrator Directors or directors of a Subsidiary in place of or in addition to all or any of the Administrator Directors or directors then in office;
 - (vi) an order directing the Trust or any other person to purchase securities of a holder of securities;
 - (vii) an order directing the Trust or any other person to pay a securityholder any part of the monies that the securityholder paid for securities;
 - (viii) an order varying or setting aside a transaction or contract to which the Trust, Administrator or a Subsidiary is a party and compensating the Trust, Administrator or a Subsidiary or any other party to the transaction or contract;
 - (ix) an order requiring the Trust, Administrator or a Subsidiary, within a time specified by the court, to produce to the court or an interested person financial statements or an accounting in such form as the court may determine;
 - (x) an order compensating an aggrieved person;
 - (xi) an order directing rectification of the Register or Registers or other records of the Trust, Administrator or a Subsidiary;
 - (xii) an order directing an investigation to be made; and
 - (xiii) an order requiring the trial of any issue.
- (d) If an order made under this Section 18.2 directs an amendment of this Trust Indenture or to the constating documents of a Subsidiary, then:
 - (i) the Administrator Directors shall request the Trust, such Subsidiary and all directors, Administrator Directors, officers of the Administrator and other persons responsible for management to take all steps necessary to carry out that direction; and

- (ii) no other amendment to this Trust Indenture or such constating documents shall be made without the consent of the court, until a court otherwise orders.
- (e) A Unitholder is not entitled to dissent under this Trust Indenture or other applicable law if an amendment to this Trust Indenture or such constating documents is effected under this Section 18.2.
- (f) A Complainant may apply in the alternative for an order to wind up the Trust or liquidate and dissolve a Subsidiary and a court may so order if the court is satisfied that it is just and equitable that such winding up, liquidation or dissolution occur.

ARTICLE 19 GENERAL

19.1 Trust Property to be Kept Separate

The Trustee shall maintain the Trust Property separate from all other property in its possession and not commingled, and to the extent that all or part of the Trust Property is placed in the possession of the Administrator or any other person on behalf of the Trust, the Trustee shall take such reasonable steps to ensure that such persons shall also keep such Trust Property separate from all other property of such persons and not commingled.

19.2 Trustee May Not Hold Units

- (a) No Trustee may be a Unitholder in its or his capacity as Trustee (except pursuant to a repurchase of Units pending their cancellation).
- (b) No Trustee may be a Unitholder in its personal capacity provided, however, that a Trustee may hold Units for the account of its clients generally and in other capacities, without any duty to account to the Unitholders therefor.

For greater certainty and notwithstanding the foregoing, affiliates of any Trustee may be Unitholders.

19.3 Privacy

The parties acknowledge that the Trustee may, in the course of providing services hereunder, collect or receive financial and other personal information about such parties and/or their representatives, as individuals, or about other individuals related to the subject matter hereof, and use such information for the following purposes:

- (a) to provide the services required under this Indenture and other services that may be requested from time to time;
- (b) to help the Trustee manage its servicing relationships with such individuals;
- (c) to meet the Trustee's legal and regulatory requirements; and
- (d) if Social Insurance Numbers are collected by the Trustee, to perform tax reporting and to assist in verification of an individual's identity for security purposes.

Each party acknowledges and agrees that the Trustee may receive, collect, use and disclose personal information provided to it or acquired by it in the course of this Indenture for the purposes described

above and, generally, in the manner and on the terms described in its privacy code, which the Trustee shall make available on its website or upon request, including revisions thereto. Further, each party agrees that it shall not provide or cause to be provided to the Trustee any personal information relating to an individual who is not a party to this Agreement unless that party has assured itself that such individual understands and has consented to the aforementioned uses and disclosures.

19.4 U.S. Securities and Exchange Matters

The Trust confirms that as at the date of execution of this agreement it does not have a class of securities registered pursuant to Section 12 of the *U.S. Securities Exchange Act* or have a reporting obligation pursuant to Section 15(d) of the *U.S. Securities Exchange Act*. The Trust covenants that in the event that: (a) any class of its securities shall become registered pursuant to Section 12 of the *U.S. Securities Exchange Act* or the Trust shall incur a reporting obligation pursuant to Section 15(d) of the *U.S. Securities Exchange Act*; or (b) any such registration or reporting obligation shall be terminated by the Trust in accordance with the *U.S. Securities Exchange Act*, the Trust shall promptly deliver to the Trustee an Officers' Certificate (in a form provided by the Trustee) notifying the Trustee of such registration or termination and such other information as the Trustee may require at the time. The Trust acknowledges that the Trustee is relying upon the foregoing representation and covenants in order to meet certain SEC obligations with respect to those clients who are filing with the SEC.

19.5 Representation regarding Third Party Interests

Each party to this Indenture (in this paragraph referred to as a "**representing party**") hereby represents to the Trustee that any account to be opened by, or interest to held by, the Trustee in connection with this Indenture, for or to the credit of such representing party, either: (a) is not intended to be used by or on behalf of any third party; or (b) is intended to be used by or on behalf of a third party, in which case such representing party hereby agrees to complete, execute and deliver forthwith to the Trustee a declaration in the Trustee's prescribed form or in such other form as may be satisfactory to it, as to the particulars of such third party.

19.6 Execution and Effect of Restated Trust Indenture

A restated Trust Indenture, setting forth the terms of this Trust Indenture, as amended to the time of execution, may be executed at any time or from time to time by the Trustee and such restated Trust Indenture as so executed shall thereafter be effective and may thereafter be referred to in lieu of this Trust Indenture as so amended; provided, however, that no such execution of a restated Trust Indenture shall be deemed to constitute a termination of the Trust or this Trust Indenture.

19.7 Consolidations

The Trustee may prepare consolidated copies of the Trust Indenture as it may from time to time be amended or amended and restated and may certify the same to be a true consolidated copy of the Trust Indenture, as amended or amended and restated.

19.8 Severability

The provisions of this Trust Indenture are severable and if any provisions are in conflict with any Applicable Laws, the conflicting provisions shall be deemed never to have constituted a part of this Trust Indenture and shall not affect or impair any of the remaining provisions thereof. If any provision of this Trust Indenture 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 Trust Indenture in any jurisdiction.

19.9 Successors and Assigns

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

19.10 Counterparts

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

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IN WITNESS WHEREOF the parties have hereunto executed this Trust Indenture as of the day and year first above written.

**COMPUTERSHARE TRUST COMPANY
OF CANADA**

as trustee of

CRIUS ENERGY TRUST

(signed) "Beatriz Fedozzi"

Beatriz Fedozzi

Corporate Trust Officer

(signed) "Anna Szczepankiewicz"

Anna Szczepankiewicz

Corporate Trust Officer

CRIUS ENERGY ADMINISTRATOR INC.

(signed) "Michael Fallquist"

Michael Fallquist

President and Chief Executive Officer

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