

**TRUST DECLARATION**

This Trust Declaration made effective the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

**BETWEEN:**

[CORPORATION]  
(the "Corporation")

- and -

[TRUSTEE]  
(the "Trustee")

**WHEREAS:**

- A. The Corporation has granted or will grant up to \_\_\_\_ undivided interest units in the Lands described herein;
- B. The Corporation has agreed to convey title to the Lands to the Trustee and does hereby transfer, set over and assign all of its right title and interest in the Lands to the Trustee to be held by the Trustee, in trust for the Corporation, subject to the rights of the Co-Owners and subject to the terms and conditions set forth herein;
- C. The Trustee has agreed to deal with the assets and undertakings subject to its administration in accordance with the terms and conditions set forth herein;
- D. All things necessary have been done and performed to make the Undivided Interests, when authenticated by the Trustee and granted as in this Trust Declaration provided, legal, valid and binding obligations of the Corporation with the benefit and subject to the terms of this Trust Declaration and to make this Trust Declaration valid and binding in accordance with its and their terms.

**NOW THEREFORE THIS TRUST DECLARATION WITNESSES** and it is hereby agreed and declared as follows:

**ARTICLE 1 - INTERPRETATION**

**Section 1.1 - Definitions**

In this Trust Declaration, unless there is something in the subject matter or context inconsistent therewith:

"Acknowledgement of Ownership" means the written acknowledgement executed by the Trustee as evidence of ownership of an undivided interest in the Lands;

"Co-Owners" means the Persons from time to time entered in the Register as co-owners of the undivided interests in the Lands;

"Co-Owners' Requisition" means any instrument in writing signed by any Co-Owner requiring the Trustee to take such action or proceeding as the Co-Owner may be authorized pursuant to this Trust Declaration and the Co-ownership Agreement to so require of the Trustee;

"Co-Ownership Agreement" means the agreement registered against the title to the Lands in priority to this Trust Deed which shall govern the relationship of all owners of the Lands including the Corporation and the Co-Owners;

"Corporation" means [CORPORATION] and its successors or assigns;

"Lands" means those lands legally described on Schedule "A" attached hereto;

“Permitted Encumbrances” means:

- (a) reservations, limitations, provisos and conditions expressed in any original grant from the Crown and statutory exceptions to title;
- (b) liens for Property Taxes not yet due;
- (c) easements, utility rights-of-way, public ways, or similar grants which do not in the aggregate materially and adversely impair the Lands;
- (d) defects or irregularities of title affecting the Lands which are of a minor nature and, in the aggregate, do not materially impair the use of the Lands or materially impair the rights of the Co-Owners or which the Trustee is willing to accept as not being materially or adversely prejudicial to the interests of the Co-Owners;
- (e) any lease of the Lands;
- (f) the Co-ownership Agreement; and
- (g) the Trust Declaration;

“Person” means an individual, a partnership, a corporation, a trust, an unincorporated organization, a government or any department or agency thereof, and the heirs, executors, administrators or other legal representatives of an individual, and words importing persons have a similar meaning;

“Property Taxes” means all present and future taxes, rates, duties, levies and assessments whatsoever, including, without limitation, assessments for local- improvement and sewer charges, whether municipal, regional, provincial or federal, charged upon the whole or any part of the Lands or upon the Corporation in respect thereof, other than taxes imposed in respect of the income of the Corporation, including, without limitation, income, profit, capital gain and excess profit taxes;

“Register” means the register of Co-Owners kept by the Trustee as contemplated in Section 2.1 hereof;

“this Trust Declaration”, “these presents”, “herein”, “hereof”, “hereby” and similar expressions mean and refer to this Trust Declaration and include any deed, indenture or instrument which is supplemental or ancillary hereto or in implement hereof or thereof; and the expressions “Article”, “Section”, “Subsection”, “Clause”, “Subclause” or “Schedule” followed by a number mean and refer to the specified Article, Section, Subsection, Clause, Subclause or Schedule of this Trust Declaration; and

“Trustee” means [TRUSTEE] and its successors for the time being in the trusts hereby declared and provided for.

### **Section 1.2 - Interpretation**

In this Trust Declaration, except as otherwise expressly provided or unless the context otherwise requires:

- (a) the division of this Trust Declaration into Articles, Sections, Subsections, Clauses, Subclauses and Schedules, the insertion of headings and the provision of a table of contents are for convenience of reference only and shall not affect the construction or interpretation of this Trust Declaration;
- (b) Schedule “A” is specifically incorporated into and forms part of this Trust Declaration;
- (c) words importing the singular number include the plural and vice versa;
- (d) words importing gender include the neuter, feminine and masculine genders;
- (e) all references to dollar amounts are expressed in terms of lawful money of Canada; and
- (f) reference to any statute or any provision thereof shall be deemed to be a reference to such statute or provision, as the case may be, as amended, re-enacted or replaced from time to time.

Time shall be of the essence of this Trust Declaration.

### **Section 1.3 - Applicable Law**

This Trust Declaration shall be governed by and construed in accordance with the laws of the Province of \_\_\_\_\_ and the federal laws of Canada applicable therein and shall be treated in all respects as \_\_\_\_\_ contracts.

## **ARTICLE 2 - REGISTRATION, TRANSFER, EXCHANGE AND OWNERSHIP**

### **Section 2.1 - Register**

The Trustee shall cause to be kept, with respect to the undivided interests of the Co-Owners, the Register at the principal office of the Trustee in \_\_\_\_\_, \_\_\_\_\_. The Trustee shall enter in such Register the name and latest known address of each Person who is or has been a Co-Owner and the particulars of the undivided interest held by such Person.

### **Section 2.2 - Transferee Entitled to Registration**

The transferee of an undivided interest, after:

- (a) presentment thereof to the Trustee at the principal office of the Trustee in \_\_\_\_\_, \_\_\_\_\_ bearing or accompanied by an instrument of transfer in form and execution satisfactory to the Trustee, or such endorsement as is permitted by law, in each case signed by the Holder or his executors, administrators, successors or other legal representatives; and
- (b) compliance with such reasonable requirements, if any, as the Trustee may lawfully prescribe and, in any event, with all other conditions in that behalf prescribed by law;

shall be entitled to be recorded on the Register as the owner of such undivided interest.

### **Section 2.3 - Inspection of Register and Lists of Co-Owners**

The Register shall at all reasonable times be open for inspection by the Corporation or any Co-Owner.

The Trustee, from time to time, shall, at the request of the Corporation, furnish the Corporation with a list of the names and addresses as set forth in the Register of the Co-Owners of each undivided interest.

### **Section 2.4 - Ownership of Undivided Interests**

Unless otherwise required by law, the Person in whose name any undivided interest is registered and in whose name the Acknowledgement of Authentication has been issued shall for all purposes of this Trust Declaration be and be deemed to be owner thereof and the rights conferred thereby and the exercise thereof shall be made only to or upon the order in writing of such Person.

Neither the Corporation nor the Trustee shall be bound to take notice of or see to the performance or observance of any duty owed to a third Person (whether under a trust, express, implied or constructive, in respect of any undivided interest or otherwise) by the registered Co-Owner or any Person whom the Corporation or the Trustee treat, as permitted or required by law, as the Co-Owner of such undivided interest and may transfer such undivided interest on the direction of the Person so treated or registered as the Co-Owner thereof, whether named as trustee or otherwise, as though that Person were the beneficial owner thereof.

The Corporation and the Trustee may treat the Co-Owner of any undivided interest as the owner thereof, without actual production of the undivided interest or Acknowledgement of Ownership.

### **Section 2.5 - Charges for Transfers and Exchanges**

The Person requesting any exchange or transfer shall reimburse the Trustee or the Corporation for the Trustee's fees in respect thereof and for any stamp tax or other governmental charge as a condition precedent to such transfer or exchange.

## ARTICLE 3 - GRANT

### Section 3.1 - Disposition of Trust Property

The Trustee shall hold the Lands in trust for the Co-Owners. While not in default of its obligations hereunder, the Co-Owners shall be entitled to full rights of ownership of the Lands, including possession and the right to use and enjoy same and may give written directions to the Trustee from time to time, as the trustee and holder of the legal title to the Lands, concerning the management and administration of the Lands and, subject to the terms of the Co-Ownership Agreement, the Trustee shall comply with such directions.

### Section 3.2 - Direction

The Corporation hereby irrevocably directs the Trustee to hold title to the Lands in accordance with the provisions of the Co-Ownership Agreement from and after the date hereof.

### Section 3.3 - Acceptance of Trust Terms

The Trustee hereby accepts the direction of the Corporation and covenants and agrees to hold and administer the Lands in accordance with the provisions hereof.

### Section 3.4 - Disposition of Income from the Lands

Unless otherwise directed by the Corporation to the contrary and provided that the Corporation has met all of its obligations to the Trustee as set forth herein, during the term of the trusts hereof the Trustee shall pay or transfer the net income arising from the Lands to the Corporation.

### Section 3.5 - Trustee's Remuneration and Expense

Except in the case of a new Trustee appointed by Extraordinary Resolution of the Co-Owners, the Corporation covenants to pay to the Trustee from time to time reasonable remuneration for its services hereunder and shall pay or reimburse the Trustee, upon its request, for all reasonable expenses, disbursements and advances incurred or made by the Trustee in the administration or execution of the trusts hereby created (including the reasonable fees and disbursements of its solicitors and all other advisors not regularly in its employ), until all duties of the Trustee under the trusts hereof shall be finally and fully performed, except any such expense, disbursement or advance as may arise from its willful default, negligence or bad faith. Any amount due under this Section 3.5 shall bear interest at a rate per annum equal to the sum of \_\_\_\_\_ percent (\_\_\_%) above the prime rate from time to time quoted by \_\_\_\_\_ or its successors for commercial loans made in Canadian dollars in Canada. Such interest shall accrue, in the case of the remuneration of the Trustee and disbursements incurred by it for purchases made or services rendered by others in connection with the performance by the Trustee of its duties hereunder, from and after the expiration of forty-five (45) days from the date of presentment of the invoice therefor.

All amounts so payable and the interest thereon shall be a charge on the Lands secured by this Trust Declaration and the Trustee shall have a lien therefor upon the Lands and the proceeds thereof in priority to any other interest protected by this Trust Declaration.

## ARTICLE 4 - SATISFACTION AND DISCHARGE

### Section 4.1 - Cancellation and Destruction

All Certificates of Ownership shall, forthwith after exercise and completion of the transfer contemplated thereby or after expiry, be cancelled and delivered to the Trustee. All Certificates of Ownership cancelled or required to be cancelled under this or any other provision of this Trust Declaration may, subject to applicable law, be destroyed by or under the direction of the Trustee.

## ARTICLE 5 - CONCERNING THE TRUSTEE

### Section 5.1 - Standard of Care

The Trustee, in exercising its powers and discharging its duties hereunder, shall:

- (a) act honestly and in good faith with a view to the best interests of the Corporation and the Co-Owners, and
- (b) exercise the care, diligence and skill of a reasonably prudent trustee.

The Trustee shall be liable for its willful default, negligence and bad faith.

**Section 5.2 - Conditions Precedent to Action by Trustee**

Subject only to Section 5.1, the obligation of the Trustee to commence or continue any act, action or proceeding for the purpose of enforcing any rights of the Trustee or of the Co-Owners hereunder shall be conditional upon the Co-Owners furnishing, when required by notice in writing by the Trustee, sufficient funds to commence or continue such act, action or proceeding and indemnity reasonably satisfactory to the Trustee to protect and hold harmless the Trustee against the expenses and liabilities to be incurred thereby and any loss or damage it may suffer by reason thereof, except such as may arise from its willful default, negligence or bad faith.

None of the provisions contained in this Trust Declaration 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 indemnified as required herein.

The Trustee may, before commencing or at any time during continuance of any act, action or proceeding referred to in this Article 5, require the Co-Owners at whose instance it is acting to deposit with the Trustee the Undivided Interests held by them respectively, for which Undivided Interests the Trustee shall issue receipts.

**THIS IS A 9-PAGE DOCUMENT with a 1-page schedule.**