

RIOCAN REAL ESTATE INVESTMENT TRUST

**SECOND AMENDED AND RESTATED
DECLARATION OF TRUST
MADE AS OF JUNE 2, 2020**

TABLE OF CONTENTS

ARTICLE I THE TRUST DEFINITIONS	1
1.1 Definitions and Interpretation	1
1.2 Name	4
1.3 Use of Name	5
1.4 Places of Business	5
1.5 Nature of the Trust	5
1.6 Applications to Court	5
ARTICLE II TERMS AND REMUNERATION OF TRUSTEES	6
2.1 Number	6
2.2 Term of Office	6
2.3 Qualifications of Trustees	6
2.4 Election of Trustees	6
2.4.1 Nomination of Trustees	6
2.5 Resignation, Removal and Death of Trustee	8
2.6 Vacancies	9
2.7 Successor and Additional Trustees	9
2.8 Compensation and Other Remuneration	9
2.9 Officers of the Trust	10
2.10 Independent Trustees	10
2.11 Chairperson of the Trustees	10
2.12 Lead Trustee	10
ARTICLE III TRUSTEE'S POWERS AND DUTIES	11
3.1 General Powers	11
3.2 Specific Powers and Authorities	11
3.3 Further Powers of the Trustees	14
3.4 Standard of Care	14
3.5 Reliance Upon Trustees	15
3.6 Determinations of Trustees Binding	15
3.7 Conflict of Interest	15
ARTICLE IV INVESTMENT RESTRICTIONS	18
4.1 Fundamental Restrictions	18
4.2 Permitted Borrowing	21
4.3 Registered Investment	22
4.4 Application of Investment Restrictions	22
4.5 Regulatory Matters	22
ARTICLE V TRUST EQUITY INTERESTS	22
5.1 Units	22
5.2 Ranking of Units	23
5.2.1 Preferred Units	23
5.3 Equity Interests Non-Assessable	24
5.4 No Pre-Emptive Rights	24
5.5 Fractional Units	24

5.6	Legal Ownership of Assets of the Trust	24
5.7	Allotment and Issue	25
5.8	Rights, Warrants and Options	25
5.9	Commissions and Discounts	25
5.10	Transferability	25
5.11	Certificates	25
5.12	Certificate Fee	25
5.13	Form of Certificate	26
5.14	Equity Interest Unit Register and Transfer Ledgers to be Maintained	26
5.15	Entry on Register	26
5.16	Limitation on Non-Resident Ownership	26
5.17	Transfer of Units	27
5.18	Successors in Interest to Unitholders	28
5.19	Equity Interests Held Jointly or in Fiduciary Capacity	28
5.20	Performance of Trusts	28
5.21	Lost Certificates	28
5.22	Death of Unitholders	29
5.23	Unclaimed Distributions	29
5.24	Repurchase of Equity Interests	29
5.25	Take-Over Bids	29
ARTICLE VI MEETINGS OF UNITHOLDERS		33
6.1	Annual Meeting	33
6.2	Other Meetings	33
6.3	Notice of Meeting of Unitholders	34
6.4	Unitholder Proposals	35
6.5	Quorum; Chairperson	37
6.6	Voting	38
6.7	Matters on which Unitholders may Vote	38
6.8	Voting Units Held By Trust	39
6.9	Record Dates	40
6.10	Court Requisitioned Meetings	40
6.11	Proxies	41
6.12	Meetings by Telephone, Electronic or Other Communications Facility	42
ARTICLE VII MEETINGS OF TRUSTEES		42
7.1	Trustees May Act Without Meeting	42
7.2	Notice of Meeting	42
7.3	Quorum	42
7.4	Voting at Meetings	43
7.5	Meetings by Telephone or Electronic Means	43
ARTICLE VIII DELEGATION OF POWERS		43
8.1	The Investment Committee	43
8.2	The Compensation Committee	44
8.3	The Audit Committee	44
8.4	Additional Committees and Powers That May Not Be Delegated	45

ARTICLE IX UNITHOLDER REMEDIES.....	45
9.1 Dissent and Appraisal Rights.....	45
9.2 Oppression Remedy	49
ARTICLE X DISTRIBUTIONS.....	50
10.1 Computation of Income	50
10.2 Distributions Payable	51
10.3 Automatic Reinvestment.....	51
10.4 Income Tax Matters	52
10.5 Designation of Taxable Dividends, Taxable Capital Gains and Foreign Income..	52
10.6 Definitions.....	52
ARTICLE XI FEES AND EXPENSES.....	52
11.1 Expenses	52
11.2 Payment of Real Property and Brokerage Commissions.....	52
11.3 Property Management, Leasing and Financing Fees	52
11.4 Indemnification of Unitholders for Transfer Taxes	53
ARTICLE XII AMENDMENTS TO THE DECLARATION OF TRUST	53
12.1 Amendments by the Trustees.....	53
12.2 Ratifying Amendments to Declaration of Trust.....	53
12.3 Amendments by Unitholders	54
12.4 Two-Thirds Unitholder Vote	54
ARTICLE XIII TERMINATION OF THE TRUST	54
13.1 Duration of the Trust.....	54
13.2 Termination by Unitholders.....	55
13.3 Effect of Termination.....	55
ARTICLE XIV LIABILITIES OF THE TRUSTEES AND OTHERS.....	55
14.1 Liability and Indemnification of the Trustees, Officers and Employees	55
14.2 Liability of Trustees, Officers and Employees	55
14.3 Reliance upon Advice.....	56
14.4 Liability of Unitholders and Others	56
ARTICLE XV GENERAL	57
15.1 Execution of Instruments	57
15.2 Manner of Giving Notice	57
15.3 Failure to Give Notice.....	58
15.4 Trust Auditors	58
15.5 Fiscal Year	58
15.6 Reports to Unitholders and Statements of Units Held	58
15.7 Trust Assets to be Kept Separate	58
15.8 Trustees May Hold Equity Interests	58
15.9 Right to Inspect Documents and Records of the Trust	58
15.9.1 Information Available to Unitholders and other Securityholders.....	59
15.9.2 Affidavits	59
15.9.3 Use of Information.....	60
15.10 Consolidations.....	60

15.11	Counterparts	60
15.12	Execution and Effect of Restated Declaration of Trust	60
15.13	Severability	60
15.14	Headings for Reference Only.....	60
15.15	Governing Law	60

RIOCAN REAL ESTATE INVESTMENT TRUST
AMENDED AND RESTATED DECLARATION OF TRUST

THIS SECOND AMENDED AND RESTATED DECLARATION OF TRUST made in Toronto, Ontario as of the 2nd day of June, 2020.

RECITAL

WHEREAS the Trust was established for the principal purpose of providing persons who may become the holders of Equity Interests with an opportunity to invest in an entity owning and holding a diversified portfolio of primarily income-producing real property investments;

AND WHEREAS at an annual and special meeting of the Unitholders held on June 17, 2015, the Unitholders voted to approve the First Amended and Restated Declaration of Trust (the “**First Amended and Restated Declaration of Trust**”);

AND WHEREAS the Trustees wish to further amend and restate the First Amended and Restated Declaration of Trust in the manner provided herein;

AND WHEREAS, for greater certainty, this Second Amended and Restated Declaration of Trust shall not be deemed to constitute a termination of the Trust or a resettlement of the Trust’s amended and restated declaration of trust or of the Trust;

DECLARATION

NOW THEREFORE, the Trustees hereby confirm that they agree to hold in trust as trustees any and all property, real, personal or otherwise, tangible or intangible, which has been at the date hereof or is hereafter transferred, conveyed or paid to them as such trustees and all rents, income, profits and gains therefrom for the benefit of the Unitholders hereunder in accordance with and subject to the express provisions of this Declaration of Trust, to wit:

ARTICLE I
THE TRUST DEFINITIONS

1.1 Definitions and Interpretation

In this Declaration of Trust, words in the singular number include the plural and words in the plural number include the singular, and the masculine includes the feminine and neuter. In this Declaration of Trust, except where the context otherwise requires:

“**Adjusted Unitholders’ Equity**” means, at any time, the aggregate of the amount of Unitholders’ equity of the Trust and the amount of accumulated amortization of income properties recorded in the books and records of the Trust, calculated in accordance with generally accepted accounting principles;

“**affiliate**” with relation to any person means an associate or an affiliated, controlled or subsidiary company of such person, all such terms (except person) having the meaning ascribed thereto by National Instrument 45-106 – *Prospectus and Registration Exemptions* of the Canadian Securities Administrators, as amended from time to time;

“**annuitant**” means the annuitant of a registered retirement savings plan or a registered retirement income fund, all as defined in the *Income Tax Act* (Canada);

“**Audit Committee**” means the committee established pursuant to section 8.3;

“**capital cost allowance**” shall include any amounts deductible in respect of the cost of investments or other capital assets as is permitted by the *Income Tax Act* (Canada);

“**capital cost allowance of the Trust**” for any year shall be the amount of capital cost allowance that is deductible under the *Income Tax Act* (Canada) in computing the income of the Trust for income tax purposes for the year;

“**capital gain**” shall have the meaning ascribed to such term in the *Income Tax Act* (Canada);

“**capital loss**” shall have the meaning ascribed to such term in the *Income Tax Act* (Canada);

“**Chief Executive Officer**”, “**President**”, “**Vice-President**”, and “**Secretary**” means the person holding the respective office from time to time in accordance with section 2.9;

“**Compensation Committee**” means the committee established pursuant to section 8.2;

“**court**” means the Superior Court of Justice in the Province of Ontario;

“**Declaration of Trust**” means this Second Amended and Restated Declaration of Trust, as amended from time to time;

“**dissenting offeree**” means, where a take-over bid is made for all the Equity Interests of a class of Equity Interests, a holder of such Equity Interests who does not accept the take-over bid and includes a subsequent holder of that Equity Interest who acquires it from the first mentioned holder;

“**Distribution Date**” means each date selected by the Trustees for the purpose of making distributions contemplated in Article X;

“**Distributions**” means the income of the Trust to be distributed to Unitholders in accordance with Article X;

“**Equity Interests**” means the Units and/or the Preferred Units;

“**going-private transaction**” means an arrangement, consolidation or other transaction involving the Trust, other than an acquisition pursuant to section 5.25, that results in the interest of a holder of participating securities of the Trust 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;

“**herein**”, “**hereof**”, “**hereby**”, “**hereunder**” and similar expressions refer to this Declaration of Trust and include every instrument supplemental or ancillary to or in implementation of this Declaration of Trust and, except where the context otherwise requires, not to any particular article, section or other portion thereof;

references to “**the *Income Tax Act (Canada)***” mean such act and the regulations thereunder as the same may be amended from time to time;

“**indebtedness**” means any obligation of the Trust for borrowed money (including, for greater certainty, the principal amount of convertible debt securities, notwithstanding the presentation of such securities in the Trust’s financial statements in accordance with generally accepted accounting principles and excluding the redemption amount of Preferred Units that have been called for redemption if the Preferred Units were accounted for as equity instruments in accordance with generally accepted accounting principles prior to being called for redemption) to the extent that it appears as a liability on the balance sheet of the Trust calculated in accordance with generally accepted accounting principles;

“**Independent Trustee**” means any Trustee who is independent for purposes of National Policy 58-101 – *Disclosure of Corporate Governance Practices*;

“**Investment Committee**” means the committee established pursuant to section 8.1;

“**Lead Trustee**” has the meaning ascribed to it in section 2.12;

“**mortgage**” means any mortgage, charge, hypothec, bond, debenture, note or other evidence of indebtedness directly or indirectly secured by real property;

“**Nominating Unitholder**” has the meaning ascribed to it in section 2.4.1;

“**Notice Date**” has the meaning ascribed to it in section 2.4.1;

“**participating securities**” means securities that give the holder of the securities a right to share in the earnings of the person that issued the securities and after the liquidation, dissolution, or winding up of the person that issued the securities or, in the case of the Trust, upon the termination of the Trust, a right to share in its assets. For greater certainty, participating securities includes the Units;

“**person**” means and includes individuals, corporations, limited partnerships, general partnerships, joint stock companies, joint ventures, associations, companies, trusts, banks, trust companies, land trusts, business trusts or other organizations, whether or not legal entities and governments and agencies and political subdivisions thereof;

“**Preferred Unit**” means a preferred equity interest of any series in the Trust as more particularly described in section 5.2.1 with such designation, rights, privileges,

restrictions and conditions attached thereto as determined by the Trustees and which are issued from time to time in accordance with the provisions hereof;

“Public Trustee” means the Office of the Public Guardian and Trustee, a part of Ontario’s Ministry of the Attorney General;

“real property” means property which in law is real property and includes, whether or not the same would in law be real property, leaseholds, mortgages, undivided joint interests in real property (whether by way of tenancy-in-common, joint tenancy, co-ownership, partnership, joint venture or otherwise) and securities of persons whose assets consist primarily of real property and/or investments, direct or indirect, in real property;

“Receiver General” means the Receiver General for Canada;

“Register” means the register which shall be established and maintained pursuant to section 5.14;

“Subsidiary” means a wholly-owned subsidiary of the Trust, with the term “subsidiary” having the meaning ascribed thereto in National Instrument 45-106 – *Prospectus and Registration Exemptions* of the Canadian Securities Administrators, as amended from time to time;

“take-over bid” has the meaning ascribed to such term in the *Securities Act* (Ontario), as amended from time to time, and includes an offer made by the Trust to repurchase all of the Equity Interests of a class of its Equity Interests other than an offer made by the Trust to repurchase the Preferred Units, Series A (and the Preferred Units, Series B into which such Preferred Units, Series A may be reclassified) and the Preferred Units, Series C (and the Preferred Units, Series D into which such Preferred Units, Series C may be reclassified);

“Trust” means RioCan Real Estate Investment Trust established hereunder;

“Trustees” means, as of any particular time, the trustees holding office under this Declaration of Trust at such time, whether they be the signatories hereto or additional or successor trustees;

“Trustees’ Regulations” means the regulations adopted by the Trustees pursuant to section 3.3;

“Unit” means a unit of interest in the Trust in accordance with the provisions hereof that is not a Preferred Unit and includes a fraction of a Unit; and

“Unitholder” means a person whose name appears on the Register as a holder of Equity Interests.

1.2 Name

The name of the trust created by this Declaration of Trust shall be “RioCan Real Estate Investment Trust”. As far as practicable and except as otherwise provided in this Declaration of

Trust, the Trustees shall conduct the Trust activities, hold property, execute all documents and take all legal proceedings under that name.

1.3 Use of Name

Should the Trustees determine that the use of the name “RioCan Real Estate Investment Trust” is not practicable, legal or convenient, they may use such other designation or they may adopt such other name for the Trust as they deem appropriate and the Trust may hold property and conduct its activities under such other designation or name.

1.4 Places of Business

The principal office and centre of administration of the Trust shall be at RioCan Yonge Eglinton Centre, 2300 Yonge Street, Suite 500, Toronto, Ontario, unless changed by the Trustees to another location. The Trust may have such other offices or places for the conduct of its affairs as the Trustees may from time to time determine as necessary or desirable.

1.5 Nature of the Trust

The Trust is an unincorporated investment trust. The Trust, its Equity Interests and its property shall be governed by the general law of trusts, except as such general law of trusts has been or is from time to time modified, altered or abridged for investment trusts and for this Trust by:

- (i) applicable laws, regulations or other requirements imposed by applicable securities or other regulatory authorities; and
- (ii) the terms, conditions and trusts set forth in this Declaration of Trust.

The beneficial interest of a holder of any Equity Interest shall be limited to the right to participate in distributions in such amounts, when and as declared by the Trustees as contemplated by Article X and distributions upon the termination of the Trust as contemplated in Article XIII. The Trust is not and is not intended to be, shall not be deemed to be and shall not be treated as a general partnership, limited partnership, syndicate, association, joint venture, company, corporation or joint stock company nor shall the Trustees, the Unitholders or any officer or other employee of the Trust or any of them for any purpose be, or be deemed to be treated in any way whatsoever to be, liable or responsible hereunder as partners or joint venturers. Neither the Trustees nor any officer or other employee of the Trust shall be, or be deemed to be, agents of the Unitholders. The relationship of the Unitholders to the Trustees, to the Trust, and to the officers and other employees of the Trust and to the property of the Trust shall be solely that of beneficiaries in accordance with rights conferred and the liabilities and obligations imposed upon them by this Declaration of Trust and, in respect of the Preferred Units, in a “Certificate of Preferred Unit Terms” approved by the Trustees pursuant to section 5.2.1.

1.6 Applications to Court

As the rights (including the right to apply to a court) and remedies set out in sections 3.7(h), 5.25, 6.1, 6.4, 6.10, 9.1 and 9.2 of this Declaration of Trust are not statute-based, all

references in this Declaration of Trust 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 II TERMS AND REMUNERATION OF TRUSTEES

2.1 Number

There shall be no fewer than five nor more than fifteen Trustees. The number of Trustees may be increased or decreased within such limits from time to time by the Unitholders or by the Trustees, provided that the Trustees may not, between meetings of Unitholders, appoint additional Trustees if, after such appointment, the total number of Trustees would be greater than one and one-third times the number of Trustees required to have been elected at the last annual meeting of Unitholders.

2.2 Term of Office

Each Trustee who executes this Declaration of Trust or who is hereafter elected or appointed shall (except as provided in section 2.6) hold office until the next annual meeting of Unitholders or until his or her successor has been elected and has qualified to serve as Trustee.

2.3 Qualifications of Trustees

A Trustee shall be an individual at least 18 years of age, who is not of unsound mind and has not been found to be of unsound mind by a court in Canada or elsewhere, and who does not have the status of bankrupt. Trustees are not required to hold Equity Interests. A majority of the Trustees must be resident Canadians.

2.4 Election of Trustees

Election of Trustees shall be by the vote of Unitholders entitled to vote in such election. The election of any Trustee (other than an individual who is serving as a Trustee immediately prior to such election) shall not become effective unless and until such person shall have in writing accepted his or her election and agreed to be bound by the terms of this Declaration of Trust.

2.4.1 Nomination of Trustees

- (a) Only persons who are nominated in accordance with the following procedures shall be eligible for election as Trustees of the Trust. Nominations of persons for election to the board of Trustees 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 Trustees:
 - (i) by or at the direction of the board of Trustees, 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 this Declaration of Trust; 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 2.4.1 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 2.4.1.
- (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 Trustees in the manner prescribed by this Declaration of Trust. 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 Trustees 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 Trustees (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 Trustees must set forth:
- (i) as to each person whom the Nominating Unitholder proposes to nominate for election as a Trustee: (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 in the capital of the Trust 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 Trustees 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 of the Trust 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 Trustees pursuant to applicable securities laws.
- (e) The Trust may require any proposed nominee to furnish such other information as may reasonably be required by the Trust to determine the eligibility of such proposed nominee to serve as an independent trustee of the Trust or that could be material to a reasonable Unitholder's understanding of the independence, or lack thereof, of such proposed nominee.
- (f) No person shall be eligible for election as a Trustee of the Trust unless nominated in accordance with the provisions of this section 2.4.1; provided, however, that nothing in this section 2.4.1 shall be deemed to preclude discussion by a Unitholder (as distinct from the nomination of Trustees) 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 Declaration of Trust. 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.
- (g) For purposes of this section 2.4.1, "**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.
- (h) Notwithstanding the foregoing, the Trustees may, in their sole discretion, waive any requirement in this section 2.4.1.

2.5 Resignation, Removal and Death of Trustee

- (a) A Trustee may resign at any time by an instrument in writing signed by him and delivered or mailed to the Chief Executive Officer or the Secretary. Such resignation shall take effect on the date such notice is given or at any later time specified in the notice without need for prior accounting.
- (b) A Trustee may be removed at any time with or without cause by a majority of the votes cast at a meeting of Unitholders called for that purpose or by the consent of holders of a majority of the outstanding Equity Interests entitled to vote thereon or with cause by the resolution of two-thirds of the remaining Trustees. This Declaration of Trust may only be amended to require a greater number of votes of

Unitholders to remove a Trustee than the number set forth in this section 2.5 with the unanimous consent of the Unitholders.

- (c) Upon the resignation or removal of any Trustee, or his or her otherwise ceasing to be a Trustee, he or she shall execute and deliver such documents as the remaining Trustees shall require for the conveyance of any Trust property held in his or her name, shall account to the remaining Trustees as they may require for all property which he or she holds as Trustee and shall thereupon be discharged as Trustee.
- (d) Upon the incapacity or death of any Trustee, his or her legal representative shall execute and deliver on his behalf such documents as the remaining Trustees may require as provided in this section. In the event that a Trustee or his or her legal representatives, as applicable, are unable or unwilling to execute and deliver such required documents, each of the remaining Trustees is hereby appointed as the attorney of such Trustee for the purposes of executing and delivering such required documents. This power of attorney granted to each of the remaining Trustees is not intended to be a continuing power of attorney within the meaning of the Substitute Decisions Act, 1992 (Ontario), exercisable during a Trustee's incapacity to manage property, or any similar power of attorney under equivalent legislation in any of the provinces or territories of Canada (a "CPOA"). The execution of this power of attorney will not terminate any CPOA granted by the Trustee previously and will not be terminated by the execution by the Trustee in the future of a CPOA, and the Trustee hereby agrees not to take any action in the future which results in the termination of this power of attorney.

2.6 Vacancies

The term of office of a Trustee shall terminate and a vacancy shall occur in the event of the death, resignation, bankruptcy, adjudicated incompetence or other incapacity to exercise the duties of the office or removal of a Trustee. No such vacancy shall operate to annul this Declaration of Trust or affect the continuity of the Trust. Until the vacancy is filled, the remaining Trustee or Trustees (even if less than a quorum) may exercise the powers of the Trustees hereunder. In the case of a vacancy, the Unitholders or a majority of the Trustees continuing in office may fill such vacancy. Any Trustee so elected by the Trustees shall hold office until the next annual meeting of Unitholders.

2.7 Successor and Additional Trustees

The right, title and interest of the Trustees in and to the property of the Trust shall vest automatically in all persons who may hereafter become Trustees upon their due election or appointment and qualification without any further act and they shall thereupon have all the rights, privileges, powers, obligations and immunities of Trustees hereunder. Such right, title and interest shall vest in the Trustees whether or not conveyancing documents have been executed and delivered pursuant to section 2.5 or otherwise.

2.8 Compensation and Other Remuneration

Trustees who are not officers or other employees of the Trust shall be entitled to receive for their services as Trustees such amounts as the Trustees may approve from time to time, as

well as reimbursement of out-of-pocket expenses incurred in acting as a Trustee, or such other reasonable compensation as the Trustees determine from time to time. Such Trustees, either directly or indirectly, shall also be entitled to receive remuneration for services rendered to the Trust in any other capacity. Such services may include, without limitation, services as legal, accounting or other professional services or services as a broker, transfer agent or underwriter, whether performed by a Trustee or any person affiliated with the Trustee. Trustees who are officers or other employees of the Trust shall not be entitled to receive any remuneration for their services as Trustees and shall not be entitled to reimbursement from the Trust of any of their expenses incurred in acting as a Trustee except for their out-of-pocket expenses incurred in attending meetings of the Trustees, the Compensation Committee, the Investment Committee or the Audit Committee or other committees of the Trustees established from time to time.

In addition to any compensation payable to Trustees in their capacity as Trustees, the Compensation Committee shall determine from time to time, for recommendation to the Trustees, such reasonable additional compensation as should be paid to the chairpersons of the various committees of the Trustees.

2.9 Officers of the Trust

The Trust shall have a Chief Executive Officer, President (who may also be Chief Executive Officer), a Secretary and may have one or more Vice-Presidents and such other officers as the Trustees may appoint from time to time. One person may hold two or more offices. The Chief Executive Officer shall be a Trustee and any other officers of the Trust may, but need not, be Trustees. Officers of the Trust shall be appointed and discharged, and their remuneration determined, by the Trustees.

2.10 Independent Trustees

A majority of the Trustees must qualify as Independent Trustees; provided, however, that if at any time a majority of the Trustees are not Independent Trustees because of the death, resignation, bankruptcy, adjudicated incompetence, removal or change in circumstance of any Trustee who was an Independent Trustee, this requirement shall not be applicable for a period of 60 days thereafter, during which time the remaining Trustees shall appoint a sufficient number of Trustees who qualify as an Independent Trustee to comply with this requirement.

2.11 Chairperson of the Trustees

The chairperson of the Trustees shall be appointed from among the Trustees. When present, the chairperson of the Trustees shall be chairperson of meetings of Trustees and Unitholders and shall have such other powers and duties as the Trustees may determine from time to time to manage the affairs of the board of Trustees and monitor the effectiveness of the Trustees.

2.12 Lead Trustee

If the chairperson of the Trustees is not an Independent Trustee, a lead trustee (the “**Lead Trustee**”) shall be appointed from among the Trustees. The Lead Trustee must be an Independent Trustee. The Lead Trustee will act as an effective leader of the board of Trustees in

respect of matters required to be considered by the Independent Trustees only, and will ensure that the board of Trustees' agenda will enable it to successfully carry out its duties.

ARTICLE III TRUSTEE'S POWERS AND DUTIES

3.1 General Powers

The Trustees, subject only to the specific limitations contained in this Declaration of Trust, shall have, without further or other authorization and free from any power of control on the part of the Unitholders, full, absolute, and exclusive power, control and authority over the assets of the Trust and over the business and affairs of the Trust to the same extent as if the Trustees were the sole owner thereof in their own right, to do all such acts and things as in their sole judgment and discretion are necessary or incidental to, or desirable for, the carrying out of any of the purposes of the Trust or the conducting of the business of the Trust. In construing the provisions of this Declaration of Trust, presumption shall be in favour of the granted powers and authority to the Trustees. The enumeration of any specific power or authority herein shall not be construed as limiting the general powers or authority or any other specified power or authority conferred herein on the Trustees. Except as specifically required by such laws, the Trustees 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. Without limiting the generality of the foregoing, the Trustees may, subject to the terms and conditions contained in this Declaration of Trust, make any investments without being required to adhere to all of, or any particular portion of the investment criteria or diversification requirements set forth in the *Trustee Act* (Ontario), as replaced or amended from time to time, including investments in mutual funds, common trust funds, unit trusts and similar types of investment vehicles, to alter or vary such investments from time to time in a like manner, to retain such investments for such length of time as the Trustees, in their discretion determine and to delegate management and authority to discretionary managers of investment funds as the Trustees in their discretion determine appropriate.

3.2 Specific Powers and Authorities

Subject only to the express limitations contained in this Declaration of Trust and in addition to any powers and authorities conferred by this Declaration of Trust or which the Trustees may have by virtue of any present or future statute or rule of law, the Trustees without any action or consent by the Unitholders shall have and may exercise at any time and from time to time the following powers and authorities which may or may not be exercised by them in their sole judgment and discretion and in such manner and upon such terms and conditions as they may from time to time deem proper:

- (a) to retain, invest and re-invest the capital or other funds of the Trust in real or personal property of any kind, all without regard to whether any such properties are authorized by law for the investment of trust funds, and to possess and exercise all the rights, powers and privileges appertaining to the ownership of the property of the Trust and to increase the capital of the Trust at any time by the issuance of additional Equity Interests for such consideration as they deem appropriate;

- (a.1) to determine the rights, designation, privileges, restrictions and conditions attaching to each series of Preferred Units authorized for issuance by the Trust in accordance with section 5.2.1;
- (b) for such consideration as they deem proper, to invest in, purchase or otherwise acquire for cash or other property or through the issuance of Equity Interests or through the issuance of notes, debentures, bonds or other obligations of the Trust and hold for investment the entire or any participating interest in notes, bonds or other obligations. In connection with any such investment, purchase, or acquisition, the Trustees shall have the power to acquire a share of rents, lease payments, or other gross income from or a share of the profits from or a share in the equity or ownership of real property;
- (c) to sell, rent, lease, hire, exchange, release, partition, assign, mortgage, pledge, hypothecate, grant security interests in, encumber, negotiate, convey, transfer or otherwise dispose of any or all of the property of the Trust by deeds, trust deeds, assignments, bills of sale, transfers, leases, mortgages, financing statements, security agreements and other instruments for any of such purposes executed and delivered for and on behalf of the Trust or Trustees or by a duly authorized officer, employee, agent or any nominee of the Trust;
- (d) to enter into leases, contracts, obligations and other agreements for a term extending beyond the term of office of the Trustees and beyond the possible termination of the Trust or for a lesser term;
- (e) to borrow money and give negotiable or non-negotiable instruments therefor, to guarantee, indemnify or act as surety with respect to payment or performance of obligations of third parties; to enter into other obligations on behalf of the Trust; and to assign, convey, transfer, mortgage, subordinate, pledge, grant security interests in, encumber or hypothecate the property of the Trust to secure any of the foregoing;
- (f) to lend money, whether secured or unsecured;
- (g) to incur and pay out of the property of the Trust any charges or expenses and disburse any funds of the Trust, which charges, expenses or disbursements are, in the opinion of the Trustees, necessary or incidental to or desirable for the carrying out of any of the purposes of the Trust or conducting the business of the Trust including, without limitation, taxes or other governmental levies, charges and assessments of whatever kind or nature, imposed upon or against the Trustees in connection with the Trust or the property of the Trust or upon or against the property of the Trust or any part thereof and for any of the purposes herein;
- (h) to deposit funds of the Trust in banks, trust companies and other depositories, whether or not such deposits will draw interest, the same to be subject to withdrawal on such terms and in such manner and by such person or persons (including any one or more Trustees, officers, agents or representatives) as the Trustees may determine;

- (i) to possess and exercise all the rights, powers and privileges appertaining to the ownership of all or any mortgages or securities, issued or created by, or interest in, any person, forming part of the assets of the Trust, to the same extent that an individual might and, without limiting the generality of the foregoing, to vote or give any consent, request or notice, or waive any notice, either in person or by proxy or power of attorney, with or without power of substitution, to one or more persons, which proxies and powers of attorney may be for meetings or action generally or for any particular meeting or action and may include the exercise of discretionary power;
- (j) to elect, appoint, engage or otherwise employ officers for the Trust (including the Chief Executive Officer, President, Secretary and such Vice-Presidents and other officers as the Trustees may determine), who may be removed or discharged at the discretion of the Trustees, such officers to have, subject to section 8.4, such powers and duties, and to serve such terms as may be prescribed by the Trustees or by the Trustees' Regulations; to engage or employ any persons as agents, representatives, employees or independent contractors (including, without limitation, real estate advisors, investment advisors, registrars, underwriters, accountants, lawyers, real estate agents, property managers, brokers, architects, engineers, construction managers, general contractors or otherwise) in one or more capacities, and to pay compensation from the Trust for services in as many capacities as such persons may be so engaged or employed; and except as prohibited by law and this Declaration of Trust, to delegate any of the powers and duties of the Trustees to any one or more Trustees, agents, representatives, officers, employees, independent contractors or other persons;
- (k) to collect, sue for and receive all sums of money coming due to the Trust, and to engage in, intervene in, prosecute, join, defend, compromise, abandon or adjust, by arbitration or otherwise, any actions, suits, proceedings, disputes, claims, demands or other litigation relating to the Trust, the assets of the Trust or the Trust's affairs, to enter into agreements therefor, whether or not any suit is commenced or claim accrued or asserted and, in advance of any controversy, to enter into agreements regarding the arbitration, adjudication or settlement thereof;
- (l) to renew, modify, release, compromise, extend, consolidate or cancel, in whole or in part, any obligation to or of the Trust;
- (m) to purchase and pay for out of the assets of the Trust, insurance contracts and policies insuring the assets of the Trust against any and all risks and insuring the Trust and/or any or all of the Trustees, the Unitholders or officers against any and all claims and liabilities of any nature asserted by any person arising by reason of any action alleged to have been taken or omitted by the Trust or by the Trustees, Unitholders or officers;
- (n) to cause legal title to any of the assets of the Trust to be held by and/or in the name of the Trustees, or except as prohibited by law, by and/or in the name of the Trust or the Trustees or any other person, on such terms, in such manner, with such powers in such person as the Trustees may determine and with or without

disclosure that the Trust or Trustees are interested therein; provided, however, that should legal title to any of the assets of the Trust be held by and/or in the name of any person or persons other than the Trust, the Trustees shall require such person or persons to execute a declaration of trust acknowledging that legal title to such assets are held in trust for the benefit of the Trust;

- (o) to determine conclusively the allocation to capital, income or other appropriate accounts all receipts, expenses, disbursements and property of the Trust;
- (p) to prepare, sign and file or cause to be prepared, signed and filed a prospectus, offering memorandum, or similar document and any amendment thereto, relating to or resulting from an offering of Equity Interests issued or held by the Trust and to pay the cost thereof and related thereto out of the property of the Trust whether or not such offering is or was of direct benefit to the Trust or those persons (if any) who were Unitholders immediately prior to such offering;
- (q) to make or cause to be made application for the listing on any stock exchange of any Equity Interests of the Trust, and to do all things which in the opinion of the Trustees may be necessary or desirable to effect or maintain such listing or listings;
- (r) to determine conclusively the value of any or all of the property of the Trust from time to time and, in determining such value, to consider such information and advice as the Trustees, in their sole judgement, may deem material and reliable; and
- (s) To do all such other acts and things as are incidental to the foregoing, and to exercise all powers which are necessary or useful to carry on the business of the Trust, to promote any of the purposes for which the Trust is formed and to carry out the provisions of this Declaration of Trust.

3.3 Further Powers of the Trustees

The Trustees shall have the power to prescribe any form provided for or contemplated by this Declaration of Trust. The Trustees may make, adopt, amend, or repeal regulations containing provisions relating to the business of the Trust, the conduct of its affairs, its rights or powers and the rights or powers of its Unitholders or officers not inconsistent with law or with this Declaration of Trust. The Trustees shall also be entitled to make any reasonable decisions, designations or determinations not contrary to this Declaration of Trust which they may determine are necessary or desirable in interpreting, applying or administering this Declaration of Trust or in administering, managing or operating the Trust. Any regulations, decisions, designations or determinations made pursuant to this section shall be conclusive and binding upon all persons affected thereby.

3.4 Standard of Care

The exclusive standard of care required of the Trustees in exercising their powers and carrying out their functions hereunder shall be that they exercise their powers and carry out their functions hereunder as Trustees honestly, in good faith and in the best interests of the Trust and

the Unitholders and that in connection therewith they exercise that degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. Unless otherwise required by law, no Trustee shall be required to give bond, surety or security in any jurisdiction for the performance of any duties or obligations hereunder. The Trustees in their capacity as trustees shall not be required to devote their entire time to the business and affairs of the Trust.

No Trustee shall be liable in carrying out such Trustee's duties under this Declaration of Trust except in cases where the Trustee fails to act honestly, in good faith and in the best interests of the Trust and the Unitholders or, in connection therewith, fails to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. The duties and standard of care of the Trustees provided as aforesaid are intended to be similar to, and not to be any greater than, those imposed on a director of a corporation governed by the *Canada Business Corporations Act*.

3.5 Reliance Upon Trustees

Any person dealing with the Trust in respect of any matters pertaining to the assets of the Trust and any right, title or interest therein or to the Trust or to securities of the Trust shall be entitled to rely on a certificate, statutory declaration or resolution executed or certified by the Trustees as to the capacity, power and authority of the Trustees or any other person to act for and on behalf and in the name of the Trust. No person dealing with the Trustees shall be bound to see to the application of any funds or property passing into the hands or control of the Trustees. The receipt of the Trustees for monies or other consideration shall be binding upon the Trust.

3.6 Determinations of Trustees Binding

All determinations of the Trustees which are made in good faith with respect to any matters relating to the Trust, including, without limiting the generality of the foregoing, whether any particular investment or disposition meets the requirements of this Declaration of Trust, shall be final and conclusive and shall be binding upon the Trust and all Unitholders (and, where the Unitholder is a registered retirement savings plan, registered retirement income fund, deferred profit sharing plan or registered pension fund or plan as defined in the *Income Tax Act* (Canada), or other such fund or plan registered under such act, upon plan beneficiaries and plan holders past, present and future) and Equity Interests of the Trust shall be issued and sold on the condition and understanding that any and all such determinations shall be binding as aforesaid.

3.7 Conflict of Interest

If a Trustee or an officer of the Trust is a party to a material contract or transaction or proposed material contract or transaction with the Trust or is a director, officer or employee of, or has a material interest in, any person who is a party to a material contract or transaction or proposed material contract or transaction with the Trust, the Trustee or officer, as the case may be, shall disclose in writing to the Trustees or request to have entered in the minutes of meetings of Trustees the nature and extent of such interest.

- (a) The disclosure required in the case of a Trustee shall be made,
 - (i) at the meeting of Trustees or the Investment Committee, as the case may be, at which a proposed contract or transaction is first considered;
 - (ii) if the Trustee was not then interested in the proposed contract or transaction, at the first meeting after he or she becomes so interested;
 - (iii) if the Trustee becomes interested after a contract is made or a transaction is entered into, at the first meeting after he or she becomes so interested; or
 - (iv) if a person who is interested in a contract or transaction later becomes a Trustee, at the first such meeting after he or she assumes that capacity.
- (b) The disclosure required in the case of an officer of the Trust who is not a Trustee shall be made,
 - (i) forthwith after he or she becomes aware that the contract or transaction or proposed contract or transaction is to be considered or has been considered at a meeting of the Investment Committee or of the Trustees;
 - (ii) if the officer becomes interested after a contract is made or a transaction is entered into, forthwith after he or she becomes so interested; or
 - (iii) if a person who is interested in a contract or transaction later becomes an officer, forthwith after he or she becomes an officer.
- (c) Notwithstanding subsections (a) and (b), where this section applies to any person in respect of a material contract or transaction or proposed material contract or transaction that, in the ordinary course of the business of the Trust, would not require approval by the Trustees or the Unitholders, such person shall disclose in writing to the Trustees or request to have entered in the minutes of meetings of the Trustees the nature and extent of his interest forthwith after such person becomes aware of the contract or transaction or proposed contract or transaction.
- (d) A Trustee referred to in this section shall not vote on any resolution to approve the contract or transaction unless the contract or transaction is,
 - (i) one relating primarily to his or her remuneration as a Trustee, officer, employee or agent of the Trust or any affiliate of the Trust; or
 - (ii) one for indemnity under section 14.1 hereof or the purchase of liability insurance.
- (e) For the purposes hereof, a general notice to the Trustees by a Trustee or officer of the Trust disclosing that they are a director, officer or employee of or have a material interest in a person and are to be regarded as interested in any contract

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

- (f) Where a material contract is made or a material transaction is entered into between the Trust and any one or more of its Trustees or officers, or between the Trust and another person of which a Trustee or officer of the Trust is a director or officer or in which they have a material interest,
 - (i) the Trustee or officer is not accountable to the Trust or to the Unitholders for any profit or gain realized from the contract or transaction; and
 - (ii) the contract or transaction is neither void nor voidable, by reason only of that relationship or by reason only that the Trustee is present at or is counted to determine the presence of a quorum at the meeting of Trustees or committee of Trustees that authorized the contract or transaction, if the Trustee or officer disclosed their interest in accordance with this section, and the contract or transaction was reasonable and fair to the Trust at the time it was so approved.
- (g) Notwithstanding anything in this section, but without limiting the effect of subsection (f) hereof, a Trustee or officer of the Trust, acting honestly and in good faith, is not accountable to the Trust or to the Unitholders for any profit or gain realized from any such contract or transaction by reason only of his or her holding such office, and the contract or transaction, if it was reasonable and fair to the Trust at the time it was approved, is not by reason only of such person's interest therein void or voidable, where,
 - (i) the contract or transaction is confirmed or approved at a meeting of Unitholders duly called for that purpose; and
 - (ii) the nature and extent of such person's interest in the contract or transaction are disclosed in reasonable detail in the notice calling the meeting or in any information circular required to be provided by this Declaration of Trust or by law.
- (h) Subject to subsections (f) and (g) hereof, where any Trustee or officer fails to disclose his or her interest in a material contract or transaction in accordance with this Declaration of Trust or otherwise fails to comply with this section, the Trustees or any Unitholder, in addition to exercising any other rights or remedies in connection with such failure exercisable at law or in equity, may apply to a court for an order setting aside the contract or transaction and directing that such person account to the Trust for any profit or gain realized.

ARTICLE IV INVESTMENT RESTRICTIONS

4.1 Fundamental Restrictions

The assets of the Trust shall be invested only in accordance with the following restrictions:

- (a) The Trust shall not make any investment that would result in Equity Interests of the Trust being disqualified for investment by registered retirement savings plans, registered retirement income funds or deferred profit sharing plans or that would result in the Trust paying a tax under the registered investment provisions of the *Income Tax Act* (Canada) imposed for exceeding certain investment limits. It is the Trustees' intention that, and the Trust shall exercise best efforts so that, the Trust shall not (i) make any investments that would result in Equity Interests of the Trust not being units of a "mutual fund trust" within the meaning of the *Income Tax Act* (Canada), or (ii) directly or indirectly, make or hold any investments or engage in any activity which would cause the Trust not to qualify as a unit trust or real estate investment trust for purposes of the *Income Tax Act* (Canada).
- (b) The Trust shall not acquire any single investment in real property (in the case of investment in securities of a person, determined on a property by property basis in such person's portfolio) if the cost to the Trust of such acquisition (net of the amount of encumbrances assumed) will exceed 10% of the Adjusted Unitholders' Equity of the Trust, or such greater percentage as is permitted from time to time under the *Income Tax Act* (Canada) but in any event not greater than 20% of the Adjusted Unitholders' Equity.
- (c) The Trust may, directly or indirectly, invest in a joint venture arrangement for the purposes of owning interests or investments in real property, including the acquisition, holding, maintenance, improvement, leasing or management thereof; provided that such joint venture arrangement contains terms and conditions which, in the opinion of management, are commercially reasonable, including without limitation, such terms and conditions relating to restrictions on transfer and the acquisition and sale of the Trust's and any joint venturer's interest in the joint venture arrangement, provisions to provide liquidity to the Trust, to limit the liability of the Trust to third parties, and provide for the participation of the Trust in the management of the joint venture arrangement. For purposes of this provision, a joint venture arrangement is an arrangement between the Trust and one or more other persons pursuant to which the Trust, directly or indirectly, conducts an undertaking for one or more of the purposes set out in this section 4.1 and in respect of which the Trust may hold its interest jointly or in common or in another manner with others either directly or through the ownership of securities of a corporation or other entity, including without limitation a general partnership, limited partnership, trust or limited liability company.
- (d) Except for temporary investments held in cash, deposits with a bank or trust company governed by the laws of Canada or of a province of Canada or the

United States or any state thereof, government debt securities or money market instruments of, or guaranteed by, any such bank or trust company and other investments permitted pursuant to this section 4.1, the Trust may not hold securities of a person other than to the extent that such securities would, for the purpose of this Declaration of Trust, constitute an investment in real property.

- (e) Subject to paragraphs (d), (k) and (m), the Trust may only invest, directly or indirectly, in income-producing real property and such other activities incidental thereto including, indirectly, operating businesses:
 - (i) where revenue will be derived, directly or indirectly, principally from income-producing real property; or
 - (ii) which principally involves the ownership, maintenance, improvement, leasing or management, directly or indirectly, of income-producing real property (in each case as determined by the Trustees).
- (f) The Trust shall not invest in rights to or interests in mineral or other natural resources, including oil or gas, except as incidental to an investment in real property.
- (g) (i) any written instrument creating an obligation which is or includes the granting by the Trust of a mortgage, and (ii) to the extent management determines to be practicable, any written instrument which is, in the judgment of management, a material obligation, shall contain a provision or be subject to an acknowledgement to the effect that the obligation being created is not personally binding upon, and that resort shall not be had to, nor shall recourse or satisfaction be sought from, the private property of any of the Trustees, Unitholders, annuitants under a plan of which a Unitholder acts as a trustee or carrier, or officers, employees or agents of the Trust, but only the property of the Trust or a specific portion thereof only shall be bound. The Trust, however, is not required to comply with this requirement in respect of obligations assumed by the Trust upon the acquisition of real property.
- (h) The Trust shall not lease or sublease to any person any real property, premises or space where that person and its affiliates would, after the contemplated lease or sublease, be leasing or subleasing real property, premises or space having an aggregate gross leaseable area in excess of 20% of the aggregate gross leaseable area of all real property held by the Trust.
- (i) The Trust shall not enter into any transaction involving the purchase of lands or land and improvements thereon and the leasing thereof back to the vendor where the aggregate gross leaseable area of the space being leased to the vendor together with all other space being leased by the Trust to the vendor and its affiliates is in excess of 20% of the aggregate gross leaseable area of all real property held by the Trust.
- (j) The limitation contained in paragraph (h) shall not apply to the renewal of a lease or sublease and the limitations contained in paragraphs (h) and (i) shall not apply

where the person to whom the lease or sublease is made is, or where the lease or sublease is guaranteed by:

- (i) the Government of Canada, the Government of the United States, any province or territory of Canada, any state of the United States, any municipality or city in Canada or the United States, or any agency or crown corporation thereof; or
 - (ii) any corporation:
 - (A) the bonds, debentures or other evidences of indebtedness of or guaranteed by which are authorized as an investment for insurance companies pursuant to paragraph 86(1)(k) of the *Canadian and British Insurance Companies Act* in effect on December 31, 1991; or
 - (B) the preferred shares or common shares of which are authorized as an investment for insurance companies pursuant to paragraphs 86(1)(m) or (n) of such Act, in effect on December 31, 1991; or
 - (C) of which any of the bonds, debentures or other evidences of indebtedness of, or guaranteed by an issuer, or any of the other securities of an issuer which have received, and continue to hold, an investment grade rating from a recognized credit rating agency, in each case at the time the lease or sublease is entered into, or at the time other satisfactory leasing or pre-leasing arrangements (as determined by the Trustees in their discretion) were entered into or at the time other satisfactory leasing or pre-leasing arrangements (as determined by the Trustees in their discretion) were entered into; or
 - (iii) a Canadian chartered bank or a trust company or insurance company registered or licensed federally or under the laws of a province of Canada.
- (k) The Trust may invest in a mortgage only where:
- (i) the real property which is security therefor is income-producing real property which otherwise meets the general investment criteria of the Trust;
 - (ii) the mortgage is registered on title to the real property which is security therefor; and
 - (iii) the aggregate value of the investments of the Trust in mortgages, other than mortgages taken back by the Trust on the sale of its properties, after giving effect to the proposed investment, will not exceed 30% of the Adjusted Unitholders' Equity of the Trust.

- (l) The Trust shall not engage in construction or development of real property except to the extent necessary to maintain its real properties in good repair, or to enhance the income-producing ability of properties owned by the Trust.
- (m) The Trust may invest an amount (which, in the case of an amount invested to acquire real property, is the purchase price less the amount of any indebtedness assumed or incurred by the Trust and secured by a mortgage on such property) up to 15% of the Adjusted Unitholders' Equity of the Trust in investments or transactions which do not comply with paragraphs (c), (d), (e), (h), (i), (k) and (l) above.
- (n) Title to each real property shall be held by and registered in the name of the Trust, the Trustees, or in the name of a corporation wholly-owned by the Trust, or in the name of a corporation which is not wholly-owned by the Trust provided that the Trust's ownership interest in such corporation, expressed as a percentage of all ownership interests, is at least as great as the Trust's intended indirect ownership interest in the real property of the corporation or in such other manner which, in the opinion of management, is commercially reasonable.

For the purpose of the foregoing restrictions, the assets, liabilities and transactions of a corporation wholly owned by the Trust will be deemed to be those of the Trust.

4.2 Permitted Borrowing

The Trust shall borrow only in accordance with the following restrictions:

- (a) The Trust shall not assume or incur any indebtedness unless, at the date of the proposed assumption or incurring of indebtedness, the aggregate of the total indebtedness of the Trust and the amount of additional indebtedness proposed to be assumed does not exceed 60% of the aggregate amount of the total assets of the Trust and the amount of accumulated amortization of income properties recorded in the books and records of the Trust in respect of its properties, calculated in accordance with generally accepted accounting principles.
- (b) Subject to subsection 4.2(c), the Trust shall not directly or indirectly guarantee any indebtedness or liabilities of any kind except:
 - (i) indebtedness assumed or incurred under a mortgage on the security of real property by a corporation wholly-owned by the Trust and operated solely for the purpose of holding a particular real property or properties; or
 - (ii) indebtedness assumed or incurred under a mortgage on the security of real property by a person of which the Trust is a securityholder (including, without limitation, equity securities) and which is operated solely for the purpose of holding a particular real property or properties for a joint venture where the limit of the guarantee, as a percentage of such indebtedness, does not exceed the percentage of the Trust's interest in the real property (or real properties, as applicable) in both instances where such mortgage, if granted by the Trust directly, would not cause the Trust

to contravene the restrictions in the remaining subsections of this section 4.2.

- (c) Notwithstanding subsection 4.2(b), the Trust may, directly or indirectly, guarantee indebtedness or liabilities in connection with, and where required or desirable to further, any initiatives undertaken by the Trust which are permitted under this Declaration of Trust.

4.3 Registered Investment

The Trustees shall cause the Trust to do all such things and take all such action as may be necessary from time to time to ensure that the Trust shall retain its status as a “registered investment” within the meaning of the *Income Tax Act* (Canada).

4.4 Application of Investment Restrictions

With respect to the restrictions contained in section 4.1, where any maximum or minimum percentage limitation is specified in any of the restrictions therein contained, such restrictions shall be applied on the basis of the relevant amounts calculated immediately after the making of such investment. Any subsequent change relative to any percentage limitation which results from a subsequent change in the amount of Adjusted Unitholders’ Equity will not require divestiture of any investment.

4.5 Regulatory Matters

If at any time a regulatory authority having jurisdiction over the Trust or any property of the Trust shall enact any law, regulation or requirement which is in conflict with any investment restriction of the Trust then in force, such restriction in conflict shall, if the Trustees on the advice of legal counsel to the Trust so resolve be deemed to have been amended to the extent necessary to resolve any such conflict, and, notwithstanding anything to the contrary herein contained, any such resolution of the Trustees shall not require the prior approval of Unitholders.

ARTICLE V TRUST EQUITY INTERESTS

5.1 Units

The beneficial interests in the Trust shall be divided into interests of two classes, described and designated as “Units” and “Preferred Units”, which shall be entitled to the rights and subject to the limitations, restrictions and conditions set out herein, and the interest of each Unitholder shall be determined by the number of Equity Interests registered in the name of the Unitholder. Following the date of this Declaration of Trust, the Trustees may create additional classes of units of the Trust having such attributes as may be ascribed from time to time provided that, other than Preferred Units, in no event, shall any such additional class of units contain any rights, terms or conditions which are more favourable than the rights terms and conditions attaching to the Units outstanding as of the date hereof. The number of Units which the Trust may issue is unlimited. The number of Preferred Units which the Trust may issue is limited to 50,000,000. The issued and outstanding Equity Interests may be subdivided or consolidated from time to time by the Trustees.

5.2 Ranking of Units

Each Unit shall represent an equal interest in the Trust with all outstanding Units, all Units outstanding from time to time shall, subject to the rights of the holders of the Preferred Units, participate pro rata in any distributions by the Trust and, in the event of termination of the Trust, in the net worth of the Trust after satisfaction of the rights of the holders of the Preferred Units, and no Unit shall have any preference or priority over any other.

5.2.1 Preferred Units

The Preferred Units shall have attached thereto the following attributes:

- (a) the Preferred Units may from time to time be issued in one or more series, and the Trustees may fix from time to time before such issue the number of Preferred Units which is to comprise each series and the designation, rights, privileges, restrictions and conditions attaching to each series of Preferred Units including, without limiting the generality of the foregoing, any voting rights, the rate or amount of distributions (which may be cumulative or non-cumulative and variable or fixed) or the method of calculating distributions, the dates of payment thereof, the terms and conditions of redemption, purchase and conversion, if any, any rights on the liquidation, dissolution or winding-up of the Trust, and any sinking fund or other provisions;
- (b) the Preferred Units of each series shall, with respect to the payment of distributions (other than distributions paid solely through the distribution of additional Units) and the distribution of assets of the Trust or return of capital in the event of liquidation, dissolution or winding-up of the Trust, whether voluntary or involuntary, or any other return of capital or distribution of assets of the Trust among its Unitholders for the purpose of winding-up its affairs, be entitled to preference over the Units, and over any other Equity Interests of the Trust ranking by their terms junior to the Preferred Units. The Preferred Units of any series may also be given such other preferences, not inconsistent with this Declaration of Trust, over the Units, and any other Equity Interests of the Trust ranking by their terms junior to the Preferred Units, as may be fixed in accordance with subsection (a); and
- (c) if any cumulative distributions or amounts payable on the return of capital in respect of a series of Preferred Units are not paid in full, all series of Preferred Units of equal ranking shall participate rateably in respect of accumulated distributions and return of capital based on the accumulated distributions and return of capital of a series of Preferred Units as a proportion of the accumulated distributions and return of capital of all series of Preferred Units of equal ranking.

The terms of a particular series of Preferred Units as fixed by the Trustees in accordance with subsection (a) above shall be set out in a "Certificate of Preferred Unit Terms" which certificate shall be approved by the Trustees prior to the issue of such Preferred Units and, upon such approval, the certificate shall become a part of this Declaration of Trust.

Notwithstanding anything else herein contained, except as otherwise provided in the terms of a particular series of Preferred Shares as fixed by the Trustees in accordance with subsection 5.2.1(a) above, neither the Units nor any series of Preferred Units shall have or be deemed to have any term, condition, right or other attribute which would provide any holder of Units or Preferred Units of any series with an interest in the income of the Trust as a percentage in any distribution received by that Unitholder that is greater or lesser than an interest in the income of the Trust as a percentage of any distribution received by the holder of any other Units or Preferred Units of any series.

5.3 Equity Interests Non-Assessable

- (a) Subject to subsection (b), no Equity Interests shall be issued other than as fully paid and non-assessable. An Equity Interest shall not be fully paid until the consideration therefor has been received in full by or on behalf of the Trust. The consideration for any Equity Interests 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 Equity Interests had been issued for money. In determining whether property or past services are the fair equivalent of a money consideration, the Trustees 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.
- (b) Notwithstanding subsection (a), the Trust may, from time to time, issue Equity Interests on an instalment receipt basis if the Trustees determine that to do so would be desirable in the circumstances.

5.4 No Pre-Emptive Rights

No person shall be entitled, as a matter of right, to subscribe for or purchase any Equity Interests of the Trust. There are no pre-emptive rights attaching to the Equity Interests.

5.5 Fractional Units

Except as otherwise provided in section 5.1, if as a result of any act of the Trustees hereunder any person becomes entitled to a fraction of an Equity Interest, such person is not entitled to receive a certificate therefor. Fractional Equity Interests shall not, except to the extent that they may represent in the aggregate one or more whole Equity Interests, entitle the holders thereof to notice of, or to attend or to vote at, meetings of Unitholders. Subject to the foregoing, such fractional Equity Interests shall have attached thereto the rights, restrictions, conditions and limitations attaching to whole Equity Interests in the proportion that they bear to a whole Equity Interest.

5.6 Legal Ownership of Assets of the Trust

The legal ownership of the assets of the Trust and the right to conduct the business of the Trust are vested exclusively in the Trustees, and the Unitholders shall have no interest therein other than the beneficial interest in the Trust conferred by their Equity Interests issued hereunder, as described in section 1.5, and they shall have no right to compel any partition, division, dividend or distribution of the Trust or any of the assets of the Trust. The Equity Interests shall

be personal property and shall confer upon the holders thereof only the interest and rights, and impose upon the holders thereof only those liabilities and obligations, specifically set forth in this Declaration of Trust. No Unitholder has or is deemed to have any right of ownership in any of the assets of the Trust.

5.7 Allotment and Issue

The Trustees may allot and issue Equity Interests at such time or times and in such manner (including pursuant to any plan from time to time in effect relating to reinvestment by Unitholders of their distributions of the Trust in Equity Interests), and for such consideration and to such person, persons or class of persons as the Trustees in their sole discretion shall determine. In the event that Equity Interests are issued in whole or in part for a consideration other than money, the resolution of the Trustees allotting and issuing such Equity Interests shall express the fair equivalent in money of the other consideration received.

5.8 Rights, Warrants and Options

The Trustees may create and issue rights, warrants or options to subscribe for fully paid Equity Interests which rights, warrants or options may be exercisable at such subscription price or prices and at such time or times as the Trustees may determine. The rights, warrants or options so created may be issued for such consideration or for no consideration, all as the Trustees may determine. A right, warrant or option shall not be an Equity Interest and a holder thereof shall not be a Unitholder.

5.9 Commissions and Discounts

The Trustees may provide for the payment of commissions or may allow discounts to persons in consideration of their subscribing or agreeing to subscribe, whether absolutely or conditionally, for Equity Interests or of their agreeing to procure subscriptions therefor, whether absolute or conditional.

5.10 Transferability

The Equity Interests are freely transferable and the Trustees shall not impose any restriction on the transfer of Equity Interests. The Trustees shall maintain a listing for the Equity Interests on a Canadian stock exchange.

5.11 Certificates

Each Unitholder or his duly authorized agent is entitled to a certificate bearing an identifying serial number in respect of the Equity Interests held by him, signed in the manner hereinafter prescribed, but the Trust is not bound to issue more than one certificate in respect of an Equity Interest or Equity Interests held jointly or in common by two or more persons and delivery of a certificate to one of them shall be sufficient delivery to all. No certificate shall be issued to evidence any fractional Equity Interests.

5.12 Certificate Fee

The Trustees may establish a reasonable fee to be charged for every certificate issued.

5.13 Form of Certificate

The form of certificate representing Units and any series of Preferred Units shall be in such form as is from time to time authorized by the Trustees.

5.14 Equity Interest Unit Register and Transfer Ledgers to be Maintained

A register (the “**Register**”) shall be kept by, or on behalf and under the direction of the Trustees, which Register shall contain the names and addresses of Unitholders, the respective numbers of Equity Interests held by them, the certificate numbers of the certificates representing such Equity Interests and a record of all transfers thereof. The Trustees may appoint one or more chartered banks or trust companies to act as transfer agents and to act as registrars for Equity Interests and may provide for the transfer of Equity Interests in one or more places within Canada. In the event of such appointment, such transfer agents and registrars shall keep all necessary registers and other books (which may be kept on a computer or similar device) for recording original issues and registering and transferring the Equity Interests of the Trust. If the Trustees have appointed a registrar and transfer agent, no certificate for Equity Interests shall be valid unless countersigned by or on behalf of the transfer agent and/or registrar. Only Unitholders whose Equity Interests are recorded on the Register shall be entitled to vote or to receive distributions or otherwise exercise or enjoy the rights of Unitholders.

5.15 Entry on Register

Upon any issue of Equity Interests, the name of the subscriber shall be promptly entered on the Register as the owner of the number of Equity Interests issued to such subscriber, or if the subscriber is already a Unitholder, the Register shall be amended to include his additional Equity Interests.

5.16 Limitation on Non-Resident Ownership

- (a) At no time may non-residents of Canada as determined for the purposes of the *Income Tax Act* (Canada) be the beneficial owner of a majority of the outstanding Units (on a basic or fully diluted basis) and the Trustees shall inform each transfer agent of the Trust of this restriction. The transfer agent of the Trust may require declarations as to the jurisdictions in which beneficial owners of Units are resident. If the Trust’s transfer agent becomes aware, as a result of requiring such declarations as to beneficial ownership, that the beneficial owners of 49% percent of the Units then outstanding (on a basic or fully diluted basis) are, or may be, non-residents or that such a situation is imminent, the transfer agent shall make a public announcement thereof and shall not accept a subscription for Units from or issue or register a transfer of Units to a person unless the person provides a declaration in form and content satisfactory to the Trustees that the person is not a non-resident of Canada. If, notwithstanding the foregoing, the transfer agent determines that a majority of the Units (on a basic or fully diluted basis) are held by non-residents, the transfer agent may send a notice to non-resident holders of Units, chosen in inverse order to the order of acquisition or registration or in such other manner as the transfer agent may consider equitable and practicable, requiring them to sell their Units or a portion thereof within a specified period of not less than 60 days. If the Unitholders receiving such notice have not sold the

specified number of Units or provided the transfer agent with satisfactory evidence that they are not non-residents within such period, the transfer agent may on behalf of such Unitholders sell such Units and, in the interim, shall suspend the voting and distribution rights attached to such Units. Upon such sale, the effective holders shall cease to be holders of Units and their rights shall be limited to receiving the net proceeds of sale upon surrender of the certificates representing such Units.

- (b) At no time may non-residents of Canada as determined for the purposes of the *Income Tax Act* (Canada) be the beneficial owner of a majority of the outstanding Preferred Units (determined on the basis of the number of Preferred Units held or the aggregate subscription price thereof) and the Trustees shall inform each transfer agent of the Trust of this restriction. The transfer agent of the Trust may require declarations as to the jurisdictions in which beneficial owners of Preferred Units are resident. If the Trust's transfer agent becomes aware, as a result of requiring such declarations as to beneficial ownership, that the beneficial owners of 49% percent of the Preferred Units then outstanding (determined on the basis of the number of Preferred Units held or the aggregate subscription price thereof) are, or may be, non-residents or that such a situation is imminent, the transfer agent shall make a public announcement thereof and shall not accept a subscription for Preferred Units from or issue or register a transfer of Preferred Units to a person unless the person provides a declaration in form and content satisfactory to the Trustees that the person is not a non-resident of Canada. If, notwithstanding the foregoing, the transfer agent determines that a majority of the Preferred Units (determined on the basis of the number of Preferred Units held or the aggregate subscription price thereof) are held by non-residents, the transfer agent may send a notice to non-resident holders of Preferred Units, chosen in inverse order to the order of acquisition or registration or in such other manner as the transfer agent may consider equitable and practicable, requiring them to sell their Preferred Units or a portion thereof within a specified period of not less than 60 days. If the Unitholders receiving such notice have not sold the specified number of Preferred Units or provided the transfer agent with satisfactory evidence that they are not non-residents within such period, the transfer agent may on behalf of such Unitholders sell such Preferred Units and, in the interim, shall suspend the voting and distribution rights attached to such Preferred Units. Upon such sale, the effective holders shall cease to be holders of Preferred Units and their rights shall be limited to receiving the net proceeds of sale upon surrender of the certificates representing such Preferred Units.

5.17 Transfer of Units

Equity Interests shall be, for all purposes of the Trust and this Declaration of Trust, personal and moveable property, and shall be transferable at any time and from time to time by endorsement and delivery of the certificates representing the Equity Interests subject to such provisions and conditions as may be prescribed by the Trustees from time to time. No transfer shall be recorded on the Register unless the transferor has executed the instrument of transfer as reproduced in the Equity Interests certificate and the transferee has delivered to the transfer agent and/or registrar a Equity Interests certificate representing the Equity Interests transferred. Subject

to the foregoing, transfers shall be recorded on the Register and a new certificate for the Equity Interests so transferred shall be issued to the transferee and in case of a transfer of only part of the Equity Interests represented by any certificate, a new certificate for the remaining Equity Interests shall be issued to the transferor.

5.18 Successors in Interest to Unitholders

Any person becoming entitled to any Equity Interests as a consequence of the death, bankruptcy or incompetence of any Unitholder or otherwise by operation of law, shall be recorded as the holder of such Equity Interests and shall receive a new certificate therefor upon production of evidence thereof satisfactory to the Trustees and delivery of the existing certificate to the Trustees or the transfer agent to the Trust, but until such record is made, the Unitholder of record shall continue to be and be deemed to be the holder of such Equity Interests for all purposes whether or not the Trust, the Trustees or the transfer agent or registrar of the Trust shall have actual or other notice of such death, bankruptcy, incompetence or other event.

5.19 Equity Interests Held Jointly or in Fiduciary Capacity

The Trust may treat two or more persons holding any Equity Interests as joint tenants of the entire interest therein unless their ownership is expressly otherwise recorded on the Register, but no entry shall be made in the Register or on any certificate that any person is in any other manner entitled to any future, limited or contingent interest in any Equity Interests; provided, however, that any person recorded as a holder of any Equity Interests may, subject to the provisions herein contained, be described on the Register or on any certificate as a fiduciary of any kind and any customary words may be added to the description of the holder to identify the nature of such fiduciary relationship.

5.20 Performance of Trusts

None of the Trustees, the Unitholders or any transfer agent or other agent of the Trust shall be bound to see to the performance of any trust, express, implied or constructive, or of any charge, pledge or equity to which any of the Equity Interests or any interest therein are or may be subject, or to ascertain or inquire whether any sale or transfer of any such Equity Interests or interest therein by any such Unitholder or his 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.

5.21 Lost Certificates

In the event that any certificate for Equity Interests is lost, stolen, destroyed or mutilated, the Trustees may authorize the issuance of a new certificate for the same number of Equity Interests in lieu thereof. The Trustees may in their discretion, before the issuance of such new certificate require the owner of the lost, stolen, destroyed or mutilated 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 Trustees deem necessary and may require the applicant to supply to the Trust a "lost certificate" or similar bond in such reasonable amount as the Trustees direct indemnifying the Trustees, the transfer agents and registrars for so doing. The Trustees shall have the power to acquire from an insurer or insurers a blanket lost security bond or bonds in respect of the replacement of lost, stolen, destroyed or mutilated

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 Trustees. If such blanket lost security bond is acquired, the Trustees may authorize and direct (upon such terms and conditions as they may from time to time impose) any registrar, transfer agent, trustee, or others to whom the indemnity of such bond extends to take such action to replace such lost, stolen, destroyed or mutilated certificates without further action or approval by the Trustees.

5.22 Death of Unitholders

The death of a Unitholder during the continuance of the Trust shall not terminate the Trust or give such Unitholder's legal representatives a right to an accounting or to take any action in the courts or otherwise against other Unitholders or the Trustees or the property of the Trust, but shall only entitle the legal representatives of the deceased Unitholder to demand and receive, pursuant to the provisions of section 5.18 hereof, a new certificate for Equity Interests in place of the certificate held by the deceased Unitholder, and upon the acceptance thereof such legal representatives shall succeed to all rights of the deceased Unitholder under this Declaration of Trust.

5.23 Unclaimed Distributions

In the event that the Trustees hold distributions which are unclaimed or which cannot be paid for any reason, neither the Trustees nor any distribution disbursing agent shall be under any obligation to invest or reinvest the same and shall only be obligated to hold the same in a current or other non-interest bearing account with a chartered bank or trust company, pending payment to the person or persons entitled thereto. The Trustees shall, as and when required by law, and may at any time prior to such required time, pay all or part of the distributions so held to the Public Trustee (or other similar government official or agency) whose receipt shall be a good acquittance and discharge of the obligations of the Trustees.

5.24 Repurchase of Equity Interests

Provided the holder thereof agrees or the terms of the Equity Interest so provide, the Trust shall be entitled to purchase for cancellation at any time the whole or from time to time any part of the outstanding Equity Interests, at a price per Equity Interest and on a basis to be determined by the Trustees in compliance with all applicable securities regulatory laws, regulations or policies or the policies of any applicable stock exchange.

5.25 Take-Over Bids

- (1) If within 120 days after the date of a take-over bid the bid is accepted by the holders of not less than ninety per cent of the 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, to acquire the Units held by the dissenting offerees.
- (2) An offeror may acquire Units held by a dissenting 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 dissenting offeree stating that:

- (a) the offerees holding more than ninety per cent of the Units to which the bid relates accepted the take-over bid;
 - (b) the offeror is bound to take up and pay for or has taken up and paid for the Units of the offerees who accepted the take-over bid;
 - (c) a dissenting offeree is required to elect:
 - (i) to transfer his Units to the offeror on the terms on which the offeror acquired the Units of the offerees who accepted the take-over bid, or
 - (ii) to demand payment of the fair value of his Units in accordance with subsections (10) to (19) by notifying the offeror within 20 days after he receives the offeror's notice;
 - (d) a dissenting offeree who does not notify the offeror in accordance with subparagraph (4)(b)(ii) is deemed to have elected to transfer his Units to the offeror on the same terms that the offeror acquired the Units from the offerees who accepted the take-over bid; and
 - (e) a dissenting offeree must send his Units to which the take-over bid relates to the Trust within twenty days after he receives the offeror's notice.
- (3) Concurrently with sending the offeror's notice under subsection (2), 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 dissenting offeree with respect to each Unit held by a dissenting offeree.
- (4) A dissenting offeree to whom an offeror's notice is sent under subsection (2) shall, within 20 days after he receives that notice:
- (a) send the certificates representing the Units of the class of Units to which the take-over bid relates to the Trust; and
 - (b) elect
 - (i) to transfer the Units to the offeror on the terms on which the offeror acquired the Units of the Unitholders who accepted the take-over bid; or
 - (ii) to demand payment of the fair value of the shares in accordance with subsections (10)–(19) by notifying the offeror within those 20 days.
- (5) A dissenting offeree who does not notify the offeror in accordance with subsection (4)(b)(ii) is deemed to have elected to transfer the Units to the offeror on the same terms on which the offeror acquired the Units from the Unitholders who accepted the take-over bid.
- (6) Within 20 days after the offeror sends an offeror's notice under subsection (2), 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 dissenting offeree if the dissenting offeree had elected to accept the take-over bid under subparagraph (4)(b)(i).

- (7) The Trust is deemed to hold in trust for the dissenting Unitholder the money or other consideration it receives under subsection (6), 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.
- (8) If the Trust is the offeror, it is deemed to hold in trust for the dissenting offeree the money and other consideration that it would have had to pay or transfer to a dissenting offeree if the dissenting offeree had elected to accept the take-over bid under subsection (4)(b)(i) 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.
- (9) Within 30 days after the offeror sends an offeror's notice under subsection (2), the Trust shall:
 - (a) issue to the offeror a Unit certificate in respect of the Units that were held by dissenting offerees;
 - (b) give to each dissenting offeree who elects to accept the take-over bid terms under subparagraph (4)(b)(i) and who sends his Unit certificates as required under subsection (4)(a), the money or other consideration to which he is entitled, disregarding fractional Units, if any, which may be paid for in money, and
 - (c) send to each dissenting unitholder who has not sent his Unit certificates as required under subsection (4) a notice stating that:
 - (i) his Units have been cancelled,
 - (ii) 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 Units, and
 - (iii) the Trust will, subject to subsections (10) to (19), send that money or other consideration to him forthwith after receiving his Units.
- (10) If a dissenting offeree has elected to demand payment of the fair value of his Units under subparagraph (4)(b)(ii), the offeror may, within 20 days after it has paid the money or transferred the other consideration under subsection (6), apply to a court to fix the fair value of the Units of that dissenting offeree.
- (11) If an offeror fails to apply to a court under subsection (10), a dissenting offeree may apply to a court for the same purpose within a further period of 20 days.
- (12) Where no application is made to a court under subsection (11) within the period set out in that subsection, a dissenting offeree is deemed to have elected to transfer his Units to the

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

- (13) An application under subsection (10) or (11) shall be made to a court having jurisdiction in the place where the Trust has its registered office.
- (14) A dissenting offeree is not required to give security for costs in an application made under subsection (10) or (11).
- (15) On an application under subsection (10) or (11):
 - (a) all dissenting offerees referred to in subparagraph (4)(b)(ii) whose Units have not been acquired by the offeror shall be joined as parties and shall be bound by the decision of the court; and
 - (b) 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.
- (16) On an application to a court under subsection (10) or (11), the court may determine whether any other person is a dissenting offeree who should be joined as a party, and the court shall then fix a fair value for the Units of all dissenting offerees.
- (17) A court may in its discretion appoint one or more appraisers to assist the court to fix a fair value for the Units of a dissenting offeree.
- (18) The final order of the court shall be made against the offeror in favour of each dissenting offeree and for the amount for his Units as fixed by the court.
- (19) 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:
 - (a) fix the amount of money or other consideration that is required to be held in trust under subsection (7) or (8);
 - (b) order that money or other consideration be held in trust by a person other than the Trust;
 - (c) allow a reasonable rate of interest on the amount payable to each dissenting offeree from the date he sends or delivers his Unit certificates under subsection (4) until the date of payment; and
 - (d) order that any money payable to a Unitholder who cannot be found be paid to the Receiver General.
- (20) If a Unitholder does not receive an offeror's notice under section 5.25(2), the Unitholder may:
 - (a) within 90 days after the date of termination of the take-over bid; or

(b) if the Unitholder did not receive an offer pursuant to the take-over bid, within 90 days after the later of:

(i) the date of termination of the take-over bid; and

(ii) the date on which the Unitholder learned of the take-over bid,

require the offeror to acquire those Units.

(21) If a Unitholder requires the offeror to acquire Units under subsection (20), the offeror shall acquire the Units on the same terms under which the offeror acquired or will acquire the Units of the Unitholders who accepted the take-over bid.

(22) Sections 5.25(1) to (21) inclusive shall apply mutatis mutandis to any series of Preferred Units that is the subject of a take-over bid (whether or not the Preferred Units are voting securities or equity securities for purposes of the *Securities Act* (Ontario)).

ARTICLE VI MEETINGS OF UNITHOLDERS

6.1 Annual Meeting

There shall be an annual meeting of the Unitholders entitled to vote at such time and place as the Trustees shall prescribe for the purpose of electing Trustees, appointing the auditors of the Trust and transacting such other business as the Trustees may determine or as may properly be brought before the meeting. The annual meeting of Unitholders shall be held after delivery to the Unitholders of the annual report referred to in section 15.6 and within six months after the end of each fiscal year. Notwithstanding the foregoing, the Trust may apply to the court for an order extending the time for calling an annual meeting beyond such six month period.

6.2 Other Meetings

The Trustees shall have power at any time to call special meetings of the Unitholders at such time and place as the Trustees may determine. Special meetings of the Unitholders shall be called upon the written request of Unitholders holding not less than 5% of the outstanding Equity Interests entitled to vote at a meeting of the Unitholders of the Trust. If there shall be no Trustees, the officers of the Trust shall promptly call a special meeting of the Unitholders for the election of successor Trustees. The phrase “meeting of Unitholders” wherever it appears in this Declaration of Trust shall mean and include both an annual meeting and any other meeting of Unitholders.

Upon receipt by the Trust of a written request for a meeting from Unitholders holding the requisite number of outstanding Equity Interests entitled to vote as aforesaid, the Trustees shall call a meeting of Unitholders to transact the business referred to in the requisition, unless:

(a) 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;

- (b) the Trustees have called a meeting of Unitholders and have given notice thereof pursuant to section 6.3; or
- (c) in connection with the business as stated in the requisition:
 - (i) it clearly appears to the Trustees that the primary purpose of the matter covered by the requisition is submitted by the Unitholder is to enforce a personal claim or redress a personal grievance against the Trust, the Trustees, the officers of the Trust or its securityholders or it clearly appears to the Trustees that the matter covered by the requisition submitted by the Unitholder does not relate in a significant way to the business or affairs of the Trust;
 - (ii) the Trust, at the Unitholder's request, included a matter covered by a requisition in an information circular relating to a meeting of Unitholders held within two years preceding the receipt of such request, and the Unitholder failed to present the matter, in person or by proxy, at the meeting;
 - (iii) substantially the same matter covered by the requisition was submitted to Unitholders in an information circular (including a dissident's information circular) relating to a meeting of Unitholders held within two years preceding the receipt of the Unitholder's request and the matter covered by the requisition was defeated; or
 - (iv) the rights conferred by this section 6.2 are being abused to secure publicity.

Subject to the foregoing, if the Trustees do not within 21 days after receiving the requisition call a meeting, any Unitholder who signed the requisition may call the meeting in accordance with the provisions of Article VI of this Declaration of Trust.

Unless the Unitholders otherwise resolve at a meeting called under this section 6.2, the Trust shall reimburse the Unitholders who signed the requisition the expenses reasonably incurred by them in requisitioning, calling and holding the meeting.

6.3 Notice of Meeting of Unitholders

Notice of all meetings of the Unitholders shall be mailed or delivered by the Trustees to each Unitholder entitled to vote at a meeting of the Unitholders at his address appearing in the Register not less than 21 nor more than 60 days before the meeting. Notice of any meeting of Unitholders shall state the time and place where the meeting is to be held. A Unitholder or any other person entitled to notice of a meeting of Unitholders may in any manner waive notice of the meeting. Attendance at a meeting of Unitholders shall constitute a waiver of notice unless the Unitholder or other person attends the meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not properly called.

If a meeting is adjourned for less than thirty days it is not necessary to give notice of the adjourned meeting, other than by announcement at the earliest meeting that is adjourned. If a

meeting of Unitholders is adjourned by one or more adjournments for an aggregate of thirty days or more, notice of the adjourned meeting shall be given as for an original meeting.

All business to be conducted at a special meeting of Unitholders and all business to be transacted at an annual meeting of Unitholders, except consideration of the financial statements, auditor's report, election of Trustees and re-appointment of the incumbent auditor, is deemed to be special business. Notice of a meeting of Unitholders at which special business is to be transacted shall state:

- (a) the nature of the business in sufficient detail to permit a Unitholder to form a reasonable judgment thereon; and
- (b) the text of any resolution (or a summary thereof) that requires the approval of two-thirds of the votes cast by Unitholders who vote in respect of that resolution to be submitted to the meeting.

6.4 Unitholder Proposals

Subject to subsections (a) and (b), a registered holder or beneficial owner of Equity Interests that carry a right to vote on matters put before an annual meeting of Unitholders (“**Voting Equity Interests**”) 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 Voting Equity Interests, as of the day on which the person submits a Proposal, or (ii) Voting Equity Interests 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 outstanding voting Equity Interests, as of the day on which the person submits the Proposal, or (ii) Equity Interests 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 Equity Interests held or owned by the person submitting the Proposal and the person's supporters, if applicable, and the date the Equity Interests 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 (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 (b).
- (f) A Proposal may not include nominations for the election of Trustees 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 2.4.1.
- (g) The Trust shall not be required to comply with subsections (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 Trustees, its officers, 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 voting Equity Interests voted, if the Proposal has been introduced at only one annual meeting of Unitholders;
 - (B) 6% of the total number of voting Equity Interests 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 voting Equity Interests 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.
 - (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 (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 (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 (g) applies, may make such order as it thinks fit.

6.5 Quorum; Chairperson

A quorum for any meeting of Unitholders shall be individuals present not being less than two in number and being Unitholders or representing by proxy Unitholders who hold in the aggregate not less than 25% of the total number of outstanding Equity Interests entitled to vote at the meeting of Unitholders. If a quorum is present at the opening of a meeting of Unitholders, the Unitholders present may proceed with the business of the meeting, notwithstanding that a

quorum is not present throughout the meeting. If a quorum is not present at the opening of a meeting of Unitholders, the chairperson the Unitholders present may adjourn the meeting to a fixed time and place but may not transact any business.

The chairperson of the Trustees or the Chief Executive Officer of the Trust, if present, and otherwise any other Trustee determined by the Trustees, shall be the chairperson of any meeting of Unitholders.

6.6 Voting

Holders of Equity Interests entitled to vote at a meeting of the Unitholders may attend and vote at all meetings of the Unitholders either in person or by proxy. Each Equity Interest entitled to vote at a meeting of the Unitholders shall be entitled to one vote at all meetings of Unitholders. Holders of Units shall be entitled to vote at all meetings of Unitholders except at a meeting of the holders of Preferred Units as contemplated in section 6.7. Any action to be taken by the Unitholders shall except as otherwise required by this Declaration of Trust or by law, be authorized when approved by a majority of the votes cast at a meeting of Unitholders. The chairperson of any such meeting shall not have a second or casting vote.

6.7 Matters on which Unitholders may Vote

Subject to section 9.2(c), none of the following shall occur unless the same has been duly approved by the Unitholders entitled to vote at a meeting duly called and held, provided that, for greater certainty, holders of Preferred Units shall only be permitted to vote (on the basis of one vote per unit) on items where the right to vote as a holder of Preferred Units is explicitly provided in section 6.7 or otherwise in this Declaration of Trust (including any Certificate of Preferred Unit Terms contemplated by section 5.2.1):

- (a) subject to sections 2.1, 2.5 and 2.6, the election or removal of Trustees;
- (b) except as provided in section 15.4, the appointment or removal of auditors of the Trust;
- (c) any amendment to the Declaration of Trust (except as provided in section 4.5 or section 12.1 (but subject to section 12.2) and except for any amendment resulting from or in connection with the issuance of any new series of Preferred Units or the conversion or reclassification of one series of Preferred Units into another series); provided that holders of Preferred Units shall not be entitled to vote on any amendment which directly or indirectly adds, removes or changes any of the rights, privileges, restrictions and conditions in respect of the Units; and further provided that any amendment which directly or indirectly adds, removes or changes in an adverse manner any of the rights, privileges, restrictions and conditions in respect of any series of Preferred Units cannot occur without the affirmative vote of at least two-thirds of the votes cast at a duly called and held meeting of the holders of Preferred Units of that series or those series so affected, except for in connection with the issuance of any new series of Preferred Units or the conversion or reclassification of one series of Preferred Unit into another series);

- (d) the sale, lease or exchange of all or substantially all the property and assets of the Trust other than in the ordinary course of business of the Trust, which shall require approval by the affirmative vote of at least two-thirds of the votes cast at a meeting of Unitholders entitled to vote called for that purpose;
- (e) the termination of the Trust pursuant to section 13.2; or
- (f) any other matters which
 - (i) expressly require the approval of the Unitholders pursuant to this Declaration of Trust; or
 - (ii) the Trustees determine to present to the Unitholders for their approval or ratification, notwithstanding that there is no express requirement for such approval or ratification hereunder.

Each Equity Interest (including Preferred Units) in the Trust shall carry the right to vote in respect of any approval of Unitholders sought pursuant to subsections (d) and (e) above, whether or not such Equity Interest shall otherwise carry a right to vote.

Further, the holders of Equity Interests (including Preferred Units) of a class or series of Equity Interests of the Trust shall be entitled to vote separately as a class or series in respect of transactions contemplated in subsections (d) and (e), provided that in respect of subsection (d), only if such class or series is affected by the sale, lease or exchange in a manner different from the Equity Interests of another class or series.

Except with respect to the foregoing matters specified in this section, no vote of the Unitholders shall in any way bind the Trustees.

6.8 Voting Units Held By Trust

- (a) If the Trust holds any Equity Interests, the Trust shall not vote or permit those Equity Interests to be voted unless:
 - (i) the Trust holds the Equity Interests for the benefit of the beneficial owner;
 - (ii) the Trust, without delay following the filing or receipt by the Trust, as applicable, of the notice of the meeting, financial statements, management proxy circular, dissident's proxy circular and any other documents (other than the form of proxy) sent to registered Unitholders entitled to vote at the applicable meeting by or on behalf of any person for use in connection with the applicable meeting, sends a copy of the document to the beneficial owner of the Equity Interests and, except where the Trust has received written voting instructions from the beneficial owner of the Equity Interests, a written request for such instructions; and
 - (iii) the Trust receives written voting instructions from the beneficial owner of the Equity Interests;

in which case the Trust shall vote, or appoint a proxyholder to vote, any such Equity Interests in accordance with any written voting instructions received from the beneficial owner thereof.

- (b) A Unitholder by or on behalf of whom a solicitation is made shall provide, at the request of the Trust, without delay, to the Trust at the Unitholder's expense the necessary number of copies of the documents referred to in subsection (a), other than copies of the document requesting voting instructions.
- (c) If a beneficial owner of Equity Interests held by the Trust so requests and provides the Trust with appropriate documentation, the Trust must appoint the beneficial owner or a nominee of the beneficial owner as proxyholder.
- (d) The Trust, the Trustees and the Unitholders agree that the failure of the Trust to comply with this section does not render void any meeting of Unitholders or any action taken at the meeting.
- (e) Nothing in this section gives the Trust the right to vote Equity Interests that the Trust is otherwise prohibited from voting.
- (f) The Trust shall not permit any of its Subsidiaries holding Equity Interests to vote, or permit those Equity Interests to be voted, unless the Subsidiary satisfies the requirements of subsection (a).

6.9 Record Dates

For the purpose of determining the Unitholders who are entitled to receive notice of and vote at any meeting or any adjournment thereof, or who are entitled to receive any distribution, or for the purpose of any other action, the Trustees may from time to time, without notice to Unitholders, close the transfer books for such period, not exceeding 30 days, as the Trustees may determine; or without closing the transfer books the Trustees may fix a date not more than 60 days prior to the date of any meeting of Unitholders or distribution or other action 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, and, except as otherwise determined from time to time by the Trustees, any Unitholder who was a Unitholder at the time so fixed shall be entitled to receive notice of and vote at such meeting or any adjournment thereof or to receive such distribution, even though he has since that date disposed of his Equity Interests, and, except as otherwise determined from time to time by Trustees, no Unitholder becoming such after that date shall be entitled to receive notice of and vote at such meeting for any adjournment thereof or to receive such distribution or to be treated as a Unitholder of record for purposes of such other action.

6.10 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:

- (a) 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 Declaration of Trust;
- (b) it is impracticable to conduct the meeting in the manner required by this Declaration of Trust; or
- (c) 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 6.10, the court may order that the quorum required by this Declaration of Trust be varied or dispensed with at a meeting called, held and conducted pursuant to this section.

A meeting called, held and conducted pursuant to this section 6.10 is for all purposes a meeting of Unitholders duly called, held and conducted.

6.11 Proxies

Whenever the vote or consent of Unitholders is required or permitted under this Declaration of Trust, such vote or consent may be given either directly by the Unitholder or by a proxy. The instrument appointing a proxy must be in writing and either substantially in a form which may be approved by the Trustees acting reasonably or as may be satisfactory to the chairperson of the meeting at which it is sought to be exercised. The instrument of proxy must be executed by the Unitholder giving the proxy or his agent duly authorized in writing and, if given on behalf of joint holders, must be executed by all of them and may be revoked by any of them, and, if given by a Unitholder which is a body corporate, must be executed on its behalf by a person duly authorized in writing. Any person may be appointed a proxy, whether or not that person is a Unitholder. The Trustees or Trust management, on behalf of the Trust, may solicit instruments of proxy from the Unitholders or any of them in respect of any matter requiring or permitting the Unitholders' vote or consent. An instrument of proxy shall be deposited with the chairperson of the meeting before any vote is cast under its authority or at such earlier time (to end not earlier than 48 hours, excluding Saturdays and holidays, prior to the meeting) or in such manner as the Trustees may prescribe from time to time.

An instrument of proxy executed in compliance with the foregoing shall be valid unless challenged at the time of or prior to its exercise and the person challenging the instrument shall have the burden of proving, to the satisfaction of the chairperson of the meeting at which the instrument is proposed to be used, that the instrument of proxy is invalid. Any decision of the chairperson of the meeting in respect of the validity of an instrument of proxy shall be final and binding upon all persons. An instrument of proxy shall be valid only at the meeting with respect to which it was solicited or any adjournment thereof.

A vote cast in accordance with any proxy shall be valid notwithstanding the death, incapacity, insolvency or bankruptcy of the Unitholder giving the proxy or the revocation of the proxy unless written notice of the death, incapacity, insolvency or bankruptcy has been received by the chairperson of the meeting prior to the time the vote is cast or, in the case of revocation, the revocation of the proxy is effected pursuant to this section 6.11.

A Unitholder may revoke a proxy:

- (a) by depositing an instrument or act in writing executed or, in Quebec, signed by the Unitholder or by the Unitholder's personal representative authorized in writing:
 - (i) at the principal office of the Trust at any time up to and including the last business day preceding the day of the meeting, or an adjournment thereof, at which the proxy is to be used; or
 - (ii) with the chairperson of the meeting on the day of the meeting prior to the time the vote is cast or any adjournment thereof; or
- (b) in any other manner permitted by law.

6.12 Meetings by Telephone, Electronic or Other Communications Facility

Any meeting of Unitholders may be held entirely by means of a telephonic, electronic or other communication facility. A person who votes at the meeting or establishes a communications link to the meeting is deemed to be present in person at the meeting. Any such meeting of the Unitholders shall be deemed to be held at the place where the registered office of the Trust is located. The rules and procedures for any meeting of Unitholders held by means of a telephonic, electronic or other communication facility shall be such reasonable rules and procedures as are determined by the Trustees and such rules and procedures shall be binding upon all parties participating in the meeting.

ARTICLE VII MEETINGS OF TRUSTEES

7.1 Trustees May Act Without Meeting

The Trustees may act with or without a meeting. Any action of the Trustees may be taken at a meeting by vote or without a meeting by written consent of all of the Trustees.

7.2 Notice of Meeting

Meetings of the Trustees may be held from time to time upon the call of the Chief Executive Officer, the Secretary or other officer of the Trust or any two Trustees. Regular meetings of the Trustees may be held without call or notice at a time and place fixed by the Trustees' Regulations. Notice of the time and place of any other meetings shall be mailed or otherwise given not less than 48 hours before the meeting but may be waived in writing by any Trustee either before or after such meeting. The attendance of a Trustee at a meeting shall constitute a waiver of notice of such meeting except where a Trustee 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.

7.3 Quorum

A quorum for all meetings of the Trustees or any committee thereof shall be at least 50% of the Trustees or of the Trustees on such committee, as the case may be, present in person a majority of whom shall be persons who are not officers or other employees of the Trust.

7.4 Voting at Meetings

- (a) Questions arising at any meeting of the Trustees shall be decided by a majority of the votes cast. In the case of an equality of votes, the chairperson of the meeting, who shall be the chairperson of the Trustees or, if he or she is not present, the Chief Executive Officer if present, shall not have a second or casting vote in addition to his original vote.
- (b) The powers of the Trustees may be exercised by resolution passed at a meeting at which a quorum is present or by resolution in writing signed by all Trustees. Resolutions in writing may be signed in counterparts, each of which shall be deemed to be an original, and all originals together shall be deemed to be one and the same instrument. Delivery by electronic mail or other electronic transmission of an executed counterpart of a Trustee's signature page to resolutions in writing shall be effective as delivery of an original executed counterpart of such resolutions.

7.5 Meetings by Telephone or Electronic Means

Any Trustee may participate in a meeting of the Trustees or any committee thereof by means of a conference telephone or other electronic communications equipment by means of which all persons participating in the meeting can hear each other and a Trustee so participating shall be considered for the purposes of this Declaration of Trust to be present at that meeting.

ARTICLE VIII DELEGATION OF POWERS

8.1 The Investment Committee

The Trustees shall appoint an Investment Committee to consist of not less than two Trustees. At least two-thirds of such members shall have had at least five years substantial experience in the commercial real estate field. The duties of the Investment Committee will be to review all proposals regarding Transactions (defined below) and to authorize proposed Transactions and make investments on behalf of the Trust. Questions arising at any meeting of the Investment Committee shall be decided by a majority of the votes. Decisions may be taken by written consent of all of the members of the Investment Committee. Any member of the Investment Committee or a member of the Trust's management may call a meeting of the Committee upon not less than 48 hours' notice. Where for any reason a member of the Investment Committee is disqualified from voting on or participating in a decision, any other independent and disinterested Trustee not already a member of the Investment Committee may be designated by the Trustees to act as an alternate.

The Investment Committee shall be entitled to delegate its responsibility for Smaller Transactions (defined below) to a committee comprised of at least three members of the Trust's management, which committee shall include the Trust's Chief Executive Officer and chief operating officer. Notwithstanding such delegation, the Investment Committee shall obtain and

review reports of such management committee at least quarterly of the deliberations and determinations of such management committee in respect of Smaller Transactions.

For the purposes of this section 8.1, “**Transactions**” shall mean:

- (a) acquisitions of income producing properties where such acquisition does not involve the issuance of securities unless such issuance is authorized by the Trustees;
- (b) development land acquisitions where such acquisition does not involve the issuance of securities unless such issuance is authorized by the Trustees; and
- (c) dispositions.

For the purposes of this section 8.1, “**Smaller Transactions**” shall mean:

- (a) acquisitions of income producing properties where the purchase price does not exceed \$40 million and where such acquisition does not involve the issuance of securities unless such issuance is authorized by the Trustees;
- (b) development land acquisitions where the total capital commitment for completion of the development, including land, is estimated not to exceed \$40 million and where such acquisition does not involve the issuance of securities unless such issuance is authorized by the Trustees; and
- (c) dispositions where proceeds do not exceed \$40 million.

8.2 The Compensation Committee

The Trustees shall appoint a Human Resources and Compensation Committee (the “**Compensation Committee**”) to consist of not less than three Trustees, a majority of whom shall not be officers or other employees of the Trust. The duties of such committee will be to review the proposed compensation of certain specified senior officers of the Trust and the chairpersons of the Trustees and any committees of the Trustees and to make recommendations in connection therewith to the Trustees. Questions arising at any meeting of such committee shall be decided by a majority of the votes. Decisions may be taken by written consent of all of the members of such committee. Any member of such committee may call a meeting of such committee upon not less than 48 hours’ notice.

8.3 The Audit Committee

The Trustees shall appoint an audit committee (the “**Audit Committee**”) from among their number to consist of not less than three Trustees, all of whom shall (a) be financially literate and independent within the meaning of National Instrument 52-110 – Audit Committees, except for temporary periods in limited circumstances in accordance with National Instrument 52-110 – Audit Committees, and (b) shall meet any requirements imposed by applicable law for the purpose of membership on such committee. The Audit Committee shall review the financial statements of the Trust and report thereon to the Unitholders. The auditors of the Trust are entitled to receive notice of every meeting of the Audit Committee and, at the expense of the

Trust, to attend and be heard thereat and, if so requested by a member of the Audit Committee, shall attend any meeting of the Audit Committee held during the term of office of the auditors. The auditors of the Trust or a member of the Audit Committee may call a meeting of the Committee on not less than 48 hours' notice.

8.4 Additional Committees and Powers That May Not Be Delegated

The Trustees may create such additional committees as they, in their discretion, determine to be necessary or desirable for the purposes of properly governing the affairs of the Trust; provided that the Trustees may not delegate to any committee or any officer any power or authority in respect of: (i) submitting to Unitholders any question or matter requiring the approval of Unitholders; (ii) filling a vacancy among the Trustees or appointing additional trustees; (iii) issuing Equity Interests except as authorized by the Trustees; (iv) declaring distributions; (v) approving a proxy circular; (vi) approving a take-over bid circular; and (vii) approving the annual financial statements of the Trust.

ARTICLE IX UNITHOLDER REMEDIES

9.1 Dissent and Appraisal Rights

- (a) Subject to section 9.2(e), a Unitholder entitled to vote at a meeting of the Unitholders of the Trust who complies with this section 9.1 may dissent if the Trust resolves to:
 - (i) sell, lease or exchange all or substantially all the property and assets of the Trust;
 - (ii) carry out a going-private transaction; or
 - (iii) amend this Declaration of Trust to
 - (A) add, change or remove any provision restricting or constraining the issue, transfer or ownership of the Equity Interests;
 - (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 Equity Interests of the class held by the dissenting Unitholder;
 - (D) increase the rights or privileges of any class of units having rights or privileges equal or superior to the class of Equity Interests held by the dissenting Unitholder;
 - (E) create a new class of units equal to or superior to the class of Equity Interests held by the dissenting Unitholder;

- (F) 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) effect an exchange or create a right of exchange in all or part of a class of Equity Interests into the class of Units held by the dissenting Unitholder.

For greater certainty, excluding the issuance of any new series of Preferred Units or the conversion or reclassification of one series of Preferred Unit into another series.

- (b) In addition to any other right the Unitholder may have, a Unitholder who complies with this section 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 Equity Interests 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 with respect to all the Equity Interests 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 (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 (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 (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, Equity Interests in respect of which the Unitholder dissents; and
 - (iii) a demand for payment of the fair value of such Equity Interests.
- (g) A dissenting Unitholder shall, within 30 days after the sending of a notice under subsection (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 (g) has no right to make a claim under this section.
- (i) The Trust or its transfer agent shall endorse on any certificate received under subsection (g) a notice that the holder is a dissenting Unitholder under this section 9.1 and shall return forthwith the certificates to the dissenting Unitholder.
- (j) On sending a notice under subsection (f), a dissenting Unitholder ceases to have any rights as a Unitholder other than the right to be paid the fair value of its Equity Interests as determined under this section except where:
 - (i) the Unitholder withdraws that notice before the Trust makes an offer under subsection (k);
 - (ii) the Trust fails to make an offer in accordance with subsection (k) and the dissenting Unitholder withdraws the notice; or
 - (iii) the Trustees revoke the resolution which gave rise to the dissent rights under this section, 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 (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 (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 Trustees to be the fair value, accompanied by a statement showing how the fair value was determined.
- (l) Every offer made under subsection (k) for Equity Interests of the same class or series shall be on the same terms.
- (m) The Trust shall pay for the Equity Interests of a dissenting Unitholder within 10 days after an offer made under subsection (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 (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 Equity Interests of any dissenting Unitholder.
- (o) If the Trust fails to apply to a court under subsection (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 (n) or (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 (n) or (o).
- (r) On an application under subsection (n) or (o):
 - (i) all dissenting Unitholders whose Equity Interests 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 (n) and (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 Equity Interests 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 Equity Interests of the dissenting Unitholders.
- (u) The final order of a court in the proceedings commenced by an application under subsection (n) and (o) shall be rendered against the Trust in favour of each dissenting Unitholder and for the amount of the Equity Interests 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 (y) applies, the Trust shall, within ten days after the pronouncement of an order under subsection (u), notify each dissenting Unitholder that it is unable lawfully to pay dissenting Unitholders for their Equity Interests.
- (x) If subsection (y) applies, a dissenting Unitholder, by written notice delivered to the Trust within thirty days after receiving a notice under subsection (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 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.

9.2 Oppression Remedy

- (a) Any registered holder or beneficial owner of Equity Interests or former registered holder or beneficial owner of Equity Interests or any securityholder, Trustee or officer 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 9.2.
- (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 Subsidiary are or have been carried on or conducted in a manner; or
 - (iii) the powers of the Trustees are or have been exercised in a mannerthat is oppressive or unfairly prejudicial to or that unfairly disregards the interests of any Unitholder, securityholder, creditor, Trustee or officer, 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 section 9.2(a) and without limiting subsection (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 Trust's affairs or those of a Subsidiary by amending this Declaration of Trust or the articles or by-laws of a Subsidiary;
 - (iv) an order directing an issue or exchange of securities;
 - (v) an order appointing Trustees or directors of a Subsidiary in place of or in addition to all or any of the Trustees 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 or a Subsidiary is a party and compensating the Trust or a Subsidiary or any other party to the transaction or contract;
 - (ix) an order requiring the Trust 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 registers or other records of the Trust 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 directs an amendment of this Declaration of Trust or to the constating documents of a Subsidiary, then:
- (i) the Trustees shall request the Trust, such Subsidiary and all directors, Trustees, officers and other persons responsible for management to take all steps necessary to carry out that direction; and
 - (ii) no other amendment to this Declaration of Trust 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 Declaration of Trust or other applicable law if an amendment to the Declaration of Trust or such constating documents is effected under this section.
- (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 X DISTRIBUTIONS

10.1 Computation of Income

Income of the Trust to be distributed to Unitholders on each Distribution Date (the “**Distributions**”) shall be determined by the Trustees and computed on each Distribution Date for the calendar month ending on the Distribution Date or, if the Distribution Date does not

coincide with the last day of a calendar month, for the last calendar month ended immediately preceding the Distribution Date. Except as otherwise provided in the terms of a particular series of Preferred Units as fixed by the Trustees in accordance with section 5.2.1(a), income and net taxable capital gains for purposes of the *Income Tax Act* (Canada) will be allocated to Unitholders in the same proportions as distributions received by Unitholders.

10.2 Distributions Payable

On each Distribution Date specified herein or which may be determined by the Trustees, the Distributions determined and calculated in accordance with section 10.1 shall be payable proportionately to persons who (subject to section 5.16) are holders of Units on the record date for distribution in respect of each such distribution, subject to the preferential entitlements of the holders of the Preferred Units.

For greater certainty, it is hereby expressly declared that a holder of Equity Interests shall have the legal right to enforce payment of any amount which is required to be payable by this Declaration of Trust. The Trustees, if they so determine when income has been accrued but not collected may, on a temporary basis, transfer sufficient monies from the capital to the income account of the Trust to permit distributions of income which are payable to be effected.

The Trustees may, in their discretion, at any time or times during any year, declare additional amounts to be distributable to persons who are holders of Units as at the record date for such distribution.

The Trust shall pay or declare payable to holders of Preferred Units of each series as may from time to time be issued and outstanding, and the holders of such Preferred Units will have a right to receive, such portion of the income of the Trust as the Trustees have determined to distribute to such holders of Preferred Units as prescribed by the rights, privileges, restrictions and conditions established by the Trustees on the creation of such series of Preferred Units. For so long as any Preferred Units remain issued and outstanding, the Trust shall not pay or declare payable any amount to holders of Units (other than amounts that are paid solely through the issuance of additional Units) unless and until the distribution entitlements of the Preferred Units have been paid in full.

Cash distributions shall be made by cheque payable to or to the order of the Unitholder or by such other manner of payment as may be approved by the Trustees from time to time. The payment, if made by cheque, shall be conclusively deemed to have been made upon hand-delivery of a cheque to the Unitholder or to his agent duly authorized in writing or upon the mailing of a cheque by prepaid first-class mail addressed to the Unitholder at his address as it appears on the Register unless the cheque is not paid on presentation. The Trustees may issue a replacement cheque if they are satisfied that the original cheque has not been received or has been lost or destroyed upon being furnished with such evidence of loss, indemnity or other document in connection therewith that they may in their discretion consider necessary.

10.3 Automatic Reinvestment

The Trustees may in their sole discretion, establish a distribution reinvestment plan at any time providing for the voluntary reinvestment of distributions of income by Unitholders.

10.4 Income Tax Matters

In computing the income of the Trust for income tax purposes, the Trust shall claim the maximum amount allowable to it in respect of the capital cost allowance of the Trust, except as otherwise determined by the Trustees, and to the extent permitted by the *Income Tax Act* (Canada) may apply non-capital losses for prior years and any losses (other than capital losses) realized in the year to reduce tax payable or taxable capital gains of the Trust, and shall, to the extent permitted by the *Income Tax Act* (Canada), deduct such portion of the income paid or payable to Unitholders in the year in excess of any capital cost allowance and any losses applied to reduce tax payable on taxable capital gains pursuant to this section.

10.5 Designation of Taxable Dividends, Taxable Capital Gains and Foreign Income

In accordance with and to the extent permitted by the *Income Tax Act* (Canada), the Trustees in each year shall make such designations in respect of the amounts payable or deemed to have been payable to or on behalf of Unitholders for such amounts that the Trustees consider to be reasonable in all of the circumstances, including designations relating to taxable dividends received by the Trust in the year on shares of taxable Canadian corporations, net capital gains realized by the Trust in the year and foreign source income of the Trust for the year.

10.6 Definitions

Unless the context otherwise requires, any term in Article I or this Article X which is defined in the *Income Tax Act* (Canada) shall have for the purposes of Article I and this Article X the meaning that it has in the *Income Tax Act* (Canada).

ARTICLE XI FEES AND EXPENSES

11.1 Expenses

The Trust may pay reasonable expenses incurred in connection with the administration and management of the Trust, including, without limitation, fees of auditors, lawyers, appraisers, registrars and transfer agents and other agents, consultants and professional advisors employed by or on behalf of the Trust and the cost of reporting or giving notices to Unitholders.

11.2 Payment of Real Property and Brokerage Commissions

The Trust may pay real property and brokerage commissions at commercial rates in respect of the acquisition and disposition of any investment acquired or disposed of by it.

11.3 Property Management, Leasing and Financing Fees

The Trust may pay property management fees, leasing fees, financing fees and similar fees normally charged by property managers, all at commercial rates in respect of any real property owned by it.

11.4 Indemnification of Unitholders for Transfer Taxes

Unitholders who acquire Equity Interests through the facilities of a stock exchange shall at all times be indemnified and saved harmless out of the funds of the Trust from and against any and all claims which may be made of them for the payment of any tax, charge, or other levy imposed by a taxing authority in connection with the transfer of an interest in real property.

ARTICLE XII AMENDMENTS TO THE DECLARATION OF TRUST

12.1 Amendments by the Trustees

The Trustees may make the following amendments to this Declaration of Trust in their sole discretion and without the approval of Unitholders:

- (a) amendments for the purpose of ensuring continuing compliance with applicable laws, regulations, requirements or policies of any governmental authority having jurisdiction over the Trustees or over the Trust, its status under the *Income Tax Act* (Canada) or the distribution of Equity Interests;
- (b) amendments which, in the opinion of the Trustees, provide additional protection for Unitholders;
- (c) amendments which, in the opinion of the Trustees, are necessary or desirable to remove conflicts or inconsistencies in the Declaration of Trust;
- (d) amendments of a minor or clerical nature or to correct typographical mistakes, ambiguities or manifest omissions or errors which amendments in the opinion of the Trustees are necessary or desirable and not prejudicial to the Unitholders;
- (e) such amendments to the Declaration of Trust as they in their discretion deem necessary or desirable as a result of changes in the taxation laws or accounting standards from time to time which may affect the Trust or its beneficiaries; and
- (f) amendments which in the opinion of the Trustees are not prejudicial to Unitholders and are necessary or desirable.

12.2 Ratifying Amendments to Declaration of Trust

- (a) The Trustees shall submit any amendment to the Declaration of Trust that has not been approved by the Unitholders pursuant to section 12.1, other than amendments pursuant to section 4.5, 12.1(a), 12.1(d) or 12.1(e), or as contemplated by section 5.2.1 and amendments the Trustees determine are necessary or advisable pursuant to or in connection with applicable tax laws, securities laws, accounting rules or other applicable laws or regulations or such amendments, the equivalent of which, would not otherwise be required to be ratified by shareholders pursuant to the *Canada Business Corporations Act*, to the Unitholders at the next meeting of Unitholders and the Unitholders entitled to vote on the amendment may, by a vote representing at least a majority of the

Equity Interests voted, in person or by proxy, confirm, reject or amend the amendment to the Declaration of Trust.

- (b) An amendment to this Declaration of Trust which the Trustees are expressly empowered to make pursuant to the terms hereof is effective from the date the amended Declaration of Trust is signed which reflects the amendment approved by the Trustees until, if required, it is confirmed, confirmed as amended or rejected by the Unitholders under subsection (a) or until it ceases to be effective under subsection (c) and, where the amendment is confirmed or confirmed as amended, it continues in effect in the form in which it was so confirmed.
- (c) If an amendment to this Declaration of Trust is rejected by the Unitholders, or if the Trustees do not submit an amendment to the Unitholders as required under subsection (a), the amendment ceases to be effective immediately after the meeting of Unitholders referred to in subsection (a) and no subsequent resolution of the Trustees to amend the Declaration of Trust having substantially the same purpose or effect is effective until it is confirmed or confirmed as amended by the Unitholders. The Trustees shall sign an amended and restated Declaration of Trust which removes the rejected or unapproved amendment.

12.3 Amendments by Unitholders

Subject to sections 2.5, 6.7(c) and 12.4, this Declaration of Trust may be amended by the vote of a majority of the votes cast at a meeting of Unitholders entitled to vote called for that purpose.

12.4 Two-Thirds Unitholder Vote

Subject to sections 2.5, 4.5, 6.7(c), and 9.2, no amendment may be made which would change any right with respect to any outstanding Equity Interests of the Trust by reducing the amount payable thereon upon termination of the Trust, by diminishing or eliminating any voting rights pertaining thereto or which would relate to the duration or termination of the Trust or any sale, lease or exchange of all or substantially all of the property or assets of the Trust, except by the affirmative vote of at least two-thirds of the votes cast at a meeting of Unitholders entitled to vote called for that purpose.

ARTICLE XIII TERMINATION OF THE TRUST

13.1 Duration of the Trust

Unless the Trust is sooner terminated as otherwise provided herein, the Trust shall continue in such manner that the Trustees shall have all the powers and discretions, expressed and implied, conferred upon them by law or by this Declaration of Trust.

13.2 Termination by Unitholders

Subject to section 6.7(e), the Trust may be terminated by the vote of at least two-thirds of the votes cast by holders of each class of Equity Units at a meeting of Unitholders called for that purpose.

13.3 Effect of Termination

Upon the termination of the Trust, the liabilities of the Trust shall be discharged with due speed and the net assets of the Trust shall be liquidated and the proceeds distributed to holders of issued and outstanding Preferred Units in accordance with the rights, privileges, restrictions and conditions attached to the Preferred Units, with the remaining balance of the proceeds distributed proportionately to the holders of Units. Such distribution may be made in cash or in securities or partly in both, all as the Trustees in their sole discretion may determine.

ARTICLE XIV LIABILITIES OF THE TRUSTEES AND OTHERS

14.1 Liability and Indemnification of the Trustees, Officers and Employees

The Trustees, officers and other employees of the Trust shall at all times be indemnified and saved harmless out of the funds of the Trust from and against all claims whatsoever, including costs, charges and expenses in connection therewith, brought, commenced or prosecuted against any of them for or in respect of any act, deed, matter or thing whatsoever made, done, acquiesced in or omitted in or about or in relation to the execution of their duties as Trustees, officers or employees, as the case may be, and also from and against all other costs, charges, and expenses which they sustain or incur in or about or in relation to the affairs of the Trust. Further, no such person shall be liable to the Trust or to any Unitholder or annuitant or any other person for any loss or damage relating to any matter regarding the Trust, including any loss or diminution in the value of the Trust or its assets. The foregoing sentences do not apply unless:

- (a) the person acted honestly and in good faith with a view to the best interests of the Trust; and
- (b) in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, the person had reasonable grounds for believing his conduct was lawful.

14.2 Liability of Trustees, Officers and Employees

The Trustees, officers and other employees of the Trust, shall not be liable to the Trust or to any Unitholder, annuitant or any other person for the acts, omissions, receipts, neglects or defaults of any person, firm or corporation employed or engaged by them as permitted hereunder, or for joining in any receipt or act of conformity, or for any loss, damage or expense caused to the Trust through the insufficiency or deficiency of any security in or upon which any of the monies of or belonging to the Trust shall be laid out or invested, or for any loss or damage arising from the bankruptcy, insolvency or tortuous act of any person, firm or corporation with whom or which any monies, securities or property of the Trust shall be lodged or deposited, or for any loss occasioned by error in judgment or oversight on the part of the Trustees, officers or

other employees or for any other loss, damage or misfortune which may happen in the execution by such persons of their duties hereunder, except to the extent set out in the last sentence of section 14.1.

14.3 Reliance upon Advice

The Trustees, officers and other employees of the Trust may rely and act upon any statement, report or opinion prepared by or any advice received from the auditors, solicitors or other professional advisors of the Trust and shall not be responsible or held liable for any loss or damage resulting from so relying or acting.

14.4 Liability of Unitholders and Others

No Unitholder or annuitant shall be held to have any personal liability as such, and no resort shall be had to his private property for satisfaction of any obligation or claim arising out of or in connection with any contract or obligation of the Trust or of the Trustees or any obligation which a Unitholder or annuitant would otherwise have to indemnify a trustee for any personal liability incurred by the Trustees as such, but rather the assets of the Trust only are intended to be liable and subject to levy or execution for such satisfaction. Any written instrument creating an obligation which is or includes the granting by the Trust of a lease, sublease or mortgage or which is, in the judgement of the Trustees, a material obligation shall contain a provision to the effect that the obligation being created is not personally binding upon, and that resort shall not be had to, nor shall recourse or satisfaction be sought from, the private property of any of the Unitholders, but the property of the Trust or a specific portion thereof only shall be bound. If the Trust acquires any real property investment subject to existing contractual obligations, including obligations under mortgages and leases, the Trustees shall use their best efforts to have any such obligations modified so as to achieve the aforesaid disavowal of contractual liability. Further, the Trustees shall cause the operations of the Trust to be conducted, with the advice of counsel, in such a way and in such jurisdictions as to avoid, as far as possible, any material risk of liability on the Unitholders for claims against the Trust, and shall, to the extent which it determines to be possible and reasonable, including in the cost or premiums, to cause the Trust to carry insurance for the benefit of the Unitholders and annuitants in such amounts as they consider adequate to cover any foreseeable non-contractual or non-excluded contractual liability. Any potential liability of the Trustees with respect to their foregoing obligations or their failure to perform the same shall be governed by the provisions of sections 14.1, 14.2 and 14.3.

To the extent that, notwithstanding the provisions of this section, any Unitholder, in its capacity as such, is determined by a judgment of a court of competent jurisdiction to be, or is otherwise held, personally liable in respect of any of the liabilities of the Trust or is required to indemnify the Trustees or any other person,:

- (a) any such judgment, writ of execution or similar process in respect thereof will be enforceable only against, and will be satisfied only out of, the assets of the Trust; and
- (b) in the event that, notwithstanding subsection (a), the judgment, writ of execution or similar process is enforceable against the Unitholder, or the Unitholder is otherwise held personally liable, the Unitholder will be entitled to indemnity and reimbursement out of the assets of the Trust to the full extent of the liability and

for all costs of any litigation or other proceedings in which such liability has been determined, including all fees and disbursements of counsel.

The rights accruing to a Unitholder under this section 14.4 and the limitations of a Unitholder's liability set out herein are in addition to, and do not exclude, any other rights or limitations of liability to which such Unitholder may be lawfully entitled, pursuant to statute, regulation or otherwise, and nothing herein contained restricts the right of the Trustees to indemnify or reimburse a Unitholder out of the assets of the Trust in any appropriate situation not specially provided herein but, for greater certainty, the Trustees have no liability to reimburse Unitholders for taxes assessed against them by reason of or arising out of their ownership of Units.

ARTICLE XV GENERAL

15.1 Execution of Instruments

Any two Trustees shall have authority to sign in the name and on behalf of the Trust all instruments in writing and any instruments in writing so signed shall be binding upon the Trust without any further authorization or formality. The Trustees shall have power from time to time to appoint any person or persons on behalf of the Trust either to sign instruments in writing generally or to sign specific instruments in writing.

15.2 Manner of Giving Notice

Any notice required or permitted by the provisions of this Declaration of Trust to be given to a Unitholder shall be deemed conclusively to have been given if given either by delivery or by prepaid ordinary mail addressed to the Unitholder at his address shown on the Register, to a Trustee at the last address provided by such Trustee to the Chief Executive Officer of the Trust, or to the auditors of the Trust at the last address provided by the auditors to the Trustees, as the case may be provided that if there is a general discontinuance of postal service due to strike, lockout or otherwise, such notice may be given by publication twice in the Report on Business section of the National Edition of The Globe and Mail or similar section of any other newspaper having national circulation in Canada provided further that if there is no newspaper having national circulation, then by publishing twice in the business section of a newspaper in each city where the Register or a branch register is maintained. Any notice so given shall be deemed to have been given on the day following that on which the letter or circular was posted or, in the case of notice being given by publication, after publishing such notice twice in the designated newspaper or newspapers. In proving notice was posted, it shall be sufficient to prove that such letter or circular was properly addressed, stamped and posted.

Any written notice or written communication given to the Trustees shall be addressed to the Trustees at the head office of the Trust, and shall be deemed to have been given on the date of delivery or date sent by other means of prepaid, transmitted or recorded communications or, if mailed, five days from the date of mailing. If any such notice or communication shall have been mailed and if regular mail service shall be interrupted by strikes or other irregularities, such notice or communication shall be deemed to have been received 48 hours after 12:01 a.m. on the

day following the resumption of normal mail service, provided that during the period that regular mail service shall be interrupted any notice or other communication shall be given by personal delivery or by other means of prepaid, transmitted or recorded communication.

15.3 Failure to Give Notice

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

15.4 Trust Auditors

The auditors of the Trust shall be appointed at each annual meeting. If at any time a vacancy occurs in the position of auditors of the Trust, the Trustees may appoint a firm of chartered accountants qualified to practice in all provinces of Canada to act as the auditors of the Trust until the next annual meeting of Unitholders. The auditors of the Trust shall report to the Trustees and the Unitholders on the annual financial statements of the Trust and shall fulfil such other responsibilities as they may properly be called upon by the Trustees to assume. The auditors shall have access to all records relating to the affairs of the Trust. The remuneration of auditors shall be fixed by the Trustees.

15.5 Fiscal Year

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

15.6 Reports to Unitholders and Statements of Units Held

Within 140 days of the end of each calendar year and at least 21 days prior to each annual meeting of Unitholders, the Trustees shall send to each Unitholder a report, including audited comparative financial statements for such year, prepared in compliance with applicable securities laws. Within 60 days after the end of each of the first three fiscal quarters, of each year, the Trustees shall send unaudited comparative financial statements for the period then ended prepared in compliance with applicable securities laws to each Unitholder. The Trustees will supply Unitholders with any information that may be required by them in connection with their obligations under the *Income Tax Act* (Canada).

15.7 Trust Assets to be Kept Separate

The Trustees shall maintain the assets of the Trust separate from all other property in their possession.

15.8 Trustees May Hold Equity Interests

Subject to section 5.7, any Trustee may be a Unitholder or may be an annuitant.

15.9 Right to Inspect Documents and Records of the Trust

- (a) A Unitholder and any agent, consultant or creditor of the Trust shall have the right to examine the Declaration of Trust and any other documents or records which the

Trustees determine should be available for inspection by such persons, during normal business hours at the principal office of the Trust.

- (b) Any person described in subsection (a) who wishes to examine the securities Register of the Trust must first make a request to the Trust or its agent or mandatary, accompanied by an affidavit referred to in section 15.9.2. On receipt of the affidavit, the Trust or its agent or mandatary shall allow the applicant access to the securities Register during the normal business hours, and, on payment of a reasonable fee, provide the applicant with an extract from the securities Register.

15.9.1 Information Available to Unitholders and other Securityholders

- (a) Unitholders, other securityholders of the Trust and creditors and their respective personal representatives, or any other person, on payment of a reasonable fee therefor and on sending the Trust or its agent or mandatary an affidavit referred to in section 15.9.2 may on application require the Trust or its agent or mandatary to provide, where available, within 10 days after receipt of the affidavit a list (in this section referred to as the "basic list") made up to a date not more than 10 days before the receipt of the affidavit setting out the names of the Unitholders, the number of Equity Interests held by each Unitholder and the address of each Unitholder as shown in the records of the Trust.
- (b) A person requiring the Trust to provide a basic list may, by stating in the affidavit referred to in subsection (a) that they require supplemental lists, require the Trust or its agent or mandatary on payment of a reasonable fee to provide supplemental lists, where available, setting out any changes from the basic list in the names or addresses of the Unitholders and the number of Equity Interests owned by each Unitholder for each business day following the date the basic list is made up to.
- (c) The Trust or its agent or mandatary shall provide a supplemental list, where available, required under subsection (b):
 - (i) on the date the basic list is furnished, where the information relates to changes that took place prior to that date; and
 - (ii) on the business day following the day to which the supplemental list relates, where the information relates to changes that take place on or after the date the basic list is furnished.
- (d) A person requiring the Trust to furnish a basic list or a supplemental list may also require the Trust to include in that list the name and address of any known holder of an option or right to acquire Equity Interests, where available.

15.9.2 Affidavits

- (1) An affidavit required under sections 15.9 or 15.9.1 shall state
 - (a) the name and address of the applicant;

- (b) the name and address for service of the body corporate, if the applicant is a body corporate; and
- (c) that the information contained in the securities register obtained pursuant to section 15.9 or the basic list and any supplemental lists obtained pursuant to section 15.9.1, as the case may be, will not be used except as permitted under subsection 15.9.3.

15.9.3 Use of Information

- (a) a list of Unitholders or information from a securities register obtained under section 15.9 or 15.9.1 shall not be used by any person except in connection with
 - (i) an effort to influence the voting of Unitholders of the Trust;
 - (ii) an offer to acquire securities of the Trust; or
 - (iii) any other matter relating to the affairs of the Trust.

15.10 Consolidations

Any one or more Trustees may prepare consolidated copies of the Declaration of Trust as it may from time to time be amended and may certify the same to be a true consolidated copy of the Declaration of Trust, as amended.

15.11 Counterparts

This Declaration of Trust 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.

15.12 Execution and Effect of Restated Declaration of Trust

Subject to Article XII, a restated Declaration of Trust, setting forth the terms of this Declaration of Trust, as amended to the time of execution, may be executed at any time or from time to time by the Trustees and such restated Declaration of Trust as so executed shall thereafter be effective and may thereafter be referred to in lieu of the original Declaration of Trust as so amended; provided, however, that no such execution of a restated Declaration of Trust shall be deemed to constitute a termination and/or resettlement of the Trust or this Declaration of Trust.

15.13 SeverabilityThe provisions of this Declaration of Trust are severable and if any provisions are in conflict with any applicable law, the conflicting provisions shall be deemed never to have constituted a part of the Declaration of Trust and shall not affect or impair any of the remaining provisions thereof.

15.14 Headings for Reference Only

The headings preceding the articles and sections hereof have been inserted for convenience of reference only and shall not be construed to affect the meaning, construction or effect of this Declaration of Trust. Governing Law

This Declaration of Trust shall be interpreted and take effect in accordance with the laws of the Province of Ontario.

IN WITNESS WHEREOF the Trustees have caused these presents to be signed and sealed as of the 2nd day of June, 2020.

“Bonnie Brooks”

Bonnie Brooks

“Richard Dansereau”

Richard Dansereau

“Paul Godfrey”

Paul Godfrey

“Dale H. Lastman”

Dale H. Lastman

“Jane Marshall”

Jane Marshall

“Sharon Sallows”

Sharon Sallows

“Edward Sonshine”

Edward Sonshine, Q.C.

“Siim Vanaselja”

Siim Vanaselja

“Charles Winograd”

Charles Winograd