

ALLIED

Amended and Restated Declaration of
Trust

MAY 3, 2022

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AMENDED AND RESTATED DECLARATION OF TRUST

Made in Toronto, Ontario as of the 3rd day of May, 2022.

RECITALS

WHEREAS the Trust was established by a declaration of trust on October 25, 2002 for the principal purpose of providing persons who may become the holders of Units of the Trust with an opportunity to invest in a trust owning a portfolio of income-producing real property investments;

AND WHEREAS the declaration of trust dated October 25, 2002 was amended and restated on February 6, 2003, May 14, 2008, May 11, 2010, May 15, 2012, May 14, 2013, May 14, 2015, May 12, 2016, April 14, 2020, May 10, 2021 and March 4, 2022;

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

AND WHEREAS for greater certainty, the amendment and restatement of this Amended and Restated Declaration of Trust shall not be deemed to constitute a termination of the Trust or a resettlement of this Amended and Restated Declaration of Trust or the trust created thereby;

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the foregoing, the parties hereto covenant and agree to be bound by, and declare that they are bound by, this Amended and Restated Declaration of Trust (hereinafter referred to as this "*Declaration of Trust*"), as follows:

ARTICLE 1 - INTERPRETATION

Section 1.1 Definitions

In this Declaration of Trust, unless the subject matter or context otherwise requires, the following terms have the following meanings:

"Adjusted Unitholders' Equity" means, at any time, the aggregate amount of Unitholders' equity and the amount of accumulated depreciation and amortization recorded in the books and records of the Trust in respect of its properties calculated in accordance with IFRS;

"Affected Holders" has the meaning ascribed thereto in Section 6.10 hereof;

"Affected Units" has the meaning ascribed thereto in Section 6.10 hereof;

"affiliate" means, with respect to any person, an associate or any other person directly or indirectly controlling, controlled by or under direct or indirect common control with, such person;

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

“associate” has the meaning ascribed thereto in the Securities Act;

“Audit Committee” means the committee established pursuant to Section 9.3 hereof;

“Basic Basis” means, at any time, the number of Units outstanding at such time, excluding, for greater certainty, Units issuable upon the surrender or exchange of Exchangeable Securities or Trust Exchangeable Securities;

“Book-Entry System” means the record-entry securities transfer and pledge system known, as of the date hereof, by such name, which is administered by CDS in accordance with the operating rules and procedures of the securities settlement services of CDS in force from time to time, or any successor system which CDS may offer from time to time;

“Business Day” means a day which is not a Saturday, a Sunday or a statutory or civic holiday in the City of Toronto, Canada or a day on which The Toronto Stock Exchange is closed;

“CDS” means CDS Clearing and Depository Services Inc. and its successors;

“CDS Participant” means a broker, dealer, bank, other financial institution or other person who, directly or indirectly, from time to time effects book-based transfers with CDS and pledges of securities deposited with CDS;

“capital cost allowance” includes any amount deductible in respect of the cost of investments or other capital assets as is permitted by the Tax Act;

“Chair of Trustees” means the person holding that office from time to time in accordance with Section 4.2 hereof;

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

“Declaration of Trust” means this Amended and Restated Declaration of Trust as the same may be further amended, supplemented or amended and restated from time to time;

“Depository” has the meaning ascribed thereto in Section 6.12(a) hereof;

“dissenting offeree” means, where a take-over bid is made for all the Units other than those held by the offeror (its affiliates and associates), a holder of Units who does not accept the take-over bid and includes a subsequent holder of such Unit who acquires such Unit from the first mentioned holder;

“Distribution Date” means, in respect of a month, on or about the 15th day of the following month;

“Distributions” has the meaning set forth in Section 11.1 hereof;

"Distribution Reinvestment Plan" means the distribution reinvestment plan to be adopted by the Trust, pursuant to which Unitholders will be entitled to elect to have cash distributions in respect of Units automatically reinvested in additional Units;

"Exchangeable Securities" means any securities of any trust, limited partnership (including the LP) or corporation other than the Trust that are convertible or exchangeable directly for Units without the payment of additional consideration therefor and, for greater certainty, includes the LP Class B Units but does not include Trust Exchangeable Securities;

"Fully-Diluted Basis" means, for the purposes of Section 6.10, at any time, the number of (i) Units outstanding at such time and (ii) Units issuable upon the surrender or exchange of Exchangeable Securities or Trust Exchangeable Securities at such time;

"GLA" means in relation to a building, the area of the premises that are intended to be leased to tenants in such building, measured using accepted industry standards of measurement;

"Global Unit Certificate" has the meaning ascribed thereto in Section 6.12(a) hereof;

"going-private transaction" means an arrangement, consolidation or other transaction involving the Trust, other than an acquisition pursuant to Section 6.26, 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;

"Governance, Compensation and Nomination Committee" means the committee established pursuant to Section 9.4 hereof;

"Gross Book Value" means, at any time, the total assets of the Trust shown on the then most recent interim balance sheet of the Trust;

"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 hereof;

"IFRS" means International Financial Reporting Standards issued by the International Accounting Standards Board, and as adopted by the Chartered Professional Accountants Canada, which are applicable as at the date on which any calculation made hereunder is to be effective;

"Independent Trustee" means a Trustee who is "independent" as defined in National Instrument 58-101 *Disclosure of Corporate Governance Practices*, as amended from time to time, and any successor law or instrument;

"Investment Committee" means the committee which may be established pursuant to Section 9.2 hereof;

“issuer bid” has the meaning ascribed thereto in the Securities Act;

“Lead Trustee” has the meaning set forth in Section 4.2 hereof;

“LP” means Allied Properties Limited Partnership, a limited partnership formed under the laws of the Province of Ontario;

“LP Agreement” means the limited partnership agreement of the LP;

“LP Class B Unit” means a unit of interest in the LP designated as a LP Class B Unit and having the rights and attributes described in the LP Agreement with respect thereto, including the right of a holder thereof to exchange such unit for a Unit;

“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 set forth in Subsection 2.7(a) hereof;

“Notice Date” has the meaning set forth in Subsection 2.7(c) hereof;

“Officer of the Trust” means a person appointed as an officer of the Trust pursuant to Article 4 hereof;

“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 but does not include the Special Voting Units;

“person” means and includes any individual, general partnership, limited partnership, joint venture, syndicate, sole proprietorship, company or corporation with or without share capital, joint stock company, association, trust, trust company, bank, pension fund, trustee, executor, administrator or other legal personal representative, regulatory body or agency, government or governmental agency, authority or other organization or entity, whether or not a legal entity, however designated or constituted;

“Properties Under Development” means any real property that is undergoing development or redevelopment necessary to function as high quality office, retail or residential property that is carried as such in the financial statements of the Trust or has been designated as such by the Trustees;

“Public Trustee” means the Office of the Public Guardian and Trustee, a part of the Province of Ontario's Ministry of the Attorney General, or any successor;

“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) any interests in any of the foregoing and securities of corporations or partnerships or trusts whose purpose and activity is to invest in, hold,

manage and/or deal in real property;

“Receiver General” means the Receiver General for Canada;

“Record Date” means the date for determining Trust Unitholders entitled to receive notice of or vote at a meeting of Trust Unitholders;

“Register” means the register which shall be established and maintained pursuant to Section 6.16 hereof;

“Related Party” means any person who is (a) a Trustee or an affiliate of a Trustee; (b) a promoter of the Trust or any affiliate of a promoter of the Trust; (c) a substantial security holder of the Trust or a promoter of the Trust, or any affiliate of such substantial security holder; and (d) an officer, director or employee of the Trust or of a promoter of the Trust, or of any affiliate of the Trust or promoter of the Trust;

“Rights Plan” means the Unitholders' rights plan established by the Trust, as amended, supplemented and/or restated from time to time;

“Securities Act” means the *Securities Act* (Ontario), as amended from time to time, and any successor law or instrument;

“Sell Notice” means a notice delivered to an Affected Holder as contemplated in Section 6.10 hereof;

“Special Voting Unit” means a special voting unit of the Trust that is authorized and issued pursuant to Section 6.1 to a holder of an Exchangeable Security;

“subsidiary” has the meaning ascribed thereto in National Instrument 45-106 *Prospectus Exemptions*, as amended from time to time, and any successor law or instrument;

“take-over bid” has the meaning ascribed thereto in the Securities Act;

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

“Tax Distribution Date” has the meaning set forth in Section 11.2 hereof;

“Taxation Distribution Amount” has the meaning set forth in Section 11.2 hereof;

“Taxation Year” means the taxation year of the Trust for the purposes of the Tax Act;

“Trust” means Allied Properties Real Estate Investment Trust constituted hereunder or the Trustees thereof, as the context requires;

“Trust Exchangeable Securities” has the meaning set out in Section 6.7;

“Trust Unitholder” means a person whose name appears on the Register as a holder of one or more Units or Special Voting Units, or a fraction thereof;

“Trust Units” means, collectively, the Units and the Special Voting Units;

“Trustees” means, as of any particular time, the trustees holding office under and in accordance with 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 hereof;

“Unit” means a unit of interest in the Trust authorized and issued hereunder as such and for the time being outstanding and includes a fraction of a Unit but, for greater certainty, excludes a Special Voting Unit;

“Unit Certificate” means a certificate, in the form stipulated by Section 6.14 hereof, evidencing one or more Units, issued and certified in accordance with the provisions hereof;

“Unit Option Plan” means the unit option plan which the Trust may adopt from time to time providing for the issuance, from time to time, of options to purchase Units for cash to the members of the Trust’s management; and

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

Section 1.2 Name

The name of the trust created by this Declaration of Trust shall be “Allied Properties Real Estate Investment Trust” and the French form of the name shall be “Fonds de placement immobilier Allied”. 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, in either its English or French form.

The Trust may be legally designated by either the English or French form of its name or both forms and any mention of the name of the Trust herein shall refer to both the English and French forms of the name of the Trust.

Section 1.3 Use of Name

Should the Trustees determine that the use of the name “Allied Properties Real Estate Investment Trust” or the French form thereof 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.

Section 1.4 Places of Administration

The principal office and centre of administration of the Trust shall be at 134 Peter Street, Suite 1700, Toronto, Ontario, M5V 2H2, unless changed by the Trustees to another location in Canada. 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.

Section 1.5 Nature of the Trust

The Trust is an unincorporated investment trust. The Trust, its Trust Units 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:

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

The beneficial interests and rights of a holder of any Unit shall be limited to the right to vote as contemplated in Article 6 and to participate in distributions when and as declared by the Trustees as contemplated by Article 11 and distributions upon the termination of the Trust as contemplated in Article 14. The interest and rights of a holder of any Special Voting Units shall be limited to the right to vote as contemplated by Article 6. 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 or the Trust 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 Trust Unitholders. The relationship of the Unitholders to the Trustees, to 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. The relationship of the holders of Special Voting Units to the Trustees, to the Trust and to the property of the Trust shall be solely that of participants in any vote of Trust Unitholders in accordance with rights conferred and the liabilities and obligations imposed upon them by this Declaration of Trust.

Section 1.6 Applications to Court

As the rights (including the right to apply to a court) and remedies set out in Sections 3.7(g), 6.25, 7.1, 7.4, 7.11, 10.1 and 10.2 of this Declaration of Trust are not statute-based, all references in this Declaration of Trust to Trust 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 Trust Unitholder (or other eligible person as contemplated herein) applying to the court under such Sections.

ARTICLE 2 - TRUSTEES

Section 2.1 Number

There shall be no fewer than seven nor more than 13 Trustees. The number of Trustees may be increased or decreased within such limits from time to time by the Trust Unitholders or, if authorized by the Trust Unitholders, by the Trustees, in each case subject to and in compliance with Section 2.3, provided that the Trustees may not, between meetings of Trust Unitholders, appoint an additional Trustee if, after such appointment, the total number of Trustees would be greater than one and one-third times the number of Trustees

immediately following the last annual meeting of Trust Unitholders.

Section 2.2 Term of Office

Each Trustee who executes this Declaration of Trust or who is hereafter elected or appointed in accordance with this Declaration of Trust shall (except as provided in Section 2.4 and Section 2.6) hold office until the next annual meeting of Trust Unitholders or until his or her successor has been duly elected or appointed, as the case may be, and has qualified to serve as Trustee and has accepted such election or appointment.

Section 2.3 Qualifications of Trustees

A Trustee shall be an individual at least 18 years of age upon the date of election or appointment, as applicable, 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 Trust Units. A majority of the Trustees and a majority of the Independent Trustees must be resident Canadians. A majority of the Trustees shall be 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 of affiliation of any Trustee who was not so affiliated, this requirement shall not be applicable for a period of 60 days, during which the Trustees shall appoint a sufficient number of Trustees to comply with the requirement.

Section 2.4 Election of Trustees

Subject to Section 2.2 hereof, the election of Trustees shall be by the vote of Trust Unitholders at a meeting duly called and held for such purpose. The election or appointment 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 accepted his or her election or appointment, as the case may be, and agreed to be bound by the terms of this Declaration of Trust.

Section 2.5 Resignation, Removal and Death of Trustees

A Trustee may resign at any time by an instrument in writing signed by him and delivered or mailed to the Chair of Trustees, or any officer designated by the Chair of Trustees for this purpose. Such resignation shall take effect on the date such notice is given or at any later time specified in the notice. A Trustee may be removed: (i) at any time with or without cause by a majority of the votes entitled to be cast at a meeting of Trust Unitholders duly called for that purpose; or (ii) at any time with cause by two-thirds of the votes cast by the remaining Trustees at any Trustees' meeting. This Declaration of Trust may only be amended to require a greater number of votes of Trust Unitholders to remove a Trustee than the number set forth in this Section 2.5 with the unanimous consent of the Trust Unitholders. Upon the resignation or removal of any Trustee, or his or her otherwise ceasing to be a Trustee, he or she shall (i) cease to have the rights, privileges and powers of a Trustee hereunder; (ii) execute and deliver such documents as the remaining Trustees shall require for the conveyance of any Trust property held in his or her name; (iii) account to the remaining Trustees as they may require for all property which he or she holds as Trustee; and (iv) at the request of the Trustees, resign from all representative or other positions held by him on behalf of the Trust, including without limitation, as a director or officer of any corporation in which the Trust beneficially owns any securities; and

only thereupon shall he or she be discharged as Trustee. Upon the incapacity or death of any Trustee, his or her legal representative shall execute and deliver on his or her behalf 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.

Section 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 upon the 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 Trust Unitholders or, so long as they constitute a quorum, the Trustees continuing in office, may fill such vacancy. Any Trustee so elected by the Trust Unitholders shall hold office until the next annual meeting of Trust Unitholders.

Section 2.7 Nominations of Trustees

- (a) Only persons who are nominated in accordance with the following procedures shall be eligible for election as Trustees. Nominations of persons for election as Trustees may be made at any annual meeting of Trust Unitholders, or at any special meeting of Trust 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 Trustees, including pursuant to a notice of meeting;
 - ii. by or at the direction or request of one or more Trust Unitholders pursuant to a written request of Trust Unitholders made in accordance with Article 7; or
 - iii. by any person (a "*Nominating Unitholder*"): (A) who, at the close of business on the date of the giving of the notice provided for below in this Section 2.7 and on the record date for notice of such meeting, is entered in the Register as a holder of one or more Trust 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 2.7.
- (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 Trust Unitholders, not less than 30 days prior to the date of the annual meeting of Trust Unitholders; provided, however, that

in the event that the annual meeting of Trust 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 Trust 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 Trust 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 Trust Units in the capital of the Trust which are controlled, directed or which are owned beneficially or of record by the person as of the record date for the meeting of Trust 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 law; and
 - ii. as to the Nominating Unitholder giving the notice, any proxy, contract, agreement, arrangement or understanding pursuant to which such Nominating Unitholder has a right to vote any Trust Units and any other information relating to such Nominating Unitholder that would be required to be made in a dissident’s proxy circular in connection with solicitations of proxies for election of Trustees pursuant to applicable securities law.
- (e) The Trust may require any proposed nominee to furnish such other information as may be required pursuant to applicable securities law or the rules of any stock exchange on which the Units are listed to determine the eligibility of such proposed nominee to serve as an Independent Trustee of the Trust.
- (f) No person shall be eligible for election as a Trustee unless nominated in accordance with the provisions of this Section 2.7; provided, however, that nothing in this Section 2.7 shall be deemed to preclude discussion by a Trust Unitholder (as distinct from the nomination of Trustees) at a meeting of Trust 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 chair 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 2.7, “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 for 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 2.7.

Section 2.8 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 and acceptance thereof 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.

Section 2.9 Compensation and Other Remuneration

Trustees shall be entitled to receive for their services as Trustees such reasonable compensation as the Trustees may determine from time to time as well as amounts as reimbursement for their out-of-pocket expenses incurred in acting as Trustees or on any committee of Trustees, including out-of-pocket expenses incurred in attending meetings of the Trustees or committees thereof. 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, legal, accounting, consulting or other professional services, or services as a broker, transfer agent or underwriter, whether performed by a Trustee or any person affiliated with a Trustee. Trustees who are employed by, and who receive a salary from the Trust or any of its affiliates, shall not be entitled to receive any remuneration for their services as Trustees from the Trust, except as may be approved by a majority of the Independent Trustees, but shall be entitled to reimbursement from the Trust for any of their out-of-pocket expenses incurred in acting as Trustees.

ARTICLE 3 - TRUSTEES' POWERS AND DUTIES

Section 3.1 General Powers

The Trustees, subject only to the specific limitations contained in this Declaration of Trust, including without limitation Article 5 hereof, shall have, without further or other authorization and free from any power of control on the part of the Trust Unitholders, full, absolute, and exclusive power, control and authority over the assets of the Trust and over the activities of the Trust to the same extent as if the Trustees were the sole owners 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 purposes of the Trust or the conducting of the activities 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 in carrying out investment activities shall 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.

Section 3.2 Independent Trustee Matters

Notwithstanding anything herein to the contrary, the following matters shall require the prior approval of a majority of the Independent Trustees holding office as such at the time (given by vote at a meeting of Trustees at which all Independent Trustees are present or by written consent) in order to become effective:

- (a) the acquisition of real property or an investment in real property in which any Related Party has any direct or indirect interest;
- (b) to waive the application of the Rights Plan to any flip-in event (as such term is defined in the Rights Plan); and
- (c) any matter involving the Trust in which a Related Party has an interest.

Section 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 (the "*Trustees' Regulations*") containing provisions relating to the activities of the Trust, the conduct of its affairs, their rights or powers and the rights or powers of its Trust 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, including, without limitation, Trustees' Regulations, decisions, designations or determinations made pursuant to this Section shall be conclusive and binding upon all persons affected thereby.

Subject as otherwise herein provided, and to any agreement entered into between the Trust and a Trustee, the Trustees may from time to time in their discretion appoint, employ, invest in, contract or deal with any person including, without limitation, any affiliate of any of them and any person in which any one or more of them may be directly or indirectly interested and, without limiting the generality of the foregoing, any Trustee may purchase, hold, sell, invest in or otherwise deal with real property or other property of the same class and nature as may be held by the Trustees as property of the Trust, whether for the Trustee's own account or for the account of another (in a fiduciary capacity or otherwise), without being liable to account therefor and without being in breach of his or her duties and responsibilities hereunder.

Section 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 Trust 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 re-

quired to give a 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 activities of the Trust.

Section 3.5 Reliance Upon Trustees and Officers

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 or any officer of the Trust appointed 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 or officers of the Trust shall be bound to see to the application of any funds or property passing into the hands or control of the Trustees or officers of the Trust. The receipt of the Trustees or officers of the Trust for monies or other consideration shall be binding upon the Trust.

Section 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 Trust Unitholders (and, where the Trust Unitholder is a registered retirement savings plan, registered retirement income fund, registered education savings plan, deferred profit sharing plan or registered pension fund or plan as defined in the Tax Act, or other such fund or plan registered under such act, upon plan beneficiaries and plan holders past, present and future) and Trust Units shall be issued and sold on the condition and understanding that any and all such determinations shall be binding as aforesaid.

Section 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 or 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, such Trustee or officer of the Trust, 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 or officer 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 or officer was not then interested in a proposed contract or transaction, at the first such meeting after he or she becomes so interested;
 - iii. if the Trustee or officer 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 or officer, at the first such meeting of Trustees after he or she assumes that capacity.
- (b) Notwithstanding paragraph (a), 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 Trust Unitholders, such person shall disclose in writing to the Trustees or request to have entered in the minutes of meetings of Trustees the nature and extent of his or her interest forthwith after that person becomes aware of the contract or transaction or proposed contract or transaction.
- (c) 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
 - ii. one for indemnity under Section 15.1 hereof or for the purchase of liability insurance.
- (d) For the purposes hereof, a general notice to the Trustees by a Trustee or an officer of the Trust or any other person referred to in this Section 3.7 disclosing that he or she is a director, officer or employee of or has a material interest in a person and is 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.
- (e) 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 he or she has a material interest,
- i. the Trustee or officer, as applicable, is not accountable to the Trust or to the Trust 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 disclosed his or her interest in accordance with this Section 3.7 and the contract or transaction was reasonable and fair to the Trust at the time it was so approved.
- (f) Notwithstanding anything in this Section, but without limiting the effect of paragraph (e) hereof, a Trustee or officer of the Trust, acting honestly and in good faith, is not accountable to the Trust or to the Trust Unitholders for any profit or gain realized from any such contract or transaction by reason only of his or her

holding the office of Trustee or officer, 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 the Trustee's or officer's interest therein void or voidable, where,

- i. the contract or transaction is confirmed or approved at a meeting of Trust Unitholders duly called for that purpose; and
 - ii. the nature and extent of the Trustee's or officer'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.
- (g) Subject to paragraphs (e) and (f) hereof, where any Trustee or officer of the Trust 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 Trust 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 the Trustee or officer account to the Trust for any profit or gain realized.

ARTICLE 4 - OFFICERS OF THE TRUST

Section 4.1 General

The Trust shall have a Chair of Trustees, and may have one or more other officers as the Trustees may appoint from time to time. A Trustee may hold any office and one person may hold two or more offices. Officers of the Trust may be appointed and discharged, and their responsibilities and remuneration determined, by the Trustees.

Section 4.2 Chair of Trustees

The Chair of Trustees shall be appointed from among the Trustees. When present, the Chair of Trustees shall be chair of meetings of Trustees and Trust Unitholders and shall have such other powers and duties as the Trustees may determine from time to time. If the Chair of Trustees is not an Independent Trustee, a lead trustee (the "*Lead Trustee*") shall be appointed from among the Independent Trustees. The Lead Trustee will act as an effective leader of the board of Trustees in respect of any matters required to be considered by the Independent Trustees, and will ensure that the board of Trustees' agenda will enable the Trustees to successfully carry out their duties.

Section 4.3 Term of Office

The Chair and any other officer appointed by the Trustees shall hold office until his or her successor is elected or appointed, provided that the Trustees may at any time remove an officer from office at any time in their sole discretion.

Section 4.4 Independent Contractors

Except for the Chair of the Trustees, any office of the Trust appointed by the Trustees may be served by an individual who is not an employee of the Trust but has been retained

by the Trust to serve such office pursuant to an independent service agreement entered into between the Trust and that individual or that individual's employer.

ARTICLE 5 - INVESTMENTS AND OPERATIONS OF THE TRUST

Section 5.1 Investment Restrictions

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

- (a) the Trust may invest in interests (including fee ownership and leasehold interests) in income producing office, retail and residential properties and Properties Under Development in Canada;
- (b) the Trust shall not make any investment, engage in any activity, take any action or omit to take any action that would result in Units not being units of a "mutual fund trust" within the meaning of the Tax Act, that would result in Units being disqualified for investment by registered retirement savings plans, registered retirement income funds, deferred profit sharing plans, tax free savings accounts, registered disability savings plans, or registered education savings plans, or that would cause the Trust not to qualify as a unit trust or a real estate investment trust for purposes of the Tax Act or that would result in the Trust being liable under the Tax Act to pay a tax under the registered investment provisions of the Tax Act or as a SIFT Trust as that term is defined in the Tax Act;
- (c) the Trust may invest in joint venture, partnership or co-ownership arrangements (a "joint venture arrangement") only if:
 - i. the joint venture arrangement is one pursuant to which the Trust holds an interest in real property jointly or in common with others ("joint venturers") either directly or through a partnership or the ownership of securities of a corporation (a "joint venture entity");
 - ii. the Trust's interest in the joint venture arrangement and the joint venture arrangement's interest in the particular real property or properties, is not subject to any restriction on transfer other than rights to purchase, if any, in favour of the joint venturers, restrictions, if any, on the nature and/or identity of the potential transferees and the requirement that the transferee enter into an assumption agreement;
 - iii. the Trust has a right to purchase the interests of the other joint venturers which right may be subject to restrictions and/or limitations;
 - iv. the joint venture arrangement may provide for an appropriate buy-sell mechanism to enable a joint venturer to purchase the interest of the other joint venturer or to sell its interest;
 - v. the joint venture arrangement provides that the liability of the Trust to third parties is several and not joint and several (and contains an express disavowal of Trustee and Trust Unitholder liability); provided, however, that the Trust may provide guarantees of the obligations of the other joint venturers to third parties if the Trust has remedies against the other joint venturers

and also provided a joint venturer may be required to give up its interest in any particular joint venture property as a result of another joint venturer's failure to honour its proportionate share of the obligations relating to such property;

- vi. the joint venture arrangement is approved by a majority of the Independent Trustees or, if the number of Independent Trustees is less than three, by all the Independent Trustees; and
- vii. the Trust receives an opinion from counsel to the effect that the Trust is not exposed to any additional or unusual liabilities as a result of the joint venture arrangement;

provided that, notwithstanding the foregoing, the Trust may from time to time enter into any joint venture arrangement which does not comply with any of subparagraphs (ii), (iii) or (iv) above if the Trustees determine that the investment is desirable for the Trust and otherwise complies with the investment restrictions, investment guidelines and operating policies established in accordance with the Declaration of Trust and in effect at such time;

- (d) the Trust shall not purchase, sell, market or trade in currency or interest rate futures contracts otherwise than for hedging purposes where, for the purposes hereof, the term "hedging" shall have the meaning ascribed thereto by National Instrument 81-102 *Investment Funds*, as amended from time to time, and any successor law or instrument;
- (e) except for temporary investments held in cash, deposits with a Canadian chartered bank or trust company registered under the laws of a province or of Canada, short-term government debt securities, or money market instruments of, or guaranteed by, a Schedule I Canadian bank maturing within one year from the date of issue or except as permitted pursuant to paragraphs (c), (d), (i), (j) and (k) of this Section 5.1, the Trust shall not hold securities of another issuer unless either (i) such securities derive their value, directly or indirectly, principally from real property, or (ii) the principal business of the issuer of the securities is the ownership or operation, directly or indirectly, of real property; or (iii) shares of a corporation which carries on a business which is ancillary or incidental to an income producing office property in Canada in which the Trust holds an interest (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) the Trust shall not invest in raw land, except raw land:
 - i. which is ancillary to property which the Trust is otherwise permitted to purchase or already owns; or
 - ii. for the purpose of developing new properties which will be or are expected to be upon completion income producing;

- (h) the aggregate amount of the acquisition costs of all Properties Under Development and the development costs of all Properties Under Development will not exceed 15% of the Gross Book Value;
- (i) the Trust may invest in mortgages if the Trust intends to use the acquisition of the mortgages as a method of acquiring control of an income-producing real property which would otherwise comply with the investment restrictions, investment guidelines and operating policies established in accordance with the Declaration of Trust and in effect at such time and provided the aggregate book value of the investments of the Trust in these mortgages, after giving effect to the proposed investment, will not exceed 20% of the Adjusted Unitholders' Equity;
- (j) the Trust shall not invest in or acquire securities of a Canadian real estate investment trust unless:
 - i. the activities of the real estate investment trust are focused on acquiring, holding, maintaining, improving, leasing or managing primarily income-producing real properties; and
 - ii. in the case of any proposed investment or acquisition which would result in the Trust owning beneficially more than 10% of the outstanding units of such real estate investment trust (the "*acquired trust*"), the investment is made for the purpose of subsequently effecting the merger or combination of the operations and assets of the Trust and the acquired trust or for otherwise ensuring that the Trust will control the undertaking and operations of the acquired trust;
- (k) subject to paragraph (b), 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 (a), (c), (e), (g), (i) and (j) of this Section 5.1 or paragraph (d) of Section 5.2;
- (l) the Trust shall not acquire any interest in a single real property if, after giving effect to the proposed acquisition, the cost to the Trust of such acquisition (net of the amount of acquisition debt) will exceed 20% of the Trust's Adjusted Unitholders' Equity; and
- (m) the Trust may invest in interests (including fee ownership and leasehold interests) in income producing office, retail or residential properties and Properties Under Development in the United States.

For the purpose of the foregoing guidelines, the assets, liabilities and transactions of a corporation or other entity wholly or partially owned by the Trust will be deemed to be those of the Trust on a proportionate consolidated basis. In addition, any references in the foregoing to investment in real property will be deemed to include an investment in a joint venture arrangement. Nothing in the guidelines prohibits the Trust from holding some or all of the receivables due pursuant to the instalment receipt agreements.

Section 5.2 Operating Policies

The Declaration of Trust hereby provides that the operations and affairs of the Trust shall be conducted in accordance with the following policies:

- (a) (i) any written instrument creating an obligation which is or includes the granting by the Trust of a mortgage, or (ii) to the extent the Trustees determine to be practicable and consistent with their fiduciary duty to act in the best interests of the Trust Unitholders, any written instrument which in the judgment of the Trustees is a material obligation must, in each case, 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 will not be had to, nor will recourse or satisfaction be sought from, the private property (including, without limitation, any private property consisting of or arising from a distribution of any kind or nature by the Trust) of any of the Trustees, Trust Unitholders, annuitants under a plan of which a Trust Unitholder acts as a trustee or carrier, or officers, employees or agents of the Trust, but that only property of the Trust or a specific portion thereof will be bound; the Trust, however, is not required, subject to having, in the opinion of the Trustees, used all reasonable efforts to comply with this requirement, to comply in respect of obligations assumed by the Trust upon the acquisition of real property;
- (b) the Trust will 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 a fair market value net of encumbrances in excess of 20% of the Adjusted Unitholders' Equity of the Trust;
- (c) the limitation contained in paragraph (b) will not apply where the lessee or sub-lessee is, or where the lease or sublease is guaranteed by:
 - i. the Government of Canada, the Government of the United States, any province of Canada, any state of the United States, any municipality or city in Canada or the United States, or any agency thereof; or
 - ii. a Canadian chartered bank or its subsidiaries or a life insurance company registered or licensed federally or under the laws of a province of Canada;
- (d) the Trust may engage in construction or development of real property in order to maintain its real properties in good repair or to expand upon or enhance the income-producing potential of properties in which the Trust has an interest;
- (e) title to each real property must be held by and registered in the name of the Trust, the Trustees, a trustee for the Trust or in the name of a corporation or other entity wholly-owned, directly or indirectly, by the Trust or, directly or indirectly, by the Trust together with joint venturers, partners or co-owners;
- (f) the Trust will not incur or assume any indebtedness if, after the incurring or assuming of the indebtedness, the total indebtedness of the Trust would be more than 60% of the Gross Book Value, excluding convertible debentures (or 65% of the Gross Book Value, including the entire principal amount of indebtedness

outstanding pursuant to any convertible debentures, if any such convertible debentures are outstanding). For the purposes of this subsection, "indebtedness" means (without duplication) on a consolidated basis:

- i. any obligation of the Trust for borrowed money (including, for greater certainty, the specified amount of convertible debentures, notwithstanding the presentation of such securities in the Trust's financial statements in accordance with IFRS);
- ii. any obligation of the Trust incurred in connection with the acquisition of property;
- iii. any obligation of the Trust issued or assumed as the deferred purchase price for property;
- iv. any capital lease obligation of the Trust; and
- v. any obligation of a person other than the Trust of the type referred to in (i) through (iv) above, the payment of which is guaranteed by the Trust or for which the Trust is responsible or liable;

provided that for the purposes of paragraphs (i) through (v) above (except as specifically provided with respect to convertible debentures in paragraph (i) above), an obligation will only constitute "indebtedness" only to the extent that it would appear as a liability on the consolidated balance sheet of the Trust in accordance with IFRS;

- (g) unless otherwise approved by a majority of the Trustees, at no time shall the total indebtedness of the Trust (other than secured trade payables, accrued expenses and distributions payable): (i) having floating interest rates; or (ii) having maturities of less than one year at the time of incurrence of the debt, exceed an amount equal to 15% of the Gross Book Value of the assets of the Trust;
- (h) the Trust will not directly or indirectly guarantee any indebtedness or liabilities of any person unless such guarantee is given in connection with or incidental to an investment that is otherwise permitted under Section 5.1;
- (i) the Trust shall obtain an independent appraisal of each property that it acquires;
- (j) the Trust shall obtain and maintain at all times insurance coverage in respect of potential liabilities of the Trust and the accidental loss of value of the assets of the Trust from risks, in amounts, with such insurers, and on such terms as the Trustees consider appropriate, taking into account all relevant factors including the practices of owners of comparable properties; and
- (k) the Trust shall obtain a Phase I environmental assessment of each real property to be acquired by it and, if the Phase I environmental assessment report recommends a Phase II environmental assessment be conducted, the Trust shall have conducted a Phase II environmental assessment, in each case by an independent and experienced environmental consultant; such assessment as a condition to any acquisition, must be satisfactory to the Trustees.

For the purpose of the foregoing policies, the assets, liabilities and transactions of a corporation or other entity wholly or partially owned by the Trust will be deemed to be those of the Trust on a proportionate consolidated basis. In addition, any references in the foregoing to investment in real property will be deemed to include an investment in a joint venture arrangement.

Section 5.3 Tax Matters

The Trustees shall cause the Trust to do all things and take any action necessary to maintain at all times the status of the Trust as a “mutual fund trust” and “registered investment” under the Tax Act. The Trustees shall cause the Trust to do all things and take any action necessary to ensure that the Trust qualifies as a “real estate investment trust” for the purposes of the Tax Act and is not a SIFT trust for purposes of the Tax Act. The Trustees shall take all steps necessary to ensure that the Trust is not liable for tax under Part X.2 or XII.2 of the Tax Act.

Section 5.4 Application of Investment Restrictions and Operating Policies

With respect to the investment restrictions and operating policies contained in Sections 5.1 and 5.2, 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 book value of the assets of the Trust or the amount of Adjusted Unitholders' Equity will not require divestiture of any investment.

Section 5.5 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 Trust Unitholders.

ARTICLE 6 - TRUST UNITS

Section 6.1 Trust Units

The units of the Trust shall be divided into two classes, described and designated as “Units” and “Special Voting Units”, respectively, which will have attached thereto the rights and be subject to the restrictions, conditions and limitations set out herein.

The number of Trust Units which the Trust may issue is unlimited. The issued and outstanding Units may be subdivided or consolidated from time to time by the Trustees without notice to Unitholders.

Section 6.2 Ranking of Trust Units

- (a) Each Unit shall represent an equal undivided beneficial interest in the Trust, in any distribution from the Trust, whether of net income of the Trust, net taxable capital gains of the Trust (other than net taxable capital gains allocated and distributed to redeeming Unitholders), or other amounts, and, in the event of termination or winding-up of the Trust, in the net assets of the Trust remaining after satisfaction of all liabilities. All Units rank among themselves equally and rateably without discrimination, preference or priority. Each Unit shall entitle the holder of record thereof to receive notice of, to attend, and to one vote at all meetings of Trust Unitholders or in respect of any written resolution of the Trust Unitholders.
- (b) Each Special Voting Unit shall entitle the holder of record thereof to receive notice of, to attend, and to vote a number of votes at all meetings of the Trust Unitholders or in respect of any written resolution of the Trust Unitholders equal to the number of Units into which the outstanding Exchangeable Securities to which such Special Voting Units relate are, directly or indirectly, exchangeable or convertible. Special Voting Units shall be issued only in connection with or in relation to Exchangeable Securities. A Special Voting Unit shall, unless otherwise provided, be issued in tandem with the issuance of an Exchangeable Security and will be evidenced only by the certificate or certificates representing such Exchangeable Securities, if any. Except for the right to attend and vote at meetings of the Trust Unitholders or in respect of written resolutions of the Trust Unitholders, the Special Voting Units shall not confer upon the holders thereof any other rights; and for greater certainty, no Special Voting Unit will have any economic interest in the Trust or be entitled to any interest or share in the Trust, in any distribution from the Trust (whether of net income of the Trust, net taxable capital gains of the Trust or other amounts) or in any net assets of the Trust in the event of the termination or winding-up of the Trust.
- (c) Concurrently with the issue of the Special Voting Units, the Trust shall enter into such agreements, including an exchange agreement and/or other voting or support agreements, as may be necessary or desirable, pursuant to which the Trust shall provide certain support in respect of the exchange feature of the Exchangeable Securities and in respect of distributions. It is hereby confirmed that the timing, amount and nature of distributions made to holders of Exchangeable Securities are intended to be made, and the Trustees shall take reasonably necessary steps to ensure they are so made, in accordance with the provisions of the applicable agreement(s) and the rights attaching to such Exchangeable Securities.
- (d) As Exchangeable Securities are exchanged, converted, redeemed or cancelled, the corresponding number of Special Voting Units shall be cancelled for no consideration and without any further action of the Trustees, and the former holder or holders of such Special Voting Units shall cease to have any rights with respect thereto.

Section 6.3 Trust Units Non-Assessable

Except as set forth in this Section 6.3, Trust Units shall be issued only as fully paid and

non-assessable. A Trust Unit 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 Trust Unit 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 Trust Unit 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. Notwithstanding the foregoing, Units may be issued and sold on an instalment receipt basis, in which event beneficial ownership of such Units may be represented by the instalment receipts, but shall otherwise be non-assessable.

Section 6.4 Fractional Trust Units

Fractional Trust Units shall not, except to the extent that they may represent in the aggregate one or more whole Trust Units, entitle the holders thereof to notice of, or to attend or to vote at, meetings of Trust Unitholders. Subject to the foregoing, such fractional Trust Units shall have attached thereto the rights, restrictions, conditions and limitations attaching to whole Trust Units in the proportion that they bear to a whole Trust Unit.

Section 6.5 Legal Ownership of Assets of the Trust

The legal ownership of the assets of the Trust and the right to conduct the activities 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 the Units 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 Trust Units 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 Trust Unitholder has or is deemed to have any right of ownership in any of the assets of the Trust.

Section 6.6 Allotment and Issue

- (a) The Trustees may allot and issue Units 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 Units), 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 Units are issued in whole or in part for a consideration other than money, the resolution of the Trustees allotting and issuing such Units shall express the fair equivalent in money of the other consideration received.
- (b) Special Voting Units may not be issued by the Trust or the Trustees other than pursuant to Section 6.2(b).

Section 6.7 Rights, Warrants, Options, Convertible Indebtedness and Other Securities

The Trustees may create and issue rights (including, for greater certainty, the creation and issuance of rights pursuant to the Rights Plan), warrants or options or other instru-

ments or securities, including securities exercisable, convertible or exchangeable for Units, to subscribe for fully paid Units which rights, warrants, options, instruments or securities may be exercisable, convertible or exchangeable at such subscription price or prices and at such time or times as the Trustees may determine (“*Trust Exchangeable Securities*”). Any Trust Exchangeable Securities so created may be issued for such consideration or for no consideration, all as the Trustees may determine. A Trust Exchangeable Security shall not be a Unit and a holder thereof shall not be a Unitholder. Subject to the provisions of Article 5 hereof, the Trustees may create and issue indebtedness of the Trust in respect of which interest, premium or principal payable thereon may be paid, at the option of the Trust or the holder, in fully paid Units, or which indebtedness, by its terms, may be convertible into Units at such time and for such prices as the Trustees may determine. Any indebtedness so created shall not be a Unit and a holder thereof shall not be a Unitholder unless and until fully paid Units are issued in accordance with the terms of such indebtedness.

Section 6.8 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 Units or other securities issued by the Trust or of their agreeing to procure subscriptions therefor, whether absolute or conditional.

Section 6.9 Transferability

Subject to Section 6.10 and applicable laws, Units are freely transferable and, except as stipulated in Section 6.10, the Trustees shall not impose any restriction on the transfer of Units by any Unitholder except with the consent of such Unitholder. The Trustees shall seek to obtain and maintain a listing for the Units on The Toronto Stock Exchange.

Section 6.10 Non-Resident Ownership Constraint

At no time may non-residents of Canada (within the meaning of the Tax Act) be the beneficial owners of more than 49% of the Units on either a Basic Basis or a Fully-Diluted Basis, and the Trustees shall inform the transfer agent and registrar of this restriction. The Trustees may require declarations as to the jurisdictions in which beneficial owners of Units are resident. If the Trustees become aware, as a result of requiring such declarations as to beneficial ownership or otherwise, that the beneficial owners of 49% of the Units on a Basic Basis or a Fully-Diluted Basis are, or may be, non-residents or that such a situation is imminent, the Trustees may 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.

If, notwithstanding the foregoing, the Trustees determine that more than 49% of the Units on a Basic Basis or a Fully-Diluted Basis are held by non-residents, the transfer agent and registrar may, upon receiving a direction and suitable indemnity from the Trustees, send a notice to registered non-resident holders of Units, chosen in inverse order to the order of acquisition or registration or in such manner as the Trustees 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 Trustees with satisfactory evidence that they are not non-residents within such period, the transfer agent and registrar, upon receiving

a direction from the Trustees, may on behalf of such Unitholders (“*Affected Holders*”) sell such Units (“*Affected Units*”) and, in the interim, shall suspend the voting and distribution rights attached to such Units.

Upon such sale the Affected Holders shall cease to be holders of Units and their rights shall be limited to receiving the net proceeds of sale, subject to the right to receive payment of any distribution declared by the Trustees which is unpaid and owing to such Unitholders, upon surrender of the certificate representing such Units, if any. The Trust shall deposit an amount equal to such net proceeds in a special account in any bank or trust company in Canada selected by it. The amount of such deposit, less the reasonable costs of the administration of the special account, shall be payable to the Affected Holders upon presentation of evidence acceptable to the bank or trust company of such person’s interest in the Affected Units, including the certificate or certificates therefor, if any. Any interest earned on any amount so deposited shall accrue to the benefit of the Affected Holders.

The Trust shall, as soon as reasonably practical, and in any event, not later than 30 days after making a deposit pursuant to the terms of this Section 6.10, send a notice to the Affected Holders stating that the Affected Units have been sold, the amount of the net proceeds to which each such Affected Holders is entitled, the name and address of the bank or trust company at which the Trust has made the deposit and all other relevant particulars of the sale.

For greater certainty, the Trust may sell Units in accordance with the terms hereof despite the fact that the Trust does not possess the certificate or certificates, if any, representing the Affected Units at the time of the sale. Where, in accordance with this Section 6.10, Affected Units are sold by the Trust without possession of the certificate or certificates, if any, representing the same and, after the sale, a person establishes that it is a *bona fide* purchaser without notice of the Affected Units from the Affected Holders, then, subject to applicable law:

- (a) the Trust shall be entitled to treat the Units so purchased by the bona fide purchaser as validly issued and outstanding Units in addition to the Units sold by the Trust; and
- (b) notwithstanding anything hereinbefore contained, the Trust is entitled to the deposit made with respect to such sale and shall add the amount of the deposit to the capital account maintained by the Trust in respect of outstanding Units.

Section 6.11 Trustees’ Determinations as to Non-Resident Status

The Trustees shall have the sole right and authority to make any determination required or contemplated under Section 6.10. The Trustees shall make all determinations necessary for the administration of the provisions of Section 6.10 and, without limiting the generality of the foregoing, if the Trustees consider that there are reasonable grounds for believing that a contravention of the non-resident ownership restriction has occurred or will occur, the Trustees shall make a determination with respect to the matter. Any such determination shall be conclusive, final and binding except to the extent modified by any subsequent determination by the Trustees. Notwithstanding the foregoing, the Trustees may delegate, in whole or in part, their power to make a determination to any officer of the Trust.

Section 6.12 Book-Entry System

- (a) The provisions of Section 6.12 to Section 6.15, inclusive, shall not in any way alter the nature of Units or the relationships of a Unitholder to the Trustees and of one Unitholder to another but are intended only to facilitate the issuance of certificates evidencing the ownership of Units, if desirable to issue them to Unitholders, and the recording of all transactions in respect of Units and Unit Certificates whether by the Trust, securities dealers, stock exchanges, transfer agents, registrars or other persons. Subject to this subsection, Units shall be issued in the form of a Unit Certificate provided; however, that Units may be issued in uncertificated form or in the form of a global Unit certificate (a “*Global Unit Certificate*”) in the name of CDS or a successor (collectively, the “*Depository*”) or its nominee, and deposited by the transfer agent and registrar of the Trust with, or on behalf of, the Depository, as custodian of such Global Unit Certificate, if any, and registered by the transfer agent and registrar of the Trust in the name of the Depository or its nominee. No purchaser of Units registered in the name of the Depository or its nominee will be entitled to a certificate or other instrument from the Trust or the Depository evidencing that purchaser’s ownership thereof except in the circumstances where the Depository resigns or is removed from its responsibilities as depository and the Trust is unable or does not wish to locate a qualified successor. Beneficial interests in Units registered in the name of the Depository or its nominee will be represented only through the Book-Entry System. Transfers of Units between CDS Participants shall occur in accordance with the Depository’s rules and procedures.
- (b) All references herein to actions by, notices given or payments made to Unitholders shall, where such Units are held through the Depository, refer to actions taken by, or notices given or payments made to, the Depository upon instruction from the CDS Participants in accordance with the Depository’s rules and procedures. For the purposes of any provisions hereof requiring or permitting actions with the consent of or at the direction of Unitholders evidencing a specified percentage of the aggregate Units outstanding, such direction or consent may be given by Unitholders acting through the Depository and the CDS Participants owning Units evidencing the aggregate percentage of Units. The rights of a Unitholder whose Units are held through the Depository shall be exercised only through the Depository and the CDS Participants and shall be limited to those established by law and agreements between such Unitholders and the Depository and/or the CDS Participants or upon instructions from the CDS Participants. Each of the transfer agent and registrar of the Trust and the Trustees may deal with the Depository for all purposes (including the making of payments) as the authorized representative of the respective Unitholders and such dealing with the Depository shall constitute satisfaction or performance, as applicable, towards their respective obligations hereunder.
- (c) For so long as Units are held through the Depository, if any notice or other communication is required to be given to Unitholders, the Trustees and the transfer agent and registrar of the Trust will give all such notices and communications to the Depository.

Section 6.13 Removal of Depository

If the Depository resigns or is removed from its responsibilities as depository and the Trust is unable or does not wish to locate a qualified successor, the Depository shall surrender the Global Unit Certificate, if any, to the transfer agent and registrar of the Trust with instructions from the Depository for registration of Units in the name and in the amounts specified by the Depository and the Trust shall issue and the Trustees and transfer agent and registrar of the Trust shall execute and deliver the aggregate number of Units then outstanding in the form of definitive Unit Certificates representing such Units.

Section 6.14 Unit Certificates

- (a) Unit Certificates shall, subject to the provisions hereof, be in such form as is authorized from time to time by the Trustees.
- (b) If issued, Unit Certificates are issuable only in fully registered form.
- (c) The definitive form of the Unit Certificate shall:
 - i. be in the English language;
 - ii. be dated as of the date of issue thereof;
 - iii. contain the CUSIP number for the Units; and
 - iv. contain such distinguishing letters and numbers as the Trustees shall prescribe.
- (d) In the event that the Unit Certificates are translated into the French language and any provision of the Unit Certificates in the French language shall be susceptible of an interpretation different from the equivalent provision in the English language, the interpretation of such provision in the English language shall be determinative.
- (e) Each Unit Certificate shall be signed on behalf of the Trust and the transfer agent of the Trust. The signature of the Trustees required to appear on such certificate may be printed, lithographed or otherwise mechanically reproduced thereon and, in such event, certificates so signed are as valid as if they had been signed manually. If a Unit Certificate contains printed, lithographed or otherwise mechanically reproduced signature of a person, the Trust may issue the certificate even though the person has ceased to be a Trustee or an officer of the Trust and such Certificate is valid as if the person were a Trustee or an officer of the Trust at the date of its issue.

Section 6.15 Contents of Unit Certificates

- (a) Until otherwise determined by the Trustees, each Unit Certificate shall legibly set forth on the face thereof, inter alia, the following:
 - i. the name of the Trust and the words "A trust governed under the laws of the Province of Ontario created by a Declaration of Trust made the 25th day of

October, 2002, as amended from time to time” or words of like effect;

- ii. the name of the person to whom the Unit Certificate is issued as Unitholder;
 - iii. the number of Units represented thereby and a statement that the Units are fully paid;
 - iv. that the Units represented thereby are transferable;
 - v. “The Units represented by this certificate are issued upon the terms subject to the conditions of the Declaration of Trust, which Declaration of Trust is binding upon all holders of Units and, by acceptance of this certificate, the holder assents to the terms and conditions of the Declaration of Trust. A copy of the Declaration of Trust, pursuant to which this certificate and the Units represented thereby are issued, may be obtained by the Unitholder on demand and without fee from the head office of the Trust” or words of like effect; and
 - vi. “For information as to personal liability of a Unitholder, see the reverse side of this certificate” or words of like effect.
- (b) Until otherwise determined by the Trustees, each such certificate shall legibly set forth on the reverse side thereof, inter alia, the following:
- i. “no Unitholder or annuitant shall be held to have any personal liability as such, and no resort shall be had to his 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 Trustee as such, but rather the assets of the Trust only are intended to be liable and subject to levy or execution for such satisfaction”, or words of like effect; and
 - ii. appropriate forms of powers of attorney for transferring Units.

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

Section 6.16 Trust 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 Trust Unitholders, the respective numbers of Trust Units held by them, the certificate numbers of the certificates of such Trust Units, if applicable, 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 Units and/or Special Voting Units and may provide for the transfer of Trust Units 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 Trust Units. If the Trustees have appointed a registrar and transfer agent, no certificate for Units shall be valid unless countersigned by or on

behalf of the transfer agent and/or registrar. Only Trust Unitholders whose Trust Units are recorded on the Register shall be entitled to vote or to receive distributions or otherwise exercise or enjoy the rights of Trust Unitholders.

Section 6.17 Entry on Register

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

Section 6.18 Transfer of Trust Units

- (a) Units 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 Units 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 Unit certificate and the transferee has delivered to the transfer agent and/or registrar a Unit certificate representing the Units transferred. Subject to the foregoing and Section 6.10, transfers shall be recorded on the Register and a new certificate for the Units so transferred shall be issued to the transferee and in case of a transfer of only part of the Units represented by any certificate, a new certificate for the remaining Units shall be issued to the transferor.
- (b) A Special Voting Unit shall not be transferable separately from the Exchangeable Security issued in tandem with it, and, upon any transfer of such Exchangeable Security, such Special Voting Unit shall automatically be transferred to the transferee of such Exchangeable Security. For greater certainty, a Special Voting Unit shall only be transferred to a permitted transferee of an Exchangeable Security under the terms and conditions of the constating documents of the entity that issued the Exchangeable Security.

Section 6.19 Successors in Interest to Trust Unitholders

Any person becoming entitled to any Trust Units as a consequence of the death, bankruptcy or incompetence of any Trust Unitholder or otherwise by operation of law, shall be recorded as the holder of such Trust Units 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 a transfer agent to the Trust, but until such record is made, the Trust Unitholder of record shall continue to be and be deemed to be the holder of such Trust Units for all purposes whether or not the Trust, the Trustees or a transfer agent or registrar of the Trust shall have actual or other notice of such death, bankruptcy, incompetence or other event.

Section 6.20 Trust Units Held Jointly or in Fiduciary Capacity

The Trust may treat two or more persons holding any Trust Unit as joint tenants of the entire interest therein unless their ownership is expressly otherwise recorded on the Register of the Trust, 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 Trust Unit; provided, however, that any person recorded as a holder of any Trust Unit may, subject to the provisions herein contained, be described in 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.

Section 6.21 Performance of Trusts

The Trustees, the officers of the Trust, the Trust Unitholders, any transfer agent or other agent of the Trust or the Trustees, shall not 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 Trust Units or any interest therein are or may be subject, or to ascertain or inquire whether any sale or transfer of any such Trust Units or interest therein by any such Trust 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 the Trust Unitholder.

Section 6.22 Lost Certificates

In the event that any certificate for Units is lost, stolen, destroyed or mutilated, the Trustees or any officer of the Trust may authorize the issuance of a new certificate for the same number of Units in lieu thereof. The Trustees or any officers of the Trust 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 or any officers of the Trust 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 or any officers of the Trust direct indemnifying the Trustees or any officers of the Trust, the transfer agents and registrars for so doing. The Trustees or any officers of the Trust 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 or any officers of the Trust. If such blanket lost security bond is acquired, the Trustees or any officers of the Trust 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 or any officers of the Trust.

Section 6.23 Death of Trust Unitholders

The death of a Trust Unitholder during the continuance of the Trust shall not terminate the Trust or give such Trust Unitholders' legal representatives a right to an accounting or to take any action in the courts or otherwise against other Trust Unitholders or the Trustees or the property of the Trust, but shall only entitle the legal representatives of the deceased Trust Unitholder to demand and receive, pursuant to the provisions of Section 6.12 and Section 6.19 hereof, a new certificate for Units 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 Trust Unitholder under this Declaration of Trust.

Section 6.24 Unclaimed Distributions

In the event that the Trustees hold distributions which are unclaimed after the expiry of six years from the date of their declaration 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 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 acquaintance and discharge of the obligations of the Trustees.

Section 6.25 Repurchase of Units

The Trust shall be entitled to purchase for cancellation at any time the whole or from time to time any part of the outstanding Units, at a price per Unit 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.

Section 6.26 Take-Over Bids

- (a) If within 120 days after the date of a take-over bid or issuer bid the bid is accepted by the holders of not less than 90% of the Units (including Units issuable upon the surrender or exchange of Exchangeable Securities), 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.
- (b) 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
 - i. the offerees holding not less than 90% of the Units to which the bid relates accepted the take-over bid;
 - ii. the offeror is bound to take up and pay for or has taken up and paid for the Units of the offerees who accepted the take-over bid;
 - iii. a dissenting offeree is required to elect
 - (A) to transfer their Units to the offeror on the terms on which the offeror acquired the Units of the offerees who accepted the take-over bid, or
 - (B) to demand payment of the fair value of their Units in accordance with subsections (j) to (s) by notifying the offeror within 20 days after receiving the offeror's notice;
 - iv. a dissenting offeree who does not notify the offeror in accordance with subparagraph (iii)(B) 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

- v. a dissenting offeree must send their Units to which the take-over bid relates to the Trust within 20 days after he receives the offeror's notice.
- (c) Concurrently with sending the offeror's notice under subsection (b), the offeror shall send to the Trust a notice of adverse claim disclosing the name and address of the offeror and the name of the dissenting offeree with respect to each Unit held by a dissenting offeree.
 - (d) A dissenting offeree to whom an offeror's notice is sent under subsection (b) shall, within 20 days after receiving that notice: (i) send the Unit certificates to the Trust; and (ii) elect (A) to transfer the Units to the offeror on the terms on which the offeror acquired the Units of offerees who accepted the take-over bid or (B) to demand payment of the fair value of the Units in accordance with subsections (j) to (s) by notifying the offeror within those 20 days.
 - (e) A dissenting offeree who does not notify the offeror in accordance with subsection (d)(ii)(B) 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 offerees who accepted the take-over bid.
 - (f) Within 20 days after the offeror sends an offeror's notice under subsection (b), the offeror shall pay or transfer to the Trust the amount of money or other consideration that the offeror would have had to pay or transfer to a dissenting offeree if the dissenting offeree had elected to accept the take-over bid under subparagraph (b)(iii)(A).
 - (g) The Trust is deemed to hold in trust for the dissenting offeree the money or other consideration it receives under subsection (f), and the Trust shall deposit the money in a separate account in a bank or other body corporate any of whose deposits are insured by the Canada Deposit Insurance Corporation or guaranteed by the Quebec Deposit Insurance Board, and shall place the other consideration in the custody of a bank or such other body corporate.
 - (h) Where the Trust is the offeror making a take-over bid to repurchase the Units, the Trust is deemed to hold in trust for the dissenting offerees the money or 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 subparagraph (d)(ii)(A), and the Trust shall, within 20 days after a notice is sent under subsection (b), deposit 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 other consideration in the custody of such bank or of such other body corporate.
 - (i) Within 30 days after the offeror sends an offeror's notice under subsection (b), the Trust shall:
 - i. if the payment or transfer under subsection (f) is made, issue to the offeror a Unit certificate in respect of the Units that were held by dissenting offerees;

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

- (p) On an application to a court under subsection (j) or (k) 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.
- (q) 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.
- (r) The final order of the court shall be made against the offeror in favour of each dissenting offeree and for the amount of their Units as fixed by the court.
- (s) In connection with proceedings under this Section, a court may make any order it thinks fit and, without limiting the generality of the foregoing, it may
 - i. fix the amount of money or other consideration that is required to be held in trust under subsection (g);
 - ii. order that that money or other consideration be held in trust by a person other than the Trust;
 - iii. allow a reasonable rate of interest on the amount payable to each dissenting offeree from the date such dissenting offeree sends or delivers their Unit certificates under subsection (d) until the date of payment; and
 - iv. order that any money payable to a Unitholder who cannot be found be paid to the Receiver General.
- (t) If a Unitholder does not receive an offeror's notice under subsection (b), the Unitholder may:
 - i. within 90 days after the date of termination of the take-over bid; or
 - ii. if the Unitholder did not receive an offer pursuant to the take-over bid, within 90 days after the later of:
 - (A) the date of termination of the take-over bid; and
 - (B) the date on which the Unitholder learned of the take-over bid,
 require the offeror to acquire those Units.
- (u) If a Unitholder requires the offeror to acquire Units under subsection (t), 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.
- (v) Nothing contained in this Section 6.26 shall restrict the powers of the Trustees in relation to the adoption of the Rights Plan, or the waiver by the Trustees of the application of the Rights Plan to any flip-in event (as defined in the Rights Plan).

Section 6.27 Offers

If an offer, issuer bid (other than an issuer bid exempt from the formal bid requirements

under the Securities Act), take-over bid (other than a take-over bid exempt from the formal bid requirements under the Securities Act) or similar transaction with respect to the Units is proposed by the Trust or is proposed to the Trust or Unitholders and is recommended by the Trustees, or is otherwise effected or to be effected, whether or not with the consent or approval of the Trustees (each, an “Offer”), and the Exchangeable Securities are not exchanged in accordance with the applicable exchange agreement, the Trust will, to the extent possible in the circumstances, expeditiously and in good faith, take all such actions and do all such things as are necessary or desirable to enable and permit holders of Exchangeable Securities to participate in such Offer to the same extent and on an economically equivalent basis as the Unitholders without discrimination. Without limiting the generality of the foregoing, the Trust will, to the extent possible in the circumstances, expeditiously and in good faith, ensure that holders of Exchangeable Securities may participate in such Offer without being required to exercise their right to exchange their Exchangeable Securities (or, if so required, to ensure that any such exchange will be effective only upon, and will be conditional upon, the successful completion of the Offer and only to the extent necessary to tender to or deposit under the Offer). In such event, the provisions of Section 6.26 shall apply in respect of the applicable Exchangeable Securities held by dissenting offerees.

ARTICLE 7 - MEETINGS OF TRUST UNITHOLDERS

Section 7.1 Annual Meeting

Commencing following the first full fiscal year of the Trust, there shall be an annual meeting of the Trust Unitholders at such time and place as the Trustees shall prescribe for the purpose of electing those Trustees to be elected by Trust Unitholders as contemplated in Article 2 hereof, 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 Trust Unitholders shall be held after delivery to the Trust Unitholders of the annual report referred to in Section 16.6 and within 140 days after the end of each full 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 period.

Section 7.2 Other Meetings

- (a) The Trustees shall have the power at any time to call special meetings of the Trust Unitholders at such time and place as the Trustees may determine. On and subject to the provisions of this Section 7.2, the Trustees shall call a special meeting of the Trust Unitholders upon the written request of Trust Unitholders holding not less than 5% of the outstanding Trust Units. If there shall be no Trustees, any Trust Unitholder shall be entitled to call a special meeting of the Trust Unitholders for the election of successor Trustees. The phrase “meeting of Trust Unitholders” wherever it appears in this Declaration of Trust shall mean and include both an annual meeting and any other meeting of Trust Unitholders.
- (b) Upon receipt by the Trust of a written request for a meeting from Trust Unitholders holding the requisite number of outstanding Trust Units as aforesaid, the Trustees shall call a meeting of Trust Unitholders to transact the business referred to in the requisition, unless:
 - i. a Record Date for a meeting of the Trust Unitholders has been fixed and no-

tice thereof has been given to each stock exchange in Canada on which the Units are listed for trading;

- ii. the Trustees have called a meeting of the Trust Unitholders and have given notice thereof pursuant to Section 7.3; or
 - iii. in connection with the business as stated in the requisition:
 - (A) it clearly appears to the Trustees that the primary purpose of the matter covered by the requisition is submitted by the Trust Unitholder is to enforce a personal claim or to redress a personal grievance against the Trust, the Trustees, the officers of the Trust or its security holders or it clearly appears to the Trustees that the matter covered by the requisition submitted by the Trust Unitholder does not relate in a significant way to the business or affairs of the Trust;
 - (B) the Trust, at the Trust Unitholder's request, included a matter covered by a requisition in an information circular relating to a meeting of Trust Unitholders held within two years preceding the receipt of such request, and the Trust Unitholder failed to present the matter, in person or by proxy, at the meeting;
 - (C) substantially the same matter covered by the requisition was submitted to Trust Unitholders in an information circular (including a dissident's information circular) relating to a meeting of Trust Unitholders held within two years preceding the receipt of the Trust Unitholder's request and the matter covered by the requisition was defeated; or
 - (D) the rights conferred by this Section 7.2 are being abused to secure publicity.
- (c) Subject to the foregoing, if the Trustees do not within 21 days after receiving the requisition to call a meeting, any Trust Unitholder who signed the requisition may call the meeting in accordance with the provisions of Article 7 of this Declaration of Trust.
- (d) Unless the Trust Unitholders otherwise resolve at a meeting called under subsection (c), the Trust shall reimburse the Trust Unitholders who signed the requisition the expenses reasonably incurred by them in requisitioning, calling and holding the meeting.

Section 7.3 Notice of Meeting of Trust Unitholders

Notice of all meetings of the Trust Unitholders shall be mailed or delivered by the Trustees to each Trust Unitholder at his address appearing in the Register not less than 21 nor more than 60 days before the meeting. Notice of any meeting of Trust Unitholders shall state the time and place where the meeting is to be held. A Trust Unitholder or any other person entitled to notice of a meeting of Trust Unitholders may in any manner waive notice of the meeting. Attendance at a meeting of Trust Unitholders shall constitute a waiver of notice unless the Trust 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 Trust 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 Trust Unitholders and all business to be transacted at an annual meeting of Trust Unitholders, except consideration of the financial statements, auditor's report, election of Trustees, re-appointment of the incumbent auditor and non-binding advisory resolution on the approach to executive compensation, is deemed to be special business. Notice of a meeting of Trust Unitholders at which special business is to be transacted shall state:

- (a) the nature of the business in sufficient detail to permit a Trust 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 Trust Unitholders who vote in respect of that resolution to be submitted to the meeting.

Section 7.4 Trust Unitholder Proposals

Subject to subsections (a) and (b), a registered holder or beneficial owner of Trust Units may: (i) submit written notice to the Trust of any matter that the person proposes to raise at an annual meeting of Trust 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 Trust Units, as of the day on which the person submits a Proposal, or (ii) Trust Units whose fair market value, as determined at the close of business on the day before the person submits the Proposal, is at least \$2,000; or
 - ii. must have the support of persons who, in the aggregate, and including or not including the person that submits the Proposal, have been, for at least the six-month period immediately before the day on which the person submits the Proposal, the registered holders or beneficial owners of (i) at least 1% of the total number of outstanding Trust Units, as of the day on which the person submits the Proposal, or (ii) Trust Units whose fair market value, as determined at the close of business on the day before the person submits the Proposal, is at least \$2,000.
- (b) A Proposal must be accompanied by the following information:
 - i. the name and address of the person submitting the Proposal and the per-

son's supporters, if applicable; and

- ii. the number of Trust Units held or owned by the person submitting the Proposal and the person's supporters, if applicable, and the date the Trust Units were acquired.
- (c) If requested by the Trust within 14 days of the receipt of the Proposal, a person who submits a Proposal must provide proof, within 21 days following the day on which the person receives the Trust's request, or if the request was mailed to the person, within 21 days after the postmark date stamped on the envelope containing the request, that the person meets the requirements set out in subsection (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 Trust Unitholder shall not have the right to make nominations at the meeting, unless such nomination is made in accordance with the provisions of Section 2.7.
- (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 Trust Unitholders in connection with the Trust's previous annual meeting of Trust 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 Trust Unitholders or other security holders 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 Trust Unitholders, a Proposal that, at the person's request, had been included in a proxy circular relating to a meeting of the Trust Unitholders;
 - iv. substantially the same proposal was submitted to Trust Unitholders in a proxy circular relating to a meeting of the Trust 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 Trust Units voted, if the Proposal has been introduced at only one annual meeting of Trust Unitholders;

- (B) 6% of the total number of Trust Units voted at the last meeting at which the matter was submitted to Trust Unitholders, if the Proposal was introduced at two annual meetings of Trust Unitholders; and
 - (C) 10% of the total number of Trust Units voted at the last meeting at which the matter was submitted to Trust Unitholders, if the Proposal was introduced at three or more annual meetings of Trust Unitholders; or
 - (D) 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 Trust 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 Trust 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.

Section 7.5 Quorum

Two Trust Unitholders at any meeting represented in person or by proxy holding in the aggregate not less than 25% of the outstanding Trust Units shall constitute a quorum for any meeting of Trust Unitholders. If a quorum is present at the opening of a meeting, the Trust Unitholders 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 Trust Unitholders, the chair or the Trust Unitholders present may adjourn the meeting to a fixed time and place but may not transact any business.

The chair of any meeting at which a quorum of Trust Unitholders is present may, with a consent of the majority of the Trust Unitholders present in person or by proxy, adjourn any such meeting.

Section 7.6 Chair, Secretary, Scrutineers

The Chair of the Trustees or the Chief Executive Officer of the Trust, if present, and otherwise any officer of the Trust or any other Trustee determined by the Trustees, shall be the chair of any meeting of Trust Unitholders. If there are neither any Trustees, nor officers of the Trust, any of the Trust Unitholders calling the meeting pursuant to Section 7.2 shall be the chair. The chair shall appoint an individual, who need not be a Trust Unitholder, to act as secretary of the meeting. If desired, one or more scrutineers, who need not be Trust Unitholders, may be appointed by the chair.

Section 7.7 Voting

- (a) Subject to Section 6.4 and Section 6.10, Trust Unitholders may attend and vote at all meetings of the Trust Unitholders either in person or by proxy. Any action to be taken by the Trust 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 Trust Unitholders in accordance with paragraph (b) below. Every question submitted to a meeting of Trust Unitholders shall be decided in the first place by a majority of the votes cast on a show of hands, unless a poll is demanded, in which case a poll shall be taken. At any such meeting, unless a poll is demanded, a declaration by the chair that a resolution has been carried or carried unanimously or by a particular majority, or lost or not carried by a particular majority, shall be conclusive evidence of the fact. If a poll is demanded concerning the election of a chair or an adjournment, it shall be taken immediately upon request and, in any other case, it shall be taken at such time as the chair of the meeting may direct. The poll shall be taken in such manner as the chair may direct. The demand for a poll shall not prevent the continuation of a meeting for the transaction of any business other than the question on which the poll has been demanded
- (b) At any meeting of Trust Unitholders, on a show of hands every person who is present and entitled to vote, whether as a Trust Unitholder or as a proxy, shall have one vote. At any meeting of Trust Unitholders on a poll, each Trust Unitholder present in person or represented by a duly appointed proxy shall have one vote for each Trust Unit held on the applicable Record Date.
- (c) If Trust Units are held jointly by two or more persons, any one of them present in person or by proxy at the meeting may vote in the absence of the other or others; but if more than one of them is present in person or by a proxy, they shall vote together with respect to the Trust Units held jointly, provided that only one of them can vote on a show of hands, and, if they do not agree on how to exercise any vote to which they are jointly entitled (including a vote on a show of hands), they shall, for the purposes of the voting, be deemed not to be present. The chair of a meeting shall be entitled to vote in respect of Trust Units held by the chair or represented by the chair by proxy. In the case of an equality of votes, the chair shall not have a casting vote and the resolution shall be deemed to be defeated.

Section 7.8 Matters on which Trust Unitholders must Vote

Subject to subsection 10.2(c), none of the following shall occur unless the same has been duly approved by the Trust Unitholders at a meeting duly called and held:

- (a) subject to Sections 2.1, 2.5 and 2.6, the election or removal of Trustees;
- (b) except as provided in Section 16.4, the appointment or removal of auditors of the Trust;
- (c) any amendment to the Declaration of Trust (except as provided in Section 5.5 or Section 13.1 but subject to Section 13.2);
- (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 Trust Unitholders entitled to vote called for that purpose;
- (e) the termination of the Trust pursuant to Section 14.2; or
- (f) any other matters which (i) expressly require the approval of the Trust Unitholders pursuant to this Declaration of Trust; or (ii) the Trustees determine to present to the Trust Unitholders for their approval or ratification, notwithstanding that there is no express requirement for such approval or ratification hereunder.

Section 7.9 Voting Units Held by Trust

- (a) If the Trust holds any Trust Units, the Trust shall not vote or permit those Trust Units to be voted unless:
 - i. the Trust holds the Trust Units as agent for or 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 Trust 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 Trust Units and, except where the Trust has received written voting instructions from the beneficial owner of the Trust Units, a written request for such instructions; and
 - iii. the Trust receives written voting instructions from the beneficial owner of the Trust Units;

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

- (b) A Trust 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 Trust 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 Trust Units 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 Trust Unitholders agree that the failure of the Trust to comply with this Section does not render void any meeting of Trust Unitholders or any action taken at the meeting.
- (e) Nothing in this Section gives the Trust the right to vote Trust Units that the Trust is otherwise prohibited from voting.
- (f) The Trust shall not permit any of its subsidiaries holding Trust Units to vote, or permit those Trust Units to be voted, unless the subsidiary satisfies the requirements of subsection (a).

Section 7.10 Record Dates

For the purpose of determining the Trust 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 Trust 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 Trust Unitholders or other action as the Record Date for the determination of Trust Unitholders entitled to receive notice of and to vote at such meeting or any adjournment thereof or to be treated as Trust Unitholders of record for purposes of such other action, provided that the Trustees shall be entitled to set a record date more than 60 days prior to the date of any distribution, and any Trust Unitholder who was a Trust 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 Trust Units, and no Trust 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 Trust Unitholder of record for purposes of such other action. If, in the case of any meeting of Trust Unitholders, no record date with respect to voting has been fixed by the Trustees, the record date for voting shall be 5:00 p.m. (Toronto time) on the last business day before the meeting.

Section 7.11 Court Requisitioned Meetings

A Trust Unitholder who is entitled to vote at a meeting of Trust Unitholders may apply to a court to order a meeting of the Trust 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 7.11, 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 7.11 is for all purposes a meeting of Trust Unitholders duly called, held and conducted.

Section 7.12 Proxies

Whenever the vote or consent of Trust Unitholders is required or permitted under this Declaration of Trust, such vote or consent may be given either directly by the Trust 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 chair of the meeting at which it is sought to be exercised. The instrument of proxy must be executed or, in Québec, signed by the Trust Unitholder giving the proxy or by the Trust Unitholder's personal representative or 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 Trust 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 Trust Unitholder. The Trustees, on behalf of the Trust, may solicit instruments of proxy from the Trust Unitholders or any of them in respect of any matter requiring or permitting the Trust Unitholders' vote or consent. An instrument of proxy shall be deposited with the chair of the meeting before any vote is cast under its authority or at such earlier time 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 chair of the meeting at which the instrument is proposed to be used, that the instrument of proxy is invalid. Any decision of the chair 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 Trust Unitholder giving the proxy or the revocation of the proxy unless written notice of the death, incapacity, insolvency, bankruptcy or revocation of the proxy has been received by the chair of the meeting prior to the time the vote is cast.

A Trust Unitholder may revoke a proxy:

- (a) by depositing an instrument or act in writing executed or, in Québec, signed by the Trust Unitholder or by the Trust Unitholder's personal representative or agent 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 chairman 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.

Section 7.13 Legal Personal Representatives

If a Trust Unitholder is deceased, his or her legal personal representative, upon filing with the secretary of the meeting such proof of his or her appointment as the secretary considers sufficient, shall be entitled to exercise the same voting rights at any meeting of Trust Unitholders as the Trust Unitholder would have been entitled to exercise if he were living and for the purpose of the meeting shall be considered to be a Trust Unitholder. Subject to the provisions of the will of a deceased Trust Unitholder, if there is more than one legal personal representative, the provisions of Section 7.7 relating to joint holders shall apply.

Section 7.14 Attendance by Others

Any Trustee, officer of the Trust, representative of the auditors of the Trust or other individual approved by the Trustees may attend and speak at any meeting of Trust Unitholders.

Section 7.15 Conduct of Meetings

To the extent that the rules and procedures for the conduct of a meeting of Trust Unitholders are not prescribed herein, the rules and procedures shall be such reasonable rules and procedures as are determined by the chair of the meeting and such rules and procedures shall be binding upon all parties participating in the meeting.

Section 7.16 Binding Effect of Resolutions

Every resolution passed at a meeting in accordance with the provisions of this Article 7 shall be binding upon all Trust Unitholders, whether present at or absent from the meeting. Subject to Section 7.8, no action taken by Trust Unitholders at any meeting of Trust Unitholders shall in any way bind the Trust or the Trustees without the approval of the Trustees.

Section 7.17 Meetings by Telephone, Electronic or Other Communications Facility

Any meeting of Trust 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 Trust Unitholders shall be deemed to be held at the place where the principal office of the Trust is located.

ARTICLE 8 - MEETINGS OF TRUSTEES

Section 8.1 Trustees May Act Without Meeting

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

original or facsimile and/or electronic mail consent of, in the case of a meeting of Trustees, all of the Trustees, and, in the case of a committee of Trustees, all of the Trustees who are members of the applicable committee.

Section 8.2 Notice of Meeting

Meetings of the Trustees may be held from time to time on any Business Day upon the call of the Chair of Trustees 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. Notice of the time and place of any other meetings shall be given not less than 48 hours before the meeting but may be waived in writing by any Trustee either before or after such meeting. All meetings of Trustees shall be held in Canada. The attendance of a Trustee at any meeting of Trustees or any committee of Trustees 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.

Section 8.3 Quorum

A quorum for any meeting of the Trustees or any committee thereof shall be at least 50% of the Trustees, or of the members of such committee, as the case may be, present in person. A majority of the Trustees present must be residents of Canada for the purposes of the Tax Act.

Section 8.4 Voting at Meetings

Questions arising at any meeting of the Trustees or any committee thereof shall be decided by a majority of the votes cast. In the case of an equality of votes, the chair of the meeting (who, in the case of a meeting of the Trustees shall be the Chair of Trustees if present, and otherwise any Trustee selected by the Trustees), shall not have a second or casting vote in addition to his or her original vote.

Section 8.5 Meetings by Telephone

Any Trustee may participate in a meeting of the Trustees or any committee thereof by means of a conference telephone or other 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 in person at that meeting.

ARTICLE 9 - DELEGATION OF POWERS

Section 9.1 General

Except as prohibited by law, the Trustees shall have the power to appoint, employ or contract with any person for the transaction of any business of the Trust.

Section 9.2 The Investment Committee

The Trustees may appoint from among their number an Investment Committee consisting of at least three Trustees, a majority of whom shall be Independent Trustees. The In-

vestment Committee shall have the power, to the extent delegated from the Trustees, to approve or reject proposed acquisitions and dispositions of investments by the Trust, to authorize proposed transactions on behalf of the Trust and to approve all borrowings and the assumption or granting of any mortgage. Any member of the Investment Committee may call a meeting of the Investment Committee on any Business Day 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.

Section 9.3 The Audit Committee

The Trustees shall appoint an Audit Committee to consist of at least three Trustees, all of whom shall be Independent Trustees. The Audit Committee shall be responsible for monitoring the Trust's system of financial controls, to evaluate and report on the integrity of the financial statements of the Trust, to enhance the independence of the Trust's external auditors and to oversee the financial reporting process of the Trust. The auditors of the Trust are entitled to receive notice of every meeting of the Audit Committee and to attend and be heard thereat and, if so requested by a member of the Audit Committee, shall be requested to attend any meeting of the Audit Committee held during the term of office of the auditors. Any member of the Audit Committee or the auditors of the Trust may call a meeting of the Audit Committee on not less than 48 hours' notice.

Section 9.4 The Governance, Compensation and Nomination Committee

The Trustees shall appoint a Governance, Compensation and Nomination Committee, to consist of at least three Trustees, a majority of whom shall be Independent Trustees. The Governance, Compensation and Nomination Committee shall be responsible for developing and monitoring the Trust's approach to matters of governance, to the compensation of officers of the Trust and to the nomination of Trustees for election by Trust Unitholders. Any member of the Governance, Compensation and Nomination Committee may call a meeting of the Governance, Compensation and Nomination Committee on any Business Day on not less than 48 hours' notice.

Section 9.5 Additional Committees and Powers That May Not Be Delegated

The Trustees may change the size and the responsibilities of any committee and 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 Trust Unitholders any question or matter requiring the approval of Trust Unitholders; (ii) filling a vacancy among the Trustees or appointing additional trustees; (iii) issuing Trust Units except as authorized by the Trustees; (iv) declaring distributions; (v) approving a proxy circular; (vi) approving a take-over bid circular; or (vii) approving the annual financial statements of the Trust.

ARTICLE 10 - TRUST UNITHOLDER REMEDIES

Section 10.1 Dissent and Appraisal Rights

(a) Subject to subsection 10.2(e), a Unitholder entitled to vote at a meeting of the

Trust Unitholders who complies with this Section 10.1 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 Units;
 - (B) add, change or remove any restriction on the business that the Trust may carry on;
 - (C) add, change or remove the rights, privileges, restrictions or conditions attached to the Units 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 Units held by the dissenting Unitholder;
 - (E) create a new class of Units equal to or superior to the class of Units 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 Units into the class of Units held by the dissenting Unitholder.
- (b) In addition to any other right the Unitholder may have, a Unitholder who complies with this Section is entitled, when the action approved by the resolution from which the Unitholder dissents becomes effective, to be paid by the Trust the fair value of the Units held by the Unitholder in respect of which the Unitholder dissents, determined as of the close of business on the day before the resolution was adopted.
- (c) A dissenting Unitholder may only claim under this Section with respect to all the Units held by the dissenting Unitholder on behalf of any one beneficial owner and registered in the name of the dissenting Unitholder.
- (d) A dissenting Unitholder shall send to the Trust, at or before any meeting of Trust 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 Trust 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, Units in respect of which the Unitholder dissents; and
 - iii. a demand for payment of the fair value of such Units.
- (g) A dissenting Unitholder shall, within 30 days after the sending of a notice under subsection (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 10.1 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 Units 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 Units of the same class or series shall be on the same terms.
- (m) The Trust shall pay for the Units of a dissenting Unitholder within 10 days after an offer made under subsection (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 Units 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 Units have not been purchased by the Trust shall be joined as parties and bound by the decision of the court; and
 - ii. the Trust shall notify each affected dissenting Unitholder of the date, place and consequences of the application and of the dissenting Unitholder's right to appear and be heard in person or by counsel.
- (s) On an application to a court under subsection (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 Units of all dissenting Unitholders.
- (t) A court may in its discretion appoint one or more appraisers to assist the court to fix a fair value for the Units of the dissenting Unitholders.
- (u) The final order of a court in the proceedings commenced by an application under subsection (n) and (o) shall be rendered against the Trust in favour of each dissenting Unitholder and for the amount of the Units as fixed by the court.
- (v) A court may in its discretion allow a reasonable rate of interest on the amount payable to each dissenting Unitholder from the date the action approved by the resolution is effective until the date of payment.
- (w) If subsection (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 Units.

- (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.

Section 10.2 Oppression Remedy

- (a) Any registered holder or beneficial owner of Trust Units or former registered holder or beneficial owner of Trust Units or any security holder (each, a "Complainant") may apply to a court under the provisions of this Section 10.2.
- (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 Trust Unitholder or security holder, the court may make an order to rectify the matters complained of by the Complainant.
- (c) In connection with an application by a Complainant under subsection (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 security holder any part of the monies that the security holder 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 Trustees, directors, 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 Trust 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 11 - DISTRIBUTIONS

Section 11.1 Distributions

The Trust may distribute to Unitholders on each Distribution Date such amounts (“Distributions”) as shall be determined by the Trustees in their discretion for each calendar month or other calendar period selected by the Trustees.

Section 11.2 Distributions Payable

- (a) On each Distribution Date specified herein or which may be determined by the Trustees, the Distributions determined in accordance with Section 11.1 shall be payable proportionately to persons who are Unitholders on the record date for distribution selected by the Trustees in respect of such Distributions.
- (b) Notwithstanding the foregoing, having regard to the present intention of the Trustees to allocate, distribute and make payable to Unitholders, in aggregate, the amount necessary to ensure that the Trust will not be liable to pay income tax under Part I of the Tax Act for any Taxation Year (such amount being known, in respect of any year, as the “Taxation Distribution Amount”), unless the Trustees, in their absolute discretion, have otherwise determined to not distribute such Taxation Distribution Amount, the Taxation Distribution Amount shall be deemed to be declared by the Trustees as a Distribution, and to be due and payable, on the earlier of the last Distribution Date in respect of the Taxation Year or December 31 in the year (the “Tax Distribution Date”), to persons who are Unitholders on the record date in respect of such Distribution. For greater certainty, if the Trustees have exercised their absolute discretion to not distribute the Taxation Distribution Amount in respect of any Taxation Year, the difference between Distributions and the Taxation Distribution Amount in respect of such year shall not be payable to Unitholders. Moreover, the Trustees, in their absolute discretion, may at any time refute the intention referred to above to distribute the Taxation Distribution Amount in respect of any Taxation Year or future year. For greater certainty, it is hereby declared that a Unitholder shall have the legal right to enforce payment of any Taxation Distribution Amount as and from the Tax Distribution Date.
- (c) Notwithstanding the foregoing, if the Trustees anticipate a cash shortfall and determine that it would be in the best interests of the Trust, they may reduce for any period the Distributions to be distributed to Unitholders.

Section 11.3 Payment of Distributions

Distributions paid on each Unit shall be equal and shall be made by cheque payable to or to the order of the Unitholder, by electronic funds transfer or by such other manner of payment 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. A Unitholder shall be entitled on the day on which a distribution is payable pursuant to Section 11.2 to enforce payment of the amount payable to the Unitholder.

Section 11.4 Reinvestment

The Trustees may in their sole discretion establish a Distribution Reinvestment Plan at any time providing for the voluntary reinvestment by Unitholders of Distributions. Such plan may entitle those Unitholders that elect to participate to a bonus distribution as a reduction of capital of the Trust.

Section 11.5 Income Tax Matters

In computing the net income of the Trust for income tax purposes for any year, except as the Trustees otherwise determine, the Trust shall claim the maximum amount of capital cost allowance and other discretionary deductions available to the Trust under the Tax Act.

Section 11.6 Allocations of Net Income for Tax Purposes

Subject to the discretion of the Trustees to adopt an allocation method which the Trustees consider to be more reasonable in the circumstances, the net income of the Trust for a Taxation Year, including net taxable capital gains of the Trust, determined in accordance with the provisions of the Tax Act other than paragraph 82(1)(b) and subsection 104(6) payable to Unitholders shall be allocated to the Unitholders for the purposes of the Tax Act in the same proportion as the total distributions made to Unitholders in the Taxation Year under Section 11.2. The Trustees shall in each year make such other designations for tax purposes in respect of Distributions that the Trustees consider to be reasonable or advisable in the circumstances.

Section 11.7 Tax Act Definitions

Unless the context otherwise requires, any term used in Article 1 above or in this Article 11 which is defined in the Tax Act shall, for the purposes of Article 1 above and this Article 11, have the meaning ascribed to such term in the Tax Act, unless otherwise specifically noted.

ARTICLE 12 - FEES AND EXPENSES

Section 12.1 Expenses

The Trust shall pay from the assets of the Trust expenses incurred in connection with the administration and management of the Trust and its investments, including without limitation, interest and other costs of borrowed money, fees of auditors, lawyers, appraisers, registrars and transfer agents and other agents, stock exchanges, consultants and professional advisors employed by or on behalf of the Trust, fees and expenses of the Trustees, fees and expenses connected with the acquisition, disposition of ownership of real property interests or mortgage loans or other property, insurance as considered necessary by the Trustees (including liability insurance for the Trustees and Trust Unitholders), expenses in connection with payments of distributions on Units of the Trust, expenses in connection with communications to Trust Unitholders and other

bookkeeping and clerical work necessary in maintaining relations with Trust Unitholders, the cost of any accounting, statistical or bookkeeping equipment necessary for the maintenance of the books and records of the Trust, expenses of changing or terminating the Trust, all fees, expenses, taxes and other costs incurred in connection with the issuance, distribution, transfer and qualification for distribution to the public of the Trust Units and other required governmental filings, and all costs and expenses in connection with the incorporation, organization and maintenance of corporations formed to hold real property or other property of the Trust.

Section 12.2 Payment of Real Property and Brokerage Commissions

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

Section 12.3 Property Management, Leasing and Financing Fees

The Trust may pay property management fees, leasing fees and financing fees in respect of any real property owned by it.

Section 12.4 Charges for Services by Related Parties

Notwithstanding anything contained in this Declaration of Trust, if any Related Party renders services to the Trust other than those specifically required under the terms of any applicable agreement, such person shall be entitled to receive remuneration for such services rendered in amounts determined by the Trustees.

ARTICLE 13 - AMENDMENTS TO THE DECLARATION OF TRUST

Section 13.1 Amendments by the Trustees

Notwithstanding Section 7.8 and Section 13.5, the Trustees may, without the approval of, or any notice to, Trust Unitholders, make amendments to the Declaration of Trust:

- (a) 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;
- (b) which, in the opinion of the Trustees, provide additional protection for the Trust Unitholders;
- (c) to remove any conflicts or inconsistencies in the Declaration of Trust or to make minor corrections which are, in the opinion of the Trustees, necessary or desirable and not prejudicial to the Trust Unitholders;
- (d) which, in the opinion of the Trustees, are necessary or desirable as a result of changes in taxation laws or accounting standards, or the interpretation thereof from time to time, including, without limiting the generality of the foregoing, amendments which may permit the Trust to qualify for any status under the Tax Act which would benefit the Trust and its Trust Unitholders or to ensure to the extent possible that the Trust is not liable for any taxes under the Tax Act or any provincial taxing statute;

- (e) for the purpose of ensuring that the Trust maintains its status at all times as a “mutual fund trust”, a “registered investment” and a “real estate investment trust” for purposes of the Tax Act and that it is not a “SIFT trust” for purposes of the Tax Act;
- (f) resulting from or in connection with the creation and issuance of any special voting units to facilitate the acquisition of an interest in real property by the Trust or the conversion or reclassification of any such special voting units into Units; and
- (g) for any purpose (except one in respect of which a Trust Unitholder vote is specifically otherwise required) if the Trustees are of the opinion that the amendment is not prejudicial to Trust Unitholders and is necessary or desirable.

Section 13.2 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 Trust Unitholders, other than amendments pursuant to Section 5.5 or the provisions of subsections (a), (c), (d), (e) and (f) of Section 13.1 and amendments that 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 Trust Unitholders at the next meeting of Trust Unitholders and the Trust Unitholders entitled to vote on the amendment may, by a vote representing at least a majority of the Trust Units 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 Trust 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 Trust Unitholders, or if the Trustees do not submit an amendment to the Trust Unitholders as required under subsection (a), the amendment ceases to be effective immediately after the meeting of Trust 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 Trust Unitholders. The Trustees shall sign an amended and restated Declaration of Trust which removes the rejected or unapproved amendment.

Section 13.3 Amendments by Trust Unitholders

Subject to Sections 2.5, 7.8(c), 13.4 and 13.5, where Trust Unitholders are entitled under the terms hereof to vote on an amendment to this Declaration of Trust, this Declaration

of Trust may only be amended by the vote of a majority of the votes cast at a meeting of Trust Unitholders duly called for that purpose.

Section 13.4 Two-Thirds Trust Unitholder Vote

No amendment may be made to the Declaration of Trust which would relate to the duration or termination of the Trust, and the Trust shall not sell, lease or exchange all or substantially all its assets or property (except to any person in respect of which all of the issued voting securities thereof are owned or, after such sale, would be owned, by the Trust Unitholders at such time in the same respective proportions as Trust Units are owned immediately prior to such sale), except in each case with the approval of Trust Unitholders given by the affirmative vote of at least two-thirds of the votes cast at a meeting of Trust Unitholders duly called for that purpose.

No amendment may be made to the Declaration of Trust which would modify the provisions of Section 5.1 or the provisions of paragraphs (e), (g), (h), (i) and (j) of Section 5.2 except with the approval of Trust Unitholders given by the affirmative vote of at least two-thirds of the votes cast at a meeting of Trust Unitholders duly called for that purpose. The remaining provisions of Section 5.2 may be amended with the approval of a majority of the votes cast by Trust Unitholders duly called for that purpose.

Section 13.5 Special Trust Unitholder Vote

Notwithstanding Sections 13.3 and 13.4, at all times the following amendments to the Declaration of Trust require the approval of two-thirds of the votes cast at a meeting of Trust Unitholders:

- (a) an exchange, reclassification or cancellation of all or part of the Trust Units (other than as provided herein);
- (b) the addition, change or removal of the rights, privileges, restrictions or conditions attached to the Trust Units and, including, without limiting the generality of the foregoing,
 - i. the removal or change of rights to distributions;
 - ii. the addition or removal of or change to conversion privileges, options, voting, transfer or pre-emptive rights; or
 - iii. the reduction or removal of a distribution preference or liquidation preference;
- (c) the creation of new rights or privileges attaching to certain of the Trust Units; or
- (d) the constraint on the issue, transfer or ownership of Trust Units or the change or removal of such constraint;

provided, however, for greater certainty, that this Section 13.5 shall not apply to an amendment of the Declaration of Trust pursuant to subsection 13.1(f) or the adoption by the Trustees of the Rights Plan or the waiver by the Trustees of the application of the Rights Plan to any flip-in event (as defined in the Rights Plan).

ARTICLE 14 - TERMINATION OF THE TRUST

Section 14.1 Duration of the Trust

The Trust shall continue until terminated pursuant to Section 14.2 hereof 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.

Section 14.2 Termination by Trust Unitholders

Subject to Section 13.4, the Trust may be terminated by the vote of at least two-thirds of the votes cast at a meeting of Trust Unitholders called for that purpose.

Section 14.3 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 the Unitholders on a *pro rata* basis. 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 15 - LIABILITIES OF THE TRUSTEES AND OTHERS

Section 15.1 Liability and Indemnification of the Trustees

The Trustees, officers and employees of the Trust, and the directors, officers and employees of any subsidiary of the Trust shall at all times including, for the purposes of this Article 15 the time after they have ceased to be Trustees, directors, officers or employees, be indemnified and saved harmless out of the funds of the Trust from and against all claims whatsoever, including costs, charges, expenses, fines, penalties and settlements in connection therewith, threatened, brought, commenced or prosecuted against them, and any appeal thereof, 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 of the Trust or as directors, officers and employees of any subsidiary of the Trust, including, without limitation, arising out of or in connection with the presence, release, discharge or disposal of any hazardous substance or any adverse environmental conditions at, on, under or near any real property or any investigation, remediation or clean up action required to be undertaken in connection with any real property. The Trustees shall at all times including, for the purposes of this Article 15, the time after they have ceased to be Trustees, be indemnified and saved harmless out of the funds of the Trust 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, the Trustees and the officers and employees of the Trust shall not be liable to the Trust or to any Trust Unitholder or annuitant 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, however, 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 or her conduct was lawful.

Trustees shall not at any time be indemnified or saved harmless by any Trust Unitholder.

Section 15.2 Liability of the Trustees

The Trustees shall not be liable to the Trust or to any Trust Unitholder or annuitant for the acts, omissions, receipts, neglects or defaults of any person employed or engaged by the Trust 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 tortious act of any person 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 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 that the Trustee cannot satisfy the conditions set out in clauses (a) and (b) contained in Section 15.1.

Section 15.3 Reliance upon Advice

The Trustees 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.

Section 15.4 Liability of Trust Unitholders and Others

No Trust Unitholder, annuitant or any officer, employee, or agent of the Trust shall be held to have any personal liability as such, and no resort shall be had to his property (including, without limitation, any property consisting of or arising from a distribution of any kind or nature by the Trust) 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 Trust Unitholder or annuitant would otherwise have to indemnify a Trustee for any personal liability incurred by the Trustee 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 judgment 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 (including, without limitation, any private property consisting of or arising from a distribution of any kind or nature by the Trust) of any of the Trustees, Trust Unitholders, annuitants, or officers, employees and agents of the Trust 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, the Trustees shall use their reasonable efforts to have any such obligations under material contracts (including mortgages), other than leases, modified so as to achieve the aforesaid disavowal of contractual liability. Further, the Trustees shall cause the operations of the Trust to be conducted in such a way and in such jurisdictions as to avoid, as far as reasonably possible, any material risk of liability on the Trustees, Trust Unitholders, annuitants or officers, employees and agents of the Trust for claims against the Trust, and shall, to the extent which they determine to be possible and reasonable, including in the cost or premiums, to cause the Trust to carry insurance for the benefit of such persons 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 15.1, 15.2 and 15.3.

To the extent that, notwithstanding the provisions of this Section, any Trust 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 Trust Unitholder, or the Trust Unitholder is otherwise held personally liable, the Trust 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 Trust Unitholder under this Section 15.4 and the limitations of a Trust Unitholder's liability set out herein are in addition to, and do not exclude, any other rights or limitations of liability to which such Trust 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 Trust 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 Trust Unitholders for taxes assessed against them by reason of or arising out of their ownership of Trust Units.

ARTICLE 16 - GENERAL

Section 16.1 Execution of Instruments

Any two Trustees or officers (or any combination thereof) 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 Trustees and the Trust without any further authorization or formality. The Trustees shall have power from time to time by resolution to appoint any Trustee or any person (including, without limitation, any officer of the Trust) or persons on behalf of the Trustees either to sign instruments in writing generally or to sign specific instruments in writing.

Section 16.2 Manner of Giving Notice

Any notice required or permitted by the provisions of this Declaration of Trust to be given to a Trust Unitholder shall be deemed conclusively to have been given if given either by delivery or by prepaid ordinary mail addressed to the Trust Unitholder at his address shown on the Register.

Section 16.3 Failure to Give Notice

The failure by the Trustees, by accident or omission or otherwise unintentionally, to give any Trust 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 Trust Unitholder for any such failure.

Section 16.4 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 Trust Unitholders. The auditors of the Trust shall report to the Trustees and the Trust Unitholders on the annual financial statements of the Trust and shall fulfill 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 the auditors shall be fixed by the Trustees.

Section 16.5 Fiscal Year

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

Section 16.6 Reports to Trust Unitholders and Statements of Trust Units Held

Within 140 days of the end of each complete calendar year and at least 21 days prior to each annual meeting of Trust Unitholders, the Trustees shall send to each Trust 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 Trust Unitholder. The Trustees will supply Trust Unitholders with any information that may be required by them in connection with their obligations under the Tax Act.

Section 16.7 Fund Assets to be Kept Separate

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

Section 16.8 Competition with Trust

The Trustees may, from time to time, be engaged, for their own account or on behalf of others (including as trustee, administrator or manager of other funds or portfolios), in real estate investment and other activities identical or similar to or competitive with the activities of the Trust or its affiliates in connection with the Trust. The Trustees shall not incur or be under any liability to the Trust, any Trust Unitholder or any annuitant for, by reason of, or as a result of any such engagement or competition or the manner in which he or she may resolve any conflict of interest or duty arising therefrom provided that it has acted in accordance with the provisions of this Declaration of Trust and any agreement made between the Trustee and the Trust.

Section 16.9 Trustees May Hold Trust Units

Subject to Section 6.10, a Trustee may be a Trust Unitholder or may be an annuitant.

Section 16.10 Right to Inspect Documents and Records

A Trust 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.

Section 16.11 Information Available to Trust Unitholders and Other Security Holders

- (a) Trust Unitholders and other security holders of the Trust and their respective personal representatives who wish 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 16.12. 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.
- (b) Any person described in subsection (a), on payment of a reasonable fee therefor and on sending the Trust or its agent or mandatary an affidavit referred to in Section 16.12, 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 Trust Unitholders, the number of Trust Units held by each Trust Unitholder and the address of each Trust Unitholder as shown in the records of the Trust.
- (c) A person requiring the Trust to provide a basic list may, by stating in the affidavit referred to in subsection (b) 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 Trust Unitholders and the number of Trust Units owned by each Trust Unitholder for each business day following the date the basic list is made up to.
- (d) The Trust or its agent or mandatary shall provide a supplemental list, where available, required under subsection (c):
 - 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.
- (e) 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 Trust Units, where available.

Section 16.12 Affidavits

- (a) An affidavit required under Sections 16.11 shall state:
- i. the name and address of the applicant;
 - ii. the name and address for service of the body corporate, if the applicant is a body corporate; and
 - iii. that the information contained in the securities register, the basic list and any supplemental lists obtained pursuant to Section 16.11, as the case may be, will not be used except as permitted under Section 16.13.

Section 16.13 Use of Information

- (a) A list of Trust Unitholders or information from the securities register obtained under Section 16.11 shall not be used by any person except in connection with:
- i. an effort to influence the voting of Trust 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.

Section 16.14 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.

Section 16.15 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.

Section 16.16 Severability

The 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.

Section 16.17 Execution and Effect of Restated Declaration of Trust

Subject to Article 13, 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.

Section 16.18 Quantity and Gender

In this Declaration of Trust whenever the singular form is used, the same shall include the plural as and when required by the context. Words denoting one gender include the other or the neuter, and words denoting the neuter denote either gender, unless a contrary intention is to be inferred from or required by the subject matter or context.

Section 16.19 Headings for Reference Only

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

Section 16.20 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 parties have caused these presents to be signed and sealed as of the 3rd day of May, 2022.

"Matthew Andrade"

Matthew Andrade

"Kay Brekken"

Kay Brekken

"Gerald R. Connor"

Gerald R. Connor

"Lois Cormack"

Lois Cormack

"Gordon R. Cunningham"

Gordon R. Cunningham

"Michael R. Emory"

Michael R. Emory

"Antonia Rossi"

Antonia Rossi

"Stephen Sender"

Stephen Sender

"Jennifer A. Tory"

Jennifer A. Tory