
ALLIED PROPERTIES REAL ESTATE INVESTMENT TRUST

**AMENDED AND RESTATED
TRUST DECLARATION**

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ALLIED PROPERTIES REAL ESTATE INVESTMENT TRUST

AMENDED AND RESTATED DECLARATION OF TRUST made in Toronto, Ontario the 6th day of February, 2003 as amended and restated as of the 14th day of May, 2013.

B E T W E E N:

Margaret T. Nelligan, of the Province of Ontario
(hereinafter referred to as the “Settlor”)

– and –

Gerald R. Connor,
Gordon R. Cunningham,
Michael R. Emory,
James Griffiths,
Ralph T. Neville,
Daniel F. Sullivan, and
Peter Sharpe, all of the Province of Ontario
(hereinafter referred to as the “Trustees”)

RECITALS

WHEREAS the Trust was to established by a declaration of trust on October 25, 2002 for the principal purpose of providing persons who may become the holders of Units (“Unitholders”) 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 and May 15, 2012;

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 Canadian generally accepted accounting principles;

“Affected Holders” has the meaning ascribed thereto in section 6.9 hereof;

“Affected Units” has the meaning ascribed thereto in section 6.9 hereof;

“affiliate” means, with respect to any person, 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* (Ontario);

“Audit Committee” means the committee established pursuant to section 9.4 hereof;

“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 The Canadian Depository for Securities Limited 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;

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

“Closing Date” means the date on which the Initial Offering is completed;

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

“Depository” has the meaning ascribed thereto in Section 6.11(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 other than the month of December, on or about the 15th day of the following month and, in respect of the month of December, December 31st;

“Distributions” has the meaning set forth in section 10.1 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;

“generally accepted accounting principles” means the accounting principles so described and promulgated by the Canadian Institute of Chartered Accountants which are applicable as at the date on which any calculation made hereunder is to be effective;

“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 6.11(a) hereof;

“Governance and Compensation Committee” means the committee established pursuant to section 9.5 hereof;

“Gross Book Value” means, at any time, the book value of the assets of the Trust shown on the then most recent interim balance sheet of the Trust, plus the amount of accumulated depreciation and amortization included therein or in the notes thereto;

“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;

“Independent Trustee” means a Trustee who is “unrelated” (as defined in the Toronto Stock Exchange Guidelines on Corporate Governance), as amended from time to time and not related within the meaning of the Tax Act to the Promoter or any affiliate thereof;

“Initial Vendors” means the owners of the Initial Properties who have agreed to sell the Initial Properties to the Trust;

“Initial Offering” means the initial distribution to the public of Units as contemplated by the Prospectus;

“Initial Properties” means, collectively, 425-439 King Street West, 445-455 King Street West, 468 King Street West, 500-522 King Street West, 420 Wellington Street West, 425 Adelaide Street West, 388 King Street West, 82 Peter Street, 331-333 Adelaide Street West, 358-360 Adelaide Street West, 134 Peter Street and 230 Richmond Street East, 35-39 Front Street East and 41-45 Front Street East, each located in Toronto, Ontario, and **“Initial Property”** means any one of them;

“Investment Committee” means the committee which may be established pursuant to section 9.3 hereof;

“issuer bid” has the meaning ascribed thereto in the *Securities Act* (Ontario);

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

“Net Realized Capital Gains of the Trust” for any period means the amount, if any, by which the amount of the capital gains of the Trust for the period exceeds the amount of any capital losses of the Trust for the period determined in accordance with the Tax Act;

“Non-Competition Agreements” mean the non-competition agreements to be entered into on the Closing Date between the Trust and each of the Promoter, Michael R. Emory and Wayne L. Jacobs and their respective related parties;

“Office Property” means, at any time, a building in Canada in which not less than 50% of the GLA is used or is reasonably capable of being used as office space;

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

“Option Agreement” means the agreement to be entered into on or prior to the Closing Date between the Trust, the Promoter and others pursuant to which the Trust will be granted certain rights to purchase Office Properties from time to time;

“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;

“Promoter” means Allied Canadian Corporation, a corporation incorporated under the laws of the Province of Ontario and any successor corporation;

“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;

“Property Management Agreement” means the agreement to be entered into on the Closing Date between the Trust and the Promoter, in its capacity as initial Property Manager pursuant to which the Property Manager will manage the Trust’s portfolio of properties and act as leasing manager for the Trust;

“Property Manager” means the person engaged from time to time by the Trust to operate the Trust’s portfolio of real property investments and act as leasing manager pursuant to section 9.7;

“Prospectus” means the (final) prospectus of the Trust relating to the Initial Offering;

“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;

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

“Register” means the register which shall be established and maintained pursuant to section 6.15 hereof;

“Rights Plan” means the Unitholders’ rights plan to be established by the Trust on or prior to the Closing Date;

“Sell Notice” means a notice delivered to an Affected Holder as contemplated in section 6.9 hereof;

“subsidiary” has the meaning ascribed thereto in the *Securities Act* (Ontario);

“take-over bid” has the meaning ascribed thereto in the *Securities Act* (Ontario);

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

“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;

“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 3.4 hereof;

“Unit” means a unit of interest in the Trust as designated in accordance with section 6.1 hereof;

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

“Unit Certificate” means a certificate, in the form stipulated by Section 6.13 hereof, evidencing one or more Units, issued and certified in accordance with the provisions hereof; and

“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 Trustees, members of the Trust’s management and the officers and employees of the Promoter and its affiliates.

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 469 King Street West, 4th Floor, Toronto, Ontario, M5V 1K4, 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 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 participate in distributions when and as declared by the Trustees as contemplated by Article 10 and distributions upon the termination of the Trust as contemplated in Article 13. 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 Unitholders or any officer or other employee of the Trust or any of them for any purpose be or be deemed to be treated in any way whatsoever to be, liable or responsible hereunder as partners or joint venturers. Neither the Trustees nor any officer or other employee of the Trust shall be, or be deemed to be, agents of the Unitholders. The relationship of the Unitholders to the Trustees, to the Trust and to the 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.

ARTICLE 2 - TRUSTEES

Section 2.1 - Number

There shall be no fewer than seven nor more than nine Trustees. The initial number of Trustees shall be seven and may be changed from time to time as hereinafter provided. The number of Trustees may be increased or decreased within such limits from time to time by the Unitholders or, if authorized by the 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 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 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 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 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 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 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 Chairman of Trustees, or any officer designated by the Chairman 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 two-thirds of the votes entitled to be cast at a meeting of Unitholders duly called for that purpose; or (ii) at any time with cause by two-thirds of the votes cast by the Trustees at any Trustees' meeting. Upon the resignation or removal of any Trustee, or his otherwise ceasing to be a Trustee, he 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 name; (iii) account to the remaining Trustees as they may require for all property which he 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 be discharged as Trustee. Upon the incapacity or death of any Trustee, his legal representative shall execute and deliver on his behalf such documents as the remaining Trustees may require as provided in this section. In the event that a Trustee or his 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 Unitholders or, so long as they constitute a quorum, the Trustees continuing in office, may fill such vacancy. Any Trustee so elected by the Unitholders shall hold office until the next annual meeting of Unitholders.

Section 2.7 - Successor and Additional Trustees

The right, title and interest of the Trustees in and to the property of the Trust shall vest automatically in all persons who may hereafter become Trustees upon their due election or appointment and qualification 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 2.8 - 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 the Promoter 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 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 - Initial Offering

For greater certainty and without limiting the generality of section 3.1, the Trust is authorized to complete the Initial Offering upon the terms set forth in the Prospectus including (i) prepare, file,

execute and deliver the Prospectus and all other documents, agreements and instruments as may be necessary or, in the Trustees discretion, desirable to complete the Initial Offering; (ii) acquire from the Initial Vendors on or before the Closing Date the Initial Properties and pay the Purchase Price therefor; (iii) enter into the Material Contracts to which it is a party; and (iv) implement the Rights Plan. For the purposes of this section 3.2, terms not otherwise defined herein have the meanings ascribed thereto in the Prospectus and "Material Contracts" means those contracts listed in the Prospectus under the heading "Material Contracts". For greater certainty, the Trust is not required to complete the Initial Offering unless and until the Trustees are satisfied with the terms and conditions thereof.

Section 3.3 - 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 the Promoter or any of its Related Parties (as defined in the Option Agreement) has any direct or indirect interest;
- (b) a material change to any of the Option Agreement (including any loan agreement entered into pursuant thereto), the Non-Competition Agreements, the Property Management Agreement or any renewal, extension or termination thereof or any increase in the fees payable under the Property Management Agreement;
- (c) the enforcement of any agreement entered into by the Trust with a non-Independent Trustee or an associate thereof or with the Promoter or an affiliate or associate thereof;
- (d) to waive or amend the provisions of any of the Option Agreement, the Non-Competition Agreements or the Property Management Agreement;
- (e) to waive the application of the Rights Plan to any flip-in event (as such term is defined in the Rights Plan); and
- (f) any matter involving the Trust in which the Promoter or any of its associates or affiliates has an interest.

Section 3.4 - 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 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 duties and responsibilities hereunder.

Section 3.5 - Standard of Care

The exclusive standard of care required of the Trustees in exercising their powers and carrying out their functions hereunder shall be that they exercise their powers and carry out their functions hereunder as Trustees honestly, in good faith and in the best interests of the Trust and the Unitholders and that in connection therewith they exercise that degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. Unless otherwise required by law, no Trustee shall be required to give 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 3.6 - 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 3.7 - Determinations of Trustees Binding

All determinations of the Trustees which are made in good faith with respect to any matters relating to the Trust, including, without limiting the generality of the foregoing, whether any particular investment or disposition meets the requirements of this Declaration of Trust, shall be final and conclusive and shall be binding upon the Trust and all Unitholders (and, where the Unitholder is a registered retirement savings plan, registered retirement income fund, 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 Units of the Trust shall be issued and sold on the condition and understanding that any and all such determinations shall be binding as aforesaid.

Section 3.8 - 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 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 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 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 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 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 remuneration as a Trustee, officer, employee or agent of the Trust; or
 - (ii) one for indemnity under section 14.1 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 3.8 disclosing that he 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 has a material interest,

(i) the Trustee or officer, as applicable, is not accountable to the Trust or to the Unitholders for any profit or gain realized from the contract or transaction; and

(ii) the contract or transaction is neither void nor voidable;

by reason only of that relationship or by reason only that the Trustee is present at or is counted to determine the presence of a quorum at the meeting of Trustees or committee of Trustees that authorized the contract or transaction, if the Trustee disclosed his interest in accordance with this section 3.8 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 Unitholders for any profit or gain realized from any such contract or transaction by reason only of his 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 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 interest in a material contract or transaction in accordance with this Declaration of Trust or otherwise fails to comply with this section, the Trustees or any Unitholder, in addition to exercising any other rights or remedies in connection with such failure exercisable at law or in equity, may apply to a court for an order setting aside the contract or transaction and directing that 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 Chairman 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 - Chairman of Trustees

The Chairman of Trustees shall be appointed from among the Trustees. When present, the Chairman of Trustees shall be chairman of meetings of Trustees and Unitholders and shall have such other powers and duties as the Trustees may determine from time to time.

Section 4.3 - Term of Office

The Chairman and any other officer appointed by the Trustees shall hold office until his 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 Chairman 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, 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 or registered education savings plans, that would result in the Trust being liable under the Tax Act to pay a tax as a result of holdings by the Trust of foreign property as defined in the Tax Act or that would result in Units being foreign property for the purpose of the Tax Act;
- (c) the Trust may invest in a joint venture or co-ownership arrangement (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 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 a right of first refusal, if any, in favour of the joint venturers and the requirement that the transferee enter into an assumption agreement;
 - (iii) the Trust has a right of first refusal to buy the interests of the other joint venturers;
 - (iv) the joint venture arrangement provides an appropriate buy-sell mechanism to enable a joint venturer to purchase the other joint venturers’ interests 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 Unitholder liability); provided, however, that subject to any remedies that each joint venturer may have against the other joint venturers, a joint venturer may be required to give up its interest in any particular property owned by the joint venture entity 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 permits, but does not require, the Trust or its designee to participate fully in the management thereof;
 - (vii) 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
 - (viii) the Trust receives and 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;
- (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 adopted by the Canadian Securities Administrators, as amended from time to time;
- (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 1 Canadian bank maturing within one year from the

date of issue or except as permitted pursuant to paragraphs (c), (d), (g), (i), (j) and (k), under the heading "Investment Guidelines and Operating Policies – Investment Guidelines", 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 acquire interests in general partnerships or limited partnerships provided that the Trust may invest in a limited partnership if:
 - (i) the limited partnership is formed and operated solely for the purpose of acquiring, owning, maintaining, improving, leasing or managing a particular real property or properties or interests therein;
 - (ii) the Trust's interest in the limited partnership is not subject to any restriction on transfer other than a right of first offer or right of first refusal, if any, in favour of any other partner or any affiliate thereof and a requirement that the transferee enter into an assumption agreement;
 - (iii) the Trust has a right of first offer or right of first refusal to buy the interests of the other partners;
 - (iv) the limited partnership arrangement provides an appropriate buy-sell mechanism to enable a limited partner to purchase the other limited partners' interests or to sell its interests; and
 - (v) the limited partnership 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;

provided that, notwithstanding the foregoing, the Trust may from time to time enter into any limited partnership 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;

- (h) 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.1) 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), (h), (i) and (j) under the heading "Investment Guidelines and Operating Policies – Investment Guidelines" or paragraph (d) under the heading "Investment Guidelines and Operating Policies – Operating Policies";
- (l) the Trust shall not acquire any interest in a single real property if, after giving effect to the proposed acquisition, the cost of 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 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, Unitholders, annuitants under a plan of which a 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 sublessee 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 generally accepted accounting principles);
 - (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 generally accepted accounting principles;

- (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 the heading “Investment Guidelines and Operating Procedures—Investment Guidelines”;
- (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. Notwithstanding the foregoing, prior to the completion of the Initial Offering, the Trust shall not be required to comply with section 5.1 and section 5.2 (save and except subsection 5.1(a) and subsection 5.2(b)).

Section 5.3 - Registered Investment

The Trustees shall cause the Trust to do all such things and take all such action as may be necessary to obtain, as soon as practicable following the Closing Date, status for the Trust as a “registered investment” under the Tax Act, and shall do all such things and take such action as may be necessary from time to time to ensure that the Trust shall retain such status. The Trustees shall take all steps necessary to ensure that the Trust does not make or hold any investment that would result in the Trust being liable for tax under Part XI or Part X.2 of the Tax Act.

Section 5.4 - Application of Investment Restrictions and Operating Guidelines

With respect to the investment restrictions and operating guidelines 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 Unitholders.

ARTICLE 6 - TRUST UNITS

Section 6.1 - Units

The beneficial interests in the Trust shall be divided into equal interests of one class of Units which shall be designated and referred to as "Units" or such other designation as the Trustees, with the consent of any stock exchange on which the Units are listed, approve and which shall be entitled to the rights and subject to the restrictions, conditions and limitations set out herein. The number of 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 - Units Non-Assessable

No Units shall be issued other than as fully paid and non-assessable. A 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 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 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 6.3 - Fractional Units

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

Section 6.4 - 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 their 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 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 Unitholder has or is deemed to have any right of ownership in any of the assets of the Trust.

Section 6.5 - Allotment and Issue

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.

Section 6.6 - 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 instruments or securities to subscribe for fully paid Units which rights, warrants, options, instruments or securities may be exercisable at such subscription price or prices and at such time or times as the Trustees may determine. Any such rights, warrants, options, instruments or securities so created may be issued for such consideration or for no consideration, all as the Trustees may determine. A right, warrant, option, instrument or 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 6.7 - 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 6.8 - Transferability

Subject to applicable laws, Units are freely transferable and, except as stipulated in section 6.9, 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 6.9 - 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 and the Trustees shall inform the transfer agent and registrar of this restriction. The transfer agent and registrar may require declarations as to the jurisdictions in which beneficial owners of Units are resident. If the transfer agent and registrar becomes aware, as a result of requiring such declarations as to beneficial ownership or otherwise,

that the beneficial owners of 49% of the Units then outstanding are, or may be, non-residents or that such a situation is imminent, the transfer agent and registrar will advise the Trustees and, upon receiving direction from 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 transfer agent and registrar determines that more than 49% of the Units 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. 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 6.9, 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 6.9, 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 6.10 - 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 6.9. The Trustees shall make all determinations necessary for the administration of the provisions of section 6.9 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 6.11 - Book-Entry System

- (a) The provisions of sections 6.11 to 6.14, 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. Units shall be issued in the form of a Unit Certificate provided; however, that a global Unit certificate (a "**Global Unit Certificate**") may be issued in the name of and deposited by the transfer agent and registrar of the Trust with, or on behalf of, CDS or a successor (collectively, the "**Depository**"), as custodian of such Global Unit Certificate and registered by the transfer agent and registrar of the Trust in the name of the Depository or its nominee. No purchaser of Units represented by a Global Unit Certificate 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 a Global Unit Certificate 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 of the Depository.

Section 6.12 - 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 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 6.13 - 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 Trustee 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 6.14 - 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 6.15 - Unit Register and Transfer Ledgers to be Maintained

A register (the “**Register**”) shall be kept by, or on behalf and under the direction of the Trustees, which Register shall contain the names and addresses of Unitholders, the respective numbers of Units held by them, the certificate numbers of the certificates of such Units 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 may provide for the transfer of 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 Units of the Trust. If the Trustees have appointed a registrar and transfer agent, no certificate for Units shall be valid unless countersigned by or on behalf of a transfer agent and/or registrar. Only Unitholders whose Units are recorded on the Register shall be entitled to vote or to receive distributions or otherwise exercise or enjoy the rights of Unitholders.

Section 6.16 - Entry on Register

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

Section 6.17 - Transfer of Units

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 6.9, 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.

Section 6.18 - Successors in Interest to Unitholders

Any person becoming entitled to any Units as a consequence of the death, bankruptcy or incompetence of any Unitholder or otherwise by operation of law, shall be recorded as the holder of such 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 Unitholder of record shall continue to be and be deemed to be the holder of such Units for all purposes whether or not the Trust, the 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 6.19 - Units Held Jointly or in Fiduciary Capacity

The Trust may treat two or more persons holding any 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 Unit; provided, however, that any person recorded as a holder of any 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 6.20 - Performance of Trusts

The Trustees, the officers of the Trust, the 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 Units or any interest therein are or may be subject, or to ascertain or inquire whether any sale or transfer of any such Units or interest therein by any such Unitholder or his personal representatives is authorized by such trust, charge, pledge or equity, or to recognize any person as having any interest therein, except for the person recorded as Unitholder.

Section 6.21 - 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 6.22 - Death of Unitholders

The death of a Unitholder during the continuance of the Trust shall not terminate the Trust or give such Unitholders' legal representatives a right to an accounting or to take any action in the courts or otherwise against other Unitholders or the Trustees or the property of the Trust, but shall only entitle the legal representatives of the deceased Unitholder to demand and receive, pursuant to the provisions of sections 6.11 and 6.18 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 Unitholder under this Declaration of Trust.

Section 6.23 - 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 can not 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 6.24 - 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 6.25 - 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, 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 or in the province where the dissenting offeree resides if the Trust carries on business in that province.
- (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; and
- (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.
- (t) Nothing contained in this section 6.25 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).

ARTICLE 7 - MEETINGS OF UNITHOLDERS

Section 7.1 - Annual Meeting

Commencing following the first full fiscal year of the Trust, there shall be an annual meeting of the Unitholders at such time and place as the Trustees shall prescribe for the purpose of electing those Trustees to be elected by 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 Unitholders shall be held after delivery to the Unitholders of the annual report referred to in section 15.6 and within 140 days after the end of each full fiscal year.

Section 7.2 - Other Meetings

The Trustees shall have the power at any time to call special meetings of the 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 Unitholders to transact such business as set forth in section 7.7(a), (b), (d) or (e) upon the written request of Unitholders holding not less than 5% of the outstanding Units of the Trust. If there shall be no Trustees, any Unitholder shall be entitled to call a special meeting of the Unitholders for the election of successor Trustees. The phrase "meeting of Unitholders" wherever it appears in this Declaration of Trust shall mean and include both an annual meeting and any other meeting of Unitholders.

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

- (i) a Record Date for a meeting of the Unitholders has been fixed and notice thereof has been given to each stock exchange in Canada on which the Units are listed for trading;
- (ii) the Trustees have called a meeting of the 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 Unitholder is to enforce a personal claim or 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 Unitholder does not relate in a significant way to the business or affairs of the Trust;
- (B) the Trust, at the Unitholder's request, included a matter covered by a requisition in an information circular relating to a meeting of Unitholders held within two years preceding the receipt of such request, and the Unitholder failed to present the matter, in person or by proxy, at the meeting;
- (C) substantially the same matter covered by the requisition was submitted to Unitholders in an information circular (including a dissident's information circular) relating to a meeting of Unitholders held within two years preceding the receipt of the Unitholder's request and the matter covered by the requisition was defeated; or
- (D) the rights conferred by this section 7.2 are being abused to secure publicity.

Subject to the foregoing, if the Trustees do not within 21 days after receiving the requisition to call a meeting, any Unitholder who signed the requisition may call the meeting in accordance with the provisions of Article 7 of this Declaration of Trust.

Section 7.3 - Notice of Meeting of Unitholders

Notice of all meetings of the Unitholders shall be mailed or delivered by the Trustees to each Unitholder at his address appearing in the Register not less than 21 nor more than 50 days before the meeting. Notice of any meeting of Unitholders shall state the time and place where the meeting is to be held and shall state briefly the general nature of the business to be transacted thereat, but it shall not be necessary for the notice to set out the terms of any resolution and shall otherwise include such information as would be provided to shareholders of a corporation governed by the *Canada Business Corporations Act* in connection with a meeting of shareholders. A Unitholder or any other person entitled to notice of a meeting of Unitholders may in any manner waive notice of the meeting. Attendance at a meeting of Unitholders shall constitute a waiver of notice unless the Unitholder or other person attends the meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not properly called.

Section 7.4 - Quorum

Two Unitholders at any meeting represented in person or by proxy shall constitute a quorum for any meeting of Unitholders. If a quorum of Unitholders is not constituted within 30 minutes within the time fixed for holding any meeting of Unitholders, the meeting shall be adjourned by

the chairman to a date not fewer than three days and later than 14 days after the date of the meeting. It shall not be necessary to give notice of the adjourned meeting, other than by an announcement at the earlier meeting that is adjourned. If a quorum is present at the opening of a meeting, the Unitholders may proceed with the business of the meeting, notwithstanding that a quorum is not present throughout the meeting.

The chairman of any meeting at which a quorum of Unitholders is present may, with a consent of the majority of the Unitholders present in person or by proxy, adjourn any such meeting and no notice of any such adjournment need be given.

Section 7.5 - Chairman, Secretary, Scrutineers

In the absence of the Chairman of Trustees or the Chief Executive Officer, any officer of the Trust or any Trustee shall be the chairman of any meeting of Unitholders. If there are neither any Trustees, nor officers of the Trust, any of the Unitholders calling the meeting pursuant to section 7.2 shall be the chairman. The Chairman shall appoint an individual, who need not be a Unitholder, to act as secretary of the meeting. If desired, one or more scrutineers, who need not be Unitholders, may be appointed by the chairman.

Section 7.6 - Voting

- (a) Subject to sections 6.3 and 6.9, Unitholders may attend and vote at all meetings of the Unitholders either in person or by proxy. Any action to be taken by the Unitholders shall, except as otherwise required by this Declaration of Trust or by law, be authorized when approved by a majority of the votes cast at a meeting of Unitholders in accordance with paragraph (b) below. Every question submitted to a meeting of 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 chairman 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 chairman or an adjournment, it shall be taken immediately upon request and, in any other case, it shall be taken at such time as the chairman of the meeting may direct. The poll shall be taken in such manner as the chairman 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 Unitholders, on a show of hands every person who is present and entitled to vote, whether as a Unitholder or as a proxy, shall have one vote. At any meeting of Unitholders on a poll, each Unitholder present in person or represented by a duly appointed proxy shall have one vote for each Unit held on the applicable Record Date.
- (c) If 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 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 chairman of a meeting shall be entitled to vote in respect of Units held by the chairman or represented by the chairman by proxy. In the case of an equality of votes, the chairman shall not have a casting vote and the resolution shall be deemed to be defeated.

Section 7.7 - Matters on which Unitholders must Vote

None of the following shall occur unless the same has been duly approved by the Unitholders at a meeting duly called and held:

- (a) the election or removal of Trustees;
- (b) except as provided in section 15.4, the appointment or removal of auditors of the Trust;
- (c) any amendment to the Declaration of Trust (except as provided in section 5.5 or Article 12);
- (d) the sale of the assets of the Trust as an entirety or substantially as an entirety, other than as part of an internal reorganization of the assets of the Trust as approved by the Trustees; or
- (e) the termination of the Trust.

Nothing in this section, however, shall prevent the Trustees from submitting to a vote of Unitholders any matter which they deem appropriate.

Section 7.8 - Record Dates

For the purpose of determining the Unitholders who are entitled to receive notice of and vote at any meeting or any adjournment thereof, or who are entitled to receive any distribution, or for the purpose of any other action, the Trustees may from time to time, without notice to Unitholders, close the transfer books for such period, not exceeding 30 days, as the Trustees may determine; or without closing the transfer books the Trustees may fix a date not more than 60 days prior to the date of any meeting of Unitholders or other action as the Record Date for the determination of Unitholders entitled to receive notice of and to vote at such meeting or any adjournment thereof or to be treated as 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 Unitholder who was a Unitholder at the time so fixed shall be entitled to receive notice of and vote at such meeting or any adjournment thereof or to receive such distribution, even though he has since that date disposed of his Units, and no Unitholder becoming such after that date shall be entitled to receive notice of and vote at such meeting for any adjournment thereof or to receive such distribution or to be treated as a Unitholder of record for purposes of such other action. If, in the case of any meeting of 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 7.9 - Proxies

Whenever the vote or consent of Unitholders is required or permitted under this Declaration of Trust, such vote or consent may be given either directly by the Unitholder or by a proxy. The instrument appointing a proxy must be in writing and either substantially in a form which may be approved by the Trustees acting reasonably or as may be satisfactory to the chairman of the meeting at which it is sought to be exercised. The instrument of proxy must be executed by the Unitholder giving the proxy or his agent duly authorized in writing and, if given on behalf of joint holders, must be executed by all of them and may be revoked by any of them, and, if given by a Unitholder which is a body corporate, must be executed on its behalf by a person duly authorized in writing. Any person may be appointed a proxy, whether or not that person is a Unitholder. The Trustees, on behalf of the Trust, may solicit instruments of proxy from the Unitholders or any of them in respect of any matter requiring or permitting the Unitholders' vote or consent. An instrument of proxy shall be deposited with the chairman 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 chairman of the meeting at which the instrument is proposed to be used, that the instrument of proxy is invalid. Any decision of the chairman of the meeting in respect of the validity of an instrument of proxy shall be final and binding upon all persons. An instrument of proxy shall be valid only at the meeting with respect to which it was solicited or any adjournment thereof.

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

Section 7.10 - Legal Personal Representatives

If a Unitholder is deceased, his legal personal representative, upon filing with the secretary of the meeting such proof of his appointment as the secretary considers sufficient, shall be entitled to exercise the same voting rights at any meeting of Unitholders as the Unitholder would have been entitled to exercise if he were living and for the purpose of the meeting shall be considered to be a Unitholder. Subject to the provisions of the will of a deceased Unitholder, if there is more than one legal personal representative, the provisions of section 7.6 relating to joint holders shall apply.

Section 7.11 - 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 Unitholders.

Section 7.12 - Conduct of Meetings

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

Section 7.13 - Binding Effect of Resolutions

Every resolution passed at a meeting in accordance with the provisions of this Article 7 shall be binding upon all Unitholders, whether present at or absent from the meeting. Subject to section 7.7, no action taken by Unitholders at any meeting of Unitholders shall in any way bind the Trust or the Trustees without the approval of the Trustees.

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 Chairman 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 chairman of the meeting (who, in the case of a meeting of the Trustees shall be the Chairman of Trustees if present, and

otherwise any Trustee selected by the Trustees), shall not have a second or casting vote in addition to his 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 - Property Management Agreement

The Trustee shall be authorized from time to time to engage independent contractors to serve as management of the Trust and to delegate to such contractors such duties as the Trustees consider appropriate. On the Closing Date, the Trust shall be authorized to enter into the Property Management Agreement with the Promoter providing for, among other things, certain employees of the Promoter to serve as management and employees of the Trust and providing for, among other things, the Promoter to supply to the Trust support services, including accounting and human resource services, office space and equipment and the necessary clerical and secretarial personnel for the administration of the day-to-day activities of the Trust. The Trustees shall be authorized to execute the Property Management Agreement and settle the terms and conditions thereof and to terminate the Property Management Agreement in accordance with its terms.

Section 9.3 - 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 Investment 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 9.4 - 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 9.5 - The Governance and Compensation Committee

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

Section 9.6 - Additional Committees

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 any powers or authority in respect of which a board of directors of a corporation governed by the *Canada Business Corporations Act* may not so delegate.

Section 9.7 - The Property Manager

The Trustees may appoint from time to time a Property Manager to perform such property management and other services, including leasing management services, as the Trustees shall determine, subject to the supervision of the Trust's management. The initial Property Manager shall be the Promoter and the Trustees in accordance with the provisions of the Property Management Agreement.

ARTICLE 10 - DISTRIBUTIONS

Section 10.1 - 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 10.2 - Distributions Payable

- (a) On each Distribution Date specified herein or which may be determined by the Trustees, the Distributions determined in accordance with Section 10.1 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) For greater certainty, it is hereby declared that a Unitholder shall have the legal right to enforce payment of any amount which is payable on or by December 31 in any year pursuant to this section as of such 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 10.3 - 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 10.2 to enforce payment of the amount payable to the Unitholder.

Section 10.4 - 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 10.5 - 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 10.6 - 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, determined in accordance with the provisions of the Tax Act other than paragraph 82(1)(b) and subsection 104(6) payable to Unitholders, including net taxable capital gains of the Trust, 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 10.2. The Trustees shall in each year make such other designations for tax purposes in respect of Distributions that the Trustees consider to be reasonable in all of the circumstances.

Section 10.7 - Tax Act Definitions

Unless the context otherwise requires, any term used in Article 1 above or in this Article 10 which is defined in the Tax Act shall, for the purposes of Article 1 above and this Article 10, have the meanings ascribed to such terms in the Tax Act, unless otherwise specifically noted.

ARTICLE 11 - FEES AND EXPENSES

Section 11.1 - 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 Unitholders), expenses in connection with payments of distributions on Units of the Trust, expenses in connection with communications to Unitholders and other bookkeeping and clerical work necessary in maintaining relations with 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 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. Without limiting the generality of the foregoing, the Trust is hereby authorized to pay the fees and other costs payable from time to time to the Property Manager pursuant to the Property Management Agreement.

Section 11.2 - 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 11.3 - 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 including to the Property Manager.

Section 11.4 - 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 12 - AMENDMENTS TO THE DECLARATION OF TRUST

Section 12.1 - Amendments by the Trustees

Notwithstanding Section 7.7 and Section 12.4, the Trustees may, without the approval of, or any notice to, 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, its status as a “mutual fund trust” and a “registered investment” under the Tax Act or the distribution of Units;
- (b) which, in the opinion of the Trustees, provide additional protection for the 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 Unitholders;
- (d) amendments which, in the opinion of the Trustees, are necessary or desirable to remove conflicts or inconsistencies between the disclosure in the (final) prospectus relating to the initial public offering of Units of the Trust and the Declaration of Trust;
- (e) 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 Unitholders;
- (f) for any purpose (except one in respect of which a Unitholder vote is specifically otherwise required) if the Trustees are of the opinion that the amendment is not prejudicial to Unitholders and is necessary or desirable; and
- (g) at any time prior to the issuance of any Units upon unanimous consent.

Section 12.2 - Amendments by Unitholders

Subject to section 12.3 and section 12.4, this Declaration of Trust may only be amended by the vote of a majority of the votes cast at a meeting of Unitholders duly called for that purpose.

Section 12.3 - Two-Thirds 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 its assets as an entirety or substantially as an entirety (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 Unitholders at such time in the same respective proportions as Units are owned immediately prior to such sale), except in each case

with the approval of Unitholders given by the affirmative vote of at least two-thirds of the votes cast at a meeting of 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 subparagraphs (e), (g), (h), (i) and (j) of section 5.2 except with the approval of Unitholders given by the affirmative vote of at least two-thirds of the votes cast at a meeting of 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 Unitholders duly called for that purpose.

Section 12.4 - Special Unitholder Vote

Notwithstanding sections 12.1, 12.2 and 12.3, 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 Unitholders:

- (a) an exchange, reclassification or cancellation of all or part of the Units;
- (b) the addition, change or removal of the rights, privileges, restrictions or conditions attached to the 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 Units; or
- (d) the constraint on the issue, transfer or ownership of Units or the change or removal of such constraint;

provided, however, for greater certainty, that this section 12, 4 shall not apply to 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 13 - TERMINATION OF THE TRUST

Section 13.1 - Duration of the Trust

The Trust shall continue until terminated pursuant to section 13.2 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 13.2 - Termination by Unitholders

Subject to section 12.3, the Trust may be terminated by the vote of at least two-thirds of the votes cast at a meeting of Unitholders called for that purpose.

Section 13.3 - Effect of Termination

Upon the termination of the Trust, the liabilities of the Trust shall be discharged with due speed and the net assets of the Trust shall be liquidated and the proceeds distributed 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 14 - LIABILITIES OF THE TRUSTEES AND OTHERS

Section 14.1 - 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 14, 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 14, 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 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 Unitholder.

Section 14.2 - Liability of the Trustees

The Trustees shall not be liable to the Trust or to any 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 14.1.

Section 14.3 - 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 14.4 - Liability of Unitholders and Others

No 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 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, 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, 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 14.1, 14.2 and 14.3.

ARTICLE 15 - GENERAL

Section 15.1 - 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 15.2 - Manner of Giving Notice

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

Section 15.3 - Failure to Give Notice

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

Section 15.4 - Trust Auditors

The auditors of the Trust shall be appointed at each annual meeting. If at any time a vacancy occurs in the position of auditors of the Trust, the Trustees may appoint a firm of chartered accountants qualified to practice in all provinces of Canada to act as the auditors of the Trust until the next annual meeting of Unitholders. The auditors of the Trust shall report to the Trustees and the Unitholders on the annual financial statements of the Trust and shall 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.

Section 15.5 - Fiscal Year

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

Section 15.6 - Reports to Unitholders and Statements of Units Held

Within 140 days of the end of each complete calendar year and at least 21 days prior to each annual meeting of Unitholders, the Trustees shall send to each Unitholder a report, including audited comparative financial statements for such year, prepared in compliance with applicable securities laws. Within 60 days after the end of each of the first three fiscal quarters of each year (other than the fiscal quarter ended March 31, 2003, unless required by applicable law), the

Trustees shall send unaudited comparative financial statements for the period then ended prepared in compliance with applicable securities laws to each Unitholder. The Trustees will supply Unitholders with any information that may be required by them in connection with their obligations under the Tax Act.

Section 15.7 - Fund Assets to be Kept Separate

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

Section 15.8 - Competition with Trust

The Trustees, Promoter, the Property Manager and affiliates, any officer of any of the foregoing 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 of the Promoter or the Property Manager and their respective affiliates in connection with the Trust. Neither the Trustees, nor the Promoter, nor the Property Manager, nor any of their affiliates shall incur or be under any liability to the Trust, any Unitholder or any annuitant for, by reason of, or as a result of any such engagement or competition or the manner in which it 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 Promoter or the Property Manager, as applicable, and the Trust.

Section 15.9 - Trustees, Promoter, Property Manager, Leasing Manager May Hold Units

Subject to section 6.9, the Trustees, the Promoter, the Property Manager, any officer thereof and any affiliate of any of the foregoing may be a Unitholder or may be an annuitant.

Section 15.10 - Right to Inspect Documents

A Unitholder and any agent, consultant or creditor of the Trust shall have the right to examine the Declaration of Trust and any other documents or records which the Trustees determine should be available for inspection by such persons, during normal business hours at the principal office of the Trust. Unitholders and creditors of the Trust shall have the right to obtain or make or cause to be made a list of all or any of the registered holders of Units, to the same extent and upon the same conditions as those which apply to shareholders and creditors of a corporation governed by the *Canada Business Corporations Act*, as amended from time to time.

Section 15.11 - 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 15.12 - 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 15.13 - 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 15.14 - Execution and Effect of Restated Declaration of Trust

Subject to Article 12, 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 15.15 - 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 15.16 - 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 15.17 - 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 14th day of May, 2013.

| | | | |
|-------------------------------|---|-------------------------------|--------|
| <u>“Anne E. Markle”</u> |) | <u>“Margaret T. Nelligan”</u> | (I.s.) |
| Witness to the signature of |) | Margaret T. Nelligan, Settlor | |
| |) | | |
| |) | | |
| |) | | |
| <u>“Margaret T. Nelligan”</u> |) | <u>“Gerald R. Connor”</u> | (I.s.) |
| Witness to the signature of |) | Gerald R. Connor, Trustee | |
| |) | | |
| |) | | |
| |) | | |
| <u>“Margaret T. Nelligan”</u> |) | <u>“Gordon R. Cunningham”</u> | (I.s.) |
| Witness to the signature of |) | Gordon R. Cunningham, Trustee | |
| |) | | |
| |) | | |
| |) | | |
| <u>“Margaret T. Nelligan”</u> |) | <u>“Michael R. Emory”</u> | (I.s.) |
| Witness to the signature of |) | Michael R. Emory, Trustee | |
| |) | | |
| |) | | |
| |) | | |
| <u>“Margaret T. Nelligan”</u> |) | <u>“James Griffiths”</u> | (I.s.) |
| Witness to the signature of |) | James Griffiths, Trustee | |
| |) | | |
| |) | | |
| |) | | |
| <u>“Margaret T. Nelligan”</u> |) | <u>“Ralph T. Neville”</u> | (I.s.) |
| Witness to the signature of |) | Ralph T. Neville, Trustee | |
| |) | | |
| |) | | |
| |) | | |
| <u>“Margaret T. Nelligan”</u> |) | <u>“Daniel F. Sullivan”</u> | (I.s.) |
| Witness to the signature of |) | Daniel F. Sullivan, Trustee | |
| |) | | |
| |) | | |
| |) | | |
| <u>“Margaret T. Nelligan”</u> |) | <u>“Peter Sharpe”</u> | (I.s.) |
| Witness to the signature of |) | Peter Sharpe, Trustee | |