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**DECLARATION OF TRUST**

***governing***

**DREAM RESIDENTIAL REAL ESTATE INVESTMENT TRUST**

**Made as of February 24, 2022**

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## DECLARATION OF TRUST

**THIS DECLARATION OF TRUST** was made as of February 24, 2022 by P. Jane Gavan and Brian Pauls (the “**Trustees**”).

**WHEREAS** the Trustees have determined to establish a Trust under the laws of the Province of Ontario for the purpose of producing income for the exclusive benefit of the Unitholders;

**NOW THEREFORE**, the undersigned Trustees hereby confirm and declare that they hold in trust as trustees the sum of US\$5.00 and any and all other property, real, personal or otherwise, tangible or intangible, which is hereafter transferred, conveyed or paid to or otherwise received by them as such Trustees or to which the Trust is otherwise entitled and all rents, income, profits and gains therefrom for the benefit of the Unitholders hereunder in accordance with and subject to the express provisions of this Declaration of Trust.

### ARTICLE 1 THE TRUST AND DEFINITIONS

#### 1.1 Definitions

For the purposes of this Declaration of Trust, unless the context otherwise requires, the following terms shall have the respective meanings set out below:

“**Affiliate**” means, with respect to any Person, a Person who is an “affiliate” of that first mentioned Person within the meaning of NI 45-106;

“**annuitant**” means the annuitant or beneficiary of a Plan, or of any plan of which a unitholder acts as a trustee or a carrier;

“**Associate**” means, with respect to any Person, a Person who is an “associate” of that first mentioned Person as that term is defined in the *Securities Act* (Ontario);

“**Auditors**” means the firm of chartered accountants appointed as the auditors of the Trust and its Subsidiaries from time to time;

“**Board of Trustees**” means the board of Trustees of the Trust;

“**CBCA**” means the *Canada Business Corporations Act*, as amended from time to time;

“**President**”, “**Chief Executive Officer**”, “**Chief Financial Officer**”, “**Chief Operating Officer**”, “**Executive Vice President**”, “**Senior Vice President**”, “**Vice President**”, “**Treasurer**” and “**Secretary**” mean the Person(s) holding the respective offices from time to time, if so appointed by the Trustees;

“**Code**” means the U.S. Internal Revenue Code of 1986, as amended from time to time;

“**consolidation**” means a consolidation, combination or reduction (other than by way of redemption or purchase) in outstanding REIT Units into a lesser number of REIT Units;

“**control**” has the meaning given in NI 45-106;

“**Declaration of Trust**” means this declaration of trust, as it may be amended, supplemented and/or restated from time to time;

“**IFRS**” means International Financial Reporting Standards established by the International Accounting Standards Board and as adopted by the Canadian Institute of Chartered Accountants in Part I of the Canadian Institute of Chartered Accountants Handbook – Accounting, as amended from time to time;

“**Income of the Trust**” for any taxation year of the Trust means the net income for the year determined pursuant to the provisions of the Tax Act having regard to the provisions thereof which relate to the calculation of taxable income of a trust, without reference to paragraph 82(1)(b) (dividend gross up) and subsection 104(6) (deduction for payments out of the Trust) of the Tax Act (including any income realized by the Trust on the redemption of Units *in specie*) and taking into account such other adjustments as may be determined in the sole discretion of the Trustees, provided, however, that capital gains and capital losses shall be excluded from the computation of net income;

“**Initial Contribution**” means the amount of US\$5.00 in cash paid by the Initial Unitholder on February 24, 2022 for the purpose of settling the Trust;

“**Initial Unitholder**” means Derrick Lau;

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

“**Net Realized Capital Gains of the Trust**” for any year means the amount, if any, by which the aggregate amount of the realized capital gains of the Trust for the year, calculated in accordance with the provisions of the Tax Act, exceeds the aggregate of: (i) the aggregate amount of any realized capital losses of the Trust for the year, calculated in accordance with the provisions of the Tax Act; (ii) any capital gains which are realized by the Trust in the year (including any capital gains realized by the Trust on the disposition of the units of U.S. Co. and any other property of the Trust) designated as having been paid to any redeeming Unitholders; (iii) the amount determined by the Trustees in respect of any net capital losses of the Trust (as defined in the Tax Act) carried forward from prior taxation years to the extent not previously deducted from realized capital gains of the Trust; and (iv) any amount in respect of which the Trust is entitled to a capital gains refund under the Tax Act, as determined by the Trustees; provided that at the discretion of the Trustees, the Net Realized Capital Gains of the Trust for a year may be calculated without subtracting the full amount of the net capital losses of the Trust carried forward from prior years;

“**NI 45-106**” means National Instrument 45-106 – *Prospectus Exemptions*;

“**Non-Resident**” means a person who is not a Resident Canadian and a partnership that is not a “Canadian partnership” within the meaning of the Tax Act;

“**Notes**” means the promissory notes, bonds, debentures, debt securities or similar evidence of indebtedness issued by a Person;

“**Person**” includes an individual, sole proprietorship, corporation, company, partnership, limited partnership, joint venture, association, trust, trustee, unincorporated organization, limited liability company, société à responsabilité limitée, or government or any agency or instrumentality thereof, or any other entity recognized by law;

“**Plan**” means any trust governed by a registered retirement savings plan, a registered retirement income fund, a deferred profit sharing plan, a registered disability savings plan, a tax-free savings account or a registered education savings plan, each as defined in the Tax Act;

“**Preferred Unit**” means a preferred unit representing an interest in the Trust created, authorized and issued hereunder and having the rights and attributes established by the Trustees from time to time in accordance with Section 5.3;

“**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, trusts or partnerships whose sole or principal purpose and activity is to invest in, hold and deal in real property;

“**Register**” has the meaning set out in Section 5.14;

“**REIT Units**” has the meaning in Section 5.1;

“**Resident Canadian**” means an individual or corporation who is, or is deemed to be, a resident of Canada for purposes of the Tax Act;

“**take-over bid**” has the meaning given to such term in the *Securities Act* (Ontario);

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

“**Trust**” means the trust constituted hereunder but, for certainty, unless otherwise expressly provided, does not include any Subsidiaries or Affiliates thereof;

“**Trust Liability**” has the meaning set out in Subsection 12.4(a);

“**Trust Property**” means, at any particular time, any and all property and assets of the Trust, including, without limitation, all proceeds therefrom;

“**Trustees**” means, as of any particular time, all of the trustees holding office under and in accordance with this Declaration of Trust, in their capacity as trustees hereunder and “**Trustee**” means any one of them;

“**Trustees’ Regulations**” means the regulations adopted by the Trustees pursuant to Section 3.3 or 6.9 from time to time;

“**U.S. Non-Resident**” means a person who is not a United States person under the Code;

“**Unit**” means a unit representing an interest in the Trust (other than a Preferred Unit) authorized and issued hereunder and having the rights and attributes set out in Section 5.2;

“**Unitholder**” means, initially, the Initial Unitholder and subsequently means any other Person whose name appears on the Register as a holder of one or more Units; and

“**year end distribution**” has the meaning set out in Section 8.1.

## 1.2 Construction

In this Declaration of Trust, unless otherwise expressly stated or the context otherwise requires:

- (a) references to “**Declaration of Trust**”, “**this Declaration of Trust**”, “**the Declaration of Trust**”, “**hereto**”, “**hereof**”, “**herein**”, “**hereby**”, “**hereunder**” and similar expressions are references to this Declaration of Trust, as amended, restated, modified, replaced and/or supplemented from time to time and not to any particular Article or Section, and references to an “**Article**”, “**Section**”, “**Subsection**”, “**Schedule**” or “**clause**” are references to the specified Article, Section, Subsection, Schedule or clause of this Declaration of Trust;
- (b) the division of this Declaration of Trust into Articles, Sections, Subsections and clauses and the insertion of headings and a table of contents are provided for convenience of reference only and shall not affect the construction or interpretation thereof;
- (c) words importing the singular shall include the plural and *vice versa*, and words importing gender shall include all genders;
- (d) the words “includes” and “including”, when following any general term or statement, are not to be construed as limiting the general term or statement to the specific items or matters set forth or to similar items or matters, but rather as referring to all other items or matters that could reasonably fall within the broadest possible scope of the general term or statement;
- (e) reference to any statute, rule or instrument shall be deemed to be a reference to such statute, rule or instrument as amended, re-enacted or replaced from time to time, including every regulation made pursuant thereto, all amendments to the statute, rule or instrument or to any such regulation in force from time to time, and any statute, rule or instrument or regulation which supplements or supersedes such statute, rule or instrument or any such regulation;
- (f) unless otherwise specified, all references to money amounts are to the lawful currency of the United States; and
- (g) for certainty, unless otherwise expressly provided herein, where any reference is made in this Declaration of Trust, in any resolution of the unitholders or the Trustees or in any agreement or other document to the Trust as a party or as an owner of property, or to an act to be performed by or a covenant given by the Trust,



such reference shall be construed and applied for all purposes as if referred to the Trustees, in their capacity as trustees of the Trust under this Declaration of Trust.

### **1.3 Name**

The name of the Trust is “**Dream Residential Real Estate Investment Trust**” in its English form and “**Fiducie de placement immobilier résidentielle Dream**” in its French form. As far as practicable and except as otherwise provided in this Declaration of Trust, the Trustees shall conduct the affairs of the Trust, hold property, execute all documents and take all legal proceedings under that name, in either its English or French form.

### **1.4 Use of Name**

Should the Trustees determine that the use of the name “Dream Residential Real Estate Investment Trust” in its English form or “Fiducie de placement immobilier résidentielle Dream” in its French form is not practicable, legal or convenient, they may use such other designation, or they may adopt such other name for the Trust, as they deem appropriate, and the Trust may hold property and conduct its activities under such other designation or name.

### **1.5 Office**

The principal office and centre of administration of the Trust shall be located at 30 Adelaide Street East, Suite 301, Toronto, Ontario, M5C 3H1 or at such other address in Canada as may be determined by the Trustees in their discretion. The Trust may have such other offices or places for the conduct of its affairs as the Trustees or management of the Trust or any of its Subsidiaries may from time to time determine to be necessary or desirable.

### **1.6 Establishment of Trust and Initial Contribution**

- (a) The Trustees hereby declare and agree to hold and administer the Trust Property in trust for the use and benefit of the Unitholders, their successors, permitted assigns and personal representatives, and subject to the terms and conditions hereinafter declared and set forth, such trust to constitute the Trust hereunder.
- (b) The Trustees hereby acknowledge and confirm that the Initial Unitholder has made the Initial Contribution to the Trustees for the purpose of establishing the Trust and issues 10 Units to the Initial Unitholder as consideration.

### **1.7 Nature of the Trust**

The Trust is an unincorporated open-ended limited purpose investment trust. The Trust 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 the Trust by:

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

The beneficial interests and rights generally of a unitholder shall be limited to the right to participate *pro rata* in distributions payable to unitholders when and as declared by the Trustees as contemplated by Article 8 and distributions payable to unitholders upon the termination of the Trust as contemplated in Article 11. The Trust is not, is not intended to be, shall not be deemed to be and shall not be treated as a general partnership, limited partnership, syndicate, association, joint venture, company, corporation or joint stock company nor shall the Trustees, the unitholders, 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. The Trustees shall not be, or be deemed to be, agents of the unitholders. The relationship of the unitholders to the Trustees, to the Trust and to the Trust Property shall be solely that of beneficiaries in accordance with this Declaration of Trust.

### **1.8 Purpose of the Trust**

The purpose of the Trust is to establish and carry on activities in order to produce income for the exclusive benefit of the unitholders and to distribute the Trust Property upon termination of those activities by the Trust in accordance with Article 11. The undertakings and activities of the Trust will be: (a) the transfer, acquisition or acceptance of the Trust Property determined by the Trustees from time to time and the administration of such Trust Property; (b) arranging for the funding of such acquisitions to the extent necessary; (c) the granting of security in the Trust Property for the obligations of the Trust; and (d) all such other activities as may be reasonably incidental to the foregoing or necessary in connection with the performance by the Trustees of their obligations under any agreement to which they are or may become parties for such purposes or in connection with such activities, all in such manner and on such terms as the Trustees, acting reasonably, deem appropriate. Notwithstanding the foregoing or any other provision of this Declaration of Trust, at no time will the Trust's activities include an activity, nor will the Trust take any action, nor will the Trust make any investment that would prevent the Trust from: (i) qualifying as a "mutual fund trust", as defined in the Tax Act; or (ii) a "real estate investment trust" under the Code unless at least 66 $\frac{2}{3}$ % of the Trustees have determined, at their discretion, that the Trust should cease qualifying as a "real estate investment trust" under the Code. The Trust shall not engage directly or indirectly in any activity other than the activities permitted by this Section 1.8.

### **1.9 Accounting Principles**

Where the character or amount of any asset or liability or item of revenue or expense is required to be determined, or any consolidation or other accounting computation is required to be made for the purpose of this Declaration of Trust, such determination or calculation shall, to the extent applicable and except as otherwise specified herein or as otherwise agreed in writing by the parties, be made in accordance with IFRS, and all financial data prepared pursuant to this Declaration of Trust shall be prepared in accordance with such principles, consistently applied. In the event of a change in IFRS, the Trustees shall revise (if appropriate) the financial data prepared pursuant to this Declaration of Trust to reflect IFRS as then in effect, in which case all financial data shall be made on a basis consistent with IFRS in existence as at the date of such revisions.

## **ARTICLE 2 TRUSTEES**

### **2.1 Term**

Each Trustee will serve indefinitely unless the Trustee ceases to be a Trustee under the provisions of this Declaration of Trust.

### **2.2 Status**

Each Trustee shall not have the status of bankrupt, shall be a resident Canadian, be at least 18 years of age and not have been found to be of unsound mind by a court in Canada or elsewhere.

### **2.3 Resignation or Removal of Trustee**

- (a) A Trustee may resign from the Trust, provided that no such voluntary resignation shall be effective until a replacement Trustee acceptable to the Unitholders, acting reasonably, has been appointed in accordance with Section 2.3(b) and has executed a written agreement whereby such replacement Trustee agrees to assume the obligations of the Trustee hereunder and under any of the other contracts pursuant to which the Trustee is obligated. Upon such resignation, such Trustee shall be discharged from all further duties and liabilities under this Declaration of Trust.
- (b) In the event of the Trustee resigning or becoming deceased or being removed or becoming bankrupt or otherwise becoming incapable of acting hereunder, the Unitholders will appoint a replacement Trustee. Any replacement Trustee appointed under any provision of this Section will meet the qualification criteria set out in this Declaration of Trust.
- (c) Subject to this Section 2.3, any replacement Trustee shall, forthwith upon appointment, become vested with all the estates, properties, rights, powers and trusts of its predecessor in the trusts hereunder, with like effect as if originally named as a Trustee herein. Nevertheless, upon the written request of the replacement Trustee, the Trustee ceasing to act shall execute and deliver an instrument assigning and transferring to such replacement Trustee, upon the trusts herein expressed, all the rights, powers and trusts of the Trustee so ceasing to act, and shall duly assign, transfer and deliver all property and money held by such Trustee to the replacement Trustee so appointed in its place.

### **2.4 Officers of the Trust**

The Trustees may appoint a President, a Chief Executive Officer, a Chief Financial Officer, Chief Operating Officer, one or more Executive Vice-Presidents, one or more Senior Vice-Presidents, one or more Vice-Presidents, a Treasurer, a Secretary and such other officers as the Trustees may wish to appoint from time to time. One Person may hold two or more offices. Any officer of the Trust may, but need not, be a Trustee. Officers of the Trust, if any, shall be appointed and discharged and their remuneration determined by the Trustees.

## **2.5 Validity of Acts**

Any act of a Trustee is valid notwithstanding any irregularity in the appointment of the Trustee or a defect in the qualifications of the Trustees.

### **ARTICLE 3 TRUSTEES' POWERS AND DUTIES**

#### **3.1 General Powers**

The Trustees, subject only to the specific limitations contained in this Declaration of Trust, including Sections 1.8, 4.1, 4.2 and 10.2, shall have, without further or other authorization and free from any control or direction on the part of the unitholders, full, absolute and exclusive power, control and authority over the Trust Property and the affairs of the Trust to the same extent as if the Trustees were the sole owners of the Trust Property in their own right, to do all such acts and things as in their sole judgment and discretion are necessary or incidental to, or desirable for, the carrying out of any of the purposes of the Trust or the conducting of the affairs of the Trust. In construing the provisions of this Declaration of Trust, there shall be a presumption in favour of the power and authority having been granted 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 law, the Trustees shall in carrying out investment activities not be in any way restricted by the provisions of the laws of any jurisdiction limiting or purporting to limit investments which may be made by trustees. Without limiting the generality of the foregoing, subject to Sections 1.8, 4.1, 4.2 and 10.2, the Trustees may make any investments without being required to adhere to all of, or any particular portion of the investment criteria or diversification requirements set forth in the *Trustee Act* (Ontario), as amended from time to time, including investments in mutual funds, common trust funds, unit trusts and similar types of investment vehicles or any other securities, to alter or vary such investments from time to time in a like manner, to retain such investments for such length of time as the Trustees, in their sole discretion, determine and to delegate management and authority to discretionary managers of investment funds as the Trustees, in their sole discretion, determine appropriate.

#### **3.2 Specific Powers and Authorities**

Subject only to the express limitations contained in this Declaration of Trust, including Sections 1.8, 4.1, 4.2 and 10.2, and in addition to any powers and authorities conferred by this Declaration of Trust or which the Trustees may have by virtue of any present or future statute or rule of law, the Trustees without any action or consent by the unitholders shall have and may exercise, on behalf of the Trust, at any time and from time to time the following powers and authorities which may or may not be exercised by them in their sole judgment and discretion and in such manner and upon such terms and conditions as they may from time to time deem proper:

- (a) to increase the capital of the Trust at any time by the issuance of additional REIT Units for such consideration as they deem appropriate;
- (b) for such consideration as they deem proper, to invest in, purchase or otherwise acquire for cash or other property or through the issuance of REIT Units or through

the issuance of Notes, or other obligations or securities of the Trust and hold for investment, Notes and units, or other obligations or securities of any Person;

- (c) to sell, rent, lease, hire, exchange, release, partition, assign, mortgage, pledge, hypothecate, grant security interests in, encumber, negotiate, convey, transfer or otherwise dispose of any or all of the Trust Property by deeds, trust deeds, assignments, bills of sale, transfers, leases, mortgages, financing statements, security agreements and other instruments for any of such purposes executed and delivered for and on behalf of the Trust by one or more of the Trustees or by a duly authorized officer, employee, agent or any nominee of the Trust;
- (d) to enter into, and perform their obligations under, leases, contracts, obligations and other agreements for a term extending beyond the term of office of the Trustees and beyond the possible termination of the Trust or for a lesser term;
- (e) to open bank accounts and to transact all necessary banking activities of the Trust, including the operation of the Trust's accounts; the making, signing, drawing, accepting, endorsing, negotiating, lodging, depositing or transferring of any cheques, promissory notes, drafts, acceptances, bills of exchange and orders for the payment of money; the giving of receipts for orders relating to any Trust Property; the execution of any agreement relating to any Trust Property; the execution of any agreement relating to such banking activities and defining the rights and powers of the parties thereto; and the authorizing of any officer of such bank to do any act or thing on the Trust's behalf to facilitate such banking activities), which activities and transactions shall be transacted on the Trust's behalf by one or more officers of the Trust as the Trustees may designate, appoint or authorize from time to time;
- (f) to (i) borrow money from or incur indebtedness to any Person; (ii) guarantee, indemnify or act as surety with respect to payment or performance of obligations of any Person; (iii) enter into other obligations on behalf of the Trust; and (iv) assign, convey, transfer, mortgage, subordinate, pledge, grant security interests in, encumber or hypothecate the Trust Property to secure any of the foregoing;
- (g) to lend money or other Trust Property, whether secured or unsecured;
- (h) to maintain records and provide reports to unitholders;
- (i) to establish systems to continuously monitor the qualification of the Trust as a "mutual fund trust" pursuant to subsections 132(6.1) of the Tax Act and a "real estate investment trust" within the meaning of the Code;
- (j) to pay all taxes or assessments, of whatever kind or nature, whether within or outside Canada, imposed upon or against the Trustees in connection with the Trust Property, the undertaking or taxable Income of the Trust, or imposed upon or against the Trust Property, the undertaking or taxable Income of the Trust, or any part thereof and to settle or compromise any disputed tax liabilities and for the foregoing purposes to make such returns, take such deductions, and make such designations, elections and determinations in respect of the Income of the Trust or

Net Realized Capital Gains of the Trust distributed to unitholders and any other matter as shall be permitted under the Tax Act, the Code or other tax statute (provided that to the extent necessary the Trustees will seek the advice of the Trust's counsel or the Auditors), and do all such other acts and things as may be deemed by the Trustees in their sole discretion to be necessary, desirable or convenient in connection with such matters;

- (k) to incur and pay out of the Trust Property any charges or expenses and disburse any funds of the Trust, which charges, expenses or disbursements are, in the opinion of the Trustees, necessary or desirable for or incidental to the carrying out of any of the purposes of the Trust or conducting the affairs of the Trust including taxes or other governmental levies, charges and assessments of whatever kind or nature, imposed upon or against the Trustees in connection with the Trust Property or Income of the Trust or upon or against the Trust Property or the undertaking of the Trust or taxable Income of the Trust or any part thereof or for any of the purposes herein;
- (l) to deposit funds of the Trust in banks or trust companies, whether or not such deposits will earn interest, the same to be subject to withdrawal on such terms and in such manner and by such Person or Persons (including the Trustees, officers, agents or representatives) as the Trustees may determine;
- (m) to possess and exercise all the rights, powers and privileges appertaining to the ownership of or interest in all or any mortgages or securities, issued or created by any Person, forming part of the Trust Property, to the same extent that an individual might and, without limiting the generality of the foregoing, to vote or give any consent, request or notice, or waive any notice, either in person or by proxy or power of attorney, with or without power of substitution, to one or more Persons, which proxies and powers of attorney may be for meetings or action generally or for any particular meeting or action and may include the exercise of discretionary power;
- (n) to exercise any conversion privilege, subscription right, warrant or other right or option available in connection with any of the Trust Property at any time held by the Trust and to make payments incidental thereto; to consent, or otherwise participate in or dissent from, the reorganization, consolidation, amalgamation, merger or readjustment of the finances of any Person (other than the Trust), any of the securities of which may at any time be held, directly or indirectly, by the Trust, or to the sale, mortgage or lease of the property of any such Person; and to do any act with reference thereto, including the delegation of discretionary powers, the exercise of options, the making of agreements or subscriptions and the payment of expenses, assessments or subscriptions which the Trustees may consider necessary or advisable in connection therewith;
- (o) to appoint, engage or employ officers for the Trust, who may be removed or discharged at the sole discretion of the Trustees, such officers to have such powers and duties, and to serve such terms as may be prescribed by the Trustees or by the

Trustees' Regulations; to engage, appoint, employ or contract with any Person as agents, representatives, employees or independent contractors or otherwise (including real estate advisors, investment advisors, registrars, underwriters, accountants, lawyers, real estate agents, property managers, asset managers, appraisers, brokers, architects, engineers, construction managers, general contractors or otherwise) in one or more capacities, and to pay compensation from the Trust Property for services in as many capacities as such Person may be so engaged or employed; and, except as prohibited by law, to delegate any of the powers and duties of the Trustees (including the power of delegation) to any one or more Trustees, agents, representatives, officers, employees, independent contractors or other Persons without regard to whether such power, authority or duty is normally granted or delegated by the Trustees;

- (p) to collect, sue for and receive sums of money coming due to the Trust, and to engage in, intervene in, prosecute, join, defend, compromise, abandon or adjust, by arbitration or otherwise, any actions, suits, proceedings, disputes, claims, demands or other litigation relating to the Trust, the Trust Property or the Trust's affairs, to enter into agreements therefor whether or not any suit is commenced or claim asserted and, in advance of any controversy, to enter into agreements regarding the arbitration, adjudication or settlement thereof;
- (q) to renew, modify, release, compromise, extend, consolidate or cancel, in whole or in part, any obligation to or of the Trust;
- (r) to purchase and pay for, out of the Trust Property, insurance contracts and policies insuring the Trust Property against any and all risks and insuring the Trust and/or any or all of the Trustees, the unitholders, annuitants or the officers of the Trust against any and all claims and liabilities of any nature asserted by any Person arising by reason of any action alleged to have been taken or omitted by the Trust or by the Trustees, the unitholders, annuitants or the officers of the Trust;
- (s) to cause legal title to any of the Trust Property to be held by and/or in the name of the Trustees, or, except as prohibited by law, by and/or in the name of the Trust or any other Persons, on such terms, in such manner with such powers in such Person as the Trustees may determine and with or without disclosure that the Trust or Trustees are interested therein, provided, however, that should legal title to any of the Trust Property be held by and/or in the name of any Person or Persons other than the Trust, the Trustees shall require such Person or Persons to execute a declaration of trust acknowledging that legal title to such property is held in trust for the benefit of, or for the account of, the Trust or its Subsidiaries;
- (t) to determine conclusively the allocation to capital, income or other appropriate accounts for all receipts, expenses, disbursements and Trust Property;
- (u) to authorize and, subject to any requisite regulatory or other approvals, issue different classes of REIT Units as the Trustees, in their sole discretion, may determine appropriate for the Trust;

- (v) to prepare, sign and file or cause to be prepared, signed and filed any prospectus, offering memorandum or similar document, and any amendment thereto and all agreements contemplated therein or ancillary thereto relating to or resulting from any offering of REIT Units or other securities issued or held by the Trust and to pay the cost thereof and related thereto out of the property of the Trust whether or not such offering is or was of direct benefit to the Trust or those Persons (if any) who were unitholders immediately prior to such offering;
- (w) to make or cause to be made any application for the listing and trading on any stock exchange, automated inter-dealer quotation system or over-the-counter market, of any REIT Units or other securities of the Trust, and to do all things which in the opinion of the Trustees may be necessary or desirable to effect or maintain such listing(s) and facilitate such trading;
- (x) to determine conclusively the value of any or all of the Trust Property from time to time and, in determining such value, to consider such information and advice as the Trustees, in their sole judgment, may deem material and reliable;
- (y) subject to obtaining all required regulatory approvals, to establish one or more distribution reinvestment plans, unit purchase plans, unit option plans or any other unit compensation, incentive plan or similar plan with respect to the Units; and
- (z) to do all such other acts and things as are incidental to the foregoing, and to exercise all powers that are necessary or useful to carry on the activities of the Trust, to promote any of the purposes for which the Trust is formed and to carry out the provisions of this Declaration of Trust.

### **3.3 Further Powers of the Trustees**

The Trustees shall have the power to prescribe any form provided for or contemplated by this Declaration of Trust. The Trustees may make, adopt, amend, or repeal regulations containing provisions relating to the Trust, the conduct of its affairs, the rights or powers of the Trustees and the rights or powers of the unitholders or officers of the Trust, provided that such regulations shall not be inconsistent with applicable law or with this Declaration of Trust and not, in the opinion of the Trustees, prejudicial to the unitholders. The Trustees shall also be entitled to make any reasonable decisions, designations or determinations not inconsistent with law or with 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. To the extent of any inconsistency between this Declaration of Trust and any regulation, decision, designation or determination made by the Trustees, this Declaration of Trust shall prevail and such regulation, decision, designation or determination shall be deemed to be modified to eliminate such inconsistency. Any regulations, decisions, designations or determinations made in accordance with this Section 3.3 shall be conclusive and binding upon all Persons affected thereby.

Subject to any agreement between the Trust and any Trustee, unless otherwise herein provided, the Trustees may from time to time in their sole discretion, appoint, employ, invest in, contract or deal with any Person including 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 property of the same class and nature as may be held by the Trustees as Trust Property, whether for a 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 its duties and responsibilities hereunder.

### **3.4 Limitations on Powers**

The Trustees hereby acknowledge that the Trust is bound by certain investment guidelines and operating policies and the Trustees agree that at no time shall they act or cause the Trust to act in such a manner, including through voting its units or shares, as applicable, in any of its Subsidiaries to effect any changes or amendments to their investment guidelines or operating policies without the approval of at least 66⅔% of the unitholders pursuant to Section 4.3.

### **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 discharge their duties hereunder as Trustees honestly and in good faith with a view to the best interests of the Trust and the unitholders and, in connection therewith, that they exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. No Trustee shall be liable in carrying out such Trustee's duties under this Declaration of Trust except in cases where the Trustee (a) fails to act honestly, in good faith and with a view to the best interests of the Trust and the unitholders or, (b) fails to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. The duties and standard of care of the Trustees provided as aforesaid are intended to be similar to, and not to be any greater than, those imposed on a director of a corporation governed by the CBCA. Unless otherwise required by law, no Trustee shall be required to give bond, surety or security in any jurisdiction for the performance of any duties or obligations hereunder. The Trustees in their capacity as Trustees shall not be required to devote their entire time to the affairs of the Trust.

### **3.6 Reliance Upon Trustees**

Any Person dealing with the Trust in respect of any matters pertaining to the Trust Property and any right, title or interest therein or to securities of the Trust shall be entitled to rely on a certificate or statutory declaration (including a certificate or statutory declaration as to the passing of a resolution of the Trustees) executed by any single Trustee or, without limiting the foregoing, such other Person or Persons as may be authorized by the Trustees as to the capacity, power and authority of the Trustees or any such other Person or Persons to act for and on behalf and in the name of the Trust. No Person dealing with the Trustees shall be bound to see to the application of any funds or property passing into the hands or control of the Trustees. The receipt by or on behalf of the Trustees for monies or other consideration shall be binding upon the Trust.

### **3.7 Determinations of Trustees Binding**

All determinations of the Trustees that are made in good faith with respect to any matters relating to the Trust, including whether any particular investment or disposition meets the requirements of this Declaration of Trust, shall be final and conclusive and shall be binding upon the Trust and all

unitholders and REIT Units shall be issued and sold on the condition and understanding that any and all such determinations shall be binding as aforesaid.

## **ARTICLE 4 INVESTMENT GUIDELINES AND OPERATING POLICIES**

### **4.1 Investment Guidelines**

Notwithstanding anything contained herein to the contrary, the Trust Property may be invested only in accordance with the following investment guidelines and the Trust shall not permit any of its Subsidiaries to conduct its operations and affairs other than in accordance with the following investment guidelines:

- (a) the Trust shall only invest in units, Notes or other securities of its Subsidiaries and amounts receivable in respect of such units, Notes or other securities, cash and similar deposits with a Canadian or U.S. chartered bank, credit union or trust company, short-term government debt securities or money market instruments maturing prior to one year from the date of issue, and, subject to the limitations set out in Subsections 4.1(b) and 4.1(c), such other investments as the Trustees deem advisable from time to time;
- (b) the Trust shall not make, or permit any of its Subsidiaries to make, and Subsidiaries of the Trust will not make, any investment that could result in:
  - (i) the Units being disqualified for investment by Plans;
  - (ii) the Trust and any of its Subsidiaries being liable under the Tax Act to pay a tax imposed under either paragraph 122(1)(b), subsection 197(2) or Part XII.2 of the Tax Act; or
  - (iii) the Trust ceasing to qualify as a “mutual fund trust” for purposes of the Tax Act;
- (c) the business of the Trust shall be limited to and conducted in such a manner as to permit the Trust at all times to be classified as a “real estate investment trust” (as defined in the Code) for U.S. federal income tax purposes, unless at least 66⅔% of the Trustees have determined, at their full discretion, that the Trust cease qualifying as a real estate investment trust under the Code;

### **4.2 Operating Policies**

Unless otherwise determined by the Unitholders, every written lease, contract, agreement or other obligation or commitment and every other written instrument containing or evidencing any commitment or other obligation of the Trust, or entered into by the Trustee or any other person on behalf of the Trust, will contain, where commercially practicable and reasonable, provisions or be subject to an acknowledgement to the following effect: *“The parties hereto acknowledge that the [representative] is entering into this agreement solely on behalf of the Trust and the obligations of the Trust hereunder shall not be personally binding upon any of the Trustees, the*

*[representative], any registered or beneficial holder of units or any annuitant or beneficiary of a Plan of which a holder of units acts as a trustee or carrier, and that resort shall not be had to, nor shall recourse be sought from, any of the foregoing or the private property of any of the foregoing in respect of any indebtedness, obligation or liability of the Trust arising hereunder or arising in connection herewith or from the matters to which this agreement relates, and recourse shall be limited to, and satisfied only out of, the Trust's assets.”.*

### **4.3 Amendments to Investment Guidelines and Operating Policies**

Subject to Sections 4.4 and 10.1, any of the investment guidelines set forth in Section 4.1 may be amended only by the vote of at least 66 $\frac{2}{3}$ % of the votes cast at a meeting of the unitholders called for that purpose. Subject to Section 10.1, the operating policies set forth in Section 4.2 may be amended by the vote of at least a majority of the votes cast at a meeting of the unitholders called for that purpose.

### **4.4 Regulatory Matters**

If at any time a government or regulatory authority having jurisdiction over the Trust or any Trust Property shall enact any law, regulation or requirement which is in conflict with any investment guideline 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 the unitholders.

## **ARTICLE 5 UNITS**

### **5.1 REIT Units**

The units of the Trust shall be described and designated as “**Units**” (collectively with any Preferred Units issued from time to time, the “**REIT Units**”), which shall be entitled to the rights and subject to the limitations, restrictions and conditions set out in this Declaration of Trust. In addition, Preferred Units may from time to time be created and issued in one or more classes (each of which may be comprised of unlimited series). Before the issuance of Preferred Units of a series, the Board of Trustees will execute an amendment to this Declaration of Trust (which may be in the form of an amended and restated declaration of trust) containing a description of such series, including the designations, rights, privileges, restrictions and conditions determined by the Board of Trustees, and the class of Preferred Units of which such series is a part. Only after Preferred Units of a class have been created pursuant to the execution of such an amendment will such class become a class of REIT Units under this Declaration of Trust.

The number of REIT Units which the Trust may issue is unlimited. REIT Units shall be issued only as fully paid and non-assessable units. Each REIT Unit when issued shall vest indefeasibly in the holder thereof. The issued and outstanding REIT Units may be subdivided or consolidated from time to time by the Trustees with the approval of a majority of the unitholders, or as otherwise provided in Section 5.7.

## 5.2 Units

Each Unit shall confer the right to one vote at all meetings of unitholders and to participate *pro rata* in any distributions by the Trust, whether of Income of the Trust, Net Realized Capital Gains of the Trust or other amounts, and, in the event of termination or winding up of the Trust, in the net Trust Property remaining after satisfaction of all liabilities. The Units shall rank among themselves equally and rateably without discrimination, preference or priority.

## 5.3 Preferred Units

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

## 5.4 Fractional REIT Units

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

## **5.5 Allotment and Issue of REIT Units**

The Trustees may allot and issue REIT 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 the unitholders of distributions of the Trust in REIT Units) and to such Person, Persons or class of Persons as the Trustees in their sole discretion shall determine. The price or value of the consideration for which REIT Units may be issued and the terms and conditions of issuance of the REIT Units shall be determined by the Trustees (who, for certainty, may delegate such authority to an officer of the Trust), generally (but not necessarily) in consultation with firms who may act as underwriters or agents in connection with offerings of REIT Units. In the event that REIT Units are issued in whole or in part for consideration other than money, the resolution of the Trustees allotting and issuing such REIT Units shall express the fair equivalent in money of the other consideration received.

## **5.6 Consideration for REIT Units**

No REIT Unit shall be issued other than as a fully paid and non-assessable unit. A REIT 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 REIT Unit shall be paid in money or in property or in past services received by the Trust that are not less in value than the fair equivalent of the money that the Trust would have received if the REIT Unit had been issued for money. In determining whether property or past services are the fair equivalent of consideration paid in money, 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, REIT Units may be issued and sold on an instalment receipt basis, in which event beneficial ownership of such REIT Units may be represented by the instalment receipts, but shall otherwise be non-assessable.

## **5.7 No Pre-Emptive Rights**

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

## **5.8 Consolidation of Each Series of Units**

- (a) Unless the Trustees determine otherwise, immediately after any *pro rata* distribution of additional Units to all Unitholders, pursuant to Subsection 8.3(b), the number of outstanding Units will automatically be consolidated such that each such holder will hold after the consolidation the same number of Units as such holder held before the distribution of additional Units. In this case, each Unit certificate representing the number of Units prior to the distribution of additional Units is deemed to represent the same number of Units after the non-cash distribution of additional Units and the consolidation.
- (b) Notwithstanding the foregoing, where tax is required to be withheld from a Unitholder's share of the distribution and such amount is not paid by, or otherwise on behalf of, the Unitholder to the Trust, the consolidation may result in such Unitholder holding that number of Units equal to (i) the number of Units held by such Unitholder prior to the distribution plus the number of Units received by such

Unitholder in connection with the distribution (net of the number of whole and part Units withheld on account of withholding taxes) multiplied by (ii) the fraction obtained by dividing the aggregate number of Units outstanding prior to the distribution by the aggregate number of Units that would be outstanding following the distribution and before the consolidation if no withholding were required in respect of any part of the distribution payable to any Unitholder. Such Unitholder will be required to surrender the Unit certificates, if any, representing such Unitholder's original Units, in exchange for a certificate representing such Unitholder's post-consolidation Units.

### **5.9 Title to Trust Property**

The legal ownership of the Trust Property and the right to conduct the affairs of the Trust are vested exclusively in the Trustees, and the unitholders shall have no interest therein other than the beneficial interest in the Trust conferred by the REIT Units issued hereunder. The unitholders shall have no right to compel any partition, division or distribution of the Trust or any Trust Property. The REIT 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 shall be deemed to have any right of ownership in any of the Trust Property.

### **5.10 Rights, Warrants, Options and Other Securities**

The Trust may create and issue rights, warrants or options to subscribe for fully paid REIT Units which rights, warrants or options may be exercisable at such subscription price or prices and at such time or times as the Trustees may determine. The rights, warrants or options so created may be issued for such consideration or for no consideration, all as the Trustees may determine. A right, warrant or option shall not be a REIT Unit and a holder thereof shall not be a unitholder solely by virtue of holding such right, warrant or option. Upon the approval of any unit option plan, deferred unit incentive plan or other security based compensation arrangement for the Trustees, officers and/or employees of the Trust, any Subsidiary of the Trust or other Persons, the Board of Trustees may, upon receiving authority from the Trustees, recommend the granting of options, deferred units or other entitlements upon the terms and subject to the conditions set forth in such plan.

Subject to Sections 4.1 and 4.2, 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 REIT Units, or which indebtedness, by its terms, may be convertible into REIT Units at such time and for such prices and on such terms as the Trustees may determine (who, for certainty, may delegate such authority to an officer of the Trust). Any indebtedness so created shall not be a REIT Unit, unless and until fully paid REIT Units are issued in accordance with the terms of such indebtedness.

### **5.11 Commissions**

The Trustees may provide for the payment of commissions to Persons in consideration of their subscribing or agreeing to subscribe, whether absolutely or conditionally, for REIT Units or other securities issued by the Trust or of their agreeing to produce subscriptions therefor, whether absolute or conditional.

## **5.12 Transferability**

No Unitholder shall transfer, mortgage, charge, pledge or otherwise dispose of or encumber its Units, in whole or in part unless (i) the requirements of this Declaration of Trust have been complied with, and (ii) the Trustees provides their prior written consent thereto. Notwithstanding the foregoing, no transfer of Units shall be effective as against the Trustee or shall be in any way binding upon the Trustees until the transfer has been recorded on the Register and no transfer of a Unit shall be recognized unless such transfer is of a whole Unit.

## **5.13 Certificates**

- (a) Each Unitholder or his or her duly authorized agent is entitled to a certificate bearing an identifying serial number in respect of the Units held by him or her, signed in the manner hereinafter prescribed, but the Trust is not bound to issue more than one certificate in respect of a Unit or Units or held jointly or in common by two or more Persons and delivery of a certificate to any one of them shall be sufficient delivery to all.
- (b) The Trustees may establish a reasonable fee to be charged for every certificate issued evidencing the ownership of Units.
- (c) The form of certificate representing Units shall be in such form as is from time to time authorized by the Trustees. Signatures of Trustees or officers of the Trust required on Unit certificates may be printed or otherwise mechanically reproduced thereon. If a Unit certificate contains a printed or 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 as valid as if the Person were a Trustee or an officer at the date of its issue.
- (d) 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 sole 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 Trust Property with such contribution, if any, by those insured as may be determined to be desirable 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.

- (e) Unit certificates representing any number of Units may be exchanged without charge for Unit certificates representing an equivalent number of Units in the aggregate. Any exchange of Unit certificates may be made at the offices of the Trust or the transfer agent where registers are maintained for Unit certificates pursuant to the provisions of Section 5.14. Any Unit certificates tendered for exchange shall be surrendered to the Trustees or appropriate transfer agent and then shall be cancelled.

#### 5.14 Register

- (a) One or more registers (collectively, 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 the unitholders, the respective numbers of REIT Units held by them, the certificate numbers of the certificates of such REIT Units (in the case of 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 REIT Units and may provide for the transfer of REIT 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 REIT Units. If the Trustees have appointed a registrar and transfer agent for any class of REIT Units, no certificate for REIT Units of such class shall be valid unless countersigned by or on behalf of a transfer agent and/or registrar. Only the unitholders whose REIT Units are recorded on the Register shall be entitled to vote or to receive distributions or otherwise exercise or enjoy the rights of the unitholders.
- (b) Upon any issue of REIT Units, the name of the subscriber shall be promptly entered on the Register as the owner of the number of REIT Units issued to such subscriber, or if the subscriber is already a unitholder, the Register shall be amended to include his/her additional REIT Units.
- (c) REIT Units shall be transferable on the Register only by the holders of record thereof or their executors, administrators or other legal representatives or by their agents or attorneys duly authorized in writing, and, in the event the REIT Unit is represented by a certificate, upon delivery to the Trust of the certificate therefor, properly endorsed or accompanied by a duly executed instrument of transfer or power of attorney and accompanied by all necessary transfer or other taxes imposed by law, together with such evidence of the genuineness of such endorsement, execution and authorization and other matters that may reasonably be required by the Trustees. Upon such delivery the transfer shall be recorded on the Register or branch transfer registers and a new Unit certificate for the Units shall be issued to



the transferee and a new Unit certificate for the balance of Units not transferred shall be issued to the transferor.

### **5.15 Successors in Interest to the Unitholders**

Any Person becoming entitled to any REIT Units as a consequence of the death, bankruptcy or incompetence of any unitholder or otherwise by operation of law shall be recorded in the Register as the holder of such REIT Units, but until such record is made, the unitholder of record shall continue to be and shall be deemed to be the holder of such REIT Units for all purposes whether or not the Trust, the Trustees or the transfer agent or registrar of the Trust shall have actual or other notice of such death, bankruptcy, incompetence or other event and the Persons becoming entitled to such REIT Units shall be bound by every notice or other document in respect of the REIT Units which shall have been duly given to the Persons from whom he or she derives his/her title to such REIT Units.

### **5.16 REIT Units Held Jointly or in Fiduciary Capacity**

The Trust may treat two or more Persons holding any REIT Unit as joint tenants of the entire interest therein unless the ownership is expressly otherwise recorded on the Register, but no entry shall be made in the Register or on any certificate that any Person is in any other manner entitled to any future, limited or contingent interest in any REIT Unit; provided, however, that any Person recorded in the Register or on any certificate as a unitholder 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.

### **5.17 Performance of Trusts**

None of the Trustees, the officers of the Trust, the unitholders or any transfer agent or other agent of the Trust or the Trustees shall have a duty to inquire into any claim that a transfer of a REIT Unit or other security of the Trust was or would be wrongful or that a particular Person is the owner of or has an interest in the REIT Unit or other security or has any other adverse claim, or 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 REIT Units or other securities or any interest therein are or may be subject, or to ascertain or inquire whether any sale or transfer of any such REIT Units or other securities or interest therein by any such unitholder or holder of such security or his/her personal representatives is authorized by such trust, charge, pledge or equity, or to recognize any Person as having any interest therein, except for the Persons recorded as the unitholder or holder of such security.

### **5.18 Death of a Unitholder**

The death of a unitholder during the continuance of the Trust shall not terminate the Trust or give the personal representatives or the heirs of the estate of the deceased unitholder a right to an accounting or to take any action in the courts or otherwise against other unitholders or the Trustees, officers of the Trust or the Trust Property, but shall only entitle the personal representatives or the heirs of the estate of the deceased unitholder, subject to Section 5.15, to succeed to all rights of the deceased unitholder under this Declaration of Trust.

### 5.19 Unclaimed Payments

In the event that the Trustees hold any amounts to be paid to the unitholders under Article 5, Article 8 or Article 11 or otherwise because such amounts are unclaimed or cannot be paid for any reason, neither the Trustees nor any distribution disbursing agent shall be under any obligation to invest or reinvest the same and shall only be obligated to hold the same in a current or other non-interest bearing account with a chartered bank or trust company pending payment to the Persons or Persons entitled thereto. The Trustees shall, as and when required by law, and may at any time prior to such required time, pay all or part of such amounts so held to a court in the province where the Trust has its principal office or to the Public Guardian and Trustee of Ontario (or other similar government official or agency in the province where the Trust has its principal office) whose receipt shall be a fulfilment and discharge of the obligations of the Trustees.

### 5.20 Redemption of Units

Each Unitholder shall be entitled to require the Trust to redeem at any time or from time to time at the demand of the Unitholder all or any part of the Units registered in the name of the Unitholder at the prices determined and payable in accordance with the following conditions:

- (a) To exercise a Unitholder's right to require redemption under this Section 5.20, a duly completed and properly executed notice requiring the Trust to redeem Units, in a form approved by the Trustees or their delegate, specifying the number of Units to be so redeemed, shall be sent to the Trust at the head office of the Trust. No form or manner of completion or execution shall be sufficient unless the same is in all respects satisfactory to the Trustees and is accompanied by any further evidence that the Trustees may reasonably require with respect to the identity, capacity or authority of the Person giving such notice. A holder of Units who is not a registered holder of Units and who wishes to exercise the holder's redemption right will be required to follow the procedures of such intermediary for exercising such right.
- (b) Units shall be considered to be tendered for redemption on the date that the Trust has, to the satisfaction of the Trustees, received the notice and other required documents or evidence as aforesaid. Upon receipt by the Trust of such satisfactory notice to redeem Units and other required documents or evidence as aforesaid, such Unitholder shall thereafter cease to have any rights with respect to the Units tendered for redemption (other than to receive the redemption payment therefor) including ceasing to have the right to receive any distributions thereon which are declared payable to the Unitholders of record on a date which is subsequent to the day of receipt by the Trust of such notice.
- (c) Upon receipt by the Trust of the notice to redeem Units, in accordance with this Section 5.20, the holder of the Units tendered for redemption shall be entitled to receive a price per Unit (the "**Redemption Price**") equal to 90% of the fair market value of the Units as determined by the Trustees.
- (d) Subject to Subsections 5.20(e) and 5.20(f), the Redemption Price payable in respect of the Units tendered for redemption during any month shall be paid by cheque, drawn on a chartered bank or a trust company in lawful money of the United States,

payable at par to or to the order of the Unitholder who exercised the right of redemption on or before the last day of the calendar month following the month in which the Units were tendered for redemption. Payments made by the Trust of the Redemption Price are conclusively deemed to have been made upon the mailing of a cheque in a postage prepaid envelope addressed to the former unitholder unless such cheque is dishonoured upon presentment. Upon such payment, the Trust shall be discharged from all liability to such former Unitholder in respect of the Units so redeemed.

- (e) Subsection 5.20(d) shall not be applicable to Units of a series tendered for redemption by a Unitholder, if the total amount payable by the Trust pursuant to Subsection 5.20(c) in respect of such Units and all other Units tendered for redemption prior thereto in the same calendar month exceeds US\$50,000 (the “**Monthly Limit**”); provided that the Trustees may, in their sole discretion, waive such limitation in respect of all Units tendered for redemption in any calendar month.
- (f) If, pursuant to Subsection 5.20(e), Subsection 5.20(d) is not applicable to Units tendered for redemption by a Unitholder, the Redemption Price per Unit specified in Subsection 4.20(c) to which the Unitholder would otherwise be entitled shall, subject to receipt of all necessary regulatory approvals, be paid and satisfied by way of a distribution *in specie* to such Unitholder of Subsidiary Securities having a fair market value equal to the product of: (i) the remainder of the Redemption Price per Unit of the Units tendered for redemption to be so satisfied; and (ii) the number of Units tendered by such Unitholder for redemption. No Subsidiary Securities with a fair market value of less than US\$100 will be transferred and where the number of Subsidiary Securities to be received by such former Unitholder upon redemption *in specie* would otherwise include a Subsidiary Security with a fair market value of less than a multiple of US\$100, such number shall be rounded to the next lowest multiple of US\$100 and the excess shall be paid in cash. The portion of the Redemption Price payable pursuant to this Subsection 5.20(f) in respect of Units tendered for redemption during any month shall, subject to receipt of all necessary regulatory approvals, be paid by the transfer, to or to the order of the Unitholder who exercised the right of redemption, on the last day (the “**Transfer Date**”) of the calendar month following the month in which the Units were tendered for redemption, of the fair market value of Subsidiary Securities determined as aforesaid and the cash payment, if any, in accordance with the provisions of Subsection 5.20(d) applied *mutatis mutandis*. The Trust shall be entitled to all interest, if any, paid or declared payable on the Subsidiary Securities being transferred, to and including the Transfer Date. Payments by the Trust of the Redemption Price are conclusively deemed to have been made upon the mailing of the Subsidiary Securities and cheque, if any, by registered mail in a postage prepaid envelope addressed to such former Unitholder. Upon such payment, the Trust shall be discharged from all liability to the former Unitholder in respect of the Units so redeemed. Except as set out above, the terms and conditions of the Subsidiary Securities shall be as set out in the applicable indenture or similar agreement for such Subsidiary Securities.

- (g) If, pursuant to Subsection 5.20(e), Subsection 5.20(d) is not applicable to the Units tendered for redemption by a Unitholder, the Redemption Price per Unit to which the Unitholder would otherwise be entitled shall be paid and satisfied as follows:
  - (i) a portion of the Redemption Price per Unit equal to the Monthly Limit divided by the number of Units tendered for redemption in the month shall be paid and satisfied in cash, in accordance with Subsection 5.20(d) applied *mutatis mutandis*; and
  - (ii) subject to receipt of all necessary regulatory approvals, the remainder of the Redemption Price per Unit shall be paid and satisfied by way of a distribution in specie to such Unitholder of Subsidiary Securities, in accordance with Subsection 5.20(f) applied *mutatis mutandis*. Upon such payment, the Trust shall be discharged from all liability to the former Unitholder in respect of the Units so redeemed.
- (h) All Units which are redeemed under this Section 5.20 shall be cancelled and such Units shall no longer be outstanding and shall not be reissued.
- (i) Some or all of the Income of the Trust and the Net Realized Capital Gains of the Trust may, for purposes of computing the net Income of the Trust and the Net Realized Capital Gains of the Trust under the Tax Act or other tax legislation be treated as having been paid in the year by the Trust to the Unitholders redeeming Units in such year and, to the extent that the amount thereof so treated has been designated as taxable capital gains or income to such unitholders, the holder's redemption proceeds shall be reduced accordingly. Any such amounts shall be determined at the discretion of the Trustees, taking into account, among other things, subsection 132(5.3) of the Tax Act; however, in all cases, a redeeming Unitholder will only be treated as having been paid an amount to which the Unitholder of the Units redeemed would be entitled to receive.

## **5.21 Purchase 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 determined by the Trustees, subject to compliance with all applicable laws. The payment of the purchase price to any Unitholders in cash as provided in this section will be satisfied by cheque payable to or to the order of the Unitholder or by such other manner of payment approved by the Trustees from time to time.

## **ARTICLE 6 MEETINGS OF THE UNITHOLDERS**

### **6.1 Annual Meeting**

There shall be an annual meeting of unitholders, at such time and place in Canada as the Trustees shall prescribe, for the purpose of electing the Trustees, appointing or changing the Auditors and transacting such other business as the Trustees may determine or as may properly be brought before the meeting; provided that the Trustees may in their sole discretion determine that a meeting

shall not be held at any place, but may instead be held entirely by means of a telephonic, electronic or other communication facility that permits all participants to communicate adequately during the meeting pursuant to Section 6.3 if the Trust is able to, and does, make available such a communication facility. The annual meeting of the unitholders shall be held within 180 days after the end of each fiscal year of the Trust.

## **6.2 Special Meetings**

The Trustees shall have power at any time to call special meetings of the unitholders at such time and place in Canada as the Trustees may determine; provided that the Trustees may in their sole discretion determine that a meeting shall not be held at any place, but may instead be held entirely by means of a telephonic, electronic or other communication facility that permits all participants to communicate adequately during the meeting pursuant to Section 6.3 if the Trust is able to, and does, make available such a communication facility. The unitholders holding in the aggregate not less than 5% of the votes attaching to all outstanding REIT Units (on a fully diluted basis) may requisition the Trustees in writing to call a special meeting of the unitholders for the purposes stated in the requisition. The requisition must state in reasonable detail the business proposed to be transacted at the meeting and shall be sent to each of the Trustees and to the principal office of the Trust. The unitholders have the right to obtain a list of the unitholders to the same extent and upon the same conditions as those which apply to shareholders of a corporation governed by the CBCA. Upon receiving the requisition, the Trustees shall call a meeting of the unitholders to transact the business referred to in the requisition, unless:

- (a) a record date for a meeting of unitholders has been fixed and notice of the record date having been given pursuant to Section 6.3;
- (b) in connection with the business as stated in the requisition:
  - (i) it clearly appears to the Trustees that the primary purpose of the matter covered by the requisition submitted by the unitholder is to enforce a personal claim or to redress a personal grievance against the Trust, the Trustees, the officers of the Trust or its security holders;
  - (ii) it clearly appears to the Trustees that the matter covered by the requisition does not relate in a significant way to the business or affairs of the Trust;
  - (iii) 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;  
or
  - (iv) the rights conferred by this Section 6.2 are being abused to secure publicity.

Subject to the foregoing, if the Trustees do not within 21 days after receiving the requisition call a meeting, any unitholder who signed the requisition may call the meeting in accordance with the provisions of Sections 6.3 and 6.7 and the Trustees' Regulations, *mutatis mutandis*. If there shall be no Trustees, the officers of the Trust shall promptly call a special meeting of 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 the unitholders.

### **6.3 Unitholder Meeting Attendance by Telephonic, Electronic or Other Communication Facility and Electronic Voting**

If authorized by the Trustees in their sole discretion, and subject to such guidelines and procedures as the Trustees may adopt, unitholders and proxyholders not physically present at a meeting of unitholders may, by means of a telephonic, electronic or other communication facility that permits all participants to communicate adequately during the meeting, if the Trust makes available such a communication facility:

- (a) participate in a meeting of unitholders; and
- (b) be deemed present in person and vote at a meeting of unitholders whether such meeting is to be held at a designated place or solely by means of a telephonic, electronic or other communication facility, provided that: (i) the Trust shall implement reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of a telephonic, electronic or other communication facility is a unitholder or proxyholder, (ii) the Trust shall implement reasonable measures to provide such unitholders and proxyholders a reasonable opportunity to read or hear the proceedings of the meeting substantially concurrently with such proceedings and to vote on matters submitted to the unitholders, and (iii) if any unitholder or proxyholder votes or takes other action at the meeting by means of a telephonic, electronic or other communication facility, a record of such votes or other action shall be maintained by the Trust.

A unitholder or proxyholder participating in a meeting by such means is deemed for the purposes of this Declaration of Trust to be present at the meeting. Any person entitled to vote at a meeting of unitholders where the Trust has made available a telephonic, electronic or other communication facility for the purposes of attending and voting at such meeting may vote by such means of the telephonic, electronic or other communication facility that the Trust has made available for that purpose. Any vote referred to in Section 6.6 may be held entirely by means of a telephonic, electronic or other communication facility if the Trust makes available such a communication facility, provided, in each case, that the facility: (i) enables the votes to be gathered in a manner that permits their subsequent verification; and (ii) permits the tallied votes to be presented to the Trust without it being possible for the Trust to identify how each Unitholder or group of Unitholders voted.

### **6.4 Notice of Meeting of the Unitholders**

Notice of all meetings of unitholders shall be mailed or delivered by the Trustees to each unitholder at his/her address appearing in the Register, to each Trustee and to the Auditors not less than 21 days nor more than 60 days before the meeting. Notice of any meeting of unitholders shall state the purposes of the meeting, the time and place in Canada, if any, where such meeting is to be held, and if a meeting is to take place through a communications facility by which unitholders and

proxyholders may be deemed to be present in person, the means to access such communications facility and vote at such meeting.

## **6.5 Quorum**

A quorum for any meeting of unitholders shall be individuals present not being less than two in number and being the unitholders or representing by proxy the unitholders who hold in the aggregate not less than 10% of the votes attached to all outstanding REIT Units (on a fully diluted basis), provided that if the Trust has only one unitholder, the unitholder present or by proxy constitutes a meeting and a quorum for such meeting. In the event of such quorum not being present within 30 minutes after the time fixed for the holding of such meeting, the meeting, if convened on the requisition of unitholders, shall be dissolved, but in any other case shall stand adjourned to such day being not less than 10 days later and to such place in Canada, if any, and time as may be fixed by the Trustees. If at such adjourned meeting a quorum as above defined is not present, the unitholders present either personally or by proxy shall form a quorum, and any business may be brought before or dealt with at such an adjourned meeting which might have been brought before or dealt with at the original meeting in accordance with the notice calling the same.

## **6.6 Voting**

Unitholders may attend and vote at all meetings of unitholders either personally or by proxy. Each REIT Unit shall entitle the holder thereof to one vote at all meetings of unitholders. Whenever any action is to be taken by the unitholders, they shall, except as otherwise required by this Declaration of Trust or by law, be authorized when approved by at least a majority of the votes cast at such meeting of unitholders. The chair of any such meeting shall not have a second or casting vote.

## **6.7 Class Approval**

If any business to be transacted at a meeting of unitholders would affect the rights of unitholders of one or more classes (or, subject to clause (c) below, series) in a manner different from the unitholders of any other class (or, subject to clause (c) below, series) then:

- (a) reference to such fact, indicating each class so affected, shall be made in the notice of such meeting; and
- (b) unitholders of a class so affected shall not be bound or adversely affected by any action to be taken at such meeting unless in addition to compliance with the other provisions of this Section:
  - (i) there are present or by proxy unitholders of such class who hold in the aggregate not less than 10% of the votes attached to such class or series, subject to the provisions of this Article as to quorum at adjourned meetings; and
  - (ii) the resolution is passed by the affirmative vote of at least two thirds of the unitholders of such class; and

- (c) the unitholders of a series of REIT Units of a class are entitled to vote separately as a series under this Section only if such series is affected by an amendment in a manner different from other REIT Units of the same class.

## **6.8 Record Dates**

For the purpose of determining the unitholders who are entitled to receive notice of and vote at any meeting or any adjournment(s) or postponement(s) thereof or for the purpose of any other action, the Trustees may from time to time, without notice to the unitholders, close the transfer books for such period, not exceeding 35 days, as the Trustees may determine; or without closing the transfer books the Trustees may fix a date not less than 30 days and not more than 60 days prior to the date of any meeting of unitholders or other action as a record date for the determination of the unitholders entitled to receive notice of and to vote at such meeting or any adjournment(s) or postponement(s) thereof or to be treated as the unitholders of record for purposes of such other action, 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(s) or postponement(s) thereof, even though such unitholder has since that date disposed of its REIT Units, and no unitholder becoming such after that date shall be entitled to receive notice of and vote at such meeting or any adjournment(s) or postponement(s) thereof 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 Business Day immediately preceding the day on which the notice of the meeting is given.

## **6.9 Proxies**

Whenever the vote or consent of the 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 in such form as the Trustees may prescribe from time to time or, in the case of a unitholder that is a body corporate or association, by an individual authorized by the board of directors or governing body of the body corporate or association to represent it at a meeting of the unitholders. A proxyholder need not be a unitholder. The Trustees may solicit such proxies from the unitholders or any of them for any matter requiring or permitting the unitholders' vote, approval or consent.

The Trustees may adopt, amend or repeal such regulations relating to the appointment of proxyholders, and the solicitation, execution, validity, revocation and deposit of proxies, as they in their sole discretion from time to time determine.

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 Persons challenging the instrument shall have the burden of proving, to the satisfaction of the Trustees that the instrument of proxy is invalid. Any decision of the Trustees 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(s) or postponement(s) 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 Trustees prior to the time when the vote is cast.



#### **6.10 Personal Representatives**

If a unitholder is deceased, his/her personal representative, upon filing with the Secretary of the meeting such proof of his/her 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 or she 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 personal representative, the provisions of Section 5.16 relating to joint holders shall apply.

#### **6.11 Attendance by Others**

Any Trustee, officer of the Trust, representative of the Auditors, representative of the legal counsel of the Trust or other individual approved by the Trustees may attend and speak at any meeting of the unitholders.

#### **6.12 Conduct of Meetings**

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

#### **6.13 Binding Effect of Resolutions**

Every resolution passed at a meeting in accordance with the provisions of this Article 6 shall be binding upon all unitholders, whether present at or absent from the meeting.

#### **6.14 Resolution in Lieu of Meeting**

Notwithstanding any other provision of this Declaration of Trust, a resolution signed in writing by all of the unitholders entitled to vote on that resolution at a meeting of unitholders is as valid as if it had been passed at a meeting of unitholders.

#### **6.15 Actions by the Unitholders**

Any action, change, approval, decision or determination required or permitted to be taken or made by the unitholders hereunder shall be effected by a resolution passed by the unitholders at a duly constituted meeting (or a written resolution in lieu thereof) in accordance with this Article 6.

### **ARTICLE 7 MEETINGS OF THE TRUSTEES**

#### **7.1 Trustees May Act Without Meeting**

The Trustees may act with or without a meeting. Any action of the Trustees may be taken at a meeting by vote of, or without a meeting by written consent signed by all of, the Trustees. Written consents and resolutions in writing may be signed in counterparts, each of which shall be deemed to be an original, and all originals together shall be deemed to be one and the same instrument.

## **7.2 Notice of Meeting**

Meetings of the Trustees may be held from time to time upon the giving of notice by any two Trustees. Regular meetings of the Trustees may be held without call or notice at a time and place in Canada fixed in accordance with the Trustees' Regulations or by other means permitted by Section 7.5. Notice of the time and place of any other meetings shall be given (which need not be in writing) not less than 48 hours before the meeting but may be waived in writing by any Trustee either before or after such meeting. The attendance of a Trustee at a meeting shall constitute a waiver of notice of such meeting except where a Trustee attends a meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting has not been lawfully called or convened.

## **7.3 Quorum**

A quorum for all meetings of the Trustees shall be at least two Trustees present, at least one of whom shall be a resident Canadian; provided that if there is no quorum, the meeting may be adjourned to a Business Day on notice to all of the Trustees and, at the reconvened meeting, the presence of one Resident Canadian Trustee is required to constitute a quorum.

## **7.4 Voting at Meetings**

Questions arising at any meeting of the Trustees shall be decided by a majority of the votes cast. In the case of an equality of votes at any meeting of Trustees, the Trustee who called the meeting shall not have a second or casting vote in addition to his/her original vote, if any. Every meeting of the Trustees shall take place in Canada.

## **7.5 Meeting by Telephone or Other Electronic Communication Facilities**

Any Trustee may participate in a meeting of the Trustees by means of a conference telephone or other electronic communication facilities by means of which all Trustees participating in the meeting can hear and communicate with each other and a Trustee so participating shall be considered for the purposes of this Declaration of Trust to be present at that meeting, provided that the conference telephone or other electronic communication facility is originated within Canada (to the extent applicable).

# **ARTICLE 8 DISTRIBUTIONS**

## **8.1 Distributions**

The Trustees may declare to be payable and make distributions, from time to time, out of Income of the Trust, Net Realized Capital Gains of the Trust, the capital of the Trust or otherwise, in any year, in such amount or amounts, and on such dates on or before December 30 of that year as the Trustees may determine, to the extent such income, capital gains or capital has not already been paid, allocated or distributed to the Unitholders that are Unitholders at the record date for such distribution, to the extent such income, capital gains and capital may reasonably be considered to be attributable to and derived from the Trust's investments.

The Board of Trustees shall endeavor to cause the Trust to declare and pay distributions as shall be necessary for the Trust to qualify as a “real estate investment trust” under Section 857 of the Code.

Each year the Trust shall deduct in computing its income for purposes of the Tax Act such portion of the amounts paid or payable to the Unitholders for the year as is necessary to ensure that the Trust is not liable for income tax under Part I of the Tax Act for that taxation year.

Having regard to the present intention of the Trustees to allocate, distribute and make payable to Unitholders all of the Income of the Trust, Net Realized Capital Gains of the Trust and any other applicable amounts so that the Trust will not have any liability for tax under Part I of the Tax Act in any taxation year, the total amount to be distributed on or before the January 15<sup>th</sup> distribution date of each year in respect of the most recent taxation year of the Trust ending on or before such date (the “**preceding taxation year**”) pursuant to this Section 8.1 shall not be less than the amount necessary to ensure that the Trust shall not be liable to pay income tax under Part I of the Tax Act for the preceding taxation year, after taking into account any entitlement to a capital gains refund, and:

- (a) the amount, if any, by which the Income of the Trust for such year exceeds the aggregate of the portions, if any, of each distribution made by the Trust pursuant to this Section 8.1 which have been determined by the Trustees, pursuant to Section 8.5, to have been payable by the Trust out of Income of the Trust for such year; and
- (b) the amount, if any, by which the Net Realized Capital Gains of the Trust for such year exceeds the aggregate of the portions, if any, of each distribution made by the Trust pursuant to this Section 8.1 which has been determined by the Trustees, pursuant to Section 8.5, to have been payable by the Trust out of Net Realized Capital Gains of the Trust for such year;

shall, without any further actions on the part of the Trustees, be due and payable (“**year-end distribution**”) to the Unitholders that are Unitholders of record on December 31 of the preceding taxation year.

In addition to the distributions which are made payable to Unitholders, the Trustees may designate and make payable any income or capital gains realized by the Trust (including any income realized by the Trust on the redemption of Units *in specie*) to redeeming Unitholders.

For certainty, it is hereby expressly declared that a Unitholder shall have the legal right to enforce payment of any amount on December 31 of any taxation year which is required to be distributed to a Unitholder hereunder on or before December 31. The Trustees, if they so determine when income has been accrued but not collected may, on a temporary basis, transfer sufficient monies from the capital to the income account of the Trust to permit distributions of income which are payable to be effected.

Notwithstanding anything to the contrary above, for greater certainty, the Trustees may cause one or more distributions made in a year subsequent to a particular taxation year to be treated for U.S. federal income tax purposes as having been paid in such particular taxation year for purposes of

determining the Trust's dividend paid deduction in accordance with section 857 or section 858 of the Code.

## **8.2 Allocation**

Distributions payable to Unitholders pursuant to this Article 8 shall be deemed to be distributions of Income of the Trust (including dividends), Net Realized Taxable Capital Gains of the Trust, Trust capital or other items in such amounts as the Trustees in their absolute discretion, determine, and shall be allocated to the Unitholders in the same proportions as distributions received by the Unitholders, subject to the discretion of the Trustees to adopt an allocation method which the Trustees consider to be more reasonable in the circumstances.

## **8.3 Payment and Method of Distributions**

- (a) Distributions 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/her agent duly authorized in writing or upon the mailing of a cheque by prepaid first-class mail addressed to the Unitholder at his/her address as it appears on the Register unless the cheque is not paid on presentation, or in any other manner determined by the Trustees in their sole discretion. In the case of jointly registered Unitholders, any cash payment required hereunder to be made to a Unitholder shall be deemed to be required to be made to such Unitholders jointly and shall be paid by cheque or bank draft but may also be paid in such other manner as the joint registered Unitholders or any one of the joint registered Unitholders has designated to the Trustees and the Trustees have accepted. For certainty, a Unitholder or any one of the joint Unitholders may designate and the Trustees may accept that any payment required to be made hereunder shall be made by deposit to an account of such Unitholder or to a joint account of such Unitholder and any other Person or in the case of joint registered Unitholders to an account of joint registered Unitholders or to an account of any one of the joint registered Unitholders. A cheque or bank draft shall, unless the joint registered Unitholders otherwise direct, be made payable to the order of all of the said joint registered Unitholders, and if more than one address appears on the books of the Trust in respect of such joint Unitholding, the cheque or bank draft or payment in other acceptable manner as aforesaid shall satisfy and discharge all liability of the Trustees and the Trust for the amount so required to be paid unless the cheque or bank draft is not paid at par on presentation at any place where it is by its terms payable. The receipt by the registered Unitholder in another acceptable manner of any payment not mailed or paid in accordance with this Section 8.3 shall be a valid and binding discharge to the Trust and to the Trustees for any payment made in respect of the registered Units and if several Persons are registered as joint registered Unitholders or, in consequence of the death, bankruptcy or incapacity of a Unitholder, one or several Persons are entitled so to be registered, subject to Section 5.15, in accordance with this Declaration of Trust, respectively, receipt of payment by any one of them shall be a valid and binding discharge to the Trust and to the Trustees for any such payment.

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 sole discretion consider necessary. No Unitholders will be entitled to recover by action or other legal process against the Trust any distribution that is represented by a cheque that has not been duly presented to the Trust's banker for payment or that otherwise remains unclaimed for a period of six years from the date on which such distribution was payable.

- (b) Where the Trustees determine that the Trust does not have available cash in an amount sufficient to make payment of the full amount of any distribution which has been declared to be payable pursuant to this Article 8 on the due date for such payment, the payment may, at the option of the Trustees, include the issuance of additional Units, or fractions of Units, if necessary, having a fair market value as determined by the Trustees equal to the difference between the amount of such distribution and the amount of cash which has been determined by the Trustees to be available for the payment of such distribution in the case of Units; provided that, if the Trustees issue Units in respect of a distribution and intend for the Trust to qualify as a "real estate investment trust" under Section 857 of the Code, the Trustees will distribute sufficient cash for the Trust to meet its distribution requirements for qualification as a "real estate investment trust" as set forth in Section 857 of the Code.

#### **8.4 Income Tax Matters**

In reporting income for income tax purposes the Trust shall claim the maximum amount available to it as deductions under the relevant law, unless the Trustees determine otherwise.

#### **8.5 Designations**

In accordance with and to the extent permitted by the Tax Act, the Trustees shall, in each year, make such designations for income tax purposes in respect of amounts paid or payable or deemed to be paid to the Unitholders for such amounts that the Trustees consider to be reasonable in the circumstances, including designations relating to taxable dividends received or deemed to be received by the Trust in the year on shares of taxable Canadian corporations, net taxable capital gains of the Trust in the year, and foreign source Income of the Trust and foreign taxes in respect of such foreign source income for the year, if any. Where permitted by the Tax Act, the Trustees shall make designations under the Tax Act so that the amount distributed to a Unitholder but not deducted by the Trust would not be included in the Unitholder's income for the purposes of the Tax Act. For certainty, it is hereby declared that any distributions of Net Realized Capital Gains of the Trust shall include the non-taxable portion of the capital gains of the Trust which are included in such distribution.

#### **8.6 Withholding Taxes**

Unless otherwise determined by the Trustees, the Trust shall deduct or withhold from distributions payable to any Unitholder amounts required by law to be deducted or withheld from such Unitholder's distributions. Unitholders who are Non-Residents will be required to pay all Canadian

withholding taxes payable in respect of any distributions of income by the Trust and all unitholders who are U.S. Non-Residents will be required to pay all U.S. withholding taxes payable in respect of any distributions of income by the Trust, whether such distributions are in the form of cash or additional REIT Units.

## **8.7 Definitions**

Unless the context otherwise requires, any term in Article 1 and this Article 8 not otherwise defined herein shall have for the purposes of Article 1 and this Article 8 the meaning that it has in the Tax Act.

## **ARTICLE 9 FEES AND EXPENSES**

### **9.1 Expenses**

The Trustees shall pay out of the Trust Property all expenses incurred in connection with the administration and management of the Trust and its investments, including:

- (a) interest and other costs of borrowed money;
- (b) fees and expenses of lawyers, accountants, appraisers, the Auditors and other agents or consultants employed by or on behalf of the Trust;
- (c) compensation, remuneration and expenses of the Trustees;
- (d) fees and expenses connected with the due diligence, acquisition, disposition and ownership of Trust Property permitted in this Declaration of Trust;
- (e) insurance, including trustees, directors and officers liability insurance, as considered necessary by the Trustees;
- (f) expenses in connection with payments of distributions of Units of the Trust;
- (g) expenses in connection with communications to the unitholders and the other bookkeeping and clerical work necessary in maintaining relations with the unitholders;
- (h) expenses of changing the terms of this Declaration of Trust or terminating the Trust;
- (i) fees and charges of transfer agents, registrars, indenture trustees and other trustees and custodians;
- (j) all fees, expenses, taxes and other costs incurred in connection with the issuance, distribution, transfer and qualification for distribution to the public of REIT Units or other securities of the Trust and other required governmental filings and fees of stock exchanges and the securities administrators; and

- (k) all costs and expenses in connection with the incorporation or establishment, organization and maintenance of corporations and other entities controlled by the Trust and formed to hold real property or other property of the Trust,

provided that the Trust will not incur any expense that would cause the Trust to fail or cease to qualify as a “mutual fund trust” under the Tax Act.

## **ARTICLE 10 AMENDMENTS TO THE DECLARATION OF TRUST**

### **10.1 Amendment by the Trustees**

The Trustees may, from time to time, amend or alter the provisions of the Declaration of Trust, including as follows:

- (a) for the purpose of ensuring continuing compliance with applicable laws, (including the Tax Act) regulations, requirements or policies of any governmental authority having jurisdiction over: (i) the Trustees or over the Trust; (ii) the status of the Trust as a “mutual fund trust” under the Tax Act or to otherwise prevent the Trust or any of its Subsidiaries from becoming subject to tax under the provisions of the Tax Act that apply to a specified investment flow-through trust or partnership; (iii) the status of the Trust as a “real estate investment trust” for U.S. federal income tax purposes; or (iv) the distribution of REIT Units;
- (b) to the extent deemed by the Trustees in good faith to be necessary to remove any conflicts or other inconsistencies which may exist between any of the terms of this Declaration of Trust and the provisions of any applicable law;
- (c) to the extent determined by the Trustees in good faith to be necessary to make any change or correction in the Declaration of Trust which is a typographical change or correction or which the Trustees have been advised by legal counsel is required for the purpose of curing any ambiguity or defect or inconsistent provision or clerical omission or mistake or manifest error contained herein;
- (d) which, in the opinion of the Trustees, are necessary or desirable: (i) to ensure continuing compliance with IFRS; or (ii) to ensure the Units are classified as equity for purposes of IFRS;
- (e) which, in the opinion of the Trustees, are necessary or desirable to enable the Trust to implement a Unit option plan, Unit purchase plan, deferred unit incentive plan, or other compensation plan;
- (f) which, in the opinion of the Trustees, are necessary or desirable for the Trust to qualify for a particular status under, or as a result of changes in, taxation or other laws, or the interpretation of such laws, including to qualify for the definition of “real estate investment trust” in the Code or to otherwise prevent the Trust or any of its Subsidiaries from becoming subject to SIFT Tax; or

- (g) as otherwise deemed by the Trustees in good faith to be necessary or desirable.

In no event may the Trustees amend this Declaration of Trust if such amendment would (i) amend this Article 10; or (ii) cause the Trust to fail or cease to qualify as a “mutual fund trust” under the Tax Act or a “real estate investment trust” under the Code.

## **10.2 Amendments by the Unitholders**

Except as otherwise provided in Sections 4.3, 8.1 and 10.1, this Declaration of Trust may be amended only if authorized by the vote of at least 66 $\frac{2}{3}$ % of the votes cast at a meeting of the unitholders called for that purpose. Without limiting the generality of the foregoing, the following amendments will require the approval of at least 66 $\frac{2}{3}$ % of the votes cast by the unitholders (at a meeting or by written resolution in lieu thereof):

- (a) the sale of Trust Property as an entirety or substantially as an entirety or the sale of all or substantially all of the assets of a Subsidiary of the Trust (other than as part of an internal reorganization, including by way of a transfer of Trust Property or property or assets of a Subsidiary of the Trust, as approved by the Trustees);
- (b) an exchange, reclassification or cancellation of all or part of the REIT Units;
- (c) the addition, change or removal of the rights, privileges, restrictions or conditions attached to the REIT Units, including, without limiting the generality of the foregoing,
  - (i) the removal or change of rights to distributions attached to the REIT Units; or
  - (ii) the addition or removal of or change to conversion privileges, redemption privileges, voting, transfer or pre-emptive rights attached to the REIT Units;
- (d) the creation of new rights or privileges attaching to certain of the REIT Units;
- (e) any additional constraints or change to the existing constraints on the issue, transfer or ownership of the REIT Units; and
- (f) the combination, amalgamation, merger or arrangement of any of the Trust or its Subsidiaries with any other entity (other than as part of an internal reorganization of the assets of the Trust or its Subsidiaries as approved by the Trustees and not prejudicial to Unitholders).

## **10.3 Automatic Amendment**

Upon a Trustee ceasing to be a trustee of the Trust, the Declaration of Trust will be automatically amended to delete any reference to the name of the Trustees so ceasing to be a trustee of the Trust and to substitute therefor the name of the replacement Trustees of the Trust.



#### **10.4 Supplemental Declaration of Trust**

The Trustees are authorized to execute any supplemental Declaration of Trust to give effect to amendments to the Declaration of Trust made pursuant to this Article 10.

#### **10.5 No Termination**

No amendment to or amendment and restatement of this Declaration of Trust, whether pursuant to this Article 10 or otherwise, shall be construed as a termination of the Trust and the settlement or establishment of a new trust.

### **ARTICLE 11 TERMINATION OF TRUST**

#### **11.1 Termination of the Trust**

- (a) The Trust will continue in full force and effect until such time as it is terminated by either the Trustees or the unitholders in accordance with the terms of this Article 11.
- (b) Upon the satisfaction of all debt instruments and other obligations and liabilities of the Trust, the Trustees may, in their sole discretion, wind up the affairs of the Trust, terminate the Trust and, upon receipt of such releases, indemnities and refunding agreements as the Trustees deem necessary for their protection, distribute the remaining Trust Property in cash or in kind or partly in each to the Unitholders.
- (c) The Trust may be terminated by resolution signed in writing by all of the Unitholders.

### **ARTICLE 12 LIABILITIES OF THE TRUSTEES AND OTHERS**

#### **12.1 Liability and Indemnification of the Trustees**

The Trustees shall at all times be indemnified and saved harmless out of the Trust Property from and against all liabilities, damages, losses, debts and claims whatsoever, including costs, charges and expenses in connection therewith, sustained, incurred, brought, commenced or prosecuted against them for or in respect of any act, deed, matter or thing whatsoever made, done, acquiesced in or omitted in or about or in relation to the execution of their duties as Trustees and also from and against all other liabilities, damages, losses, debts, claims, costs, charges, and expenses (including legal fees and disbursements on a solicitor-and-his/her-own-client basis) which they sustain or incur in or about or in relation to the affairs of the Trust. Further, the Trustees shall not be liable to the Trust or to any unitholder or annuitant for any loss or damages relating to any matter regarding the Trust, including any loss or diminution in the value of the Trust or the Trust Property. The foregoing provisions of this Section 12.1 in favour of the Trustees do not apply to a Trustee unless:

- (a) the Trustee acted honestly and in good faith with a view to the best interests of the Trust and the unitholders; and

- (b) in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, the Trustee had reasonable grounds for believing his/her conduct was lawful.

## **12.2 Liability of the Trustees**

The Trustees shall not be liable to the Trust or to any unitholder, annuitant or any other Person for the acts, omissions, receipts, neglects or defaults of any Person, firm or corporation employed or engaged by them as permitted hereunder, or for joining in any receipt or act of conformity or for any loss, damage or expense caused to the Trust through the insufficiency or deficiency of any security in or upon which any of the monies of or belonging to the Trust shall be paid out or invested, or for any loss or damage arising from the bankruptcy, insolvency or tortious act of any Person, firm or corporation with whom or which any monies, securities or property of the Trust shall be lodged or deposited, or for any loss occasioned by error in judgment or oversight on the part of the Trustees, or for any other loss, damage or misfortune which may happen in the execution by the Trustees of their duties hereunder, except to the extent the Trustees have not acted in accordance with Subsections 12.1(a) and 12.1(b).

## **12.3 Reliance Upon Advice**

The Trustees may rely and act upon any statement, report or opinion prepared by or any advice received from the Auditors, lawyers 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.

## **12.4 Liability of the Unitholders and Others**

- (a) Notwithstanding any other provision of this Declaration of Trust, no unitholder or annuitant shall be held to have any personal liability as such, and no resort shall be had to, nor shall recourse or satisfaction be sought from, the private property of any unitholder or annuitant for any liability whatsoever, in tort, contract or otherwise, to any Person in connection with the Trust Property or the affairs of the Trust, including 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 (“**Trust Liability**”), but rather the Trust Property only are intended to be liable and subject to levy or execution for satisfaction of such Trust Liability. Each unitholder and annuitant shall be entitled to be reimbursed out of the Trust Property in respect of any payment of such Trust Liability made by such unitholder or annuitant.
- (b) In addition to the policies set out in 0, the Trustees shall cause the operations of the Trust to be conducted, with the advice of counsel, in such a way and in such jurisdictions as to avoid, to the extent which they determine to be practicable and consistent with their fiduciary duty to act in the best interests of the unitholders, any material risk of liability on the unitholders for claims against the Trust, and shall, to the extent available on terms which they determine to be practicable, including the cost of premiums, cause the insurance carried by the Trust, to the extent applicable, to cover the unitholders and annuitants as additional insureds.

Any potential liability of the Trustees with respect to the foregoing obligations or their failure to perform the same shall be governed by the provisions of Sections 12.1, 12.2 and 12.3.

## **ARTICLE 13 GENERAL**

### **13.1 Execution of Instruments**

Any one of the Trustees shall have the power to sign instruments in writing generally or to sign specific instruments in writing or to appoint any Person on behalf of the Trust to sign such instruments. Provisions respecting the foregoing may be contained in the Trustees' Regulations.

### **13.2 Manner of Giving Notice**

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

### **13.3 Failure to Give Notice**

The failure by the Trustees, by accident or omission or otherwise unintentionally, to give any unitholder or the Auditors 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.

### **13.4 Fiscal Year**

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

### **13.5 Trust Property to be Kept Separate**

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

### **13.6 Trustees May Hold Units**

Any Trustee and any Associate of a Trustee may be a Unitholder or may be an annuitant.

### **13.7 Trust Records**

The Trustees shall prepare and maintain, at the principal office of the Trust or at any other place in Canada designated by the Trustees, records containing: (i) the Declaration of Trust; and (ii) minutes of meetings and resolutions of the unitholders. The Trust shall also prepare and maintain adequate accounting records and records containing minutes of meetings and resolutions of the Trustees. Such records shall be kept at the principal office of the Trust or at such other place as the Trustees think fit and shall at all reasonable times be open to inspection by the Trustees.

### **13.8 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, the Trustees' Regulations, the minutes of meetings and resolutions of the unitholders, and any other documents or records which the Trustees determine should be available for inspection by such Person, during normal business hours at the principal office of the Trust. The 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 REIT Units, to the same extent and upon the same conditions as those which apply to shareholders and creditors of a corporation governed by the CBCA.

### **13.9 Taxation Information**

On or before the 90th day of each calendar year, the Trust will provide to Unitholders who received distributions from the Trust in either the prior calendar year or on or before January 15 of such year, such information regarding the Trust required by Canadian law to be submitted to unitholders for income tax purposes to enable unitholders to complete their tax returns in respect of the prior calendar year. In particular, for Canadian income tax purposes, each Unitholder shall be informed each year of the composition of the amounts payable by the Trust to such Unitholder in terms of net income, taxable dividends, net taxable capital gains, foreign source income and return of capital, and will be informed of the portion of such net income that has been designated as taxable dividends on shares of taxable Canadian corporations and net taxable capital gains of the Trust, the portion of foreign source income designated by the Trust, and of the amount of any foreign taxes paid by the Trust in respect of which the Unitholder may claim a credit for Canadian tax purposes to the extent permitted by the Tax Act, where those items are applicable. The Trust also will provide to Unitholders who received distributions from the Trust in the prior calendar year such information as is required by U.S. law to be submitted to Unitholders for U.S. income tax purposes to enable Unitholders to complete their U.S. tax returns in respect of such distributions, including, to the extent applicable, the allocation of the distributions payable by the Trust to each Unitholder to ordinary income, capital gain and return of capital.

### **13.10 Tax Status**

In respect of the first taxation year of the Trust, the Trustees shall cause the Trust to elect: (a) pursuant to subsection 132(6.1) of the Tax Act that the Trust be deemed to be a "mutual fund trust"

for the purposes of the Tax Act for the entire year, provided that prior to filing such return of income the Trust has sufficient unitholders so as to be entitled to make such election and has otherwise complied with the requirements thereof, and (b) pursuant to Section 856 of the Code, to treat the Trust as a real estate investment trust for U.S. federal income tax purposes.

### **13.11 Consolidations**

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

### **13.12 Counterparts**

This Declaration of Trust may be executed by the parties hereto in several counterparts and may be executed and delivered by facsimile or portable document format (PDF) and all the counterparts together shall constitute one and the same instrument, which shall be sufficiently evidenced by any such counterparts.

### **13.13 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.

### **13.14 Enforcement**

The Trust is authorized specifically to seek equitable relief, including injunctive relief, to enforce the provisions of this Declaration of Trust.

### **13.15 Non-Waiver**

No delay or failure on the part of the Trust or Trustees in exercising any right hereunder shall operate as a waiver of any right of the Trust or the Trustees, as the case may be, except to the extent specifically waived in writing.

### **13.16 Governing Law**

This Declaration of Trust shall be interpreted and governed by and take effect exclusively in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable in that province. Any and all disputes arising under this Declaration of Trust, whether as to interpretation, performance or otherwise, shall be subject to the exclusive jurisdiction of the courts of the Province of Ontario and each of the Trustees hereby irrevocably attorns, and each unitholder shall be deemed to hereby irrevocably attorn, to the exclusive jurisdiction of the courts of such province.

### **13.17 Language**

*Les parties aux présentes ont exigé que la présente déclaration de fiducie, ainsi que tous les documents et avis qui en découleront, soient rédigés en langue anglaise.* The parties hereto have

required that this Declaration of Trust and all documents and notices resulting herefrom be drawn up in English.

**[Remainder of Page Intentionally Left Blank]**

**IN WITNESS WHEREOF** the Trustees appearing below, having been duly authorized to execute and deliver this Declaration of Trust, have caused these presents to be signed as of the date first above written.

Signed in the presence of:

\_\_\_\_\_

Witness

|

\_\_\_\_\_  
*"P. Jane Gavan"*

P. Jane Gavan

Signed in the presence of:

\_\_\_\_\_

Witness

|

\_\_\_\_\_  
*"Brian Pauls"*

Brian Pauls