

AMENDED AND RESTATED DECLARATION OF TRUST
governing
DREAM INDUSTRIAL REAL ESTATE INVESTMENT TRUST

AMENDED AND RESTATED DECLARATION OF TRUST
Amended and Restated as of June 7, 2022

OSLER, HOSKIN & HARCOURT LLP

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AMENDED AND RESTATED DECLARATION OF TRUST

THIS AMENDED AND RESTATED DECLARATION OF TRUST was made as of the 20th day of July, 2012, amended and restated as of the 4th day of October, 2012, amended and restated as of the 5th day of May, 2014, amended as of the 18th day of May, 2022 and is further amended and restated as of the 7th day of June, 2022.

WHEREAS the Trust was established pursuant to a declaration of trust dated July 20, 2012 (the “**Original Declaration of Trust**”) under the name “Dundee Industrial Real Estate Investment Trust” for the purpose of producing income for the exclusive benefit of the holders of Units;

AND WHEREAS the Trust was on that date settled with \$10.00 in lawful money of Canada;

AND WHEREAS the beneficiaries of the Trust are the holders of Units;

AND WHEREAS the Original Declaration of Trust was amended and restated as of October 4, 2012, further amended and restated as of May 5, 2014 and amended by a first amendment as of May 18, 2022;

AND WHEREAS the undersigned Trustees wish to further amend and restate the Declaration of Trust in its entirety by executing this Amended and Restated Declaration of Trust;

AND WHEREAS, for certainty, the amendment and restatement of the Original Declaration of Trust shall not constitute a termination or a resettlement of the Original Declaration of Trust or the Trust created thereby and hereby;

NOW THEREFORE, the undersigned Trustees hereby confirm and declare that they hold in trust as trustees any and all other property, real, personal or otherwise, tangible or intangible, which has been at the date hereof or 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:

“**Adjusted Unitholders’ Equity**” means, at any time, the aggregate of: (a) the amount of unitholders’ equity; and (b) the amount of accumulated depreciation and amortization recorded on the books and records of the Trust and its Subsidiaries in respect of their properties, in each case calculated in accordance with IFRS;

“**Affiliate**” means, with respect to any Person, a Person who is an “affiliate” of that first mentioned Person as that term is defined in NI 45-106;

“**Annuitant**” means the annuitant or beneficiary of a Deferred Income 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);

“**Audit Committee**” means the committee of the Trustees established pursuant to Section 8.3;

“**Auditors**” means the firm of chartered accountants appointed as the auditors of the Trust and its Subsidiaries from time to time in accordance with Section 14.4;

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

“**Business Day**” means any day other than a Saturday or a Sunday or statutory holiday on which Canadian chartered banks are open in the City of Toronto in the Province of Ontario for the transaction of banking business;

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

“**CDS**” means CDS Clearing and Depository Services Inc., together with its successors from time to time;

“**Chair**”, “**Vice-Chair**”, “**President**”, “**Chief Executive Officer**”, “**Chief Financial 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;

“**Closing Date**” means the date on which the initial public offering of Units by the Trust pursuant to the Prospectus was completed;

“**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 to it in NI 45-106;

“**DAM**” means DREAM Asset Management Corporation (formerly Dundee Realty Corporation) and its successors and assigns;

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

“**Deferred Income 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 or a deferred profit sharing plan, each as defined in the Tax Act;

“**Deferred Unit Incentive Plan**” means the Trust’s Deferred Unit Incentive Plan for Trustees, Senior Management and Consultants;

“**DIMLP**” means Dream Industrial Management Limited Partnership (formerly Dundee Industrial Management Limited Partnership), a limited partnership created under the laws of the Province of Ontario and its successors and assigns;

“**DIMLP Agreement**” means the limited partnership agreement dated as of July 20, 2012 creating DIMLP, as it may be further amended, supplemented and/or restated from time to time;

“**Dissenting Offeree**” means, where a take-over bid is made for all of the Units other than those held by the Offeror (and its Affiliates and Associates), a Unitholder who does not accept the take-over bid and includes a subsequent holder of those Units who acquires them from the first mentioned holder;

“**Distribution Date**” means, with respect to a distribution by the Trust, a Business Day determined by the Trustees for any calendar month to be on or about the 15th day of the following calendar month;

“**Distribution Reinvestment Plan**” means the distribution reinvestment and unit purchase plan adopted by the Trust for holders of Units;

“**DOLP**” means Dream Office LP (formerly Dundee Properties Limited Partnership), a limited partnership created under the laws of the Province of Ontario and its successors and assigns;

“**Europe Asset Management Agreement**” means the asset management agreement dated as of January 1, 2022 among Dream Industrial International Sub-Trust, Dream Industrial International Holdings LP, Dream Industrial Europe Advisors Coöperatieve U.A., Dream Europe Asset Management Corporation and DAM, as amended, supplemented and/or restated from time to time;

“**Exchange and Support Agreement**” means the exchange and support agreement dated as of October 4, 2012 between the Trust, Industrial LP and each holder of an Industrial LP Class B Unit, and each additional person who becomes, from time to time, a holder of exchangeable units and agrees to be a party to and bound by such agreement, as it may be amended, supplemented and/or restated from time to time;

“**Exchangeable Securities**” means securities which are exchangeable into Units, including, without limitation, the Industrial LP Class B Units;

“**Executive Committee**” means the committee of the Trustees established pursuant to Section 8.2;

“**Governance, Compensation and Environmental Committee**” means the committee of the Trustees established pursuant to Section 8.4;

“**IFRS**” means International Financial Reporting Standards established by the International Accounting Standards Board;

“**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;

“**Independent Trustee**” means any Trustee who is independent for purposes of NI 58-101;

“**Industrial General Partner**” means Dream Industrial (GP) Inc. (formerly Dundee Industrial (GP) Inc.), a corporation incorporated under the laws of the Province of Ontario to be the general partner of Industrial LP;

“**Industrial LP**” means Dream Industrial LP (formerly Dundee Industrial Limited Partnership), a limited partnership created under the laws of the Province of Ontario, and its successors and assigns;

“**Industrial LP Agreement**” means the amended and restated limited partnership agreement dated as of June 7, 2022, governing Industrial LP, as it may be further amended, supplemented or restated from time to time;

“**Industrial LP Class A Unit**” means a unit of interest in Industrial LP designated as a LP Class A Unit and having the rights and attributes described in the Industrial LP Agreement with respect thereto;

“**Industrial LP Class A Note Purchase Agreement**” means the purchase agreement dated as of October 4, 2012, among DOLP and certain subsidiaries of DOLP, as vendors, and the Trust, as purchaser, as it may be amended, supplemented and/or restated from time to time;

“**Industrial LP Class B Unit**” means a unit of interest in Industrial LP designated as a LP Class B Unit and having the rights and attributes described in the Industrial LP Agreement with respect thereto;

“**Initial Contribution**” means the amount of \$10.00 in cash paid by DOLP on July 20, 2012 for the purpose of settling the Trust;

“**Initial Properties**” means the income-producing properties in which the Trust indirectly acquired an ownership interest on October 4, 2012;

“**Initial Unitholder**” means Dream Office LP;

“**Manager**” means DIMLP and its successors and permitted assigns under the Master Property Management Agreement;

“**MI-61-101**” means Multilateral Instrument 61-101 - *Protection of Minority Security Holders in Special Transactions*;

“**Master Property Management Agreement**” means the property and facility management agreement dated as of January 1, 2015 among DIMLP, Industrial LP and the Trust, as it may be amended, supplemented and/or restated from time to time;

“**Monthly Limit**” has the meaning set out in Subsection 5.21(e);

“**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 Industrial LP and any other property of the Trust) designated as having been paid to the redeeming Unitholders pursuant to Section 5.21; (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 for the year and/or 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*;

“**NI 58-101**” means National Instrument 58-101 – *Disclosure of Corporate Governance Practices*;

“**North America Asset Management Agreement**” means the amended and restated asset management agreement dated as of January 1, 2022 among the Trust, Industrial LP and DAM, as amended, supplemented and/or restated from time to time;

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

“**Offeree**” means a Person to whom a take-over bid is made;

“**Offeror**” means a Person, or two or more persons acting jointly or in concert, that makes a take-over bid;

“**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;

“**Preferred Unit**” means a preferred unit representing an interest in the Trust (other than a Special Trust Unit or a Unit) created, authorized and issued hereunder and having the rights and attributes established by the Trustees from time to time in accordance with Section 5.4;

“**Prospectus**” means the final prospectus of the Trust dated September 26, 2012 relating to the initial public offering of Units;

“**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;

“**Redemption Date**” has the meaning set out in Subsection 5.21(c);

“**Redemption Price**” has the meaning set out in Subsection 5.21(c);

“**Register**” has the meaning set out in Section 5.15;

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

“**Related Party**” means, with respect to any Person, a Person who is a “related party” of that first mentioned Person, as that term is defined in MI 61-101, but for purposes of this Declaration of Trust shall not include any wholly owned subsidiary of the Trust;

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

“**Services Agreement**” means the services agreement dated as October 4, 2012 between the Trust, certain of the Trust’s Subsidiaries and Dream Industrial Management Corp. (formerly Dundee Realty Management Corp.), as amended, supplemented and/or restated from time to time;

“**Special Trust Unit**” means a unit of the Trust (other than a Unit or a Preferred Unit) authorized and issued hereunder to a holder of securities (including, without limitation, a holder of Industrial LP Class B Units) which are exchangeable for Units;

“**Subsidiary**” means, with respect to any Person, a Person who is a “subsidiary” of that first mentioned Person as that term is defined in NI 45-106;

“**Subsidiary Securities**” means Notes or other securities of a Subsidiary of the Trust;

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

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

“**Transfer Date**” has the meaning set out in Subsection 5.21(f);

“**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 13.4(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 Section 6.9 from time to time;

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

“**Unitholder**” means a Person whose name appears on the Register as a holder of one or more Units, but “**unitholders**”, when used in lower case type, refers to all holders of REIT Units whose names appear on the Register as holders of one or more REIT Units; and

“**year end distribution**” has the meaning set out in Section 9.1.

1.2 Construction

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

- (a) references to “Declaration of Trust”, “Amended and Restated Declaration of Trust”, “this Declaration of Trust”, “this Amended and Restated 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 the masculine, feminine and neuter 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 Canada; 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 it 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 Industrial Real Estate Investment Trust**” in its English form and “**Fiducie de placement immobilier industriel 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 Industrial Real Estate Investment Trust” in its English form or “Fiducie de placement immobilier industriel 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 Confirmation of Establishment of Trust

The Trustees hereby declare and agree to continue 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.

1.7 Nature of the Trust

The Trust is a limited purpose unincorporated open-ended 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 or other regulatory authorities; and
- (b) the terms, conditions and trusts set forth in this Declaration of Trust.

The beneficial interest 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 9 and distributions payable to unitholders upon the termination of the Trust as contemplated in Article 12. 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 12. The undertakings and activities of the Trust will be (i) the transfer, acquisition or acceptance of the Trust Property determined by the Trustees from time to time and the administration of such Trust Property; (ii) arranging for the funding of such acquisitions to the extent necessary; (iii) the granting of security in the Trust Property for the obligations of the Trust; all in such manner and on such terms as the Trustees, acting reasonably, deem appropriate; and (iv) 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. 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, that would (i) prevent the Trust from qualifying as a "mutual fund trust" or cause it to disqualify as such or cause it to disqualify as a "real estate investment trust", each as defined in the Tax Act; or (ii) cause the Trust to be subject to tax under paragraph 122(1)(b) of the Tax Act. 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 AND OFFICERS

2.1 Number

From and after the Closing Date, there shall be at all times no fewer than five and no more than twelve Trustees. There shall be six Trustees on the Closing Date. The number of Trustees may only be changed within such limits by the unitholders or, if authorized by the unitholders, by the Trustees, provided that the Trustees may not, between meetings of the unitholders, appoint an additional Trustee if, after such appointment, the total number of Trustees would be greater than one and one-third times the number of Trustees in office immediately following the last annual meeting of the unitholders. A vacancy occurring among the Trustees may be filled by resolution of the remaining Trustees so long as they constitute a quorum or by the unitholders at a meeting of the unitholders.

2.2 Term of Office

The Trustees on the Closing Date shall hold office for a term expiring at the close of the first annual meeting of the unitholders or until their respective successors are elected or appointed and shall be eligible for re-election. Thereafter, the Trustees shall be elected at each annual meeting of the unitholders for a term expiring at the conclusion of the next annual meeting or until their successors are elected or appointed and shall be eligible for re-election. Trustees appointed by the Trustees between meetings of the unitholders or to fill a vacancy, in each case in accordance with Section 2.1, shall be appointed for a term expiring at the conclusion of the next annual meeting or until their successors are elected or appointed and shall be eligible for election or re-election.

2.3 Qualifications of Trustees

A Trustee shall be an individual at least 18 years of age who has not been found to be of unsound mind by a court in Canada or elsewhere, and who does not have the status of bankrupt. Trustees are not required to hold REIT Units. A majority of Trustees shall be at all times Resident Canadians. If at any time a majority of Trustees are not Resident Canadians because of the death, resignation, bankruptcy, adjudicated incompetence, removal or change in circumstance of any Trustee who was a Resident Canadian Trustee, the remaining Trustees, whether or not they constitute a quorum, shall appoint a sufficient number of Resident Canadian Trustees to comply with this requirement. In addition to the foregoing, a majority of Trustees shall be at all times Independent Trustees. If at any time a majority of Trustees are not Independent Trustees because of the death, resignation, bankruptcy, adjudicated incompetence, removal or change in circumstance of any Trustee who was an Independent Trustee, this requirement shall not be applicable for a period of 60 days thereafter, during which time the remaining Trustees shall appoint a sufficient number of Independent Trustees to comply with this requirement.

2.4 Election of Trustees

The election of the Trustees shall be at each meeting of unitholders at which an election of Trustees is proposed. The election or appointment of any Trustee (other than an individual who is serving as a Trustee immediately prior to such election or appointment) shall not become effective unless and until such individual shall have in writing accepted his/her election or appointment and agreed to be bound by the terms of this Declaration of Trust.

2.5 Resignations, Removal and Death of Trustees

A Trustee may resign at any time by an instrument in writing signed by him/her and delivered or mailed to the Chair or, if there is no Chair, the Chief Executive Officer. Such resignation shall take effect on the date such notice is given or at any later time specified in the notice. A Trustee may be removed at any time with or without cause by a majority of the votes cast at a meeting of the unitholders called for that purpose or by the written consent of the unitholders holding in the aggregate not less than a majority of the outstanding REIT Units entitled to vote thereon or with cause by a resolution passed by an affirmative vote of not less than two-thirds of the other Trustees. Any removal of a Trustee shall take effect immediately following the aforesaid vote or resolution, and any Trustee so removed shall be so notified by the Chair or another officer of the Trust forthwith following such removal. Upon the resignation or removal of any Trustee, or his/her otherwise ceasing to be a Trustee, he/she shall: (i) cease to have the rights, privileges and powers of a Trustee hereunder; (ii) execute and deliver such documents as the remaining Trustees shall reasonably require for the conveyance of any Trust Property held in his/her name; (iii) account to the remaining Trustees as they may require for all property which he/she holds as Trustee; and (iv) resign from all representative or other positions held by him/her on behalf of the Trust, including as a director or officer of any corporation in which the Trust owns any securities (directly or indirectly); upon which he/she shall be discharged from his/her obligations as Trustee. Upon the incapacity or death of any Trustee, his/her legal representative shall execute and deliver on his/her behalf such documents as the remaining Trustees may require as provided in this Section. In the event that a Trustee or his/her legal representative, as applicable, is unable or unwilling to execute and deliver such required documents, each of the remaining Trustees is hereby appointed as the attorney of such Trustee for the purpose of executing and delivering such required documents.

2.6 Vacancies

The term of office of a Trustee shall terminate and a vacancy shall occur in the event of the death, resignation, bankruptcy, adjudicated incompetence or other incapacity to exercise the duties of the office or upon the removal of such Trustee. No such vacancy shall operate to annul this Declaration of Trust or affect the continuity of the Trust. Until vacancies are filled, the remaining Trustee or Trustees (even if less than a quorum) may exercise the powers of the Trustees hereunder.

2.7 Successor and Additional Trustees

The right, title and interest of the Trustees in and to the Trust Property and the rights of the Trustees to control and exclusively administer the Trust and all other rights of the Trustees at law or under this Declaration of Trust shall vest automatically in all individuals who may hereafter become Trustees upon their due election or appointment and qualification without any further act, and they shall thereupon have all the rights, privileges, powers, obligations and immunities of the Trustees under this Declaration of Trust. Such right, title and interest shall vest in the Trustees whether or not conveyancing or transfer documents have been executed and delivered pursuant to Section 2.5 or otherwise.

2.8 Compensation and Other Remuneration

The Trustees shall be paid such compensation for their services as the Trustees may from time to time determine. Until otherwise determined, Trustees, other than Trustees who are employees of

the Trust, DAM or any of their respective Affiliates, shall receive an annual retainer in the amount of \$25,000 per year from the Trust plus a meeting fee of \$1,500 per meetings of the Board of Trustees or a committee thereof that are attended in person or via teleconference and reimbursement for their out-of-pocket expenses incurred in acting as a Trustee. The Chair of the Board of Trustees, if not an employee of the Trust, DAM or any of their respective Affiliates shall receive an annual fee of \$80,000 but shall not receive fees for board or committee meetings, and the Chair of the Audit Committee shall receive an additional fee of \$20,000. The Chair of each other committee, if not an employee of the Trust, DAM or any of their respective Affiliates shall receive an additional annual fee of \$5,000. Each of the Trustees, either directly or indirectly, shall also be entitled to receive remuneration for services rendered to the Trust in any other capacity. Such services may include legal, accounting or other professional services or services as a broker, transfer agent or underwriter, whether performed by a Trustee or any Person affiliated with a Trustee. Trustees who are employees of and who receive salary from the Trust, DAM or any of their respective Affiliates shall not be entitled to receive any remuneration for their services as Trustees but shall be entitled to reimbursement from the Trust of their out-of-pocket expenses incurred in acting as a Trustee.

2.9 Officers of the Trust

The Trust may have a Chair, one or more Vice-Chairs, a President, a Chief Executive Officer, a Chief Financial 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 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. The Chair shall be entitled to receive notice of and attend all meetings of Trustees but, unless he or she is a Trustee shall not be entitled to vote at any such meeting. Officers of the Trust shall be appointed and discharged and their remuneration determined by 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 11.2, 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 11.2, 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 11.2, 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 borrow money from or incur indebtedness to any Person; to guarantee, indemnify or act as surety with respect to payment or performance of obligations of Subsidiaries of the Trust; to enter into other obligations on behalf of the Trust; and to assign, convey, transfer, mortgage, subordinate, pledge, grant security interests in, encumber or hypothecate the Trust Property to secure any of the foregoing;
- (f) to lend money or other Trust Property, whether secured or unsecured;
- (g) entering into and performing its obligations under the Exchange and Support Agreement, the Industrial LP Class A Note Purchase Agreement, the Master Property Management Agreement, the Asset Management Agreement and the Services Agreement;

- (h) to maintain records and provide reports to unitholders;
- (i) to establish systems to monitor the qualification of the Trust as a “mutual fund trust” pursuant to subsections 132(6) and 132(7) of the Tax Act and a “real estate investment trust” within the meaning of the Tax Act and ensure that the Trust does not take any action or acquire, retain or hold any investment that would cause the Trust or a Subsidiary of the Trust to become liable to tax under paragraph 122(1)(b), subsection 197(2) or Part XII.2 of the Tax Act;
- (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 (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 it

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 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 application for the listing on any stock exchange 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 or listings;
- (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 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

[Intentionally deleted].

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. 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, where the unitholder is a Deferred Income Plan, registered pension fund or plan as defined in the Tax Act, or other similar fund or plan registered under the Tax Act, upon plan

beneficiaries and plan holders past, present and future) and REIT Units shall be issued and sold on the condition and understanding that any and all such determinations shall be binding as aforesaid.

3.8 Conflict of Interest

Except for agreements entered into on or before the Closing Date and/or the ownership of Units, Industrial LP Class A Units or Industrial LP Class B Units, a Trustee or an officer of the Trust shall disclose to the Trustees, in writing or by requesting to have it entered in the minutes of meetings of the Board of Trustees or of meetings of committees of the Trustees, the nature and extent of any interest that he or she has in a material contract or material transaction, whether made or proposed, with the Trust or any of its Subsidiaries, if the Trustee or officer: (i) is a party to the contract or transaction; (ii) is a director or an officer, or an individual acting in a similar capacity, of a party to the contract or transaction; or (iii) has a material interest in a party to the contract or transaction:

- (a) the disclosure required in the case of a Trustee shall be made:
 - (i) at the meeting of the Board of Trustees or the applicable committee thereof, as the case may be, at which a proposed contract or transaction is first considered;
 - (ii) if the Trustee was not then interested in a proposed contract or transaction, at the first such meeting after he/she becomes so interested;
 - (iii) if the Trustee becomes interested after a contract is made or a transaction is entered into, at the first meeting after he/she becomes so interested; or
 - (iv) if an individual who is interested in a contract or transaction later becomes a Trustee, at the first such meeting after he/she becomes a Trustee;
- (b) the disclosure required in the case of an officer of the Trust, who is not a Trustee, shall be made:
 - (i) forthwith after such officer becomes aware that the contract or transaction or proposed contract or transaction is to be considered or has been considered at a meeting of the Board of Trustees or the applicable committee thereof, as the case may be;
 - (ii) if such officer becomes interested after a contract is made or transaction is entered into, forthwith after such individual becomes aware that he/she has become so interested; or
 - (iii) if an individual who is interested in a contract or a transaction later becomes an officer of the Trust, forthwith after he/she becomes an officer of the Trust;
- (c) notwithstanding Subsections 3.8(a) and 3.8(b), if a material contract or material transaction, whether entered into or proposed, is one that, in the ordinary course of the affairs of the Trust, would not require approval by the Trustees or the unitholders, a Trustee or officer of the Trust shall disclose, in writing to the Trustees

or applicable committee thereof or request to have it entered into the minutes of meetings of the Board of Trustees or of the applicable committee thereof, the nature and extent of his or her interest immediately after he or she becomes aware of the contract or transaction;

- (d) a Trustee referred to in this Section 3.8 shall not vote on any resolution to approve such contract or transaction unless the contract or transaction:
 - (i) relates primarily to his or her remuneration as a Trustee, officer, employee or agent of the Trust or a Subsidiary; or
 - (ii) is for indemnity under Section 13.1 or the purchase of liability insurance;
- (e) for the purposes hereof, a general notice to the Trustees by a Trustee or an officer of the Trust disclosing that he/she is a director or officer of or has a material interest in a Person and is to be regarded as interested in any contract made or any transaction entered into with that Person, is a sufficient disclosure of interest in relation to any contract so made or transaction so entered into. In the event that a meeting of the unitholders is called to confirm or approve a contract or transaction which is the subject of a general notice to the Trustees, the nature and extent of the interest in the contract or transaction of the Persons giving such general notice shall be disclosed in reasonable detail in the notice calling such meeting of the unitholders or in any information circular to be provided by this Declaration of Trust or by law;
- (f) where a material contract is made or a material transaction is entered into between the Trust and a Trustee or an officer of the Trust, or between the Trust and another Person in which a Trustee or an officer of the Trust has a material interest:
 - (i) such Trustee or officer of the Trust is not accountable to the Trust or to the unitholders for any profit or gain realized from the contract or transaction; and
 - (ii) the contract or transaction is neither void nor voidable,

by reason only of that relationship or by reason only that such Trustee or officer is present at or is counted to determine the presence of a quorum at the meeting of the Board of Trustees or the applicable committee thereof, as the case may be, that authorized the contract or transaction, if such Trustee or officer of the Trust disclosed his/her interest in accordance with this Section 3.8, and the contract or transaction was reasonable and fair to the Trust at the time it was approved;
- (g) notwithstanding anything in this Section, but without limiting the effect of Subsection 3.8(f), a Trustee or an officer of the Trust, acting honestly and in good faith, is not accountable to the Trust or to the unitholders for any profit or gain realized from any such contract or transaction by reason only of his/her holding such office or position, and the contract or transaction, if it was reasonable and fair to the Trust at the time it was approved or confirmed, is not by reason only of such Trustee's or officer's interest therein void or voidable, where:

- (i) the contract or transaction is confirmed or approved at a meeting of the unitholders duly called for that purpose; and
- (ii) the nature and extent of such Person's interest in the contract or transaction are disclosed in reasonable detail in the notice calling the meeting or in any information circular to be provided by this Declaration of Trust or by law; and
- (h) subject to Subsections 3.8(f) and 3.8(g), where a Trustee or an officer of the Trust fails to disclose his/her interest in a material contract or transaction in accordance with this Declaration of Trust or otherwise fails to comply with this Section 3.8, the Trustees or any unitholder, in addition to exercising any other rights or remedies in connection with such failure exercisable at law or in equity, may apply to a court for an order setting aside the contract or transaction and directing that such Trustee or officer account to the Trust for any profit or gain realized.

3.9 Independent Trustee Matters

Notwithstanding anything herein to the contrary, in addition to requiring the approval of a majority of the Trustees, the approval of not less than a majority of the Independent Trustees holding office at such time who have no interest in the matter (given by vote at a meeting of Independent Trustees or by written consent) shall be required with respect to any decision:

- (a) to make any material change to the Europe Asset Management Agreement, the North America Asset Management Agreement or the Services Agreement or to make any increase in the fees payable thereunder (or any change thereto which has the effect of increasing the fees payable thereunder), or to terminate the Asset Management Agreement or the Services Agreement;
- (b) to enter into any agreement or transaction in which any Related Party has a material interest or to make a material change to any such agreement or transaction;
- (c) to approve or enforce any agreement entered into by the Trust or any of its Subsidiaries with a Related Party;
- (d) to permit any of the Trust's Subsidiaries to acquire any real or other property in which a Related Party has an interest or to sell any interest in any real or other property to a Related Party; and
- (e) to make or prosecute any claim by or against any Related Party.

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, amounts receivable in respect of such units, Notes or other securities, cash and similar deposits in a Canadian chartered bank or trust company and, subject to the limitations set out in Subsection 4.1(b) 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 Deferred Income 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” or “real estate investment trust” for purposes of the Tax Act;
- (c) subject to the qualifications set out in Subsection 4.1(g), Subsidiaries of the Trust will focus their investment activities on industrial revenue producing properties; provided, however, Subsidiaries of the Trust may invest in other classes of real properties if the Trustees determine that it is in the best interests of the Trust to do so;
- (d) subject to the qualifications set out in Subsection 4.1(g), Subsidiaries of the Trust will not invest in or acquire securities of a Canadian real estate investment trust unless:
 - (i) the activities of the real estate investment trust are focused on acquiring, holding, maintaining, improving, leasing or managing revenue producing properties; and
 - (ii) in the case of any proposed investment or acquisition which would result in Subsidiaries of the Trust owning beneficially more than 10% of the outstanding units of such real estate investment trust (the “acquired trust”), the investment is made for the purpose of subsequently effecting the merger or combination of the business and assets of the Subsidiaries and the acquired trust or for otherwise ensuring that the Subsidiaries will control the business and operations of the acquired trust;
- (e) Subsidiaries of the Trust will not lease or sublease to any Person any real property, premises or space where that Person and its Affiliates would, after the contemplated lease or sublease, be leasing or subleasing real property, premises or space having a fair market rental rate in excess of 15% of our Adjusted Unitholders’ Equity;
- (f) Subsidiaries of the Trust shall not invest in raw land (except for the acquisition of properties adjacent to their existing properties for the purpose of renovation or expansion of existing facilities where the total cost of all such investments does not exceed 5% of Adjusted Unitholders’ Equity); and

- (g) Subsidiaries of the Trust may invest an amount (which, in the case of an amount invested to acquire real property, is the purchase price less the amount of any indebtedness assumed or incurred by us and secured by a mortgage on such property) up to 25% of Adjusted Unitholders' Equity in investments or transactions which do not otherwise comply with our investment guidelines, so long as the investment does not contravene subsection (b) set out above.

For the purpose of the foregoing restrictions, the assets, liabilities and transactions of a Person in which the Trust or any of its Subsidiaries has an interest will be deemed to be those of the Trust on a proportionate consolidated basis. In addition, any references in the foregoing to an investment in real property will be deemed to include an investment in a joint venture arrangement that holds real property.

4.2 Operating Policies

The operations and affairs of the Trust shall be conducted in accordance with the following operating policies and the Trust shall not permit any of its Subsidiaries to conduct its operations and affairs other than in accordance with the following policies:

- (a) (i) any written instrument creating an obligation which is or includes the granting by the REIT of a mortgage; or (ii) to the extent the Trustees determine to be practicable and consistent with their fiduciary duty to act in the best interests of the Trust and the unitholders, any written instrument which in the sole judgment of the Trustees creates a material obligation of the Trust; must, in each case, contain a provision or be subject to an acknowledgement to the effect that the obligation being created is not personally binding upon, and that resort will not be had to, nor will recourse or satisfaction be sought from the private property of any of the Trustees, unitholders, Annuitants or beneficiaries under a plan of which a unitholder acts as a Trustee or carrier or officers, employees or agents of the Trust, but that only property of the Trust or a specific portion thereof will be bound;
- (b) the Trust shall only guarantee the obligations of its wholly-owned Subsidiaries (other than any wholly-owned Subsidiaries that are general partners in partnerships that are not wholly-owned by the Trust), except that the Trust may guarantee the obligations of any other Person that is not a wholly-owned Subsidiary of the Trust (and may guarantee the obligations of a Subsidiary that is a general partner in a partnership that is not wholly-owned by the Trust) if the Trust has received a legal opinion that the guarantee by the Trust of the obligations of such other Person should not cause the Trust to cease to qualify as a "mutual fund trust" for the purposes of the Tax Act;
- (c) Subsidiaries of the Trust shall not enter into any transaction involving the purchase of lands or land and improvements thereon and the leasing thereof back to the vendor where the fair market value net of encumbrances of the property being leased to the vendor together with all other property being leased by Subsidiaries of the Trust to the vendor and its Affiliates is in excess of 15% of Adjusted Unitholders' Equity;

- (d) the limitation referred to in Subsection 4.2(c) will not apply where the lessee or sublessee is, or where the lease or sublease is guaranteed by:
 - (i) the Government of Canada, the Government of the United States, the Government of any province or territory of Canada, any state of the United States, any municipality or city in Canada or the United States, or any agency or crown corporation thereof;
 - (ii) any corporation which has securities outstanding that have received and continue to hold an investment grade rating from a recognized credit rating agency at the time the lease or sublease is entered into, or at the time other satisfactory leasing or pre-leasing arrangements were entered into that is not less than A low or its equivalent; or
 - (iii) a Canadian chartered bank or a trust company or insurance company registered or licensed federally or under the laws of a province of Canada;
- (e) Subsidiaries of the Trust may engage in construction or development of real property provided such real property meets the Trust's investment guidelines and operating policies;
- (f) title to each real property shall be held by and registered in the name of a Subsidiary of the Trust or a corporation or other entity wholly-owned, directly or indirectly, by a Subsidiary of the Trust or jointly-owned, directly or indirectly, by a Subsidiary of the Trust with joint venturers; provided that where land tenure will not provide fee simple title, a Subsidiary of the Trust or a corporation or other entity wholly-owned, directly or indirectly, by a Subsidiary of the Trust or jointly-owned, directly or indirectly, by a Subsidiary of the Trust with joint venturers will hold a land lease as appropriate under the land tenure system in the relevant jurisdiction;
- (g) Subsidiaries of the Trust have conducted environmental and other diligence, as is commercially reasonable in the circumstance, on each real property the Trust or Industrial LP intend to acquire with respect to the physical condition thereof, including required capital replacement programs;
- (h) Subsidiaries of the Trust will obtain and maintain at all times insurance coverage in respect of potential liabilities of Subsidiaries of the Trust and the accidental loss of value of the assets of Subsidiaries of the Trust from risks, in amounts, with such insurers, and on such terms as the Trustees consider appropriate, taking into account all relevant factors including the practices of owners of comparable properties;
- (i) Subsidiaries of the Trust will have conducted a phase I environmental site assessment of each real property to be acquired by it and, if the phase I environmental site assessment report recommends that further environmental site assessments be conducted, Subsidiaries of the Trust shall have conducted such further environmental site assessments, in each case by an independent and experienced environmental consultant; such site assessment as a condition to any acquisition shall be satisfactory to Industrial LP; and

- (j) Subsidiaries of the Trust will maintain an interest coverage ratio of no less than 1.4 times. The interest coverage ratio is calculated as net operating income from continuing operations, plus interest and fee income, less general and administrative expense from continuing operations, including equity accounted investments, divided by interest expense on debt. When calculating the interest coverage ratio, the results of equity accounted investments using proportionate consolidation at its ownership level shall be included.

For the purpose of the foregoing policies, the assets, liabilities and transactions of a Person in which the Trust or any of its Subsidiaries has an interest will be deemed to be those of the Trust on a proportionate consolidated basis. In addition, any references in the foregoing to investment in property will be deemed to include an investment in a joint venture arrangement.

4.3 Amendments to Investment Guidelines and Operating Policies

Subject to Sections 4.4 and 11.1, any of the investment guidelines set forth in Section 4.1 may be amended by the vote of at least a two-thirds majority of the votes cast at a meeting of the unitholders called for that purpose. Subject to Section 11.1, 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.

4.5 Operating Plan

The Trustees shall, at least on an annual basis, approve an investment and operating plan for the ensuing period.

ARTICLE 5 UNITS

5.1 REIT Units

The units of the Trust shall be divided into two classes described and designated as “Units” and “Special Trust Units” (collectively, the “**REIT Units**”), which shall be entitled to the respective 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 Special Trust Units

The Special Trust Units shall have attached thereto the following attributes:

- (a) Special Trust Units shall only be issued in connection with or in relation to the issuance of Exchangeable Securities. A Special Trust Unit shall be issued in tandem with the Exchangeable Securities issued and shall be used to provide voting rights with respect to the Trust to holders of Exchangeable Securities. Each Special Trust Unit shall entitle the holder of record thereof to a number of votes at all meetings of unitholders or in respect of any written resolution of the unitholders equal to the number of Units which may be obtained upon the surrender of the Exchangeable Securities to which the Special Trust Units relate.
- (b) Concurrently with the issue of the Special Trust Units, the Trust shall enter into the Exchange and Support Agreement.
- (c) The holder of a Special Trust Unit shall not be entitled to participate in any distributions by the Trust, whether of Income of the Trust, Net Realized Capital Gains of the Trust or other amounts.
- (d) In the event of liquidation, dissolution or winding up of the Trust, the holder of a Special Trust Unit shall not be entitled to any amount.
- (e) Special Trust Units shall not be transferable separately from the Exchangeable Securities issued in tandem with them, and, upon any permitted transfer of such Exchangeable Securities, such Special Trust Units shall automatically be transferred to the transferee of such Exchangeable Securities.
- (f) As Exchangeable Securities are surrendered for Units or redeemed or purchased for cancellation, the corresponding Special Trust Units shall automatically be cancelled. Following such cancellation, such Special Trust Units shall no longer be outstanding and may not be reissued.

- (g) The Special Trust Units shall have no economic entitlement nor beneficial interest in the Trust or the Trust Property.

5.4 Preferred Units

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.

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 or Special Trust 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.

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.

5.5 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, except that Special Trust Units shall only be issued in connection with the issuance of Exchangeable Securities. 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.

5.7 Consolidation of Each Series of Units and Fractional Units

- (a) Immediately after any pro rata distribution of additional Units to all unitholders, pursuant to Subsection 9.3(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, the consolidation will 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.
- (c) If as a result of any act of the Trustees hereunder, any Person becomes entitled to a fraction of a Unit, such Person shall not be entitled to receive a certificate therefor. Fractional Units shall not, except to the extent that they may represent in the aggregate one or more whole Units, entitle the holders thereof to notice of or to attend or to vote at meetings of the unitholders. Subject to the foregoing, such fractional Units shall have attached thereto the rights, restrictions, conditions and limitations attaching to whole Units in the proportion that they bear to a whole Unit.

5.8 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.

5.9 Non-Resident Ownership Constraint

Notwithstanding any provision of this Declaration of Trust to the contrary, at no time may more than 49% of the Units or more than 49% of the Special Trust Units then outstanding be held by or for the benefit of Persons who are not Resident Canadians (“**Non-Resident Beneficiaries**”). The Trustees may require declarations as to the jurisdictions in which beneficial owners of REIT Units are resident or declarations from holders of REIT Units as to whether such REIT Units are held for the benefit of Non-Resident Beneficiaries. If the Trustees become aware that more than 49% of the Units or more than 49% of the Special Trust Units then outstanding are, or may be, held by or for the benefit of Non-Resident Beneficiaries or that such a situation is imminent, the Trustees may make a public announcement thereof and shall not accept a subscription for such REIT Units from or issue or register a transfer of such REIT Units to a Person unless the Person provides a declaration that the Person is not a non-resident for the purposes of the Tax Act (or, in the discretion of the Trustees, that the Person is not a Non-Resident Beneficiary) and does not hold his/her or its REIT Units for a Non-Resident Beneficiary. If, notwithstanding the foregoing, the Trustees determine that more than 49% of the Units or more than 49% of the Special Trust Units then outstanding are held by or for the benefit of Non-Resident Beneficiaries, the Trustees may send a notice to non-resident holders of the REIT Units and holders of REIT Units for Non-Resident Beneficiaries chosen in inverse order to the order of acquisition or registration or in such manner as the Trustees may consider equitable and practicable, requiring them to sell their REIT Units or a portion thereof within a specified period of not more than 60 days. If the Unitholders receiving such notice have not sold or redeemed the specified number of REIT Units or provided the Trustees with satisfactory evidence that they are not non-residents for the purpose of the Tax Act and do not hold their REIT Units for the benefit of Non-Resident Beneficiaries within such period, the Trustees may sell or redeem such REIT Units on behalf of such Unitholders (and the Trustees shall have the power of attorney of such Unitholders to do so) and, in the interim, the voting and distribution rights attached to such REIT Units shall be suspended. Upon such sale the affected holders shall cease to be holders of REIT Units and their rights shall be limited to receiving the net proceeds of sale upon surrender of the certificates representing such REIT Units. In any situation where it is unclear whether REIT Units are held for the benefit of Non-Resident Beneficiaries, the Trustees may exercise their discretion in determining whether such REIT Units are or are not so held, and any such exercise by them of their discretion shall be binding for the purposes of this Section 5.9.

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 or any of its committees 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 of their agreeing to produce subscriptions therefor, whether absolute or conditional.

5.12 Transferability

The Units are freely transferable, and the Trustees shall not impose any restriction on the transfer of Units. The Trustees shall use all reasonable efforts to obtain and maintain a listing for the Units on one or more stock exchanges in Canada. The Special Trust Units shall be transferable only together with the related Exchangeable Securities. Notwithstanding the foregoing, no transfer of REIT Units shall be effective as against the Trustees or shall be in any way binding upon the Trustees until the transfer has been recorded on the Register and no transfer of a REIT Unit shall be recognized unless such transfer is of a whole REIT Unit.

5.13 Certificates

- (a) Units may be represented in the form of one or more fully registered unit certificates held by, or on behalf of, CDS, as custodian of such certificates for the participants of CDS, registered in the name of CDS or its nominee, and registration of ownership and transfers of Units may be effected through the book-based system administered by CDS.
- (b) Each Unitholder or his/her duly authorized agent is entitled to a certificate bearing an identifying serial number in respect of the Units held by him/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.
- (c) The Trustees may establish a reasonable fee to be charged for every certificate issued evidencing the ownership of Units.
- (d) 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.

- (e) 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.

5.14 No Certificates for Special Trust Units

Unless otherwise determined by the Trustees, no holder of a Special Trust Unit shall be entitled to a certificate or other instrument from the Trust evidencing the holder’s ownership of such Special Trust Unit, and such holder shall only be entitled to be entered on the Register in accordance with Section 5.15.

5.15 Register

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.

Subject to Section 5.14, 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.

5.16 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/she derives his/her title to such REIT Units.

5.17 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.

5.18 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.

5.19 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 5.16, to succeed to all rights of the deceased unitholder under this Declaration of Trust.

5.20 Unclaimed Payments

In the event that the Trustees hold any amounts to be paid to the unitholders under Article 5, Article 9 or Article 12 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.

5.21 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 5.21, 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 5.21, the holder of the Units tendered for redemption shall be entitled to receive a price per Unit (the "Redemption Price") equal to the lesser of:
 - (i) 90% of the "market price" of the Units on the principal exchange or market on which the Units are quoted for trading on the trading day prior to the date on which the Units were surrendered to the Trust for redemption (the "Redemption Date"); and

- (ii) 100% of the “closing market price” of the Units on the principal exchange or market on which the Units are quoted for trading on the Redemption Date.

For the purposes of the foregoing calculation, the “market price” in respect of Units as at a specified date shall be an amount equal to the weighted average closing price of the Units on the principal exchange or market on which the Units are listed or quoted for trading during the period of 20 consecutive trading days ending on such date; provided that if the applicable exchange or market does not provide a closing price, but only provides the highest and lowest prices of the Units traded on a particular day, the “market price” as at a specified date will be an amount equal to the weighted average of the highest and lowest prices of the Units on the principal exchange or market on which the Units are listed or quoted for trading during the period of 20 consecutive trading days ending on such date; and provided further that if there was trading on the applicable exchange or market for fewer than five of the 20 trading days, the “market price” as at a specified date shall be an amount equal to the weighted average of the following prices established for each of the 20 trading days: (a) the weighted average of the last bid and last asking prices of the Units for each day on which there was no trading; (b) the closing price of the Units for each day on which there was trading if the exchange or market provides a closing price; and (c) the weighted average of the highest and lowest prices of Units for each day that there was trading if the exchange or market does not provide a closing price but provides only the highest and lowest prices of Units traded on a particular day.

The “closing market price” in respect of the Units as at a specified date will be: (i) an amount equal to the closing price of Units if there was a trade on the date and the exchange or market provides a closing price; (ii) an amount equal to the weighted average of the highest and lowest prices of Units if there was trading and the exchange or other market does not provide a closing price but provides only the highest and lowest trading prices of Units traded on a particular day; or (iii) the weighted average of the last bid and last asking price of Units if there was no trading on the date.

If a Unitholder is not entitled to receive cash upon the redemption of Units in circumstances in which Subsection 5.21(e)(ii) or (iii) apply, then the Redemption Price will be the fair market value of the Units, which will be determined by the Trustees in their sole discretion.

- (d) Subject to Subsections 5.21(e) and 5.21(f), the Redemption Price payable in respect of the Units tendered for redemption during any month shall be paid by cheque, drawn on a Canadian chartered bank or a trust company in lawful money of Canada, 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 5.21(d) shall not be applicable to Units of a series tendered for redemption by a Unitholder, if:
 - (i) the total amount payable by the Trust pursuant to Subsection 5.21(c) in respect of such Units and all other Units tendered for redemption prior thereto in the same calendar month exceeds \$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;
 - (ii) at the time the Units are tendered for redemption, the outstanding Units are not listed for trading or quoted on any stock exchange or market which the Trustees consider, in their sole discretion, provides representative fair market value prices for the Units; or
 - (iii) the normal trading of the outstanding Units is suspended or halted on any stock exchange on which the Units are listed for trading or, if not so listed, on any market on which the Units of such series are quoted for trading, on the Redemption Date for the Units of such series or for more than five trading days during the 10 trading day period commencing immediately after the Redemption Date for such Units.
- (f) If, pursuant to Subsection 5.21(e)(ii) or (iii), Subsection 5.21(d) is not applicable to Units tendered for redemption by a Unitholder, the Redemption Price per Unit specified in Subsection 5.21(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 \$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 \$100, such number shall be rounded to the next lowest multiple of \$100 and the excess shall be paid in cash. The portion of the Redemption Price payable pursuant to this Subsection 5.21(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 5.21(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 5.21(e)(i), Subsection 5.21(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 5.21(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 5.21(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 5.21 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; 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.

5.22 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 securities laws, instruments, regulations, rules, blanket orders, notices or policies or the rules or applicable policies of any stock exchange.

5.23 Right to Acquire

- (a) If, within 120 days after the date of a take-over bid, the take-over bid is accepted by the holders of not less than 90% of the Units (including Units issuable upon the surrender or exchange of any securities including Exchangeable Securities but not including any such Units held at the date of the take-over bid by or on behalf of the Offeror or Affiliates or Associates of the Offeror), other than Units held at the date of the take-over bid by or on behalf of the Offeror or an Affiliate or Associate of the Offeror, the Offeror is entitled, on complying with this Section 5.23, to acquire the Units held by Unitholders who do not accept such offer (each a “Dissenting Offeree”), provided that such Units have been or are legally required to be taken up and paid for by the Offeror.
- (b) An Offeror may acquire Units held by a Dissenting Offeree by sending by registered mail within 60 days after the date of termination of the take-over bid and in any event within 180 days after the date of the take-over bid, an Offeror’s notice to each Dissenting Offeree stating that:
 - (i) the Offerees holding more than 90% of the Units to which the bid relates accepted the take-over bid;
 - (ii) the Offeror is bound to take up and pay for or has taken up and paid for the Units of the Offerees who accepted the take-over bid;
 - (iii) a Dissenting Offeree is required to elect:
 - (A) to transfer their Units to the Offeror on the terms on which the Offeror acquired the Units of the Offerees who accepted the take-over bid, or
 - (B) to demand payment of the fair value of the Units in accordance with Subsection 5.23(i) to 5.23(r) by notifying the Offeror within 20 days after receiving the Offeror’s notice;
 - (iv) a Dissenting Offeree who does not notify the Offeror in accordance with Subsection 5.23(d) is deemed to have elected to transfer the Units to the Offeror on the same terms that the Offeror acquired the Units from the Offerees who accepted the take-over bid; and
 - (v) a Dissenting Offeree must send notice to the Trust within 20 days after he/she receives the Offeror’s notice.
- (c) Concurrently with sending the Offeror’s notice under Subsection 5.23(b), the Offeror shall send to the Trust a notice of adverse claim disclosing the name and address of the Offeror and the name of the Dissenting Offeree with respect to each Unit held by a Dissenting Offeree.
- (d) A Dissenting Offeree to whom an Offeror’s notice is sent under Subsection 5.23(b) shall, within 20 days after receiving that notice:

- (i) send the certificate(s) representing the Units to the Trust; and
- (ii) elect:
 - (A) to transfer the Units to the Offeror on the terms on which the Offeror acquired the Units of the Offerees who accepted the take-over bid; or
 - (B) to demand payment of the fair value of the Units in accordance with Subsections 5.23(i) to 5.23(r).
- (e) A Dissenting Offeree who does not notify the Offeror in accordance with Subsection 5.23(d)(ii)(B) is deemed to have elected to transfer the Units to the Offeror on the same terms on which the Offeror acquired the Units from the Offerees who accepted the take-over bid.
- (f) Within 20 days after the Offeror sends an Offeror's notice under Subsection 5.23(b), the Offeror shall pay or transfer to the Trust the amount of money or other consideration that the Offeror would have had to pay or transfer to a Dissenting Offeree if the Dissenting Offeree had elected to accept the take-over bid under Subsection 5.23(d)(ii)(A).
- (g) The Trust is deemed to hold in trust for the Dissenting Offeree the money or other consideration it receives under Subsection 5.23(f), and the Trust shall deposit the money in a separate account in a Canadian chartered bank and shall place the other consideration in the custody of a Canadian chartered bank or similar institution whose deposits are insured by the Canada Deposit Insurance Corporation.
- (h) Within 30 days after the Offeror sends an Offeror's notice under Subsection 5.23(b), the Trust shall:
 - (i) if the payment or transfer required by Subsection 5.23(f) is made, transfer to the Offeror the Units that were held by Dissenting Offerees;
 - (ii) give to each Dissenting Offeree who elects to accept the take-over bid terms under Subsection 5.23(d)(ii)(A) and who transferred his/her Units as required under Subsection 5.23(b), the money or other consideration to which the Offeree is entitled, disregarding fractional Units, if any, which may be paid for in money; and
 - (iii) if the payment or transfer required by Subsection 5.23(f) is made and the money or other consideration is deposited as required by Subsection 5.23(g), send to each Dissenting Offeree who has not sent its Unit certificate as required under Subsection 5.23(d) and a notice stating that:
 - (A) the Dissenting Offeree's Units have been cancelled,
 - (B) the Trust or some designated Person holds in trust for the Dissenting Offeree the money or other consideration to which the Dissenting Offeree is entitled as payment for or in exchange for the Units, and

- (C) the Trust will, subject to Subsections 5.23(i) to 5.23(r), send that money or other consideration to that Offeree without delay after receiving the Units.
- (i) If a Dissenting Offeree has elected to demand payment of the fair value of his/her Units under Subsection 5.23(d)(ii)(B), the Offeror may, within 20 days after it has paid the money or transferred the other consideration under Subsection 5.23(f), apply to a court to fix the fair value of the Units of that Dissenting Offeree.
- (j) If an Offeror fails to apply to a court under Subsection 5.23(i), a Dissenting Offeree may apply to a court for the same purpose within a further period of 20 days.
- (k) Where no application is made to a court under Subsection 5.23(j) within the period set out in that subsection, a Dissenting Offeree is deemed to have elected to transfer their Units to the Offeror on the same terms that the Offeror acquired the Units from the Offerees who accepted the take-over bid.
- (l) An application under Subsection 5.23(i) or 5.23(j) shall be made to a court having jurisdiction in the place where the Trust has its registered office.
- (m) A Dissenting Offeree is not required to give security for costs in an application made under Subsection 5.23(i) or 5.23(j).
- (n) On an application under Subsection 5.23(i) or 5.23(j):
 - (i) all Dissenting Offerees referred to in Subsection 5.23(d)(ii)(B) whose Units have not been acquired by the Offeror shall be joined as parties and are bound by the decision of the court; and
 - (ii) the Offeror shall notify each affected Dissenting Offeree of the date, place and consequences of the application and of their right to appear and be heard in Person or by counsel.
- (o) On an application to a court under Subsection 5.23(i) or 5.23(j) the court may determine whether any other Persons is a Dissenting Offeree who should be joined as a party, and the court shall then fix a fair value for the Units of all Dissenting Offerees.
- (p) A court may in its discretion appoint one or more appraisers to assist the court to fix a fair value for the Units of all Dissenting Offerees.
- (q) The final order of the court shall be made against the Offeror in favour of each Dissenting Offeree and for the amount for the Units as fixed by the court.
- (r) In connection with proceedings under this Section 5.23, a court may make any order it thinks fit and, without limiting the generality of the foregoing, it may:
 - (i) fix the amount of money or other consideration that is required to be held in trust under Subsection 5.23(g);

- (ii) order that money or other consideration be held in trust by a Person other than the Trust; and
- (iii) allow a reasonable rate of interest on the amount payable to each Dissenting Offeree from the date they send or deliver notice under Subsection 5.23(d) until the date of payment.

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 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. The annual meeting of the unitholders shall be held after delivery to the unitholders of the information referred to in Section 14.7 and, in any event, within 180 days after the end of each fiscal year of the Trust. The first annual meeting of unitholders shall be no later than June 30, 2013.

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. 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 has been given to each stock exchange in Canada on which the Units are listed for trading;
- (b) the Trustees have called a meeting of unitholders and have given notice thereof pursuant to Section 6.3;
- (c) in connection with the business as stated in the requisition:
 - (i) it clearly appears to the Trustees that the primary purpose of the matter covered by the requisition 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;
 - (iv) substantially the same matter covered by the requisition was submitted to the unitholders in an information circular (including a dissidents information circular) relating to a meeting of the unitholders held within five years preceding the receipt of the unitholder's request and the matter covered by the requisition did not receive the prescribed minimum amount of support at the meeting; or
 - (v) the rights conferred by this Section 6.2 are being abused to secure publicity; or
- (d) the unitholders who submitted the requisition fail to continue to hold or own at least 5% of the votes attaching to all outstanding REIT Units (on a fully diluted basis) up to and including the day of the meeting.

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 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, or within such other number of days as required by law or the relevant stock exchange, before the meeting. Notice of any meeting of unitholders shall state the purposes of the meeting.

6.4 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 25% 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 in person or by proxy constitutes a meeting and a quorum for such meeting. In the event of such quorum not being present at the appointed place on the date for which the meeting is called 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 and time as may be fixed by the Chair of the meeting. 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. The Chair, or, if the Chair is not present, the Vice-Chair or any other Trustee determined by the Trustees, shall be the Chair of any meeting of unitholders.

6.5 Voting

Unitholders may attend and vote at all meetings of unitholders either in person 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.

6.6 Unitholder Vote on Sale of Trust Property

No sale of Trust Property as an entirety or substantially as an entirety (other than as a part of an internal reorganization, including by way of the transfer of Trust Property or assets or property of a Subsidiary of the Trust, as approved by the Trustees) shall occur unless the same has been duly approved by at least two-thirds of the votes cast by the unitholders at a meeting duly called for that purpose or by written resolution in lieu thereof.

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 in person 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 Chair of the meeting at which the instrument is proposed to be used, that the instrument of proxy is invalid. Any decision of the Chair of the meeting in respect of the validity of an instrument of proxy shall be final and binding upon all Persons. An instrument of proxy shall be valid only at the meeting with respect to which it was solicited or any adjournment(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 Chair of the meeting 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/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 5.13 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 Chair of the meeting 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 or any committee 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 or the members of the applicable committee, as the case may be.

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. 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. Each committee of Trustees appointed by the Trustees may adopt its own rules or procedures for the calling, conduct, adjournment and regulation of the meetings of such committees as it sees fit and may amend or repeal such rules or procedures from time to time; provided, however, that the Trustees' Regulations and any such rules or procedures shall not be inconsistent with this Declaration of Trust.

7.3 Quorum

A quorum for all meetings of Trustees or any committee thereof shall be a majority of the Trustees then holding office or a majority of the Trustees on such committee, as the case may be, present in person, provided that a majority of the Trustees comprising the quorum shall be Resident Canadians and at least two of whom shall be Independent Trustees; provided that if there is no quorum, the meeting may be adjourned to a Business Day on notice to all of the Trustees or members of such committee, as the case may be and, at the reconvened meeting, the presence of one Resident Canadian Trustee or one Resident Canadian member of such committee, as the case may be, is required in order to constitute a quorum. Notwithstanding any vacancy among the members of Trustees, a quorum of Trustees may exercise all of the powers of the Trustees.

7.4 Voting at Meetings

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

7.5 Meeting by Telephone

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

ARTICLE 8 DELEGATION OF POWERS

8.1 General

Except as prohibited by law, the Trustees may appoint from among their number a committee of Trustees and may delegate to such committee any of the powers of the Trustees, provided that a majority of the Trustees appointed to such committee shall be Resident Canadians. The Trustees shall have the power to appoint, employ or contract with any Person for any matter relating to the Trust or its assets or affairs. For certainty, the Trustees may delegate to any Person (including any one or more officers of the Trust) the power to execute any document or enter into any agreement on behalf of the Trust or exercise any discretion or make any amendment in relation thereto. The Trustees may grant or delegate such authority to an advisor as the Trustees may in their sole discretion deem necessary or desirable without regard to whether such authority is normally

granted or delegated by trustees. The Trustees shall have the power to determine the term and compensation of an advisor or any other Persons whom they may employ or with whom they may contract. The Trustees shall have the power to grant powers of attorney as required in connection with any financing or security relating thereto. Each member of a committee shall serve on such committee until she/he resigns from such committee or otherwise ceases to be a Trustee.

8.2 Executive Committee

The Trustees shall appoint an executive committee (the “**Executive Committee**”) consisting of at least, until determined otherwise, four members, each of whom may be either a Trustee or executive officer of the Trust. The Executive Committee shall meet on an “as needed” basis and have the authority to exercise all of the powers and discretions in the management and direction of the Trust’s activities delegated to it by the Board of Trustees, subject to applicable law. The responsibilities of the Executive Committee shall include: (a) approving or rejecting proposed acquisitions and dispositions of investments by the Trust or its Subsidiaries in each case up to \$50 million (by way of debt or equity); (b) approving the assumption or granting of any mortgage of up to \$50 million (or such other amount provided the terms thereof have been reflected in the Trust’s operating budget approved by the Board of Trustees for the applicable year) other than the renewal of any existing mortgage by any of the Trust’s Subsidiaries; (c) developing the Trust’s strategy, risk management and staffing requirements for review and approval by the Board of Trustees; and (d) approve the assumption or incurrence of any debt obligations of up to \$50 million (or such other amount provided the terms thereof have been reflected in the Trust’s operating budget approved by the Board of Trustees for the applicable year). For certainty, all material investments and transactions outside the Trust’s activities or undertakings must be reviewed by, and are subject to the prior approval of the Board of Trustees. Questions arising in any meeting of the Executive Committee shall be decided by a majority of the votes cast. Decisions may be taken by written consent signed by all of the members of the Executive Committee. Any member of the Executive Committee may call a meeting of the Executive Committee upon not less than 48 hours’ notice. Where for any reason a member of the Executive Committee is disqualified from voting on or participating in a decision, any other disinterested Trustee not already a member of the Executive Committee may be designated by the Trustees to act as an alternate. Notwithstanding the appointment of the Executive Committee, the Trustees may consider and approve any matter which the Executive Committee has the authority to consider or approve. The Executive Committee may grant or delegate all or some of the duties set out in this Section 8.2 to the senior management of the Trust or Industrial LP.

8.3 Audit Committee

The Trustees shall appoint an audit committee (the “**Audit Committee**”) consisting of at least three Trustees, all of whom shall be Independent Trustees. The Audit Committee shall assist the Board of Trustees in fulfilling its oversight responsibilities with respect to financial reporting, including: (i) reviewing the Trust’s procedures for internal control with the Auditors and Chief Financial Officer; (ii) reviewing and approving the engagement of the Auditors; (iii) reviewing annual and quarterly financial statements and all other material continuous disclosure documents, including the Trust’s annual information form and management discussion and analysis; (iv) assessing the Trust’s financial and accounting personnel; (v) assessing the Trust’s accounting policies; (vi) reviewing the Trust’s risk management procedures; and (vii) reviewing any significant transactions outside the Trust’s ordinary course of business and all pending litigation involving the Trust. The Audit Committee will have direct communication channels with the Chief

Financial Officer and Auditors to discuss and review such issues as the Audit Committee may deem appropriate. The Auditors are entitled to receive notice of every meeting of the Audit Committee and, at the expense of the Trust, to attend and be heard thereat and, if so requested by a member of the Audit Committee, shall attend any meeting of the Audit Committee held during the term of office of the Auditors. Questions arising at any meeting of the Audit Committee shall be decided by a majority of the votes cast. Decisions may be taken by written consent signed by all of the members of the Audit Committee. The Auditors or a member of the Audit Committee may call a meeting of the Audit Committee on not less than 48 hours' notice.

8.4 Governance, Compensation and Environmental Committee

The Trustees shall appoint a governance, compensation and environmental committee (the "**Governance, Compensation and Environmental Committee**") consisting of at least three Trustees, all of whom shall be Independent Trustees. The Governance, Compensation and Environmental Committee is responsible for reviewing, overseeing and evaluating the Trust's governance, environmental and compensation policies. The duties of the Governance, Compensation and Environmental Committee shall include: (i) assessing the effectiveness of the Board of Trustees, each of its committees and individual Trustees; (ii) overseeing the recruitment and selection of candidates as Trustees; (iii) organizing an orientation and education program for new Trustees; (iv) considering and approving proposals by the Trustees to engage outside advisers on behalf of the Board of Trustees as a whole or on behalf of the Independent Trustees; (v) reviewing and making recommendations to the Board of Trustees concerning any change in the number of Trustees comprising the Board of Trustees; (vi) reviewing the environmental state of any real property owned by Industrial LP and Subsidiaries of the Trust; (vii) establishing formal policies and procedures to review and monitor environmental exposure; (viii) considering questions of management succession; (ix) administering the Deferred Unit Incentive Plan and any unit option or purchase plan and any other compensation incentive programs; (x) assessing the performance of management of the Trust; (xi) reviewing and approving the compensation paid by the Trust, if any, to the Trust's officers, advisers and consultants (other than the Auditors); (xii) reviewing and making recommendations to the Board of Trustees concerning the level and nature of the compensation payable to the Trustees and officers of the Trust; (xiii) overseeing and reviewing health and safety matters of the Trust; and (xiv) reviewing community and social responsibility matters of the Trust. The Governance, Compensation and Environmental Committee will establish formal policies and procedures to review and monitor the environmental state of any real property owned by the Trust, Industrial LP and the Subsidiaries of the Trust, which will take into account CSA Staff Notice 51-533 – *Environmental Reporting Guidance*. Monitoring and review of the environmental state of real property owned by the Trust, Industrial LP and the Subsidiaries of the Trust, may include: (i) a review of environmental liability risk assessments, (ii) review of environmental incident reports, (iii) inspection and monitoring of any ongoing environmental control measures, (iv) review of compliance with local jurisdictional regulations and orders, and (v) preparation of a hazardous materials management plan. Questions arising in any meeting of the Governance, Compensation and Environmental Committee shall be decided by a majority of the votes cast. Decisions may be taken by written consent signed by all of the members of the Governance, Compensation and Environmental Committee. Any member of the Governance, Compensation and Environmental Committee may call a meeting of the Governance, Compensation and Environmental Committee upon not less than 48 hours' notice. Where for any reason a member of the Governance, Compensation and Environmental Committee is disqualified from voting on or participating in a decision, any other independent and disinterested Trustee not

already a member of the Governance, Compensation and Environmental Committee may be designated by the Trustees to act as an alternate. Notwithstanding the appointment of the Governance, Compensation and Environmental Committee, the Trustees may consider and approve any matter which the Governance, Compensation and Environmental Committee has the authority to consider or approve.

8.5 Additional Committees

The Trustees may create such additional committees as they, in their discretion, determine to be necessary or desirable for the purposes of properly governing the affairs of the Trust; provided that the majority of the members of any additional committee must be Resident Canadians. Further, the Trustees may not delegate to any such additional committee any powers or authority in respect of which a board of directors of a corporation governed by the CBCA may not delegate.

8.6 Management of the Trust

The Trustees may exercise broad discretion in hiring officers, employees, agents and consultants to administer the Trust's day-to-day operations, all subject to the overriding authority of the Trustees over the management and affairs generally of the Trust.

ARTICLE 9 DISTRIBUTIONS

9.1 Distributions

The Trust shall distribute to the Unitholders, to the extent possible, and such Unitholders shall have a right to receive, on or about each Distribution Date, such amount as the Trustees determine in their sole discretion derived from the Trust's investments. Any distribution shall be made on a Distribution Date proportionately to Persons who are Unitholders as of the close of business on the record date of such distribution which shall be the last Business Day of the calendar month immediately preceding the month in which the Distribution Date falls or such other date, if any, as is fixed by the Trustees in accordance with Section 6.8.

Distributions shall be made in cash and may be invested in similar Units pursuant to any distribution reinvestment plan or unit purchase plan adopted by the Trustees. Any distribution shall be made proportionately to Persons who are the Unitholders as at the close of business on the record date for such distribution, which shall be December 31 in the applicable year, in the case of a year-end distribution, and otherwise, the last day of the calendar month immediately preceding the month in which the Distribution Date falls, or if such date is not a Business Day then the next following Business Day, or such other date, if any, as is fixed by the Trustees in accordance with Section 6.8.

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.

In addition, 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.

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 15th 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 9.1 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 9.1 which have been determined by the Trustees, pursuant to Section 9.5, to have been payable by the Trust out of Income of the Trust for such year and the amount of income treated as having been paid in the year pursuant to Subsection 5.21(i); 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 9.1 which has been determined by the Trustees, pursuant to Section 9.5, to have been payable by the Trust out of Net Realized Capital Gains of the Trust for such year and the amount of taxable capital gain treated as having been paid in the year pursuant to Subsection 5.21(i);

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.

This Section 9.1 may be amended only if authorized by the vote of at least a majority of the votes cast at a meeting of the Unitholders called for that purpose, except where an amendment is required to ensure that the Trust is not liable to pay income tax under Part I of the Tax Act.

9.2 Allocation

Distributions payable to Unitholders pursuant to this Article 9 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 including in accordance with Subsection 5.21(i).

9.3 Payment and Method of Distributions

- (a) Distributions shall be made 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. 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 joint 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 9.3 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 5.16, 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 9 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.

9.4 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.

9.5 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.

9.6 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.

9.7 Definitions

Unless the context otherwise requires, any term in Article 1 and this Article 9 not otherwise defined herein shall have for the purposes of Article 1 and this Article 9 the meaning that it has in the Tax Act.

**ARTICLE 10
FEES AND EXPENSES**

10.1 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, 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 acquisition, disposition and ownership of Trust Property permitted in this Declaration of Trust;
- (e) insurance, including 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; and
- (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,

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” or “real estate investment trust” under the Tax Act.

**ARTICLE 11
AMENDMENTS TO THE DECLARATION OF TRUST**

11.1 Amendment by the Trustees

A majority of all Trustees may, without the approval of the unitholders, 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”, and a “real estate investment 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 (including the amendments announced on July 20, 2011) that apply to a specified investment flow-through trust or partnership; or (iii) the distribution of REIT Units;

- (b) which, in the opinion of the Trustees, acting reasonably, are necessary to maintain the rights of the unitholders set out in this Declaration of Trust;
- (c) 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 or to make minor corrections which are, in the opinion of the Trustees, necessary or desirable and not prejudicial to the unitholders;
- (d) 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;
- (e) (i) to create and issue one or more new classes of Preferred Units (each of which may be comprised of unlimited series) that rank in priority to the Units (in payment of distributions and in connection with any termination or winding-up of the Trust), and/or (ii) to remove the redemption right attaching to the Units and to convert the Trust into a closed-end limited purpose trust, in each case at least 10 days following the issuance of a news release announcing such amendment(s);
- (f) Deemed necessary or advisable to ensure that the Trust has not been established nor maintained primarily for the benefit of persons who are not Resident Canadians;
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 11; (ii) amend the unitholders’ voting rights; (iii) cause the Trust to fail or cease to qualify as a “mutual fund trust” or “real estate investment trust” under the Tax Act or (iv) cause the Trust or a Subsidiary of the Trust to be subject to tax under paragraph 122(1)(b), subsection 197(2) or Part XII.2 of the Tax Act.

11.2 Amendments by the Unitholders

Except as otherwise provided in Sections 4.3, 4.4, 9.1 and 11.1, this Declaration of Trust may be amended only if authorized by the vote of at least two-thirds 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 two-thirds 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; or
 - (ii) the addition or removal of or change to conversion privileges, redemption privileges, voting, transfer or pre-emptive rights;
 - (d) the creation of new rights or privileges attaching to certain of the REIT Units;
 - (e) any change to the existing constraints on the issue, transfer or ownership of the REIT Units; or
 - (f) the combination, amalgamation, or arrangement of any of the Trust or its Subsidiaries with any other entity.

11.3 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 11.

11.4 No Termination

No amendment to or amendment and restatement of this Declaration of Trust, whether pursuant to this Article 11 or otherwise, shall be construed as a termination of the Trust and the settlement or establishment of a new trust.

11.5 Matters Submitted for Vote of Unitholders

Nothing in this Declaration of Trust shall prevent the Trustees from submitting to a vote of the unitholders any matter which they deem appropriate. Except with respect to the matters specified in Sections 4.3, 6.6, 9.1, 11.2 or 12.1 or matters submitted to a vote of the unitholders by the Trustees, no vote of the unitholders shall in any way bind the Trust or Trustees.

In addition, the Trust will not agree to or approve any material change to the Industrial LP Agreement without the approval of at least two-thirds of the votes cast at a meeting of unitholders called for that purpose.

ARTICLE 12 TERMINATION OF TRUST

12.1 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 12.
- (b) The Trust may be terminated by the vote of at least two-thirds of the votes cast at a meeting of unitholders called for that purpose.

12.2 Effect of Termination

Upon the termination of the Trust, the liabilities of the Trust shall be discharged with due speed, the net assets of the Trust shall be liquidated and the proceeds distributed to the unitholders in accordance with their entitlements as provided herein. Such distribution may be made in cash or in kind or partly in each, all as the Trustees in their sole discretion may determine.

ARTICLE 13 LIABILITIES OF THE TRUSTEES AND OTHERS

13.1 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 13.1 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.

13.2 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 13.1(a) and 13.1(b).

13.3 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.

13.4 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 Article 4, 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 13.1, 13.2 and 13.3.

ARTICLE 14 GENERAL

14.1 Execution of Instruments

The Trustees shall have power from time to time to appoint any Trustee or Trustees or any Person or Persons on behalf of the Trust either to sign instruments in writing generally or to sign specific

instruments in writing. Provisions respecting the foregoing may be contained in the Trustees' Regulations.

14.2 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 Chief Executive Officer of the Trust, or to the Auditors at the last address provided by the Auditors to the Chief Executive Officer of the Trust, as the case may be.

14.3 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.

14.4 Auditors

The initial Auditors shall be PricewaterhouseCoopers LLP, unless otherwise determined by the Trustees. The Auditors shall be appointed at each annual meeting by a majority of the votes cast by the unitholders. If at any time a vacancy occurs in the position of Auditors, the Trustees may appoint a firm of chartered accountants qualified to practise in all provinces of Canada to act as the Auditors until the next annual meeting of the unitholders. The Auditors shall report to the Trustees and the unitholders on the annual financial statements of the Trust and shall fulfil such other responsibilities as they may properly be called upon by the Trustees to assume. The Auditors shall have access to all records relating to the affairs of the Trust. The Auditors shall receive such remuneration as may be approved by the Trustees.

14.5 Change of Auditors

Subject to applicable laws, the Auditors may at any time be removed and new Auditors appointed by a majority of the Trustees.

14.6 Fiscal Year

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

14.7 Reports to the Unitholders

Prior to each annual and special meeting of unitholders, the Trustees shall provide the unitholders (along with notice of such meeting) information similar to that required to be provided to shareholders of a public corporation governed by the CBCA and as required by applicable tax and securities laws.

14.8 Trust Property to be Kept Separate

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

14.9 Trustees May Hold Units

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

14.10 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 and any committee thereof. 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.

14.11 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.

14.12 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.

14.13 Income Tax Election

In respect of the first taxation year of the Trust, the Trust shall elect 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.

14.14 Consolidations

Any one or more Trustees may prepare consolidated copies of the Declaration of Trust as it may from time to time be amended 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.

14.15 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.

14.16 Severability

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

14.17 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.

14.18 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.

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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.

/s/ ***“Dr. R. Sacha Bhatia”***

Dr. R. Sacha Bhatia, Trustee

/s/ ***“Michael Cooper”***

Michael Cooper, Trustee

/s/ ***“J. Michael Knowlton”***

J. Michael Knowlton, Trustee

/s/ ***“Ben Mulronev”***

Ben Mulronev, Trustee

/s/ ***“Brian Pauls”***

Brian Pauls, Trustee

/s/ ***“Vicky Schiff”***

Vicky Schiff, Trustee

/s/ "Vincenza Sera"

Vincenza Sera, Trustee

/s/ "Sheldon Wiseman"

Sheldon Wiseman, Trustee