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**AMENDED AND RESTATED DECLARATION OF TRUST**

***governing***

**DREAM RESIDENTIAL REAL ESTATE INVESTMENT TRUST**

**Amended and Restated as of May 6, 2022**

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## AMENDED AND RESTATED DECLARATION OF TRUST

**THIS AMENDED AND RESTATED DECLARATION OF TRUST** was made as of February 24, 2022 and is amended and restated as of May 6, 2022.

**WHEREAS** pursuant to a declaration of trust dated February 24, 2022 (the “**Original Declaration of Trust**”), the Trust was formed as a trust under the laws of the Province of Ontario and the Trust was, on that date, settled with US\$5.00 by the Initial Unitholder;

**WHEREAS** on March 11, 2022, the Subsequent Unitholder contributed all of the outstanding shares of U.S. Co. to the Trust in exchange for additional Units of the Trust;

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

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

**AND WHEREAS**, for the avoidance of doubt, this amendment and restatement of the Original Declaration of Trust shall not constitute a termination or a resettlement of the trust created by the Original Declaration of Trust;

**NOW THEREFORE**, the undersigned Trustees hereby confirm and declare that they hold in trust as trustees the sum of US\$5.00, the outstanding shares of U.S. Co., and 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 within the meaning of NI 45-106;

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

**“Applicable Securities Laws”** means, collectively, (i) the applicable securities laws of each of the relevant provinces and territories of Canada and the respective regulations and rules made under those securities laws together with all published policy statements, instruments, blanket orders and rulings of Canadian securities commissions and all discretionary orders or rulings, if any, of Canadian securities commissions made in connection with the transactions contemplated by the Prospectus and this Declaration of Trust, and (ii) if and to the extent applicable, securities laws of the United States and the blue sky laws of any state within the United States;

**“Asset Management Agreement”** means the asset management agreement dated as of the Closing Date among the Trust, U.S. Co., Holdco, DDRRAM and Pauls Realty, as amended, supplemented and/or restated from time to time;

**“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 9.2;

**“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 15.4;

**“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 banking institutions are open in the City of Toronto 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”, “Chief Operating Officer”, “Executive Vice President”, “Senior Vice President”, “Vice President”, “Treasurer” “Corporate Secretary” and “General Counsel”** mean the Person(s) holding the respective offices from time to time, if so appointed by the Trustees;

**“Class A Unit”** means a membership interest in Holdco designated as a Class A Unit and having the rights and attributes described in the Holdco Operating Agreement with respect thereto;

**“Class B Unit”** means a membership interest in Holdco designated as a Class B Unit and having the rights and attributes described in the Holdco Operating Agreement with respect thereto;

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

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

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

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

“**DAM**” means Dream Asset Management Corporation and its successors and assigns;

“**Dream**” means Dream Unlimited Corp. and its successors and assigns;

“**Dream Service Agreement**” means the services agreement dated as of the Closing Date between the Trust, U.S. Co, Holdco and DAM, as amended, supplemented and/or restated from time to time;

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

“**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;

“**Exchangeable Security**” or “**Exchangeable Securities**” means a unit or units, a share or shares or other security or securities issued by the Trust or a Subsidiary of the Trust and which are convertible into or exchangeable or redeemable for REIT Units or other Exchangeable Securities without the payment of additional consideration therefor, including Class B Units;

“**Governance, Compensation and Environmental Committee**” means the committee of the Trustees established pursuant to Section 9.3;

“**Holdco**” means DRR Holdings LLC, a limited liability company created under the laws of the State of Delaware and its successors and permitted assigns;

“**Holdco Operating Agreement**” means the amended and restated operating agreement dated as of May 6, 2022, governing Holdco, as it may be further amended, supplemented and/or restated from time to time;

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

“**Income of the Trust**” for any taxation year of the Trust means the net income for the year determined pursuant to the provisions of the Tax Act having regard to the provisions thereof which



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

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

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

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

“**Monthly Limit**” has the meaning set out in Subsection 5.19(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 U.S. Co. and any other property of the Trust) designated as having been paid to the redeeming Unitholders pursuant to Section 5.19; (iii) the amount determined by the Trustees in respect of any net capital losses of the Trust (as defined in the Tax Act) carried forward from prior taxation years to the extent not previously deducted from realized capital gains of the Trust; and (iv) any amount in respect of which the Trust is entitled to a capital gains refund under the Tax Act, as determined by the Trustees; provided that at the discretion of the Trustees, the Net Realized Capital Gains of the Trust for a year may be calculated without subtracting the full amount of the net capital losses of the Trust carried forward from prior years;

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

“**NI 52-110**” means National Instrument 52-110 – *Audit Committees*;

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

“**Nominating Unitholder**” has the meaning set out in Section 7.5;

“**Non-Competition Agreement**” means the non-competition agreement dated as of the Closing Date among the Trust, Dream Unlimited Corp. and Pauls Capital, LLC, as amended, supplemented and/or restated from time to time;

“**non-exempt take-over bid**” means a take-over bid that is not exempt under Part 4 of National Instrument 62-104 – *Take Over Bids and Issuer Bids*;

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

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

“**Notice Date**” has the meaning set out in Section 7.5;

“**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;

“**Pauls**” means Pauls Capital, LLC and its successors and assigns;

“**Pauls Realty**” means Pauls Realty Services, LLC and its successors and assigns;

“**Pauls Service Agreement**” means the services agreement dated as of the Closing Date between the Trust, Pauls Realty, U.S. Co and Holdco LLC, as amended, supplemented and/or restated from time to time;

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

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

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

“**Prospectus**” means the final prospectus of the Trust dated April 29, 2022 relating to the initial public offering of Units;

“**Public Announcement**” means disclosure in a press release reported by a national news service in Canada, or in a document publicly filed by the Trust under its profile on the System of Electronic Document Analysis and Retrieval at [www.sedar.com](http://www.sedar.com);

“**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 5.19(c);

“**Redemption Price**” has the meaning set out in Subsection 5.19(c);

“**Register**” has the meaning set out in Section 5.13;

“**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, or is deemed to be, a resident of Canada for purposes of the Tax Act;

“**Services Agreements**” mean, collectively, the Pauls Service Agreement and the Dream Service Agreement;

“**Subsequent Unitholder**” means Robert Hughes;

“**Subsidiary**” has the meaning given 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), as amended from time to time;

“**Transfer Date**” has the meaning set out in Subsection 5.19(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 14.4(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 7.11 from time to time;

“**TSX**” means the Toronto Stock Exchange;

“**U.S. Co.**” means DRR Holdings Inc., a corporation created under the laws of the State of Delaware and its successors and permitted assigns;

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

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

“**Unitholder**” means 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 10.1.

## 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 all genders;
- (d) the words “includes” and “including”, when following any general term or statement, are not to be construed as limiting the general term or statement to the specific items or matters set forth or to similar items or matters, but rather as referring to all other items or matters that could reasonably fall within the broadest possible scope of the general term or statement;
- (e) reference to any statute, rule or instrument shall be deemed to be a reference to such statute, rule or instrument as amended, re-enacted or replaced from time to time, including every regulation made pursuant thereto, all amendments to the statute, rule or instrument or to any such regulation in force from time to time, and any statute, rule or instrument or regulation which supplements or supersedes such statute, rule or instrument or any such regulation;
- (f) unless otherwise specified, all references to money amounts are to the lawful currency of the United States; and
- (g) for certainty, unless otherwise expressly provided herein, where any reference is made in this Declaration of Trust, in any resolution of the unitholders or the

Trustees or in any agreement or other document to the Trust as a party or as an owner of property, or to an act to be performed by or a covenant given by the Trust, such reference shall be construed and applied for all purposes as if 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 Residential Real Estate Investment Trust**” in its English form and “**Fiducie de placement immobilier résidentielle Dream**” in its French form. As far as practicable and except as otherwise provided in this Declaration of Trust, the Trustees shall conduct the affairs of the Trust, hold property, execute all documents and take all legal proceedings under that name, in either its English or French form.

### **1.4 Use of Name**

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

### **1.5 Office**

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

### **1.6 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 an unincorporated open-ended limited purpose investment trust. The Trust shall be governed by the general law of trusts, except as such general law of trusts has been or is from time to time modified, altered or abridged for the Trust by:

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

The beneficial interests and rights generally of a unitholder shall be limited to the right to participate *pro rata* in distributions payable to unitholders when and as declared by the Trustees as contemplated by Article 10, distributions payable to unitholders upon the termination of the Trust as contemplated in Article 13 and to the right of redemption as contemplated in Section 5.19. 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 13. The undertakings and activities of the Trust will be: (a) the transfer, acquisition or acceptance of the Trust Property determined by the Trustees from time to time and the administration of such Trust Property; (b) arranging for the funding of such acquisitions to the extent necessary; (c) the granting of security in the Trust Property for the obligations of the Trust; and (d) all such other activities as may be reasonably incidental to the foregoing or necessary in connection with the performance by the Trustees of their obligations under any agreement to which they are or may become parties for such purposes or in connection with such activities, all in such manner and on such terms as the Trustees, acting reasonably, deem appropriate. Notwithstanding the foregoing or any other provision of this Declaration of Trust, at no time will the Trust's activities include an activity, nor will the Trust take any action, nor will the Trust make any investment that would prevent the Trust from: (i) qualifying as a "mutual fund trust", as defined in the Tax Act; or (ii) a "real estate investment trust" under the Code unless at least 66 $\frac{2}{3}$ % of the Trustees have determined, at their discretion, that the Trust should cease qualifying as a "real estate investment trust" under the Code. The Trust shall not engage directly or indirectly in any activity other than the activities permitted by this Section 1.8.

### **1.9 Accounting Principles**

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

## **ARTICLE 2 TRUSTEES 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 five 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 of the unitholders or until their successors are elected or appointed and shall be eligible for election or re-election.

### **2.3 Qualifications of Trustees**

- (a) 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.
- (b) 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.
- (c) 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 180 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 or 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) 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.
- (b) A Trustee may be removed at any time with or without cause by a resolution passed 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 66% of the other Trustees. Any removal of a Trustee shall take effect immediately following approval of the aforesaid resolution, and any Trustee so removed shall be so notified by the Chair or another officer of the Trust forthwith following such removal.
- (c) Upon the resignation or removal of any Trustee, or his/her otherwise ceasing to be a Trustee, he or she shall: (i) cease to have the rights, privileges and powers of a Trustee hereunder; (ii) execute and deliver such documents as the remaining Trustees shall 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 or 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 or other Person in which the Trust owns any securities (directly or indirectly), upon which he or 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-in-fact 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 in accordance with the terms of this Declaration of Trust. 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 by the Board of Trustees, Trustees, other than Trustees who are employees of the Trust, Pauls, Dream, or any of their respective Affiliates, shall receive an annual retainer in the amount of US\$28,000 per year from the Trust and reimbursement for their out-of-pocket expenses incurred in acting as a Trustee. Until otherwise determined by the Board of Trustees: (a) the Chair of the Board of Trustees, if not an employee of the Trust, Pauls, Dream or any of their respective Affiliates shall receive an annual fee of US\$39,000 but shall not receive fees for board or committee meetings; (b) the Chair of the Audit Committee and the Governance, Compensation and Environmental Committee shall each receive an additional annual fee of US\$8,000; and (c) the other members of the Audit Committee and the Governance, Compensation and Environmental Committee shall each receive an additional annual fee of US\$4,000. 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, except in respect of their service as directors of any of the Trust's Subsidiaries. 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. Until otherwise determined by the Board of Trustees, Trustees who are employees of and who receive salary from the Trust, Pauls, Dream 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 Trustees may appoint a Chair, one or more Vice-Chairs, a President, a Chief Executive Officer, a Chief Financial Officer, Chief Operating Officer, one or more Executive Vice-Presidents, one or more Senior Vice-Presidents, one or more Vice-Presidents, a Treasurer, a General Counsel, a Corporate Secretary and such other officers as the Trustees may wish to appoint from time to time. One Person may hold two or more offices. Any officer of the Trust may, but need not, be a Trustee. The Chair, if any, 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, if any, shall be appointed and discharged and their remuneration determined by the Trustees.

## **2.10 Validity of Acts**

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

# **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, 12.2 and 12.5, 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, 12.2 and 12.5, 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, 12.2 and 12.5, 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 (i) borrow money from or incur indebtedness to any Person; (ii) guarantee, indemnify or act as surety with respect to payment or performance of obligations of any Person; (iii) enter into other obligations on behalf of the Trust; and (iv) assign, convey, transfer, mortgage, subordinate, pledge, grant security interests in, encumber or hypothecate the Trust Property to secure any of the foregoing;
- (f) to lend money or other Trust Property, whether secured or unsecured;
- (g) to enter into and perform their obligations under the Asset Management Agreement and the Services Agreements, including delegating day to day management of the Trust in accordance with the terms of such agreements, and to enter into and perform their obligations under any other similar agreement, including where such agreement provides for the day to day management of the Trust;
- (h) to maintain records and provide reports to unitholders;
- (i) to establish systems to continuously monitor the qualification of the Trust as a “mutual fund trust” pursuant to subsections 132(6.1) of the Tax Act and a “real estate investment trust” within the meaning of the Code;
- (j) to pay all taxes or assessments, of whatever kind or nature, whether within or outside Canada, imposed upon or against the Trustees in connection with the Trust Property, the undertaking or taxable Income of the Trust, or imposed upon or against the Trust Property, the undertaking or taxable Income of the Trust, or any part thereof and to settle or compromise any disputed tax liabilities and for the foregoing purposes to make such returns, take such deductions, and make such designations, elections and determinations in respect of the Income of the Trust or Net Realized Capital Gains of the Trust distributed to unitholders and any other matter as shall be permitted under the Tax Act, the Code or other tax statute (provided that to the extent necessary the Trustees will seek the advice of the Trust’s counsel or the Auditors), and do all such other acts and things as may be

deemed by the Trustees in their sole discretion to be necessary, desirable or convenient in connection with such matters;

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

appraisers, brokers, architects, engineers, construction managers, general contractors or otherwise) in one or more capacities, and to pay compensation from the Trust Property for services in as many capacities as such Person may be so engaged or employed; and, except as prohibited by law, to delegate any of the powers and duties of the Trustees (including the power of delegation) to any one or more Trustees, agents, representatives, officers, employees, independent contractors or other Persons without regard to whether such power, authority or duty is normally granted or delegated by the Trustees;

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

pay the cost thereof and related thereto out of the property of the Trust whether or not such offering is or was of direct benefit to the Trust or those Persons (if any) who were unitholders immediately prior to such offering;

- (w) to make or cause to be made any application for the listing and trading on any stock exchange, automated inter-dealer quotation system or over-the-counter market, of any REIT Units or other securities of the Trust, and to do all things which in the opinion of the Trustees may be necessary or desirable to effect or maintain such listing(s) and facilitate such trading;
- (x) to determine conclusively the value of any or all of the Trust Property from time to time and, in determining such value, to consider such information and advice as the Trustees, in their sole judgment, may deem material and reliable;
- (y) subject to obtaining all required regulatory approvals, to establish one or more distribution reinvestment plans, unit purchase plans, unit option plans or any other unit compensation, incentive plan or similar plan with respect to the Units; and
- (z) to do all such other acts and things as are incidental to the foregoing, and to exercise all powers that are necessary or useful to carry on the activities of the Trust, to promote any of the purposes for which the Trust is formed and to carry out the provisions of this Declaration of Trust.

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

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

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

### **3.4 Standard of Care**

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

### **3.5 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.

### **3.6 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 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.

### **3.7 Conflict of Interest**

Except for agreements entered into on or before the Closing Date and/or the ownership of Units, Class A Units or 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 or she becomes so interested;
  - (iii) if the Trustee becomes interested after a contract is made or a transaction is entered into, at the first meeting after he or she becomes so interested; or
  - (iv) if an individual who is interested in a contract or transaction later becomes a Trustee, at the first such meeting after he or 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 or 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 or she becomes an officer of the Trust;
- (c) notwithstanding Subsections 3.7(a) and 3.7(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 3.7 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 14.1 or the purchase of liability insurance;
- (e) for the purposes of this Section 3.7, a general notice to the Trustees by a Trustee or an officer of the Trust disclosing that he or 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 3.7, 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 3.7(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 3.7(f) and 3.7(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 3.7, 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.

### **3.8 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 other than in their capacity as Trustee (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 Asset Management Agreement, the Services Agreements or the Non-Competition 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, the Services Agreements or the Non-Competition 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 and amounts receivable in respect of such units, Notes or other securities, cash and similar deposits with a Canadian or U.S. chartered bank, credit union or trust company, short-term government debt securities or money market instruments maturing prior to one year from the date of issue, and, subject to the limitations set out in Subsections 4.1(b) and 4.1(c), such other investments as the Trustees deem advisable from time to time;
- (b) the Trust shall not make, or permit any of its Subsidiaries to make, and Subsidiaries of the Trust will not make, any investment that could result in:
  - (i) the Units being disqualified for investment by Plans;
  - (ii) the Trust and any of its Subsidiaries being liable to pay a tax imposed under either paragraph 122(1)(b), subsection 197(2) or Part XII.2 of the Tax Act; or
  - (iii) the Trust ceasing to qualify as a “mutual fund trust” for purposes of the Tax Act;
- (c) the business of the Trust shall be limited to and conducted in such a manner as to permit the Trust at all times to be classified as a “real estate investment trust” (as defined in the Code) for U.S. federal income tax purposes, unless at least 66⅔% of the Trustees have determined, in their discretion, that the Trust cease qualifying as a real estate investment trust under the Code;
- (d) subject to the qualifications set out in Subsections 4.1(b) and 4.1(c), the Trust and Subsidiaries of the Trust will focus their investment activities on interests (including fee ownership and leasehold interests) in real estate and real estate related assets (including for greater certainty, assets whose revenue stems primarily from residential and multi-family assets but which may include income from other classes of real property), assets ancillary thereto necessary for the operation of such real estate and such other activities as are consistent with the other investment guidelines of the Trust; and
- (e) 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 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 Subsections 4.1(b) and 4.1(c).

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 Trust of a mortgage; or (ii) to the extent the Trustees determine to be practicable and consistent with their fiduciary duty to act in the best interests of the Trust and the unitholders, any written instrument which in the 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 following effect: *“The parties hereto acknowledge that the [representative] is entering into this agreement solely on behalf of the Trust and the obligations of the Trust hereunder shall not be personally binding upon any of the Trustees, the [representative], any registered or beneficial holder of units or any annuitant or beneficiary of a Plan of which a holder of units acts as a trustee or carrier, and that resort shall not be had to, nor shall recourse be sought from, any of the foregoing or the private property of any of the foregoing in respect of any indebtedness, obligation or liability of the Trust arising hereunder or arising in connection herewith or from the matters to which this agreement relates, and recourse shall be limited to, and satisfied only out of, the Trust’s assets.”*;
- (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 may engage in construction or development of real property provided such real property meets the Trust’s investment guidelines and operating policies;
- (d) 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;

- (e) unless otherwise determined by the Trustees, Subsidiaries of the Trust shall conduct environmental and other diligence with respect to the physical condition, as is commercially reasonable in the circumstances, of each real property that the Trust or a Subsidiary intend to acquire or in which the Trust or a Subsidiary intend to invest;
- (f) 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; and
- (g) unless otherwise determined by the Trustees, Subsidiaries of the Trust will conduct a phase I environmental site assessment of each real property to be acquired and, if the phase I environmental site assessment report recommends that further environmental site assessments be conducted, unless otherwise determined by the Trustees Subsidiaries of the Trust will conduct such further environmental site assessments, in each case by an independent and experienced environmental consultant and the results of such site assessment shall be satisfactory to the Trustees.

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 12.1, any of the investment guidelines set forth in Section 4.1 may be amended with the approval of at least 66 $\frac{2}{3}$ % of the votes cast at a meeting of the unitholders called for that purpose. Subject to Section 12.1, the operating policies set forth in Section 4.2 may be amended with the approval 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, consider and approve an annual investment and operating plan for the ensuing period.

## ARTICLE 5 UNITS

### 5.1 REIT Units

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

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

### 5.2 Units

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

### 5.3 Preferred Units

- (a) The Board of Trustees may fix from time to time before such issue the number of Preferred Units which is to comprise each class and series and the designation, rights, privileges, restrictions and conditions attaching to each class and series of Preferred Units including, without limiting the generality of the foregoing, any voting rights, the rate or amount of distributions (which may be cumulative or non-cumulative and variable or fixed) or the method of calculating distributions, the dates of payment thereof, the terms and conditions of redemption, purchase and conversion, if any, any rights on the liquidation, dissolution or winding-up of the Trust, and any sinking fund or other provisions.
- (b) The Preferred Units of each class and series shall, with respect to the payment of distributions (other than distributions paid solely through the distribution of additional Units) and the distribution of assets of the Trust or return of capital in the event of liquidation, dissolution or winding-up of the Trust, whether voluntary or involuntary, or any other return of capital or distribution of assets of the Trust

among its Unitholders for the purpose of winding-up its affairs, be entitled to preference over the Units ranking by their terms junior to the Preferred Units. The Preferred Units of any series may also be given such other preferences, not inconsistent with this Declaration of Trust, over the Units ranking by their terms junior to the Preferred Units.

- (c) If any cumulative distributions or amounts payable on the return of capital in respect of a class or series of Preferred Units are not paid in full, all classes and series of Preferred Units of equal ranking shall participate rateably in respect of accumulated distributions and return of capital, based on the accumulated distributions and return of capital of a class and series of Preferred Units as a proportion of the accumulated distributions and return of capital of all classes and series of Preferred Units of equal ranking.

#### **5.4 Fractional REIT Units**

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

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

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

#### **5.6 Consideration for REIT Units**

No REIT Unit shall be issued other than as a fully paid and non-assessable unit. A REIT Unit shall not be fully paid until the consideration therefor has been received in full by or on behalf of the Trust. The consideration for any REIT Unit shall be paid in money or in property or in past services received by the Trust that are not less in value than the fair equivalent of the money that the Trust would have received if the REIT Unit had been issued for money. In determining whether property or past services are the fair equivalent of consideration paid in money, the Trustees may take into account reasonable charges and expenses of organization and reorganization and payments for property and past services reasonably expected to benefit the Trust. Notwithstanding the foregoing, REIT Units may be issued and sold on an instalment receipt basis, in which event beneficial

ownership of such REIT Units may be represented by the instalment receipts, but shall otherwise be non-assessable.

### **5.7 Consolidation of Each Series of Units**

- (a) Unless the Trustees determine otherwise, immediately after any *pro rata* distribution of additional Units to all Unitholders, pursuant to Subsection 10.3(b), the number of outstanding Units will automatically be consolidated such that each such holder will hold after the consolidation the same number of Units as such holder held before the distribution of additional Units. In this case, each Unit certificate representing the number of Units prior to the distribution of additional Units is deemed to represent the same number of Units after the non-cash distribution of additional Units and the consolidation.
- (b) Notwithstanding the foregoing, where tax is required to be withheld from a Unitholder's share of the distribution and such amount is not paid by, or otherwise on behalf of, the Unitholder to the Trust, the consolidation may result in such Unitholder holding that number of Units equal to (i) the number of Units held by such Unitholder prior to the distribution plus the number of Units received by such Unitholder in connection with the distribution (net of the number of whole and part Units withheld on account of withholding taxes) multiplied by (ii) the fraction obtained by dividing the aggregate number of Units outstanding prior to the distribution by the aggregate number of Units that would be outstanding following the distribution and before the consolidation if no withholding were required in respect of any part of the distribution payable to any Unitholder. Such Unitholder will be required to surrender the Unit certificates, if any, representing such Unitholder's original Units, in exchange for a certificate representing such Unitholder's post-consolidation Units.

### **5.8 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 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.

### **5.10 Commissions**

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

### **5.11 Transferability**

Except as stipulated in Article 6 and Section 5.13, 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. 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.

### **5.12 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 or her duly authorized agent is entitled to a certificate bearing an identifying serial number in respect of the Units held by him or her, signed in the manner hereinafter prescribed, but the Trust is not bound to issue more than one certificate in respect of a Unit or Units or held jointly or in common by two or more Persons and delivery of a certificate to any one of them shall be sufficient delivery to all.
- (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.
- (f) Unit certificates representing any number of Units may be exchanged without charge for Unit certificates representing an equivalent number of Units in the aggregate. Any exchange of Unit certificates may be made at the offices of the Trust or the Transfer Agent where registers are maintained for Unit certificates pursuant to the provisions of Section 5.13. Any Unit certificates tendered for exchange shall be surrendered to the Trustees or appropriate Transfer Agent and then shall be cancelled.

### 5.13 Register

- (a) One or more registers (collectively, the “**Register**”) shall be kept by, or on behalf and under the direction of the Trustees, which Register shall contain the names and addresses of the unitholders, the respective numbers of REIT Units held by them, the certificate numbers of the certificates of such REIT Units (in the case of Units) and a record of all transfers thereof. The Trustees may appoint one or more chartered banks or trust companies to act as transfer agents and to act as registrars

for REIT Units and may provide for the transfer of REIT Units in one or more places within Canada. In the event of such appointment, such transfer agents and registrars shall keep all necessary registers and other books (which may be kept on a computer or similar device) for recording original issues and registering and transferring the REIT Units. If the Trustees have appointed a registrar and transfer agent for any class of REIT Units, no certificate for REIT Units of such class shall be valid unless countersigned by or on behalf of a transfer agent and/or registrar. Only the unitholders whose REIT Units are recorded on the Register shall be entitled to vote or to receive distributions or otherwise exercise or enjoy the rights of the unitholders.

(b) Subject to Article 6:

- (i) 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; and
- (ii) REIT Units shall be transferable on the Register only by the holders of record thereof or their executors, administrators or other legal representatives or by their agents or attorneys duly authorized in writing, and, in the event the REIT Unit is represented by a certificate, upon delivery to the Trust or to the Transfer Agent of the certificate therefor, properly endorsed or accompanied by a duly executed instrument of transfer or power of attorney and accompanied by all necessary transfer or other taxes imposed by law, together with such evidence of the genuineness of such endorsement, execution and authorization and other matters that may reasonably be required by the Trustees or the Transfer Agent. Upon such delivery the transfer shall be recorded on the Register or branch transfer registers and a new Unit certificate for the Units shall be issued to the transferee and a new Unit certificate for the balance of Units not transferred shall be issued to the transferor.

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

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

### **5.15 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.

### **5.16 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.

### **5.17 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 5.14, to succeed to all rights of the deceased unitholder under this Declaration of Trust.

### **5.18 Unclaimed Payments**

In the event that the Trustees hold any amounts to be paid to the unitholders under Article 5, Article 10 or Article 13 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.

## 5.19 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 5.19, 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 5.19, 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 5.19(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 5.19(e) and 5.19(f), the Redemption Price payable in respect of the Units tendered for redemption during any month shall be paid by cheque, drawn on a chartered bank or a trust company in lawful money of the United States, payable at par to or to the order of the Unitholder who exercised the right of redemption on or before the last day of the calendar month following the month in which the Units were tendered for redemption. Payments made by the Trust of the Redemption Price are conclusively deemed to have been made upon the mailing of a cheque in a postage prepaid envelope addressed to the former unitholder unless such cheque is dishonoured upon presentment. Upon such payment, the Trust shall be discharged from all liability to such former Unitholder in respect of the Units so redeemed.
- (e) Subsection 5.19(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 5.19(c) in respect of such Units and all other Units tendered for redemption prior thereto in the same calendar month exceeds US\$50,000 (the “**Monthly Limit**”); provided that the Trustees may, in their sole discretion, waive such

- limitation in respect of all Units tendered for redemption in any calendar month;
- (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 5.19(e)(ii) or (iii), Subsection 5.19(d) is not applicable to Units tendered for redemption by a Unitholder, the Redemption Price per Unit specified in Subsection 5.19(c) to which the Unitholder would otherwise be entitled shall, subject to receipt of all necessary regulatory approvals, be paid and satisfied by way of a distribution *in specie* to such Unitholder of Subsidiary Securities having a fair market value equal to the product of: (i) the remainder of the Redemption Price per Unit of the Units tendered for redemption to be so satisfied; and (ii) the number of Units tendered by such Unitholder for redemption. No Subsidiary Securities with a fair market value of less than US\$100 will be transferred and where the number of Subsidiary Securities to be received by such former Unitholder upon redemption *in specie* would otherwise include a Subsidiary Security with a fair market value of less than a multiple of US\$100, such number shall be rounded to the next lowest multiple of US\$100 and the excess shall be paid in cash. The portion of the Redemption Price payable pursuant to this Subsection 5.19(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 5.19(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 5.19(e)(i), Subsection 5.19(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 5.19(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 5.19(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 5.19 shall be cancelled and such Units shall no longer be outstanding and shall not be reissued.
- (i) Some or all of the Income of the Trust and the Net Realized Capital Gains of the Trust may, for purposes of computing the net Income of the Trust and the Net Realized Capital Gains of the Trust under the Tax Act or other tax legislation be treated as having been paid in the year by the Trust to the Unitholders redeeming Units in such year and, to the extent that the amount thereof so treated has been designated as taxable capital gains or income to such unitholders, the holder's redemption proceeds shall be reduced accordingly. Any such amounts shall be determined at the discretion of the Trustees, taking into account, among other things, subsection 132(5.3) of the Tax Act; however, in all cases, a redeeming Unitholder will only be treated as having been paid an amount to which the Unitholder of the Units redeemed would be entitled to receive.

## **5.20 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 or the rules or applicable policies of any stock exchange.

## **5.21 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 outstanding Units (including Units issuable upon the surrender or exchange of any securities including Exchangeable Securities and calculated as if all Class B Units were redeemed for Units, 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 5.21, 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 5.21(i) to 5.21(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 5.21(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 or she receives the Offeror’s notice.
- (c) Concurrently with sending the Offeror’s notice under Subsection 5.21(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 5.21(b) shall, within 20 days after receiving that notice:

- (i) send the certificate(s) representing the Units to the Trust and the Unit certificates issuable upon the exchange or surrender of Exchangeable Securities, if any; 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 5.21(i) to 5.21(r).
- (e) A Dissenting Offeree who does not notify the Offeror in accordance with Subsection 5.21(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 5.21(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 5.21(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 5.21(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 5.21(b), the Trust shall:
  - (i) if the payment or transfer required by Subsection 5.21(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 5.21(d)(ii)(A) and who transferred his/her Units as required under Subsection 5.21(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 5.21(f) is made and the money or other consideration is deposited as required by Subsection 5.21(g), send to each Dissenting Offeree who has not sent its Unit certificate as required under Subsection 5.21(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 5.21(i) to 5.21(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 5.21(d)(ii)(B), the Offeror may, within 20 days after it has paid the money or transferred the other consideration under Subsection 5.21(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 5.21(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 5.21(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 5.21(i) or 5.21(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 5.21(i) or 5.21(j).
  - (n) On an application under Subsection 5.21(i) or 5.21(j):
    - (i) all Dissenting Offerees referred to in Subsection 5.21(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 5.21(i) or 5.21(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 5.21, 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 5.21(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 5.21(d) until the date of payment.
- (s) Where an Offeror is entitled to acquire Units held by a dissenting offeree pursuant to Section 5.21(a) and the Offeror wishes to exercise such right, the offeror shall also deliver an offer (the “**Redemption Offer**”) to the Trustees, at the same time that an offeror’s notice is delivered pursuant to Section 5.21(b), addressed to each holder of Class B Units to acquire all Units issued to such holder by the Trust following the redemption of the holder’s Class B Units for Units pursuant to the Holdco Operating Agreement. The Redemption Offer shall be made on the same terms at which the Offeror acquired the Units of the Unitholders who accepted the take-over bid and the redemption by the holder of the Class B Units and the acquisition by the Offeror of the Units issuable upon redemption thereof shall occur within 30 days of delivery of the Redemption Offer to the Trustees. The Trustees shall deliver the Redemption Offer to each holder of Class B Units forthwith upon receipt, if any such holders exist.
- (t) In the event that a non-exempt take-over bid from a person acting at arm’s length to holders of Class B Units (or any affiliate or associate thereof) is made for Units, unless the take-over bid is structured (i) to permit holders of Class B Units to both redeem for Units and tender conditional on take-up, or (ii) such that the offer is made for all Class B Units on identical terms, then from and after the first take-up of Units under the said takeover bid (provided that not less than 25% of the Units other than Units held at the date of the take-over bid by the Offeror or associates or affiliates of the Offeror or those acting jointly or in concert are so taken up), the terms and conditions of the Class B Units held by persons other than the Offeror (or any affiliate or associate thereof) will automatically (without any further action) be amended such that the redemption ratio shall be varied to equal 110% of the redemption ratio then in effect (such that on redemption the holder shall receive 1.1 Units for each Unit that the holder would otherwise have received). For greater certainty, notwithstanding any adjustment contemplated by this section, the holders of such Class B Units shall not be entitled to any adjustment to their entitlement to distributions until such time as such Class B Units are redeemed for Units.

## 5.22 Redemption of Initial Units

Concurrently with the closing of the initial public offering of the Trust, the Units held by the Initial Unitholder will be redeemed by the Trust for a redemption price of US\$130.00 and upon the completion of such redemption, such Units shall be cancelled and shall no longer be outstanding for any purpose under this Declaration of Trust.

## ARTICLE 6 RESTRICTIONS ON TRANSFER AND OWNERSHIP OF UNITS

### 6.1 Definitions

For the purpose of Sections 6.2, 6.3 and 6.4, the following terms shall have the following meanings:

- (a) **“Beneficial Ownership”** shall mean ownership of Units by a Person, whether the interest in the Units is held directly or indirectly (including by a nominee), and shall include interests that are actually owned or would be treated as owned through the application of Section 544 of the Code, as modified by Sections 856(h)(1)(B) and 856(h)(3) of the Code. The terms **“Beneficial Owner,” “Beneficially Own,” “Beneficially Owns”** and **“Beneficially Owned”** shall have the correlative meanings.
- (b) **“Charitable Beneficiary”** shall mean one or more beneficiaries of the Trust as determined pursuant to Section 6.3(f), provided that each such organization must be a “United States person” under the Code that is described in Section 501(c)(3) of the Code and contributions to each such organization must be eligible for deduction under each of Sections 170(b)(1)(A), 2055 and 2522 of the Code.
- (c) **“Charitable Trust”** shall mean any trust provided for in Section 6.3(a) that is a “United States person” under the Code.
- (d) **“Charitable Trustee”** shall mean the Person unaffiliated with the Trust and any Prohibited Owner, that is appointed by the Trust to serve as trustee of a Charitable Trust.
- (e) **“Constructive Ownership”** shall mean ownership of Units by a Person, whether the interest in the Units is held directly or indirectly (including by a nominee), and shall include interests that are actually owned or would be treated as owned through the application of Section 318(a) of the Code, as modified by Section 856(d)(5) of the Code. The terms **“Constructive Owner,” “Constructively Own,”**

“Constructively Owns” and “Constructively Owned” shall have the correlative meanings.

- (f) **“Excepted Holder”** shall mean a Unitholder of the Trust for whom an Excepted Holder Limit is created by the Trustees pursuant to Section 6.2(g).
- (g) **“Excepted Holder Limit”** shall mean for each Excepted Holder, the percentage limit established by the Board of Trustees for such Excepted Holder pursuant to Section 6.2(g), which limit may be expressed, in the discretion of the Board of Trustees, as one or more percentages and/or numbers of Units, provided that the affected Excepted Holder agrees to comply with any requirements established by the Board of Trustees pursuant to Section 6.2(g) and subject to adjustment pursuant to Section 6.2(h).
- (h) **“FIRPTA Holder”** shall mean any Person that (i) is not a “United States person” under the Code, and (ii) is treated as holding more than 5% of the Units determined applying the constructive ownership rules of Section 897(c)(3) of the Code, including through the application of Section 897(c)(6)(C) of the Code and excluding any such outstanding Units which are not treated as outstanding for U.S. federal income tax purposes. Any determination by the Trust as to the ownership of Units by a Person shall be conclusive for all purposes hereof.
- (i) **“Individual”** means an individual, a trust qualified under Section 401(a) or 501(c)(17) of the Code, a portion of a trust permanently set aside for or to be used exclusively for the purposes described in Section 642(c) of the Code, or a private foundation within the meaning of Section 509(a) of the Code, provided that, except as set forth in Section 856(h)(3)(A)(ii) of the Code, a trust described in Section 401(a) of the Code and exempt from tax under Section 501(a) of the Code shall be excluded from this definition.
- (j) **“Initial Date”** shall mean the date of the closing of the issuance of Units pursuant to the initial public offering of the Trust.
- (k) **“Market Price”** on any date shall mean, with respect to the Units, the Closing Price for such Units. The **“Closing Price”** on any date shall mean the last sale price for such Units, regular way, or, in case no such sale takes place on such day, the average of the closing bid and asked prices, regular way, for such Units, in either case as reported in the principal consolidated transaction reporting system with respect to securities listed or admitted to trading on the TSX or, if the Units are not listed or admitted to trading on the TSX, as reported on the principal consolidated transaction reporting system with respect to securities listed on the principal national securities exchange on which such Units are listed or admitted to trading or, if such Units are not listed or admitted to trading on any national securities exchange, the last quoted price, or, if not so quoted, the average of the high bid and low asked prices in the over-the-counter market, as reported by the principal automated quotation system on which such Units are quoted, or if such Units are not quoted by any such organization, the average of the closing bid and asked prices

as furnished by a professional market maker making a market in such Units selected by the Trustees or, in the event that no trading price is available for such Units, the fair market value of the Units, as determined in good faith by the Trustees.

- (l) “**Prohibited Owner**” shall mean, with respect to any purported Transfer, any Person who, but for the provisions of Section 6.2(a), would Beneficially Own or Constructively Own Units in violation of Section 6.2(a)(i) or would be an Undisclosed FIRPTA Holder, and if appropriate in the context, shall also mean any Person who would have been the record owner of the Units that the Prohibited Owner would have so owned.
- (m) “**Restriction Termination Date**” shall mean the first day after the Initial Date on which at least 66⅔% of the Trustees determine pursuant to Section 12.1(a) of this Declaration of Trust that it is no longer in the best interests of the Trust to attempt to, or continue to qualify as a “real estate investment trust” for U.S. federal income tax purposes or that compliance with the restrictions and limitations on Beneficial Ownership, Constructive Ownership and Transfers of Units set forth herein is no longer required in order for the Trust to qualify as a “real estate investment trust” for U.S. federal income tax purposes.
- (n) “**Transfer**” shall mean any issuance, sale, transfer, redemption, conversion, gift, assignment, devise or other disposition, as well as any other event that causes any Person to acquire, or change its level of, Beneficial Ownership or Constructive Ownership, or to acquire, or change its level of ownership, for the purposes of Section 897(c)(3) of the Code, including through the application of Section 897(c)(6)(C) of the Code, or any agreement to take any such actions or cause any such events, of Units or the right to vote (other than solely pursuant to a recoverable proxy) or receive distributions on Units, including (i) the granting or exercise of any option (or any disposition of any option), (ii) any disposition of any securities or rights convertible into or exchangeable for Units or any interest in Units or any exercise of any such conversion or exchange right, and (iii) Transfers of interests in other entities that result in changes in Beneficial Ownership or Constructive Ownership of Units or changes in level of ownership for the purposes of Section 897(c)(3) of the Code, including through the application of Section 897(c)(6)(C) of the Code; in each case, whether voluntary or involuntary, whether owned of record, Beneficially Owned or Constructively Owned or owned for purposes of Section 897(c)(3) of the Code, including through the application of Section 897(c)(6)(C) of the Code, and whether by operation of law or otherwise. The terms “**Transferring**” and “**Transferred**” shall have the correlative meanings.
- (o) “**Undisclosed FIRPTA Holder**” shall mean any Person that (i) is a FIRPTA Holder and (ii) has not fully satisfied the requirements of Section 6.2(d)(iii). Any determination by the Trust as to whether the provisions of Section 6.2(d)(iii) have been fully satisfied by a Person shall be conclusive for all purposes hereof.
- (p) “**Unit Ownership Limit**” shall mean 9.8% (in value or in number of Units, whichever is more restrictive), and subject to adjustment from time to time by the

Trustees in accordance with Section 6.2(h) of the aggregate of the outstanding Units, excluding any such outstanding Units which are not treated as outstanding for U.S. federal income tax purposes. Notwithstanding the foregoing, for purposes of determining the percentage ownership of Units by any Person, Units that are treated as Beneficially Owned or Constructively Owned by such Person shall be deemed to be outstanding. The number and value of outstanding Units shall be determined by the Board of Trustees in good faith, which determination shall be conclusive for all purposes hereof.

## 6.2 Units

### (a) Ownership Limitations.

(i) *Basic Restrictions.* During the period commencing on the Initial Date and prior to the Restriction Termination Date:

(A) (1) No Person, other than an Excepted Holder, shall Beneficially Own or Constructively Own Units in excess of the Unit Ownership Limit and (2) no Excepted Holder shall Beneficially Own or Constructively Own Units in excess of the Excepted Holder Limit for such Excepted Holder.

(B) No Person shall Beneficially Own or Constructively Own Units to the extent that such Beneficial Ownership or Constructive Ownership of Units could result in (1) the Trust being “closely held” within the meaning of Section 856(h) of the Code (without regard to whether the ownership interest is held during the last half of a taxable year), or (2) otherwise failing to qualify as a “real estate investment trust” for U.S. federal income tax purposes (including but not limited to Beneficial Ownership or Constructive Ownership that could result in the Trust Constructively Owning an interest in a tenant that is described in Section 856(d)(2)(B) of the Code if the income derived by the Trust from such tenant, taking into account any other income of the Trust that is treated as non-qualifying income for purposes of the gross income tests of Section 856(c) of the Code, might cause the Trust to fail to satisfy any of such gross income requirements imposed on real estate investment trusts) under Section 856(c) of the Code.

(C) Any Transfer that, if effective, would result in the Units being beneficially owned by fewer than 100 Persons (determined under the principles of Section 856(a)(5) of the Code) shall be *void ab initio*, and the intended transferee shall acquire no rights in such Units.

(ii) *Transfer in Charitable Trust for REIT Purposes.* If any Transfer (whether or not such Transfer is the result of a transaction entered into through the facilities of the TSX or any other national securities exchange or automated



inter-dealer quotation system or over-the-counter market) occurs which, if effective, would result in any Person Beneficially Owning or Constructively Owning Units in violation of Section 6.2(a)(i)(A) or (B):

- (A) then that number of Units the ownership of which otherwise would cause such Person to violate Section 6.2(a)(i)(A) or (B) (rounded up to the nearest whole Unit) shall be automatically transferred to a Charitable Trust for the benefit of a Charitable Beneficiary, as described in Section 6.3, effective as of the close of business on the Business Day prior to the date of such Transfer, and such Person shall acquire no rights in such Units; or
- (B) if the transfer to the Charitable Trust described in clause (A) of this sentence would not be effective for any reason to prevent the violation of Section 6.2(a)(i)(A) or (B), then the Transfer of that number of Units that otherwise would cause any Person to violate Section 6.2(a)(i)(A) or (B) shall be *void ab initio*, and the intended transferee shall acquire no rights in such Units.

In determining which Units are to be transferred to a Charitable Trust in accordance with this Section 6.2(a)(ii) and Section 6.3, Units shall be so transferred to a Charitable Trust in such manner as minimizes the aggregate value of the Units that are transferred to the Charitable Trust (except as provided in Section 6.2(f)) and, to the extent not inconsistent therewith, on a *pro rata* basis (unless otherwise determined by the Trustees in their sole and absolute discretion). To the extent that, upon a transfer of Units pursuant to this Section 6.2(a)(ii), a violation of any provision of Section 6.2(a)(i) would nonetheless be continuing (as, for example, where the ownership of Units by a single Charitable Trust would result in the Units being Beneficially Owned (determined under the principles of Section 856(a)(5) of the Code) by fewer than 100 Persons), then Units shall be transferred to that number of Charitable Trusts, each having a Charitable Trustee and a Charitable Beneficiary or Charitable Beneficiaries that are distinct from those of each other Charitable Trust, such that there is no such violation or unpermitted transfer.

(iii) *Transfer in Charitable Trust for FIRPTA Purposes.* If (1) any Transfer (whether or not such Transfer is the result of a transaction entered into through the facilities of the TSX or any other national securities exchange or automated inter-dealer quotation system or over-the-counter market) occurs which, if effective, would result in any Person being a FIRPTA Holder, and (2) the Person has not fully complied with the notice requirements of Sections 6.2(d)(iii):

- (A) then that number of Units the ownership of which otherwise caused such Person to be a FIRPTA Holder rounded up to the nearest whole Unit shall be automatically transferred to a Charitable Trust for the benefit of a Charitable Beneficiary, as described in Section 6.3, effective as of the close of business on the Business Day prior to the

date of such Transfer, and such Person shall acquire no rights in the Units; or

- (B) if the transfer to the Charitable Trust described in clause (A) of this sentence would not be effective for any reason to prevent the Person from becoming a FIRPTA Holder, then the Transfer of that number of Units that otherwise would cause the Person to become a FIRPTA Holder shall be *void ab initio*, and the intended transferee shall acquire no rights in such Units.

In determining which Units are to be transferred to a Charitable Trust in accordance with this Section 6.2(a)(iii) and Section 6.3, Units shall be so transferred to a Charitable Trust in such manner as minimizes the aggregate value of the Units that are transferred to the Charitable Trust (except as provided in Section 6.2(f) and, to the extent not inconsistent therewith, on a *pro rata* basis (unless otherwise determined by the Trustees in their sole and absolute discretion)).

- (iv) Without limitation of the application of any other provision of this Article 6, it is expressly intended that the restrictions on ownership and Transfer described in this Section 6.2(a) shall apply to restrict the rights of any member or partner in limited liability companies or partnerships to exchange their interest in such entities for Units.
- (b) *Remedies for Breach.* If the Board of Trustees shall at any time determine in good faith that a Transfer or other event has taken place that results in a violation of Section 6.2(a)(i) or that a Person that otherwise would be a FIRPTA Holder has not fully satisfied the notice requirements of Section 6.2(d)(iii), or that a Person intends or has attempted to acquire Beneficial Ownership or Constructive Ownership of any Units in violation of Section 6.2(a)(i) (whether or not such violation is intended), the Trustees or a committee thereof shall be entitled to and shall take such action as they or it deems advisable, in their or its sole and absolute discretion, to refuse to give effect to or to prevent such Transfer or other event, including, without limitation, causing the Trust to redeem Units, refusing to give effect to such Transfer on the books of the Trust, instituting proceedings to enjoin such Transfer or other event; provided, however, that any Transfer or attempted Transfer or other event in violation of Section 6.2(a)(i) or that otherwise would result in a Person being a FIRPTA Holder (where such Person has not fully complied with the notice requirements of Section 6.2(d)(iii)) shall automatically result in the transfer to the Charitable Trust described above, or, where applicable, such Transfer (or other event) shall be *void ab initio* as provided above irrespective of any action (or non-action) by the Trustees or a committee thereof.
- (c) *Notice of Restricted Transfer.* Any Person who acquires or attempts or intends to acquire Beneficial Ownership or Constructive Ownership of Units that will or may violate Section 6.2(a)(i) or any Person who held or would have owned Units that resulted in a transfer to a Charitable Trust pursuant to the provisions of Section

6.2(a)(ii) shall immediately give written notice to the Trust of such event or, in the case of such a proposed or attempted transaction, give at least 15 days' prior written notice, and shall provide to the Trust such other information as the Trust may request in order to determine the effect, if any, of such Transfer on the Trust's status as a "real estate investment trust" for U.S. federal income tax purposes.

(d) *Owners Required To Provide Information.*

- (i) From the Initial Date and prior to the Restriction Termination Date, each Person that is a Beneficial Owner or Constructive Owner of Units and each Person (including the Unitholder of record) who is holding Units for a Beneficial or Constructive Owner shall, on demand, provide to the Trust in writing such information as the Trust may request in order to determine the effect, if any, of such Beneficial Ownership or Constructive Ownership on the Trust's status as a "real estate investment trust" for U.S. federal income tax purposes and to ensure compliance with the Unit Ownership Limit and the other restrictions set forth herein, and to comply with requirements of any taxing authority or governmental authority or to determine such compliance.
- (ii) From the Initial Date, each Person that is treated as holding Units for the purpose of Section 897(c)(3) of the Code, including through the application of Section 897(c)(6)(C) of the Code, shall, on demand, provide to the Trust in writing such information as the Trust may request in order to determine the ownership of the Units for the purpose of determining the Trust's obligations under Section 1445 of the Code.
- (iii) For the purpose of determining the Trust's obligations under Section 1445 of the Code, from the Initial Date, any Person that would be treated as having changed its ownership of Units as a result of a Transfer so as to become a FIRPTA Holder shall provide to the Trust, in writing, prospective notice of the intended Transfer, which notice shall include the identity of the Person, the date of the intended Transfer and the number of Units that the Person would be treated as holding after the intended Transfer. Such notice is required to be delivered to the Chief Executive officer and the Corporate Secretary of the Trust by the close of the Business Day prior to the date of the intended Transfer.
- (iv) The Trustees may, in their sole and absolute discretion, from time to time revise the required notice provisions described in Section 6.2(d)(iii). The Trustees also may, in their sole and absolute discretion, from time to time choose whether or not to apply the excess Unit mechanism described in Section 6.2(a)(iii) to a particular FIRPTA Holder that has not complied with the notice provisions of Section 6.2(d)(iii), if the Trustees reasonably establish that the Trust can comply with its obligations under Section 1445 of the Code without the application of the excess Unit mechanism, or

reasonably establishes that it has no such obligations under Section 1445 of the Code.

- (e) *Remedies Not Limited.* Subject to Section 12.1(a) nothing contained in this Section 6.2 shall limit the authority of the Trustees to take such other action as they deem necessary or advisable to protect the Trust and the interests of its Unitholders in preserving the Trust's status as a "real estate investment trust" for U.S. federal income tax purposes or to comply with its obligations under Section 1445 of the Code.
- (f) *Ambiguity.* In the case of an ambiguity in the application of any of the provisions of this Article 6, including Section 6.2, Section 6.3, or any definition contained in Section 6.1 or any defined term used in this Article 6 but defined elsewhere in this Declaration of Trust, the Trustees shall have the power to determine the application of the provisions of this Article 6 with respect to any situation based on the facts known to it. In the event Section 6.2 or Section 6.3 requires an action by the Trustees and the Trustees fail to provide specific guidance with respect to such action, the Trustees shall have the power to determine the action to be taken so long as such action is not contrary to the provisions of Section 6.1, Section 6.2 or Section 6.3.
- (g) *Exceptions.*
  - (i) Subject to Section 6.2(a)(i)(B)(2), the Trustees, subject to their fiduciary duties under applicable law, may retroactively exempt and shall prospectively exempt a Person from the Unit Ownership Limit and, if necessary, shall establish or increase an Excepted Holder Limit for such Person, if the Trustees, based on such representations, covenants and undertakings from such Person to the extent required by the Trustees, and as are necessary or prudent to ascertain, as determined by the Trustees in their sole discretion, that such exemption could not cause or permit:
    - (A) five or fewer Individuals to Beneficially Own more than 49% in value of the outstanding Units (taking into account the then current Unit Ownership Limit, any then existing Excepted Holder Limits, and the Excepted Holder Limit of such Person); or
    - (B) the Trust to Constructively Own an interest in any tenant of the Trust or any tenant of any entity directly or indirectly owned, in whole or in part, by the Trust (for this purpose, the Trustees may determine in their sole and absolute discretion that a tenant shall not be treated as a tenant of the Trust if (1) the Trust could not Constructively Own more than a 9.9% interest (that is described in Section 856(d)(2)(B) of the Code) in any such tenant; or (2) the Trust (directly, or through an entity directly or indirectly owned, in whole or in part, by the Trust) derives (and is expected to continue to derive) a sufficiently small amount of revenue from such tenant such that, in the opinion

of the Trustees, rent from such tenant would not adversely affect the Trust's ability to qualify as a "real estate investment trust" for U.S. federal income tax purposes).

- (ii) Further, in connection with obtaining an Excepted Holder Limit, the Person to whom the Trustees are granting such Excepted Holder Limit must agree that any violation or attempted violation of such representations, covenants or undertakings described in Section 6.2(g)(i) may result in such Units being automatically transferred to a Charitable Trust in accordance with Sections 6.2(a)(ii) and 6.2(a)(iii).
- (iii) Prior to granting any exception pursuant to Section 6.2(g)(i), the Trustees may require a ruling from the U.S. Internal Revenue Service, or an opinion of counsel, in either case in form and substance satisfactory to the Trustees in their sole and absolute discretion, as they may deem necessary or advisable in order to determine or ensure the Trust's status as a "real estate investment trust" for U.S. federal income tax purposes. Notwithstanding the receipt of any ruling or opinion, the Trustees may impose such conditions or restrictions as they deem appropriate in connection with granting such exception.
- (iv) Subject to Section 6.2(a)(i)(B)(2), an underwriter which participates in a public offering or a private placement of Units (or securities convertible into or exchangeable for Units) may Beneficially Own or Constructively Own Units (or securities convertible into or exchangeable for Units) in excess of the Unit Ownership Limit, but only to the extent necessary to facilitate such public offering or private placement.
- (v) The Trustees may only reduce the Excepted Holder Limit for an Excepted Holder: (A) with the written consent of such Excepted Holder at any time, or (B) pursuant to the terms and conditions of the agreements and undertakings entered into with such Excepted Holder in connection with the establishment of the Excepted Holder Limit for that Excepted Holder. No Excepted Holder Limit shall be reduced to a percentage that is less than the Unit Ownership Limit.
- (h) *Increase or Decrease in Unit Ownership Limit.* Subject to Section 6.2(a) and the rest of this Section 6.2(h), the Trustees may, in their sole and absolute discretion, from time to time, increase or decrease the Unit Ownership Limit for one or more Persons; provided, however, that a Unit Ownership Limit will not be effective for any Person who Beneficially Owns or Constructively Owns, as applicable, Units in excess of such decreased Unit Ownership Limit at the time such limit is decreased, until such time as such Person's Beneficial Ownership or Constructive Ownership of Units, as applicable, equals or falls below the decreased Unit Ownership Limit, but any further acquisition of Units or increased Beneficial Ownership or Constructive Ownership of Units, during the period that such decreased Unit Ownership Limit is not effective with respect to such Person, will be in violation

of the Unit Ownership Limit and, provided further, that the new Unit Ownership Limit (taking into account any then existing Excepted Holder Limits to the extent appropriate as determined by the Trust) would not allow five or fewer Persons to Beneficially Own more than 49% in value of the outstanding Units.

- (i) *Legend.* Each certificate representing Units, if any, shall bear substantially the following legend:

“The Units represented by this certificate are subject to restrictions on Beneficial and Constructive Ownership and Transfer for the purpose of the Trust’s maintenance of its status as a real estate investment trust (“REIT”) under the U.S. Internal Revenue Code of 1986, as amended (the “Code”). Subject to certain further restrictions and except as expressly provided in the Trust’s Declaration of Trust, (i) no Person may Beneficially or Constructively Own Units in excess of the Unit Ownership Limit unless such Person is an Excepted Holder (in which case the Excepted Holder Limit shall be applicable); (ii) no Person may Beneficially or Constructively Own Units that would result in the Trust being “closely held” under Section 856(h) of the Code (without regard to whether the ownership interest is held during the last half of a taxable year) or otherwise cause the Trust to fail to qualify as a REIT; and (iii) no Person may Transfer Units if such Transfer would result in the Units of the Trust being owned by fewer than 100 Persons (as determined under the principles of Section 856(a)(5) of the Code). Any Person who Beneficially or Constructively Owns or attempts to Beneficially or Constructively Own Units which causes or will cause a Person to Beneficially or Constructively Own Units in excess or in violation of the above limitations must immediately notify the Trust. If any of the restrictions on transfer or ownership set forth in (i) through (iii) above are violated, the Units represented hereby will be automatically transferred to a Charitable Trustee of a Charitable Trust for the benefit of one or more Charitable Beneficiaries. In addition, the Trust may take other actions, including redeeming Units upon the terms and conditions specified by the Trustees in their sole and absolute discretion if the Trustees determine that ownership or a Transfer or other event may violate the restrictions described above. Furthermore, upon the occurrence of certain events, attempted Transfers in violation of the restrictions described above may be *void ab initio*.

The Units represented by this certificate are subject to transfer restrictions for the purpose of the Trust’s compliance with the requirements of Section 1445 of the Code. If (1) any Transfer (whether or not such Transfer is the result of a transaction entered into through the facilities of the TSX or any other national securities exchange or automated inter-dealer quotation system or over-the-counter market) occurs which, if effective, would result in any Person being a FIRPTA Holder, and (2) the Person has not fully complied with the notice requirements of Section 6.2(d)(iii) of this Declaration of Trust: (i) then that number of Units the ownership of which otherwise would cause such Person to be a FIRPTA Holder is to be automatically transferred to a Charitable Trust for the benefit of a Charitable Beneficiary, as described in Section 6.3 of this Declaration of Trust, effective as of the close of business on the Business Day prior to the date of such Transfer, and

such Person shall acquire no rights in the Units; or (ii) if the transfer to the Charitable Trust described in clause (i) of this sentence would not be effective for any reason to prevent the Person from becoming a FIRPTA Holder, then the Transfer of that number of Units that otherwise would cause the Person to become a FIRPTA Holder shall be *void ab initio*, and the intended transferee shall not acquire any rights in such Units. In addition, the Trust may take other actions, including redeeming Units upon the terms and conditions specified by the Trustees in their sole and absolute discretion if the Trustees determine that ownership or a Transfer has resulted in a Person becoming a FIRPTA Holder that has not fully complied with the notice requirements of Section 6.2(d)(iii) of this Declaration of Trust.

All capitalized terms in this legend have the meanings defined in the Declaration of Trust of the Trust, as the same may be amended from time to time, a copy of which, including the restrictions on transfer and ownership, will be furnished to each holder of Units of the Trust on request and without charge. Requests for such a copy may be directed to the Corporate Secretary of the Trust at its principal office.”;

provided that instead of the foregoing legend, a certificate may state that the Trust will furnish a full statement about certain restrictions on ownership and transfer of the Units to a Unitholder on request and without charge.

### **6.3 Transfer of Units in Charitable Trust**

- (a) *Ownership in Charitable Trust.* Upon any purported Transfer or other event described in Section 6.2(a)(ii) or Section 6.2(a)(iii) that would result in a transfer to a Charitable Trust, such Units shall be deemed to have been transferred to the Charitable Trustee as trustee of a Charitable Trust for the exclusive benefit of one or more Charitable Beneficiaries. Such transfer to the Charitable Trustee shall be deemed to be effective as of the close of business on the Business Day prior to the purported Transfer or other event that results in the transfer to the Charitable Trust pursuant to Section 6.2(a)(ii) or Section 6.2(a)(iii). The Charitable Trustee shall be appointed by the Trust and shall be a Person unaffiliated with the Trust and any Prohibited Owner. Each Charitable Beneficiary shall be designated by the Trust as provided in Section 6.3(f).
- (b) *Status of Units Held by the Charitable Trustee.* Units held by the Charitable Trustee shall be issued and outstanding Units of the Trust. The Prohibited Owner shall have no rights in the Units held by the Charitable Trustee. The Prohibited Owner shall not benefit economically from ownership of any Units held in trust by the Charitable Trustee, shall have no rights to dividends or other distributions and shall not possess any rights to vote or other rights attributable to the Units held in the Charitable Trust. The Prohibited Owner shall have no claim, cause of action, or any other recourse whatsoever against the purported transferor of such Units.

- (c) *Dividend and Voting Rights.* The Charitable Trustee shall have all voting rights and rights to dividends or other distributions with respect to Units held in the Charitable Trust, which rights shall be exercised for the exclusive benefit of the Charitable Beneficiary. Any dividend or other distribution paid prior to the discovery by the Charitable Trust that the Units have been transferred to the Charitable Trustee shall be paid by the recipient of such dividend or other distribution to the Charitable Trustee upon demand and any dividend or other distribution authorized but unpaid shall be paid when due to the Charitable Trustee. Any dividend or distribution so paid to the Charitable Trustee shall be held in trust for the Charitable Beneficiary. The Prohibited Owner shall have no voting rights with respect to Units held in the Charitable Trust and, subject to the laws of the Province of Ontario, effective as of the date that the Units have been transferred to the Charitable Trustee, the Charitable Trustee shall have the authority (at the Charitable Trustee's sole and absolute discretion) (i) to rescind as void any vote cast by a Prohibited Owner prior to the discovery by the Trust that the Units have been transferred to the Charitable Trustee and (ii) to recast such vote in accordance with the desires of the Charitable Trustee acting for the benefit of the Charitable Beneficiary; provided, however, that if the Trust has already taken irreversible action, then the Charitable Trustee shall not have the authority to rescind and recast such vote. Notwithstanding the provisions of this Article 6, until the Trust has received notification that Units have been transferred into a Charitable Trust, the Trust shall be entitled to rely on its Unit transfer and other Unitholder records for purposes of preparing lists of Unitholders entitled to vote at meetings, determining the validity and authority of proxies and otherwise conducting votes of Unitholders.
- (d) *Sale of Units by Charitable Trustee.* Within 20 days of receiving notice from the Trust that Units have been transferred to the Charitable Trust, the Charitable Trustee of the Charitable Trust shall sell the Units held in the Charitable Trust to a Person or Persons, designated by the Charitable Trustee, whose ownership of the Units will not violate the ownership limitations set forth in Section 6.2(a)(i) and who is not (and would not become as a result of the transfer) an Undisclosed FIRPTA Holder. Upon such sale, the Charitable Beneficiary in the Units sold shall terminate and the Charitable Trustee shall distribute the net proceeds of the sale to the Prohibited Owner and to the Charitable Beneficiary as provided in Section 6.3(f). The Prohibited Owner shall receive the lesser of (i) the price paid by the Prohibited Owner for the Units or, if the Prohibited Owner did not give value for the Units in connection with the event causing the Units to be held in the Trust (e.g., in the case of a gift, devise or other such transaction), the Market Price of the Units on the day of the event causing the Units to be held in the Trust, and (ii) the price per Unit received by the Charitable Trustee (net of any commissions and other expenses of sale) from the sale or other disposition of the Units held in the Charitable Trust. The Charitable Trustee shall reduce the amount payable to the Prohibited Owner by the amount of dividends and other distributions which have been paid to the Prohibited Owner and are owed by the Prohibited Owner to the Charitable Trustee pursuant to Section 6.3(c). Any net sales proceeds in excess of the amount payable to the Prohibited Owner shall be immediately paid to the Charitable Beneficiary together with any dividends or other distributions thereon.



If, prior to the discovery by the Trust that Units have been transferred to the Charitable Trustee, such Units are sold by a Prohibited Owner, then (A) such Units shall be deemed to have been sold on behalf of the Charitable Trust, and (B) to the extent that the Prohibited Owner received an amount for such Units that exceeds the amount that such Prohibited Owner was entitled to receive pursuant to this Section 6.3(d), such excess shall be paid to the Charitable Trustee upon demand.

- (e) *Purchase Right in Units Transferred to the Charitable Trustee.* Units transferred to the Charitable Trustee shall be deemed to have been offered for sale to the Trust, or its designee (subject to the approval of such designee by the TSX), at a price per Unit equal to the lesser of (i) the price per Unit in the transaction that resulted in such transfer to the Charitable Trust (or, in the case of a gift, devise or other transaction, the Market Price at the time of such gift, devise or other transaction) and (ii) the Market Price on the date the Trust, or its designee, accepts such offer. The Trust shall reduce the amount payable to the Charitable Trustee by the amount of dividends and distributions which have been paid to the Prohibited Owner and are owed by the Prohibited Owner to the Charitable Trustee pursuant to Section 6.3(c). The Trust shall pay the amount of such reduction to the Charitable Trustee for the benefit of the Charitable Beneficiary. The Trust shall have the right to accept such offer until the Charitable Trustee has sold the Units held in the Charitable Trust pursuant to Section 6.3(d). Upon such a sale to the Trust, the interest of the Charitable Beneficiary in the Units sold shall terminate and the Charitable Trustee shall distribute the net proceeds of the sale to the Prohibited Owner and any dividends or other distributions held by the Charitable Trustee with respect to such Units will be paid to the Charitable Beneficiary.
- (f) *Designation of Charitable Beneficiaries.* By written notice to the Charitable Trustee, the Trust shall designate one or more non-profit organizations to be the Charitable Beneficiary of the interest in the Charitable Trust such that the Units held in the Charitable Trust would not violate the restrictions set forth in Section 6.2(a)(i) in the hands of such Charitable Beneficiary and would not be treated as being held by an Undisclosed FIRPTA Holder. Neither the failure of the Trust to make such designation nor the failure of the Trust to appoint the Charitable Trustee before the automatic transfers provided for in Section 6.2(a)(ii) or Section 6.2(a)(iii) shall make such transfer ineffective, provided that the Charitable Trust thereafter makes such designation and appointment. The designation of a non-profit organization as a Charitable Beneficiary shall not entitle such non-profit organization to continue to serve in such capacity and the Trust may, in its sole discretion, designate a different non-profit organization as the Charitable Beneficiary at any time and for any or no reason, provided, however, that if a Charitable Beneficiary was designated at the time the Units were placed in the Charitable Trust, such Charitable Beneficiary shall be entitled to the rights set forth herein with respect to such Units, unless and until the Trust opts to purchase such Units.

#### **6.4 Additional FIRPTA Remedies**

To the extent that the provisions provided herein are not sufficient to permit the Trust to comply with its FIRPTA withholding obligations or to recover amounts in respect of its FIRPTA withholding obligations from a Person that is or has been (or would be or would have been but for the provisions of Section 6.2(a)(iii)) a FIRPTA Holder, or if required to enforce the provisions of Section 6.3, the Board of Trustees shall be authorized to take any actions required to satisfy such obligations or recover such amounts (subject to applicable law). Such actions may include, but are not limited to: (i) making any required deduction or withholding from a distribution or any other amounts payable in connection with the Units to comply with the provisions of U.S. federal, state or local tax law, (ii) setting off against any payments on the Units to a Person that is or has been a FIRPTA Holder (or otherwise would be or would have been a FIRPTA Holder but for the provisions of Section 6.2(a)(iii)) that has not complied with the provisions of Sections 6.2(d)(ii), 6.2(d)(iii) or 8.3, or (iii) forcing a sale of Units held by a Person and requiring the proceeds to be applied against the Trust's obligations under Section 1445 of the Code if such obligations have resulted from any distributions to such Person.

#### **6.5 TSX and other Exchange Transactions**

Nothing in this Article 6 shall preclude the settlement of any transaction entered into through the facilities of the TSX or any other national securities exchange or automated inter-dealer quotation system or over-the-counter market. The fact that the settlement of any transaction occurs shall not negate the effect of any other provision of this Article 6 and any transferee in such a transaction shall be subject to all of the provisions and limitations set forth in this Article 6.

### **ARTICLE 7 MEETINGS OF THE UNITHOLDERS**

#### **7.1 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; provided that the Trustees may in their sole discretion determine that a meeting shall not be held at any place, but may instead be held entirely by means of a telephonic, electronic or other communication facility that permits all participants to communicate adequately during the meeting pursuant to Section 7.3 if the Trust is able to, and does, make available such a communication facility. The annual meeting of the unitholders shall be held after delivery to the unitholders of the information referred to in Section 15.7 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, 2023.

#### **7.2 Special Meetings**

The Trustees shall have power at any time to call special meetings of the unitholders at such time and place in Canada as the Trustees may determine; provided that the Trustees may in their sole discretion determine that a meeting shall not be held at any place, but may instead be held entirely by means of a telephonic, electronic or other communication facility that permits all participants

to communicate adequately during the meeting pursuant to Section 7.3 if the Trust is able to, and does, make available such a communication facility. The unitholders holding in the aggregate not less than 5% of the votes attaching to all outstanding REIT Units (on a fully diluted basis) may requisition the Trustees in writing to call a special meeting of the unitholders for the purposes stated in the requisition. The requisition must state in reasonable detail the business proposed to be transacted at the meeting and shall be sent to each of the Trustees and to the principal office of the Trust. The unitholders have the right to obtain a list of the unitholders to the same extent and upon the same conditions as those which apply to shareholders of a corporation governed by the CBCA. Upon receiving the requisition, the Trustees shall call a meeting of the unitholders to transact the business referred to in the requisition, unless:

- (a) a record date for a meeting of unitholders has been fixed and notice of the record date 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 7.3;
- (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 7.2 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 7.3 and 7.9 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.

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

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

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

A unitholder or proxyholder participating in a meeting by such means is deemed for the purposes of this Declaration of Trust to be present at the meeting. Any person entitled to vote at a meeting of unitholders where the Trust has made available a telephonic, electronic or other communication facility for the purposes of attending and voting at such meeting may vote by such means of the telephonic, electronic or other communication facility that the Trust has made available for that purpose. Any vote referred to in Section 7.7 may be held entirely by means of a telephonic, electronic or other communication facility if the Trust makes available such a communication facility, provided, in each case, that the facility: (i) enables the votes to be gathered in a manner that permits their subsequent verification; and (ii) permits the tallied votes to be presented to the Trust without it being possible for the Trust to identify how each Unitholder or group of Unitholders voted.

### **7.4 Notice of Meeting of the Unitholders**

Notice of all meetings of unitholders shall be mailed or delivered by the Trustees to each unitholder at his/her address appearing in the Register, to each Trustee and to the Auditors not less than 21

days nor more than 60 days, or within such other number of days as required by law or the relevant stock exchange, before the meeting (including, for clarity, any time periods applicable to the Trust's use of "notice and access" or any other means of distributing materials in respect of the applicable meeting of unitholders). Notice of any meeting of unitholders shall state the purposes of the meeting, the time and place in Canada, if any, where such meeting is to be held, and if a meeting is to take place through a communications facility by which unitholders and proxyholders may be deemed to be present in person, the means to access such communications facility and vote at such meeting.

## 7.5 Nominations of Trustees

- (a) Subject only to this Declaration of Trust and Applicable Securities Laws, only persons who are nominated in accordance with the following procedures shall be eligible for election as Trustees of the Trust. Nominations of persons for election to the Board may be made at any annual meeting of unitholders, or at any special meeting of unitholders if one of the purposes for which the special meeting was called was the election of Trustees:
  - (i) by or at the direction of the Board of Trustees, including pursuant to a notice of meeting;
  - (ii) by or at the direction or request of one or more unitholders pursuant to a requisition of the unitholders made in accordance with the Declaration of Trust; or
  - (iii) by any person (a "**Nominating Unitholder**") who:
    - (A) at the close of business on the date by which the Nominating Unitholder must give notice as provided for below in this Section 7.5 and at the close of business on the record date for notice of such meeting, is entered in the Register of the Trust as a holder of one or more REIT Units carrying the right to vote at such meeting or beneficially owns REIT Units that are entitled to be voted at such meeting; and
    - (B) complies with the notice procedures set out below in this Section 7.5.
- (b) In addition to any other applicable requirements, for a nomination to be validly made by a Nominating Unitholder, the Nominating Unitholder must have given notice thereof that is both timely (in accordance with Section 7.5(c) below) and in proper written form (in accordance with Section 7.5(d) below) to the Trustees at the corporate offices of the Trust.
- (c) To be timely, a Nominating Unitholder's notice to the Trustees must be made:
  - (i) in the case of an annual meeting of unitholders (including an annual and special meeting), not less than 30 days prior to the date of the annual

meeting of unitholders provided, however, that in the event that the annual meeting of unitholders is to be held on a date that is less than 50 days after the date (the “**Notice Date**”) on which the first Public Announcement of the date of the annual meeting was made, notice by the Nominating Unitholder may be made not later than the close of business on the 10th day following the Notice Date;

- (ii) in the case of a special meeting (which is not also an annual meeting) of unitholders called for the purpose of electing Trustees (whether or not called for other purposes as well), not later than the close of business on the 15th day following the day on which the first Public Announcement of the date of the special meeting of unitholders was made; and
  - (iii) in the case of a meeting of unitholders of the type contemplated by (a) or (b) above for which notice-and-access is to be used for the delivery of the applicable proxy-related materials and for which the date on which the first Public Announcement of the date of such meeting was made is not less than 50 days prior to the date of such meeting of Unitholders, not less than 40 days prior to the date of such meeting of Unitholders.
- (d) To be in proper written form, a Nominating Unitholder’s notice to the Trustees must be in writing and must set forth:
- (i) as to each person whom the Nominating Unitholder proposes to nominate for election as a Trustee (each, a “**Proposed Nominee**”):
    - (A) the name, age, business address and residential address of the Proposed Nominee;
    - (B) the principal occupation or employment of the Proposed Nominee both presently and for the past five years;
    - (C) whether the Proposed Nominee is a “resident Canadian” within the meaning of the CBCA;
    - (D) each class or series and number of REIT Units which are, directly or indirectly, owned beneficially or of record by, or under the control or direction of, the Proposed Nominee or any affiliates or associates of, any person or entity acting jointly or in concert with, the Proposed Nominee as of the record date for the meeting of Unitholders (if such date shall then have been made publicly available and shall have occurred) and as of the date of such notice;
    - (E) full particulars regarding (i) any contract, agreement, arrangement, understanding or relationship (collectively, “**Arrangements**”), including without limitation financial, compensation and indemnity related Arrangements, between the Proposed Nominee or any affiliates or associates of, or any person or entity acting jointly or in

concert with, the Proposed Nominee or the Nominating Unitholder, in connection with the Proposed Nominee's nomination and election as Trustee; and

- (F) any other information relating to the Proposed Nominee that would be required to be disclosed in a dissident's proxy circular in connection with solicitations of proxies for the election of Trustees pursuant to the Declaration of Trust or Applicable Securities Laws.
- (ii) as to each Nominating Unitholder giving the notice:
- (A) their name, business and residential address;
  - (B) each class or series and number of REIT Units which are, directly or indirectly, owned beneficially or of record by, or under the control or direction of, the Nominating Unitholder or any other person with whom the Nominating Unitholder is acting jointly or in concert with respect to the Trust or any of its REIT Units, as of the record date for the meeting of unitholders (if such date shall then have been made publicly available and shall have occurred) and as of the date of such notice;
  - (C) their interests in, or rights or obligations associated with, any Arrangement, the purpose or effect of which is to alter, directly or indirectly, the Nominating Unitholder's economic interest in a REIT Unit or the Nominating Unitholder's economic exposure to the Trust;
  - (D) full particulars regarding any Arrangements, including without limitation financial, compensation and indemnity related Arrangements, pursuant to which the Nominating Unitholder or any person acting jointly or in concert with the Nominating Unitholder, has any interests, rights or obligations relating to the voting of any REIT Units or the nomination of Trustees to the Board of Trustees; and
  - (E) any other information relating to the Nominating Unitholder that would be required to be disclosed in a dissident's proxy circular in connection with solicitations of proxies for the election of Trustees pursuant to Applicable Securities Laws.
- (e) Unless otherwise specified in this Section 7.5, all information to be provided in a timely notice pursuant to Subsection 7.5(c) above shall be provided as of the date of such notice. If requested by the Trust, the Nominating Unitholder shall update such information forthwith so that it is true and correct in all material respects as of the record date for the meeting of unitholders to which such notice relates and the date that is 10 Business Days prior to the date of the meeting, or any adjournment or postponement thereof.

- (f) For the avoidance of doubt, the procedures set forth in this Section 7.5 shall be the exclusive means for any person to bring nominations for election to the Board of Trustees before any annual or special meeting of unitholders of the Trust. No person shall be eligible for election as a Trustee of the Trust unless such person has been nominated in accordance with the provisions of this Section 7.5; provided, however, that nothing in this Section 7.5 shall be deemed to preclude discussion by a unitholder (as distinct from the nomination of Trustees) at a meeting of unitholders of any matter in respect of which such unitholder would have been entitled to submit to a vote pursuant to the terms and conditions of the Declaration of Trust.
- (g) Notwithstanding any other provision of this Section 7.5, any notice or other document or information required to be given to the Trustees pursuant to this Section 7.5 may only be given by personal delivery, facsimile transmission or by email (at such email address as may be stipulated from time to time by the Trustees for purposes of this notice), and shall be deemed to have been given and made only at the time it is served by personal delivery to the Trustees at the address of the corporate offices of the Trust, emailed (at the address as aforesaid) or sent by facsimile transmission (provided that receipt of confirmation of such transmission has been received); provided that if such delivery or electronic communication is made on a day which is a not a Business Day or later than 5:00 p.m. (Toronto time) on a Business Day, then such delivery or electronic communication shall be deemed to have been made on the next following day that is a Business Day.
- (h) Notwithstanding any of the foregoing, the Board of Trustees may, in its sole discretion, waive all or any of the requirements of this Section 7.5.
- (i) The Chair of the meeting shall have the duty and the power to determine whether a nomination was made in accordance with the procedures set forth in the foregoing provisions of this Section 7.5 and, if any proposed nomination is not in compliance with such provisions, to declare that such defective nomination shall be disregarded.

## **7.6 Quorum**

A quorum for any meeting of unitholders shall be individuals present not being less than two in number and being the unitholders or representing by proxy the unitholders who hold in the aggregate not less than 10% of the votes attached to all outstanding REIT Units (on a fully diluted basis), provided that if the Trust has only one unitholder, the unitholder present or by proxy constitutes a meeting and a quorum for such meeting. In the event of such quorum not being present within 30 minutes after the time fixed for the holding of such meeting, the meeting, if convened on the requisition of unitholders, shall be dissolved, but in any other case shall stand adjourned to such day being not less than 10 days later and to such place in Canada, if any, and time as may be fixed by the 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.

### **7.7 Voting**

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

### **7.8 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 66 $\frac{2}{3}$ % of the votes cast by the unitholders at a meeting duly called for that purpose or by written resolution in lieu thereof.

### **7.9 Class Approval**

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

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

### **7.10 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.

### **7.11 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.

### **7.12 Personal Representatives**

If a unitholder is deceased, his/her personal representative, upon filing with the Corporate Secretary of the meeting such proof of his/her appointment as the Corporate Secretary considers sufficient, shall be entitled to exercise the same voting rights at any meeting of unitholders as the unitholder would have been entitled to exercise if he or she were living and for the purpose of the

meeting shall be considered to be a unitholder. Subject to the provisions of the will of a deceased unitholder, if there is more than one personal representative, the provisions of Section 5.15 relating to joint holders shall apply.

### **7.13 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.

### **7.14 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.

### **7.15 Binding Effect of Resolutions**

Every resolution passed at a meeting in accordance with the provisions of this Article 7 shall be binding upon all unitholders, whether present at or absent from the meeting.

### **7.16 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.

### **7.17 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 7.

## **ARTICLE 8 MEETINGS OF THE TRUSTEES**

### **8.1 Trustees May Act Without Meeting**

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

## **8.2 Notice of Meeting**

Meetings of the Trustees may be held from time to time upon the giving of notice by any two Trustees. Regular meetings of the Trustees may be held without call or notice at a time and place in Canada fixed in accordance with the Trustees' Regulations or by other means permitted by Section 8.5. Notice of the time and place of any other meetings shall be given (which need not be in writing) not less than 48 hours before the meeting but may be waived in writing by any Trustee either before or after such meeting. The attendance of a Trustee at a meeting shall constitute a waiver of notice of such meeting except where a Trustee attends a meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting has not been lawfully called or convened. 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.

## **8.3 Quorum**

A quorum for all meetings of Trustees or any committee thereof shall be a majority of the Trustees then holding office or of the Trustees on such committee, as the case may be, present; 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.

## **8.4 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.

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

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

## **ARTICLE 9 DELEGATION OF POWERS**

### **9.1 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.

### **9.2 Audit Committee**

The Trustees shall appoint an audit committee (the “**Audit Committee**”) consisting of at least three Trustees, all of whom shall be financially literate and independent within the meaning of NI 52-110, except for temporary periods in limited circumstances in accordance with NI 52-110. The Audit Committee shall have the powers and duties provided to an audit committee pursuant to Applicable Securities Laws and in addition, such other powers and duties as the Trustees may determine as set out in the Audit Committee’s charter and may otherwise assign from time to time. 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.

### **9.3 Governance, Compensation and Environmental Committee**

The Trustees shall appoint one or more committees of the Board of Trustees having responsibility for governance, compensation and environmental matters, and having such powers and duties as the Trustees may determine as set out in such committee’s charter and may otherwise assign from time to time.

#### **9.4 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 committee of the Board of Trustees any powers or authority in respect of which a board of directors of a corporation governed by the CBCA may not delegate.

#### **9.5 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 10 DISTRIBUTIONS**

#### **10.1 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.

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 on a Distribution Date 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 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 7.10.

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

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

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 15<sup>th</sup> Distribution Date of each year in respect of the most recent taxation year of the Trust ending on or before such date (the “**preceding taxation year**”) pursuant to this Section 10.1 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 10.1 which have been determined by the Trustees, pursuant to Section 10.5, 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 5.19(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 10.1 which has been determined by the Trustees, pursuant to Section 10.5, 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 5.19(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 10.1 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.

Notwithstanding anything to the contrary above, for greater certainty, the Trustees may cause one or more distributions made in a year subsequent to a particular taxation year to be treated for U.S. federal income tax purposes as having been paid in such particular taxation year for purposes of determining the Trust’s dividend paid deduction in accordance with section 857 or section 858 of the Code.

## **10.2 Allocation**

Distributions payable to Unitholders pursuant to this Article 10 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 5.19(i).

## **10.3 Payment and Method of Distributions**

- (a) Distributions shall be made by cheque payable to or to the order of the Unitholder, by electronic funds transfer or by such other manner of payment approved by the Trustees from time to time. The payment, if made by cheque, shall be conclusively deemed to have been made upon hand delivery of a cheque to the Unitholder or to his/her agent duly authorized in writing or upon the mailing of a cheque by prepaid first-class mail addressed to the Unitholder at his/her address as it appears on the Register unless the cheque is not paid on presentation, or in any other manner determined by the Trustees in their sole discretion. In the case of jointly registered Unitholders, any cash payment required hereunder to be made to a Unitholder shall be deemed to be required to be made to such Unitholders jointly and shall be paid by cheque or bank draft but may also be paid in such other manner as the joint registered Unitholders or any one of the joint registered Unitholders has designated to the Trustees and the Trustees have accepted. For certainty, a Unitholder or any one of the joint Unitholders may designate and the Trustees may accept that any payment required to be made hereunder shall be made by deposit to an account of such Unitholder or to a joint account of such Unitholder and any other Person or in the case of joint registered Unitholders to an account of joint registered Unitholders or to an account of any one of the joint registered Unitholders. A cheque or bank draft shall, unless the joint registered Unitholders otherwise direct, be made payable to the order of all of the said joint registered Unitholders, and if more than one address appears on the books of the Trust in respect of such joint Unitholding, the cheque or bank draft or payment in other acceptable manner as aforesaid shall satisfy and discharge all liability of the Trustees and the Trust for the amount so required to be paid unless the cheque or bank draft is not paid at par on presentation at any place where it is by its terms payable. The receipt by the registered Unitholder in another acceptable manner of any payment not mailed or paid in accordance with this Section 10.3 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 5.14, 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 10 on the due date for such payment, the payment may, at the option of the Trustees, include the issuance of additional Units, or fractions of Units, if necessary, having a fair market value as determined by the Trustees equal to the difference between the amount of such distribution and the amount of cash which has been determined by the Trustees to be available for the payment of such distribution in the case of Units; provided that, if the Trustees issue Units in respect of a distribution and intend for the Trust to qualify as a "real estate investment trust" under Section 857 of the Code, the Trustees will distribute sufficient cash for the Trust to meet its distribution requirements for qualification as a "real estate investment trust" as set forth in Section 857 of the Code. Such additional Units will be issued pursuant to applicable exemptions under Applicable Securities Laws, discretionary exemptions granted by applicable securities regulatory authorities or a prospectus or similar filing. The value of each Unit that is issued pursuant to this Section 10.3 will be the market price (determined in accordance with Section 5.19) of the Units determined as of the trading day immediately prior to the applicable record date in respect of the distribution.

#### **10.4 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.

#### **10.5 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.

## **10.6 Holdco Distributions**

In exercising their discretion to declare a cash distribution on the Units, the Trustees shall confirm that Holdco has or will have sufficient funds to make a corresponding cash distribution on the Class B Units in accordance with their terms.

## **10.7 Withholding Taxes**

Unless otherwise determined by the Trustees, the Trust shall deduct or withhold from distributions payable to any Unitholder amounts required by law to be deducted or withheld from such Unitholder's distributions. Unitholders who are Non-Residents will be required to pay all Canadian withholding taxes payable in respect of any distributions of income by the Trust and all unitholders who are U.S. Non-Residents will be required to pay all U.S. withholding taxes payable in respect of any distributions of income by the Trust, whether such distributions are in the form of cash or additional REIT Units.

## **10.8 Definitions**

Unless the context otherwise requires, any term in Article 1 and this Article 10 not otherwise defined herein shall have for the purposes of Article 1 and this Article 10 the meaning that it has in the Tax Act.

# **ARTICLE 11 FEES AND EXPENSES**

## **11.1 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 payable under the Asset Management Agreement and the Services Agreements;
- (c) fees and expenses of lawyers, accountants, appraisers, the Auditors and other agents or consultants employed by or on behalf of the Trust;
- (d) compensation, remuneration and expenses of the Trustees;
- (e) fees and expenses connected with the due diligence, acquisition, disposition and ownership of Trust Property permitted in this Declaration of Trust;
- (f) insurance, including trustees, directors and officers liability insurance, as considered necessary by the Trustees;
- (g) expenses in connection with payments of distributions of Units of the Trust;

- (h) expenses in connection with communications to the unitholders and the other bookkeeping and clerical work necessary in maintaining relations with the unitholders;
- (i) expenses of changing the terms of this Declaration of Trust or terminating the Trust;
- (j) fees and charges of transfer agents, registrars, indenture trustees and other trustees and custodians;
- (k) all fees, expenses, taxes and other costs incurred in connection with the issuance, distribution, transfer and qualification for distribution to the public of REIT Units or other securities of the Trust and other required governmental filings and fees of stock exchanges and the securities administrators; and
- (l) all costs and expenses in connection with the incorporation or establishment, organization and maintenance of corporations and other entities controlled by the Trust and formed to hold real property or other property of the Trust,

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

## **ARTICLE 12 AMENDMENTS TO THE DECLARATION OF TRUST**

### **12.1 Amendment by the Trustees**

A majority of the 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” under the Tax Act or to otherwise prevent the Trust or any of its Subsidiaries from becoming subject to tax under the provisions of the Tax Act that apply to a specified investment flow-through trust or partnership; (iii) the status of the Trust as a “real estate investment trust” for U.S. federal income tax purposes; or (iv) the distribution of REIT Units;
- (b) 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), (ii) to enable the Trust to issue Units for which the purchase price is payable in instalments; and/or (iii) 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) which, in the opinion of the Trustees, are necessary or desirable: (i) to ensure continuing compliance with IFRS; or (ii) to ensure the Units are classified as equity for purposes of IFRS;
- (g) which, in the opinion of the Trustees, are necessary or desirable to enable the Trust to implement a Unit option plan, Unit purchase plan, deferred unit incentive plan, or other compensation plan;
- (h) which, in the opinion of the Trustees, are necessary or desirable for the Trust to qualify for a particular status under, or as a result of changes in, taxation or other laws, or the interpretation of such laws, including to qualify for the definition of “real estate investment trust” in the Code or to otherwise prevent the Trust or any of its Subsidiaries from becoming subject to SIFT Tax; or
- (i) 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 12; (ii) amend the unitholders’ voting rights; or (iii) cause the Trust to fail or cease to qualify as a “mutual fund trust” under the Tax Act.

## **12.2 Amendments by the Unitholders**

Except as otherwise provided in Sections 4.3, 4.4, 10.1 and 12.1, this Declaration of Trust may be amended only if authorized by the approval of at least 66⅔% 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 66⅔% of the votes cast by the unitholders (at a meeting or by written resolution in lieu thereof):

- (a) the sale of Trust Property as an entirety or substantially as an entirety or the sale of all or substantially all of the assets of a Subsidiary of the Trust (other than as part of an internal reorganization, including by way of a transfer of Trust Property or property or assets of a Subsidiary of the Trust, as approved by the Trustees);
- (b) an exchange, reclassification or cancellation of all or part of the REIT Units;

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

### **12.3 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 Sections 4.3, 4.4 or this Article 12.

### **12.4 No Termination**

No amendment to or amendment and restatement of this Declaration of Trust, whether pursuant to this Article 12 or otherwise, shall be construed as a termination of the Trust and the settlement or establishment of a new trust.

### **12.5 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, 7.8, 10.1, 12.2 or 13.1 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 Holdco Operating Agreement without the approval of at least 66 $\frac{2}{3}$ % of the votes cast at a meeting of unitholders called for that purpose.

## **ARTICLE 13 TERMINATION OF TRUST**

### **13.1 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 13.

- (b) The Trust may be terminated by the vote of at least 66<sup>2</sup>/<sub>3</sub>% of the votes cast at a meeting of unitholders called for that purpose.

### **13.2 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 14 LIABILITIES OF THE TRUSTEES AND OTHERS**

### **14.1 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 14.1 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.

### **14.2 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 14.1(a) and 14.1(b).

### **14.3 Reliance Upon Advice**

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

### **14.4 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 14.1, 14.2 and 14.3.

## **ARTICLE 15 GENERAL**

### **15.1 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.

### **15.2 Manner of Giving Notice**

Any notice required or permitted by the provisions of this Declaration of Trust to be given to a unitholder, a Trustee or the Auditors shall be deemed conclusively to have been given if given

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

### **15.3 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.

### **15.4 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.

### **15.5 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.

### **15.6 Fiscal Year**

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

### **15.7 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 laws and Applicable Securities Laws.



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

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

### **15.9 Trustees May Hold Units**

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

### **15.10 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.

### **15.11 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.

### **15.12 Taxation Information**

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

### **15.13 Tax Status**

In respect of the first taxation year of the Trust, the Trustees shall cause the Trust to elect: (a) pursuant to subsection 132(6.1) of the Tax Act that the Trust be deemed to be a “mutual fund trust” for the purposes of the Tax Act for the entire year, provided that prior to filing such return of income the Trust has sufficient unitholders so as to be entitled to make such election and has otherwise complied with the requirements thereof, and (b) pursuant to Section 856 of the Code, to treat the Trust as a real estate investment trust for U.S. federal income tax purposes.

### **15.14 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.

### **15.15 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.

### **15.16 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.

### **15.17 Enforcement**

The Trust is authorized specifically to seek equitable relief, including injunctive relief, to enforce the provisions of this Declaration of Trust, including Article 6 herein.

### **15.18 Non-Waiver**

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

### **15.19 Governing Law**

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

### **15.20 TSX Approval**

Notwithstanding any other provision hereof, any references to or provisions herein requiring approval of the TSX shall only apply if the relevant securities of the Trust are listed on the TSX at such time.

### **15.21 Language**

*Les parties aux présentes ont exigé que la présente déclaration de fiducie, ainsi que tous les documents et avis qui en découleront, soient rédigés en langue anglaise.* The parties hereto have required that this Declaration of Trust and all documents and notices resulting herefrom be drawn up in English.

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

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

*/s/ "Leonard Abramsky"*

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Leonard Abramsky

*/s/ "Fahad Khan"*

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Fahad Khan

*/s/ "P. Jane Gavan"*

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P. Jane Gavan

*/s/ "Brian Pauls"*

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Brian Pauls

*/s/ "Vicky Schiff"*

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Vicky Schiff