

**THIRTEENTH AMENDED AND RESTATED DECLARATION OF TRUST**

creating

**BOARDWALK REAL ESTATE INVESTMENT TRUST**

**Made as of January 9, 2004**

As amended and restated as of May 3, 2004  
As further amended and restated as of May 10, 2006  
As further amended and restated as of May 10, 2007  
As further amended and restated as of May 13, 2008  
As further amended and restated as of May 13, 2009  
As further amended and restated as of May 18, 2010  
As further amended and restated as of May 12, 2011  
As further amended and restated as of May 15, 2012  
As further amended and restated as of May 14, 2014  
As further amended and restated as of May 12, 2016  
As further amended and restated as of May 11, 2017  
As further amended and restated as of May 15, 2018  
As further amended and restated as of May 6, 2024

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## AMENDED AND RESTATED DECLARATION OF TRUST

**THIS THIRTEENTH AMENDED AND RESTATED DECLARATION OF TRUST** is made as of the 9<sup>th</sup> day of January, 2004, as amended and restated at 12:05 a.m. the 3<sup>rd</sup> day of May, 2004, as further amended and restated as of May 10, 2006, May 10, 2007, May 13, 2008, May 13, 2009, May 18, 2010, May 12, 2011, May 15, 2012, May 14, 2014, May 12, 2016, May 11, 2017, May 15, 2018 and May 6, 2024.

**WHEREAS** the Trust was established pursuant to a Declaration of Trust dated January 9, 2004 (the “**Original Declaration of Trust**”) under the name “**Boardwalk Real Estate Investment Trust**”;

**AND WHEREAS** the Trust was on that date settled with \$10.00 in lawful money of Canada which the Trustee thereupon invested;

**AND WHEREAS** the Trust was amended and restated as of 12:05 a.m. on May 3, 2004 and was further amended and restated as of May 10, 2006, May 10, 2007, May 13, 2008, May 13, 2009, May 18, 2010, May 12, 2011, May 15, 2012, May 14, 2014, May 12, 2016, May 11, 2017 and May 15, 2018;

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

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

**AND WHEREAS**, for greater certainty, neither the first, second, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth, eleventh or twelfth restatement of this Declaration of Trust shall be deemed to constitute a termination of the Trust or a resettlement of this Declaration of Trust or the Trust created hereby;

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

### **ARTICLE 1** **THE TRUST AND DEFINITIONS**

#### **Section 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:

“**ABCA**” means the *Business Corporations Act* (Alberta), as amended, including the regulations promulgated thereunder;

“**Acquired indebtedness**” means the indebtedness of a Person (i) existing at the time such Person becomes a Subsidiary of the Trust, or (ii) assumed by the Trust in connection with the acquisition of assets from such Person, calculated as of the date such Person becomes a Subsidiary or of such acquisition, in each case, other than indebtedness incurred in connection with or in contemplation of such Person’s becoming a Subsidiary or such acquisition;

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

**“affiliate”** means a Person considered to be an affiliated entity of another Person within the meaning of National Instrument 45-106 - Prospectus and Registration Exemptions of the Canadian Securities Administrators;

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

**“Arrangement”** means an arrangement under the provisions of Section 193 of the ABCA, on the terms and conditions set forth in the Plan of Arrangement;

**“associate”** has the meaning given thereto in the *Securities Act* (Alberta), as amended from time to time;

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

**“Auditors”** means the firm of chartered accountants appointed as the auditors of the Trust from time to time in accordance with Section 15.4 and, initially means Deloitte LLP;

**“basic list”** has the meaning given in Section 15.12(a);

**“BEI”** means BPCL Holdings Inc. (formerly known as Boardwalk Equities Inc.), a corporation existing under the laws of the Province of Alberta;

**“BEI Subco”** means a corporation wholly-owned by BEI;

**“BPCL”** means Boardwalk Properties Company Limited, a corporation existing under the laws of the Province of Alberta;

**“BPCL Appointee”** has the meaning set out in Section 2.2;

**“BPCL Ownership Threshold”** has the meaning set out in Section 2.2;

**“Business Day”** means a day, other than a Saturday or Sunday, on which Schedule I Chartered banks are open for business in Calgary, Alberta, Toronto, Ontario, and Vancouver, British Columbia;

**“CDS”** means the Canadian Depository for Securities Limited and any successor;

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

**“C&G Committee”** means the committee of the Trustees established pursuant to Section 8.3;

**“CMHC Rental Properties”** means real properties of the Trust, its Subsidiaries or joint venture entities or of BEI, that are associated with the Retained Debt, in each case where the associated mortgage financing is insured by the Canada Mortgage and Housing Corporation;

**“Complainant”** has the meaning set out in Section 9.2(a);

**“Consolidated EBITDA”** of the Trust for any period means Consolidated Profit increased by the sum of: (i) Consolidated Interest Expense, excluding interest that has been capitalized on projects that are under development or held for future development, for such period; (ii) tax expense of the Trust for such period (including both income tax and large corporations tax other than income taxes, either positive or negative, attributable to extraordinary or nonrecurring gains or losses) determined on a consolidated basis in accordance with IFRS; (iii) amortization of income properties (including provisions for diminution of income properties) for such period, determined on a consolidated basis in accordance with IFRS; (iv) amortization

of deferred expenses of the Trust for such period, determined on a consolidated basis in accordance with IFRS; and (v) other non-cash items reducing Consolidated Profit resulting from a change in accounting principles in determining Consolidated Profit for such period;

**“Consolidated Interest Expense”** of the Trust for any period means the aggregate amount of interest expense of the Trust in respect of indebtedness, capital lease obligations, the original issue discount of any indebtedness issued at a price less than the face amount thereof paid, accrued or scheduled to be paid or accrued by the Trust during such period and, to the extent interest has been capitalized on projects that are under development or held for future development during the period, the amount of interest so capitalized, all as determined on a consolidated basis in accordance with IFRS (provided that, notwithstanding its presentation under IFRS, all interest expense of the Trust in respect of convertible debt indebtedness will be included (without duplication) and all amortized deferred financing charges will be excluded in determining Consolidated Interest Expense). Consolidated Interest Expense shall not include: (a) Distributions or other distributions paid or payable on any LP Partnership Units or other equity securities convertible or exchangeable into Units; or (b) any rent payable by the Trust, any Subsidiary, or any affiliate of the Trust and/or a Subsidiary pursuant to any lease under which one or more of them are a lessee.

**“Consolidated Profit”** of the Trust for any period means the net income (loss) of the Trust for such period determined on a consolidated basis in accordance with IFRS, excluding: (i) any gain or loss (net of any tax impact) attributable to the sale or other disposition of any asset of the Trust, other than the sale or disposition of income properties specifically acquired and held for resale; (ii) any extraordinary gains and losses of the Trust, determined on a consolidated basis in accordance with IFRS; (iii) any fair value adjustment(s) of any asset(s) of the Trust required by IFRS; and (iv) other non-recurring items;

**“control”** means the possession, directly or indirectly, of the power to direct the management and policies of a Person, whether through the ownership of voting securities, contract or otherwise;

**“court” or “Court”** means the Court of Queen’s Bench in the Province of Alberta;

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

**“Deferred Income Plan”** means any trust governed by a Plan;

**“dissenting offeree”** means, where a take-over bid is made for all of the Units other than those held by the offeror; a holder of Units 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”** has the meaning set out in Section 9.1;

**“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 15<sup>th</sup> day of the following month;

**“Distribution Reinvestment Plan”** means the Distribution reinvestment plan that the Trust adopted effective June 2004, as amended, supplemented or restated from time to time, pursuant to which holders of REIT Units will be entitled to elect to have cash Distributions in respect of such units automatically reinvested in additional REIT Units;

**“Effective Date”** means the date shown on the certificate of arrangement giving effect to the Arrangement, issued pursuant to Subsection 193(11) of the *ABCA*;

**“Entity Value”** means the amount determined by multiplying the total number of REIT Units issued and outstanding (on a fully-diluted basis, including without limitation REIT Units issuable on the exchange of LP Class B Units) by the 10 day weighted average trading price of the REIT Units (or BEI common shares trading in substitution for the REIT Units) on the Toronto Stock Exchange for the 10 trading days

immediately following the Effective Date with such adjustments as the Trustees determine may be appropriate;

**“Exchange and Support Agreement”** means the exchange and support agreement dated the Effective Date between the Trust, the Operating Trust, the LP, **BEI** and BEI Subco;

**“exempt issuer bid”** means an issuer bid that is exempt from Sections 4.6 to 4.11 of National Instrument 62-104;

**“exempt take-over bid”** means a take-over bid that is exempt from Sections 4.1 to 4.5 of National Instrument 62-104;

**“General Partner”** means Boardwalk Real Estate Management Ltd., a corporation incorporated under the laws of the Province of Alberta, the general partner of the LP, or any successor general partner of the LP;

**“generally accepted accounting principles”** or **“GAAP”** means, as at any date of determination, generally accepted accounting principles in Canada including, among other things, Recommended Accounting Practices for Real Estate Investment and Development Companies issued by the Canadian Institute of Public and Private Real Estate Companies;

**“going private transaction”** means an arrangement, consolidation or other transaction involving the Trust, other than an acquisitions pursuant to Section 5.27 that results in the interest of a holder of participating securities of the Trust being terminated without the consent of a holder and without the substitution of an interest of equivalent value in participating securities of the Trust or of a person that succeeds to the business of the Trust, which participating securities have rights and privileges that are equal to or greater than the affected participating securities.

**“Gross Book Value”** means, at any time, the book value of the assets of the Trust and its Subsidiaries, shown on its then most recent publicly-issued consolidated balance sheet prepared in accordance with IFRS, plus the amount of accumulated depreciation and amortization shown thereon or in the notes thereto;

**“IFRS”** means International Financial Reporting Standards issued by the International Accounting Standards Board, and as adopted by the Canadian Institute of Chartered Accountants, 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 REIT Units *in specie*) and taking into account such other adjustments as may be determined in the discretion of the Trustees, provided, however, that capital gains and capital losses shall be excluded from the computation of net income;

**“Independent Trustee”** means a Trustee who is an “independent Trustee” (as defined in the Canadian Securities Administrators’ National Policy 58-201 on Corporate Governance);

**“Initial Contribution”** means the amount of \$10.00 paid by BEI on the date hereof for the purpose of settling the Trust;

**“Initial REIT Unit”** means a unit of interest in the Trust designated as an Initial REIT Unit;

**“Initial Unitholder”** means BEI;

**“issuer bid”** has the meaning given to such term in Multilateral Instrument 62-104, as amended from time to time;



**“Liquidated Net Assets of the Trust”** has the meaning given thereto in Section 13.3;

**“LP”** means Boardwalk REIT Limited Partnership, a limited partnership governed by the laws of the Province of British Columbia;

**“LP Agreement”** means the limited partnership agreement dated January 9, 2004 creating the LP, as amended and restated as of May 3, 2004, as it may be further amended, supplemented or restated from time to time;

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

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

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

**“LP Partnership Units”** means, collectively or respectively as the context requires, the LP Class A Units, LP Class B Units, LP Class C Units and any other units of interest in the LP authorized, created and issued from time to time;

**“Master Asset Contribution Agreement”** means an agreement made between BEI and the LP on the Effective Date setting out the terms and conditions upon which BEI transferred and contributed, or caused to be transferred and contributed, to the LP the Contributed Assets (as defined therein) in consideration for the assumption of certain liabilities of BEI by the LP, the issuance by the LP to BEI of the LP Note and an addition by the LP to the Capital Accounts (as defined in the LP Agreement) in respect of each of BEI’s LP Class B Units and LP Class C Units, all as more particularly set out therein;

**“Monthly Limit”** has the meaning given thereto in Section 5.24(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;

**“Mortgage Insurance Fees”** means fees charged by Canada Mortgage and Housing Corporation or similar mortgage insurer;

**“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 (including without limitation any realized capital gains allocated from the Operating Trust Units), 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 and Notes of the Operating Trust and any other property of the Trust) designated as having been paid to the redeeming Unitholders pursuant to Section 5.24; (iii) the amount determined by the Trustees in respect of any net capital losses of the Trust (as defined in the Tax Act) carried forward from prior taxation years to the extent not previously deducted from realized capital gains of the Trust; and (iv) any amount in respect of which the Trust is entitled to a capital gains refund under the Tax Act, as determined by the Trustees; provided that at the discretion of the Trustees, the net realized capital gains of the Trust for a year may be calculated without subtracting the full amount of the net capital losses of the Trust for the year and/or without subtracting the full amount of the net capital losses of the Trust carried forward from prior years and/or without considering the Trust’s entitlement to a capital gains refund;

**“net recapture income of the Trust”** for any year means the amount distributed by the Operating Trust that may reasonably be considered to be a distribution of net recapture income of the Operating Trust, as defined in its declaration of trust;

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

**“Note Indentures”** means, collectively, the trust indentures dated the Effective Date providing for the issuance of the Operating Trust Notes;

**“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;

**“Operating Trust”** means Top Hat Operating Trust, the trust created under the laws of British Columbia by the declaration of trust dated January 9, 2004, as amended and restated as of the 3<sup>rd</sup> day of May, 2004, as it may be further amended, supplemented or restated from time to time;

**“Operating Trust Notes”** means the Series 1 Notes and the Series 2 Notes; **“Operating Trust Unit”** means a unit of interest in the Operating Trust;

**“participating securities”** means securities that give the holder of the securities a right to share in the earnings of the person that issued the securities and after the liquidation, dissolution or winding up of the person that issued the securities, or, in the case of the Trust, upon the termination of the Trust, a right to share in its assets. For greater certainty, participating securities includes the Units;

**“Person”** means an individual, partnership, limited partnership, corporation, unlimited liability company, trust, unincorporated organization, association, government, or any department or agency thereof and the successors and assigns thereof or the heirs, executors, administrators or other legal representatives of an individual, or any other entity recognized by law;

**“Plan of Arrangement”** means the plan of arrangement under the provisions of Section 193 of the ABCA, substantially in the form attached as Appendix I to the acquisition and arrangement agreement dated as of January 9, 2004 entered into between BEI, BPCL (and/or its affiliates), the Trust, the Operating Trust and the LP;

**“Plans”** means, collectively, trusts governed by registered retired savings plans, registered retirement income funds, registered education savings plans, deferred profit sharing plans, registered disability savings plans or tax-free savings accounts, each as described in the Tax Act;

**“Proposal”** has the meaning set forth in Section 6.4;

**“Public Trustee”** means the Office of the Public Trustee, a part of Alberta’s Ministry of Human Services;

**“real property”** means property which in law is real property and includes whether or not the same would in law be real property, leaseholds, emphyteutic leases, 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 of which is to invest in, hold and deal in real property;

**“Receiver General”** means the Receiver General for Canada; **“Redemption Date”** has the meaning set out in Section 5.24(c);

**“Redemption Distribution Amount”** means the portion of the Redemption Price paid to a Unitholder under Section 5.24 that pursuant to Section 5.24(i) is treated as net realized capital gains of the Trust or net recapture income of the Trust paid in the year by the Trust to such Unitholder;

**“Redemption Price”** has the meaning set out in Section 5.24(c);

**“Reference Period”** means the most recently completed four fiscal quarters preceding the date of a calculation pursuant to Section 4.2(c) for which consolidated financial statements of the Trust have been publicly released;

**“Register”** has the meaning set out in Section 5.16;

**“REIT Unit”** means a unit of beneficial interest in the Trust (other than a Special Voting Unit) authorized and issued hereunder as such and for the time being outstanding and includes a fraction of a unit and any other classes of units authorized by the Trustees as such;

**“Related Party”** means, with respect to any Person, a Person who is a “related party” as that term is defined in Multilateral Instrument 61-101, as amended from time to time (including any successor rule or policy thereto);

**“resident Canadian”** means a Person who is a resident of Canada for purposes of the Tax Act;

**“Retained Debt”** has the meaning given thereto in the LP Agreement;

**“Series 1 Notes”** means the Series 1 Notes issued by the Operating Trust issued exclusively to the Trust;

**“Series 2 Notes”** means the Series 2 Notes issued by the Operating Trust issued exclusively as full or partial payment of the Series 1 Notes and units of the Operating Trust;

**“Special Voting Unit”** means a unit of interest in the Trust that is authorized and issued pursuant to Section 5.1 to holders of certain LP Partnership Units;

**“Subsidiary”** means, with respect to any Person (other than an individual), any other Person (other than an individual) the financial results of which would be required to be consolidated with those of the first Person’s in the preparation of the first Person’s consolidated financial statements if prepared in accordance with GAAP;

**“take-over bid”** has the meaning given to such term in the National Instrument 62-104, as amended from time to time;

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

**“Top Hat Operating Trust”** means the trust created by the declaration of trust dated January 9, 2004 as it may be amended, supplemented or restated from time to time;

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

**“Trust Property”** means, at any particular time, any and all 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 of them;

**“Trustees’ Regulations”** means the regulations adopted by the Trustees pursuant to Section 3.3 or Section 6.12 from time to time;

**“Unitholder”** or **“Holder”** means a Person whose name appears on the Register as a holder of one or more Units; and

**“Units”** means, collectively, the REIT Units and the Special Voting Units.

## **Section 1.2 Construction**

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

- (a) references to “herein”, “hereby”, “hereunder”, “hereof” and similar expressions are references to this Declaration of Trust and not to any particular Article or Section of this Declaration of Trust;
- (b) references to an “Article” or “Section” are references to an Article or Section of this Declaration of Trust;
- (c) words importing the singular shall include the plural and vice versa, and words importing gender shall include the masculine, feminine and neuter genders;
- (d) the use of headings is for convenience of reference only and shall not affect the construction or interpretation hereof;
- (e) 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; and
- (f) for greater certainty, unless otherwise expressly provided herein, where any reference is made in this Declaration of Trust or in any resolution of the Unitholders or Trustees to the Trust as a party to any agreement 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.

## **Section 1.3 Name**

The name of the Trust is **“Boardwalk Real Estate Investment Trust”** in its English form and **“Fonds de placement immobilier Boardwalk”** 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.

## **Section 1.4 Use of Name**

Should the Trustees determine that the use of the name Boardwalk Real Estate Investment Trust in its English form or 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.

### **Section 1.5 Office**

The principal office and centre of administration of the Trust shall be at 200, 1501 - First Street S.W., Calgary, Alberta T2R 0W1 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.

### **Section 1.6 Establishment of Trust**

The Trustees hereby declare and agree to hold 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.

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

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

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

The beneficial interest and rights generally of a Unitholder in the Trust shall be limited to the right to participate pro rata in Distributions when and as declared by the Trustees as contemplated by Article 10 and distributions upon the termination of the Trust as contemplated in Article 13. The Trust is not and is not intended to be, shall not be deemed to be and shall not be treated as a general partnership, limited partnership, syndicate, association, joint venture, company, corporation or joint stock company nor shall the Trustees or the Unitholders or any 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 property of the Trust shall be solely that of beneficiaries in accordance with this Declaration of Trust.

### **Section 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.

### **Section 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 Agreement, 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 GAAP applied on a consistent basis.

### **Section 1.10 Applications to Court**

As the rights (including the right to apply to a court) and remedies set out in Section 3.8(h), Section 5.27, Section 6.1, Section 6.4, Section 6.11, Section 9.1 and Section 9.2 of this Declaration of Trust are not statute-based, all references in this Declaration of Trust to Unitholder rights (or the rights of any other

person) that may be enforced by the court or to remedies that may be granted by the court are subject to the court, in its discretion, accepting jurisdiction to consider and determine any proceeding commenced by an eligible Unitholder (or other eligible person as contemplated herein) applying to the court under such sections.

## **ARTICLE 2** **TRUSTEES AND OFFICERS**

### **Section 2.1     Number**

Subject to Section 2.4, from and after the Effective Date, there shall be at all times no fewer than five and no more than 12 Trustees, a majority of whom shall be Independent Trustees. There shall be seven Trustees on the Effective Date. Subject to Section 2.4, the number of Trustees may only be changed within such limits by the Unitholders or by the Trustees, provided that the number of additional Trustees appointed by the Trustees between annual meetings of Unitholders shall not at any time exceed one-third of the number of Trustees who held office at the expiration of the last annual meeting of the Unitholders. A vacancy occurring among the Trustees (other than a vacancy resulting from the resignation or removal of the BPCL Appointee) 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. A vacancy occurring among the Trustees resulting from the resignation or removal of the BPCL Appointee may be filled by an appointment by BPCL.

### **Section 2.2     BPCL Appointee**

BPCL shall have the right to appoint one Trustee serving on the board provided that BPCL and its affiliates continue to beneficially own, in the aggregate, a number of REIT Units and LP Class B Units that, upon surrender or exchange of the LP Class B Units would equal at least five percent of all then outstanding REIT Units (on a fully-diluted basis) (the "**BPCL Ownership Threshold**"). The Unitholders shall elect all remaining Trustees at each annual meeting as set out in Section 2.3. Any Trustee appointed by BPCL may be changed by BPCL at any time. Any appointment made by BPCL pursuant to this Section 2.2 shall be made by the delivery to the Trust of a written instrument executed by BPCL. In determining the number of REIT Units and LP Class B Units beneficially owned by BPCL and its affiliates, the Trustees may rely on a certificate of any officer or director of BPCL.

The Trustee appointed by BPCL pursuant to the rights granted by this Section 2.2 is referred to herein as the "**BPCL Appointee**". Upon the Trust being notified in writing by BPCL that it no longer meets the BPCL Ownership Threshold, or that BPCL chooses to permanently give up its right to appoint a Trustee pursuant to this Section 2.2, BPCL shall permanently lose its right to appoint any Trustees pursuant to this Section 2.2.

### **Section 2.3     Term of Office**

The Trustees, other than the BPCL Appointee, shall be elected at each annual meeting of the Unitholders by a resolution passed by a majority of the votes cast at such meeting of the Unitholders for a term expiring at the conclusion of the next annual meeting or until their successors are elected or appointed and shall be eligible for re-election. Trustees appointed by the Trustees between meetings of the Unitholders or to fill a vacancy, in each case in accordance with Section 2.1, shall be appointed for a term expiring at the conclusion of the next annual meeting or until their successors are elected or appointed and shall be eligible for election or re-election.

The BPCL Appointee shall be appointed by BPCL at each annual meeting of the Unitholders for a term expiring at the conclusion of the next annual meeting unless removed earlier in accordance with Section 2.2.

#### **Section 2.4 Qualifications of Trustees**

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

#### **Section 2.5 Election of Trustees**

The election of the Trustees (other than the BPCL Appointee) shall be by a majority of the votes cast at a meeting of the Unitholders. The appointment or election of any Trustee (other than an individual who is serving as a Trustee immediately prior to such appointment or election) shall not become effective unless and until such individual shall have in writing accepted his appointment or election and agreed to be bound by the terms of this Declaration of Trust.

#### **Section 2.6 Resignations, Removal and Death of Trustees**

A Trustee may resign at any time by an instrument in writing signed by him or her and delivered or mailed to the Chair or, if there is no Chair, the President. Such resignation shall take effect on the date such notice is given or at any later time specified in the notice. A Trustee, other than the BPCL Appointee, may be removed at any time with or without cause by a majority of the votes cast at a meeting of the Unitholders called for that purpose or by the written consent of the Unitholders holding in the aggregate not less than a majority of the outstanding REIT Units entitled to vote thereon or with cause by a resolution passed by an affirmative vote of not less than two-thirds of the other Trustees. This Declaration of Trust may only be amended to require a greater number of votes of Unitholders to remove a Trustee than the number set forth in this Section 2.6 with unanimous consent of the Unitholders. Any removal of a Trustee shall take effect immediately following the aforesaid vote or resolution, and any Trustee so removed shall be so notified by the Chair or another officer of the Trust forthwith following such removal. Upon the resignation or removal of any Trustee, or his 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 or her name; (iii) account to the remaining Trustees as they may require for all property which he or she holds as Trustee; and (iv) resign from all representative or other positions held by him or her on behalf of the Trust, including as a director or officer of any corporation in which the Trust owns any securities (directly or indirectly); upon which he or she shall be discharged from his or her obligations as Trustee. Upon the incapacity or death of any Trustee, his legal representative shall execute and deliver on his or her behalf such documents as the remaining Trustees may require as provided in this section. In the event that a Trustee or his or her legal representative, as applicable, is unable or unwilling to execute and deliver such required documents, each of the remaining Trustees is hereby appointed as the attorney of such Trustee for the purpose of executing and delivering such required documents.

#### **Section 2.7 Vacancies**

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

## **Section 2.8 Successor and Additional Trustees**

The right, title and interest of the Trustees in and to the property of the Trust shall vest automatically in all 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 Trustees hereunder. Such right, title and interest shall vest in the Trustees whether or not conveyancing documents have been executed and delivered pursuant to Section 2.6 or otherwise.

## **Section 2.9 Compensation and Other Remuneration**

The Trustees shall be paid such compensation for their services as the Trustees may from time to time unanimously determine. Each of the Trustees, either directly or indirectly, shall also be entitled to receive remuneration for services rendered to the Trust in any other capacity. Such services may include legal, accounting or other professional services or services as a broker, transfer agent or underwriter, whether performed by a Trustee or any Person affiliated with a Trustee. Trustees who are employees of and who receive salary from the Trust or its Subsidiaries 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.

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

## **Section 3.1 General Powers**

The Trustees, subject only to the specific limitations contained in this Declaration of Trust, 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 assets and the affairs of the Trust to the same extent as if the Trustees were the sole owners of such assets 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 Section 1.8, Section 4.1 and Section 4.2, the Trustees may make any investments without being required to adhere to all of, or any particular portion of the investment criteria or diversification requirements set forth in the *Trustee Act* (Alberta), as amended from time to time, including investments in mutual funds, common trust funds, unit trusts and similar types of investment vehicles, 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 discretion determine and to delegate management and authority to discretionary managers of investment funds as the Trustees in their discretion determine appropriate.

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

Subject only to the express limitations contained in this Declaration of Trust, 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 of the Operating Trusts;
- (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 property of the Trust 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 leases, contracts, obligations and other agreements for a term extending beyond the term of office of the Trustees and beyond the possible termination of the Trust or for a lesser term;
- (e) to borrow money from or incur indebtedness to any Person; to guarantee, indemnify or act as surety with respect to payment or performance of the obligations of its Subsidiaries and, subject to Section 4.2(d), joint venture entities, and/or in relation to the Retained Debt; to enter into other obligations on behalf of the Trust; and to assign, convey, transfer, mortgage, subordinate, pledge, grant security interests in, encumber or hypothecate the property of the Trust to secure any of the foregoing;
- (f) to lend money or other property of the Trust, whether secured or unsecured;
- (g) entering into and performing its obligations under the Exchange and Support Agreement;
- (h) to maintain records and provide reports to Unitholders;
- (i) to establish systems to monitor the qualification of the Trust as a "mutual fund trust" pursuant to subsections 132(6) and 132(7) of the Tax Act and a "registered investment" and "real estate investment trust" within the meaning of the Tax Act;
- (j) to pay all taxes or assessments, of whatever kind or nature, whether within or outside Canada, imposed upon or against the Trustees in connection with the assets of the Trust, the undertaking or taxable income of the Trust, or imposed upon or against the assets of the Trust, the undertaking or taxable income of the Trust, or any part thereof and to settle or compromise disputed tax liabilities and for the foregoing purposes to make such returns, take such deductions, and make such designations, elections and determinations in respect of the income of the Trust or net realized capital gains of the Trust distributed to Unitholders and any other matter as shall be permitted under the Tax Act (provided that to the extent necessary the Trustees will seek the advice of the Trust's counsel or its 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 property of the Trust 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 incidental to or desirable for 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 undertaking or taxable income of the Trust or the property of the Trust or upon or against the undertaking, taxable income or property of the Trust or any part thereof and for any of the purposes herein;

- (l) 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 assets of the Trust, 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;
- (m) 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 property of the Trust at any time held by it and to make payments incidental thereto; to consent, or otherwise participate in or dissent from, the reorganization, consolidation, amalgamation, merger or readjustment of the finances of any Person (other than the Trust), any of the securities of which may at any time be held by the Trust or to the sale, mortgage or lease of the property of any such Person; and to do any act with reference thereto, including the delegation of discretionary powers, the exercise of options, the making of agreements or subscriptions and the payment of expenses, assessments or subscriptions which it may consider necessary or advisable in connection therewith;
- (o) to elect, appoint, engage or employ officers for the Trust, who may be removed or discharged at the 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, appraisers, brokers, architects, engineers, construction managers, general contractors or otherwise) in one or more capacities, and to pay compensation from the Trust 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 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 assets of the Trust or the Trust's affairs, to enter into agreements therefor whether or not any suit is commenced or claim accrued or 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, cancel, postpone or subordinate, in whole or in part, any obligation to or of the Trust;
- (r) to purchase and pay for, out of the assets of the Trust, insurance contracts and policies insuring the assets of the Trust against any and all risks and insuring the Trust and/or any or all of the Trustees, the Unitholders, annuitants or 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 assets of the Trust 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 one or more of the Trustees 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 assets of the Trust 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 assets is held in trust for the benefit of the Trust;
- (t) to determine conclusively the allocation to capital, income or other appropriate accounts for all receipts, expenses, disbursements and property of the Trust;
- (u) to authorize and, subject to regulatory approvals, issue different classes of 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 the REIT Units or other securities issued or held by the Trust and to pay the cost thereof and related thereto out of the property of the Trust whether or not such offering is or was of direct benefit to the Trust or those Persons (if any) who were Unitholders immediately prior to such offering;
- (w) to make or cause to be made application for the listing on any stock exchange of any REIT Units or other securities of the Trust, and to do all things which in the opinion of the Trustees may be necessary or desirable to effect or maintain such listing or listings;
- (x) to determine conclusively the value of any or all of the property of the Trust 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 REIT 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.

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

The Trustees shall have the power to prescribe any form provided for or contemplated by this Declaration of Trust. The Trustees may make, adopt, amend, or repeal regulations 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 law or with this Declaration of Trust and not, in the opinion of the Trustees, prejudicial to the Unitholders. The Trustees shall also be entitled to make any reasonable decisions, designations or determinations not inconsistent with law or with this Declaration of Trust which they may determine are necessary or desirable in interpreting, applying or administering this Declaration of Trust or in administering, managing or operating the Trust. To the extent of any inconsistency between this Declaration of Trust and any regulation, decision, designation or determination made by the Trustees, this Declaration of Trust shall prevail and such regulation, decision, designation or determination shall be deemed to be modified to

eliminate such inconsistency. Any regulations, decisions, designations or determinations made in accordance with this section shall be conclusive and binding upon all Persons affected thereby.

Subject to any agreement between the Trust and any Trustee, unless otherwise herein provided, the Trustees may from time to time in their 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 property of the Trust, whether for the Trustee's own account or for the account of another (in a fiduciary capacity or otherwise), without being liable to account therefor and without being in breach of his duties and responsibilities hereunder.

### **Section 3.4 Limitations on Powers**

The Trustees hereby acknowledge that the LP is bound by certain investment guidelines and operating policies and, notwithstanding anything herein to the contrary, the Trustees agree that at no time shall they act or cause the Trust to act in such a manner, including without limitation, through voting its units or shares, as applicable, in the Operating Trust or the General Partner to effect any changes or amendments to the LP's investment guidelines or operating policies without the approval of at least 66<sup>2</sup>/<sub>3</sub>% of the Unitholders pursuant to Section 4.3.

### **Section 3.5 Standard of Care**

The exclusive standard of care required of the Trustees in exercising their powers and carrying out their functions hereunder shall be that they exercise their powers and discharge their duties hereunder as Trustees honestly, in good faith with a view to the best interests of the Trust and the Unitholders and in connection therewith, that they exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. Unless otherwise required by law, no Trustee shall be required to give bond, surety or security in any jurisdiction for the performance of any duties or obligations hereunder. The Trustees in their capacity as Trustees shall not be required to devote their entire time to the affairs of the Trust.

### **Section 3.6 Reliance Upon Trustees**

Any Person dealing with the Trust in respect of any matters pertaining to the assets of the Trust and any right, title or interest therein or to 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 Persons as may be authorized by the Trustees as to the capacity, power and authority of the Trustees or any such other Persons to act for and on behalf and in the name of the Trust. No Persons 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.

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

All determinations of the Trustees that are made in good faith with respect to any matters relating to the Trust, including whether any particular investment or disposition meets the requirements of this Declaration of Trust, shall be final and conclusive and shall be binding upon the Trust and all Unitholders (and, where the Unitholder is a Deferred Income Plan or 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 Units of the Trust shall be issued and sold on the condition and understanding that any and all such determinations shall be binding as aforesaid.

### **Section 3.8 Conflict of Interest**

Except for agreements entered into on or before the Effective Date and/or the ownership of REIT Units or LP Partnership Units, if a Trustee or officer of the Trust: (i) is a party to a material contract or transaction or proposed material contract or transaction with the Trust or its Subsidiaries; or (ii) is a director or officer of, or otherwise has a material interest in, any Person who is a party to a material contract or transaction or proposed material contract or transaction with the Trust or its Subsidiaries, such Trustee or officer shall disclose in writing to the Trustees or request to have entered into the minutes of meetings of the Trustees, the nature and extent of such interest as follows:

- (a) the disclosure required in the case of a Trustee shall be made:
  - (i) at the meeting of Trustees 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 Trustees;
  - (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 Section 3.8(a) and (b), where this Section applies to a Trustee or officer of the Trust in respect of a material contract or transaction or proposed material contract or transaction that, in the ordinary course of the affairs of the Trust, would not require approval by the Trustees or the Unitholders, such Trustee or officer of the Trust shall disclose in writing to the Trustees or request to have entered into the minutes of meetings of the Trustees the nature and extent of the interest of such Trustee or officer of the Trust forthwith after he or she becomes aware of the contract or transaction or proposed contract or transaction;
- (d) a Trustee referred to in this Section 3.8 shall not vote on any resolution to approve the said contract or transaction unless the contract or transaction is:
  - (i) one relating primarily to his or her remuneration as a Trustee, officer, employee or agent of the Trust or any affiliate of the Trust; or
  - (ii) one for indemnity under Section 14.1 or the purchase of liability insurance;

- (e) for the purposes hereof, a general notice to the Trustees by a Trustee or an officer of the Trust disclosing that he 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 the said 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 Trustees or Investment Committee that authorized the contract or transaction, if such Trustee or officer of the Trust disclosed his interest in accordance with this Section 3.8, and the contract or transaction was reasonable and fair to the Trust at the time it was approved;
- (g) notwithstanding anything in this Section, but without limiting the effect of Section 3.8(f), a Trustee or an officer of the Trust, acting honestly and in good faith, is not accountable to the Trust or to the Unitholders for any profit or gain realized from any such contract or transaction by reason only of his 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, 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 Section 3.8(f) and Section 3.8(g), where a Trustee or an officer of the Trust fails to disclose his or her interest in a material contract or transaction in accordance with this Declaration of Trust or otherwise fails to comply with this Section 3.8, the Trustees or any Unitholder, in addition to exercising any other rights or remedies in connection with such failure exercisable at law or in equity, may apply to a court for an order setting aside the contract or transaction and directing that such Trustee or officer account to the Trust for any profit or gain realized.

### **Section 3.9 Independent Trustee Matters**

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

- (a) to make a material change to the Plan of Arrangement;
- (b) to enter into any agreement or transaction in which any Related Party has a material interest or make a material change to any such agreement or transaction;
- (c) relating to a claim by or against any Related Party;
- (d) relating to a claim in which the interests of a Related Party differ from the interests of the Trust;
- (e) to permit the LP 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;
- (f) granting REIT Units under any unit incentive or unit compensation plan approved by the Trustees and, if required, by the Unitholders or awarding any right to acquire or other right or interest in the REIT Units or securities convertible into or exchangeable for REIT Units under any plan approved by the Trustees and, if required, by the Unitholders;
- (g) to approve or enforce any agreement entered into by the Trust or its Subsidiaries with a Trustee who is not an Independent Trustee or an associate thereof, with a Related Party;
- (h) recommending to the holders of the Units to increase the number of Trustees serving on the board of Trustees or authorizing the Trustees to change the number of Trustees from time to time; and
- (i) change to the compensation of any officer or employee of the Trust.

### **Section 3.10 Transactions with Related Parties**

Following the Effective Date, the Trustees shall obtain a valuation in respect of any real property that the LP intends to purchase from or sell to a Related Party prepared by a valuator engaged by, and prepared under the supervision of, a committee of two or more Independent Trustees who have no interest in such transaction. In addition, the Trust shall not permit the LP to effect a transaction with a Related Party unless the transaction is determined to be on commercially reasonable terms by, and is approved by, a majority of the Independent Trustees who have no interest in such transaction in accordance with Section 3.9.

### **Section 3.11 Trust Bank Accounts**

The Trust shall open and maintain such bank accounts as the Trustees shall determine.

## **ARTICLE 4**

### **INVESTMENT GUIDELINES AND OPERATING POLICIES**

### **Section 4.1 Investment Guidelines of the Trust**

Following the Effective Date, notwithstanding anything contained herein to the contrary, the assets of the Trust may be invested only and the Trust shall not permit the assets of any Subsidiary to be invested otherwise than in accordance with the following investment guidelines:

- (a) The Trust shall focus its activities primarily on the acquisition, holding, developing, maintaining, improving, leasing or managing of multiunit residential revenue producing properties, and ancillary real estate ventures, including, but not limited to, condominium conversions and sales of properties in which the Trust has (or will have) an interest, as well as, subject to Section 4.1(k) below, the development of raw land (including the financing thereof) for the purpose of carrying out the above noted activities ("**focus activities**");

- (b) notwithstanding anything herein contained to the contrary, no investment shall be made that would result in:
- (i) Units of the Trust being disqualified for investment by Plans;
  - (ii) The Trust ceasing to qualify as a “mutual fund trust” or a “registered investment” for purposes of the Tax Act; or
  - (iii) The Trust not qualifying as a real estate investment trust, as defined in the Tax Act, if as a consequence of the trust not so qualifying, the trust would be subject to tax on its taxable SIFT trust distributions, as defined in the Tax Act.
- (c) the Trust may, directly or indirectly, invest in a joint venture arrangement for the purposes of owning interests or investments otherwise permitted to be held by the Trust, provided that such joint venture arrangement contains terms and conditions which, in the opinion of the Trustees, are commercially reasonable, including without limitation such terms and conditions relating to restrictions on transfer and the acquisition and sale of the Trust’s and any joint venturer’s interest in the joint venture arrangement, provisions to provide liquidity to the Trust, such as buy-sell mechanisms, provisions that limit the liability of the Trust to third parties, and provisions that provide for the participation of the Trust in the management of the joint venture arrangement. For purposes of this provision, a joint venture arrangement is an arrangement between the Trust and one or more other persons (“**joint venturers**”) pursuant to which the Trust, directly or indirectly, conducts an undertaking for one or more of the purposes set out above and in respect of which the Trust may hold its interest jointly or in common or in another manner with others either directly or through the ownership of securities of a corporation or other entity (a “**joint venture entity**”), including without limitation a general partnership, limited partnership or limited liability company.
- (d) unless otherwise permitted in this Section and except for temporary investments held in cash, deposits with a Canadian or U.S. chartered bank or trust company registered under the laws of a province of Canada, short-term government debt securities or in money market instruments of, or guaranteed by, a Schedule I Canadian chartered bank maturing prior to one year from the date of issue, the Trust, directly or indirectly, may not hold securities other than:
- (i) currency or interest rate futures contracts for hedging purposes to the extent that such hedging activity complies with the Canadian Securities Administrator’s National Instrument 81-102 or any successor instrument or rule;
  - (ii) securities of a joint venture entity, trust or limited partnership or any entity or corporation formed and operated solely for the purpose of carrying on ancillary activities to any real estate owned (or to be owned) or developed (or to be developed), directly or indirectly, by the Trust, or an entity or corporation, wholly-owned (or to be wholly-owned), directly or indirectly, by the Trust formed and operated solely for the purpose of holding and/or developing a particular real property or real properties, or for any other purpose relating to the activities of the Trust; and
  - (iii) securities of another issuer, including, but not limited to, a real estate investment trust, provided either:
    - (A) such securities derive their value, directly or indirectly, principally from real property; or



- (B) the principal business of the issuer of the securities is the ownership, development or operation, directly or indirectly, of real property, and provided in either case the entity whose securities are being acquired are engaged in a focus activity;
- (e) no investment will be made in a real property located in the United States unless the Trust has obtained an opinion from legal counsel to the effect that the making of the investment should not result in interest paid by any U.S. entity in which the Trust, directly or indirectly, owns an interest to any affiliate of the Trust ceasing to be deductible for U.S. federal income tax purposes or becoming subject to U.S. withholding tax;
- (f) no investment will be made, directly or indirectly, in operating businesses unless such investment is through a corporation, limited partnership or trust;
- (g) notwithstanding any other provisions of this Section 4.1, the securities of a reporting issuer in Canada may be acquired provided that:
  - (i) the activities of the issuer are focused on focus activities; and
  - (ii) in the case of any proposed investment or acquisition which would result in the beneficial ownership of more than 10% of the outstanding units of the securities issuer (the “**acquired issuer**”), the investment is made for the purpose of subsequently effecting the merger or combination of the business and assets of the Trust and the acquired issuer or for otherwise ensuring that the Trust will control the business and operations of the acquired issuer;
- (h) no investments will be made in rights to or interests in mineral or other natural resources, including oil or gas, except as incidental to an investment in real property;
- (i) the Trust may not invest in mortgages, mortgage bonds, Notes (other than Operating Trust Notes) or debentures (“**Debt Instruments**”) (including participating or convertible) unless the real property which is security therefor is real property which otherwise meets the provisions of this Section 4.1 including, but not limited to, Section 4.1(b) above; provided that, notwithstanding the foregoing, an investment may be made in Debt Instruments if the primary intention is to use such investment as a method of acquiring control of a revenue producing real property which would otherwise be a permitted investment pursuant to this Section 4.1, including, but not limited to, Section 4.1(b) above;
- (j) notwithstanding Section 4.1(i), the Trust may also invest in mortgages where:
  - (i) the mortgage is a “vendor take-back” mortgage granted to the Trust in connection with the sale by it of existing real property and as a means of financing the purchaser’s acquisition of such property from the Trust;
  - (ii) the mortgage is interest bearing;
  - (iii) the mortgage is registered on title to the real property which is security therefore;
  - (iv) the mortgage has a maturity not exceeding five years;
  - (v) the amount of the mortgage loan is not in excess of 85% of the selling price of the property securing the mortgage; and
  - (vi) the aggregate value of these mortgages (including mortgages and mortgage bonds in which the Trust is permitted to invest by virtue of Subsection 4.1(i), after giving

effect to the proposed investment, will not exceed 15% of Gross Book Value of the Trust calculated at the time of such investment;

- (k) subject to Section 4.1(b), the Trust may invest directly in raw land for development provided such investment is through a corporation, limited partnership or trust established for the purpose of: (i) the renovation or expansion of existing facilities that are capital property of the Trust; or (ii) the development of new facilities which will be capital property of the Trust; and
- (l) notwithstanding any other provisions hereof, investments may be made which do not comply with the provisions of this Section 4.1 provided: (i) the aggregate cost thereof (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 in connection with the acquisition and secured by a mortgage on such property) does not exceed 15% of the Adjusted Unitholders' Equity of the Trust; and (ii) the making of such investment would not contravene Section 4.1(b).

For the purpose of the foregoing operating policies, the assets, indebtedness, liabilities and transactions of a corporation, Trust, partnership or other entity in which the Trust has (or will have) an interest, directly or indirectly, will be deemed to be those of the Trust on a proportionate consolidated basis. In addition, any references in the foregoing to investment in real property will be deemed to include an investment in a joint venture arrangement. The term "indebtedness" means (without duplication):

- (i) any obligation, directly or indirectly, of the Trust for borrowed money;
- (ii) any obligation, directly or indirectly, of the Trust incurred in connection with the acquisition or development of property, assets or business other than the amount of future income tax liability arising out of indirect acquisitions;
- (iii) any obligation, directly or indirectly, of the Trust issued or assumed as the deferred purchase price of property;
- (iv) any capital lease obligation, directly or indirectly, of the Trust;
- (v) any obligation, directly or indirectly, of the type referred to in clauses (i) through (iv) of another Person, the payment of which the Trust has, directly or indirectly, guaranteed or for which the Trust is responsible for or liable; and
- (vi) any amounts secured by the assets or other property of the Trust (including without limitation the property associated with the Retained Debt);

provided that (a) for the purposes of (i) through (iv), an obligation (other than convertible debentures) will constitute indebtedness only to the extent that it would appear as a liability on the consolidated balance sheet of the Trust in accordance with generally accepted accounting principles, (b) obligations referred to in clauses (i) through (iii) exclude trade accounts payable, Distributions payable and accrued liabilities arising in the ordinary course of business; and (c) convertible debentures will constitute indebtedness to the extent of the principal amount outstanding.

All of the foregoing prohibitions, limitations or requirements pursuant to the foregoing policies shall be determined as at the date of investment or other action by the Trust.

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

to include an investment in a joint venture arrangement. Nothing in the guidelines prohibits the Trust from holding or assigning some or all of the receivables due pursuant to any instalment receipt agreement.

Except as specifically set forth herein to the contrary, all of the foregoing prohibitions, limitations or requirements for investment shall be determined as at the date of investment by the Trust.

#### **Section 4.2 Operating Policies of the Trust**

Following the Effective Date, the operations and affairs of the Trust shall be conducted in accordance with the following operating policies and the Trust shall not permit any Subsidiary to conduct its operations and affairs other than in accordance with the following policies:

- (a) the construction and/or development of real property (including the financing thereof) may be engaged in order to maintain its real properties in good repair or to enhance the revenue-producing potential of real properties in which it has, or will have, an interest;
- (b) except for properties encumbered by the Retained Debt, title to each real property shall be held by and registered in the name of the LP, the General Partner or a corporation or other entity wholly-owned indirectly by the Trust or jointly owned indirectly by the Trust with joint venturers; provided, that where land tenure will not provide fee simple title, the LP, the General Partner or a corporation or other entity wholly-owned, directly or indirectly by the LP or jointly owned, directly or indirectly, by the Trust with joint venturers shall hold a land lease as appropriate under the land tenure system in the relevant jurisdiction;
- (c) The Trust will maintain a ratio of Consolidated EBITDA to Consolidated Interest Expense of not less than 1.50 to 1, calculated from time to time in respect of the most recently completed Reference Period;
- (d) the Trust may, directly or indirectly, guarantee indebtedness or liabilities of a third party, provided that such guarantee is related to the direct or indirect ownership or acquisition by the Trust of real property that would otherwise comply with the investment restrictions and operating guidelines contained in Section 4.1 and Section 4.2;
- (e) except for assets acquired pursuant to the Master Asset Contribution Agreement, an engineering survey or physical review by an experienced third party consultant will be obtained for each real property intended to be acquired with respect to the physical condition thereof;
- (f) at all times insurance coverage will be obtained and maintained in respect of potential liabilities of the Trust and the accidental loss of value of the assets of the Trust from risks, in amounts and with such insurers, in each case as the Trustees consider appropriate, taking into account all relevant factors including the practices of owners of comparable properties;
- (g) except for assets acquired pursuant to the Master Asset Contribution Agreement, a Phase I environmental audit shall be conducted or obtained for each real property to be acquired and, if the Phase I environmental audit report recommends that further environmental audits be conducted or obtained, such further environmental audits shall be conducted or obtained, in each case by or from an independent and experienced environmental consultant; and
- (h) at least 8.5% of gross consolidated annual rental revenues generated from CMHC Rental Properties shall be expended annually on sustaining capital expenditures, repairs, and maintenance, all determined on a portfolio basis for all CMHC Rental Properties. For this purpose, capital expenditures, repair and maintenance include, without limitation, all on-

site labour costs and other expenses and items associated with such capital expenditures, repairs, and maintenance.

For the purpose of the foregoing operating policies, the assets indebtedness, liabilities and transactions of a corporation, Trust, partnership or other entity in which the Trust has (or will have) an interest, directly or indirectly, will be deemed to be those of the Trust on a proportionate consolidated basis. In addition, any references in the foregoing to investment in real property will be deemed to include an investment in a joint venture arrangement. The term “**indebtedness**” means (without duplication):

- (i) any obligation, directly or indirectly, of the Trust for borrowed money;
- (ii) any obligation, directly or indirectly, of the Trust incurred in connection with the acquisition of property, assets or business other than the amount of future income tax liability arising out of indirect acquisitions;
- (iii) any obligation, directly or indirectly, of the Trust issued or assumed as the deferred purchase price of property;
- (iv) any capital lease obligation, directly or indirectly, of the Trust;
- (v) any obligation, directly or indirectly, of the type referred to in clauses (i) through (iv) of another Person, the payment of which the Trust has, directly or indirectly, guaranteed or for which the Trust is responsible for or liable; and
- (vi) any amounts secured by the assets or other property of the Trust (including without limitation the property associated with the Retained Debt);

provided that: (a) for the purposes of (i) through (iv), an obligation (other than convertible debentures) will constitute indebtedness only to the extent that it would appear as a liability on the consolidated balance sheet of the Trust in accordance with generally accepted accounting principles; (b) obligations referred to in clauses (i) through (iii) exclude trade accounts payable, Distributions payable, any securities issued by the Trust or its Subsidiaries, including, but not limited to, the LP Class B Units, and accrued liabilities arising in the ordinary course of business; and (c) convertible debentures will constitute indebtedness to the extent of the principal amount outstanding.

All of the foregoing prohibitions, limitations or requirements pursuant to the foregoing policies shall be determined as at the date of investment or other action by the Trust.

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

Subject to Section 4.5 and Section 12.1 any of the investment guidelines set forth in Section 4.1 may be amended only by the vote of a two-thirds majority 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 by the vote of a majority of the votes cast at a meeting of the Unitholders called for that purpose.

#### **Section 4.4 Restrictions on Trust Activities**

Notwithstanding any other provision of this Declaration of Trust, including without limitation this Article 4, the assets of the Trust shall not be directly invested otherwise than in Operating Trust Units and Operating Trust Notes and shares of the General Partner, amounts receivable in respect of such units, Notes and shares and in cash and similar deposits in a Canadian chartered bank or trust company.

#### **Section 4.5 Regulatory Matters**

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

#### **Section 4.6 Operating Plan**

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

### **ARTICLE 5 UNITS**

#### **Section 5.1 Units**

The beneficial interests in the Trust shall be divided into two classes described as “REIT Units” and “Special Voting Units”, respectively. The number of Units of any class which the Trust may issue is unlimited. Units shall be issued only as fully paid and non-assessable. Each Unit when issued shall vest indefeasibly in the holder thereof. The issued and outstanding Units may be subdivided or consolidated from time to time by the Trustees with the approval of the majority of the Unitholders, or as otherwise provided in Section 5.4. The Units are not “deposits” within the meaning of the *Deposit Insurance Corporation Act* (Canada) and are not insured under the provisions of such act or any other legislation.

#### **Section 5.2 Ranking of Units**

Each REIT Unit shall represent an undivided beneficial interest in the Trust and Distributions by the Trust, whether of net income, net realized capital gains or other amounts, and, in the event of a liquidation, dissolution, winding-up or other termination of the Trust, in the net assets of the Trust remaining after satisfaction of all liabilities. No REIT Unit shall have preference or priority over any other. The Distribution entitlement of each REIT Unit is intended to and will be derived from the same sources.

Special Voting Units shall be issued only in connection with or in relation to LP Partnership Units including, without limitation, the LP Class B Units, that carry with them the right to receive notice of, to attend and to vote at all meetings of holders of REIT Units. A Special Voting Unit shall be issued in tandem with each such LP Partnership Unit issued. A Special Voting Unit will not be transferable separately from the associated LP Partnership Unit. Each Special Voting Unit shall entitle the holder of record thereof to a number of votes at all meetings of the Unitholders or in respect of any written resolution of the Unitholders equal to the number of REIT Units which may be obtained upon the surrender of the associated LP Partnership Unit. The Special Voting Units shall have no rights or entitlements in respect of distributions, whether of Distributions, or on a liquidation, dissolution or winding-up of the Trust or otherwise.

Concurrently with the issue of the Special Voting Units, the Trust shall enter into the Exchange and Support Agreement.

As LP Partnership Units are surrendered for REIT Units, the corresponding Special Voting Units, if any, shall automatically be cancelled for no consideration and shall no longer be outstanding.

### **Section 5.3 Ranking of REIT Units**

Each REIT Unit shall represent an undivided beneficial interest in the Trust and Distributions by the Trust, whether of net income, net realized capital gains or other amounts, and, in the event of termination or winding up of the Trust, in the net assets of the Trust remaining after satisfaction of all liabilities.

### **Section 5.4 Consideration for REIT Units**

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.

### **Section 5.5 Consolidation of REIT Units and Fractional REIT Units**

Unless the Trustees determine otherwise, immediately after any pro rata distribution of additional REIT Units to all holders of REIT Units pursuant to Section 10.3(b), the number of the outstanding REIT Units will automatically be consolidated such that each such holder will hold after the consolidation the same number of REIT Units, as such holder held before the distribution of additional REIT Units. In this case, each REIT Unit certificate representing the number of REIT Units prior to the distribution of additional REIT Units is deemed to represent the same number of REIT Units after the non-cash distribution of additional REIT Units and the consolidation.

Notwithstanding the foregoing, where tax is required to be withheld from a Unitholder's share of the distribution, the consolidation will result in such Unitholder holding that number of REIT Units equal to: (i) the number of REIT Units held by such Unitholder prior to the distribution plus the number of REIT Units received by such Unitholder in connection with the distribution (net of the number of whole and part REIT Units withheld on account of withholding taxes) multiplied by; (ii) the fraction obtained by dividing the aggregate number of REIT Units outstanding prior to the distribution by the aggregate number of REIT 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 REIT Unit certificates, if any, representing such Unitholder's original REIT Units, in exchange for a REIT Unit certificate representing such Unitholder's post-consolidation 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.

### **Section 5.6 Legal Ownership of Assets of the Trust**

The legal ownership of the assets of the Trust 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 as described in Section 1.7. The Unitholders shall have no right to compel any partition, division or distribution of the Trust or any of the assets of the Trust. 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 assets of the Trust.

### **Section 5.7 Allotment and Issue**

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 the 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 in their sole discretion, generally (but not necessarily) in consultation with investment dealers or brokers who may act as underwriters in connection with offerings of REIT Units. Subject to Section 5.13, REIT Units shall not be issued in registered form. In the event that REIT Units are issued in whole or in part for a 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.

### **Section 5.8 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. Upon the approval of any unit option plan for the Trustees, officers and/or employees of the Trust or any Subsidiary of the Trust and/or their personal holding companies or family trusts and/or Persons who provide services to the Trust or the C&G Committee may, upon receiving authority from the Trustees, recommend to the Trustees the granting of options upon the terms and subject to the conditions set forth in such plan.

Subject to Section 4.1 and Section 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 as the Trustees may determine. 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.

### **Section 5.9 Commissions**

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

### **Section 5.10 Transferability**

Subject to Section 5.11 and any applicable securities laws or the rules of any stock exchange on which the REIT Units are then listed, the REIT Units shall be freely transferable, and the Trustees shall not impose any restriction on the transfer of REIT Units. The Trustees shall use all reasonable efforts to obtain and maintain a listing for the REIT Units on one or more stock exchanges in Canada. The Special Voting Units shall be transferable only together with the associated LP Partnership Units. 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.

### **Section 5.11 Non-Resident Ownership Constraint**

Notwithstanding any provision of this Declaration of Trust to the contrary, at no time may more than 49% of the REIT Units or the Special Voting Units then outstanding be held by or for the benefit of Persons who are not resident Canadians ("**Non-Resident Beneficiaries**"). The Trustees may require declarations as to the jurisdictions in which beneficial owners of REIT Units or Special Voting Units, as the case may be, are

resident or declarations from holders of REIT Units or Special Voting Units, as the case may be, as to whether such REIT Units or Special Voting Units, as the case may be, are held for the benefit of Non-Resident Beneficiaries. If the Trustees become aware that more than 49% of the REIT Units or the Special Voting Units then outstanding are, or may be, held by or for the benefit of Non-Resident Beneficiaries or that such a situation is imminent, the Trustees may make a public announcement thereof and shall not accept a subscription for such REIT Units or Special Voting Units, as the case may be, from or issue or register a transfer of such REIT Units or Special Voting Units, as the case may be, to a Person unless the Person provides a declaration that the Person is not a non-resident for the purposes of the Tax Act (or, in the discretion of the Trustees, that the Person is not a Non-Resident Beneficiary) and does not hold his REIT Units or Special Voting Units, as the case may be, for a Non-Resident Beneficiary. If, notwithstanding the foregoing, the Trustees determine that more than 49% of the REIT Units or the Special Voting Units then outstanding are held by or for the benefit of Non-Resident Beneficiaries, the Trustees may send a notice to non-resident holders of REIT Units or Special Voting Units, as the case may be, and holders of REIT Units or Special Voting Units, as the case may be, for Non-Resident Beneficiaries chosen in inverse order to the order of acquisition or registration or in such other manner as the Trustees may consider equitable and practicable, requiring them to sell or redeem their REIT Units or Special Voting Units, as the case may be, or a portion thereof within a specified period of not more than 60 days (unless the Canada Customs and Revenue Agency has confirmed in writing that a longer period is acceptable). If the Unitholders receiving such notice have not sold or redeemed the specified number of REIT Units or Special Voting Units, as the case may be, or provided the Trustees with satisfactory evidence that they are not non-residents for the purpose of the Tax Act and do not hold their REIT Units or Special Voting Units for the benefit of Non-Resident Beneficiaries within such period, the Trustees may sell or redeem such REIT Units or Special Voting Units, as the case may be, on behalf of such Unitholders (and the Trustees shall have the power of attorney of such Unitholders to do so) and, in the interim, the voting and Distribution rights, if any, attached to such REIT Units or Special Voting Units, as the case may be, shall be suspended. Upon such sale the affected holders shall cease to be holders of REIT Units or Special Voting Units, as the case may be, and their rights shall be limited to receiving the net proceeds of sale upon surrender of such REIT Units or Special Voting Units, as the case may be. In any situation where it is unclear whether REIT Units or Special Voting Units are held for the benefit of Non-Resident Beneficiaries, the Trustees may exercise their discretion in determining whether such REIT Units or Special Voting Units, as the case may be, are or are not so held, and any such exercise by them of their discretion shall be binding for the purposes of this Section 5.11.

#### **Section 5.12 Certificates**

Subject to Section 5.13, each Unitholder or his duly authorized agent is entitled to a certificate bearing an identifying serial number in respect of the REIT Units held by him, signed in the manner hereinafter prescribed, but the Trust is not bound to issue more than one certificate in respect of a REIT Unit or REIT 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.

#### **Section 5.13 Book-Based System for REIT Units; No Certificates for Special Voting Units**

Unless otherwise determined by the Trustees, the REIT Units shall be represented in the form of one or more fully registered unit certificates held by, or on behalf of, CDS, as custodian of the such certificates for the participants of CDS, registered in the name of CDS or its nominee, and registration of ownership and transfers of the REIT Unit may be effected through the book-based system administered by CDS. No holder of a Special Voting Unit shall be entitled to a certificate or other instrument from the Trust evidencing the holder's ownership of such Units; such holder shall only be entitled to be entered on the Register in accordance with Section 5.16 and Section 5.17.

#### **Section 5.14 Certificate Fee**

The Trustees may establish a reasonable fee to be charged for every certificate issued evidencing the ownership of REIT Units.



### **Section 5.15 Form of Certificate**

The form of certificate representing REIT Units shall be in such forms from time to time authorized by the Trustees. Signatures of Trustees or officers of the Trust required on REIT Unit certificates may be printed or otherwise mechanically reproduced thereon. If a REIT 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.

### **Section 5.16 Register**

A register (the “**Register**”) shall be kept by, or on behalf and under the direction of the Trustees, which Register shall contain the names and addresses of the Unitholders, the respective numbers of Units held by them, the certificate numbers of the certificates of such Units and a record of all transfers thereof. The Trustees may appoint one or more chartered banks or trust companies to act as transfer agents and to act as registrars for Units and may provide for the transfer of Units in one or more places within Canada. In the event of such appointment, such transfer agents and registrars shall keep all necessary registers and other books (which may be kept on a computer or similar device) for recording original issues and registering and transferring the Units of the Trust. If the Trustees have appointed a registrar and transfer agent, no certificate for Units shall be valid unless countersigned by or on behalf of a transfer agent and/or registrar. Only the Unitholders whose Units are recorded on the Register shall be entitled to vote or to receive Distributions or otherwise exercise or enjoy the rights of the Unitholders.

### **Section 5.17 Entry on Register**

Subject to Section 5.11 and Section 5.13, upon any issue of Units, the name of the subscriber shall be promptly entered on the Register as the owner of the number of Units issued to such subscriber, or if the subscriber is already a Unitholder, the Register shall be amended to include his additional Units.

### **Section 5.18 Successors in Interest to the Unitholders**

Subject to Section 5.11, any Person becoming entitled to any Units as a consequence of the death, bankruptcy or incompetence of any Unitholder or otherwise by operation of law shall be recorded in the Register as the holder of such 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 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 Units shall be bound by every notice or other document in respect of the Units which shall have been duly given to the Persons from whom he derives his title to such Units. If such transfer will contravene the limitation set forth in Section 5.11, such Person will be deemed never to have been a Unitholder and such Units shall be deemed to have been tendered for redemption to the Trust on the day immediately preceding the day on which such entitlement arose and the rights of such Person will be limited to the rights of a redeeming Unitholder.

### **Section 5.19 Units Held Jointly or in Fiduciary Capacity**

The Trust may treat two or more Persons holding any Unit as joint tenants of the entire interest therein unless 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 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.

### **Section 5.20 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 Unit or other security of the Trust was or would be wrongful or that a particular adverse Person is the owner of or has an interest in the Unit or other security or 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 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 Units or other securities or interest therein by any such Unitholder or holder of such security or his personal representatives is authorized by such trust, charge, pledge or equity, or to recognize any Person as having any interest therein, except for the Persons recorded as the Unitholder or holder of such security.

### **Section 5.21 Lost Certificates**

In the event that any certificate for REIT 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 REIT Units in lieu thereof. The Trustees or any officers of the Trust may in their discretion, before the issuance of such new certificate require the owner of the lost, stolen, destroyed or mutilated certificate, or the legal representative of the owner to make such affidavit or statutory declaration, setting forth such facts as to the loss, theft, destruction or mutilation as the Trustees or any officers of the Trust deem necessary and may require the applicant to supply to the Trust a "lost certificate" or similar bond in such reasonable amount as the Trustees or any officers of the Trust direct indemnifying the Trustees or any officers of the Trust, the transfer agents and registrars for so doing. The Trustees or any officers of the Trust shall have the power to acquire from an insurer or insurers a blanket lost security bond or bonds in respect of the replacement of lost, stolen, destroyed or mutilated certificates. The Trust shall pay all premiums and other sums of money payable for such purpose out of the property of the Trust with such contribution, if any, by those insured as may be determined by the Trustees or any officers of the Trust. If such blanket lost security bond is acquired, the Trustees or any officers of the Trust may authorize and direct (upon such terms and conditions as they may from time to time impose) any registrar, transfer agent, trustee, or others to whom the indemnity of such bond extends to take such action to replace such lost, stolen, destroyed or mutilated certificates without further action or approval by the Trustees or any officers of the Trust.

### **Section 5.22 Death of the Unitholders**

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 property of the Trust, but shall only entitle the personal representatives or the heirs of the estate of the deceased Unitholder, subject to Section 5.18, to succeed to all rights of the deceased Unitholder under this Declaration of Trust.

### **Section 5.23 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 Trustee of Alberta (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.

## Section 5.24 Redemption of REIT 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 REIT 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 5.24, a duly completed and properly executed notice requiring the Trust to redeem REIT Units, in a form approved by the Trustees, specifying the series of REIT Units and the number of REIT 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.
- (b) Upon receipt by the Trust of the notice to redeem REIT Units, the Unitholder shall thereafter cease to have any rights with respect to the REIT 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. REIT 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.
- (c) Upon receipt by the Trust of the notice to redeem REIT Units, in accordance with this Section 5.24, the holder of the REIT Units tendered for redemption shall be entitled to receive a price per REIT Unit (the "**Redemption Price**") of a series of REIT Units equal to the lesser of:
  - (i) 90% of the "market price" of the REIT Units of such series on the principal market on which the REIT Units of such series are quoted for trading on the trading day prior to the date on which the REIT Units of such series were surrendered to the Trust for redemption (the "**Redemption Date**"); and
  - (ii) 100% of the "closing market price" of the REIT Units of such series on the principal market on which the REIT Units of such series are quoted for trading on the Redemption Date.

For the purposes of this calculation, the "market price" in respect of REIT Units of a series will be an amount equal to the 20-day daily-volume weighted average of the closing price of the REIT Units for each of the trading days on which there was a closing price; provided that if the applicable exchange or market does not provide a closing price, but only provides the highest and lowest prices of the REIT Units traded on a particular day, the "market price" shall be an amount equal to the average of the highest and lowest prices for each of the trading days on which there was a trade; 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" shall be the average of the following prices established for each of the 20 trading days: (i) the average of the last bid and last asking prices of REIT Units for each day on which there was no trading; (ii) the closing price of the REIT Units for each day on which there was trading if the exchange or market provides a closing price; and (iii) the average of the highest and lowest prices of REIT 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 REIT Units traded on a particular day.

The "closing market price" in respect of REIT Units shall be: (i) an amount equal to the closing price of REIT Units if there was a trade on the date and the exchange or market

provides a closing price; (ii) an amount equal to the average of the highest and lowest prices of REIT 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 REIT Units traded on a particular day; or (iii) the average of the last bid and last asking price of REIT Units if there was no trading on the date.

If a Unitholder is not entitled to receive cash upon the redemption of REIT Units in circumstances in which Section 5.24(e)(ii) or (iii) apply, then the Redemption Price shall be equal to the fair market value of the REIT Units as determined by the Trustees.

- (d) Subject to Section 5.24(e) and Section 5.24(f), the Redemption Price payable in respect of the REIT Units tendered for redemption during any month shall be paid by cheque, drawn on a Canadian chartered bank or a trust company in lawful money of Canada, payable at par to or to the order of the Unitholder who exercised the right of redemption on or before the last day of the calendar month following the month in which the REIT 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 the former Unitholder in respect of the REIT Units so redeemed.
- (e) Section 5.24(d) shall not be applicable to REIT Units tendered for redemption by a Unitholder, if:
  - (i) the total amount payable by the Trust pursuant to Section 5.24(c) in respect of such REIT Units and all other REIT Units tendered for redemption prior thereto in the same calendar month exceeds \$50,000 (the “**Monthly Limit**”); provided that the Trustees may, in their sole discretion, waive such limitation in respect of all REIT Units tendered for redemption in any calendar month;
  - (ii) at the time the REIT Units are tendered for redemption, the outstanding REIT 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 REIT Units of such series; or
  - (iii) the normal trading of the outstanding REIT Units is suspended or halted on any stock exchange on which the REIT Units are listed for trading or, if not so listed, on any market on which the REIT Units are quoted for trading, on the Redemption Date for the REIT Units or for more than five trading days during the 10 trading day period commencing immediately after the Redemption Date for such REIT Units.
- (f) If, pursuant to Section 5.24(e)(ii) or Section 5.24(e)(iii), Section 5.24(d) is not applicable to REIT Units tendered for redemption by a Unitholder, the Redemption Price per REIT Unit specified in Section 5.24(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 Series 2 Notes of the Operating Trust having a principal amount equal to the product of: (i) the Redemption Price per REIT Unit of the REIT Units tendered for redemption; and (ii) the number of REIT Units tendered by such Unitholder for redemption. No Series 2 Notes in a principal amount of less than \$100 will be transferred and where the number of Series 2 Notes to be received by the former Unitholder upon redemption, *in specie*, would otherwise include a principal amount of less than a multiple of \$100, such number shall be rounded to the next lowest multiple of \$100 and the excess shall be paid in cash. The Redemption Price payable pursuant to this Section 5.24(f) in respect of REIT 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 REIT Units were tendered for redemption, of the principal amount of Series 2 Notes determined as aforesaid and the cash payment, if any, in accordance with the provisions of Section 5.24(d) applied *mutatis mutandis*. The Trust shall be entitled to all interest paid or declared payable on the Series 2 Notes 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 Series 2 Notes and cheque, if any, by registered mail in a postage prepaid envelope addressed to the former Unitholder. Upon such payment, the Trust shall be discharged from all liability to the former Unitholder in respect of the REIT Units so redeemed. Except as set out above, the terms and conditions of the Series 2 Notes shall be as set out in the applicable Note Indenture for such Series 2 Notes.

- (g) If, pursuant to Section 5.24(e)(i), Section 5.24(d) is not applicable to the REIT Units tendered for redemption by a Unitholder, the Redemption Price per REIT Unit to which the Unitholder would otherwise be entitled shall be paid and satisfied as follows:
- (i) a portion of the Redemption Price per REIT Unit equal to the Monthly Limit divided by the number of REIT Units tendered for redemption in the month shall be paid and satisfied in cash, in accordance with Section 5.24(d) applied *mutatis mutandis*; and
  - (ii) subject to receipt of all necessary regulatory approvals, the remainder of the Redemption Price per REIT Unit shall be paid and satisfied by way of a distribution in specie to such Unitholder of Series 2 Notes, in accordance with Section 5.24(f) applied *mutatis mutandis*.

Upon such payment, the Trust shall be discharged from all liability to the former Unitholder in respect of the REIT Units so redeemed.

- (h) All REIT Units which are redeemed under this Section 5.24 shall be cancelled and such REIT Units shall no longer be outstanding and shall not be reissued.
- (i) Some or all of the income of the Trust, the net realized capital gains of the Trust and the net recapture income of the Trust for a year 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 REIT Units in such year and, to the extent of 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 a majority of the Trustees; however in all cases, a redeeming Unitholder will only be treated as having been paid an amount to which the Unitholders of the REIT Units redeemed would be entitled to receive.

#### **Section 5.25 Purchase of REIT Units**

The Trust shall be entitled to purchase at any time the whole or from time to time any part of the outstanding REIT Units, at a price per REIT Unit and on a basis determined by the Trustees in compliance with all applicable securities laws, regulations, rules, blanket orders, notices or policies or the rules or applicable policies of any stock exchange.

#### **Section 5.26 Right to Acquire**

- (a) If there is a take-over bid for all of the outstanding REIT Units and, within the time limited in a take-over bid for its acceptance, or 120 days after the date of such take-over bid, as defined under the National Instrument 62-104, whichever period is the shorter, the take-

over bid is accepted by the holders of not less than 90% of the REIT Units (including REIT Units issuable upon the surrender or exchange of any securities for REIT Units but not including any such securities 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 REIT 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 5.26, to acquire the REIT Units held by the dissenting offerees.

- (b) An offeror may acquire REIT 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 REIT 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 REIT Units of the offerees who accepted the takeover bid;
  - (iii) a dissenting offeree is required to elect:
    - (A) to transfer their REIT Units to the offeror on the terms on which the offeror acquired the REIT Units of the offerees who accepted the take-over bid, or
    - (B) to demand payment of the fair value of the REIT Units in accordance with Section 5.26(h) to Section 5.26(k) by notifying the offeror within 20 days after receiving the offeror's notice and by applying to the Court of King's Bench of Alberta (the "**Court**") to fix the fair value of the REIT Units of the dissenting offeree; within 60 days after the date of the sending of the offeror's notice
  - (iv) a dissenting offeree who does not notify the offeror and apply to the Court in accordance with Section 5.26(b)(iii) is deemed to have elected to transfer the REIT Units to the offeror on the same terms that the offeror acquired the REIT Units from the offerees who accepted the take-over bid; and
  - (v) a dissenting offeree shall send the certificates representing the REIT Units to the Trust within 20 days after the offeree receives the offeror's notice.
- (c) Concurrently with sending the offeror's notice under Section 5.26(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, the registered owner of the REIT Units if different from the dissenting offeree, with respect to each REIT Unit held by a dissenting offeree.
- (d) A dissenting offeree to whom an offeror's notice is sent under Section 5.26(b) shall, within 20 days after receiving that notice:
- (i) send the certificate(s) representing the REIT Units to the Trust; and
  - (ii) elect;
    - (A) to transfer the Units to the offeror on the terms on which the offeror acquired the REIT Units of the Unitholders who accepted the takeover bid; or

- (B) to demand payment of the fair value of the REIT Units in accordance with Section 5.26(i) to (o) by notifying the offeror within those 20 days.
- (e) Within 20 days after the offeror sends an offeror's notice under Section 5.26(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 Section 5.26(b)(iii)(A).
- (f) The Trust is deemed to hold in trust for the dissenting offeree the money or other consideration it receives under Section 5.26(e), 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.
- (g) If the Trust is the offeror, it is deemed to hold in trust for the dissenting offeree the money and other consideration that it would have had to pay or transfer to a dissenting offeree if the dissenting offeree had elected to accept the take-over bid under Section 5.26(d)(ii)(A) and the Trust shall, within 20 days after the offeror's notice is sent, 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.
- (h) Within 30 days after the offeror sends an offeror's notice under Section 5.26(b), the Trust shall, if the payment or transfer required by Section 5.26(e) is made:
  - (i) issue to the offeror a certificate in respect of the REIT Units that were held by dissenting offerees;
  - (ii) give to each dissenting offeree who elects to accept the takeover bid terms under Section 5.26(b)(i) and who sends or delivers his REIT Units as required under Section 5.26(b), the money or other consideration to which the offeree is entitled, disregarding fractional REIT Units, if any, which may be paid for in money; and
  - (iii) send to each dissenting offeree who has not sent REIT Unit certificates as required under Section 5.26(d) a notice stating that:
    - (A) the dissenting offeree's REIT 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 REIT Units; and
    - (C) the Trust will, subject to Section 5.26(i) to Section 5.26(l) send that money or other consideration to that offeree without delay after receiving the REIT Units.
- (i) If a dissenting offeree has elected to demand payment of the fair value of his REIT Units under Section Section 5.26(d)(ii), the offeror may, within 20 days after it has paid the money or transferred the other consideration under Section 5.26(e), apply to a the Court to fix the fair value of the REIT Units of that dissenting offeree.
- (j) A dissenting offeree is not required to give security Section 5.26(b)(iii)(B) or Section 5.26(i).
- (k) If more than one application is made under Sections Section 5.26(b)(iii)(B) or Section 5.26(i) the offeror or a dissenting offeree may apply to have the applications heard together, and 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.

- (l) On an application to the Court under Sections Section 5.26(b)(iii)(B) or Section 5.26(i), the Court shall then fix a fair value for the REIT Units of each dissenting offerees who is a party to the application.
- (m) The Court may in its discretion appoint one or more appraisers to assist the court to fix a fair value for the REIT Units of a dissenting offeree.
- (n) The final order of the court shall be made against the offeror in favour of each dissenting offeree who has elected to demand payment of the fair value of the dissenting offeree's REIT Units for the fair value of the dissenting offeree's REIT Units as fixed by the Court.
- (o) In connection with proceedings under this Section 5.26, the 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 Section 5.26(f);
  - (ii) order that money or other consideration be held in trust by a Person other than the Trust;
  - (iii) allow a reasonable rate of interest on the amount payable to each dissenting offeree from the date the dissenting offeree sends or delivers the offeree's REIT Units under Section 5.26(d) until the date of payment; and
  - (iv) order that any money payable to a Unitholder who cannot be found be paid to the Provincial Treasurer in Alberta and, if at any time a Person establishes that the Person is entitled to any money paid to the Provincial Treasurer pursuant to this Section, the Provincial Treasurer shall pay an equivalent amount to that Person out of the general revenue fund.
- (p) If a Unitholder does not receive an offeror's notice under Section 5.26(b), the Unitholder may:
  - (i) within 90 days after the date of termination of the take-over bid; or
  - (ii) if the Unitholder did not receive an offer pursuant to the takeover bid, within 90 days after the later of:
    - (A) the date of termination of the take-over bid; and
    - (B) the date on which the Unitholder learned of the take-over bid, require the offeror to acquire those REIT Units.
- (q) If a Unitholder requires the offeror to acquire the REIT Units under Section 5.26(p), the offeror shall acquire the REIT Units on the same terms under which the offeror acquired or will acquire the REIT Units of the Unitholders who accepted the take-over bid.

## **Section 5.27 Offers**

If an offer, issuer bid (other than an exempt issuer bid), take-over bid (other than an exempt take-over bid) or similar transaction with respect to the REIT Units is proposed by the Trust or is proposed to the Trust or Unitholders of REIT Units and is recommended by the board of Trustees of the Trust, or is otherwise



effected or to be effected, whether or not with the consent or approval of the board of Trustees of the Trust (each, an “Offer”), and the LP Partnership Units (other than LP Class A Units and LP Class C Units) are not acquired by the LP in accordance with their terms or exchanged in accordance with the Exchange and Support Agreement, the Trust will, to the extent possible in the circumstances, expeditiously and in good faith, take all such actions and do all such things as are necessary or desirable to enable and permit holders of such LP Partnership Units to participate in such Offer to the same extent and on an economically equivalent basis as the holders of REIT Units without discrimination. Without limiting the generality of the foregoing, the Trust will, to the extent possible in the circumstances, expeditiously and in good faith, use commercially reasonable efforts to ensure that holders of such LP Partnership Units may participate in all such Offers without being required to exercise any available right to surrender their LP Partnership Units for withdrawal or to exchange LP Partnership Units (or, if so required, to ensure that any such surrender or exchange will be effective only upon, and will be conditional upon, the successful completion of the Offer and only to the extent necessary to tender to or deposit under the Offer).

### **Section 5.28 Redemption of Initial REIT Unit**

On the Effective Date, the Trust redeemed the Initial REIT Unit held by the Initial Unitholder for a redemption price of \$10.00 and, upon the completion of such redemption, the Initial REIT Unit was cancelled and is longer outstanding for any purpose pursuant to this Declaration of Trust.

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

### **Section 6.1 Annual Meeting**

There shall be an annual meeting of the Unitholders, at such time and place in Canada as the Trustees shall prescribe, for the purpose of electing Trustees (except for the BPCL Appointee), appointing or changing the Auditors of the Trust, the Operating Trust and the LP and transacting such other business as the Trustees may determine or as may properly be brought before the meeting. The annual meeting of the Unitholders shall be held after delivery to the Unitholders of the information referred to in Section 15.7 and, in any event, within 180 days after the end of each fiscal year of the Trust. Notwithstanding the foregoing, the Trust may apply to the Court for an order extending the time for calling an annual meeting beyond such 180 day period.

### **Section 6.2 Special Meetings**

The Trustees shall have power at any time to call special meetings of the Unitholders at such time and place in Canada as the Trustees may determine. The Unitholders holding in the aggregate not less than 5% of the votes attaching to all outstanding 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 ABCA. 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 the Unitholders has been fixed and notice thereof has been given to each stock exchange in Canada on which the REIT Units are listed for trading;
- (b) the Trustees have called a meeting of the Unitholders and have given notice thereof pursuant to Section 6.3; or
- (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 is 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 the 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 two years preceding the receipt of the Unitholder's request and the matter covered by the requisition did not receive the prescribed minimum amount of support at the meeting; or
- (v) the rights conferred by this Section 6.2 are being abused to secure publicity.

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 Section 6.3 and the Trustees' Regulations, *mutatis mutandis*. If there shall be no Trustees, the officers of the Trust shall promptly call a special meeting of the Unitholders for the election of successor Trustees. The phrase "meeting of the Unitholders" wherever it appears in this Declaration of Trust shall mean and include both an annual meeting and any other meeting of the Unitholders.

Unless the Unitholders otherwise resolve at a meeting called under this Section 6.2, the Trust shall reimburse the Unitholders who signed the requisition for the expenses reasonably incurred by them in requisitioning, calling and holding the meeting.

### **Section 6.3 Notice of Meeting of the Unitholders**

Notice of all meetings of the Unitholders shall be provided by the Trustees to each Unitholder at his address appearing in the Register or as otherwise permitted under this Declaration of Trust, to each Trustee and to the Auditors of the Trust not less than 21 nor more than 60 days before the meeting. Notice of any meeting of the Unitholders shall state the purposes of the meeting.

If a meeting is adjourned for less than 30 days it is not necessary to give notice of the adjourned meeting, other than by announcement at the earliest meeting that is adjourned. If a meeting of the Unitholders is adjourned by one (1) or more adjournments for an aggregate of 30 days or more, notice of the adjourned meeting shall be given as for an original meeting.

All business to be conducted at a special meeting of Unitholders and all business to be transacted at an annual meeting of Unitholders, except consideration of financial statements, auditor's report, election of Trustees and re-appointment of the incumbent auditor, is deemed to be special business. Notice of a meeting of Unitholders at which special business is to be transacted shall state:

- (a) the nature of the business in sufficient detail to permit a Unitholder to form a reasonable judgment thereon; and

- (b) the text of any resolution (or summary thereof) that requires the approval of two-thirds (2/3) of the votes cast by Unitholders who vote in respect of that resolution to be submitted to the meeting.

#### **Section 6.4 Unitholder Proposals**

Subject to subsections (a) and (b), a registered holder or beneficial owner of REIT Units may: (i) submit written notice to the Trust of any matter that the person proposes to raise at an annual meeting of Unitholders (a "**Proposal**"); and (ii) discuss at the meeting any matter with respect to which the person would have been entitled to submit a Proposal. For greater certainty, any Proposal that includes nominations for the election of Trustees shall comply with Section 6.5.

- (a) To be eligible to submit a Proposal, a person;
  - (i) must be, for at least the six (6) month period immediately before the day on which the person submits the Proposal, the registered holder or the beneficial owner of: (A) at least one percent (1%) of the total number of outstanding REIT Units, as of the day on which the person submits a Proposal; or (B) REIT Units whose fair market value, as determined at the close of business on the day before the person submits the Proposal, is at least \$2,000; or
  - (ii) must have the support of persons who, in the aggregate, and including or not including the person that submits the Proposal, have been, for at least the six (6) month period immediately before the day on which the person submits the Proposal, the registered holders or beneficial owners of: (A) at least one percent (1%) of the total number of outstanding REIT Units, as of the day on which the person submits the Proposal; or (B) REIT Units whose fair market value, as determined at the close of business on the day before the person submits the Proposal, is at least \$2,000.
- (b) A Proposal must be accompanied by the following information:
  - (i) the name and address of the person submitting the Proposal and the person's supporters, if applicable; and
  - (ii) the number of REIT Units held or owned by the person submitting the Proposal and the person's supporters, if applicable, and the date the REIT Units were acquired.
- (c) If requested by the Trust within 14 days of the receipt of the Proposal, a person who submits a Proposal must provide proof, within 21 days following the day on which the person received the Trust's request, or if the request was mailed to the person, within 21 days after the postmark date stamped on the envelope containing the request, that the person meets the requirements set out in subsection (a).
- (d) The Trust shall set out the Proposal in its proxy circular in connection with its annual meeting or attach the Proposal thereto.
- (e) If so requested by the person who submits the Proposal, the Trust shall include in, or attach to, its proxy circular delivered in connection with its annual meeting, a statement in support of the Proposal by the person and the name and address of the person making the Proposal. The statement and Proposal so included must not exceed 500 words, excluding the information required by subsection (b).
- (f) The Trust shall not be required to comply with subsections (d) and (e) if:

- (i) the Proposal is submitted less than 90 days before the anniversary date of the notice of meeting that was sent to Unitholders in connection with the Trust's previous annual meeting of Unitholders;
- (ii) it clearly appears that: (A) the primary purpose of the Proposal is to enforce a personal claim or redress a personal grievance against the Trust, the Trustees, its officers, the Unitholders or other securityholders of the Trust; or (B) the Proposal does not relate in a significant way to the business or affairs of the Trust;
- (iii) not more than two (2) years preceding the receipt of such Proposal, the proposing person failed to present, in person or by proxy, at a meeting of the Unitholders, a proposal that, at the person's request, had been included in a proxy circular relating to a meeting of the Unitholders;
- (iv) substantially the same proposal was submitted to Unitholders in a proxy circular relating to a meeting of the Unitholders held within five (5) years preceding the receipt of the Proposal and the matter covered by the Proposal did not receive the required support at that meeting. For the purposes hereof, the required support for a Proposal is:
  - (A) three percent (3%) of the total number of REIT Units voted, if the Proposal has been
  - (B) six percent (6%) of the total number of REIT Units voted at the last meeting at which the matter was submitted to Unitholders, if the Proposal was introduced at two (2) annual meetings of Unitholders; and
  - (C) ten percent (10%) of the total number of REIT Units voted at the last meeting at which the matter was submitted to Unitholders, if the Proposal was introduced at three (3) or more annual meetings of Unitholders; or
- (v) the rights conferred by this Section are being abused to secure publicity.
- (g) If a person who submits a Proposal fails to continue to hold or own the number of REIT Units referred to in subsection (a) up to and including the meeting, the Trust is not required to set out in its proxy circular, or attach to it, any Proposal submitted by that person for any meeting held within two (2) years following the date of the meeting
- (h) Neither the Trust nor any person acting on its behalf will incur any liability to Unitholders or any other person by reason only of circulating a Proposal or statement in compliance with this section.
- (i) If the Trust refuses to include a Proposal in its proxy circular, it shall, within 21 days of the later of receipt of the Proposal or proof of ownership under subsection (c), as the case may be, notify in writing the person submitting the Proposal of its intention to omit the Proposal from the Trust's proxy circular and of the reasons for the refusal.
- (j) On the application of a person submitting a Proposal who claims to be aggrieved by the Trust's refusal under subsection (i), the Court may restrain the holding of the meeting to which the Proposal is sought to be presented and make any further order it thinks fit.
- (k) The Trust or any person claiming to be aggrieved by a Proposal may apply to the Court for an order permitting the Trust to omit the Proposal from the proxy circular, and the Court, if it is satisfied that subsection (g) applies, may make such order as it thinks fit.

## Section 6.5 Nominations of Trustees

- (a) Only persons who are nominated in accordance with the following procedures shall be eligible for election as Trustees. Nominations of persons for election to the board of Trustees of the Trust 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 of the Trust, 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 this Article 6; or
  - (iii) by any person (a "**Nominating Unitholder**"): (A) who, at the close of business on the date of the giving of the notice provided for below in this Section 6.5 and on the record date for notice of such meeting, is entered in the Register as a holder of one or more Units carrying the right to vote at such meeting or who beneficially owns Units that are entitled to be voted at such meeting; and (B) who complies with the notice procedures set forth below in this Section 6.5.
- (b) In addition to any other applicable requirements, for a nomination to be made by a Nominating Unitholder, the Nominating Unitholder must have given timely notice thereof to the Trustees in the manner prescribed by this Declaration of Trust. Furthermore, if such notice is made on a day which is not a Business Day or later than 5:00 p.m. (Calgary time) on a day which is a Business Day, then such notice shall be deemed to have been made on the subsequent day that is a Business Day.
- (c) To be timely, a Nominating Unitholder's notice to the Trustees must be made:
- (i) in the case of an annual meeting of Unitholders (which includes 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 that is the earlier of the date that a notice of meeting is filed for such meeting or the date on which the first public announcement of the date of the annual meeting was made (the "**Notice Date**"), notice by the Nominating Unitholder may be made not later than the close of business on the tenth (10<sup>th</sup>) day following the Notice Date; and
  - (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), not later than the close of business on the fifteenth (15<sup>th</sup>) day following the day that is the earlier of the date that a notice of meeting is filed for such meeting or the date on which the first public announcement of the date of the special meeting of Unitholders was made;
- provided that, in either instance, if notice-and-access (as defined in National Instrument 54-101 – Communication with Beneficial Owners of Securities of a Reporting Issuer of the Canadian Securities Administrators) is used for delivery of proxy related materials in respect of a meeting described in Section 6.5(c)(i) or Section 6.5(c)(ii), and the Notice Date in respect of the meeting is not less than 50 days before the date of the applicable meeting, the notice must be received not later than the close of business on the 40<sup>th</sup> day before the date of the applicable meeting.

Notwithstanding the foregoing, an adjournment or postponement of a meeting of Unitholders or the announcement thereof shall commence a new time period for the giving of a Nominating Unitholder's notice, in accordance with the requirements described above.

- (d) To be in proper written form, a Nominating Unitholder's notice to the Trustees must set forth:
  - (i) as to each person whom the Nominating Unitholder proposes to nominate for election as a Trustee: (A) the name, age, business address and residential address of the person; (B) the principal occupation or employment of the person, both presently and for the past five years; (C) the citizenship or residency of the person; (D) the class or series and number of Units which are controlled, directed or which are owned beneficially or of record by the person 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; and (E) any other information relating to the person that would be required to be disclosed in a dissident's proxy circular in connection with solicitations of proxies for election of Trustees pursuant to applicable securities laws;
  - (i) as to the Nominating Unitholder giving the notice, and each beneficial owner, if any, on whose behalf the nomination is made, any proxy, contract, agreement, arrangement or understanding (including financial, compensation or indemnity related) pursuant to which such Nominating Unitholder has a right to vote any Units and any other information relating to such Nominating Unitholder that would be required to be made in a dissident's proxy circular in connection with solicitations of proxies for election of Trustees pursuant to applicable securities laws.
- (e) The Trust may require any proposed nominee to furnish such other information as may be required by applicable securities laws to determine the eligibility of such proposed nominee to serve as an independent Trustee of the Trust.
- (f) No person shall be eligible for election as a Trustees unless nominated in accordance with the provisions of this Section 6.5; provided, however, that nothing in this Section 6.5 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 it would have been entitled to submit to a vote pursuant to the terms and conditions contained in this Declaration of Trust. The Chair of the meeting shall have the power and duty to determine whether a nomination was made in accordance with the procedures set forth in the foregoing provisions and, if any proposed nomination is not in compliance with such foregoing provisions, to declare that such defective nomination shall be disregarded.
- (g) For purposes of this Section 6.5, "public announcement" shall mean disclosure in a press release reported by a national news service in Canada, or in a document publicly filed by the Trust under its profile on SEDAR+ at [www.sedarplus.com](http://www.sedarplus.com).
- (h) Notwithstanding the foregoing, the board of Trustees of the Trust may, in its sole discretion, waive any requirement in this Section 6.5.

## **Section 6.6 Quorum**

A quorum for any meeting of the Unitholders shall be individuals present not being less than two in number and being the Unitholders or representing by proxy the Unitholders who hold in the aggregate not less than 25% of the votes attached to all outstanding Units (on a fully diluted basis), provided that if the Trust has only one Unitholder, the Unitholder present in person or by proxy constitutes a meeting and a quorum for such meeting. If a quorum is present at the opening of a meeting of the Unitholders, the Unitholders present

may proceed with the business of the meeting, notwithstanding that a quorum is not present throughout the meeting. In the event of such quorum not being present at the appointed place on the date for which the meeting is called within 30 minutes after the time fixed for the holding of such meeting, the meeting, if convened on the requisition of the Unitholders, shall be dissolved, but in any other case shall stand adjourned to such day being not less than 10 days later and to such place in Canada and time as may be appointed 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 the Unitholders.

### **Section 6.7 Voting**

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

### **Section 6.8 Matters on which the Unitholders Shall Vote**

Subject to Section 9.2, none of the following shall occur unless the same has been duly approved by at least two-thirds ( $\frac{2}{3}$ ) of the votes cast by the Unitholders at a meeting duly called and held:

- (a) any amendment to the Declaration of Trust (except as provided in Section 4.3 or Section 12.1, but subject to Section 12.2);
- (b) the sale of, lease or exchange of the assets of the Trust as an entirety or substantially as an entirety (other than in the ordinary course of the business of the Trust or as a part of an internal reorganization of the assets of the Trust as approved by the Trustees);
- (c) the termination of the Trust pursuant to Section 13.2;
- (d) any other matters which:
  - (i) expressly require the approval of the Unitholders pursuant to this Declaration of Trust; or
  - (ii) the Trustees determine to present to the Unitholders for their approval or ratification, notwithstanding that there is no express requirement for such approval or ratification hereunder.

Nothing in this Section 6.8, however, 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 this Section 6.8, Section 12.2 or Section 13.2, 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.

### **Section 6.9 REIT Units Held by Trust**

- (a) if the Trust holds any REIT Units, the Trust shall not vote or permit those REIT Units to be voted unless:
  - (i) the Trust holds the REIT Units for the benefit of the beneficial owner;

- (ii) The Trust, without delay following the filing or receipt by the Trust, as applicable, of the notice of the meeting, financial statements, management proxy circular, dissident's proxy circular and any other documents (other than the form of proxy) sent to the registered Unitholders entitled to vote at the applicable meeting by or on behalf of any person for use in connection with the applicable meeting, sends a copy of the document to the beneficial owner of the REIT Units and, except where the Trust has received written voting instructions from the beneficial owner of the REIT Units, a written request for such instructions; and
- (iii) the Trust receives written voting instructions from the beneficial owner of the REIT Units;

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

- (b) A Unitholder by or on behalf of whom the solicitation is made shall provide, at the request of the Trust, without delay, to the Trust at the Unitholder's expense, the necessary number of copies of the documents referred to in subsection (a), other than the copies of the document requesting voting instructions.
- (c) If a beneficial owner of the REIT Units held by the Trust so requests and provides the Trust with the appropriate documentation, the Trust must appoint the beneficial owner or a nominee of the beneficial owner as proxyholder.
- (d) The Trust, the Trustees and the Unitholders agree that the failure of the Trust to comply with this Section does not render void any meeting of Unitholders or any action taken at the meeting.
- (e) Nothing in this Section gives the Trust the right to vote REIT Units that the Trust is otherwise prohibited from voting.

The Trust shall not permit any of its subsidiaries holding REIT Units to vote, or permit those REIT Units to be voted, unless the subsidiary satisfies the requirements of subsection (a).

#### **Section 6.10 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 the 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 it has since that date disposed of its 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 the 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. on the last Business Day before the meeting.



### **Section 6.11 Court Requisitioned Meetings**

A Unitholder who is entitled to vote at a meeting of Unitholders may apply to the Court to order a meeting of the Unitholders to be called, held and conducted in the manner that the Court directs, if:

- (a) it is impracticable to call the meeting within the time or in the manner in which those meetings are to be called pursuant to this Declaration of Trust;
- (b) it is impracticable to conduct the meeting in the manner required by this Declaration of Trust; or
- (c) the Court thinks that the meeting should be called, held and conducted within the time or in the manner it directs for any other reason.

Without restricting the generality of this Section 6.11, the Court may order that the quorum required by this Declaration of Trust to be varied or dispensed with at a meeting called, held and conducted pursuant to this Section 6.11.

### **Section 6.12 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 proxy holder need not be a Unitholder. The Trustees may solicit such proxies from the Unitholders or any of them in 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 proxy holders, and the solicitation, execution, validity, revocation and deposit of proxies, as they in their 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 or bankruptcy has been received by the Chair of the meeting prior to the time when the vote is cast or, in the case of revocation, the revocation of the proxy is effected pursuant to this Section 6.12.

A Unitholder may revoke a proxy:

- (a) by depositing an instrument or act in writing executed or, in Quebec, signed by the Unitholder or by the Unitholder's personal representative authorized in writing:
  - (i) at the principal office of the Trust at any time up to and including the last business day preceding the day of the meeting, or an adjournment thereof, at which the proxy is to be used; or

- (ii) with the Chair of the meeting on the day of the meeting prior to the time the vote is cast or any adjournment thereof; or
- (b) in any other manner permitted by law.

**Section 6.13 Personal Representatives**

Subject to Section 5.11, if a Unitholder is deceased, his personal representative, upon filing with the secretary of the meeting such proof of his appointment as the secretary considers sufficient, shall be entitled to exercise the same voting rights at any meeting of the Unitholders as the Unitholder would have been entitled to exercise if he were living and for the purpose of the meeting shall be considered to be a Unitholder. Subject to the provisions of the will of a deceased Unitholder, if there is more than one personal representative, the provisions of Section 5.12 relating to joint holders shall apply.

**Section 6.14 Attendance by Others**

Any Trustee, officer of the Trust, representative of the Auditors of the Trust, 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.

**Section 6.15 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.

**Section 6.16 Binding Effect of Resolutions**

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

**Section 6.17 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 the Unitholders is as valid as if it had been passed at a meeting of the Unitholders.

**Section 6.18 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 special resolution in lieu thereof) in accordance with this Article 6.

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

**Section 7.1 Trustees May Act Without Meeting**

The Trustees may act with or without a meeting. Any action of the Trustees or any committee of the Trustees may be taken at a meeting by vote of, or without a meeting by written consent signed by all of, the Trustees or the members of the applicable committee, as the case may be.

## **Section 7.2 Notice of Meeting**

Meetings of the Trustees may be held from time to time upon the giving of notice by any two Trustees. Regular meetings of the Trustees may be held without call or notice at a time and place in Canada fixed in accordance with the Trustees' Regulations. Notice of the time and place of any other meetings shall be mailed or otherwise given 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.

## **Section 7.3 Quorum**

A quorum for all meetings of the Trustees or any committee thereof shall be a majority of the number of Trustees elected or a majority of the number of Trustees on such committee, as the case may be, present in person, at least two (2) of whom shall be resident Canadian and at least a majority 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.

## **Section 7.4 Voting at Meetings**

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

## **Section 7.5 Meeting by Telephone**

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

# **ARTICLE 8 DELEGATION OF POWERS**

## **Section 8.1 General**

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. 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 greater 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 he resigns from such committee or otherwise ceases to be a Trustee.

## **Section 8.2     Audit Committee**

The Trustees shall appoint an audit committee (the “**Audit Committee**”) consisting of at least three Trustees, all of whom shall be Independent Trustees and a majority of whom shall be resident Canadians. The Chair of the Audit Committee shall be selected from the group of Independent Trustees appointed to serve on such Committee. The Audit Committee shall: (i) review the Trust’s procedures for internal control with the Auditors and Chief Financial Officer of the Trust; (ii) review the engagement of the Auditors; (iii) review and recommend to the Trustees for their approval annual and quarterly financial statements and management’s discussion and analyses of financial condition and results of operation; (iv) assess the Trust’s financial and accounting personnel; and (v) review any significant transactions outside the Trust’s ordinary activities and all pending litigation involving the Trust. The Auditors of the Trust 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 of the Trust or a member of the Audit Committee may call a meeting of the Audit Committee on not less than 48 hours’ notice.

## **Section 8.3     Compensation and Governance Committee**

The Trustees shall appoint a Compensation and Governance Committee (the “**C&G Committee**”) consisting of at least three Trustees, all of such Trustees shall be Independent Trustees. The Chair of the C&G Committee shall be selected from the group of Independent Trustees appointed to serve on such Committee. The duties of the C&G Committee shall be to review the compensation of the Trustees and certain specified senior officers of the Trust. The C&G Committee shall be generally responsible for the Trust’s human resources, compensation and governance policies and will have primary responsibility for: (i) administering the Trust’s unit incentive plans; (ii) assessing the performance of the Chief Executive Officer; (iii) reviewing and approving the compensation of senior management and consultants of the Trust; (iv) reviewing and making recommendations to the Trustees concerning the level and nature of compensation payable to the Trustees; and (v) reviewing the governance policies of the Trust, including being responsible for: (a) assessing the effectiveness of the board of Trustees of the Trust and each of its committees; (b) considering questions of management succession; (c) participating along with management in the recruitment and selection of candidates for Trustees; and (d) considering and approving proposals by the Trustees to engage outside advisors on behalf of the board of Trustees of the Trust as a whole or on behalf of the Independent Trustees. Questions arising in any meeting of the C&G 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 C&G Committee. Any member of the C&G Committee may call a meeting of the C&G Committee upon not less than 48 hours’ notice. Where for any reason a member of the C&G Committee is disqualified from voting on or participating in a decision, any other independent and disinterested Trustee who is resident Canadian not already a member of the C&G Committee may be designated by the Trustees to act as an alternate. Notwithstanding the appointment of the C&G Committee, the Trustees may consider and approve any matter which the C&G Committee has the authority to consider or approve.

## **Section 8.4     Investment Committee**

In furtherance of and without limiting their authority to appoint such additional committees pursuant to Section 8.1 and Section 8.5, the Trustees may, as they, in their discretion, determine necessary or desirable, appoint an investment committee to consider, authorize and approve proposed acquisition, disposition, financing, refinancing and other such proposed transactions for and on behalf of the Trust; provided however that in the absence of any such appointment and delegation of authority, subject to Section 3.8, Section 3.9 and Section 3.10, the responsibility for such determinations shall be that of all of the Trustees who together may from time to time, in the exercise of such discretion, and subject always to Article 4, approve an investment plan for the Trust and delegate to any one or more Trustees, officers or employees of the Trust the authority to consider, authorize and approve proposed acquisition, disposition, financing, refinancing and other such proposed transactions for and on behalf of the Trust as they, in their

discretion, determine necessary or desirable, within the parameters of such investment plan. In the event that the Trustees approve any investment plan or plans for the Trust, it shall be within their authority and discretion to amend, modify, supplement or revoke such plan or plans from time to time as they, in their discretion, determine necessary or desirable.

### **Section 8.5 Additional Committees and Powers That May Not be Delegated**

The Trustees may create such additional committees as they, in their discretion, determine to be necessary or desirable for the purposes of properly governing the affairs of the Trust; provided that the majority of the members of any additional committee must be resident Canadians. Further, the Trustees may not delegate to any such committee or office any power(s) or authority in respect of:

- (a) submitting to Unitholders any question or matter requiring the approval of Unitholders;
- (b) filling a vacancy among the Trustees or appointing additional Trustees;
- (c) issuing REIT Units except as authorized by the Trustees;
- (d) declaring Distributions;
- (e) approving a proxy circular;
- (f) approving a take-over bid circular; and
- (g) approving the annual financial statements of the Trust.

### **Section 8.6 Management of the Trust**

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

## **ARTICLE 9 UNITHOLDER REMEDIES**

### **Section 9.1 Dissent and Appraisal Rights**

- (a) Subject to Section 9.2(e), a Unitholder entitled to vote at a meeting of the Unitholders of the Trust who complies with this Section 9.1 may dissent if the Trust resolves to:
  - (i) sell, lease or exchange all or substantially all of the property and assets of the Trust;
  - (ii) carry out a going-private transaction; or
  - (iii) amend this Declaration of Trust to:
    - (A) add, change or remove any provision restricting or constraining the issue, transfer or ownership of the REIT Units;
    - (B) add, change or remove any restriction on the business that the Trust may carry on;
    - (C) add, change or remove the rights, privileges, restrictions or conditions attached to the REIT Units of the class held by the dissenting Unitholder;

- (D) increase the rights or privileges, restrictions or conditions attached to the REIT Units of the class held by the dissenting Unitholder;
  - (E) create a new class of units equal to or superior to the class of REIT Units held by the dissenting Unitholder;
  - (F) make any class of units having rights or privileges inferior to the class of Units held by the dissenting Unitholder superior to that class; or
  - (G) effect an exchange or create a right of exchange in all or part of a class of REIT Units into the class of Units held by the dissenting Unitholder.
- (b) In addition to any other right the Unitholder may have, a Unitholder who complies with this Section is entitled, when the action approved by the resolution from which the Unitholder dissents becomes effective, to be paid by the Trust the fair value of the REIT Units held by the Unitholder in respect of which the Unitholder dissents, determined as of the close of business on the day before the resolution was adopted.
- (c) A dissenting Unitholder may only claim under this Section with respect to all the REIT Units held by the dissenting Unitholder on behalf of any one beneficial owner and registered in the name of the dissenting Unitholder.
- (d) A dissenting Unitholder shall send to the Trust at or before any meeting of the Unitholders at which a resolution referred to in subsection (a) is to be voted on, a written objection to the resolution, unless the Trust did not give notice to the Unitholder of the purpose of the meeting and of the Unitholder's right to dissent.
- (e) The Trust shall, within 10 days after the Unitholders adopt the resolution, send to each Unitholder who has filed the objection referred to in subsection (d) notice that the resolution has been adopted, but such notice is not required to be sent to any Unitholder who voted for the resolution or who has withdrawn its objection.
- (f) A dissenting Unitholder shall, within 20 days after receiving a notice under subsection (e) or, if the Unitholder does not receive such notice, within 20 days after learning that the resolution has been adopted, send to the Trust a written notice containing:
- (i) the Unitholder's name and address;
  - (ii) the number of, and class/ series of, REIT Units in respect of which the Unitholder dissents; and
  - (iii) a demand for payment of the fair value of such Units.
- (g) A dissenting Unitholder shall, within 30 days after the sending of a notice under subsection (f), send the certificates representing the Units in respect of which the Unitholder dissents to the Trust or its transfer agent.
- (h) A dissenting Unitholder who fails to comply with subsection (g) has no right to make a claim under this section.
- (i) The Trust or its transfer agent shall endorse on any certificate received under subsection (g) a notice that the holder is a dissenting Unitholder under this Section 9.1 and shall return forthwith the certificates to the dissenting Unitholder.

- (j) On sending a notice under subsection (f), a dissenting Unitholder ceases to have any rights as a Unitholder other than the right to be paid the fair value of its REIT Units as determined under this section except where:
  - (i) the Unitholder withdraws that notice before the Trust makes an offer under subsection (k);
  - (ii) the Trust fails to make an offer in accordance with subsection (k) and the dissenting Unitholder withdraws the notice; or
  - (iii) the Trustees revoke the resolution which gave rise to the dissent rights under this Section, and to the extent applicable, terminate the related agreements or abandon a sale, lease or exchange to which the resolution relates,in which case the Unitholder's rights are reinstated as of the date the notice under subsection (f) was sent.
- (k) The Trust shall, not later than seven (7) days after the later of the day on which the action approved by the resolution is effective or the day the Trust received the notice referred to in subsection (f), send to each dissenting Unitholder who has sent such notice a written offer to pay for the dissenting Unitholder's REIT Units in an amount considered by the Trustees to be the fair value, accompanied by a statement showing how the fair value was determined.
- (l) Every offer made under subsection (k) for REIT Units of the same class or series shall be on the same terms.
- (m) The Trust shall pay for the REIT Units of a dissenting Unitholder within 10 days after an offer made under subsection (k) has been accepted, but any such offer lapses if the Trust does not receive an acceptance thereof within 30 days after the offer has been made.
- (n) Where the Trust fails to make an offer under subsection (k), or if a dissenting Unitholder fails to accept an offer, the Trust may, within 50 days after the action approved by the resolution is effective or within such further period as the Court may allow, apply to the Court to fix a fair value for the REIT Units of any dissenting Unitholder.
- (o) If the Trust fails to apply to the Court under subsection (n), a dissenting Unitholder may apply to the Court for the same purpose within a further period of 20 days or within such further period as the Court may allow.
- (p) The Court where an application under subsection (n) or (o) may be made is the court having jurisdiction in the place where the Trust has its head office.
- (q) A dissenting Unitholder is not required to give security for costs in an application made under subsection (n) or (o).
- (r) On an application under subsection (n) or (o):
  - (i) all dissenting Unitholders whose REIT Units have not been purchased by the Trust shall be joined as parties and bound by the decision of the Court; and
  - (ii) the Trust shall notify each affected dissenting Unitholder of the date, place and consequences of the application and of the dissenting Unitholder's right to appear and be heard in person or by counsel.

- (s) On an application to the Court under subsection (n) or (o), the Court may determine whether any other person is a dissenting Unitholder who should be joined as a party, and the Court shall fix a fair value for the REIT Units of all dissenting Unitholders
- (t) A court may in its discretion appoint one or more appraisers to assist the Court to fix a fair value for the REIT Units of the dissenting Unitholders.
- (u) The final order of the Court in the proceedings commenced by an application under subsection (n) or (o) shall be rendered against the Trust in favour of each dissenting Unitholder and for the amount of the REIT Units as fixed by the Court.
- (v) The Court may in its discretion allow a reasonable rate of interest on the amount payable to each dissenting Unitholder from the date the action approved by the resolution is effective until the date of payment.
- (w) If subsection (y) applies, the Trust shall, within 10 days after the pronouncement of an order under subsection (u), notify each dissenting Unitholder that it is unable lawfully to pay dissenting Unitholders for their REIT Units.
- (x) If subsection (y) applies, a dissenting Unitholder, by written notice delivered to the Trust within 30 days after receiving a notice under subsection (w), may:
  - (i) withdraw their notice of dissent, in which case the Trust is deemed to consent to the withdrawal and the Unitholder is reinstated to their full rights as a Unitholder; or
  - (ii) retain a status as a claimant against the Trust, to be paid as soon as the Trust is lawfully able to do so or, in a liquidation, to be ranked subordinate to the rights of creditors of the Trust but in priority to its Unitholders.
- (y) A Trust shall not make a payment to a dissenting Unitholder under this section if there are reasonable grounds for believing that:
  - (i) the Trust is or would after the payment be unable to pay its liabilities as they become due; or
  - (ii) the realizable value of the Trust's assets would thereby be less than the aggregate of its liabilities.

## **Section 9.2 Oppression Remedy**

- (a) Any registered holder or beneficial owner of REIT Units or former registered holder or beneficial owner of REIT Units or any securityholder, Trustee or officer or any other person who in the discretion of the Court is a proper person to make an application (each, a "**Complainant**") may apply to the Court under the provisions of this Section 9.2.
- (b) If, on application, the Court is satisfied that, in respect of the Trust:
  - (i) any act or omission of the Trust effects a result;
  - (ii) the business or affairs of the Trust or any Subsidiary are or have been carried on or conducted in a manner; or
  - (iii) the powers of the Trustees are or have been exercised in a manner,



that is oppressive or unfairly prejudicial to or that unfairly disregards the interests of any Unitholder, securityholder, creditor, Trustee or officer, the Court may make an order to rectify the matters complained of by the Complainant.

- (c) In connection with an application by a Complainant under Section 9.2(a) and without limiting Section 9.2(b), the Court may make any interim or final order it thinks fit including, without limiting the generality of the foregoing:
- (i) an order restraining the conduct complained of;
  - (ii) an order appointing a receiver or receiver-manager;
  - (iii) an order to regulate the Trust's affairs or those of a Subsidiary by amending this Declaration of Trust or the articles or by-laws of a Subsidiary;
  - (iv) an order directing an issue or exchange of securities;
  - (v) an order appointing Trustees or directors of a Subsidiary in place of or in addition to all or any of the Trustees or directors then in office;
  - (vi) an order directing the Trust or any other person to purchase securities of a holder of securities;
  - (vii) an order directing the Trust or any other person to pay a securityholder any part of the monies that the securityholder paid for securities;
  - (viii) an order varying or setting aside a transaction or contract to which the Trust or a Subsidiary is a party and compensating the Trust or a Subsidiary or any other party to the transaction or contract;
  - (ix) an order requiring the Trust or a Subsidiary, within a time specified by the Court, to produce to the Court or an interested person financial statements or an accounting in such form as the Court may determine;
  - (x) an order compensating an aggrieved person;
  - (xi) an order directing rectification of the registers or other records of the Trust or a Subsidiary;
  - (xii) an order directing an investigation to be made; and
  - (xiii) an order requiring the trial of any issue.
- (d) If an order made under this section directs an amendment of this Declaration of Trust or to the constating documents of a Subsidiary, then:
- (i) the Trustees shall request the Trust, such Subsidiary and all directors, Trustees, officers and other persons responsible for management to take all steps necessary to carry out that direction; and
  - (ii) no other amendment to this Declaration of Trust or such constating documents shall be made without the consent of the Court, until the Court otherwise orders.

- (e) A Unitholder is not entitled to dissent under this Declaration of Trust or other applicable law if an amendment to the Declaration of Trust or such constating documents is effected under this Section 9.2.
- (f) A Complainant may apply in the alternative for an order to wind up the Trust or liquidate and dissolve a Subsidiary and the Court may so order if the Court is satisfied that it is just and equitable that such winding up, liquidation or dissolution occur.

## **ARTICLE 10** **DISTRIBUTIONS**

### **Section 10.1 Distributions**

The Trust may distribute to the Unitholders on or about each Distribution Date such percentage of the income of the Trust for the calendar month (each a “**Distribution**” and collectively, “**Distributions**”) then ended as the Trustees determine in their discretion.

Distributions may be adjusted for amounts paid in prior periods. Distributions shall be made in cash and may be invested in similar REIT Units pursuant to any Distribution reinvestment plan or unit purchase plan adopted by the Trustees. Any Distribution shall be made proportionately to Persons who are the Unitholders as at the close of business on the record date for such Distribution, which shall be the last Business Day of 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 if such date is not a Business Day then the next following Business Day, or such other date, if any, as is fixed by the Trustees in accordance with Section 6.9. 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 net recapture income 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 the last Business Day of that year as the Trustees may determine, to the extent such income, capital gains and capital has not already been paid, allocated or distributed to the Unitholders of REIT Units that are Unitholders at the record date for such Distribution.

For greater certainty, the Trustees shall not make cash Distributions in respect of any calendar month or any other period where, at the end of such month or period, or at the time proposed for Distribution, to the knowledge of the Trustees, the Trust or any of its Subsidiaries is in default in payment under any mortgage on real property held by or for the benefit of the Trust or any Subsidiary, unless a specific reserve in respect of such mortgage in default is retained in the amount of such default in payment.

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, unless the Trustees, in their absolute discretion, otherwise determine another amount, 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 Section 5.24(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 have 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 Section 5.24(i);

shall, unless otherwise determined by the Trustees in their absolute discretion, be due and payable on the last Business Day of the preceding taxation year ("**year-end Distribution**") to the Unitholders of REIT Units that are Unitholders of record on the last Business Day 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 REIT Units *in specie*) to redeeming Unitholders.

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.

Following the Effective Date, this Section 10.1 may be amended only by the vote of 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.

## **Section 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 Section 5.24(i).

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

- (a) Distributions shall be made by cheque payable to or to the order of the Unitholder or by such other manner of payment approved by the Trustees from time to time. The payment, if made by cheque, shall be conclusively deemed to have been made upon hand delivery of a cheque to the Unitholder or to his agent duly authorized in writing or upon the mailing of a cheque by prepaid first-class mail addressed to the Unitholder at his address as it appears on the Register unless the cheque is not paid on presentation, or in any other manner determined by the Trustees in their discretion. In the case of joint registered Unitholders, any cash payment required hereunder to be made to a Unitholder shall be deemed to be required to be made to such Unitholders jointly and shall be paid by cheque or bank draft but may also be paid in such other manner as the joint registered Unitholders or any one of the joint registered Unitholders has designated to the Trustees and the Trustees have accepted. For greater 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 unit holding, the cheque or bank draft or payment in other acceptable manner as aforesaid shall satisfy and discharge all liability of the Trustees or 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 other 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(a) shall be a valid and binding discharge to the Trust and to the Trustees for any payment made in respect of the registered REIT 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 5.18, 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 discretion consider necessary. No Holder of a REIT Unit 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 REIT Units or fractions of such REIT Units, as the case may be, 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 REIT Units.

#### **Section 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.

#### **Section 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 all 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 greater 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.

#### **Section 10.6 Withholding Taxes**

The Trustees shall deduct or withhold from Distributions payable to any Unitholder amounts required by law to be deducted or withheld from such Unitholder's Distributions.

**Section 10.7 No Distribution in Respect of Special Voting Units**

Notwithstanding anything to the contrary, for greater certainty, no amounts will be distributed under this Article 10 to holders of Special Voting Units.

**Section 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**

**Section 11.1 Expenses**

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

- (a) interest and other costs of borrowed money;
- (b) fees and expenses of lawyers, accountants, Auditors and other agents or consultants employed by or on behalf of the Trust;
- (c) compensation, remuneration and expenses of the Trustees;
- (d) fees and expenses connected with the acquisition, disposition and ownership of Trust Property permitted in this Declaration of Trust;
- (e) insurance, including directors and officers liability insurance, as considered necessary by the Trustees;
- (f) expenses in connection with payments of Distributions of REIT Units of the Trust;
- (g) expenses in connection with communications to the Unitholders and the other bookkeeping and clerical work necessary in maintaining relations with the Unitholders;
- (h) expenses of changing or terminating the Trust;
- (i) fees and charges of transfer agents, registrars, indenture trustees and other trustees and custodians; and
- (j) after the Effective Date, 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 and other required governmental filings; provided that the Trust will not incur any expense that would cause the Trust to fail or cease to qualify as a "mutual fund trust" as defined in the Tax Act.

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

**Section 12.1 Amendments by the Trustees**

- (a) A majority of all Trustees including a majority of the Independent Trustees may, without the approval of the Unitholders, make certain amendments to this Declaration of Trust, including amendments:

- (i) 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:
    - (A) the Trustees or over the Trust;
    - (B) the status of the Trust as a “mutual fund trust”, “unit trust”, “real estate investment trust” and a “registered investment” under the Tax Act; or
    - (C) the distribution of Units;
  - (ii) 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;
  - (iii) to remove any conflicts or inconsistencies in 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;
  - (iv) which, in the opinion of the Trustees, are necessary or desirable as a result of changes in taxation or other laws, or accounting standards (including the implementation of IFRS) from time to time which may affect the Trust or its beneficiaries or to ensure that the Units qualify as equity for the purposes of IFRS, or the administration or enforcement thereof;
  - (v) for any purpose (except one in respect of which a Unitholder vote is specifically otherwise required) which, in the opinion of the Trustees, are not prejudicial to the Unitholders and are necessary or desirable;
  - (vi) deemed necessary or advisable to ensure that the Trust has not been established nor maintained primarily for the benefit of
    - persons who are not resident Canadians; and
  - (vii) to implement the Distribution Reinvestment Plan or any amendments thereto.
- (b) 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”, “real estate investment trust” or “registered investment” under the Tax Act.

## **Section 12.2 Ratifying Amendments to the Declaration of Trust**

- (a) The Trustees shall submit any amendment to the Declaration of Trust that has not been approved by the Unitholders pursuant to Section 12.1, other than amendments pursuant to Section 4.5, Section 12.1(a)(i), (iii) or (iv) and amendments the Trustees determine are necessary or advisable pursuant to or in connection with applicable tax laws, securities laws, accounting rules or other applicable laws or regulations or such amendments, the equivalent of which, would not otherwise be required to be ratified by shareholders pursuant to the ABCA, to the Unitholders at the next meeting of Unitholders and the Unitholders entitled to vote on the amendment may, by a vote representing at least a majority of the REIT Units voted, in person or by proxy, confirm, reject or amend the amendment to the Declaration of Trust;
- (b) An amendment to this Declaration of Trust which the Trustees are expressly empowered to make pursuant to the terms hereof is effective from the date the amended Declaration

of Trust is signed which reflects the amendment approved by the Trustees until, if required, it is confirmed, confirmed as amended or rejected by the Unitholders under subsection (a) or until it ceases to be effective under subsection and, where the amendment is confirmed or confirmed as amended, it continues in effect in the form in which it was so confirmed.

- (c) If an amendment to this Declaration of Trust is rejected by the Unitholders, or if the Trustees do not submit an amendment to the Unitholders as required under subsection (a), the amendment ceases to be effective immediately after the meeting of Unitholders referred to in subsection (a) and no subsequent resolution of the Trustees to amend the Declaration of Trust having substantially the same purpose or effect is effective until it is confirmed or confirmed as amended by the Unitholders. The Trustees shall sign an amended and restated Declaration of Trust which removes the rejected or unapproved amendment.

### **Section 12.3 Amendments by the Unitholders**

Subject to Section 2.6, Section 4.3, Section 9.2, Section 10.1, Section 12.1, Section 12.4 and Section 12.5, this Declaration of Trust may be amended only by the vote of at least a two-thirds majority of the votes cast at a meeting of the Unitholders called for that purpose. Without limiting the generality of the foregoing, the following amendments will require the approval of at least two-thirds of the votes cast by all Unitholders:

- (a) an exchange, reclassification or cancellation of all or part of the Units;
- (b) the addition, change or removal of the rights, privileges, restrictions or conditions attached to the Units, including, without limiting the generality of the foregoing,
  - (i) the removal or change of rights to Distributions; or
  - (ii) the addition or removal of or change to conversion privileges, redemption privileges, voting, transfer or pre-emptive rights;
- (c) the creation of new rights or privileges attaching to certain of the Units; and
- (d) any change to the existing constraints on the issue, transfer or ownership of the Units.

In addition, the Trust will not agree to or approve any material change to the LP Agreement, the Declaration for the Operating Trust or the Exchange and Support Agreement without approval of at least a two-thirds majority of the votes cast at a meeting of the Unitholders called for that purpose; provided however, that no Unitholder approval will be required to approve any change to the LP Agreement for the purposes of providing a Distribution entitlement to the holders of LP Class B Units that is substantially equivalent to the entitlement provided by the Distribution Reinvestment Plan to holders of REIT Units. Furthermore, the Trust will not agree to or approve any change to Article 10 or the rights and attributes of the LP Class A Units, LP Class B Units or LP Class C Units without approval of at least 66<sup>2</sup>/<sub>3</sub>% of the votes cast at a meeting of the holders of Units called for that purpose.

### **Section 12.4 No Amendment to Section 2.2**

For so long as any of the circumstances entitling BPCL to appoint the BPCL Appointee pursuant to Section 2.2 remain in effect, the Trustees may not amend Section 2.2 or this Section 12.4 without the prior written approval of BPCL.

### **Section 12.5 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.

**ARTICLE 13**  
**TERMINATION OF TRUST**

**Section 13.1 Duration of the Trust**

Unless the Trust is sooner terminated as otherwise provided herein, the Trust shall continue in full force and effect so long as any property of the Trust is held by the Trustees, and the Trustees shall have all the powers and discretions, expressed and implied, conferred upon them by law or by this Declaration of Trust. Notwithstanding the foregoing, the Trust will terminate on the date which is 21 years after the date of the death of the last survivor of the issue alive at the date of this Declaration of Trust of his Majesty King George V.

**Section 13.2 Termination by the Unitholders**

Subject to Section 6.8(c), the Trust may be terminated by the vote of at least two-thirds ( $\frac{2}{3}$ ) of the votes cast at a meeting of the Unitholders called for that purpose.

**Section 13.3 Effect of Termination**

Upon the termination of the Trust, the liabilities of the Trust shall be discharged with due speed, the net assets of the Trust shall be liquidated and the proceeds ("**Liquidated Net Assets of the Trust**") distributed to the Unitholders in accordance with their entitlements as provided herein and in Section 5.3. 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**

**Section 14.1 Liability and Indemnification of the Trustees**

The Trustees shall at all times be indemnified and saved harmless out of the property of the Trust from and against all liabilities, damages, losses, debts and claims whatsoever, including costs, charges and expenses in connection therewith, unstained, 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-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 its assets. The foregoing provisions of this Section 14.1 in favour of any Trustee do not apply 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 conduct was lawful.

**Section 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 Section 14.1(a) and Section 14.1(b).

### **Section 14.3 Reliance Upon Advice**

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

### **Section 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 Trustee's 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 assets of the Trust 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 assets of the Trust 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 Section 14.1, Section 14.2 and Section 14.3.
- (c) To the extent that, notwithstanding the provisions of this section, any Unitholder, in its capacity as such, is determined by a judgment of a court of competent jurisdiction to be, or is otherwise held, personally liable in respect of any of the liabilities of the Trust or is required to indemnify the Trustees or any other person:
  - (i) any such judgment, writ of execution or similar process in respect thereof will be enforceable only against, and will be satisfied only out of, the assets of the Trust; and
  - (ii) in the event that, notwithstanding subsection (i), the judgment, writ of execution or similar process is enforceable against the Unitholder, or the Unitholder is otherwise held personally liable, the Unitholder will be entitled to indemnity and reimbursement out of the assets of the Trust to the full extent of the liability and for all costs of any litigation or other proceedings in which such liability has been determined, including all fees and disbursements of counsel.

The rights accruing to a Unitholder under this Section 14.4 and the limitations of a Unitholder's liability set out herein are in addition to, and do not exclude, any other rights or limitations of liability to which such Unitholder may be lawfully entitled, pursuant to statute, regulation or otherwise, and nothing herein contained restricts the right of the Trustees to indemnify or reimburse a Unitholder out of the assets of the Trust in any appropriate situation not specially provided for herein but, for greater certainty, the Trustees have no liability to reimburse Unitholders for taxes assessed against them by reason of or arising out of their ownership of Units.

## **ARTICLE 15** **GENERAL**

### **Section 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.

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

Any notice required or permitted by the provisions of this Declaration of Trust to be provided to a Unitholder, a Trustee or the Auditors of the Trust shall be deemed conclusively to have been provided if provided either by delivery or by prepaid first-class mail addressed to the Unitholder at his address shown on the Register, to the Trustee at the last address provided by such Trustee to the President of the Trust, or to the Auditors of the Trust at the last address provided by such Auditors to the President of the Trust, as the case may be, or as otherwise permitted under this Declaration of Trust.

### **Section 15.3 Failure to Give Notice**

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

### **Section 15.4 Trust Auditors**

The Auditors of the Trust shall be Deloitte LLP, unless otherwise determined by the Trustees. The Auditors of the Trust shall be appointed and removed 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 of the Trust, the Trustees may appoint a firm of chartered accountants qualified to practise in all provinces of Canada to act as the Auditors of the Trust until the next annual meeting of the Unitholders. The Auditors of the Trust 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.

### **Section 15.5 Change of Auditors**

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

### **Section 15.6 Fiscal Year**

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

### **Section 15.7 Reports to the Unitholders**

Prior to each annual and special meeting of the 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 ABCA and as required by applicable tax and securities laws.

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

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

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

Any Trustee or associate of a Trustee may be a Unitholder or may be an annuitant.

### **Section 15.10 Trust Records**

The Trustee shall prepare and maintain, at its principal office 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.

### **Section 15.11 Right to Inspect Documents and of Records of the Trust**

- (a) 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 ABCA.
- (b) Any person described in subsection (a) who wishes to examine the securities Register of the Trust must first make a request to the Trust or its agent or mandatary, accompanied by an affidavit referred to in Section 15.11(b). On receipt of the affidavit, the Trust or its agent or mandatary shall allow the applicant access to the securities Register during the normal business hours, and, on payment of a reasonable fee, provide the applicant with an extract from the securities Register.

### **Section 15.12 Information Available to Unitholders & Other Securityholders**

- (a) Unitholder, other securityholders of the Trust and creditors, and their respective personal representatives, or any other person, on payment of a reasonable fee therefor and on sending the Trust or its agent or mandatary an affidavit referred to in Section 15.13 may on application require the Trust or its agent or mandatary to provide, where available, within 10 days after receipt of the affidavit a list (in this section referred to as the "**basic list**") made up to a date not more than 10 days before the receipt of the affidavit setting out the names of the Unitholders, the number of REIT Units held by each Unitholder and the address of each Unitholder as shown in the records of the Trust.
- (b) A person requiring the Trust to provide a basic list may, by stating in the affidavit referred to in subsection (a) that they require supplemental lists, require the Trust or its agent or mandatary on payment of a reasonable fee to provide supplemental lists, where available,

setting out any changes from the basic list in the names or addresses of the Unitholders and the number of REIT Units owned by each Unitholder for each business day following the date the basic list is made up to.

- (c) The Trust or its agent or mandatary shall provide a supplemental list, where available, required under subsection (b):
  - (i) on the date the basic list is furnished, where the information relates to changes that took place prior to that date; and
  - (ii) on the business day following the day to which the supplemental list relates, where the information relates to changes that take place on or after the date the basic list is furnished.
- (d) A person requiring the Trust to furnish a basic list or a supplemental list may also require the Trust to include in that list the name and address of any known holder of an option or right to acquire REIT Units, where available.

### **Section 15.13 Affidavits**

An affidavit required under Section 15.11 or Section 15.12 shall state:

- (a) the name and address of the applicant;
- (b) the name and address for service of the body corporate, if the applicant is a body corporate; and
- (c) that the information contained in the securities register obtained pursuant to Section 15.11 or the basic list and any supplemental lists obtained pursuant to Section 15.12, as the case may be, will not be used except as permitted under Section 15.14.

### **Section 15.14 Use of Information**

A list of Unitholders or information from a securities register obtained under Section 15.11 or Section 15.12 shall not be used by any person except in connection with:

- (a) an effort to influence the voting of Unitholders of the Trust;
- (b) an offer to acquire securities of the Trust; or
- (c) any other matter relating to the affairs of the Trust.

### **Section 15.15 Taxation Information**

On or before March 15 in each year, the Trust will provide to Unitholders who received Distributions (including amounts treated as having been paid pursuant to Section 5.24(i)) 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.

### **Section 15.16 Income Tax Election**

In respect of the first taxation year of the Trust, the Trust elected 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.

### **Section 15.17 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.

### **Section 15.18 Counterparts**

This Declaration of Trust may be executed in several counterparts, each of which when so executed shall be deemed to be an original and such counterparts together shall constitute one and the same instrument, which shall be sufficiently evidenced by any such original counterpart.

### **Section 15.19 Severability**

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

### **Section 15.20 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 Alberta 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 Alberta 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.

### **Section 15.21 Limitation of Liability of Trustees**

With respect to (i) any written instrument creating an obligation which is or includes the granting by the Trust of a mortgage such instrument will contain and (ii) with respect to all other written instruments creating a material obligation of the Trust, the Trust will make all reasonable best efforts where it is practicable to do so to have such instrument contain limitation language. For the purposes of this Section, "**limitation language**" means an acknowledgement to the effect that the obligation being created is not personally binding upon, and that resort will not be had to, nor will recourse or satisfaction be sought from the private property of any of the Trustees, Unitholders, annuitants or officers, employees or agents of the Trust, but that only property of the Trust or a specific portion thereof will be bound.

### **Section 15.22 Language**

Les parties aux presences ont exigés que la présente convention ainsi que tous les documents et avis qui s'y rattachent et/ ou qui en découleront soient rédigés en la langue anglaise. The parties hereto have required that this Declaration of Trust and all documents and notices resulting herefrom be drawn up in English.

### **Section 15.23 Electronic Documents**

Any requirement under this Declaration of Trust, applicable securities legislation or any other applicable law that a notice, statement, document or other information be created or provided is satisfied by the creation or provision of an electronic document to the extent the same is permitted by law.

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 and sealed as of the date first above written.

/s/ "Nandini Somayaji"  
Witness

/s/ "Mandy Abramsohn"  
Mandy Abramsohn

/s/ "Nandini Somayaji"  
Witness

/s/ "Andrea Goertz"  
Andrea Goertz

/s/ "Nandini Somayaji"  
Witness

/s/ "Gary Goodman"  
Gary Goodman

/s/ "Nandini Somayaji"  
Witness

/s/ "Sam Koliass"  
Sam Koliass

/s/ "Nandini Somayaji"  
Witness

/s/ "Samantha Koliass-Gunn"  
Samantha Koliass-Gunn

/s/ "Nandini Somayaji"  
Witness

/s/ "Scott Morrison"  
Scott Morrison

/s/ "Nandini Somayaji"  
Witness

/s/ "Brian G. Robinson"  
Brian G. Robinson