

**CANADIAN APARTMENT PROPERTIES
REAL ESTATE INVESTMENT TRUST**

**AMENDED AND RESTATED
DECLARATION OF TRUST**

(DATED AS OF MAY 24, 2017)

STIKEMAN ELLIOTT LLP

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**CANADIAN APARTMENT PROPERTIES REAL ESTATE
INVESTMENT TRUST**

AMENDED AND RESTATED DECLARATION OF TRUST

THIS AMENDED AND RESTATED DECLARATION OF TRUST made in Toronto, Ontario as of the 24TH day of May, 2017.

RECITAL

WHEREAS the undersigned, being all of the Trustees, have established the Trust for the principal purpose of providing persons who may become the holders of Units or Preferred Units of the Trust with an opportunity to participate in a portfolio of income-producing multi-unit residential real property investments in Canada.

DECLARATION

NOW THEREFORE, the undersigned, being all of the Trustees, hereby confirm and declare that they agree to hold in trust as trustees any and all 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 and Preferred 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 and Interpretation.

In this Declaration of Trust, words in the singular number include the plural and words in the plural number include the singular, and the masculine includes the feminine and neuter. In this Declaration of Trust, except where the context otherwise requires:

- (1) "Acquisition and Operating Facility" means any borrowing facility of the Trust for the purposes of making acquisitions of property or of the securities of persons owning property or funding working capital;
- (2) "Adjusted Unitholders' Equity" means, at any time, as shown on the Trust's then most recent balance sheet, the aggregate of (i) the amount of Unitholders' equity plus (ii) the amount of accumulated depreciation and amortization in respect of

- its properties calculated in accordance with generally accepted accounting principles plus (iii) the amount of any provision taken in respect of future income taxes;
- (3) "Affected Holder" means a person holding or beneficially owning Trust Units in contravention of the restrictions set out in Section 5.12;
 - (4) "Affected Units" means Trust Units held or beneficially owned by an Affected Holder;
 - (5) "affiliate" has the meaning ascribed thereto by National Instrument 45-106 - *Prospectus Exemptions* of the Canadian Securities Administrators, as amended from time to time;
 - (6) "annuitant" means the annuitant of a registered retirement savings plan or a registered retirement income fund, all as defined in the *Income Tax Act* (Canada);
 - (7) "associate" has the meaning ascribed thereto by the *Canada Business Corporations Act*, as amended from time to time;
 - (8) "Audit Committee" means the committee established pursuant to Section 8.3;
 - (9) "business day" means a day other than a Saturday, Sunday or any day on which the principal chartered banks located at Toronto, Ontario are not open for business during normal banking hours;
 - (10) "CDS" means CDS Clearing and Depository Services Inc., together with its successors from time to time;
 - (11) "CDS Participant" means a broker, dealer, bank, other financial institution or other person who, directly or indirectly, from time to time effects book-based transfers with CDS and pledges of securities deposited with CDS;
 - (12) "Chairman", "Chief Executive Officer", "President", "Executive Vice-President", "Senior Vice-President", "Vice-President" and "Secretary" shall mean the person(s) holding the respective office from time to time in accordance with Section 2.9;
 - (13) "court" means, except as provided otherwise in this Declaration of Trust, the Superior Court of Justice in the Province of Ontario;
 - (14) "Declaration of Trust" means this declaration of trust as amended, supplemented or amended and restated from time to time;

- (15) "dissenting offeree" means, where a take-over bid is made for all of the Trust Units other than those held by the offeror, a holder of Trust Units who does not accept the take-over bid and includes a subsequent holder of that Trust Unit who acquires it from the first mentioned holder;
- (16) "Distribution" has the meaning ascribed thereto in Section 10.1;
- (17) "Distribution Date" means a date on which the Trustees make a Distribution, as contemplated in Article 10, which date shall be on or about the 15th day of the month following a Distribution Record Date or, if any such day is not a business day, the next following business day, or such other date as may be determined from time to time by the Trustees or otherwise in accordance with this Declaration of Trust;
- (18) "Distribution Record Date" means the last business day of each month of each year or as otherwise determined in accordance with Section 6.8, except for the month of December where the Distribution Record Date shall be December 31;
- (19) "Exchangeable Securities" means any securities of any trust, limited partnership or corporation other than the Trust that are convertible or exchangeable directly for Units without the payment of additional consideration therefor;
- (20) "Exchange Agreement" means the exchange agreement between the Trustees of the Trust, CAPREIT GP Inc., LP and any person holding Class B LP Units that provides for, among other things, the contribution of Units to LP in contemplation of an exchange of Class B LP Units of LP into Units in accordance with the terms and conditions of the Class B LP Units of LP, as described in the limited partnership agreement among the partners of LP dated July 9, 2007 (as amended, supplemented, or amended and restated from time to time);
- (21) "Extraordinary Resolution" when used in this Declaration of Trust means either:
 - (a) a resolution proposed to be passed as an extraordinary resolution at a meeting of Trust Unitholders (including an adjourned meeting) duly convened for that purpose and held in accordance with the provisions hereof at which a quorum is present and passed by the affirmative vote of not less than two-thirds of the votes cast by the Trust Unitholders entitled to vote who voted in respect of such resolution; or
 - (b) a resolution in writing signed by all of the Trust Unitholders that would be entitled to vote on that resolution at a meeting of Trust Unitholders.
- (22) "going-private transaction" means an arrangement, consolidation or other transaction involving the Trust, other than an acquisition 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 the 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;

- (23) "Governance and Nominating Committee" means the committee established pursuant to Section 8.4;
- (24) "Gross Book Value" means, at any time, the book value of the assets of the Trust, as shown on its then most recent balance sheet plus the amount of accumulated depreciation and amortization thereon;
- (25) "herein", "hereof", "hereby", "hereunder" and similar expressions refer to this Declaration of Trust and include every instrument supplemental or ancillary to or in implementation of this Declaration of Trust and, except where the context otherwise requires, not to any particular article, section or other portion hereof or thereof;
- (26) "Human Resources and Compensation Committee" means the committee established pursuant to Section 8.5;
- (27) references to the "*Income Tax Act (Canada)*" or the "Tax Act" mean the *Income Tax Act (Canada)* and the regulations thereunder as the same may be amended from time to time;
- (28) "Independent Trustee" means, for the purposes of Section 8.3, at any time, a Trustee who, in relation to the Trust, is "independent" for purposes of National Instrument 52-110 and, for all other purposes, at any time, a Trustee who, in relation to the Trust, is "independent" for the purposes of National Instrument 58-101 - *Disclosure of Corporate Governance Practices*, as amended from time to time;
- (29) "Independent Trustee Matter" means any decision:
 - (a) to enter into any arrangement in which a Non-Independent Trustee or an officer of the Trust has a material interest;
 - (b) relating to the enforcement of any agreement entered into by the Trust with a Non-Independent Trustee, or an officer of the Trust or an affiliate or associate of such party;
 - (c) to grant options under any Unit option plan or any rights to participate in any other long term incentive plans adopted by the Trust;

- (d) to demolish all or substantially all of a property owned by the Trust;
 - (e) to increase the number of Trustees by no more than one third in accordance with Section 2.1 and to appoint Trustees to fill the vacancies so created; or
 - (f) to recommend to Trust Unitholders that the number of Trustees be increased, where a vote of Trust Unitholders thereon is required, and to nominate individuals as Trustees to fill the vacancies so created;
- (30) "Investment Committee" means the committee established pursuant to Section 8.2;
 - (31) "LP" means CAPREIT Limited Partnership, a limited partnership formed under the laws of the Province of Manitoba;
 - (32) "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;
 - (33) "National Instrument 52-110" means National Instrument 52-110 - *Audit Committees*, as amended from time to time;
 - (34) "net realized capital gains of the Trust" for any year means the amount, if any, by which the amount of the capital gains of the Trust for the year exceeds the aggregate of (i) the amount of any capital losses of the Trust for the year and (ii) the amount of any net capital losses of the Trust carried forward from a previous year to the extent not previously deducted from realized capital gains of the Trust;
 - (35) "net recapture income of the Trust" for any year means the amount, if any, by which the amount required to be included in the income of the Trust for income tax purposes for such year in respect of recapture of capital cost allowance exceeds the amount permitted to be deducted under subsection 20(16) of the *Income Tax Act* (Canada) for such year;
 - (36) "Non-Independent Trustees" means the Trustees who are not Independent Trustees;
 - (37) "Non-Resident" means any person that is neither a resident nor a deemed resident of Canada nor a Canadian partnership for the purposes of the *Income Tax Act* (Canada);
 - (38) "offer" includes an invitation to make an offer;

- (39) “offeree” means a person to whom a take-over bid is made;
- (40) “offeror” means a person, other than an agent or mandatary, who makes a take-over bid, and includes two or more persons who, directly or indirectly,
 - (a) make a take-over bid jointly or in concert; or
 - (b) intend to exercise jointly or in concert voting rights attached to the Trust Units for which a take-over bid is made;
- (41) “Ordinary Resolution” when used in this Declaration of Trust means either:
 - (a) a resolution proposed to be passed as an ordinary resolution at a meeting of Trust Unitholders (including an adjourned meeting) duly convened for that purpose and held in accordance with the provisions hereof at which a quorum is present and passed by the affirmative votes of not less than a majority of the votes cast by the Trust Unitholders entitled to vote who voted in respect of such resolution; or
 - (b) a resolution in writing signed by all Trust Unitholders that would be entitled to vote on that resolution at a meeting of Trust Unitholders.
- (42) “person” means and includes individuals, corporations, limited partnerships, general partnerships, joint stock companies, joint ventures, associations, companies, trusts, banks, trust companies, pension funds, land trusts, business trusts or other organizations, whether or not legal entities and governments and agencies and political subdivisions thereof;
- (43) “Preferred Unit” means a preferred equity interest of any series in the Trust as more particularly described in Section 5.3 with such designation, rights, privileges, restrictions and conditions attached thereto as determined by the Trustees and which are issued from time to time in accordance with the provisions hereof;
- (44) “Preferred Unitholder” or “holder of Preferred Units” means a person whose name appears on the Register as a holder of Preferred Units, if any, and includes, for the purposes of Section 14.1, Section 14.2 and Section 14.4 only, any person who is a beneficial holder of a Preferred Unit, if any;
- (45) “real property” means property which in law is real property and includes, whether or not the same would in law be real property, leaseholds, mortgages, undivided joint interests in real property (whether by way of tenancy-in-common, joint tenancy, co-ownership, joint venture or otherwise), any interests in any of the foregoing and securities of corporations whose sole or principal purpose and activity is to invest in, hold and deal in real property;

- (46) "Receiver General" means the Receiver General for Canada;
- (47) "Register" means the register which shall be established and maintained pursuant to Section 5.17;
- (48) "Registrar" has the meaning ascribed thereto in Section 5.17;
- (49) "resident Canadian" means a person who is a resident of Canada for purposes of the *Income Tax Act* (Canada);
- (50) "Special Unitholder" or "holder of Special Voting Units" means a person whose name appears on the Register as a holder of Special Voting Units, if any, and includes, for the purposes of Section 14.1, Section 14.2 and Section 14.4 only, any person who is a beneficial holder of a Special Voting Unit, if any;
- (51) "Special Voting Unit" means a non-participating, voting unit of the Trust, other than a Unit, that is more particularly described herein that has been authorized and issued hereunder, if any;
- (52) "Subsidiary" means any person, company, partnership, limited partnership, trust or other entity controlled, directly or indirectly, by the Trust;
- (53) "take-over bid" has the meaning ascribed to such term in the *Securities Act* (Ontario), as amended from time to time and includes an offer made by the Trust to repurchase all of the Units, Preferred Units or Special Voting Units, as applicable;
- (54) "Transfer Agent" has the meaning ascribed thereto in Section 5.17;
- (55) "Trust" means the Canadian Apartment Properties Real Estate Investment Trust established hereunder;
- (56) "Trustees" means, as at any particular time, the trustees holding office under this Declaration of Trust at such time, whether they be the signatories hereto or additional or successor trustees;
- (57) "Trustees' Regulations" means the regulations adopted by the Trustees pursuant to Section 3.3;
- (58) "Trust Unitholders" means Unitholders, Preferred Unitholders and/or Special Unitholders, as the case may be;
- (59) "Trust Units" means Units, Preferred Units and/or Special Voting Units, as the case may be;

- (60) "Unit" means a participating, voting unit of the Trust, more particularly described herein issued from time to time in accordance with the provisions hereof that is not a Preferred Unit and includes (i) a fraction of a participating unit of the Trust, (ii) a security currently convertible into a Unit, and (iii) currently exercisable options and rights to acquire a Unit or such convertible security;
- (61) "Unit Certificate" means a certificate, in the form stipulated by Article 5, evidencing one or more Units, issued and certified in accordance with the provisions hereof;
- (62) "Unitholder" or "holder of Units" means a person whose name appears on the Register as a holder of Units and includes, for the purposes of Section 14.1, Section 14.2 and Section 14.4 only, any person who is a beneficial holder of a Unit; and
- (63) any reference to "property of the Trust" or "assets of the Trust" includes, in each case, property and assets of the Trust.

Section 1.2 Name.

The name of the Trust is Canadian Apartment Properties Real Estate Investment Trust in its English form and Fonds de Placement Immobilier D'immeubles Résidentiels Canadien 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 form or its French form.

Section 1.3 Use of Name.

Subject to any required regulatory approvals, should the Trustees determine that the use of the name Canadian Apartment Properties Real Estate Investment Trust or the name Fonds de placement immobilier d'immeubles résidentiels canadien is not practicable, legal or convenient, they may use such other designation or they may adopt such other name for the Trust as they deem appropriate and the Trust may hold property and conduct its activities under such other designation or name.

Section 1.4 Office.

The principal office and centre of administration of the Trust shall be at 11 Church Street, Suite 401, Toronto, Ontario M5E 1W1 unless changed by the Trustees to another location in Canada. The Trust may have such other offices or places for the conduct of its affairs as the Trustees may from time to time determine as necessary or desirable.

Section 1.5 Nature of the Trust.

The Trust is an unincorporated open-end mutual fund trust established pursuant to the laws of Ontario. The Trust, the Trust Units and the property of 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:

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

The beneficial interest and rights generally of a Unitholder or Preferred Unitholder in the Trust shall be limited to the right to participate in Distributions in such amounts 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 Trust 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 Trust Unitholders. The relationship of the Trust Unitholders to the Trustees, to the Trust and to the property of the Trust shall be solely that of beneficiaries in accordance with the rights conferred and the liabilities and obligations imposed upon them by this Declaration of Trust, and, in respect of the Preferred Units, in a certificate of amendment approved by the Trustees pursuant to Section 5.3.

Section 1.6 Trust Investments.

The Trust shall make such investments as the trustees consider appropriate in accordance with the provisions of this Declaration of Trust.

Section 1.7 Applications to Court.

As the rights (including the right to apply to a court) and remedies set out in Section 3.7(10), Section 5.27, Section 6.1, Section 6.9 and Section 9.1 of this Declaration of Trust are not statute-based, all references in this Declaration of Trust to Trust 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 Trust Unitholder (or other eligible person as contemplated herein) applying to the court under such sections.

ARTICLE 2 TRUSTEES AND OFFICERS

Section 2.1 Number.

There shall be no fewer than seven nor more than eleven Trustees, a majority of whom must be Independent Trustees. The number of Trustees may be increased or decreased within such limits from time to time by the Trust Unitholders, or, if authorized by the Trust Unitholders, by the Trustees, subject to Section 1.1(29)(e) and provided that the Trustees may not, between meetings of Trust Unitholders entitled to vote, appoint an additional Trustee if, after such appointment, the total number of Trustees would be greater than one and one-third times the number of Trustees in office immediately following the last annual meeting of Trust Unitholders entitled to vote.

Section 2.2 Term of Office.

The Trustees shall hold office for a term expiring at the close of the first annual meeting of the Trust Unitholders entitled to vote (except as provided in Section 2.7) following their election or appointment or until their respective successors are elected or appointed and such successors have accepted such election or appointment. At each annual meeting of the Trust Unitholders entitled to vote, the successors of the Trustees shall be elected to hold office for a term expiring at the close of the annual meeting of Trust Unitholders entitled to vote held in the next year following the year of their election.

Section 2.3 Qualifications of Trustees.

A Trustee shall be an individual at least 18 years of age, who is not of unsound mind and has not been found to be of unsound mind by a court in Canada or elsewhere, and who does not have the status of bankrupt. Trustees are not required to hold Trust Units. A majority of the Trustees must be resident Canadians. A majority of the Trustees shall have had at least five years of substantial experience in the real estate industry. A majority of the Trustees or of any committee of the Trustees must be Independent Trustees provided, however, that if at any time a majority of the Trustees are not Independent Trustees because of the death, resignation, bankruptcy, adjudicated incompetence, removal or change in circumstance of any Trustee who was an Independent Trustee, this requirement shall not be applicable for a period of 60 days thereafter, during which the remaining Trustees shall appoint a sufficient number of Independent Trustees to comply with the requirement.

Section 2.4 Election of Trustees.

Subject to Section 2.3 and Section 2.6, the election of the Trustees shall be by the vote of Trust Unitholders entitled to vote in such election. 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 person

shall have in writing accepted his appointment or election and agreed to be bound by the terms of this Declaration of Trust.

Section 2.5 Resignation, Removal and Death of Trustees.

A Trustee may resign at any time by an instrument in writing signed by him and delivered or mailed to the President or Secretary of the Trust. Such resignation shall take effect on the date such notice is given or at any later time specified in the notice. A Trustee may be removed at any time with or without cause by two-thirds of the votes in the aggregate cast at a meeting of Trust Unitholders called for that purpose by holders of Trust Units entitled to vote thereon or by the written consent of Trust Unitholders holding in the aggregate not less than two-thirds of the outstanding Trust Units entitled to vote thereon or with cause by the resolution passed by an affirmative vote of not less than two-thirds of the remaining Trustees. Any removal of a Trustee shall take effect immediately following the aforesaid vote or resolution and any Trustee so removed shall be so notified by the Secretary 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 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 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 without limitation, as a director or officer of any corporation in which the Trust owns any securities (directly or indirectly), upon which he or she shall thereupon be discharged of his or her obligations as Trustee. Upon the incapacity or death of any Trustee, his or her legal representative shall execute and deliver on his or her behalf such documents as the remaining Trustees may require as provided in this section.

Section 2.6 Vacancies.

The term of office of a Trustee shall terminate and a vacancy shall occur in the event of the death, resignation, bankruptcy, adjudicated incompetence or other incapacity to exercise the duties of the office or upon the removal of a Trustee. No such vacancy shall operate to annul this Declaration of Trust or affect the continuity of the Trust. Until vacancies are filled, the remaining Trustee or Trustees (even if less than a quorum) may exercise the powers of the Trustees hereunder. In the case of a vacancy, the Trust Unitholders or a majority of the Trustees continuing in office may fill such vacancy (except as otherwise required under Section 1.1(29)(e) and Section 2.1). Any Trustee so elected by the Trust Unitholders or appointed by the Trustees shall hold office for the remaining term of the Trustee he or she is succeeding.

Section 2.7 Successor and Additional Trustees.

The right, title and interest of the Trustees in and to the property of the Trust shall vest automatically in all persons who may hereafter become Trustees upon their

due election or appointment and qualification and acceptance thereof without any further act and they shall thereupon have all the rights, privileges, powers, obligations and immunities of Trustees hereunder. Such right, title and interest shall vest in the Trustees whether or not conveyancing documents have been executed and delivered pursuant to Section 2.6 or otherwise.

Section 2.8 Compensation and Other Remuneration.

Trustees who are not employees of and who do not receive salary from the Trust shall be entitled to receive for their services as Trustees such reasonable compensation as the Trustees may determine from time to time, as well as reimbursement of their out-of-pocket expenses incurred in acting as a Trustee. Trustees, either directly or indirectly, shall be entitled to receive remuneration for services rendered to the Trust in any other capacity. Such services may include, without limitation, services as an officer of the Trust, its subsidiaries or another person in which it has an interest, 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 a salary from the Trust 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.

Section 2.9 Officers of the Trust.

The Trust may have a Chairman, a Chief Executive Officer, a Chief Financial Officer, a Chief Operating Officer, a President, one or more Executive Vice-Presidents, one or more Senior Vice-Presidents, one or more Vice-Presidents and a Secretary and such other officers as the Trustees may appoint from time to time. One person may hold two or more offices. Any officer of the Trust may, but need not, be a Trustee. Officers of the Trust shall be appointed and discharged and their remuneration determined by the Trustees. Any Chairman must also be 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, including without limitation Section 4.1 and Section 4.2, shall have, without further or other authorization and free from any power of control on the part of the Trust Unitholders, full, absolute and exclusive power, control and authority over the assets of the Trust and over 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, presumption shall be in favour of the granted powers and authority to the Trustees. The enumeration of any specific power or authority herein shall not be construed as limiting the general powers or authority or any other specified power or authority conferred herein on the Trustees. Except as specifically required by such laws, the Trustees in carrying out investment activities shall not be in any way restricted by the provisions of the laws of any jurisdiction limiting or purporting to limit investments which may be made by trustees.

Section 3.2 Specific Powers and Authorities.

Subject only to the express limitations contained in this Declaration of Trust including, without limitation Section 4.1 and Section 4.2, and in addition to any powers and authorities conferred by this Declaration of Trust or which the Trustees may have by virtue of any present or future statute or rule of law, the Trustees without any action or consent by the Trust Unitholders shall have and may exercise 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:

- (1) To retain, invest and re-invest the capital or other funds of the Trust in real or personal property of any kind, all without regard to whether any such properties are authorized by law for the investment of trust funds, and to possess and exercise all the rights, powers and privileges appertaining to the ownership of the property of the Trust and to increase the capital of the Trust at any time by the issuance of additional Units or Preferred Units for such consideration as they deem appropriate;
 - (1.1) To determine the rights, designation, privileges, restrictions and conditions attaching to each series of Preferred Units authorized for issuance by the Trust in accordance with Section 5.3;
- (2) For such consideration as they deem proper, to invest in, purchase or otherwise acquire for cash or other property or through the issuance of Units or Preferred Units or through the issuance of notes, debentures, bonds or other obligations or securities of the Trust and hold for investment the entire or any participating interest in any mortgages. In connection with any such investment, purchase or acquisition, the Trustees shall have the power to acquire a share of rents, lease payments or other gross income from or a share of the profits from or a share in the equity or ownership of real property;
- (3) 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 or Trustees by one or more of the Trustees or by a duly authorized officer, employee, agent or any nominee of the Trust;

- (4) 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;
- (5) To borrow money from or incur indebtedness to any person; to guarantee, indemnify or act as surety with respect to payment or performance of obligations of third parties; 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;
- (6) To lend money, whether secured or unsecured;
- (7) 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, without limitation, taxes or other governmental levies, charges and assessments of whatever kind or nature, imposed upon or against the Trustees in connection with the Trust or the property of the Trust or upon or against the property of the Trust or any part thereof and for any of the purposes herein;
- (8) To deposit funds of the Trust in banks, trust companies and other depositories, whether or not such deposits will earn interest, the same to be subject to withdrawal on such terms and in such manner and by such person or persons (including any one or more Trustees, officers, employees, agents or representatives of the Trust) as the Trustees may determine;
- (9) To possess and exercise all the rights, powers and privileges appertaining to the ownership of all or any mortgages or securities, issued or created by, or interest in, 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 generally or for any particular meeting or action and may include the exercise of discretionary power;

- (10) To elect, appoint, engage or employ officers for the Trust, its subsidiaries or other persons in which it has an interest (including a Chairman, a Chief Executive Officer, a Chief Financial Officer, a Chief Operating Officer, a President, one or more Executive Vice-Presidents, one or more Senior Vice-Presidents, one or more Vice-Presidents and a Secretary and other officers as the Trustees may determine), who may be removed or discharged at the discretion of the Trustees, such officers to have, subject to Section 8.1, such powers and duties, and to serve such terms as may be prescribed by the Trustees or by the Trustees' Regulations; to engage or employ any persons as agents, representatives, employees or independent contractors (including, without limitation, 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 or its subsidiaries or other persons in which it has an interest for services in as many capacities as such persons may be so engaged or employed; and except as prohibited by law and this Declaration of Trust, to delegate any of the powers and duties of the Trustees to any one or more Trustees, agents, representatives, officers, employees, independent contractors or other persons;
- (11) 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;
- (12) To renew, modify, release, compromise, extend, consolidate or cancel, in whole or in part, any obligation to or of the Trust;
- (13) 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 Trust Unitholders 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 Trust Unitholders or the officers;
- (14) 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 by and/or in the name of the Trust or one or more of the Trustees or any other person, 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;

- (15) To issue Trust Units and other securities of the Trust or other securities convertible or exchangeable for Units or other securities of the Trust or other rights, warrants or options convertible into or exchangeable for Units, for such consideration as the Trustees may deem appropriate in their sole discretion, such issuance to be subject to the terms and conditions of this Declaration of Trust;
- (16) To enter into and perform the obligations of the Trust under the Exchange Agreement and to enter into and perform the obligations of the Trust under any amendment to such agreement;
- (17) To determine conclusively the allocation to capital, income or other appropriate accounts all revenues, receipts, expenses, disbursements and property of the Trust;
- (18) To prepare, sign and file or cause to be prepared, signed and filed a prospectus, offering memorandum or similar document, and any amendment thereto, relating to or resulting from an offering of the Units, Preferred 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 or Preferred Unitholders immediately prior to such offering;
- (19) To make or cause to be made application for the listing on any stock exchange of any Units, Preferred 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;
- (20) 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;
- (21) To do all such acts and things and to exercise such powers which are delegated to the Trustees by any person who co-owns real property with the Trust;
- (22) To make, adopt, amend or repeal policies containing provisions relating to the advance notice of nominations of Trustees in connection with any annual or special meeting of Trust Unitholders; and

- (23) To do all such other acts and things as are incidental to the foregoing, and to exercise all powers which are necessary or useful to carry on the business 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, their rights or powers and the rights or powers of its Trust Unitholders or officers not inconsistent with law or with this Declaration of Trust. The Trustees shall also be entitled to make any reasonable decisions, designations or determinations not contrary to this Declaration of Trust which they may determine are necessary or desirable in interpreting, applying or administering this Declaration of Trust or in administering, managing or operating the Trust. Any regulations, decisions, designations or determinations made pursuant to this section shall be conclusive and binding upon all persons affected thereby.

Section 3.4 Standard of Care.

The exclusive standard of care required of the Trustees in exercising their powers and carrying out their functions hereunder shall be that they exercise their powers and carry out their functions hereunder as Trustees honestly, in good faith and in the best interests of the Trust and the Trust Unitholders and that in connection therewith they exercise that degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. Unless otherwise required by law, no Trustee shall be required to give 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 3.5 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 the Trust or to securities of the Trust shall be entitled to rely on a certificate or statutory declaration (including, without limiting the foregoing, a certificate or statutory declaration as to the passing of a resolution of the Trustees) executed by any two Trustees or the Secretary or, without limiting the foregoing, such other person as may be authorized by the Trustees as to the capacity, power and authority of the Trustees or any other person to act for and on behalf and in the name of the Trust. No person dealing with the Trustees 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 3.6 Determinations of Trustees Binding.

All determinations of the Trustees which are made in good faith with respect to any matters relating to the Trust, including, without limiting the generality of the foregoing, whether any particular investment or disposition meets the requirements of this Declaration of Trust, shall be final and conclusive and shall be binding upon the Trust and all Trust Unitholders (and, where the Unitholder or Preferred Unitholder is a registered retirement savings plan, registered retirement income fund, deferred profit sharing plan or registered pension fund or plan as defined in the *Income Tax Act* (Canada), or other such fund or plan registered under the *Income Tax Act* (Canada), upon plan beneficiaries and plan holders past, present and future) and the Trust 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 3.7 Conflict of Interest.

If a Trustee or an officer of the Trust:

- (1) is a party to a material contract or transaction or proposed material contract or transaction with the Trust; or
- (2) is a director or officer of, or has a material interest in, any person who is a party to a material contract or transaction or proposed material contract or transaction with the Trust,

the Trustee or the officer of the Trust, as the case may be, shall disclose in writing to the Trustees or request to have entered into the minutes of meetings of the Trustees or the Investment Committee, as the case may be, the nature and extent of such interest as follows:

- (3) The disclosure required in the case of a Trustee shall be made:
 - (a) at the meeting of Trustees or the Investment Committee, as the case may be, at which a proposed contract or transaction is first considered;
 - (b) 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;
 - (c) 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
 - (d) if a person who is interested in a contract or transaction later becomes a Trustee, at the first such meeting after he or she becomes a Trustee.
- (4) The disclosure required in the case of an officer of the Trust who is not a Trustee:

- (a) forthwith after such person 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 or the Investment Committee;
 - (b) if such person becomes interested after a contract is made or a transaction is entered to, forthwith after such person becomes so interested; or
 - (c) if a person who is interested in a contract or transaction later becomes an officer of the Trust who is not a Trustee, forthwith after he or she becomes an officer of the Trust.
- (5) Notwithstanding subsections (3) and (4), where this section applies to any person in respect of a material contract or transaction or proposed material contract or transaction that, in the ordinary course of the affairs of the Trust, would not require approval by the Trustees or the Trust Unitholders entitled to vote, such person 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 person's interest forthwith after such person becomes aware of the contract or transaction or proposed contract or transaction.
- (6) A Trustee referred to in this section shall not vote on any resolution to approve the said contract or transaction unless the contract or transaction is:
 - (a) 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
 - (b) one for indemnity under Section 14.1 hereof or the purchase of liability insurance.
- (7) For the purposes hereof, a general notice to the Trustees by a Trustee or an officer of the Trust disclosing that he or she is a director or officer of or has a material interest in a person and is to be regarded as interested in any contract made or any transaction entered into with that person, is a sufficient disclosure of interest in relation to any contract so made or transaction so entered into. In the event that a meeting of Trust Unitholders entitled to vote is called to confirm or approve a contract or transaction which is the subject of a general notice to the Trustees, the notice and extent of the interest in the contract or transaction of the person giving such general notice shall be disclosed in reasonable detail in the notice calling the said meeting of Trust Unitholders entitled to vote or in any information circular required to be provided by this Declaration of Trust or by law.
- (8) 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 of which a Trustee or an officer of the Trust is a director or officer or in which he or she has a material interest:

- (a) such person is not accountable to the Trust or to the Trust Unitholders for any profit or gain realized from the contract or transaction; and
- (b) the contract or transaction is neither void nor voidable,

by reason only of that relationship or by reason only that such person 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 person disclosed his or her interest in accordance with this Section 3.7, and the contract or transaction was reasonable and fair to the Trust at the time it was so approved.

- (9) Notwithstanding anything in this section, but without limiting the effect of subsection (8) hereof, a Trustee or an officer of the Trust, acting honestly and in good faith, is not accountable to the Trust or to the Trust Unitholders for any profit or gain realized from any such contract or transaction by reason only of his or her holding such office, position or interest, 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 person's interest therein void or voidable, where:
 - (a) the contract or transaction is confirmed or approved at a meeting of Trust Unitholders entitled to vote duly called for that purpose; and
 - (b) 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 required to be provided by this Declaration of Trust or by law.
- (10) Subject to subsections (8) and (9) hereof, 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, the Trustees or any Trust 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 person account to the Trust for any profit or gain realized.

ARTICLE 4
INVESTMENT RESTRICTIONS AND OPERATING POLICIES

Section 4.1 Investment Restrictions.

The assets of the Trust may be invested only in accordance with the following restrictions:

- (1) the Trust shall focus its activities primarily on the acquisition, holding, developing, maintaining, improving, leasing or management of income producing real property with an emphasis on real property which is being utilized or intended to be utilized to provide living accommodation (the “**Focus Activities**”);
- (2) notwithstanding anything else contained in this Declaration of Trust, the Trust shall not make any investment, take any action or omit to take any action that would result in Trust Units not being units of a “mutual fund trust” within the meaning of the *Income Tax Act* (Canada), that would result in Units being disqualified for investment by registered retirement savings plans, registered retirement income funds or deferred profit sharing plans or that would, if the Trust is a registered investment within the meaning of the *Income Tax Act* (Canada), result in the Trust paying a tax under the registered investment provisions of the *Income Tax Act* (Canada) imposed for exceeding certain investment limits;
- (3) the Trust may, directly or indirectly, make such investments, do all such things and carry out all such activities as are necessary or desirable in connection with the conduct of its activities provided they are not otherwise specifically prohibited under this Declaration of Trust;
- (4) the Trust may invest in freehold, leasehold or other interests in property (real, personal, moveable or immoveable);
- (5) the Trust may make its investments and conduct its activities directly or indirectly through an investment in one or more persons on such terms as the Trustees may from time to time determine;
- (6) except for temporary investments held in cash, deposits with a Canadian chartered bank or trust company registered under the laws of a province of Canada, short-term government debt securities, or money market instruments of, or guaranteed by, a Canadian bank listed on Schedule I to the *Bank Act* (Canada) maturing prior to one year from the date of issue, the Trust may not hold securities other than securities of a Person:

- (a) acquired in connection with the carrying on, directly or indirectly, of the Trust's activities or the holding of its assets; or
 - (b) which focuses its activities primarily on Focus Activities and ancillary activities;
- (7) the Trust shall not invest in rights to or interests in mineral or other natural resources, including oil or gas, except as incidental to an investment in real property;
 - (8) the Trust shall not acquire any interest in a single real property if, after giving effect to the proposed acquisition, the cost to the Trust of such acquisition (net of the amount of acquisition debt) will exceed 20% of the Trust's Adjusted Unitholders' Equity;
 - (9) the Trust may invest in operating businesses;
 - (10) the Trust may invest in mortgages and mortgage bonds (including a participating or convertible mortgage) where the aggregate amount of such investments after giving effect to the proposed investment, will not exceed 20% of the Adjusted Unitholders' Equity; and
 - (11) notwithstanding any other provision of this Declaration of Trust but subject always to subsection (2) above, the Trust may make investments not otherwise permitted under this Declaration of Trust, provided the aggregate amount of such investments (which, in the case of an amount invested to acquire real property, is the purchase price less the amount of any indebtedness assumed or incurred by the Trust and secured by a mortgage on such property) will not exceed 20% of the Adjusted Unitholders' Equity of the Trust after giving effect to the proposed investment.

Section 4.2 Operating Policies.

The operations and affairs of the Trust shall be conducted in accordance with the following policies:

- (1) the Trust shall not purchase, sell, market or trade in currency or interest rate futures contracts otherwise than for hedging purposes where, for the purposes hereof, the term "hedging" shall have the meaning ascribed thereto by National Instrument 81-102 - *Mutual Funds*, as amended from time to time;
- (2) (i) any written instrument creating an obligation which is or includes the granting by the Trust of a mortgage, and (ii) to the extent the Trustees determine to be practicable and consistent with their fiduciary duty to act in the best interests of the Trust Unitholders, any written instrument which is, in the

judgment of the Trustees, a material obligation shall contain a provision or be subject to an acknowledgement to the effect that the obligation being created is not personally binding upon, and that resort shall not be had to, nor shall recourse or satisfaction be sought from, the private property of any of the Trustees, Trust Unitholders, annuitants under a plan of which a Trust Unitholder acts as a trustee or carrier, or officers, employees or agents of the Trust, but that only property of the Trust or a specific portion thereof shall be bound; the Trust, however, is not required, but shall use all reasonable efforts, to comply with this requirement in respect of obligations assumed by the Trust upon the acquisition of real property;

- (3) the Trust shall not incur or assume any indebtedness if, after giving effect to the incurring or assumption of the indebtedness, the total indebtedness of the Trust (including the amount then advanced under the Acquisition and Operating Facility) would be more than 70% of the Gross Book Value, unless a majority of the trustees, in their discretion, determine that the maximum amount of indebtedness shall be based on the appraised value of the real properties of the Trust. For the purposes of this subparagraph, "indebtedness" means (without duplication) on a consolidated basis:
- (a) any obligation of the Trust for borrowed money (other than under the Acquisition and Operating Facility),
 - (b) any obligation of the Trust (other than under the Acquisition and Operating Facility) incurred in connection with the acquisition of property, assets or businesses other than the amount of future income tax liability arising out of indirect acquisitions,
 - (c) any obligation of the Trust issued or assumed as the deferred purchase price of property, and
 - (d) any capital lease obligation of the Trust;

provided that (A) for the purposes of (a) through (d), 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 (a) through (c) exclude trade accounts payable, security deposits, distributions payable to Unitholders or Preferred Unitholders, contingent liabilities and accrued liabilities arising in the ordinary course, and (C) convertible debentures will constitute indebtedness to the extent of the principal amount thereof outstanding;

- (4) the Trust shall obtain an independent appraisal of each real property that it intends to acquire;
- (5) the Trust shall obtain and maintain at all times insurance coverage in respect of potential liabilities of the Trust and the accidental loss of value of the assets of the Trust from risks, in amounts, with such insurers, and on such terms as the Trustees consider appropriate, taking into account all relevant factors including the practices of owners of comparable properties; and
- (6) unless the Trustees determine it is not necessary, the Trust shall have conducted a Phase I environmental audit of each real property to be acquired by it and, if the Phase I environmental audit report recommends that further environmental audits be conducted, the Trust shall have conducted such further environmental audits, in each case by an independent and experienced environmental consultant; such audit, as a condition to any acquisition, shall be satisfactory to the Trustees.

Section 4.3 Operating Plan.

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

Section 4.4 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 restriction of the Trust then in force, such restriction in conflict shall, if the Trustees on the advice of legal counsel to the Trust so resolve, be deemed to have been amended to the extent necessary to resolve any such conflict and, notwithstanding anything to the contrary herein contained, any such resolution of the Trustees shall not require the prior approval of Trust Unitholders.

ARTICLE 5 TRUST UNITS

Section 5.1 Units.

- (1) The beneficial interests in the Trust shall be divided into three classes, described and designated as "Units", "Preferred Units" and "Special Voting Units", which shall be entitled to the rights and subject to the limitations, restrictions and conditions set out herein, and the interest of each Unitholder, Preferred Unitholder and Special Unitholder shall be determined by the number of Units, Preferred Units and/or Special Voting Units registered in the name of the Unitholder, Preferred Unitholder or Special Unitholder. Following the date of this Declaration of Trust, the Trustees may create additional classes of units of

the Trust having such attributes as may be ascribed from time to time provided that, other than Preferred Units, in no event, shall any such additional class of units contain any rights, terms or conditions which are more favourable than the rights terms and conditions attaching to the Units and Special Voting Units outstanding as of the date hereof. The number of Units and Special Voting Units which the Trust may issue is unlimited. The number of Preferred Units which the Trust may issue is limited to 25,840,600. The issued and outstanding Units, Preferred Units and Special Voting Units may be subdivided or consolidated from time to time by the Trustees.

- (2) Each Unit represents an equal undivided interest in the Trust. All Units outstanding from time to time shall, subject to the rights of holders of Preferred Units, be entitled to participate pro rata in any distributions by the Trust and, in the event of termination or winding-up of the Trust, in the net assets of the Trust, after satisfaction of the rights of holders of the Preferred Units. All Units shall rank among themselves equally and rateably without discrimination, preference or priority.

Section 5.2 Rights Attaching to Special Voting Units.

- (1) Special Voting Units shall not entitle the holder thereof to any share of or interest in the distributions or net assets of the Trust. Special Voting Units may be issued in series and shall only be issued in connection with or in relation to Exchangeable Securities issued and shall be automatically cancelled on the issuance of Units on exercise, conversion or cancellation of Exchangeable Securities. Subject to the restrictions set forth in this Declaration of Trust, each Special Voting Unit shall entitle the Special Unitholder of record thereof to a number of votes at all meetings of Unitholders or in respect of any written resolution of Unitholders equal to the number of Units into which the Exchangeable Securities to which such Special Voting Unit relates are, directly or indirectly, exchangeable or convertible (other than in respect of Exchangeable Securities which have been so exchanged, converted or cancelled). For greater certainty, holders of Special Voting Units shall not be entitled to any distributions of any nature whatsoever from the Trust or have any legal or beneficial interests in any assets of the Trust on termination or winding-up of the Trust.
- (2) Concurrently with the issuance of any Exchangeable Securities and associated Special Voting Units, the Trust shall enter into such agreements, including the Exchange Agreement and/or other voting and exchange trust agreements and Exchangeable Security support agreements, as may be necessary or desirable to properly provide for the terms of the Exchangeable Securities, including to provide for voting of such Special Voting Units.

Section 5.3 Rights Attaching to Preferred Units.

The Preferred Units shall have attached thereto the following attributes:

- (1) the Preferred Units may from time to time be issued in one or more series, and the Trustees may fix from time to time before such issue the number of Preferred Units which is to comprise each series and the designation, rights, privileges, restrictions and conditions attaching to each series of Preferred Units and the currency thereof, including, without limiting the generality of the foregoing, any voting rights, the rate or amount of distributions (which may be cumulative or non-cumulative and variable or fixed) or the method of calculating distributions, the dates of payment thereof, the terms and conditions of redemption, purchase and conversion, if any, any rights on the liquidation, dissolution or winding-up of the Trust, and any sinking fund or other provisions;
- (2) the Preferred Units of each series shall, with respect to the payment of distributions (other than distributions paid solely through the distribution of additional Units) and the distribution of assets of the Trust or return of capital in the event of liquidation, dissolution or winding-up of the Trust, whether voluntary or involuntary, or any other return of capital or distribution of assets of the Trust among its Unitholders and Special Unitholders for the purpose of winding-up its affairs, be entitled to preference over the Units and Special Voting Units, and over any other security of the Trust ranking by their terms junior to the Preferred Units. The Preferred Units of any series may also be given such other preferences, not inconsistent with this Declaration of Trust, over the Units, Special Voting Units and any other securities of the Trust ranking by their terms junior to the Preferred Units, as may be fixed in accordance with subsection (1); and
- (3) if any cumulative distributions or amounts payable on the return of capital in respect of a series of Preferred Units are not paid in full, all series of Preferred Units of equal ranking shall participate rateably in respect of accumulated distributions and return of capital based on the accumulated distributions and return of capital of a series of Preferred Units as a proportion of the accumulated distributions and return of capital of all series of Preferred Units of equal ranking.

The terms of a particular series of Preferred Units as fixed by the Trustees in accordance with subsection (1) above shall be set out in a "Certificate of Preferred Unit Terms" which certificate shall be approved by the Trustees prior to the issue of such Preferred Units and, upon such approval, the certificate shall become a part of this Declaration of Trust.

Notwithstanding anything else herein contained, except as otherwise provided in the terms of a particular series of Preferred Units as fixed by the Trustees in

accordance with subsection 5.3(1) above, the Units, Special Voting Units or any series of Preferred Units shall have not or be deemed to have any term, condition, right or other attribute which would provide any holder of Units, Special Voting Units or Preferred Units of any series with an interest in the income of the Trust as a percentage in any distribution received by that Trust Unitholder that is greater or lesser than an interest in the income of the Trust as a percentage of any distribution received by the holder of any other Trust Units of any series.

Section 5.4 Consideration for Units and Preferred Units.

Subject to the last sentence of this Section 5.4, a Unit or Preferred Unit shall not be fully paid until the consideration therefor has been received in full by or on behalf of the Trust. The consideration for any Unit or Preferred Unit shall be paid in money or in property or in past services that are not less in value than the fair equivalent of the money that the Trust would have received if the Unit or Preferred 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. Units may be issued and sold on an instalment basis, in which event beneficial ownership of such Units may be represented by instalment receipts, but shall otherwise be non-assessable.

Section 5.5 No Pre-Emptive Rights.

There are no pre-emptive rights attaching to the Units or Preferred Units.

Section 5.6 Fractional Units.

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

Section 5.7 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, subject to the provisions of this Declaration of Trust, and the Trust Unitholders shall have no interest therein other than the beneficial interest in the Trust conferred by their Trust Units issued hereunder as described herein, and they shall have no right to compel any partition, division, dividend or Distribution of the Trust or any of the assets of the Trust. The Trust Units shall be personal property and shall confer upon the holders thereof only the interest

and rights specifically set forth in this Declaration of Trust. No Trust Unitholder has or is deemed to have any right of ownership in any of the assets of the Trust.

Section 5.8 Issuance of Trust Units.

The Trustees may allot and issue Trust Units at such time or times and in such manner (including pursuant to any plan from time to time in effect relating to reinvestment by Unitholders of their Distributions of the Trust in Units), and for such consideration and to such person, persons or class of persons as the Trustees in their sole discretion shall determine except that Special Voting Units shall only be issued in connection with the issuance of Exchangeable Securities. In the event that Trust Units are issued in whole or in part for a consideration other than money, the resolution of the Trustees allotting and issuing such Trust Units shall express the fair equivalent in money of the other consideration received.

Section 5.9 Issuance of Other Securities.

The Trustees may create and issue convertible securities and rights, warrants or options to subscribe for fully paid Units or Preferred Units (including Exchangeable Securities) which securities, or rights, warrants or options may be convertible or exercisable, as the case may be, into Units or Preferred Units 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 convertible security, or a right, warrant or option shall not be a Unit or Preferred Unit and a holder thereof shall not be a Unitholder or a Preferred Unitholder. Upon the approval by the Trustees of any equity incentive plan for trustees, officers and/or employees of the Trust, the Human Resources and Compensation Committee may, upon receiving authority from the Trustees, grant convertible securities, rights, warrants or options upon the terms and subject to the conditions set forth in such plan.

Section 5.10 Commissions and Discounts.

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

Section 5.11 Transferability.

Subject to limitations on ownership set out in this Declaration of Trust and limitations set out in applicable securities laws, the Units and Preferred Units are freely transferable and the Trustees shall not impose any restriction on the transfer of Units and Preferred Units. The Trustees shall use all reasonable efforts to obtain and maintain a listing for the Units on one or more stock exchanges in Canada. Special Voting Units and Exchangeable Securities shall be non-transferable without the consent of the Trust and shall not be listed on any exchange.

Section 5.12 Non-Resident Ownership Constraint.

- (1) At no time may Non-Residents be the beneficial owners of more than 49% of the Units or Preferred Units, on a basic or fully-diluted basis (and for greater certainty, including Units into which Exchangeable Securities may be converted or exchanged), and the Trust shall inform its Transfer Agent of this restriction. The Trustees may require a registered holder of Trust Units to provide the Trustees with a declaration as to the jurisdictions in which beneficial owners of the Units or Preferred Units registered in such Unitholder's or Preferred Unitholder's name are resident and as to whether such beneficial owners are Non-Residents (or in the case of a partnership, whether the partnership is a Non-Resident). If the Trustees become aware, as a result of such declarations as to beneficial ownership or as a result of any other investigations, that the beneficial owners of more than 49% of the Units or Preferred Units (on a basic or fully-diluted basis, including Units into which Exchangeable Securities may be converted or exchanged) are, or may be, Non-Residents or that such a situation is imminent, the Trustees may make a public announcement thereof and shall not accept a subscription for Units or Preferred Units from or issue or register a transfer of Units or Preferred Units to a person unless the person provides a declaration in form and content satisfactory to the Trustees that the person is not a Non-Resident and does not hold such Units or Preferred Units for the benefit of Non-Residents. If, notwithstanding the foregoing, the Trustees determine that more than 49% of the Units or Preferred Units (on a basic or fully-diluted basis, including Units, Preferred Units into which Exchangeable Securities may be converted or exchanged) are held by Non-Residents, the Trustees may send a notice to such Non-Resident holders of the Units, Preferred Units or Exchangeable Securities, as the case may be, 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 their Units, Preferred Units or Exchangeable Securities or a portion thereof within a specified period of not more than thirty (30) days. If the Unitholders or Preferred Unitholders receiving such notice have not sold the specified number of Units, Preferred Units or Exchangeable Securities or provided the Trustees with satisfactory evidence that they are not Non-Residents within such period, the Trustees may on behalf of such Unitholders sell such Units, Preferred Units or Exchangeable Securities and, in the interim, shall suspend the voting and Distribution rights attached to such Units, Preferred Units or Exchangeable Securities (other than the right to receive the net proceeds from the sale). Upon such sale or conversion, the affected holders shall cease to be holders of the relevant Units, Preferred Units or Exchangeable Securities and their rights shall be limited to receiving the net proceeds of sale upon surrender of the certificates, if any, representing such securities. The Trust may direct its Transfer Agent to do any of the foregoing.

- (2) No liability shall accrue to the Trust or the Trustees if the Units or Preferred Units of a Non-Resident Unitholder are sold at a loss to such Unitholder or Preferred Unitholder, as applicable. Unless and until the Trustees shall have been required to do so under the terms hereof, the Trustees shall not be bound to do or take any proceedings or action with respect to this Section 5.12 by virtue of the powers conferred on them hereby. The Trustees shall use reasonable commercial efforts to actively monitor the ownership of Units and Preferred Units by Non-Residents. It is acknowledged that the Trustees cannot definitely monitor the ownership of Units and Preferred Units by Non-Residents if the Units or Preferred Units are registered in the name of an intermediary. The Trustees shall not be liable for any violation of the Non-Resident ownership restriction which may occur during the term of the Trust.
- (3) The Trustees' Regulations may include provisions to implement the foregoing.

Section 5.13 Book-Based System.

The provisions of this Section shall not in any way alter the nature of Trust Units or the relationships of a Trust Unitholder to the Trustees and of one Trust Unitholder to another but are intended only to facilitate the issuance of certificates evidencing the ownership of Trust Units, if desirable to issue them to Trust Unitholders, and the recording of all transactions in respect of Trust Units and certificates whether by the Trust, securities dealers, stock exchanges, transfer agents, registrars or other persons.

Registration of interests in and transfers of Trust Units held through CDS, or its nominee, will be made electronically through the uncertificated book-entry only system of CDS. The Trust, via its Transfer Agent, will electronically deliver the Trust Units registered to CDS or its nominee, and CDS will credit interests in such Trust Units to the accounts of the CDS Participants. Trust Units held in CDS will be purchased, transferred and surrendered for redemption through a CDS Participant. All rights of beneficial Trust Unitholders who hold Trust Units in CDS must be exercised through, and all payments or other property to which such beneficial Trust Unitholders are entitled will be made or delivered by CDS or the CDS Participant through which the beneficial Trust Unitholder holds such Trust Units. A beneficial holder of a Trust Unit participating in the uncertificated book-entry only system will not be entitled to a certificate or other instrument from the Trust or the Transfer Agent evidencing that person's interest in it or ownership of Trust Units, nor, to the extent applicable, will such beneficial Trust Unitholder be shown on the records maintained by CDS, except through an agent who is a CDS Participant. Registration of ownership and transfers of the Trust Units will be effected only through the book-based system administered by CDS. Special Voting Units shall be non-transferable without the consent of the Trust and applicable regulatory authorities.

Except as described below, no purchaser of a Trust Unit will be entitled to a certificate or other instrument from the Trust evidencing that purchaser's ownership thereof, and no holder of a beneficial interest in a Trust Unit (a "**Beneficial Owner**") will be shown on the records maintained by CDS except through the accounts of CDS Participants acting on behalf of the Beneficial Owners. CDS will be responsible for establishing and maintaining book-entry accounts for CDS Participants having interests in the Trust Units, and sales of interests in the Trust Units can only be completed through CDS Participants.

Trust Units will be issued in fully registered form to holders or their nominees, if any, who purchase Trust Units pursuant to the private placement of Trust Units made in reliance upon Rule 144A adopted under the *United States Securities Act of 1933*, as amended, and to transferees thereof in the United States who purchase such Trust Units in reliance upon such Rule. Likewise, any Trust Units transferred to a transferee within the United States or outside the United States to a "U.S. Person" (within the meaning of Regulation S) or a "U.S. resident" (within the meaning of the *United States Investment Company Act of 1940*, as amended) will be evidenced in definitive certificates representing any such Trust Units unless the Trust otherwise agrees that such Trust Units need not be evidenced in definitive securities. If any such Trust Units represented by definitive certificates are subsequently traded into Canada or otherwise outside the United States to a person other than a "U.S. Person" (within the meaning of Regulation S) or a "U.S. resident" (within the meaning of the *United States Investment Company Act of 1940*, as amended), the Transfer Agent will electronically deliver such Trust Units registered to CDS or its nominee, and CDS will credit interests in such Trust Units to the accounts of the CDS Participants as directed by the Transfer Agent and, thereafter, registration of ownership and transfers of such Trust Units will be made through the book-based system administered by CDS. Without the prior written consent of the Trust, no Trust Units may be transferred within the United States unless the transferee is a "Qualified Purchaser" (within the meaning of Section 2(a)(51) of the *United States Investment Company Act of 1940*, as amended) and the transfer is in compliance with U.S. federal and state securities laws. Without the prior written consent of the Trust, no Trust Units may be transferred outside the United States (A) to a "U.S. Person" (within the meaning of Regulation S under the *United States Securities Act of 1933*, as amended) or a "U.S. resident" (within the meaning of the *United States Investment Company Act of 1940*, as amended), in each case of clause (A) or (B) above if such transfer would result in the Trust being required to register as an "investment company" under the United States Investment Company Act of 1940, as amended and (B) unless in accordance with Regulation S under the *United States Securities Act of 1933*, as amended.

Except in the case of United States purchasers purchasing Trust Units under Rule 144A or purchasers outside the United States who are either a "U.S. Person" (within the meaning of Regulation S) or a "U.S. resident" (within the meaning of the United States Investment Company Act of 1940, as amended), Trust Units will be issued in fully

registered form to holders or their nominees, other than CDS or its nominee, only if: (i) the Trust is required to do so by applicable law; (ii) the depository system of CDS ceases to exist; (iii) the Trust determines that CDS is no longer willing or able or qualified to discharge properly its responsibility as depository and the Trust is unable to locate a qualified successor; or (iv) the Trust at its option elects to terminate the book-entry system in respect of the Trust Units through CDS.

All references herein to actions by, notices given or payments made to Trust Unitholders shall, where such Trust Units are held through CDS, refer to actions taken by, or notices given or payments made to, CDS upon instruction from the CDS Participants in accordance with CDS's rules and procedures. For the purposes of any provision hereof requiring or permitting actions with the consent of or at the direction of Trust Unitholders evidencing a specified percentage of the aggregate Trust Units outstanding, such direction or consent may be given by Trust Unitholders acting through CDS and the CDS Participants owning Trust Units evidencing the requisite percentage of the Trust Units. The rights of a Trust Unitholder whose Trust Units are held through CDS shall be exercised only through CDS and the CDS Participants and shall be limited to those established by law and agreements between such Trust Unitholders and CDS and/or the CDS Participants or upon instruction from the CDS Participants. Each of the Transfer Agent and the Trustees may deal with CDS for all purposes (including the making of payments) as the authorized representative of the respective Trust Unitholders and such dealing with CDS shall constitute satisfaction or performance, as applicable, towards their respective obligations hereunder.

For so long as Trust Units are held through CDS, if any notice or other communication is required to be given to Trust Unitholders, the Trustees and the Transfer Agent will give all such notices and communications to CDS.

If CDS resigns or is removed from its responsibilities as depository and the Trustees are unable or do not wish to locate a qualified successor, CDS shall surrender the Trust Units held by it to the Transfer Agent with instructions from CDS for registration of Trust Units in the name and in the amounts specified by CDS and the Trust shall issue and the Trustee and Transfer Agent shall execute and deliver the aggregate number of Trust Units then outstanding in the form of definitive certificates representing such Trust Units.

Section 5.14 Certificates.

Subject to the provisions of this Article 5, each Trust Unitholder or his, her or its duly authorized agent is entitled to a certificate bearing an identifying serial number in respect of the Trust Units held by him, her or its, signed in the manner hereinafter prescribed, but the Trust is not bound to issue more than one certificate in respect of a unit or units held jointly or in common by two or more persons and delivery of a

certificate to one of them shall be sufficient delivery to all. No certificate shall be issued to evidence any fractional units.

Section 5.15 Certificate Fee.

The Trustees may establish a reasonable fee to be charged for every certificate issued.

Section 5.16 Forms of Certificate.

The forms of certificates representing Units, Special Voting Units and any series of Preferred Units, shall be in such forms as are from time to time authorized by the Trustees.

Section 5.17 Unit, Preferred Unit and Special Voting Unit Register and Transfer Ledgers to be Maintained.

A register (the "**Register**") shall be kept by, or on behalf and under the direction of the Trustees, which Register shall contain the names, alphabetically arranged, and the latest known addresses of each Trust Unitholder who is or has been a Trust Unitholder, the respective numbers of Trust Units held by them, the certificate numbers of the certificates, if any, of such Trust Units and the date and particulars of the issue and all transfers thereof. The Trustees may appoint one or more chartered banks or trust companies to act as transfer agents (each a "**Transfer Agent**") and to act as registrars (each a "**Registrar**") for Trust Units and may provide for the transfer of Trust 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 in a bound or loose-leaf book or may be entered or recorded by any system of mechanical or electronic data processing or any other information storage device) for recording original issues and registering and transferring the Units or Preferred Units. If the Trustees have appointed a Transfer Agent and Registrar, no certificate, if any, for Trust Units shall be valid unless countersigned by or on behalf of a transfer agent and/or registrar. Only persons whose Trust Units are recorded on the Register shall be entitled to vote or otherwise exercise or enjoy the rights of Trust Unitholders, as the case may be, except that only persons whose Units or Preferred Units are recorded on the Register shall be entitled to receive Distributions.

Section 5.18 Entry on Register.

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

Section 5.19 Transfer of Units and Preferred Units.

Subject to the provisions of this Article 5, Units and Preferred Units shall be, for all purposes of the Trust and this Declaration of Trust, personal and moveable property,

and shall be transferable at any time and from time to time by the Unitholder or the Preferred Unitholder by endorsement and delivery of the certificates representing the Units or the Preferred Units subject to such provisions and conditions as may be prescribed by the Trustees from time to time. Subject to the provisions of this Article 5, no transfer shall be recorded on the Register unless the transferor has executed the instrument of transfer as reproduced in the Unit or Preferred Unit certificate and the transferee has delivered to the Transfer Agent and/or register a Unit certificate or Preferred Unit certificate representing the Units or Preferred Units transferred, as applicable. Subject to the foregoing and to the provisions of this Article 5, transfers shall be recorded on the Register and a new certificate for the Units or Preferred Units so transferred shall be issued to the transferee and in case of a transfer of only part of the Units or Preferred Units represented by any certificate, a new certificate for the remaining Units or Preferred Units shall be issued to the transferor. Special Voting Units shall be non-transferable without the consent of the Trust and applicable regulatory authorities.

Section 5.20 Successors in Interest to Unitholders and Preferred Unitholders.

Any person becoming entitled to any Trust Units as a consequence of the death, bankruptcy or incapacity of any Unitholder, Preferred Unitholder or otherwise by operation of law shall be recorded in the Register as the holder of such Trust Units and, in the case of units represented by a certificate, shall receive a new certificate therefore upon production of evidence thereof satisfactory to the Trustees and delivery of the existing certificate to the Trustees or Transfer Agent or Registrar of the Trust, but until such record is made, the Trust Unitholder of record shall continue to be and be deemed to be the holder of such Trust Units for all purposes whether or not the Trust, the Trustees or the Transfer Agent or Registrar shall have actual or other notice of such death, bankruptcy, incapacity or other event.

Section 5.21 Trust Units Held Jointly or in Fiduciary Capacity.

The Trust may treat two or more persons holding any Trust Unit as joint tenants of the entire interest therein unless the ownership is expressly otherwise recorded on the Register of the Trust, but no entry shall be made in the Register or on any certificate that any person is in any other manner entitled to any future, limited or contingent interest in any Trust Unit; provided, however, that any person recorded in the Register as a Trust 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 5.22 Performance of Trusts.

None of the Trustees, officers of the Trust, Trust Unitholders or any Transfer Agent, Registrar or other agent of the Trust or the Trustees shall have a duty to inquire into any claim that a transfer of a Trust 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 Trust 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 Trust 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 Trust Units or other securities or interest therein by any such Trust 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 person recorded as Trust Unitholder of such security.

Section 5.23 Lost, Stolen or Destroyed Certificates.

In the event that any certificate for Trust Units is lost, stolen, destroyed or mutilated, the Trustees may authorize the issuance of a new certificate for the same number of Trust Units, as applicable, in lieu thereof. The Trustees 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 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 direct indemnifying the Trustees, the transfer agents and registrars for so doing. The Trustees 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. If such blanket lost security bond is acquired, the Trustees may authorize and direct (upon such terms and conditions as they 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.

Section 5.24 Death of a Trust Unitholder.

The death of a Trust 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 Trust Unitholder a right to an accounting or to take any action in the courts or otherwise against other Trust 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 or succession of the deceased Trust Unitholder to demand to be recorded in the Register as the holder of the Trust Units formerly held by the deceased Trust Unitholder (and, in the case of units represented by certificates, the right to demand and receive a new certificate for units in place of the certificate held by the deceased Trust Unitholder), and upon the acceptance thereof such personal representatives or the heirs

of the estate or succession of the deceased Trust Unitholder shall succeed to all rights of the deceased Trust Unitholder under this Declaration of Trust.

Section 5.25 Unclaimed Payments.

In the event that the Trustees hold any amounts to be paid to Unitholders or Preferred Unitholders under Article 10 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 person 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 (or other similar government official or agency) in the province where the Trust has its principal office whose receipt shall be a good satisfaction and discharge of the obligations of the Trustees.

Section 5.26 Repurchase of Units.

Provided the holder thereof agrees or the terms of the Units or Preferred Units so provide, the Trust shall be entitled to purchase for cancellation at any time the whole or from time to time any part of the outstanding Units or Preferred Units, at a price per Unit or Preferred Unit and on a basis determined by the Trustees in compliance with all applicable securities regulatory laws, regulations or policies or the policies of any applicable stock exchange.

Section 5.27 Take-Over Bids.

- (1) For the purposes of this Section 5.27 only, where a take-over bid is made for Special Voting Units, a reference to Unit in this Section 5.27 shall be to a Special Voting Unit.
- (2) If within 120 days after the date of a take-over bid the bid is accepted by the holders of not less than 90 percent of the Units of any class of Units to which the take-over bid relates, other than Units held at the date of the take-over bid by or on behalf of the offeror or an affiliate or associate of the offeror, the offeror is entitled, on complying with this section, to acquire the Units held by the dissenting offerees.
- (3) An offeror may acquire Units held by a dissenting offeree by sending by registered mail within 60 days after the date of termination of the take-over bid and in any event within 180 days after the date of the take-over bid, an offeror's notice to each dissenting offeree stating that:

- (a) the offerees holding not less than 90% of the Units to which the bid relates accepted the take-over bid;
 - (b) the offeror is bound to take up and pay for or has taken up and paid for the Units of the offerees who accepted the take-over bid;
 - (c) a dissenting offeree is required to elect:
 - (i) to transfer his, her or its Units to the offeror on the terms on which the offeror acquired the Units of the offerees who accepted the take-over bid, or
 - (ii) to demand payment of the fair value of his, her or its Units in accordance with Sections 5.27(11) to 5.27(20) by notifying the offeror within 20 days after he, she or it receives the offeror's notice;
 - (d) a dissenting offeree who does not notify the offeror in accordance with Section 5.27(5)(ii) is deemed to have elected to transfer his, her or its Units to the offeror on the same terms that the offeror acquired the Units from the offerees who accepted the take-over bid; and
 - (e) a dissenting offeree must send his, her or its Units to which the take-over bid relates to the Trust within 20 days after he, she or it receives the offeror's notice.
- (4) Concurrently with sending the offeror's notice under Section 5.27(3), the offeror shall send to the Trust a notice of adverse claim disclosing the name and address of the offeror and the name of the dissenting offeree with respect to each Unit held by a dissenting offeree.
- (5) A dissenting offeree to whom an offeror's notice is sent under Section 5.27(3) shall, within 20 days after he, she or it receives that notice, send his, her or its certificates representing the Units of the class of Units to which the take-over bid relates to the Trust; and elect (i) to transfer the Units to the offeror on the terms on which the offeror acquired the Units of the Unitholders who accepted the take-over bid; or (ii) to demand payment of the fair value of the Units in accordance with Sections 5.27(11) to 5.27(20) by notifying the offeror within those 20 days.
- (6) A dissenting offeree who does not notify the offeror in accordance with Section 5.27(5)(ii) is deemed to have elected to transfer the Units to the offeror on the same terms on which the offeror acquired the Units from the Unitholders who accepted the take-over bid.

- (7) Within 20 days after the offeror sends an offeror's notice under Section 5.27(3), 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 5.27(5)(i).
- (8) The Trust is deemed to hold in trust for the dissenting offeree the money or other consideration it receives under Section 5.27(7), and the Trust shall deposit the money in a separate account in a bank or other body corporate any of whose deposits are insured by the Canada Deposit Insurance Corporation or guaranteed by the Quebec Deposit Insurance Board, and shall place the other consideration in the custody of a bank or such other body corporate.
- (9) If the Trust is the offeror, it is deemed to hold in trust for a 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 5.27(5)(i), and the Trust shall, within 20 days after the offeror's notice is sent under Section 5.27(3), deposit the money in a separate account in a bank or other body corporate any of whose deposits are insured by the Canada Deposit Insurance Corporation or guaranteed by the Quebec Deposit Insurance Board, and shall place the other consideration in the custody of a bank or such other body corporate.
- (10) Within 30 days after the offeror sends an offeror's notice under Section 5.27(3), the Trust shall:
 - (a) if the payment or transfer required by Section 5.27(7) is made, issue to the offeror a Unit Certificate in respect of the Units that were held by dissenting offerees;
 - (b) give to each dissenting offeree who elects to accept the take-over bid terms under Section 5.27(5)(i) and who sends his, her or its Unit Certificates as required under Section 5.27(5), the money or other consideration to which he, she or it is entitled, disregarding fractional Units, if any, which may be paid for in money; and
 - (c) if the payment or transfer required by Section 5.27(7) is made and the money or other consideration is deposited as required by Section 5.27(9) or (10), send to each dissenting offeree who has not sent his, her or its Unit Certificates as required under Section 5.27(5) a notice stating that:
 - (i) his, her or its Units have been cancelled,

- (ii) the Trust or some designated person holds in trust for him, her or it the money or other consideration to which he, she or it is entitled as payment for or in exchange for his, her or its Units, and
 - (iii) the Trust will, subject to Sections 5.27(11) to 5.27(20), send that money or other consideration to him, her or it forthwith after receiving his, her or its Units.
- (11) If a dissenting offeree has elected to demand payment of the fair value of his, her or its Units under Section 5.27(5)(ii), the offeror may, within 20 days after it has paid the money or transferred the other consideration under Section 5.27(7), apply to a court to fix the fair value of the Units of that dissenting offeree.
- (12) If an offeror fails to apply to a court under Section 5.27(11), a dissenting offeree may apply to a court for the same purpose within a further period of 20 days.
- (13) Where no application is made to a court under Section 5.27(12) within the period set out in that section, a dissenting offeree is deemed to have elected to transfer his, her or its Units to the offeror on the same terms that the offeror acquired the Units from the offerees who accepted the take-over bid.
- (14) An application under Section 5.27(11) or 5.27(12) shall be made to a court having jurisdiction in the place where the Trust has its registered office or in the province where the dissenting offeree resides if the Trust carries on business in that province.
- (15) A dissenting offeree is not required to give security for costs in an application made under Section 5.27(11) or 5.27(12).
- (16) On an application under Section 5.27(11) or 5.27(12):
 - (a) all dissenting offerees referred to in Section 5.27(5)(ii) whose Units have not been acquired by the offeror shall be joined as parties and shall be bound by the decision of the court; and
 - (b) the offeror shall notify each affected dissenting offeree of the date, place and consequences of the application and of his, her or its right to appear and be heard in person or by counsel.
- (17) On an application to a court under Section 5.27(11) or 5.27(12) the court may determine whether any other person is a dissenting offeree who should be joined as a party, and the court shall then fix a fair value for the Units of all dissenting offerees.

- (18) A court may in its discretion appoint one or more appraisers to assist the court to fix a fair value for the Units of a dissenting offeree.
- (19) The final order of the court shall be made against the offeror in favour of each dissenting offeree and for the amount for his Units as fixed by the court.
- (20) In connection with proceedings under this section, a court may make any order it thinks fit and, without limiting the generality of the foregoing, it may:
 - (a) fix the amount of money or other consideration that is required to be held in trust under Section 5.27(7) or (9);
 - (b) order that money or other consideration be held in trust by a person other than the Trust;
 - (c) allow a reasonable rate of interest on the amount payable to each dissenting offeree from the date he, she or it sends or delivers his, her or its Unit Certificates under Section 5.27(5) until the date of payment; and
 - (d) order that any money payable to a Unitholder who cannot be found be paid to the Receiver General.
- (21) If a Unitholder does not receive an offeror's notice under Section 5.27(3), the Unitholder may:
 - (a) within 90 days after the date of termination of the take-over bid, or
 - (b) if the Unitholder did not receive an offer pursuant to the take-over bid, within 90 days after the later of:
 - (i) the date of termination of the take-over bid, and
 - (ii) the date on which the Unitholder learned of the take-over bid,require the offeror to acquire those Units.
- (22) If a Unitholder requires the offeror to acquire Units under Section 5.27(21), the offeror shall acquire the Units on the same terms under which the offeror acquired or will acquire the Units of the Unitholders who accepted the take-over bid.
- (23) Section 5.27(1) to (22) inclusive shall apply *mutatis mutandis* to any series of Preferred Units that is the subject of a take-over bid (whether or not the Preferred Units are voting securities or equity securities for purposes of the *Securities Act* (Ontario)).

ARTICLE 6 MEETINGS OF TRUST UNITHOLDERS

Section 6.1 Annual Meeting.

There shall be an annual meeting of the Trust Unitholders entitled to vote at such time and place as the Trustees shall prescribe for the purpose of electing Trustees, appointing the auditors of the Trust and transacting such other business as the Trustees may determine or as may properly be brought before the meeting. The annual meeting of Trust Unitholders entitled to vote shall be held after delivery to the Trust Unitholders of the annual report referred to in Section 16.6 and, in any event, within 180 days after the end of each fiscal year of the Trust, or such later date (not later than fifteen months after holding the last preceding annual meeting of the Trust Unitholders entitled to vote) as the Trustees may determine is in the best interests of the Trust Unitholders, subject to the receipt of all applicable regulatory approvals. Notwithstanding the foregoing, the Trust may apply to the court for an order extending the time for calling an annual meeting.

Section 6.2 Other Meetings.

The Trustees shall have power at any time to call special meetings of the Trust Unitholders at such time and place as the Trustees may determine. Trust Unitholders holding in the aggregate not less than 5% of the outstanding Trust Units of the Trust may requisition the Trustees to call a special meeting of the Trust Unitholders for the purposes stated in the requisition. The requisition shall state in reasonable detail the business to be transacted at the meeting and shall be sent to each of the Trustees and to the principal office of the Trust. Upon receiving the requisition, the Trustees shall call a meeting of Trust Unitholders to transact the business referred to in the requisition, unless:

- (1) a record date for a meeting of the Trust Unitholders entitled to vote has been fixed and notice thereof has been given to each stock exchange in Canada on which the Units are listed for trading;
- (2) the Trustees have called a meeting of the Trust Unitholders entitled to vote and have given notice thereof pursuant to Section 6.3; or
- (3) in connection with the business as stated in the requisition:
 - (a) it clearly appears that the matter covered by the requisition is submitted by the Trust Unitholder primarily for the purpose of (i) enforcing a personal claim or redressing a personal grievance against the Trust, the Trustees, the officers of the Trust or its security holders, or (ii) does not relate in a significant way to the business or affairs of the Trust;

- (b) the Trust, at the Trust Unitholder's request, included a matter covered by a requisition in an information circular relating to a meeting of Trust Unitholders entitled to vote held within two years preceding the receipt of such request, and the Trust Unitholder failed to present the matter, in person or by proxy, at the meeting;
- (c) substantially the same matter covered by the requisition was submitted to Trust Unitholders in an information circular (including a dissident's information circular) relating to a meeting of Trust Unitholders entitled to vote held within two years preceding the receipt of the Trust Unitholder's request and the matter covered by the requisition was defeated; or
- (d) the rights conferred by this Section 6.2 are being abused to secure publicity.

If the Trustees do not within 21 days after receiving the requisition call a meeting, any Trust Unitholder who signed the requisition may call the meeting in accordance with the provisions of Section 6.3 and Section 6.8 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 Trust Unitholders entitled to vote for the election of successor Trustees. Unless the Trust Unitholders otherwise resolve at a meeting called under this Section 6.2, the Trust shall reimburse the Trust Unitholders, as applicable, for the expenses reasonably incurred by them in requisitioning, calling and holding the meeting. The phrase "meeting of the Trust Unitholders" wherever it appears in this Declaration of Trust shall mean and include both an annual meeting and any other meeting of Trust Unitholders entitled to vote.

Section 6.3 Notice of Meeting of Trust Unitholders.

- (1) Notice of all meetings of the Trust Unitholders entitled to vote shall be provided by the Trustees to CDS or to each Trust Unitholder entitled to vote at his, her or its 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 and no more than 60 days before the meeting.
- (2) If a meeting is adjourned for less than thirty 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 Trust Unitholders is adjourned by one or more adjournments for an aggregate of thirty days or more, notice of the adjourned meeting shall be given as for an original meeting.
- (3) All business to be conducted at a special meeting of Trust Unitholders, as applicable, except consideration of the 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 Trust Unitholders entitled to vote at

which special business is to be transacted shall state (i) the nature of the business in sufficient detail to permit a Trust Unitholder entitled to vote to form a reasonable judgment thereon, and (ii) the text of any Extraordinary Resolution.

Section 6.4 Quorum; Chairman.

A quorum for any meeting of Trust Unitholders shall be individuals present not being less than two in number and being Trust Unitholders representing by proxy Trust Unitholders who hold in the aggregate not less than 25% of the total number of outstanding Trust Units entitled to vote thereon. If a quorum is present at the opening of a meeting of Trust Unitholders, the Trust Unitholders present may proceed with the business of the meeting, notwithstanding that a quorum is not present throughout the meeting. If a quorum is not present at the opening of a meeting of Trust Unitholders, the Chairman or the Trust Unitholders present may adjourn the meeting to a fixed time and place but may not transact any other business. The Chairman, or any Trustee determined by the Trustees, shall be the chairman of any meeting of the Trust Unitholders.

Section 6.5 Voting.

Holders of Trust Units entitled to vote at a meeting may attend and vote at all meetings of the Trust Unitholders either in person or by proxy. Each Trust Unit entitled to vote at a meeting shall be entitled to one vote at all meetings of the Trust Unitholders. Unitholders and Special Unitholders shall be entitled to vote at all meetings of Unitholders, Preferred Unitholders and Special Unitholders, except at a meeting of the Preferred Unitholders as contemplated in Section 6.7(3). Any action to be taken by the Trust Unitholders shall, except as otherwise required by this Declaration of Trust or by law, be authorized when approved by Ordinary Resolution. The Chairman of any such meeting shall not have a second or casting vote.

Section 6.6 Voting Units Held by Trust.

- (1) If the Trust holds any Trust Units, the Trust shall not vote or permit those Trust Units to be voted unless:
 - (a) the Trust holds the Trust Units in the capacity of a personal representative;
 - (b) 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) provided to registered Trust Unitholders entitled to vote at the applicable meeting by or on behalf of any person for use in connection with the applicable meeting, provides a copy of the document to the beneficial owner of the Trust Units and, except where the Trust has

received written voting instructions from the beneficial owner of the Trust Units, as applicable, a written request for such instructions; and

- (c) the Trust receives written voting instructions from the beneficial owner of the Trust Units;

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

- (2) A Trust Unitholder by or on behalf of whom a solicitation is made shall provide, at the request of the Trust, without delay, to the Trust at the Trust Unitholder's expense the necessary number of copies of the documents referred to in Section 6.6(1), other than copies of the document requesting voting instructions.
- (3) If a beneficial owner of Trust Units held by the Trust so requests and provides the Trust with appropriate documentation, the Trust must appoint the beneficial owner or a nominee of the beneficial owner as proxyholder.
- (4) The failure of the Trust to comply with this Section 6.6 does not render void any meeting of Trust Unitholders or any action taken at the meeting.
- (5) Nothing in this Section gives the Trust the right to vote Trust Units that the Trust is otherwise prohibited from voting.
- (6) The Trust shall not permit any of its Subsidiaries holding Trust Units to vote, or permit those Trust Units to be voted, unless the Subsidiary satisfies the requirements of Section 6.6(1).

Section 6.7 Matters on which Trust Unitholders Shall Vote.

None of the following shall occur unless the same has been duly approved by the Trust Unitholders (as provided in Section 12.2, Section 12.3 and Section 13.2, as applicable) entitled to vote at a meeting duly called and held:

- (1) except as provided in Section 2.2, Section 2.4, Section 2.5 or Section 2.6, the appointment, election or removal of Trustees;
- (2) except as provided in Section 16.4, the appointment or removal of auditors of the Trust;
- (3) any amendment to the Declaration of Trust (except as provided in Section 4.4 or Section 12.1) and except for any amendment resulting from or in connection with the issuance of any new series of Preferred Units or the conversion or reclassification of one series of Preferred Units into another series); provided that holders of Preferred Units shall not be entitled to vote on any amendment which

directly or indirectly adds, removes or changes any of the rights, privileges, restrictions and conditions in respect of the Units; and further provided that any amendment which directly or indirectly adds, removes or changes in an adverse manner any of the rights, privileges, restrictions and conditions in respect of any series of Preferred Units cannot occur without the affirmative vote of an Extraordinary Resolution at a duly called and held meeting of the holders of Preferred Units of that series or those series so affected, except for in connection with the issuance of any new series of Preferred Units or the conversion or reclassification of one series of Preferred Unit into another series; or

- (4) any termination of this Declaration of Trust.

Nothing in this section, however, shall prevent the Trustees from submitting to a vote of Trust Unitholders any matter which they deem appropriate. Except with respect to the matters specified in this section, Section 12.2, Section 12.3 and Section 13.2 or matters submitted to a vote of the Trust Unitholders by the Trustees, no vote of the Trust Unitholders shall in any way bind the Trustees.

Section 6.8 Record Dates.

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

Section 6.9 Court Requisitioned Meetings.

- (1) A Trust Unitholder may apply to a court to order a meeting of the Trust 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 meeting 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.
- (2) Without restricting the generality of Section 6.9(1), the court may order that the quorum required by this Declaration of Trust be varied or dispensed with at a meeting called, held and conducted pursuant to this Section.
- (3) A meeting called, held and conducted pursuant to this Section is for all purposes a meeting of Trust Unitholders, duly called, held and conducted.

Section 6.10 Proxies.

- (1) Whenever the vote or consent of Trust Unitholders is required or permitted under this Declaration of Trust, such vote or consent may be given either directly by the Trust Unitholder or by means of a proxy appointing a proxyholder or one or more alternate proxyholders who are not required to be a Trust Unitholder, to attend and act at a meeting of Trust Unitholders in the manner and to the extent authorized by the proxy and the authority conferred by the proxy. A proxy shall be executed, or, in Quebec, signed by the Trust Unitholder or by the Trust Unitholder's personal representative authorized in writing. A proxy is valid only at the meeting in respect of which it is given or any adjournment thereof. The Trustees may solicit such proxies from the Trust Unitholders or any of them in any matter requiring or permitting the Trust Unitholders' vote, approval or consent. The Trustees may adopt, amend or repeal such rules relating to the appointment of proxyholders and the solicitation, execution, validity, revocation and deposit of proxies, as they in their discretion from time to time determine.
- (2) A Trust Unitholder may revoke a proxy:
 - (a) by depositing an instrument or act in writing executed, or, in Quebec, signed by the Trust Unitholder or by the Trust 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 chairman of the meeting on the day of the meeting or any adjournment thereof; or
 - (b) in any other manner permitted by law.
- (3) The Trustees may specify in a notice calling a meeting of Trust Unitholders a time not exceeding forty-eight hours, excluding Saturdays and holidays, before the meeting or adjournment before which time proxies to be used at the meeting must be deposited with the Trust or its agent or mandatary in order to be voted at the meeting. In any event, no proxy shall be voted at any meeting unless it shall have been received by the Trust or its agent or mandatary prior to the commencement of the meeting.

Section 6.11 Resolution in Lieu of Meeting.

A resolution signed in writing by all of the Trust Unitholders entitled to vote on that resolution at a meeting of Trust Unitholders is as valid as if it had been passed at a meeting of Trust Unitholders.

**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 may be taken at a meeting by vote or without a meeting by written consent signed by all of the Trustees.

Section 7.2 Notice of Meeting.

Meetings of the Trustees may be held from time to time upon the giving of notice by the President, the Secretary or other officer of the Trust or any two Trustees. Regular meetings of the Trustees may be held without call or notice at a time and place fixed by the Trustees' 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 Trustees or of the Trustees on such committee, as the case may be, present in person, at least one of whom shall be an Independent Trustee, provided that if an Independent Trustee is not present, the meeting shall 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 a majority of the Trustees or members 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 shall be decided by a majority of the votes cast; provided, however, that the approval required with respect to any Independent Trustee Matter shall be that of a majority of the votes cast of the Independent Trustees. In the case of an equality of votes, the chairman of the meeting, who shall be the Chairman if present, shall not have a second or casting vote in addition to his or her original vote, if any.

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 persons participating in the meeting can hear and speak to 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 or committees of Trustees and may delegate to such committee or committees 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. The Trustees may grant or delegate such authority to the officers of the Trust as set out in Section 3.2(10) 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. In no event shall the Trustees delegate authority with respect to any Independent Trustee Matter. Furthermore, the Trustees may not delegate to any managing Trustee or any committee of Trustees or any officer the authority to: (i) submit to the Trust Unitholders any question or matter requiring the approval of the Trust Unitholders; (ii) fill a vacancy

among the Trustees, or appoint additional Trustees; (iii) issue Trust Units except as authorized by the Trustees; (iv) declare distributions; (v) approve a proxy circular; (vi) approve a take-over bid circular or directors' circular; (vii) approve the annual financial statements of the Trust; or (viii) adopt, amend or repeal the by-laws of the Trust, if any, or amend this Declaration of Trust. The Trustees shall have the power to grant powers of attorney as required in connection with any financing or security relating thereto.

Section 8.2 Investment Committee.

The Trustees shall appoint an investment committee (the "**Investment Committee**") to consist of not less than three Trustees, a majority of whom shall be Independent Trustees and shall have had at least five years of substantial experience in the real estate industry. The duties of the Investment Committee may be changed by the Trustees from time to time and shall be subject to such authority as may be delegated from time to time to officers of the Trust without requiring the approval of or review by the Trustees or the Investment Committee. The duties of the Investment Committee will be, unless delegated by the Trustees to officers of the Trust, to: (i) review all investment and financing proposals for the Trust; (ii) where the approval of the Trustees is required, recommend to the Trustees approval or rejection of proposed transactions by the Trust (including acquisitions and dispositions of investments by the Trust); (iii) where the approval of the Investment Committee is required, approve or reject proposed transactions by the Trust (including acquisitions and dispositions of investments by the Trust); and (iv) approve all proposed borrowings and the assumption or granting of any mortgage or other security interest in real property. Questions arising at any meeting of the Investment 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 Investment Committee. Any member of the Investment Committee may call a meeting of the Investment Committee upon not less than 48 hours' notice. Where for any reason a member of the Investment Committee is disqualified from voting on or participating in a decision, any other disinterested Independent Trustee not already a member of the Investment Committee may be designated by the Trustees to act as an alternate. Notwithstanding the appointment of the Investment Committee and the granting of any authority thereto, the Trustees may consider and approve or disapprove any matter which the Investment Committee has the authority to consider or approve.

Section 8.3 Audit Committee.

The Trustees shall appoint an audit committee (the "**Audit Committee**") to consist of not less than three Trustees, all of whom shall be Independent Trustees (subject to any applicable exceptions in National Instrument 52-110). The Audit Committee shall review the financial statements of the Trust and report thereon to the Trustees. 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 8.4 Governance and Nominating Committee.

The Trustees shall appoint a governance and nominating committee (the "**Governance and Nominating Committee**") to consist of not less than three Trustees, all of whom shall be Independent Trustees. The duties of the Governance and Nominating Committee will be to review matters relating to the governance of the Trust including the nomination of trustees. Questions arising in any meeting of the Governance and Nominating Committee shall be decided by a majority of the votes cast. Decisions may be taken by written consent signed by all of the members of the Governance and Nominating Committee. Any member of the Governance and Nominating Committee may call a meeting of the Governance and Nominating Committee upon not less than 48 hours' notice. Where for any reason a member of the Governance and Nominating Committee is disqualified from voting on or participating in a decision, any other disinterested Independent Trustee not already a member of the Governance and Nominating Committee may be designated by the Trustees to act as an alternate. Notwithstanding the appointment of the Governance and Nominating Committee, the Trustees may consider and approve or disapprove any matter which the Governance and Nominating Committee has the authority to consider or approve.

Section 8.5 Human Resources and Compensation Committee.

The Trustees shall appoint a human resources and compensation committee (the "**Human Resources and Compensation Committee**") to consist of not less than three Trustees, all of whom shall be Independent Trustees. The duties of the Human Resources and Compensation Committee will be to review matters relating to human resources, including compensation of trustees and officers of the Trust. Questions arising in any meeting of the Human Resources and Compensation 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 Human Resources and Compensation Committee. Any member of the Human Resources and Compensation Committee may call a meeting of the Human Resources and Compensation Committee upon not less than 48 hours' notice. Where for any reason a member of the Human Resources and Compensation Committee is disqualified from voting on or participating in a decision, any other disinterested Independent Trustee not already a member of the Human Resources and Compensation Committee may be designated by the Trustees to act as an alternate. Notwithstanding the appointment of the Human Resources and Compensation Committee, the Trustees may consider and approve or disapprove any matter which the Human Resources and Compensation Committee has the authority to consider or approve.

ARTICLE 9 DISSENT RIGHTS

Section 9.1 Dissent Rights

- (1) A Trust Unitholder entitled to vote at a meeting of Trust Unitholders who complies with this Section 9.1, may dissent if the Trust resolves to:
 - (a) sell, lease or exchange all or substantially all of the property and assets of the Trust
 - (b) carry out a going-private transaction; or
 - (c) amend this Declaration of Trust to (A) add, change or remove (i) any provision restricting or constraining the issue, transfer or ownership of Units, (ii) any restriction on the business that the Trust may carry on, or (iii) the rights, privileges, restrictions or conditions attached to the Units of the class held by the dissenting Unitholder, (B) increase the rights or privileges of any class of units having rights or privileges equal or superior to the class of Units held by the dissenting Unitholder, (C) create a new class of units equal to or superior to the Units of the class held by the dissenting Unitholder, (D) 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 (E) effect an exchange or create a right of exchange in all or part of a class of Units into the class of Units held by the dissenting Unitholder; for greater certainty, excluding the issuance of any series of Preferred Units or the conversion or reclassification of one series of Preferred Unit into another series.
- (2) In addition to any other right a Trust Unitholder may have, a Trust Unitholder who complies with this Section 9.1 is entitled, when the action approved by the resolution from which the Trust Unitholder dissents becomes effective, to be paid by the Trust the fair value of the Trust Units held by the Trust Unitholder in respect of which the Trust Unitholder dissents, determined as of the close of business on the day before the resolution was adopted.
- (3) A dissenting Trust Unitholder may only claim under this Section 9.1 with respect to all the Trust Units held by the dissenting Trust Unitholder on behalf of any one beneficial owner and registered in the name of the Trust Unitholder.
- (4) A dissenting Trust Unitholder shall send to the Trust, at or before any meeting of Trust Unitholders at which a resolution referred to in this Section 9.1 is to be voted on, a written objection to the resolution, unless the Trust did not give notice to the Trust Unitholder of the purpose of the meeting and of the Trust Unitholder's right to dissent.

- (5) The Trust shall, within ten days after the Trust Unitholders adopt the resolution, send to each Trust Unitholder who has filed the objection referred to in Section 9.1(4) notice that the resolution has been adopted, but such notice is not required to be sent to any Trust Unitholder who voted for the resolution or who has withdrawn its objection.
- (6) A dissenting Trust Unitholder shall, within twenty days after receiving a notice under Section 9.1(5) or, if the Trust Unitholder does not receive such notice, within twenty days after learning that the resolution has been adopted, send to the Trust a written notice containing:
 - (a) the Trust Unitholder's name and address;
 - (b) the number of, and class/series of, Trust Units in respect of which the Trust Unitholder dissents; and
 - (c) a demand for payment of the fair value of such Trust Units.
- (7) A dissenting Trust Unitholder shall, within thirty days after the sending of a notice under Section 9.1(6), send the certificates, if any, representing the Trust Units in respect of which the Trust Unitholder dissents to the Trust or its Transfer Agent.
- (8) A dissenting Trust Unitholder who fails to comply with Section 9.1(7) has no right to make a claim under this Section 9.1.
- (9) The Trust or its Transfer Agent shall endorse on any certificate received under Section 9.1(7) a notice that the holder is a dissenting Trust Unitholder under this Section 9.1 and shall return forthwith such certificates to the dissenting Trust Unitholder.
- (10) On sending a notice under Section 9.1(6), a dissenting Trust Unitholder ceases to have any rights as a Trust Unitholder other than the right to be paid the fair value of its Trust Units as determined under this Section 9.1 except where:
 - (a) the Trust Unitholder withdraws that notice before the Trust makes an offer under Section 9.1(11);
 - (b) the Trust fails to make an offer in accordance with Section 9.1(11) and the dissenting Trust Unitholder withdraws the notice; or
 - (c) the Trustees revoke the resolution which gave rise to the dissent rights under this Section 9.1, 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 Trust Unitholder's rights are reinstated as of the date the notice under Section 9.1(6) was sent.

- (11) The Trust shall, not later than seven 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 Section 9.1(6), send to each dissenting Trust Unitholder who has sent such notice a written offer to pay for the dissenting Trust Unitholder's Trust Units, in an amount considered by the Trustees to be the fair value, accompanied by a statement showing how the fair value was determined.
- (12) Every offer made under Section 9.1(11) for Trust Units of the same class or series shall be on the same terms.
- (13) The Trust shall pay for the Trust Units of a dissenting Trust Unitholder within ten days after an offer made under Section 9.1(11) has been accepted, but any such offer lapses if the Trust does not receive an acceptance thereof within thirty days after the offer has been made.
- (14) Where the Trust fails to make an offer under Section 9.1(11), or if a dissenting Trust Unitholder fails to accept an offer, the Trust may, within fifty days after the action approved by the resolution is effective or within such further period as a court may allow, apply to a court to fix a fair value for the Trust Units of any dissenting Trust Unitholder.
- (15) If the Trust fails to apply to a court under Section 9.1(14), a dissenting Trust Unitholder may apply to a court for the same purpose within a further period of twenty days or within such further period as a court may allow.
- (16) The court where an application under Section 9.1(14) or Section 9.1(15) may be made is a court having jurisdiction in the place where the Trust has its registered office or in the province where the dissenting Trust Unitholder resides if the Trust carries on business in that province.
- (17) A dissenting Trust Unitholder is not required to give security for costs in an application made under Section 9.1(14) or Section 9.1(15).
- (18) On an application under Section 9.1(14) or Section 9.1(15):
 - (a) all dissenting Trust Unitholders whose Trust Units have not been purchased by the Trust shall be joined as parties and bound by the decision of the court; and
 - (b) the Trust shall notify each affected dissenting Trust Unitholder of the date, place and consequences of the application and of the dissenting Trust Unitholder's right to appear and be heard in person or by counsel.

- (19) On an application to a court under Section 9.1(14) or Section 9.1(15), the court may determine whether any other person is a dissenting Trust Unitholder who should be joined as a party, and the court shall fix a fair value for the Trust Units of all dissenting Trust Unitholders.
- (20) A court may in its discretion appoint one or more appraisers to assist the court to fix a fair value for the Trust Units of the dissenting Trust Unitholders.
- (21) The final order of a court in the proceedings commenced by an application under Section 9.1(14) or Section 9.1(15) shall be rendered against the Trust in favour of each dissenting Trust Unitholder and for the amount of the Trust Units as fixed by the court.
- (22) A court may in its discretion allow a reasonable rate of interest on the amount payable to each dissenting Trust Unitholder from the date the action approved by the resolution is effective until the date of payment.
- (23) If subsection (25) applies, the Trust shall, within ten days after the pronouncement of an order under subsection (21), notify each dissenting Trust Unitholder that it is unable lawfully to pay dissenting Trust Unitholders for their Trust Units, as applicable.
- (24) If subsection (25) applies, a dissenting Trust Unitholder, by written notice delivered to the Trust within thirty days after receiving a notice under subsection (23), may:
 - (a) withdraw their notice of dissent, in which case the Trust is deemed to consent to the withdrawal and the Trust Unitholder is reinstated to their full rights as a Trust Unitholder, as applicable; or
 - (b) 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 Trust Unitholders.
- (25) A Trust shall not make a payment to a dissenting Trust Unitholder under this section if there are reasonable grounds for believing that:
 - (a) the Trust is or would after the payment be unable to pay its liabilities as they become due; or
 - (b) the realizable value of the Trust's assets would thereby be less than the aggregate of its liabilities.

ARTICLE 10 DISTRIBUTIONS

Section 10.1 Distributions.

Income of the Trust to be distributed to Unitholders or Preferred Unitholders on each Distribution Date (each a “**Distribution**” and collectively, the “**Distributions**”) shall be determined by the Trustees and computed on or before each Distribution Date in respect of the calendar month ending immediately prior to each Distribution Date.

The Trust shall distribute to Unitholders monthly Distributions calculated and determined in accordance with this Section 10.1. Distributions may be adjusted for amounts paid in prior periods. Unitholders of record at the close of business on the Distribution Record Date in respect of a month shall be entitled to receive proportionately any Distribution declared payable by the Trustees for such month, subject to the preferential entitlements of Preferred Unitholders. The Distribution for any month shall be paid on the applicable Distribution Date. Distributions shall be made in cash or Units pursuant to any distribution reinvestment plan or Unit purchase plan adopted by the Trustees pursuant to Section 10.6. The Trustees, if they so determine when income has been earned but not collected may, on a temporary basis, transfer sufficient monies from the capital to the income account of the Trust to permit Distributions under this Section 10.1.

The Trust shall pay or declare payable to holders of Preferred Units of each series as may from time to time be issued and outstanding, and the holders of such Preferred Units will have a right to receive, such portion of the income of the Trust as the Trustees have determined to distribute to such holders of Preferred Units as prescribed by the rights, privileges, restrictions and conditions established by the Trustees on the creation of such series of Preferred Units. For so long as any Preferred Units remain issued and outstanding, the Trust shall not pay or declare payable any amount to holders of Units (other than amounts that are paid solely through the issuance of additional Units) unless and until the distribution entitlements of the Preferred Units have been paid in full.

Section 10.2 Allocation.

Except as otherwise provided in the terms of a particular series of Preferred Units as fixed by the Trustees in accordance with Section 5.3(1), income and net taxable capital gains for purposes of the *Income Tax Act* (Canada) will be allocated to Unitholders and Preferred Unitholders in the same proportions as Distributions received by Unitholders and Preferred Unitholders, subject to the discretion of the Trustees to adopt an allocation method which the Trustees consider to be more reasonable in the circumstances.

Section 10.3 Payment of Distributions.

Distributions shall be made by cheque payable to or to the order of the Unitholder or Preferred 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 Preferred Unitholder or to his, her or its agent duly authorized in writing or upon the mailing of a cheque by prepaid first-class mail addressed to the Unitholder or Preferred Unitholder at his, her or its address as it appears on the Register unless the cheque is not paid on presentation. The Trustees may issue a replacement cheque if they are satisfied that the original cheque has not been received or has been lost or destroyed upon being furnished with such evidence of loss, indemnity or other document in connection therewith that they may in their discretion consider necessary.

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, including but not limited to maximum capital cost allowance, unless the Trustees determine otherwise.

Section 10.5 Designations.

The Trustees shall make such designations for income tax purposes in respect of amounts paid or payable to Unitholders or Preferred Unitholders for such amounts that the Trustees consider to be reasonable, including designations relating to taxable dividends 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 for the year.

Section 10.6 Distribution Reinvestment and Unit Purchase Plan.

Subject to any required regulatory approvals, the Trustees may in their sole discretion establish one or more distribution reinvestment plans, distribution reinvestment and Unit purchase plans or Unit option plans at any time and from time to time.

**ARTICLE 11
FEES AND EXPENSES**

Section 11.1 Expenses.

The Trust shall pay all expenses incurred in connection with the administration and management of the Trust and its investments, including without limitation, interest and other costs of borrowed money, fees of auditors, lawyers, appraisers, Registrars and Transfer Agents and other agents, stock exchanges, consultants and professional advisors employed by or on behalf of the Trust, fees and expenses of the Trustees, fees and expenses connected with the acquisition, disposition or ownership of real property

interest or mortgage loans or other property, insurance as considered necessary by the Trustees (including liability insurance for the Trustees and holders of Trust Units), expenses in connection with payments of Distributions on Units or Preferred Units of the Trust, expenses in connection with communications to Trust Unitholders and other bookkeeping and clerical work necessary in maintaining relations with Trust Unitholders, the cost of any accounting, statistical or bookkeeping equipment necessary for the maintenance of the books and records of the Trust, expenses of changing or terminating the Trust, all fees, expenses, taxes and other costs incurred in connection with the issuance, distribution, transfer and qualification for distribution to the public of the Trust Units and other required governmental filings, and all costs and expenses in connection with the incorporation, organization and maintenance of corporations formed to hold real property or other property of the Trust.

Section 11.2 Payment of Real Property and Brokerage Commissions.

The Trust may pay real property and brokerage commissions at commercial rates in respect of the acquisition and disposition of any investment acquired or disposed of by it. Such commissions may be paid to an advisor or a property manager or to others.

Section 11.3 Advisory, Administrative and Management Fees.

The Trust may pay advisory fees, administrative fees and management fees in respect of such advisory, administrative and management services as are rendered to the Trust. Such fees may be paid to an advisor or to others.

Section 11.4 Property Management, Leasing and Financing Fees.

The Trust may pay property management fees, leasing fees and financing fees in respect of any real property owned by it. Such fees may be paid to an advisor or a property manager or to others.

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

Section 12.1 Amendments by the Trustees.

The Trustees may make the following amendments to this Declaration of Trust in their sole discretion and without the approval of Trust Unitholders:

- (1) amendments for the purpose of ensuring continuing compliance with applicable laws, regulations, requirements or policies of any governmental authority having jurisdiction over the Trustees or over the Trust, its status as a "mutual fund trust", a "registered investment", or, if applicable, a "real estate investment trust" under the *Income Tax Act* (Canada) or the distribution of its Trust Units;

- (2) amendments which, in the opinion of the Trustees, provide additional protection for Trust Unitholders;
- (3) amendments which, in the opinion of the Trustees, are necessary or desirable to remove conflicts or inconsistencies in the Declaration of Trust;
- (4) amendments of a minor or clerical nature or to correct typographical mistakes, ambiguities or manifest omissions or errors which amendments in the opinion of the Trustees are necessary or desirable and not prejudicial to the Trust Unitholders;
- (5) such amendments to the Declaration of Trust as the Trustees in their discretion deem necessary or desirable as a result of changes in the taxation laws or accounting standards from time to time which may affect the Trust, the Trust Unitholders or annuitants under a plan of which a Trust Unitholder acts as trustee or carrier;
- (6) amendments which in the opinion of the Trustees are not prejudicial to Trust Unitholders and are necessary or desirable (which, for greater certainty, exclude amendments in respect of which a Trust Unitholder vote is specifically otherwise required); and
- (7) amendments which in the opinion of the Trustees are necessary or desirable to enable the Trust to issue Trust Units for which the purchase price is payable on an instalment basis, as permitted pursuant to Section 5.4 hereof.

Section 12.2 Amendments by Unitholders and Special Unitholders.

Subject to Section 6.7(3), Section 12.1 and Section 12.3, this Declaration of Trust may be amended by Ordinary Resolution.

Section 12.3 Extraordinary Resolution of Trust Unitholder Vote.

Subject to Section 6.7(3), none of the following shall occur unless the same has been duly approved by Extraordinary Resolution:

- (1) any amendment to this Section 12.3;
- (2) any amendment to change a right with respect to any outstanding Units or Preferred Units of the Trust to reduce the amount payable thereon upon termination of the Trust or to diminish or eliminate any voting rights pertaining thereto;
- (3) any termination of the Trust as provided for in Section 13.2;
- (4) any amendment to the duration or termination provisions of the Trust;

- (5) any amendment relating to the powers, duties, obligations, liabilities or indemnification of the Trustees;
- (6) any sale or transfer of the assets of the Trust as an entirety or substantially as an entirety (other than as part of an internal reorganization of the assets of the Trust as approved by the Trustees); or
- (7) any amendment to Section 4.1 or Section 4.2, except for any amendment contemplated by Section 12.1(6).

ARTICLE 13 TERMINATION OF THE 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.

Section 13.2 Termination by Trust Unitholders.

The Trust may be terminated by Extraordinary Resolution.

Section 13.3 Effect of Termination.

Upon the termination of the Trust, the liabilities of the Trust shall be discharged with due speed and the net assets of the Trust shall be liquidated and the proceeds distributed to holders of issued and outstanding Preferred Units in accordance with the rights, privileges, restrictions and conditions attached to the Preferred Units, with the remaining balance of the proceeds distributed proportionately to the Unitholders. 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, claims, suits, actions, proceedings whatsoever, including costs, charges and expenses in connection therewith, sustained, incurred, brought, commenced or prosecuted against them for or in respect of any act, deed, matter or thing whatsoever made, done, acquiesced in or omitted in or about or in relation to the execution of their duties as Trustees and also from and against all other liabilities, damages, losses, debts, claims,

suits, actions, proceedings, costs, charges, and expenses 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 Trust 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:

- (1) the Trustee acted honestly and in good faith with a view to the best interests of the Trust and the Trust Unitholders; and
- (2) 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 Trust Unitholder, annuitant or any other person for the acts, omissions, receipts, neglects or defaults of any person or engaged by it 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(1) and (2).

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 Unitholders and Others.

- (1) No Trust Unitholder or annuitant under a plan of which a Trust Unitholder acts as trustee or carrier 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 Trust Unitholder or annuitant for any liability whatsoever, in tort, contract or otherwise, to any person in connection with the assets or liabilities of the Trust property or the obligations or the affairs of the Trust, including, without limitation, for satisfaction of any obligation or claim arising out of or in connection with any contract or obligation of the Trust or of

the Trustees or any obligation which a Trust Unitholder or annuitant would otherwise have to indemnify a Trustee for any personal liability incurred by the Trustee as such, but rather the assets of the Trust only are intended to be liable and subject to levy or execution for satisfaction of such liability. Each Trust Unitholder and annuitant under a plan of which a Trust Unitholder acts as trustee or carrier shall be entitled to be reimbursed out of the assets of the Trust in respect of any payment of a Trust obligation made by such Trust Unitholder or annuitant. Without limiting the generality of the foregoing, no Trust Unitholder or annuitant under a plan of which a Trust Unitholder acts as trustee or carrier, in its capacity as such, shall be liable to any person for any liability, act or default of the Trustees or the Trust or shall be liable to indemnify the Trustees or any other person with respect to any liabilities of the Trust.

- (2) (a) Any written instrument creating an obligation which is or includes the granting by the Trust of a mortgage; and
- (b) to the extent the Trustees determine to be practicable and consistent with their fiduciary duty to act in the best interests of the Trust Unitholders, any written instrument which is, in the judgment of the Trustees, a material obligation shall contain a provision or be subject to an acknowledgement to the effect that the obligation being created is not personally binding upon, and that resort shall not be had to, nor shall recourse or satisfaction be sought from, the private property of any of the Trust Unitholders or annuitants under a plan of which a Trust Unitholder acts as trustee or carrier, but the property of the Trust or a specific portion thereof only shall be bound. If the Trust makes any real property investment subject to existing contractual obligations, including obligations under mortgages, the Trustees shall use all reasonable efforts to have any such obligations modified so as to achieve the aforesaid disavowal of contractual liability. Further, 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 Trust Unitholders, any material risk of liability on the Trust Unitholders for claims against the Trust, and shall, to the extent available on terms which they determine to be practicable, including in the cost of premiums, cause the insurance carried by the Trust, to the extent applicable, to cover the Trust Unitholders and annuitants as additional insureds. Any potential liability of the Trustees with respect to their foregoing obligations or their failure to perform the same shall be governed by the provisions of Section 14.1, Section 14.2 and Section 14.3.

- (3) To the extent that, notwithstanding the provisions of this Section 14.4, any Trust Unitholder or annuitant under a plan of which a Trust Unitholder acts as trustee or carrier, 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:
- (a) 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
 - (b) in the event that, notwithstanding subsection (i), the judgment, writ of execution or similar process is enforceable against the Trust Unitholder or annuitant under a plan of which a Trust Unitholder or annuitant acts as trustee or carrier, or the Trust Unitholder or annuitant is otherwise held personally liable, the Trust Unitholder or annuitant 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.
- (4) The rights accruing to a Trust Unitholder and annuitant under a plan of which a Trust Unitholder acts as trustee or carrier under this Section 14.4 and the limitations of a Trust Unitholder's and annuitant's liability set out herein are in addition to, and do not exclude, any other rights or limitations of liability to which such Trust Unitholder or annuitant may be lawfully entitled, pursuant to statute, regulation or otherwise, nor does anything herein contained restrict the right of the Trustees to indemnify or reimburse a Trust Unitholder or annuitant out of the assets of the Trust in any appropriate situation not specially provided herein but, for greater certainty, the Trustees have no liability to reimburse Trust Unitholders or annuitants for taxes assessed against them by reason of or arising out of their ownership of Trust Units or annuity.

ARTICLE 15 REDEMPTION OF UNITS

Section 15.1 Right of Redemption.

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

Section 15.2 Exercise of Redemption Right.

To exercise a Unitholder's right to require redemption under this Article 15, a duly completed and properly executed notice requiring the Trust to redeem Units, in a form approved by the Trustees, together with (i) the certificate or certificates representing the Units to be redeemed or (ii) written instructions as to the number of Units to be redeemed, shall be sent to the Trust at the head office of the Trust.

A Unitholder not otherwise holding a registered Unit certificate that wishes to exercise the redemption right will be required to obtain a redemption notice form from the Unitholder's investment dealer who will be required to deliver the completed redemption notice form to the Trust and to CDS. No form or manner of completion or execution shall be sufficient unless the same is in all respects reasonably acceptable 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.

Upon receipt by the Trust of the notice to redeem Units, the Unitholder shall thereafter cease to have any rights with respect to the Units tendered for redemption (other than to receive the redemption payment therefor) including 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. Units shall be considered to be tendered for redemption on the date that the Trust has received the notice and other required documents or evidence as aforesaid.

Section 15.3 Cash Redemption.

- (1) Subject to Section 15.4, upon receipt by the Trust of the notice to redeem Units in accordance with Section 15.2, the holder of the Units tendered for redemption shall be entitled to receive a price per Unit (hereinafter called the "**Redemption Price**") equal to the lesser of:
 - (a) 90% of the "market price" of the Units on the principal market on which the Units are quoted for trading during the ten (10) trading day period ending on the date on which the Units are surrendered to the Trust for redemption; and
 - (b) the "closing market price" of the Units on the principal market on which the Units are quoted for trading on the date on which the Units are surrendered to the Trust for redemption.

For the purposes hereof, "**market price**" will be an amount equal to the simple average of the closing price of the Units for each of the ten (10) trading days on the principal market on which the Units are quoted for trading and 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 Units traded on a particular day, the market price shall be an amount equal to the weighted 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 (5) of the ten (10) trading days, the “market price” shall be the weighted average of the following prices established for each of the ten trading days: the average last bid and last ask prices for each day on which there was no trading; the closing price of the Units for each day that there was trading if the exchange or market provides for a closing price; and the weighted average of the highest and lowest price of the Units for each day that there was trading, if the market provides only the highest and lowest prices of Units traded on a particular day. The “**closing market price**” on a particular day shall be an amount equal to the closing price of the Units if there was a trade on that day and the exchange or market provides a closing price; an amount equal to the weighted average of the highest and lowest prices of Units if there was trading and the exchange or other market provides only the highest and lowest trading prices of Units traded on that day; and the weighted average of the last bid and last ask prices of the Units if there was no trading on that day.

- (2) Subject to Section 15.4 and Section 15.5, the Redemption Price payable in respect of the Units tendered for redemption during any month shall be paid by cheque, drawn on a Canadian chartered bank or a trust company in lawful money of Canada, payable at par to or to the order of the Unitholder who exercised the right of redemption on or before the last day of the calendar month following the month in which the Units are 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 and/or any party having a security interest 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 Units redeemed.

Section 15.4 No Cash Redemption in Certain Circumstances.

Section 15.3(2) shall not be applicable to Units tendered for redemption by a Unitholder, if:

- (1) the total amount payable by the Trust pursuant to Section 15.3 in respect of such Units and all other Units tendered for redemption prior thereto in the same calendar month exceeds \$50,000 (“**Monthly Limit**”); provided that the Trustees may, in their sole discretion, waive such limitation in respect of Units tendered for redemption in any calendar month. In the absence of such a waiver for such calendar month, the aggregate Redemption Price payable in respect of Units tendered for redemption in such calendar month in excess of \$50,000 shall be satisfied by the distribution *in specie* of certain securities held by the Trust, as determined by the Trustees and, subject to any applicable regulatory approvals, in accordance with Section 15.5;

- (2) at the time the Units are tendered for redemption, the outstanding Units of the Trust (or, as applicable, instalment receipts) are not listed for trading on a stock exchange or traded or quoted on any other market which the Trustees consider, in their sole discretion, provides representative fair market value prices for the Units (or, as applicable, instalment receipts); or
- (3) the normal trading of the outstanding Units (or, as applicable, instalment receipts) is suspended or halted on any stock exchange on which the Units (or, as applicable, instalment receipts) are listed for trading or, if not so listed, on any market on which the Units (or, as applicable, instalment receipts) are quoted for trading, on the date that such Units tendered for redemption are tendered to the Trust for redemption or for more than five (5) trading days during the ten (10) trading day period commencing immediately after the date on which such Units are tendered for redemption.

Section 15.5 Alternative Redemption.

If, pursuant to Section 15.4, Section 15.3(2) is not applicable to Units tendered for redemption by a Unitholder, the Redemption Price per Unit specified in Section 15.3 to which the Unitholder would otherwise be entitled shall, subject to receipt of all necessary regulatory approvals, be paid and satisfied by way of the distribution to such Unitholder of securities issued or held by the Trust or a Subsidiary of the Trust (the “**Securities**”), as determined by the Trustees in their sole discretion. The Redemption Price payable pursuant to this Section 15.5 in respect of Units tendered for redemption during any month shall, subject to receipt of all necessary regulatory approvals, be paid by transfer of the Securities, to or to the order of the Unitholder who exercised the right of redemption, on the last day of the calendar month following the month in which the Units were tendered for redemption. Payments by the Trust of the Redemption Price are conclusively deemed to have been made, in the case of Securities represented by certificates, upon the mailing of the Securities by registered mail in a postage prepaid envelope addressed to the former Unitholder or in the case of Securities represented electronically, upon CDS crediting interests in such Securities to the account of the former Unitholder. Upon such payment, the Trust shall be discharged from all liability to the former Unitholder in respect of the Units so redeemed. No fractional Securities will be distributed and where a number of Securities to be received by a Unitholder includes a fraction, such number shall be rounded to the next lowest number. The Trust shall be entitled to all income paid or accrued and unpaid on the Securities on or before the date of the distribution *in specie*. Holders of Securities will be subject to the provisions of all material agreements that relate to such Securities. Where the Trust makes a distribution *in specie* pursuant to this Section 15.5, the Trustees may, in their sole discretion, designate to the redeeming Unitholders any income or capital gain realized by the Trust as a result of the distribution of such property to such Unitholders.

Section 15.6 Cancellation of all Redeemed Units.

All Units which are redeemed under this Article 15 shall be cancelled and such Units shall no longer be outstanding and shall not be reissued.

Section 15.7 Subordination.

Following any *in specie* redemption pursuant to the operation of Section 15.5, holders of Securities will be required to acknowledge that they are subject to any applicable subordination agreements as may be determined by the Trustees prior to delivery of such Securities to the Unitholder.

**ARTICLE 16
GENERAL**

Section 16.1 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 16.2 Manner of Providing Notice.

Any notice required or permitted by the provisions of this Declaration of Trust to be provided to a Trust 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 Trust Unitholder at his, her or its address shown on the book-based system administered by CDS or on the Register, as applicable, to the Trustee at the last address provided by such Trustee to the Secretary of the Trust, or to the auditors of the Trust at the last address provided by such auditors to the Secretary of the Trust, as the case may be, or as otherwise permitted under this Declaration of Trust.

Section 15.2.1 Electronic Documents.

Any requirement under this Declaration of Trust, the *Securities Act* (Ontario) 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 permitted by law.

Section 16.3 Failure to Give Notice.

The failure by the Trustees, by accident or omission or otherwise unintentionally, to give any Trust 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 Trust Unitholder for any such failure.

Section 16.4 Trust Auditors.

The auditors of the Trust shall be appointed at each annual meeting. Such appointment shall be approved by Ordinary Resolution. If at any time a vacancy occurs in the position of auditors of the Trust, the Trustees may appoint a firm of chartered accountants qualified to practice in all provinces of Canada to act as the auditors of the Trust until the next annual meeting of Trust Unitholders. The auditors of the Trust shall report to the Trustees and the Trust 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 remuneration of auditors shall be fixed by the Trustees.

Section 16.5 Fiscal Year.

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

Section 16.6 Reports to Unitholders.

Within 140 days of the end of each fiscal year, commencing in the fiscal year of 1997, and at least 21 days prior to each annual meeting of Trust Unitholders, the Trustees shall provide to each Trust Unitholder a report, including audited comparative financial statements for such year, prepared in compliance with applicable securities laws. Within 60 days after the end of each of the first three fiscal quarters of each year, the Trustees shall provide unaudited comparative financial statements for the period then ended to each Trust Unitholder. The Trustees will supply Trust Unitholders with any information that may be required by them in connection with their obligations under the *Income Tax Act* (Canada) and equivalent provincial legislation.

Section 16.7 Trust Property to be Kept Separate.

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

Section 16.8 Trustees May Hold Trust Units.

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

Section 16.9 Trust Records.

- (1) The Trustee shall cause the Trust to prepare and maintain, at its principal office or at any other place in Canada designated by the Trustees, records containing (i) this Declaration of Trust and any amendments thereto; (ii) the Trustees Regulations, if any, (iii) minutes of meetings and resolutions of Trust Unitholders; and (iv) the Register.
- (2) 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 16.10 Right to Inspect Documents and Records of the Trust.

- (1) A Trust Unitholder and any agent, consultant or creditor of the Trust shall have the right to examine the records described in Section 16.9(1) and any other documents or records which the Trustees determine should be available for inspection by such persons, during normal business hours at the principal office of the Trust, and take extracts from the records, free of charge. Any person described in this Section 16.10 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 16.12. 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 16.11 Information Available to Trust Unitholders and other Securityholders.

- (1) Trust Unitholders and other securityholders of the Trust and creditors and their respective personal representatives, on payment of a reasonable fee therefor and on sending the Trust or its agent or mandatary an affidavit required by Section 16.12, 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 Trust Unitholders, the number of Trust Units held by each Trust Unitholder and the address of each Trust Unitholder as shown in the records of the Trust.
- (2) A person requiring the Trust to provide a basic list may, by stating in the affidavit referred to in this Section that they require supplemental lists, require the Trust or its agent or mandatary on payment of a reasonable fee to provide supplemental lists, where applicable, setting out any changes from the basic list in the names or addresses of the Trust Unitholders and the number of Trust Units owned by each Trust Unitholder for each business day following the date the basic list is made up to.
- (3) The Trust or its agent or mandatary shall provide a supplemental list, where available, required under Section 16.11(2):
 - (a) on the date the basic list is furnished, where the information relates to changes that took place prior to that date; and

- (b) 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.
- (4) 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 Trust Units, where available.
- (5) A list of Trust Unitholders or information from a securities register obtained pursuant to the provisions of this Declaration of Trust shall not be used by any person except in connection with (i) an effort to influence the voting of, Trust Unitholders of the Trust; (ii) an offer to acquire securities of the Trust; or (iii) any other matter relating to the affairs of the Trust.

Section 16.12 Affidavits.

An affidavit required under Section 16.10 or Section 16.11 shall state (i) the name and address of the applicant; (ii) the name and address for service of the body corporate, if the applicant is a body corporate; and (iii) that the information contained in the securities register obtained pursuant to Section 16.11(1) or the basic list and any supplemental lists obtained pursuant to Section 16.11(2), as the case may be, will not be used except as permitted under Section 16.11(5).

Section 16.13 Consolidations.

Any one or more Trustees or the Secretary 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 16.14 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 16.15 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 16.16 Headings for Reference Only.

The headings preceding the articles and sections hereof have been inserted for convenience and reference only and shall not be construed to affect the meaning, construction or effect of this Declaration of Trust.

Section 16.17 Governing Law.

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

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF the Trustees have caused these presents to be signed and sealed as of the date first above written.

**ON BEHALF OF THE TRUSTEES OF
CANADIAN APARTMENT PROPERTIES
REAL ESTATE INVESTMENT TRUST**

(Signed) "Thomas Schwartz"

Trustee

(Signed) "Michael Stein"

Trustee