

CANADIAN REAL ESTATE INVESTMENT TRUST

CONSOLIDATED VERSION OF DECLARATION OF TRUST

Amended and restated as of May 20, 2010

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EXECUTION

CANADIAN REAL ESTATE INVESTMENT TRUST

AMENDED AND RESTATED DECLARATION OF TRUST

**Made as of August 31, 1999, as Amended May 18, 2001,
August 29, 2001, August 8, 2003, August 5, 2004, March 28, 2005, May 20, 2005,
May 17, 2006, November 8, 2006, May 15, 2007, May 15, 2008, March 25, 2009 and
May 20, 2010**

THIS AMENDED AND RESTATED DECLARATION OF TRUST made in Toronto, Ontario as of the 31st day of August, 1999, as amended May 18, 2001, August 29, 2001, August 8, 2003, August 5, 2004, March 28, 2005, May 20, 2005, May 17, 2006, November 8, 2006, May 15, 2007, May 15, 2008, March 25, 2009 and May 20, 2010.

RECITALS

WHEREAS Canadian Real Estate Investment Trust is governed by an amended and restated declaration of trust made as of August 31, 1999 (the "Current Declaration of Trust");

AND WHEREAS at an annual and special meeting of the unitholders of Canadian Real Estate Investment Trust held on May 18, 2001, unitholders voted to amend the Current Declaration of Trust;

AND WHEREAS at a special meeting of the unitholders of Canadian Real Estate Investment Trust held on August 29, 2001, unitholders voted to further amend the Current Declaration of Trust;

AND WHEREAS at a special and general meeting of the unitholders of Canadian Real Estate Investment Trust held on June 25, 2003, unitholders voted to further amend the Current Declaration of Trust;

AND WHEREAS at a special and general meeting of the unitholders of Canadian Real Estate Investment Trust held on June 29, 2004, unitholders voted to further amend the Current Declaration of Trust;

AND WHEREAS, pursuant to a resolution of the Trustees passed on March 28, 2005, the Trustees resolved to make certain amendments to the current Declaration of Trust which, in the opinion of the Trustees, are not prejudicial to unitholders and are necessary or desirable;

AND WHEREAS at a special and general meeting of the unitholders of Canadian Real Estate Investment Trust held on May 20, 2010, unitholders voted to further amend the Current Declaration of Trust;

AND WHEREAS the Trust was established for the principal purpose of providing all investors with an opportunity to participate in a diversified portfolio of primarily income-producing real property investments located principally in Canada.

DECLARATION

NOW THEREFORE, the undersigned, being all of the Trustees, hereby confirm 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 them as such trustees and all rents, income, profits and gains therefrom for the benefit of the Unitholders hereunder in accordance with and subject to the express provisions of this Declaration of Trust, and that the Current Declaration of Trust is amended to read as follows:

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 otherwise defined or the context otherwise requires:

- (a) “Adjusted Assets” means, at any time, the aggregate amount of (i) the total assets of the Trust; (ii) the amount of accumulated depreciation in respect of its properties; (iii) the amount of accumulated amortization of leasing costs and intangible assets as incurred on the acquisition of properties; (iv) less the amount of accumulated amortization of intangible liabilities as incurred on the acquisition of properties, all as recorded in the books and records of the Trust, calculated in accordance with generally accepted accounting principles;
- (b) “affiliate” with relation to any person means an associate of, or an affiliated, controlled or subsidiary company (and including any associate thereof), of such person, all such terms (except person) having the meaning ascribed thereto by the Securities Act (Ontario), as amended from time to time;
- (c) “annuitant” means the annuitant of a Plan or any other plan of which a Unitholder acts as trustee or carrier;
- (d) “Audit Committee” means the committee established pursuant to section 8.2;
- (e) “capital cost allowance” shall include any amounts deductible in respect of the cost of investments or other capital assets as is permitted by the Tax Act;

- (f) “capital cost allowance of the Trust” for any year shall be the amount of capital cost allowance that is deductible under the Tax Act in computing the income of the Trust for income tax purposes for the year;
- (g) “Compensation and Governance Committee” means the committee established pursuant to section 8.3;
- (h) “cumulative eligible capital of the Trust” for any year shall mean the amount of cumulative eligible capital that is deductible under the Tax Act in computing the income of the Trust for income tax purposes for the year;
- (i) “Declaration of Trust” means this amended and restated declaration of trust as amended from time to time;
- (j) “dissenting offeree” means, where a take-over bid is made for all the Units other than those held by the offeror, a holder of Units who does not accept the take-over bid and includes a subsequent holder of that Unit who acquires it from the first mentioned holder;
- (k) “Distributions” has the meaning attributed thereto in section 9.1;
- (l) “Distribution Date” means each date selected by the Trustees for the purpose of making distributions contemplated in Article Nine;
- (m) “Governance Guidelines” means proposed National Policy 58-201 of the Canadian Securities Administrators, as amended or replaced from time to time, including any successor instrument or policy thereto;
- (n) “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 thereof;
- (o) “IFRS” means International Financial Reporting Standards issued by the International Accounting Standards Board, and as adopted by the Canadian Institute of Chartered Accountants, as amended from time to time;
- (p) “income-producing real property” means real property that generates, or, in the reasonable opinion of the management of the Trust, is capable of generating, income for the Trust, whether through lease payments, interest payments or otherwise;
- (q) “indebtedness” of the Trust means any obligation of the Trust for borrowed money to the extent that it appears as a liability on the balance sheet of the Trust calculated in accordance with generally accepted accounting principles;
- (r) “Independent Trustee” means any Trustee who is “independent” (as defined in the Governance Guidelines) to the Trust;
- (s) “Investment Committee” means a committee established pursuant to section 8.1;

- (t) “mortgage” means any mortgage, charge, hypothec, bond, debenture, note or other evidence of indebtedness directly or indirectly secured by real property;
- (u) “person” means and includes individuals, corporations, limited partnerships, general partnerships, joint stock companies, joint venturers, 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;
- (v) “Plans” means, collectively, trusts governed by registered retired savings plans, registered retirement income funds, registered education savings plans, deferred profit sharing plans, registered disability savings plans or tax-free savings accounts, each as described in the Tax Act;
- (w) “President”, “Chief Executive Officer” and “Chief Financial Officer” shall mean the person holding the respective office from time to time in accordance with section 2.9;
- (x) “real property” means property which in law is real property and includes, whether or not the same would in law be real property, leaseholds, mortgages, undivided joint interests in real property (whether by way of tenancy-in-common, joint tenancy, co-ownership, partnership, joint venture or otherwise) and securities of corporations or partnerships whose sole purpose and activity is to invest in, hold and deal in real property;
- (y) “Register” means the register which shall be established and maintained pursuant to section 5.14;
- (z) “subsidiary” of a person means any person that would be deemed to be a subsidiary entity of such person under the *Securities Act* (Ontario) as it exists on the date hereof (applied, with the necessary changes being made, in respect of persons that are not companies);
- (aa) “take-over bid” has the meaning ascribed to such term in the *Securities Act* (Ontario), as amended from time to time;
- (bb) “Tax Act” means the *Income Tax Act* (Canada) and the Regulations thereunder as the same may be amended from time to time;
- (cc) “Trustees” means, as of 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;
- (dd) “Trustees’ Regulations” means the regulations adopted by the Trustees pursuant to section 3.3;
- (ee) “Unit” means a unit of interest in the Trust in accordance with the provisions hereof and includes a fraction of a Unit; and
- (ff) “Unitholder” means a person whose name appears on the Register as a holder of Units.

Section 1.2. Name

The name of the trust created by this Declaration of Trust shall be Canadian Real Estate Investment Trust. As far as practicable and except as otherwise provided in this Declaration of Trust, the Trustees shall conduct the Trust activities, hold property, execute all documents and all legal proceedings under that name.

Section 1.3. Use of Name

Should the Trustees determine that the use of the name Canadian Real Estate Investment Trust 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. Places of Business

The principal office and centre of administration of the Trust shall be at 175 Bloor Street East, North Tower, Suite 500, Toronto, Ontario, M4W 3R8 unless changed by the Trustees to another location. 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 investment trust. The Trust, its Units and its property 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 investment trusts and for this Trust by:

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

The beneficial interest of a holder of any Unit shall be limited to the right to participate pro rata in distributions when and as declared by the Trustees as contemplated by Article Nine and distributions upon the termination of the Trust as contemplated in Article Twelve. The Trust is not and is not intended to be, shall not be deemed to be and shall not be treated as a general partnership, limited partnership, syndicate, association, joint venture, company, corporation or joint stock company nor shall the Trustees or the Unitholders or any of them for any purpose be, or be deemed to be treated in any way whatsoever to be, liable or responsible hereunder as partners or joint venturers. The Trustees shall not be, or be deemed to be, agents of the Unitholders. The relationship of the Unitholders to the Trustees, to the Trust and to the property of the Trust shall be solely that of beneficiaries in accordance with rights conferred and the liabilities and obligations imposed upon them by this Declaration of Trust.

ARTICLE 2. TRUSTEES AND OFFICERS

Section 2.1. Number

There shall be no fewer than three nor more than 15 Trustees. The number of Trustees may be increased or decreased within such limits from time to time by the Unitholders by ordinary resolution, or, if authorized by the Unitholders, by the Trustees, provided that the Trustees may not, between meetings of Unitholders, appoint an additional Trustee if, after such appointment, the total number of Trustees would be greater than one and one-third times the number of Trustees previously authorized by the Unitholders.

Section 2.2. Term of Office

Each Trustee who executes this Declaration of Trust or who is hereafter elected or appointed shall (except as provided in section 2.6) hold office until the next annual meeting of Unitholders or until his successor has been elected and has qualified to serve as Trustee.

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 required to hold Units in accordance with requirements established by the Board of Trustees, from time to time, in order to qualify as a Trustee. A majority of the Trustees must be resident Canadians. At least 66% of the total number of Trustees, and, except as otherwise required by applicable law, at least 66% of the total number of any committee of Trustees, shall be Independent Trustees, provided, however, that if at any time the percentage of all Trustees who are Independent Trustees becomes less than 66% of the Trustees because of the death, resignation, bankruptcy, adjudicated incompetence, removal or change of affiliation of any Trustee who was not so affiliated, this requirement shall not be applicable for a period of 60 days, during which time a sufficient number of Trustees shall be removed and/or appointed to comply with the requirement. In addition, not more than 33% of the Trustees may be non-Independent Trustees or Trustees who, directly or indirectly, receive remuneration for services rendered to the Trust or any affiliate thereof, in any capacity other than as a Trustee of the Trust.

Section 2.4. Election of Trustees

Election of the Trustees shall be by the vote of Unitholders. The election of any Trustee (other than an individual who is serving as a Trustee immediately prior to such election) shall not become effective unless and until such person shall have in writing accepted his election or appointment 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 Chairman of the Board of Trustees, the President or the Chief Financial Officer. Such resignation shall take effect on the date such notice is given or at any later time specified in the notice without need for prior accounting. A Trustee may be removed at any time with or without cause by a majority of the votes cast at a meeting of Unitholders called for that purpose or by the consent of holders of a majority of the outstanding Units entitled to vote thereon

or with cause by the resolution of two-thirds of the remaining Trustees. Upon the resignation or removal of any Trustee, or his otherwise ceasing to be a Trustee, he shall execute and deliver such documents as the remaining Trustees shall require for the conveyance of any Trust property held in his name, shall account to the remaining Trustees as they may require for all property which he holds as Trustee and shall thereupon be discharged as Trustee. Upon the incapacity or death of any Trustee, his legal representative shall execute and deliver on his 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 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. A majority of the Trustees continuing in office may fill any vacancy, with those Trustees so appointed by the Trustees in consequence hereof holding office until the next annual meeting of Unitholders.

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 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 2.5 or otherwise.

Section 2.8. Compensation and Other Remuneration

Trustees who are Independent Trustees 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 reasonably incurred in acting as a Trustee. Subject to section 3.7, Independent Trustees, either directly or indirectly, shall also be entitled to receive remuneration for services rendered to the Trust in any other capacity including, without limitation, serving as the non-executive chairman of the board of Trustees, or providing legal, accounting or other professional services or services as a broker, transfer agent, underwriter, whether performed by the Trustee or an affiliate thereof. Trustees who are not Independent Trustees shall not be entitled to receive any remuneration for their services as Trustees and shall not be entitled to reimbursement of expenses incurred in acting as a Trustee except their reasonable out-of-pocket expenses incurred in attending meetings of the Trustees or any committee thereof.

Section 2.9. Officers of the Trust

The Trust may have a President, Chief Executive Officer and Chief Financial Officer and such other officers as the Trustees may appoint from time to time. One person may hold two or more offices. Any officer may, but need not be, a Trustee. Officers of the Trust shall be appointed and discharged, and their remuneration determined, by the Trustees.

ARTICLE 3.
TRUSTEES' POWERS AND DUTIES

Section 3.1. General Powers

The Trustees, subject only to the specific limitations contained in this Declaration of Trust, shall have, without further or other authorization and free from any power of control on the part of the Unitholders, full, absolute, and exclusive power, control and authority over the assets of the Trust and over the business and affairs of the Trust to the same extent as if the Trustees were the sole owners thereof 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 business of the Trust. In construing the provisions of this Declaration of Trust, presumption shall be in favour of the powers and authority having been granted to the Trustees. The enumeration of any specific power or authority herein shall not be construed as limiting the general powers or authority or any other specified power or authority conferred herein on the Trustees. Except as specifically required by such laws, the Trustees shall in carrying out investment activities not be in any way restricted by the provisions of the laws of any jurisdiction limiting or purporting to limit investments which may be made by trustees.

Section 3.2. Specific Powers and Authorities

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

- (a) To retain, invest and re-invest the capital or other funds of the Trust in real or personal property of any kind, including derivatives contracts, 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 for such consideration as they deem appropriate.
- (b) For such consideration as they deem proper, to invest in, purchase or otherwise acquire for cash or other property or through the issuance of 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 notes, bonds or other obligations which are secured by 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.
- (c) To sell, rent, lease, hire, exchange, release, partition, assign, mortgage, pledge, hypothecate, grant security interests in, encumber, negotiate, convey, transfer or otherwise dispose of any or all of the property of the Trust by deeds, trust deeds, assignments, bills of sale, transfers, leases, mortgages, financing statements,

security agreements and other instruments for any of such purposes executed and delivered for and on behalf of the Trust or Trustees by one or more of the Trustees or by a duly authorized officer, employee, agent or any nominee of the Trust.

- (d) To enter into leases, contracts, obligations and other agreements for a term extending beyond the term of office of the Trustees and beyond the possible termination of the Trust or for a lesser term.
- (e) To borrow money and give negotiable or non-negotiable instruments therefor; subject to section 4.2, 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.
- (f) To lend money, whether secured or unsecured.
- (g) 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 business 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.
- (h) To deposit funds of the Trust in banks, trust companies and other depositories, whether or not such deposits will draw 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, agents or representatives) as the Trustees may determine.
- (i) 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.
- (j) To elect, appoint, engage or employ officers for the Trust (including a President, Secretary, Treasurer and such vice-presidents and other officers as the Trustees may determine), who may be removed or discharged at the discretion of the Trustees, such officers to have such powers and duties, and to serve such terms as may be prescribed by the Trustees or by the Trustees' Regulations; to engage 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 for services in as many capacities as such persons may be so engaged or employed; and, except as prohibited by law, 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.

- (k) 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.
- (l) To renew, modify, release, compromise, extend, consolidate or cancel, in whole or in part, any obligation to or of the Trust.
- (m) To purchase and pay for out of the assets of the Trust, insurance contracts and policies insuring the assets of the Trust against any and all risks and insuring the Trust and/or any or all of the Trustees, the Unitholders or officers 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, Unitholders or officers.
- (n) To cause legal title to any of the assets of the Trust to be held by and/or in the name of the Trustees, or except as prohibited by law, by and/or in the name of the Trust or one or more of the Trustees or any other 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 are held in trust for the benefit of the Trust.
- (o) To determine conclusively the allocation to capital, income or other appropriate accounts of all receipts, expenses, disbursements and property of the Trust.
- (p) 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 issued or held by the Trust and to pay the cost thereof and related thereto out of the property of the Trust whether or not such offering is or was of direct benefit to the Trust or those persons (if any) who were Unitholders immediately prior to such offering.
- (q) To make or cause to be made application for the listing on any stock exchange of any Units 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.
- (r) 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 judgement, may deem material and reliable.

- (s) To do all other such 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 business of the Trust, the conduct of its affairs, their rights or powers and the rights or powers of its 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 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 business and 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, statutory declaration or resolution executed or certified by one or more of the Trustees or such other person as may be authorized by the Trustees as to the capacity, power and authority of the Trustees or such 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 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 Unitholders (and, where the 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 Tax Act, or other such fund or plan registered under such act, upon plan beneficiaries and plan holders past, present and

future) and Units of the Trust shall be issued and sold on the condition and understanding that any and all such determinations shall be binding as aforesaid.

Section 3.7. Conflict of Interest

If a Trustee or an officer of the Trust or any affiliate of the Trust is a party to a material contract or transaction or proposed material contract or transaction with the Trust or is a director, officer or employee 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 officer, as the case may be, shall disclose in writing to the Trustees or request to have entered in the minutes of meetings of Trustees the nature and extent of such interest as follows:

- (a) The disclosure required in the case of a Trustee shall be made:
 - (i) at the meeting of Trustees or the Investment Committee, as the case may be, at which a proposed contract or transaction is first considered;
 - (ii) if the Trustee was not then interested in a proposed contract or transaction, at the first such meeting after he becomes so interested;
 - (iii) if the Trustee becomes interested after a contract is made or a transaction is entered into, at the first meeting after he becomes so interested; or
 - (iv) if a person who is interested in a contract or transaction later becomes a Trustee at the first such meeting after he assumes that capacity.
- (b) The disclosure required in the case of an officer of the Trust who is not a Trustee shall be made:
 - (i) forthwith after he 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 Investment Committee or of the Trustees;
 - (ii) if the officer becomes interested after a contract is made or a transaction is entered into, forthwith after he becomes so interested; or
 - (iii) if a person who is interested in a contract or transaction later becomes an officer, forthwith after he becomes an officer.
- (c) Notwithstanding subsection (a) and (b), 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 business of the Trust, would not require approval by the Trustees or Unitholders, such person shall disclose in writing to the Trustees or request to have entered in the minutes of meetings of Trustees the nature and extent of his interest forthwith after that person becomes aware of the contract or transaction or proposed contract or transaction.
- (d) A Trustee referred to in this section shall not vote on any resolution to approve the contract or transaction unless the contract or transaction is:

- (i) one relating primarily to his remuneration as a Trustee, officer, employee or agent of the Trust; or
 - (ii) one for indemnity under section 13.1 hereof or the purchase of liability insurance.
- (e) For the purposes hereof, a general notice to the Trustees by a Trustee or officer of the Trust disclosing that he is a director, officer or employee 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.
- (f) Where a material contract is made or a material transaction is entered into between the Trust and any one or more of its Trustees or officers, or between the Trust and another person of which a Trustee or officer of the Trust is a director or officer or in which he has a material interest:
 - (i) the Trustee or officer is not accountable to the Trust or to the Unitholders for any profit or gain realized from the contract or transaction; and
 - (ii) the contract or transaction is neither void nor voidable;

by reason only of that relationship or by reason only that the Trustee is present at or is counted to determine the presence of a quorum at the meeting of Trustees or committee of Trustees that authorized the contract or transaction, if the Trustee or officer disclosed his 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.

- (g) Notwithstanding anything in this section, but without limiting the effect of subsection (f) hereof, a Trustee or officer of the Trust, acting honestly and in good faith, is not accountable to the Trust or to the Unitholders for any profit or gain realized from any such contract or transaction by reason only of his holding the office of Trustee or officer, 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 the Trustee's or officer's interest therein void or voidable, where:
 - (i) the contract or transaction is confirmed or approved at a meeting of Unitholders duly called for that purpose; and
 - (ii) the nature and extent of the Trustee's or officer'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.
- (h) Subject to subsection (f) and (g) hereof, where any Trustee or officer of the Trust fails to disclose his 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 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 the Trustee or officer account to the Trust for any profit or gain realized.

Section 3.8. Related Party Transactions

- (a) Notwithstanding anything contained in this section or elsewhere in this Declaration of Trust to the contrary, the provisions of this section shall apply:
- (i) to any person who is a “related party” of the Trust within the meaning of Multilateral Instrument 61-101 (as such may be amended or replaced from time to time) (“Rule 61-101”); and
 - (ii) to any person who is:
 - (A) a Trustee or an affiliate of a Trustee;
 - (B) a promoter of the Trust or any affiliate of a promoter of the Trust;
 - (C) a substantial security holder of the Trust or a promoter of the Trust, or any affiliate of such substantial security holder;
 - (D) an officer, director or employee of the Trust or of a promoter of the Trust, or of any affiliate of the Trust or promoter of the Trust, unless such person or company is a loan corporation or trust company registered under the *Loan and Trust Corporations Act* (Ontario), an insurance company licensed under the *Insurance Act* (Ontario) or a bank incorporated under the *Bank Act* (Canada).

(such person being referred to herein as a “Related Party”).

- (b) In the event of any proposed purchase or sale of real property from or to a Related Party, the Trust shall comply with the provisions of Rule 61-101 requiring the preparation of and provision of an independent valuation for and to Unitholders, notwithstanding any exemption therefrom otherwise being contemplated under Rule 61-101.
- (c) Without limitation and in addition to the requirement, if any, under Rule 61-101 or this Declaration of Trust to obtain the approval of Unitholders and/or minority approval contemplated under Rule 61-101, the Trustees shall not carry out a proposed purchase or sale of real property from or to a Related Party or effect a related party transaction (as defined in Rule 61-101) with a Related Party unless such transaction is determined by the Trustees to be on commercially reasonable terms and approved by a majority of 66% of the Independent Trustees who have no interest in such transaction.

ARTICLE 4.
INVESTMENT RESTRICTIONS

Section 4.1. Fundamental Restrictions

The assets of the Trust shall be invested only in accordance with the following restrictions (the "Investment Restrictions"):

- (a) the Trust shall not make any investment that would result in Units of the Trust being disqualified for investment by Plans, that would result in the Trust being liable under the Tax Act to pay a tax imposed as a result of holdings by the Trust of foreign property as defined in the Tax Act, that would result in Units of the Trust being foreign property for the purpose of the Tax Act for any such plan, or that would result in the Trust paying a tax under the registered investment provisions of the Tax Act imposed for exceeding certain investment limits;
- (b) the Trust shall not make an investment in any single real property, whether through one transaction or a series of transactions, if the cost to the Trust of such acquisition will exceed 15% of the Adjusted Assets of the Trust, except in the case where the acquisition is an acquisition of the interest of a joint venturer in an existing joint venture and where the Trustees determine that such acquisition is desirable and in the best interests of Unitholders;
- (c) the Trust may invest in a joint venture arrangement only if:
 - (i) the arrangement is an arrangement pursuant to which the Trust holds, directly or indirectly, an interest in real property jointly or in common with others ("joint venturers") and the arrangement is formed and operated solely for the purpose of holding a particular real property or properties;
 - (ii) the Trust's interest in the joint venture arrangement is an interest of not less than 25% that is not subject to any restriction other than a right of first refusal, if any, in favour of the joint venturers and, where the Trust's interest in the joint venture arrangement is less than 50%, such investment has been specifically approved by the Board of Trustees;
 - (iii) the joint venture arrangement provides an appropriate mechanism to enable the Trust to: (a) acquire the joint venturer's interest; (b) dispose of or otherwise liquidate its interests; or (c) sell the entire property, unless, in each case, the joint venture arrangement is an existing arrangement that is assumed as part of a portfolio acquisition or other similar transaction; and
 - (iv) without limitation, any joint venture arrangement with a Related Party for the purposes of section 3.8 has been entered into in accordance with the provisions of section 3.8;

provided that, notwithstanding the foregoing, the Trust may from time to time acquire from another person, that person's interest in any existing joint venture arrangement which does not comply with any of subparagraphs (ii) or (iii) of this section 4.1(c) if the Trustees determine that the investment is desirable for the Trust and is otherwise in compliance with the Investment Restrictions and with the

investment guidelines and the operating plan established in accordance with this Article 4 and in effect at such time;

- (d) 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 in money market instruments of, or guaranteed by, a Schedule I Canadian chartered bank maturing prior to one year from the date of issue, the Trust may not hold securities or enter into derivatives contracts other than (i) for hedging and other risk management purposes; or (ii) securities of a joint venture entity or a partnership, or any entity formed and operated solely for the purpose of carrying on ancillary activities to any real estate owned by the Trust, or an entity wholly-owned by the Trust formed and operated solely for the purpose of holding a particular real property or real properties; or (iii) securities of a public real estate entity;
- (e) subject to paragraphs (c), (d), (f), (m), (n), (o) and (p) the Trust shall invest only in equity interests in income-producing real property (including fee ownership and leasehold interests);
- (f) the Trust shall not invest in or acquire securities of a public real estate entity unless:
 - (i) the activities of the public real estate entity are focused on acquiring, holding, maintaining, improving, leasing or managing primarily income-producing properties; and
 - (ii) in the case of any proposed investment or acquisition which would result in the Trust owning beneficially more than 10% of the outstanding units of such public real estate entity (the “acquired entity”), the investment is made for the purpose of subsequently effecting the merger or combination of the business and assets of the Trust and the acquired entity or for otherwise ensuring that the Trust will control the business and operations of the acquired entity;
- (g) 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;
- (h) the Trust shall not underwrite, sell or market, or participate in the underwriting, selling or marketing of securities other than Units and securities of the Trust;
- (i) any written instrument creating an obligation which is or includes the granting by the Trust of a lease, sublease or mortgage or which is, in the judgment of the Trustees, a material obligation, shall contain a provision 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, Unitholders, annuitants under a plan of which a Unitholder acts as a trustee or carrier, or officers, employees or agents of the Trust, but the property of the Trust or a specific portion thereof only shall be bound. The Trust is not required, subject to having in the opinion of the Trustees used its reasonable

best efforts to comply with this requirement, to comply in respect of existing obligations assumed by the Trust upon the acquisition of real property;

- (j) the Trust shall not lease or sublease to any person any real property, premises or space where that person and its affiliates would after the contemplated lease or sublease, be leasing or subleasing real property, premises or space having a fair market value in excess of 20% of the Adjusted Assets of the Trust;
- (k) the Trust shall not enter into any transaction involving the purchase of lands or land and improvements thereon and the leasing thereof back to the vendor where the fair market value of the property being leased to the vendor together with all other property being leased by the Trust to the vendor and its affiliates is in excess of 20% of the Adjusted Assets of the Trust;
- (l) the limitation contained in paragraph (j) shall not apply to the renewal of a lease or sublease and the limitations contained in paragraphs (j) and (k) shall not apply where the person to whom the lease or sublease is made is, or where the lease or sublease is guaranteed by the Government of Canada, any province of Canada, any municipality in Canada, or any agency thereof;
- (m) the Trust may invest in a mortgage or mortgage bonds (including participating or convertible mortgages) only where:
 - (A)
 - (i) the real property which is security therefor is income-producing real property which otherwise meets the general investment criteria of the Trust;
 - (ii) the mortgage is a first mortgage registered on title to the real property which is security therefor;
 - (iii) the amount of the mortgage loan is not in excess of 75% of the appraised value of the property securing the mortgage; and
 - (iv) the aggregate value of the investments of the Trust in mortgages, after giving effect to the proposed investment, will not exceed 15% of the Adjusted Assets of the Trust;

or

- (B) the sole intention is to use the acquisition of the mortgages as a method of acquiring control of an income-producing real property which would otherwise meet the Investment Restrictions of the Trust, provided that the aggregate value of the investments of the Trust in these mortgages will not exceed 10% of Adjusted Assets and provided that the Trust has an option to acquire a 100% interest in the subject property or properties; provided that, notwithstanding the foregoing, the Trust may invest in any mortgage which does not satisfy either (A) or (B) above, if such investment is specifically approved by the Trustees;

- (n) except as otherwise permitted by the Investment Restrictions, the Trust shall not engage in construction or development of real property except to the extent necessary to maintain its real properties in good repair, or to enhance the income-producing ability of properties owned by the Trust;
- (o) the Trust shall not invest in raw land (except for the acquisition of properties adjacent to existing properties of the Trust for the purpose of renovation or expansion of existing facilities where the total cost of all such investments in any fiscal year does not exceed 2.5 per cent of Adjusted Assets of the Trust);
- (p) the Trust may invest an amount) up to 15% of the Adjusted Assets of the Trust in investments or transactions which do not comply with paragraphs (d), (e), (f), (j), (k), (m), (n) and (o) above, provided that, if such an investment subsequently satisfies the criteria of the relevant paragraph, then such investment shall no longer be included in calculating compliance with the 15% threshold established by this paragraph;
- (q) title to each real property shall be held by and registered in the name of the Trust, the Trustees or a corporation or other entity wholly-owned by the Trust (either alone or jointly with joint venturers), or in the name of a joint venture entity wholly-owned by the Trust; and
- (r) the Trust shall not invest in hotels or buildings with unsold residential condominium units except in cases where the Trust is buying the entire condominium building.

For the purpose of the foregoing restrictions, the assets, liabilities and transactions of an entity wholly-owned by the Trust will be deemed to be those of the Trust.

Section 4.2. Permitted Borrowing

The Trust shall borrow only in accordance with the restrictions hereinafter set out. The Trust shall not assume or incur any indebtedness unless, at the date of the proposed assumption or incurring of indebtedness, the aggregate of the total indebtedness of the Trust and the amount of additional indebtedness proposed to be assumed does not exceed 60% of Adjusted Assets. For the purposes of this calculation, assets accounted for under the equity method of accounting, shall be proportionately consolidated. The Trust shall not directly or indirectly guarantee any indebtedness or liabilities of any kind except indebtedness assumed or incurred under a mortgage on the security of real property by an entity wholly-owned by the Trust and operated solely for the purpose of holding a particular real property or properties where such mortgage, if granted by the Trust directly, would not cause the Trust to contravene the foregoing restriction. The Trust may guarantee indebtedness assumed or incurred under a mortgage on the security of real property held by a joint venture entity, subject to the joint venturers entering into an agreement pursuant to which (i) the other joint venturer is required to give up its interest in such property held by the joint venture entity as a result of such joint venturer's failure to honour its proportionate share of such obligation and (ii) each joint venturer agrees that it is responsible for its proportionate share of such mortgage or debt. Notwithstanding the foregoing, the restriction on incurring indebtedness in excess of 60% of Adjusted Assets set out in this Section 4.2 (the "60% limit") shall not apply to the assumption or incurrence of indebtedness as a result of the Trust's acquisition of an interest of a joint venturer in an existing joint venture, provided that the Trustees have determined that such acquisition is desirable and in the best interests of Unitholders. If as a result of any such acquisition the Trust exceeds the 60% limit, it shall be required to reduce its

indebtedness in order to comply with the 60% limit within twelve months from the date the 60% limit was exceeded, subject to such reasonable extensions beyond such 12-month period as approved by the Trustees.

Section 4.3. Registered Investment

The Trustees shall cause the Trust to do all such things and take all such action as may be necessary from time to time to ensure that the Trust is a “registered investment” within the meaning of the Tax Act.

Section 4.4. Application of Investment Restrictions

Where any maximum or minimum percentage limitation is specified in any of the Investment Restrictions, such restrictions shall be applied on the basis of the relevant amounts calculated immediately after the making of such investment. Any subsequent change relative to any percentage limitation which results from a subsequent change in the amount of Adjusted Assets will not require divestiture of any investment.

Section 4.5. Regulatory Matters

If at any time a 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 Unitholders. For greater certainty, the Trust shall at all times comply with all applicable securities laws, regulations and policies, including without limitation those relating to transactions between the Trust and parties who may be considered for such purposes to be related to the Trust.

Section 4.6. Investment Guidelines

The Trustees shall, by resolution, establish guidelines pertaining to the investment of assets of the Trust (which guidelines shall comply with the restrictions contained in this Article Four) and shall review such guidelines from time to time, and modify the same, to the extent that the Trustees deem that to do so would be prudent and in the best interests of the Trust and the Unitholders. Without limiting the generality of the foregoing, the guidelines adopted by the Trustees from time to time may include particulars relating to the size, types and location of real properties to be acquired by the Trust, capitalization rates and internal rates of return relative to financing rates and to the yield achieved on Units, exposure to lease rollovers, interest rates and credit risks.

The assets of the Trust shall be invested in accordance with the prevailing investment guidelines adopted by resolution of the Trustees provided, however, that:

- (a) compliance with the prevailing investment guidelines shall be required at the time of the investment only;
- (b) the foregoing shall not be deemed to limit or restrict in any manner the ability of the Trustees, by resolution, to amend or modify the prevailing investment guidelines as hereinbefore stipulated; and

- (c) the Trust may invest in any asset which does not comply with, or otherwise satisfy, the prevailing investment guidelines, with the approval of a majority of the Trustees.

Section 4.7. Operating Plan

The Trustees shall, by resolution, establish an operating plan relating to the business and affairs of the Trust (which plan shall comply with the restrictions contained in Article Four) and shall review such operating plan from time to time and modify the same to the extent that the Trustees deem that to do so would be prudent and in the best interests of the Trust and the Unitholders. Without limiting the generality of the foregoing, the operating plan adopted by the Trustees from time to time may include particulars relating to the level and composition of the indebtedness of the Trust, including the use of floating rate and short-term indebtedness, the effect on existing Unitholders of additional issues of Units, a cash management plan, guidelines for property appraisals, level and type of insurance coverage, means to ensure compliance with environmental legislation and regulations pertaining to the assets of the Trust and means to ensure compliance with all laws, regulations and policies available to the assets of the Trust or to the Trust.

The business and affairs of the Trust shall at all times be conducted in accordance with the prevailing operating plan adopted by the Trustees provided, however, that:

- (a) the foregoing shall not be deemed to limit or restrict in any manner the ability of the Trustees, by resolution, to amend or modify the prevailing operating plan as hereinbefore stipulated; and
- (b) the Trust may act, or omit to act, in a manner not consistent with the prevailing operating plan in any circumstances in which the consent of at least a majority of the Trustees is obtained.

ARTICLE 5. TRUST UNITS

Section 5.1. Units

The beneficial interests in the Trust shall be divided into a single class of Units (which may be represented by instalment receipts). The number of Units which the Trust may issue is unlimited. The issued and outstanding Units may be subdivided or consolidated from time to time by the Trustees.

Section 5.2. Ranking of Units

Each Unit shall represent an equal interest in the Trust with all outstanding Units, all Units outstanding from time to time shall participate pro rata in any distributions by the Trust and, in the event of termination of the Trust, in the net worth of the Trust and no Unit shall have any preference or priority over any other.

Section 5.3. Units Non-Assessable

No Units shall be issued other than as fully paid and non-assessable. A 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 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 had been issued for money. In determining whether property or past services are the fair equivalent of consideration paid in money, the Trustees may take into account reasonable charges and expenses of organization and reorganization and payments for property and past services reasonably expected to benefit the Trust. Notwithstanding the foregoing, Units may be issued and sold for a price payable in instalments over time as approved by the Trustees, but shall otherwise be non-assessable. Where the purchase price for Units is payable in instalments, beneficial ownership of such Units may be represented by instalment receipts, which may be issued by the Trust at the time such Units are issued.

Section 5.4. No Pre-Emptive Rights

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

Section 5.5. Fractional Units

Except as otherwise provided in section 5.1, if as a result of any act of the Trustees hereunder any person becomes entitled to a fraction of a Unit, such person is not entitled to receive a certificate therefor. Fractional Units shall not, except to the extent that they may represent in the aggregate one or more whole Units, entitle the holders thereof to notice of or to attend or to vote at, meetings of Unitholders. Subject to the foregoing, such fractional Units shall have attached thereto the rights, restrictions, conditions and limitations attaching to whole Units in the proportion that they bear to a whole Unit.

Section 5.6. Legal Ownership of Assets of the Trust

The legal ownership of the assets of the Trust and the right to conduct the business of the Trust are vested exclusively in the Trustees, and the Unitholders shall have no interest therein other than the beneficial interest in the Trust conferred by their Units issued hereunder as described in section 1.5, 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 Units shall be personal property and shall confer upon the holders thereof only the interest and rights, and impose upon the holders thereof only those liabilities and obligations, specifically set forth in this Declaration of Trust. No Unitholder has or is deemed to have any right of ownership in any of the assets of the Trust.

Section 5.7. Allotment and Issue

The Trustees may allot and issue 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. In the event that Units are issued in whole or in part for a consideration other than money, the resolution of the Trustees allotting and issuing such Units shall express the fair equivalent in money of the other consideration received.

Section 5.8. Rights, Warrants, Options and Convertible Securities

The Trust may create and issue rights, warrants or options to subscribe for fully paid Units or may create and issue other securities convertible into Units which rights, warrants, options or other securities may be exercisable at such subscription price or prices and at such time or times as the Trustees may determine. The rights, warrants, options or other securities so created may be issued for such consideration or for no consideration, all as the Trustees may determine. A right, warrant, option or other security convertible into Units shall not be a Unit and a holder thereof shall not be a Unitholder.

Section 5.9. Commissions and Discounts

The Trustees may provide for the payment of commissions or may allow discounts (including through the issue of additional Units) to persons in consideration of their subscribing or agreeing to subscribe, whether absolutely or conditionally, for Units or of their agreeing to procure subscriptions therefor, whether absolute or conditional.

Section 5.10. Transferability

Subject to section 5.25, the Units are freely transferable and the Trustees shall not impose any restriction on the transfer of Units (except as may be required in connection with Units pledged to the Trust as security). The Trustees shall seek to obtain and maintain a listing for the Units on a Canadian stock exchange.

Section 5.11. Certificates

Each Unitholder or his duly authorized agent is entitled to a certificate bearing an identifying serial number in respect of the Units held by him, signed in the manner hereinafter prescribed, but the Trust is not bound to issue more than one certificate in respect of a 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 5.12. Certificate Fee

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

Section 5.13. Form of Certificate

The form of certificate representing Units shall be in such form as is from time to time authorized by the Trustees.

Section 5.14. 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 and addresses of Unitholders, the respective numbers of Units held by them, the certificate numbers of the certificates of such Units and a record of all transfers thereof. The Trustees may appoint one or more chartered banks or trust companies, to act as transfer agents and to act as registrars for Units and may provide for the transfer of Units in one or more places within Canada. In the event of such appointment, such transfer agents and registrars shall keep all necessary registers and other books (which may be

kept on a computer or similar device) for recording original issues and registering and transferring the Units of the Trust. If the Trustees have appointed a registrar and transfer agent, no certificate for Units shall be valid unless countersigned by or on behalf of a transfer agent and/or registrar. Only Unitholders whose Units are recorded on the Register shall be entitled to vote or to receive distributions or otherwise exercise or enjoy the rights of Unitholders.

Section 5.15. Entry on Register

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

Section 5.16. Transfer of Units

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 endorsement and delivery of the certificates representing the Units subject to such provisions and conditions as may be prescribed by the Trustees from time to time. No transfer shall be recorded on the Register unless the transferor has executed the instrument of transfer as reproduced in the Unit certificate and the transferee has delivered to the transfer agent and/or registrar a Unit certificate representing the Units transferred. Subject to the foregoing, transfers shall be recorded on the Register and a new certificate for the Units so transferred shall be issued to the transferee and in case of a transfer of only part of the Units represented by any certificate, a new certificate for the remaining Units shall be issued to the transferor.

Section 5.17. Successors in Interest to Unitholders

Any person becoming entitled to any Units as a consequence of the death, bankruptcy or incompetence of any Unitholder or otherwise by operation of law, shall be recorded as the holder of such Units and shall receive a new certificate therefor upon production of evidence thereof satisfactory to the Trustees and delivery of the existing certificate to the Trustees or a transfer agent to the Trust, but until such record is made, the Unitholder of record shall continue to be and be deemed to be the holder of such Units for all purposes whether or not the Trust, the Trustee, or a transfer agent or registrar of the Trust shall have actual or other notice of such death, bankruptcy, incompetence or other event.

Section 5.18. Units Held Jointly or in Fiduciary Capacity

The Trust may treat two or more persons holding any Unit as joint tenants of the entire interest therein unless the ownership is expressly otherwise recorded on the Register, but no entry shall be made in the Register or on any Unit certificate that any person is in any other manner entitled to any future, limited or contingent interest in any Unit; provided, however, that any person recorded as a holder of any Unit may, subject to the provisions herein contained, be described in the Register or on any Unit 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 5.19. Performance of Trusts

The Trustees, the Unitholders, any transfer agent or other agent of the Trust or the Trustees, shall not be bound to see to the performance of any trust, express, implied or

constructive, or of any charge, pledge or equity to which any of the Units or any interest therein are or may be subject, or to ascertain or inquire whether any sale or transfer of any such Units or interest therein by any such Unitholder 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 Unitholder.

Section 5.20. Lost Certificates

In the event that any certificate for Units is lost, stolen, destroyed or mutilated, the Trustees may authorize the issuance of a new certificate for the same number of Units 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 may from time to time impose) any registrar, transfer agent, trustee, or others to whom the indemnity of such bond extends to take such action to replace such lost, stolen, destroyed or mutilated certificates without further action or approval by the Trustees.

Section 5.21. Death of Unitholders

The death of a Unitholder during the continuance of the Trust shall not terminate the Trust or give such Unitholder's legal representatives a right to an accounting or to take any action in the courts or otherwise against other Unitholders or the Trustees or the property of the Trust, but shall only entitle the legal representatives of the deceased Unitholder to demand and receive, pursuant to the provisions of section 5.17 hereof a new certificate for Units in place of the certificate held by the deceased Unitholder, and upon the acceptance thereof such legal representatives shall succeed to all rights of the deceased Unitholder under this Declaration of Trust.

Section 5.22. Unclaimed Distributions

In the event that the Trustees hold distributions which are unclaimed or which can not 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 the distributions so held to the Public Guardian and Trustee of Ontario (or other similar government official or agency) whose receipt shall be a good acquittance and discharge of the obligations of the Trustees.

Section 5.23. Repurchase of Units

The Trust shall be entitled to purchase for cancellation at any time the whole or from time to time any part of the outstanding Units, at a price per Unit and on a basis determined

by the Trustees in compliance with all applicable securities regulatory laws, regulations or policies or the policies of any applicable stock exchange.

Section 5.24. Take-Over Bids

1. If within one hundred and twenty days after the date of a take-over bid the bid is accepted by the holders of not less than ninety percent of the Units, other than Units held at the date of the take-over bid by or on behalf of the offeror or an affiliate of the offeror, the offeror is entitled, on complying with this section, to acquire the Units held by the dissenting offerees.

2. An offeror may acquire Units held by a dissenting offeree by sending by registered mail within sixty days after the date of termination of the take-over bid and in any event within one hundred and eighty days after the date of the take-over bid, an offeror's notice to each dissenting offeree stating that:

- (a) the offerees holding more than ninety per cent 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 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 Units in accordance with subsection (8) to (17) by notifying the offeror within twenty days after he receives the offeror's notice;
- (d) a dissenting offeree who does not notify the offeror in accordance with subparagraph (c)(ii) is deemed to have elected to transfer his 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 Units to which the take-over bid relates to the Trust within twenty days after he receives the offeror's notice.

3. Concurrently with sending the offeror's notice under subsection (2), 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.

4. A dissenting offeree to whom an offeror's notice is sent under subsection (2) shall, within twenty days after he receives that notice, send his Unit certificates to the Trust.

5. Within 20 days after the offeror sends an offeror's notice under subsection (2), 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 subparagraph (2)(c)(i).

6. The Trust is deemed to hold in trust for the dissenting Unitholder the money or other consideration it receives under subsection (5), 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.

7. Within thirty days after the offeror sends an offeror's notice under subsection (2), the Trust shall:

- (a) 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 subparagraph (2)(c)(i) and who sends his Unit certificates as required under subsection (4), the money or other consideration to which he is entitled, disregarding fractional Units, if any, which may be paid for in money; and
- (c) send to each dissenting offeree who has not sent his Unit certificates as required under subsection (4) a notice stating that:
 - (i) his Units have been cancelled,
 - (ii) the Trust or some designated person holds in trust for him the money or other consideration to which he is entitled as payment for or in exchange for his Units, and
 - (iii) the Trust will, subject to subsection (8) to (17), send that money or other consideration to him forthwith after receiving his Units.

8. If a dissenting offeree has elected to demand payment of the fair value of his Units under subparagraph (2)(c)(ii), the offeror may, within twenty days after it has paid the money or transferred the other consideration under subsection (5), apply to a court to fix the fair value of the Units of that dissenting offeree.

9. If an offeror fails to apply to a court under subsection (8), a dissenting offeree may apply to a court for the same purpose within a further period of twenty days.

10. Where no application is made to a court under subsection (9) within the period set out in that subsection, a dissenting offeree is deemed to have elected to transfer his Units to the offeror on the same terms that the offeror acquired the Units from the offerees who accepted the take-over bid.

11. An application under subsection (8) or (9) 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.

12. A dissenting offeree is not required to give security for costs in an application made under subsection (8) or (9).

13. On an application under subsection (8) or (9):
- (a) all dissenting offerees referred to in subparagraph (2)(c)(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 right to appear and be heard in person or by counsel.
14. On an application to a court under subsection (8) or (9) 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.
15. 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.
16. 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.
17. 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 subsection (6);
 - (b) order that money or other consideration be held in trust by a person other than the Trust including without limitation the Public Trustee of Ontario; and
 - (c) allow a reasonable rate of interest on the amount payable to each dissenting offeree from the date he sends or delivers his Unit certificates under subsection (4) until the date of payment.

Section 5.25. Non-Resident Ownership Constraint

Units representing more than 50% of the outstanding Units at any particular time or from time to time shall not be held or beneficially owned, directly or indirectly, by persons who are non-residents of Canada for purposes of the Tax Act. The Trust shall not accept any subscription for Units from any person, issue any Units to any person or register or otherwise recognize the transfer of any Units to any person if, after giving effect thereto, more than 50% of the outstanding Units would be held or beneficially owned, directly or indirectly, by persons who are non-residents of Canada for such purposes. The Trustees may require declarations as to the jurisdictions in which beneficial owners of Units are resident. In the event that it appears from the Register that, or in the event that the Trustees otherwise determine that, a person is or has become the holder or beneficial owner of Units (the "Affected Units") in contravention of the aforesaid restriction, the Trust may, by written notice (a "Sell Notice") to such person (an "Affected Holder"), require that such Affected Holder sell to a person who is not a non-resident of Canada for purposes of the Tax Act the total number of Affected Units within the prescribed period stipulated in the Sell Notice. Any such Sell Notice to be delivered to an Affected Holder shall be given by registered prepaid mail or delivered directly to the Affected Holder and shall specify a date, which shall not be less than 20 days, within which the Units held by the Affected Holder must be sold on a basis that does

not result in a contravention of this section. The Sell Notice shall also require the Affected Holder to notify the Trust of the sale or disposition requested when completed.

In the event that the Affected Units have not been sold by the Affected Holder on or prior to the date stipulated in the Sell Notice, the Trust may elect to sell the Affected Units on behalf of the Affected Holder without further notice on and subject to the terms herein contained. The Trust may sell Affected Units on any stock exchange or organized market on which the Units are then listed or traded as the Trustees shall determine or, if the Units are not then listed on any stock exchange or traded on any organized market, in such other manner as the Trustees shall determine. For all purposes of such sale, the Trustees shall be deemed to be the agents and lawful attorneys of the Affected Holder and any beneficial owner of the Affected Units. The net proceeds of any such sale of Affected Units shall be the net proceeds after deduction of any commission, tax or other cost of sale.

In the event of any such sale of Affected Units, the Affected Holder shall have the right only to receive the net proceeds of such sale, subject to its right to receive payment of any distribution declared by the Trustees which is unpaid and owing to such Affected Holder. The Trust shall deposit an amount equal to such net proceeds in a special account in any bank or trust company in Canada selected by it. The amount of such deposit, less the reasonable costs of the administration of the special account, shall be payable to the Affected Holder upon presentation of evidence acceptable to the bank or trust company of such person's interest in the Affected Units, including the certificate or certificates therefor, if any. Any interest earned on any amount so deposited shall accrue to the benefit of the Affected Holder.

From and after the date of such deposit, the Affected Holder shall not be entitled to any of the rights of a registered Unitholder in respect of the Affected Units, other than the right to receive the funds so deposited as hereinbefore so stipulated.

The Trust shall, as soon as reasonably practical, and in any event, not later than 30 days after making a deposit pursuant to the terms of this section, send a notice to the Affected Holder stating that the Affected Units have been sold, the amount of the net proceeds, respectively, to which the Affected Holder is entitled, the name and address of the bank or trust company at which the Trust has made the deposit and all other relevant particulars of the sale.

For greater certainty, the Trust may sell Units in accordance with the terms hereof despite the fact that the Trust does not possess the certificate or certificates, if any, representing the Affected Units at the time of the sale. Where, in accordance with this section, Affected Units are sold by the Trust without possession of the certificate or certificates, if any, representing the same and, after the sale, a person establishes that it is a bona fide purchaser of the Affected Units from the Affected Holder, then, subject to applicable law:

- (a) the Trust shall be entitled to treat the Units so purchased by the bona fide purchaser as validly issued and outstanding Units in addition to the Units sold by the Trust; and
- (b) notwithstanding anything hereinbefore contained, the Trust is entitled to the deposit made with respect to such sale and shall add the amount of the deposit to the capital account maintained by the Trust in respect of outstanding Units.

Section 5.26. Trustees' Determinations as to Non-Resident Status

The Trustees shall have the sole right and authority to make any determination required or contemplated under section 5.25. The Trustees shall make on a timely basis all determinations necessary for the administration of the provisions of section 5.25 and, without limiting the generality of the foregoing, if the Trustees consider that there are reasonable grounds for believing that a contravention of the non-resident ownership restriction has occurred or will occur, the Trustees shall make a determination with respect to the matter. Any such determination shall be conclusive, final and binding except to the extent modified by any subsequent determination by the Trustees. Notwithstanding the foregoing, the Trustees may delegate, in whole or in part, their power to make a determination to the President or any other officer of the Trust.

ARTICLE 6. MEETINGS OF UNITHOLDERS

Section 6.1. Annual Meeting

There shall be an annual meeting of the Unitholders at such time and place as the Trustees shall prescribe for the purpose of electing Trustees, appointing the auditor 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 Unitholders shall be held after delivery to the Unitholders of the annual report referred to in section 14.6 and within six months after the end of each fiscal year.

Section 6.2. Other Meetings

The Trustees shall have power at any time to call special meetings of the Unitholders at such time and place as the Trustees may determine. Special meetings of the Unitholders shall be called upon the written request of Unitholders holding not less than 20% of the outstanding Units of the Trust. If there shall be no Trustees, the officers of the Trust shall promptly call a special meeting of the Unitholders for the election of successor Trustees. The phrase "meeting of Unitholders" wherever it appears in this Declaration of Trust shall mean and include both an annual meeting and any other meeting of Unitholders.

Section 6.3. Notice of Meeting of Unitholders

Notice of all meetings of the Unitholders shall be mailed or delivered by the Trustees to each Unitholder at his address appearing in the Register not less than 21 nor more than 50 days before the meeting. Notice of any meeting of Unitholders shall state the purpose of the meeting.

Section 6.4. Quorum; Chairman

Two Unitholders at any meeting represented in person or by proxy shall constitute a quorum for any meeting of Unitholders. The Chairman of the Trust, if a Chairman of the Trust has been appointed by the Trustees and is present, and otherwise any other Trustee determined by the Trustees, shall be the Chairman of any meeting of Unitholders.

Section 6.5. Voting

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

Section 6.6. Matters on which Unitholders may Vote

None of the following shall occur unless the same has been duly approved by the Unitholders at a meeting duly called and held:

- (a) subject to section 2.6, the election or removal of Trustees;
- (b) except as provided in section 14.4, the appointment or removal of auditors of the Trust;
- (c) any amendment to the Declaration of Trust (except as provided in section 11.1);
- (d) the sale of the assets of the Trust as an entirety or substantially as an entirety (other than as a part of an internal reorganization of the assets of the Trust as approved by the Trustees); or
- (e) the termination of the Trust.

Except with respect to the foregoing matters specified in this section, section 11.2 and section 11.3, no vote of the Unitholders shall in any way bind the Trustees. Nothing in this section, however, shall prevent the Trustees from submitting to a vote of Unitholders any matter which they deem appropriate.

Section 6.7. Record Dates

For the purpose of determining the Unitholders who are entitled to receive notice of and vote at any meeting or any adjournment thereof, or 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 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 Unitholders or distribution or other action as a record date for the determination of Unitholders entitled to receive notice of and to vote at such meeting or any adjournment thereof or to receive such distribution or to be treated as Unitholders of record for purposes of such other action, and any Unitholder who was a Unitholder at the time so fixed shall be entitled to receive notice of and vote at such meeting or any adjournment thereof or to receive such distribution, even though he has since that date disposed of his Units, and no Unitholder becoming such after that date shall be entitled to receive notice of and vote at such meeting for any adjournment thereof or to receive such distribution or to be treated as a Unitholder of record for purposes of such other action.

Section 6.8. Proxies

Whenever the vote or consent of Unitholders is required or permitted under this Declaration of Trust, such vote or consent may be given either directly by the Unitholder or by a proxy in such form as the Trustees may prescribe from time to time. The Trustees may solicit such proxies from the Unitholders or any of them in any matter requiring or permitting the Unitholders' vote or consent.

The Trustees may specify, if they so determine, in the notice of meeting of Unitholders that all proxies must be received by the Chairman or his/her appointee, of the Trust no later than 5 p.m. the day prior to the meeting excluding Saturdays, Sundays and holidays, and that proxies not so received will not be valid.

Section 6.9. Resolution in Lieu of Meeting

A resolution signed in writing by all of the Unitholders entitled to vote on that resolution at a meeting of Unitholders is as valid as if it had been passed at a meeting of Unitholders. Notwithstanding any other provision of this Declaration of Trust, a resolution in writing executed by Unitholders holding a proportion of the outstanding Units equal to the proportion required to vote in favour thereof at a meeting of Unitholders to approve that resolution is as valid as if it had been passed at a meeting of Unitholders.

**ARTICLE 7.
MEETINGS OF TRUSTEES**

Section 7.1. Trustees May Act Without Meeting

The Trustees may act with or without a meeting. The Chairman of the Board of Trustees, if present, shall act as chairman of a meeting of the Trustees. Any action of the Trustees may be taken at a meeting by vote or without a meeting by written original or facsimile and/or electronic mail consent of all of the Trustees.

Section 7.2. Notice of Meeting

Meetings of the Trustees may be held from time to time upon the call of the Chairman of the Board of Trustees, an 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.

Section 7.3. Quorum

A quorum for all meetings of the Trustees or any committee thereof shall be at least 50% of the Trustees or of the Trustees on such committee, as the case may be, present in person, a majority of whom shall be Independent Trustees.

Section 7.4. Voting at Meetings

Questions arising at any meeting of the Trustees shall be decided by a majority of the votes cast. In the case of an equality of votes, the Chairman of the meeting shall not have a second or casting vote in addition to his original vote.

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 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. The Investment Committee

The Trustees shall appoint an investment committee to consist of not less than three of the Trustees, at least two-thirds of whom shall be Independent Trustees. At least two-thirds of such members shall have had at least five years substantial experience in the commercial real estate field. The duties of the Investment Committee shall be to review such proposals regarding investments, dispositions, financings, and other transactions as shall be specified in regulations promulgated by the Trustees, to make recommendations in connection therewith to the Trustees and, to the extent authorized by the Trustees, to authorize proposed transactions and make investments on behalf of the Trust. Questions arising at any meeting of the Investment Committee shall be decided by a majority of the votes. A two-thirds majority of the members of the Investment Committee voting in any case shall be Independent Trustees. Decisions may be taken by written consent of all of the members of the Investment Committee. Any member of the Investment Committee may call a meeting of the 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 Independent and disinterested Trustee not already a member of the Investment Committee may be designated by the Trustees to act as an alternate. The Trustees may adopt a written charter with respect to the operation of the Investment Committee, the terms of which shall not be inconsistent with the provisions of this Declaration of Trust.

Section 8.2. The 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 and each of whom shall otherwise satisfy any requirements imposed by law for membership on such committee. The Audit Committee shall, in addition to any other matter from time to time delegated to the Audit Committee by the Trustees or otherwise required by applicable law to be undertaken by the Audit Committee, consider and review the financial policies and procedures of the Trust, review quarterly and annual financial statements of the Trust, review and recommend to the Board of Trustees the selection and remuneration of the auditors of the Trust and report to the Trustees on the financial statements and other matters considered by members of the Audit Committee to be appropriate. The Audit Committee shall, unless otherwise delegated by the Trustees to a committee established for such purpose, also review environmental, insurance and other liability

exposure issues relevant to the affairs of the Trust, consider and review policies and procedures established for the Trust in respect thereto, and report to the Trustees on liability exposure and other matters considered by the members of the Audit Committee to be appropriate. 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 Committee held during the term of office of the auditors. The auditors of the Trust or a member of the Audit Committee may call a meeting of the Committee on not less than 48 hours' notice. The Trustees may adopt a written charter with respect to the operation of the Audit Committee, the terms of which shall not be inconsistent with the provisions of this Declaration of Trust.

Section 8.3. Compensation and Governance Committee

The Trustees shall appoint a Compensation and Governance Committee to consist of not less than three Trustees, all of whom shall be Independent Trustees. The duties of the Compensation and Governance Committee shall be to review and establish, from time to time, the performance and compensation of the officers and senior employees of the Trust and to make recommendations in connection therewith to the Trustees, to review the performance of the Trustees and their remuneration and make recommendations in respect of the nomination for election of trustees, to monitor the compliance by the Trust with this Declaration of Trust and other statutory and regulatory requirements applicable to the Trust, to review conflicts of interests affecting the Trust, and to prepare annual and other reports in accordance with the compensation disclosure rules prescribed by the *Securities Act* (Ontario) and other applicable legislation. In addition, the Compensation and Governance Committee may perform such other duties as may be delegated to such Committee from time to time by the Trustees or otherwise required by applicable law or contemplated by the Governance Guidelines to be undertaken and performed by such Committee. Questions arising at any meeting of the Compensation and Governance Committee shall be decided by a majority of the votes. Decisions may be taken by written consent of all of the members of the Compensation and Governance Committee. Any member of the Compensation and Governance Committee may call a meeting of the Compensation and Governance Committee on not less than 48 hours notice. Where for any reason a member of the Compensation and Governance Committee is disqualified from voting on or participating in a decision, any other Independent and disinterested Trustee who is not already a member of the Compensation and Governance Committee may be designated by the Trustees to act as an alternate. The Trustees may adopt a written charter with respect to the operation of the Compensation and Governance Committee, the terms of which shall not be inconsistent with the provisions of this Declaration of Trust.

ARTICLE 9. DISTRIBUTIONS

Section 9.1. Computation of Distributions

The Trust may distribute to Unitholders on each Distribution Date ("Distributions") such amounts as shall be determined by the Trustees in their discretion for the calendar month ending on the Distribution Date or, if the Distribution Date does not coincide with the last day of the calendar month, for the last calendar month ended immediately preceding the Distribution Date.

Section 9.2. Distributions Payable

On each Distribution Date specified herein, or which may be otherwise determined by the Trustees, any Distribution determined on any Distribution Date by the Trustees shall be payable proportionately to persons who are Unitholders on the record date for distribution in respect of each such Distribution.

Notwithstanding the foregoing, having regard to the present intention of the Trustees to allocate, distribute and make payable to Unitholders all of the amount necessary to ensure that the Trust will not be liable to pay income tax under Part I of the Tax Act for any year, after taking into account any entitlement to a capital gains refund (such amount being known, in respect of any year, as the “taxation distribution amount”), unless the Trustees, in their absolute discretion, have otherwise determined to not distribute such taxation distribution amount but, in lieu thereof, to distribute another specified amount, the amount which is sufficient to ensure that the taxation distribution amount is so distributed shall be deemed to be declared by the Trustees as a Distribution, and to be due and payable, on the earlier of the last Distribution Date in respect of the year or December 31 in the year, to persons who are Unitholders on the record date in respect of such Distribution. For greater certainty, if the Trustees have exercised their absolute discretion to not distribute the taxation distribution amount in respect of any year, the difference between amounts actually declared as Distributions and the taxation distribution amount in respect of such year shall not be payable to Unitholders. Moreover, the Trustees, in their absolute discretion, may at any time refute the intention referred to above to distribute taxation distribution amounts in respect of any year or future year.

For greater certainty, it is hereby expressly declared that a Unitholder shall have the legal right to enforce payment of any amount which is determined by the Trustees to be payable, or otherwise required to be payable, to a Unitholder in accordance with this Declaration of Trust.

Cash distributions shall be made by cheque payable to or to the order of the Unitholder or by such other manner of payment approved by the Trustees from time to time. The payment, if made by cheque, shall be conclusively deemed to have been made upon hand-delivery of a cheque to the Unitholder or to his agent duly authorized in writing or upon mailing of a cheque by pre-paid first-class mail addressed to the Unitholder at his 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 evidence of such loss, or an indemnity or other document in connection therewith that they may in their discretion consider necessary.

Section 9.3. Income Tax Matters

In computing the income of the Trust for income tax purposes, the Trust shall claim the maximum amount allowable to it in respect of the capital cost allowance of the Trust and the cumulative eligible capital of the Trust, except as otherwise determined by the Trustees, and to the extent permitted by the Tax Act may apply losses for prior years and any losses realized in the year to reduce tax payable on capital gains and other income of the Trust, and shall, to the extent permitted by the Tax Act deduct such portion of the income paid or payable to Unitholders in the year in excess of any capital cost allowance and cumulative eligible capital claimed and any losses so applied pursuant to this section 9.3.

Section 9.4. Designation of Taxable Dividends, Taxable Capital Gains, Foreign Income

In accordance with and to the extent permitted by the Tax Act, the Trustees in each year shall make such designations in respect of the amounts payable or deemed to have been payable to or on behalf of Unitholders for such amounts, including designations relating to taxable dividends received by the Trust in the year on shares of taxable Canadian corporations or taxable United States corporations, net capital gains realized by the Trust in the year and foreign source income of the Trust for the year in proportion to the amounts distributed to Unitholders in the year; provided that the Trustees may make such designations on some other basis if the Trustees determine that such other basis is more equitable as between Unitholders.

Section 9.5. Definitions

Unless the context otherwise requires, any term in Article 1 or this Article 9 which is defined in the Tax Act shall have for the purposes of Article 1 or this Article 9 the meaning that it has in the Tax Act.

**ARTICLE 10.
FEES AND EXPENSES**

Section 10.1. Expenses

The Trust shall pay all expenses incurred in connection with the administration and management of the Trust and the carrying out of its business, including, without limitation, 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 and the cost of reporting or giving notices to Unitholders.

Section 10.2. 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.

Section 10.3. Property Management, Leasing and Financing Fees

The Trust may pay property management fees at commercial rates in respect of any real property owned by it. Property management fees shall be paid out of the gross revenues derived from any property in respect of which property management services are provided.

Section 10.4. Indemnification of Unitholders for Transfer Taxes

Unitholders who acquire Units from treasury or from other Unitholders, including through the facilities of a stock exchange, shall at all times be indemnified and saved harmless out of the funds of the Trust from and against any and all claims which may be made of them for the payment of any tax, charge, or other levy imposed by a taxing authority in connection with the transfer of an interest in real property.

Section 10.5. Additional Services

Notwithstanding anything contained in this Declaration of Trust, if any of the Trustees renders services to the Trust (other than those specifically required under this Declaration of Trust) such Trustee shall be entitled to receive remuneration for such services rendered in amounts not in excess of amounts which, in the sole discretion of the Trustees, would be generally charged by other persons for comparable services or activities.

ARTICLE 11. AMENDMENTS TO THE DECLARATION OF TRUST

Section 11.1. 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 Unitholders:

- (a) 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 under the *Tax Act* or the distribution of its Units;
- (b) amendments which, in the opinion of the Trustees, provide additional protection for Unitholders;
- (c) amendments which, in the opinion of the Trustees, are necessary or desirable to remove conflicts or inconsistencies in the Declaration of Trust;
- (d) 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 Unitholders;
- (e) such amendments to the Declaration of Trust as they in their discretion deem necessary or desirable as a result of changes in the taxation laws or accounting standards (including the implementation of IFRS) from time to time which may affect the Trust or its beneficiaries or to ensure that the Units qualify as equity for the purposes of IFRS; and
- (f) amendments which in the opinion of the Trustees are not prejudicial to Unitholders and are necessary or desirable.

Notwithstanding the foregoing, and for greater certainty, the Trustees may not amend the Declaration of Trust in their sole discretion and without the approval of the Unitholders to:

- (i) increase the maximum indebtedness that may be incurred by the Trust;
- (ii) decrease the distributions required to be made by the Trust to the Unitholders pursuant to Article 9;
- (iii) remove the restrictions contained in section 4.1(n) or (q); or

- (iv) increase the permitted ratio of mortgage investments to Adjusted Assets contained in section 4.1(m).

Section 11.2. Amendments by Unitholders

Subject to section 11.3, this Declaration of Trust may be amended by the vote of a majority of the votes cast at a meeting of Unitholders called for that purpose.

Section 11.3. Two-Thirds Unitholder Vote

No amendment may be made which would change any right with respect to any outstanding Units of the Trust by reducing the amount payable thereon upon liquidation of the Trust, by diminishing or eliminating any voting rights pertaining thereto or which would relate to the duration or termination of the Trust or any sale or transfer of the assets of the Trust as an entirety or substantially as an entirety, except by the affirmative vote of at least two-thirds of the votes cast at a meeting of Unitholders called for that purpose.

**ARTICLE 12.
TERMINATION OF THE TRUST**

Section 12.1. Duration of the Trust

Unless the Trust is sooner terminated as otherwise provided herein, the Trust shall continue in such manner that the Trustees shall have all the powers and discretions, expressed and implied, conferred upon them by law or by this Declaration of Trust.

Section 12.2. Termination by Unitholders

The Trust may be terminated by the vote of at least two-thirds of the votes cast at a meeting of Unitholders called for that purpose.

Section 12.3. 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 proportionately to the Unitholders. Such distribution may be made in cash or in kind or partly in both, all as the Trustees in their sole discretion may determine.

**ARTICLE 13.
LIABILITIES OF THE TRUSTEES AND OTHERS**

Section 13.1. Liability and Indemnification of the Trustees, Officers and Employees

The Trustees and the officers and employees of the Trust shall at all times be indemnified and saved harmless out of the funds of the Trust from and against all claims whatsoever, including costs, charges and expenses in connection therewith, 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, officers or employees, as the case may be, or to the extent they served in such capacity at the request of the Trust, as trustees, directors, officers or managers of any subsidiary of the

Trust, and also from and against all other costs, charges, and expenses which they sustain or incur in or about or in relation to the affairs of the Trust or, as applicable, a subsidiary of the Trust. Further, the Trustees and the officers and employees of the Trust shall not be liable to the Trust or to any Unitholder or annuitant for any loss or damages relating to any matter regarding the Trust, including any loss or diminution in the value of the Trust or its assets. The foregoing sentences do not apply unless:

- (a) the person acted honestly and in good faith with a view to the best interests of the Trust; and
- (b) in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, the person had reasonable grounds for believing his or her conduct was lawful.

Section 13.2. Liability of the Trustees and Employees

The Trustees and the officers and employees of the Trust shall not be liable to the Trust or to any Unitholder or annuitant for the acts, omissions, receipts, neglects or defaults of any person employed 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 laid out or invested, or for any loss or damage arising from the bankruptcy, insolvency or tortious act of any person 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 the officers or employees of the Trust, or for any other loss, damage or misfortune which may happen in the execution by such persons of their duties hereunder, except to the extent set out in the last sentence of section 13.1.

Section 13.3. Reliance upon Advice

The Trustees and the officers and other employees of the Trust may rely and act upon any statement, report or opinion prepared by or any advice received from the auditors, solicitors 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 13.4. Liability of Unitholders and Others

No Unitholder or annuitants shall be held to have any personal liability as such, and no resort shall be had to a Unitholder's private property for satisfaction of any obligation or claim arising out of or in connection with any contract or obligation of the Trust or of the Trustees or any obligation which a Unitholder or annuitant would otherwise have to indemnify a Trustee for any personal liability incurred by the Trustee as such, but rather the assets of the Trust only are intended to be liable and subject to levy or execution for such satisfaction. Any written instrument creating an obligation which is or includes the granting by the Trust of a lease, sublease or mortgage or which is, in the judgment of the Trustees, a material obligation, shall contain a provision 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 Unitholders, but the property of the Trust or a specific portion thereof only shall be bound. If the Trust acquires any real property investment subject to existing contractual obligations, including obligations under mortgages and leases, the Trustees shall use their best 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, as far as possible, any material risk of liability on the Unitholders for claims against the Trust, and shall, to the extent which they determine to be possible and reasonable, including with regard to costs or premiums, to cause the Trust to carry insurance for the benefit of the Unitholders and annuitants in such amounts as they consider adequate to cover any foreseeable non-contractual or non-excluded contractual liability. 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 13.1, 13.2 and 13.3.

Section 13.5. Indemnification of Unitholders

The Trust shall indemnify and hold each Unitholder harmless from and against all claims and liabilities of the nature referred to in section 13.4 to which such Unitholders may become subject by reason of being or having been a Unitholder and shall reimburse such Unitholder for all legal and other expenses reasonably incurred in connection with any such claim or liability provided for greater certainty and without limitation, however, that the Trust shall have no liability to reimburse Unitholders for taxes assessed against them by reason of their ownership of Units or for losses suffered by reason of changes in the value or market price of Units.

Section 13.6. Predecessor Indemnifications

The Trust shall indemnify and save harmless, in accordance with the provisions of the Amended and Restated Declaration of Trust dated June 1, 1994, as amended, for MD Realty Fund or as applicable any written agreement to which MD Realty Fund was a contracting party (the "Indemnification Documents"), the trustees and former trustees of MD Realty Fund, the manager(s) thereof, their respective officers, employees or agents, members of the Advisory Board to MD Realty Fund and unitholders of MD Realty Fund (the "Indemnified Parties") in respect of any and all liabilities of MD Realty Fund or any other liabilities in respect of which the Indemnified Parties would have been entitled to receive indemnification in accordance with the Indemnification Documents.

Section 13.7. Additional Indemnification

In addition to the mandatory indemnification provided for in section 13.1, 13.4, 13.5 and 13.6, the Trustees shall have the power to the extent permitted by law to cause the Trust to indemnify or enter into agreements with respect to indemnification with the Trustees, officers, representatives, employees and agents of the Trust, Unitholders, and with any other person who in the discretion of the Trustees such indemnification is considered necessary, advisable or appropriate.

ARTICLE 14. GENERAL

Section 14.1. Execution of Instruments

Any two Trustees shall have authority to sign in the name and on behalf of the Trust all instruments in writing and any instruments in writing so signed shall be binding upon the Trust without any further authorization or formality. 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.

Section 14.2. Manner of Giving Notice

Any notice required or permitted by the provisions of this Declaration of Trust to be given to a Unitholder shall be deemed conclusively to have been given if given either by delivery or by prepaid ordinary mail addressed to the Unitholder at his address shown on the Register.

Section 14.3. Failure to Give Notice

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

Section 14.4. Trust Auditors

The auditors of the Trust shall be appointed at each annual meeting. 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 Unitholders. The auditors of the Trust shall report to the Trustees and the Unitholders on the annual financial statements of the Trust and shall fulfil such other responsibilities as they may properly be called upon by the Trustees to assume. The auditors shall have access to all records relating to the affairs of the Trust.

Section 14.5. Fiscal Year

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

Section 14.6. Reports to Unitholders

Within 90 days of the end of each calendar year the Trustees shall send the audited comparative financial statements of the Trust for such year, prepared in compliance with applicable securities laws, to each Unitholder who has requested them. Within 45 days after the end of each of the first three fiscal quarters, of each year, the Trustees shall send the unaudited comparative financial statements of the Trust for the period then ended, to each Unitholder who has requested them. The Trustees shall send a request to Unitholders annually asking them if they wish to receive the interim and/or the annual financial statements. At least 21 days prior to each annual meeting of Unitholders, the Trustees shall send to each Unitholder a report with respect to the business and affairs of the Trust. The Trustees will supply Unitholders with any information as may be reasonably required by them in connection with their obligations under the Tax Act.

Section 14.7. Trust Assets to be Kept Separate

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

Section 14.8. Right to Inspect Documents

A Unitholder and any agent, consultant or creditor of the Trust shall have the right to examine the Declaration of Trust 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. Unitholders and creditors of the Trust shall have the right to obtain or make or cause to be made a list of all or any of the registered holders of Units, to the same extent and upon the same conditions as those which apply to shareholders and creditors of a corporation governed by the Canada Business Corporations Act (Canada), as amended from time to time.

Section 14.9. Consolidations

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

Section 14.10. 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 14.11. 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 14.12. 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 14.13. Electronic Documents

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

Section 14.14. Governing Law

This Declaration of Trust shall be interpreted and take effect in accordance with the laws of the Province of Ontario;

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

WITNESS:)	
)	
_____	)	<u>"John A. Brough"</u> (l.s.)
(Witness)	)	John A. Brough
)	
_____	)	<u>"John H. Clappison"</u> (l.s.)
(Witness)	)	John H. Clappison
)	
_____	)	<u>"James D. Fisher"</u> (l.s.)
(Witness)	)	James D. Fisher
)	
_____	)	<u>"F. Robert Hewett"</u> (l.s.)
(Witness)	)	F. Robert Hewett
)	
_____	)	<u>"Stephen E. Johnson"</u> (l.s.)
(Witness)	)	Stephen E. Johnson
)	
_____	)	<u>"W. Reay Mackay"</u> (l.s.)
(Witness)	)	W. Reay Mackay
)	
_____	)	<u>"John F. Marino"</u> (l.s.)
(Witness)	)	John F. Marino
)	
_____	)	<u>"James M. Tory"</u> (l.s.)
(Witness)	)	James M. Tory
)	