

**H&R REAL ESTATE INVESTMENT TRUST**

**2011 AMENDED AND RESTATED  
DECLARATION OF TRUST**

**(DATED AS OF AUGUST 11, 2011)**

**BLAKE, CASSELS & GRAYDON LLP**

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## H&R REAL ESTATE INVESTMENT TRUST

### 2011 AMENDED AND RESTATED DECLARATION OF TRUST

THIS DECLARATION OF TRUST made in Toronto, Ontario as of the 4<sup>th</sup> day of November, 1996, as amended and restated as of the 8<sup>th</sup> day of August, 1997, the 27<sup>th</sup> day of May, 1999, the 24<sup>th</sup> day of May, 2001, the 21<sup>st</sup> day of July, 2005, the 23<sup>rd</sup> day of June, 2006, the 18<sup>th</sup> day of May, 2007, the 1<sup>st</sup> day of October, 2008, the 15<sup>th</sup> day of May, 2009, the 12<sup>th</sup> day of August, 2010 and the 11<sup>th</sup> day of August, 2011.

### RECITALS

WHEREAS on the 4<sup>th</sup> day of November, 1996, the Trustees established the Trust for the principal purpose of providing persons who may become the holders of Units of the Trust with an opportunity to participate in a portfolio of income-producing real property investments;

AND WHEREAS the Trustees amended the Declaration of Trust establishing the Trust in connection with certain matters relating to the initial public offering of Units and restated the Declaration of Trust to reflect such amendments as of the 4<sup>th</sup> day of November, 1996;

AND WHEREAS at an annual and special meeting of Unitholders held on the 23<sup>rd</sup> day of June, 1997, the Unitholders voted in favour of certain amendments to the Amended and Restated Declaration of Trust dated as of the 4<sup>th</sup> day of November, 1996;

AND WHEREAS the Trustees further amended the Amended and Restated Declaration of Trust dated as of the 4<sup>th</sup> day of November, 1996 to reflect the amendments adopted by the Unitholders together with additional amendments in connection with certain matters relating to the new issue of Units, and restated the Declaration of Trust to reflect such amendments as of the 8<sup>th</sup> day of August, 1997 (the “**1997 Amended and Restated Declaration of Trust**”);

AND WHEREAS at an annual and special meeting of Unitholders held on the 27<sup>th</sup> day of May, 1999, the Unitholders voted in favour of certain amendments to the 1997 Amended and Restated Declaration of Trust;

AND WHEREAS the Trustees further amended the 1997 Amended and Restated Declaration of Trust to reflect the amendments adopted by the Unitholders and restated the Declaration of Trust to reflect such amendments as of the 27<sup>th</sup> day of May, 1999 (the “**1999 Amended and Restated Declaration of Trust**”);

AND WHEREAS at an annual and special meeting of Unitholders held on the 24<sup>th</sup> day of May, 2001, the Unitholders voted in favour of certain amendments to the 1999 Amended and Restated Declaration of Trust;

AND WHEREAS the Trustees further amended the 1999 Amended and Restated Declaration of Trust to reflect the amendments adopted by the Unitholders and restated the

Declaration of Trust to reflect such amendments as of the 24<sup>th</sup> day of May, 2001 (the “**2001 Amended and Restated Declaration of Trust**”);

AND WHEREAS at an annual and special meeting of Unitholders held on the 24<sup>th</sup> day of June, 2005, the Unitholders voted in favour of certain amendments to the 2001 Amended and Restated Declaration of Trust;

AND WHEREAS the Trustees further amended the 2001 Amended and Restated Declaration of Trust to reflect the amendments adopted by the Unitholders and restated the Declaration of Trust to reflect such amendments as of the 21<sup>st</sup> day of July, 2005 (the “**2005 Amended and Restated Declaration of Trust**”);

AND WHEREAS at an annual and special meeting of Unitholders held on the 23<sup>rd</sup> day of June, 2006, the Unitholders voted in favour of certain amendments to the 2005 Amended and Restated Declaration of Trust;

AND WHEREAS the Trustees further amended the 2005 Amended and Restated Declaration of Trust to reflect the amendments adopted by the Unitholders and restated the Declaration of Trust to reflect such amendments as of the 23<sup>rd</sup> day of June, 2006 (the “**2006 Amended and Restated Declaration of Trust**”);

AND WHEREAS at an annual and special meeting of Unitholders held on the 18<sup>th</sup> day of May, 2007, the Unitholders voted in favour of certain amendments to the 2006 Amended and Restated Declaration of Trust;

AND WHEREAS the Trustees further amended the 2006 Amended and Restated Declaration of Trust to reflect the amendments adopted by the Unitholders and restated the Declaration of Trust to reflect such amendments as of the 18<sup>th</sup> day of May, 2007 (the “**2007 Amended and Restated Declaration of Trust**”);

AND WHEREAS at a special meeting of Unitholders held on the 19<sup>th</sup> day of September, 2008, the Unitholders voted in favour of certain amendments to the 2007 Amended and Restated Declaration of Trust to, among other things, give effect to a plan of arrangement as described in a management information circular of the Trust dated August 20, 2008;

AND WHEREAS the Trustees further amended the 2007 Amended and Restated Declaration of Trust to reflect the amendments adopted by the Unitholders and restated the Declaration of Trust to reflect such amendments as of the 1<sup>st</sup> day of October, 2008 (the “**2008 Amended and Restated Declaration of Trust**”);

AND WHEREAS at an annual and special meeting of Unitholders held on the 15<sup>th</sup> day of May, 2009, the Unitholders voted in favour of certain amendments to the 2008 Amended and Restated Declaration of Trust;

AND WHEREAS the Trustees further amended the 2008 Amended and Restated Declaration of Trust to reflect the amendments adopted by the Unitholders and restated the Declaration of Trust to reflect such amendments as of the 15<sup>th</sup> day of May, 2009 (the “**2009 Amended and Restated Declaration of Trust**”);

AND WHEREAS at an annual and special meeting of Unitholders held on the 17<sup>th</sup> day of June, 2010, the Unitholders voted in favour of certain amendments to the 2009 Amended and Restated Declaration of Trust and on the 12<sup>th</sup> day of August, 2010 the Trustees resolved to amend the Declaration of Trust so as to clarify the date from which an amendment adopted by the Unitholders on the 17<sup>th</sup> day of June, 2010 is effective;

AND WHEREAS the Trustees further amended the 2009 Amended and Restated Declaration of Trust to reflect the amendments adopted by the Unitholders and approved by the Trustees and restated the Declaration of Trust to reflect such amendments as of the 12<sup>th</sup> day of August, 2010 (the “**2010 Amended and Restated Declaration of Trust**”);

AND WHEREAS at an annual and special meeting of Unitholders held on the 16<sup>th</sup> day of June, 2011, the Unitholders voted in favour of certain amendments to the 2010 Amended and Restated Declaration of Trust;

AND WHEREAS the Trustees further amended the 2010 Amended and Restated Declaration of Trust to reflect certain amendments adopted by the Unitholders and approved by the Trustees and restated the Declaration of Trust to reflect such amendments as of the 11<sup>th</sup> day of August, 2011 (the “**2011 Amended and Restated Declaration of Trust**”);

AND WHEREAS this 2011 Amended and Restated Declaration of Trust replaces and supersedes the Amended and Restated Declaration of Trust dated as of the 4<sup>th</sup> day of November, 1996, the 1997 Amended and Restated Declaration of Trust, the 1999 Amended and Restated Declaration of Trust, the 2001 Amended and Restated Declaration of Trust, the 2005 Amended and Restated Declaration of Trust, the 2006 Amended and Restated Declaration of Trust, the 2007 Amended and Restated Declaration of Trust, the 2008 Amended and Restated Declaration of Trust, the 2009 Amended and Restated Declaration of Trust and the 2010 Amended and Restated Declaration of Trust;

## **DECLARATION**

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

### **ARTICLE I THE TRUST AND DEFINITIONS**

#### **Section 1.01 Definitions and Interpretation.**

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

- (a) “**Adjusted Unitholders’ Equity**” means, at any time, the aggregate of (in each case as recorded in the books and records of the Trust (or H&R Finance, as the case may be) prepared on a consolidated basis in accordance with generally accepted accounting principles): (i) the amount of Unitholders’ equity, (ii) the amount of accumulated depreciation and/or amortization in respect of properties of the Trust, (iii) any discount on any instalment receipts receivable, (iv) all non-controlling interests, and (v) provided that an Event of Uncoupling has not occurred, the amount of unitholders’ equity of H&R Finance;
- (b) “**Affected Holder**” means a person holding or beneficially owning Units in contravention of the restrictions set out in Section 5.11;
- (c) “**Affected Units**” means Units held or beneficially owned by an Affected Holder;
- (d) “**affiliate**” has the meaning ascribed thereto by the *Securities Act* (Ontario), as amended from time to time;
- (e) “**annuitant**” means the annuitant of a registered retirement savings plan or a registered retirement income fund, all as defined in the *Income Tax Act* (Canada);
- (f) “**associate**” has the meaning ascribed thereto by the *Canada Business Corporations Act*, as amended from time to time;
- (g) “**Associate**” where used to indicate a relationship between an individual and a corporation means an individual who beneficially owns, directly or indirectly, voting securities carrying more than 10% of the voting rights attached to all voting securities of the corporation for the time being outstanding, a spouse of such individual or an immediate family member of such individual;
- (h) “**Audit Committee**” means the committee established pursuant to Section 8.03;
- (i) “**business day**” means a day other than a Saturday, Sunday or any day on which the principal chartered banks located at Toronto, Ontario are not open for business during normal banking hours;
- (j) “Chairman”, “Honorary Chairman”, “Chief Executive Officer”, “Chief Financial Officer”, “President”, “Executive Vice-President”, “Senior Vice-President”, “Vice-President” and “Secretary” shall mean the person(s) holding the respective office from time to time in accordance with Section 2.09;
- (k) “**Co-owners Agreements**” has the meaning ascribed thereto in the Prospectus;
- (l) “**Declaration of Trust**” means this declaration of trust as amended, supplemented or amended and restated from time to time;
- (m) “**dissenting offeree**” means, where a take-over bid is made for all of the Units other than those held by the offeror, a holder of Units who does not accept the

take-over bid and includes a subsequent holder of that Unit who acquires it from the first mentioned holder;

- (n) **“Distribution Date”** means on or about April 15, July 15 and October 15 and on December 31 in each calendar year, in the case of quarterly distributions or, in the case of monthly distributions, on or about the last day of each month, or, in either case, such other date as may be determined from time to time by the Trustees;
- (o) **“Event of Uncoupling”** has the meaning ascribed thereto in Section 5.10(2) hereof;
- (p) **“Existing Mortgages”** has the meaning ascribed thereto in the Prospectus;
- (q) **“Gross Book Value”** means, at any time, the sum of (in each case as recorded on the most recent balance sheet of the Trust, prepared on a consolidated basis in accordance with generally accepted accounting principles): (i) the book value of the assets of the Trust, plus (ii) the amount of accumulated depreciation and/or amortization on the assets of the Trust, minus (iii) the final instalment under any instalment receipts representing Units;
- (r) **“herein”, “hereof”, “hereby”, “hereunder”** and similar expressions refer to this Declaration of Trust and include every instrument supplemental or ancillary to or in implementation of this Declaration of Trust and, except where the context otherwise requires, not to any particular article, section or other portion hereof or thereof;
- (s) **“Hofstedter Family”** means Sandor Hofstedter, his wife, either of their children, the spouses of such children and the lineal descendants of such children;
- (t) **“HRP Note Indenture”** means the trust indenture entered into between HRP Trust and the Note Trustee providing for the issuance of the HRP Trust Notes;
- (u) **“HRP Trust”** means H&R Portfolio LP Trust, an open-ended unit trust established under the laws of the Province of Ontario on October 21, 2004;
- (v) **“HRP Trust Notes”** means the Series 1 Notes, Series 2 Notes, Series 3 Notes and Series 4 Notes collectively;
- (w) **“HRP Unit”** means a trust unit of HRP Trust, each such unit representing an equal undivided beneficial interest therein;
- (x) **“H&R Finance”** means H&R Finance Trust, an open-ended unit trust established under the laws of the Province of Ontario on October 1, 2008;
- (y) **“H&R Finance Declaration of Trust”** means the declaration of trust of H&R Finance as amended, supplemented or amended and restated from time to time;
- (z) **“H&R REIT (U.S.)”** means H&R REIT (U.S.) Holdings Inc., a corporation incorporated pursuant to the laws of the State of Delaware;

- (aa) “**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;
- (bb) “**immediate family member**” where used to indicate a relationship with an individual means a parent, child or sibling of such individual;
- (cc) references to the “**Income Tax Act (Canada)**” or the “**Tax Act**” mean the *Income Tax Act (Canada)* and the regulations thereunder as the same may be amended from time to time;
- (dd) “**Independent Trustee**” means a Trustee who is not a member of the Hofstedter Family, is not a member of the Rubinstein Family and is independent (as that term is used in National Instrument 58-101 – Disclosure of Corporate Government Practices) of the Trust;
- (ee) “**Investment Committee**” means the committee established pursuant to Section 8.02;
- (ff) “**mortgage**” means any mortgage, charge, hypothec, bond, debenture, note or other evidence of indebtedness, in each case which is directly or indirectly secured by real property;
- (gg) “**net realized capital gains of the Trust**” for any year means the amount, if any, by which the amount of the capital gains of the Trust for the year exceeds the aggregate of (i) the amount of any capital losses of the Trust for the year and (ii) the amount of any net capital losses of the Trust carried forward from a previous year to the extent not previously deducted from realized capital gains of the Trust;
- (hh) “**Non-Resident**” has the meaning specified in Section 5.11;
- (ii) “**Note Trustee**” means CIBC Mellon Trust Company or its successors as trustee under the HRP Note Indenture;
- (jj) “**offeree**” means a person to whom a take-over bid is made;
- (kk) “**offeror**” means a person, other than an agent, who makes a take-over bid, and includes two or more persons who, directly or indirectly,
  - (i) make a take-over bid jointly or in concert; or
  - (ii) intend to exercise jointly or in concert voting rights attached to the Units for which a take-over bid is made;
- (ll) “**person**” means and includes individuals, corporations, limited partnerships, general partnerships, joint stock companies, joint ventures, associations, companies, trusts, banks, trust companies, pension funds, land trusts, business

trusts or other organizations, whether or not legal entities and governments and agencies and political subdivisions thereof;

- (mm) “**Property Manager**” means H&R Property Management Ltd.;
- (nn) “**Property Management Agreements**” means the agreements entered into between the Trust, the Property Manager and others pursuant to which the Property Manager provides property management services in respect of the properties of the Trust and shall include any renewal or extension of such agreements;
- (oo) “**real property**” means property which in law is real property and includes, whether or not the same would in law be real property, leaseholds, mortgages, undivided joint interests in real property (whether by way of tenancy-in-common, joint tenancy, co-ownership, joint venture or otherwise), any interests in any of the foregoing and securities of corporations whose sole or principal purpose and activity is to invest in, hold and deal in real property;
- (pp) “**Register**” means the register which shall be established and maintained pursuant to Section 5.15;
- (qq) “**resident Canadian**” means an individual who is a resident of Canada for purposes of the *Income Tax Act* (Canada);
- (rr) “**Rubinstein Family**” means Bill Rubinstein, his wife, Daniel Rubinstein, his wife, any of their respective children, the spouses of such children and the lineal descendants of such children;
- (ss) “**Series 1 Notes**” means the interest bearing unsecured subordinated notes, series 1, of HRP Trust issued to the Trust dated November 1, 2004, as amended and restated from time to time;
- (tt) “**Series 2 Notes**” means the interest bearing unsecured subordinated notes, series 2, of HRP Trust issuable to the Trust pursuant to the HRP Note Indenture;
- (uu) “**Series 3 Notes**” means the interest bearing unsecured subordinated notes, series 3, of HRP Trust issuable pursuant to the HRP Note Indenture;
- (vv) “**Series 4 Notes**” means the interest bearing unsecured subordinated notes, series 4, of HRP Trust issuable pursuant to the HRP Note Indenture;
- (ww) “**SIFT Tax**” means the tax payable by a SIFT trust pursuant to paragraph 122(1)(b) of the Tax Act or by a SIFT partnership pursuant to section 197 of the Tax Act;
- (xx) “**SIFT trust**” has the meaning given thereto in subsection 127.1(1) of the Tax Act;
- (yy) “**Stapled Unit**” means one Unit and one Unit of H&R Finance;

- (zz) “**take-over bid**” has the meaning ascribed to such term in the *Securities Act* (Ontario), as amended from time to time;
- (aaa) “**Trust**” means the H&R Real Estate Investment Trust established hereunder;
- (bbb) “**Trustees**” means, as at any particular time, the trustees holding office under this Declaration of Trust at such time, whether they be the signatories hereto or additional or successor trustees;
- (ccc) “**Trustees’ Regulations**” means the regulations adopted by the Trustees pursuant to Section 3.03;
- (ddd) “**TT Portfolio LP**” means TT Portfolio Limited Partnership, a limited partnership formed under the laws of the Province of Alberta on December 1, 2003;
- (eee) “**Unit**” means a unit of interest in the Trust in accordance with the provisions hereof and includes a fraction of a Unit;
- (fff) “**Unit of H&R Finance**” means a unit of interest in H&R Finance created in accordance with the provisions of the H&R Finance Declaration of Trust and includes a fraction of a Unit of H&R Finance;
- (ggg) “**Unitholder**” or “**holder of Units**” means a person whose name appears on the Register as a holder of Units or Stapled Units (provided an Event of Uncoupling has not occurred), and includes, for the purposes of Section 14.01, Section 14.02 and Section 14.04 only, any person who is a beneficial holder of a Unit;
- (hhh) “**U.S. Holdco Notes**” means any notes issued by H&R REIT (U.S.) to H&R Finance pursuant to a note indenture dated as of October 1, 2008, as amended, supplemented or amended and restated from time to time;
- (iii) “**Withholding Tax**” has the meaning ascribed thereto in Section 9.04 hereof; and
- (jjj) any reference to “**property of the Trust**” or “**assets of the Trust**” includes, in each case, property and assets of the Trust.

#### Section 1.02 Name.

The name of the Trust is H&R Real Estate Investment Trust in its English form and Fonds de placement immobilier H&R in its French form. As far as practicable and except as otherwise provided in this Declaration of Trust, the Trustees shall conduct the affairs of the Trust, hold property, execute all documents and take all legal proceedings under that name, in either its English form or its French form.

#### Section 1.03 Use of Name.

Should the Trustees determine that the use of the name H&R Real Estate Investment Trust or the name Fonds de placement immobilier H&R 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 1.04 Office.

The principal office and centre of administration of the Trust shall be at Suite 500, 3625 Dufferin Street, Toronto, Ontario M3K 1N4 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 1.05 Nature of the Trust.

The Trust is an open-ended unincorporated investment trust. The Trust, the 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 the Trust by:

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

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

Section 1.06 Trust Investments.

The Trust shall invest primarily in real property.

**ARTICLE II  
TRUSTEES AND OFFICERS**

Section 2.01 Number.

There shall be no fewer than five nor more than eleven Trustees. The number of Trustees may be increased or decreased within such limits from time to time by the Unitholders, 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 in office immediately following the last annual meeting of Unitholders. In connection with the

appointment of additional Trustees pursuant to this Section 2.01, the Trustees shall indicate whether the additional Trustees shall hold office until the first or second annual meeting of Unitholders after their respective dates of appointment.

Section 2.02 Term of Office.

- (a) The Trustees shall be classified, with respect to the time for which they hold office, into two classes, which classes shall be as nearly equal in number as possible, one class to hold office for a term expiring at the close of the first annual meeting of the Unitholders; and a second class to hold office for a term expiring at the close of the second annual meeting of the Unitholders or, in each case (except as provided in Section 2.06) until their respective successors are elected or appointed. At each annual meeting of the Unitholders, the successors of the class of Trustees whose term expires at that meeting shall be elected to hold office for a term expiring at the close of the annual meeting of Unitholders held in the second year following the year of their election.
- (b) Whenever the number of Trustees within the minimum and maximum number of Trustees is changed, any increase in Trustees or any decrease in Trustees shall be so assigned among the classes of Trustees then in office as to make all classes as nearly equal in number as possible. To the extent of any inequality within the limits of the foregoing, the class or classes then having the last date or the later dates for the expiration of its or their terms shall be the class or classes with the greater number of Trustees.

Section 2.03 Qualifications of Trustees.

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

Section 2.04 Election of Trustees.

Subject to Section 2.03 and Section 2.06, the election of the Trustees shall be by the vote of Unitholders. An individual who is elected or appointed to hold office as a Trustee (other than an individual who is serving as a Trustee immediately prior to such appointment or election) is not a Trustee and is deemed not to have been elected or appointed to hold office as a Trustee unless:

- (a) he was present at the meeting when the election or appointment took place and he did not refuse to hold office as a Trustee; or
- (b) he was not present at the meeting when the election or appointment took place and (i) he consented in writing before the election or appointment or within ten days after it to hold office as a Trustee and be bound by the terms of this Declaration of Trust, or (ii) he has acted as a Trustee pursuant to the election or appointment.

Section 2.05 Resignation, Removal and Death of Trustees.

A Trustee may resign at any time by an instrument in writing signed by him and delivered or mailed to the President or Secretary. Such resignation shall take effect on the date such notice is given or at any later time specified in the notice. A Trustee may be removed at any time with or without cause by two-thirds of the votes cast at a meeting of Unitholders called for that purpose or by the written consent of Unitholders holding in the aggregate not less than two-thirds of the outstanding Units entitled to vote thereon or with cause by the resolution passed by an affirmative vote of not less than two-thirds of the remaining Trustees. Any removal of a Trustee shall take effect immediately following the aforesaid vote or resolution and any Trustee so removed shall be so notified by the Secretary or another officer of the Trust forthwith following such removal. Upon the resignation or removal of any Trustee, or his otherwise ceasing to be a Trustee, he shall (i) cease to have the rights, privileges and powers of Trustees hereunder, (ii) execute and deliver such documents as the remaining Trustees shall reasonably require for the conveyance of any Trust property held in his name, (iii) account to the remaining Trustees as they may require for all property which he holds as Trustee and (iv) resign from all representative or other positions held by him on behalf of the Trust, including without limitation, as a director or officer of any corporation in which the Trust owns any securities (directly or indirectly), upon which he shall thereupon be discharged of his obligations 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 2.06 Vacancies.

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

Section 2.07 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 2.05 or otherwise.

Section 2.08 Compensation and Other Remuneration.

Trustees who are not employees of and who do not receive salary from the Trust or the Property Manager or their respective affiliates shall be entitled to receive for their services as Trustees such reasonable compensation as the Trustees may determine from time to time, as well as reimbursement of their out-of-pocket expenses incurred in acting as a Trustee. Such Trustees, either directly or indirectly, shall also be entitled to receive remuneration for services rendered to the Trust in any other capacity. Such services may include, without limitation, services as an officer of the Trust, legal, accounting or other professional services or services as a broker, transfer agent or underwriter, whether performed by a Trustee or any person affiliated with a Trustee. Trustees who are employees of and who receive salary from the Trust or the Property Manager or their respective affiliates shall not be entitled to receive any remuneration for their services as Trustees but shall be entitled to reimbursement from the Trust of their out-of-pocket expenses incurred in acting as a Trustee.

Section 2.09 Officers of the Trust.

The Trust may have a Chairman, an Honorary Chairman, a Chief Executive Officer, a Chief Financial Officer, a President, one or more Executive Vice-Presidents, one or more Senior Vice-Presidents, one or more Vice-Presidents and a Secretary and such other officers as the Trustees may appoint from time to time. One person may hold two or more offices. Any officer of the Trust may, but need not, be a Trustee or a person who is an Associate, director, officer or employee of the Property Manager or any affiliate thereof. Each of the Chairman and the Honorary Chairman, if not a Trustee, shall be entitled to receive notice of and attend all meetings of the Trustees but, unless he is a Trustee, neither the Chairman nor the Honorary Chairman shall be entitled to vote at any such meeting. Officers of the Trust shall be appointed and discharged and their remuneration determined by the Trustees. Officers of the Trust, in their capacities as such, shall not perform any duties performed by any property manager.

**ARTICLE III  
TRUSTEES' POWERS AND DUTIES**

Section 3.01 General Powers.

The Trustees, subject only to the specific limitations contained in this Declaration of Trust, including without limitation Section 4.01 and Section 4.02, 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 affairs of the Trust to the same extent as if the Trustees were the sole owners of such assets in their own right, to do all such acts and things as in their sole judgment and discretion are necessary or incidental to, or desirable for, the carrying out of any of the purposes of the Trust or the conducting of the affairs of the Trust. In construing the provisions of this Declaration of Trust, presumption shall be in favour of the granted powers and authority to the Trustees. The enumeration of any specific power or authority herein shall not be construed as limiting the

general powers or authority or any other specified power or authority conferred herein on the Trustees. Except as specifically required by such laws, the Trustees 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 3.02 Specific Powers and Authorities.

Subject only to the express limitations contained in this Declaration of Trust including, without limitation Section 4.01 and Section 4.02, 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, 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 any mortgages. In connection with any such investment, purchase or acquisition, the Trustees shall have the power to acquire a share of rents, lease payments or other gross income from or a share of the profits from or a share in the equity or ownership of real property.
- (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 from or incur indebtedness to any person; to guarantee, indemnify or act as surety with respect to payment or performance of obligations of third parties; to enter into other obligations on behalf of the Trust; and to

assign, convey, transfer, mortgage, subordinate, pledge, grant security interests in, encumber or hypothecate the property of the Trust to secure any of the foregoing.

- (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 affairs of the Trust including, without limitation, taxes or other governmental levies, charges and assessments of whatever kind or nature, imposed upon or against the Trustees in connection with the Trust or the property of the Trust or upon or against the property of the Trust or any part thereof and for any of the purposes herein.
- (h) To deposit funds of the Trust in banks, trust companies and other depositories, whether or not such deposits will earn interest, the same to be subject to withdrawal on such terms and in such manner and by such person or persons (including any one or more Trustees, officers, 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 Chairman, an Honorary Chairman, a President, one or more Executive Vice-Presidents, one or more Senior Vice-Presidents, one or more Vice-Presidents and a Secretary and other officers as the Trustees may determine), who may be removed or discharged at the discretion of the Trustees, such officers to have 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 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 of the Trust against any and all claims and liabilities of any nature asserted by any person arising by reason of any action alleged to have been taken or omitted by the Trust or by the Trustees, the Unitholders or the 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 by and/or in the name of the Trust or one or more of the Trustees or any other person, on such terms, in such manner with such powers in such person as the Trustees may determine and with or without disclosure that the Trust or Trustees are interested therein provided, however, that should legal title to any of the assets of the Trust be held by and/or in the name of any person or persons other than the Trust, the Trustees shall require such person or persons to execute a declaration of trust acknowledging that legal title to such assets is held in trust for the benefit of the Trust.
- (o) To determine conclusively the allocation to capital, income or other appropriate accounts all receipts, expenses, disbursements and property of the Trust.
- (p) To pay all taxes or assessments, of whatever kind or nature, whether within or outside Canada, imposed upon or against the Trustees in connection with the Trust's property, undertaking or income of the Trust, or imposed upon or against the Trust's property, undertaking or income of the Trust, or any part thereof, and to settle or compromise disputed tax liabilities and for the foregoing purposes to make such returns, take such deductions, and make such designations, elections and determinations in respect of net income or net realized capital gains distributed to Unitholders in the year and any other matter as shall be permitted under the Tax Act (provided that to the extent necessary the Trustees will seek the advice of the Trust's legal counsel or the Trust's auditors), and do all such other acts and things as may be deemed by the Trustees in their sole discretion to be necessary, desirable or convenient.
- (q) 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 or other securities issued or held by the Trust and to pay the cost thereof and related thereto out of the property of the Trust whether or not such offering is or was of direct benefit to the Trust or those persons (if any) who were Unitholders immediately prior to such offering.

- (r) To make or cause to be made application for the listing on any stock exchange of any Units or other securities of the Trust, and to do all things which in the opinion of the Trustees may be necessary or desirable to effect or maintain such listing or listings.
- (s) To determine conclusively the value of any or all of the property of the Trust from time to time and, in determining such value, to consider such information and advice as the Trustees, in their sole judgment, may deem material and reliable.
- (t) To do all such acts and things and to exercise such powers which are delegated to the Trustees by any person who co-owns real property with the Trust.
- (u) To do all such other acts and things as are incidental to the foregoing, and to exercise all powers which are necessary or useful to carry on the business of the Trust, to promote any of the purposes for which the Trust is formed and to carry out the provisions of this Declaration of Trust.

Section 3.03 Further Powers of the Trustees.

The Trustees shall have the power to prescribe any form provided for or contemplated by this Declaration of Trust. The Trustees may make, adopt, amend, or repeal regulations containing provisions relating to the Trust, the conduct of its affairs, their rights or powers and the rights or powers of its 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 3.04 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 affairs of the Trust.

For greater certainty, to the extent that the Trustees have contracted or delegated the performance of all or a portion of their activities to the Property Manager or any other property manager, they shall be deemed to have satisfied the aforesaid standard of care. For greater certainty, the entering into of the Property Management Agreements is and shall be deemed to be in the best interests of the Trust and the Unitholders.

Section 3.05 Reliance Upon Trustees.

Any person dealing with the Trust in respect of any matters pertaining to the assets of the Trust and any right, title or interest therein or to the Trust or to securities of the Trust shall be entitled to rely on a certificate or statutory declaration (including, without limiting the foregoing, a certificate or statutory declaration as to the passing of a resolution of the Trustees) executed by any two Trustees or the Secretary or, without limiting the foregoing, such other person as may be authorized by the Trustees as to the capacity, power and authority of the Trustees or any other person to act for and on behalf and in the name of the Trust. No person dealing with the Trustees shall be bound to see to the application of any funds or property passing into the hands or control of the Trustees. The receipt by or on behalf of the Trustees for monies or other consideration shall be binding upon the Trust.

Section 3.06 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, registered disability savings plan, registered education savings plan, tax-free savings account or registered pension fund or plan as defined in the *Income Tax Act* (Canada), or other such fund or plan registered under the *Income Tax Act* (Canada), upon plan beneficiaries and plan holders past, present and future) and 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 3.07 Conflict of Interest.

If a Trustee or an officer of the Trust:

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

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

- (c) 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 becomes a Trustee.
- (d) The disclosure required in the case of an officer of the Trust who is not a Trustee:
  - (i) immediately after such person becomes aware that the contract or transaction or proposed contract or transaction is to be considered or has been considered at a meeting of the Trustees or the Investment Committee;
  - (ii) if such person becomes interested after a contract is made or a transaction is entered to, immediately after such person becomes so interested; or
  - (iii) if a person who is interested in a contract or transaction later becomes an officer of the Trust who is not a Trustee, immediately after he becomes an officer of the Trust.
- (e) Notwithstanding subsections 3.07(c) and 3.07(d), where this Section applies to any person in respect of a material contract or transaction or proposed material contract or transaction that, in the ordinary course of the affairs of the Trust, would not require approval by the Trustees or the Unitholders, such person shall disclose in writing to the Trustees or request to have entered into the minutes of meetings of the Trustees the nature and extent of such person's interest immediately after such person becomes aware of the contract or transaction or proposed contract or transaction.
- (f) A Trustee referred to in this Section shall not vote on any resolution to approve the said contract or transaction unless the contract or transaction is:
  - (i) one relating primarily to his remuneration as a Trustee, officer, employee or agent of the Trust; or
  - (ii) one for indemnity under Section 14.01 hereof or the purchase of liability insurance.
- (g) For the purposes hereof, a general notice to the Trustees by a Trustee or an officer of the Trust disclosing that he or it is a director or officer of or has a material interest in a person and is to be regarded as interested in any contract made or any transaction entered into with that person, is a sufficient disclosure of interest in relation to any contract so made or transaction so entered into. In the event that a meeting of Unitholders is called to confirm or approve a contract or transaction which is the subject of a general notice to the Trustees, the notice and extent of

the interest in the contract or transaction of the person giving such general notice shall be disclosed in reasonable detail in the notice calling the said meeting of Unitholders or in any information circular required to be provided by this Declaration of Trust or by law.

(h) Where a material contract is made or a material transaction is entered into between the Trust and a Trustee or an officer of the Trust, or between the Trust and another person of which a Trustee or an officer of the Trust is a director or officer of or in which he or it has a material interest:

- (i) such person 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 not invalid,

by reason only of that relationship or by reason only that such person is present at or is counted to determine whether a quorum existed at the meeting of the Trustees or Investment Committee that authorized the contract or transaction, if such person disclosed his interest in accordance with this Section 3.07, and the contract or transaction was reasonable and fair to the Trust at the time it was so approved.

(i) Notwithstanding anything in this Section, but without limiting the effect of subsection 3.07(h), a Trustee or an officer of the Trust, acting honestly and in good faith, is not accountable to the Trust or to the Unitholders for any profit or gain realized from any such contract or transaction, and the contract or transaction is not invalid by reason only of such person's interest in the contract or transaction, if:

- (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 such person's interest in the contract or transaction are disclosed in reasonable detail, sufficient to indicate its nature, in the notice calling the meeting or in any information circular required to be provided by this Declaration of Trust or by law.

(j) Subject to subsections 3.07(h) and 3.07(i), where a Trustee or an officer of the Trust fails to disclose his or its 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 or directing that such person account to the Trust for any profit or gain realized, or do both those things.

**ARTICLE IV**  
**INVESTMENT GUIDELINES AND OPERATING POLICIES**

Section 4.01 Investment Guidelines.

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

- (a) the Trust will focus its acquisition activities on existing income-producing properties, including office, retail and industrial properties, that are substantially leased;
- (b) notwithstanding any other provision of this Article IV, the Trust shall not make any investment, take any action or omit to take any action where such investment, action or omission, as the case may be, would result in Units of the Trust not being units of a “mutual fund trust” within the meaning of the Tax Act, that would result in Units not being qualified investments under the Tax Act for registered retirement savings plans, registered retirement income funds, deferred profit sharing plans, registered education savings plans, registered disability savings plans and tax-free savings accounts, or that would result in the Trust being liable to pay tax under the registered investment provisions of the Tax Act imposed for exceeding certain investment limits;
- (c) the Trust may invest in a joint venture arrangement only if:
  - (i) the arrangement is one pursuant to which the Trust holds an interest in real property jointly or in common with others (“**joint venturers**”) either directly or through the ownership of securities of a corporation or other entity (a “**joint venture entity**”) as co-owners and not as partners;
  - (ii) the Trust’s interest in the joint venture arrangement is not subject to any restriction on transfer other than a right of first refusal, if any, in favour of the joint venturers;
  - (iii) the Trust has a right of first refusal to buy the interests of the other joint venturers;
  - (iv) the joint venture arrangement provides an appropriate buy-sell mechanism to enable a joint venturer to purchase the other joint venturers’ interests or to sell its interest; and
  - (v) the joint venture arrangement provides that the liability of the Trust to third parties is several and not joint and several, provided however, that subject to any remedies that each joint venturer may have against the other joint venturers, a joint venturer may be required to give up its interest in any particular property owned by the joint venture entity as a result of another joint venturer’s failure to honour its proportionate share of the obligations relating to such property,

provided that the foregoing does not apply to the Co-Owners Agreements;

- (d) except for temporary investments held in cash, deposits with any regulated bank, trust company or deposit taking institution, short-term government debt securities, some or all of the receivables under instalment receipt agreements or in money market instruments of, or guaranteed by any such bank, trust company or deposit taking institution maturing prior to one year from the date of issue or except as permitted pursuant to subsections 4.01(g), 4.01(h), 4.01(i) and 4.01(j), the Trust may not hold securities of another issuer unless either:
  - (i) such securities derive their value, directly or indirectly, principally from real property; or
  - (ii) the principal business of the issuer of the securities is the ownership or operation, directly or indirectly, of real property(in each case as determined by the Trustees);
- (e) except as otherwise prohibited in this Declaration of Trust, the Trust may invest, directly or indirectly, in interests (including fee ownership and leasehold interests) in income-producing real property;
- (f) 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;
- (g) the Trust shall not invest in operating businesses (unless such investment is incidental to a transaction (i) where revenue will be derived, directly or indirectly, principally from real property, or (ii) which principally involves the ownership or operation, directly or indirectly, of real property (in each case as determined by the Trustees)) or acquire interests in general partnerships or limited partnerships provided that the Trust may invest in TT Portfolio LP, or any other partnership if:
  - (i) the partnership is formed and operated solely for the purpose of acquiring, holding, maintaining, improving, leasing or managing a particular real property or properties or interests therein;
  - (ii) except as a majority of the Independent Trustees may otherwise approve, the Trust's interest in the partnership is not subject to any restriction on transfer other than a right of first refusal or right of first offer, if any, in favour of any other partner or any affiliate thereof; and
  - (iii) the Trust has received a legal opinion to the effect that the Trust would not lose its status as a "mutual fund trust" within the meaning of the Tax Act or any other status under the Tax Act that is otherwise beneficial to the Trust and its Unitholders solely as a result of the Trust having made the investment;

- (h) the Trust may invest in raw land for development or other development projects for the purpose of:
  - (i) the renovation or expansion of existing facilities; or
  - (ii) the development of new facilities which will, upon completion, be income-producing.

In furtherance of subsection 4.01(h)(ii), without limiting the generality of subsection 4.01(d) and notwithstanding the provisions of subsections 4.01(i) and 4.01(j) below, the Trust may invest in mortgages (including participating or convertible mortgages) granted by:

- (A) an entity directly or indirectly wholly owned by the Trust or jointly by the Trust with a joint venturer;
- (B) a joint venturer; or
- (C) provided that the Trust has an option or a right to acquire an interest in the project, an entity which owns any such development project,

in each case secured against the real property underlying any such development project and may continue to hold such mortgages following completion of the project.

Notwithstanding subsection 4.01(h)(ii) above, the Trust may only commence funding the actual construction phase of any such new facility, or any phase thereof, upon satisfactory leasing or pre-leasing arrangements (as determined by the Trustees in their discretion) being in place for not less than 70% of the net rentable area of such facility, or any phase thereof, as the case may be;

- (i) the Trust may invest in mortgages and mortgage bonds (including, with the consent of a majority of the Trustees, a participating or convertible mortgage) where:
  - (i) the real property which is security therefor is income-producing real property which otherwise meets the general guidelines of the Trust adopted by the Trustees from time to time in accordance with this Declaration of Trust and the restrictions set out therein;
  - (ii) the amount of the mortgage loan is not in excess of 75% of the market value of the property securing the mortgage and the mortgage has at least 1.2X debt service coverage;
  - (iii) the mortgage is a first mortgage registered on title to the real property which is security therefor; and

- (iv) the aggregate value of the investments of the Trust in these mortgages, after giving effect to the proposed investment, will not exceed 20% of the Adjusted Unitholders' Equity;
- (j) the Trust may invest in mortgages if 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 guidelines of the Trust and provided the aggregate value of the investments of the Trust in these mortgages, after giving effect to the proposed investment, will not exceed 20% of Adjusted Unitholders' Equity; and
- (k) subject to subsection 4.01(b), the Trust may invest an amount (which, in the case of an amount invested to acquire real property, is the purchase price less the amount of any indebtedness assumed or incurred by the Trust and secured by a mortgage on such property) up to 15% of the Adjusted Unitholders' Equity of the Trust in investments or transactions which do not comply with subsections 4.01(d), 4.01(e), 4.01(h), 4.01(i), and 4.01(j) above or subsection 4.02(d).

For the purpose of the foregoing guidelines (other than Section 4.01(b)), the assets, liabilities and transactions of a corporation or other entity wholly or partially owned by the Trust will be deemed to be those of the Trust on a proportionate consolidation basis. In addition, any references in the foregoing to investment in real property will be deemed to include an investment in a joint venture arrangement. Nothing in the guidelines (other than Section 4.01(b)) prohibits the Trust from holding some or all of the receivables due pursuant to instalment receipt agreements.

#### Section 4.02 Operating Policies.

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

- (a) (i) any written instrument creating an obligation which is or includes the granting by the Trust of a mortgage, and (ii) to the extent the Trustees determine to be practicable and consistent with their fiduciary duty to act in the best interests of the Unitholders, any written instrument which is, in the judgment of the Trustees, a material obligation, shall contain a provision or be subject to an acknowledgement to the effect that the obligation being created is not personally binding upon, and that resort shall not be had to, nor shall recourse or satisfaction be sought from, the private property of any of the Trustees, Unitholders, annuitants under a plan of which a Unitholder acts as a trustee or carrier, or officers, employees or agents of the Trust, but that only property of the Trust or a specific portion thereof shall be bound; the Trust, however, is not required, but shall use all reasonable efforts, to comply with this requirement in respect of obligations assumed by the Trust upon the acquisition of real property;
- (b) 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 an

aggregate gross leasable area in excess of 20% of the aggregate gross leasable area of all real property held by the Trust;

- (c) the limitation contained in subsection 4.02(b) shall not apply to the renewal of a lease or sublease and shall not apply where the lessee or sublessee is, or where the lease or sublease is guaranteed by:
  - (i) the Government of Canada, the Government of the United States, any province of Canada, any state of the United States or any municipality in Canada or the United States, or any agency thereof; or
  - (ii) any issuer, of which any of the bonds, debentures or other evidences of indebtedness or any other securities of or guaranteed by which are:
    - (A) authorized as an investment for insurance companies pursuant to subsection 86(1)(k) of the *Canadian and British Insurance Companies Act* in effect on December 31, 1991; or
    - (B) have received and continue to hold an “investment grade” rating from at least one recognized credit rating agency,

in each case at the time the lease or sublease is entered into, or at the time other satisfactory leasing or pre-leasing arrangements (as determined by the Trustees in their discretion) were entered into. In the case of an investment permitted pursuant to subsection 4.01(h)(ii)(C) above, the foregoing may be determined at the time that the option or right to acquire an interest in the project is granted; or
- (iii) a Canadian chartered bank registered under the laws of a province of Canada;
- (d) in addition to the provisions of subsection 4.01(h), the Trust may engage in construction or development of real property in order to maintain its real properties in good repair or to enhance the income-producing potential of properties in which the Trust has an interest;
- (e) except for real property held by a corporation or other entity partially owned by the Trust, title to each real property shall be held by and registered in the name of the Trust, the Trustees or in the name of a corporation or other entity wholly-owned, directly or indirectly, by the Trust or jointly, directly or indirectly, by the Trust with joint venturers;
- (f) the Trust shall not incur or assume any indebtedness if, after giving effect to the incurring or assumption of the indebtedness, the total indebtedness of the Trust would be more than 65% of the Gross Book Value; for the purposes of this subsection, the term “indebtedness” means (without duplication) on a consolidated basis:

- (i) any obligation of the Trust for borrowed money;
- (ii) any obligation of the Trust incurred in connection with the acquisition of property, assets or business;
- (iii) any obligation of the Trust issued or assumed as the deferred purchase price of property;
- (iv) any capital lease obligation of the Trust; and
- (v) any obligation of the type referred to in subsections 4.02(f)(i) through 4.02(f)(iv) of another person, the payment of which the Trust has guaranteed or for which the Trust is responsible or liable, other than such an obligation in connection with a property that has been disposed of by the Trust for which the purchaser has assumed such obligations on a primary obligor basis and provided the Trust with an indemnity or similar arrangement therefor;

provided that (A) for the purposes of subsections 4.02(f)(i) through 4.02(f)(iv), an obligation will constitute indebtedness only to the extent that it would appear as liability on the consolidated balance sheet of the Trust in accordance with generally accepted accounting principles, (B) obligations referred to in subsections 4.02(f)(i) through 4.02(f)(iii) exclude trade accounts payable, distributions payable to Unitholders and accrued liabilities arising in the ordinary course of business, (C) obligations referred to in subsection 4.02(f)(v) exclude those of another person who is a joint venture partner with the Trust in a joint venture arrangement that is in compliance with the Trust's investment guideline regarding joint venture arrangements and (D) "indebtedness" does not include (1) convertible debt instruments issued by the Trust under which the principal amount owing may be satisfied by the Trust through the issuance of Units and/or, prior to any Event of Uncoupling, the issuance by H&R Finance of Units of H&R Finance, (2) debt secured against instalment receipts, (3) any amount owing pursuant to the U.S. Holdco Notes, or (4) any debt similar to (1) or (2) above;

- (g) except as may be contemplated by the Co-Owners Agreements, the Trust shall not directly or indirectly guarantee any indebtedness or liabilities of any person unless such guarantee:
  - (i) is given in connection with or incidental to an investment that is otherwise permitted under Section 4.01;
  - (ii) has been approved by a majority of the Independent Trustees; and
  - (iii) (A) would not disqualify the Trust as a "mutual fund trust" within the meaning of the Tax Act, and (B) would not result in the Trust losing any other status under the Tax Act that is otherwise beneficial to the Trust and its Unitholders;

- (h) for each property so determined by the Investment Committee in its sole discretion, the Trust shall prior to the acquisition thereof by the Trust obtain an independent appraisal of such property;
- (i) the Trust shall obtain and maintain at all times insurance coverage in respect of potential liabilities of the Trust and the accidental loss of value of the assets of the Trust from risks, in amounts, with such insurers, and on such terms as the Trustees consider appropriate, taking into account all relevant factors including the practices of owners of comparable properties; and
- (j) the Trust shall have conducted a Phase I environmental audit of each real property to be acquired by it and, if the Phase I environmental audit report recommends a Phase II environmental audit be conducted, the Trust shall have conducted a Phase II environmental audit, in each case by an independent and experienced environmental consultant; such audit as a condition to any acquisition, shall be satisfactory to the Trustees. All new leases granted by the Trust shall contain appropriate covenants from the lessee respecting environmental matters as determined by the Trustees from time to time.

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

**Section 4.03 Regulatory Matters.**

If at any time a government or regulatory authority having jurisdiction over the Trust or any property of the Trust shall enact any law, regulation or requirement which is in conflict with any investment restriction of the Trust then in force, such restriction in conflict shall, if the Trustees on the advice of legal counsel to the Trust so resolve, be deemed to have been amended to the extent necessary to resolve any such conflict and, notwithstanding anything to the contrary herein contained, any such resolution of the Trustees shall not require the prior approval of Unitholders.

**ARTICLE V  
TRUST UNITS**

**Section 5.01 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. Each Unit when issued shall vest indefeasibly in the holder thereof. Subject to applicable regulatory approval, the issued and outstanding Units may be subdivided or consolidated from time to time by the Trustees.

Section 5.02 Ranking of Units.

Each Unit shall represent an equal undivided 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 assets of the Trust remaining after satisfaction of all liabilities and no Unit shall have any preference or priority over any other.

Section 5.03 Consideration for Units.

Subject to the last sentence of this Section 5.03, 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. Units may be issued and sold on an instalment basis, in which event beneficial ownership of such Units may be represented by instalment receipts, but shall otherwise be non-assessable.

Section 5.04 No Pre-Emptive Rights.

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

Section 5.05 Fractional Units.

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 5.06 Legal Ownership of Assets of the Trust.

The legal ownership of the assets of the Trust and the right to conduct the affairs of the Trust are vested exclusively in the Trustees, and the Unitholders shall have no interest therein other than the beneficial interest in the Trust conferred by their Units issued hereunder as described in Section 1.05, 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 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 5.07 Allotment and Issue.

Subject to Sections 5.03, 5.10, and 5.11, 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 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 5.08 Rights, Warrants and Options.

The Trustees may create and issue rights, warrants or options to subscribe for fully paid Units which rights, warrants or options may be exercisable at such subscription price or prices and at such time or times as the Trustees may determine. The rights, warrants or options so created may be issued for such consideration or for no consideration, all as the Trustees may determine. A right, warrant or option shall not be a Unit and a holder thereof shall not be a Unitholder. Upon the approval by the Trustees of any unit option plan for trustees, officers and/or employees of the Trust, the Compensation and Governance Committee may, upon receiving authority from the Trustees, grant options upon the terms and subject to the conditions set forth in such plan. Provided that an Event of Uncoupling has not occurred, the Trustees may create and issue rights, warrants, or options to acquire Units of H&R Finance from H&R Finance. In addition, provided an Event of Uncoupling has not occurred, the Trustees may incur indebtedness exchangeable at the option of the creditor into Stapled Units.

Section 5.09 Commissions and Discounts.

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

Section 5.10 Transferability and Stapling.

(1) The Units are freely transferable and, other than as provided herein, the Trustees shall not impose any restriction on the transfer of Units. Provided that an Event of Uncoupling has not occurred: (a) each Unit may be transferred only together with a Unit of H&R Finance (b) no Unit may be issued by the Trust to any person unless (i) a Unit of H&R Finance is simultaneously issued to such person, or (ii) the Trust has arranged that Units will be consolidated (subject to any applicable regulatory approval) immediately after such issuance, such that each holder of a Unit will hold an equal number of Units and Units of H&R Finance immediately following such consolidation, and (c) as provided in Section 10.01, a Unitholder may require the Trust to redeem any particular number of Units only if it also requires, at the same time, and in accordance with the provisions of the H&R Finance Declaration of Trust, H&R Finance to redeem that same number of Units of H&R Finance.

(2) An **Event of Uncoupling** shall occur only: (a) in the event that Unitholders vote in favour of the uncoupling of Units and Units of H&R Finance such that the

two securities will trade separately; or (b) at the sole discretion of the trustees of H&R Finance, but only in the event of the bankruptcy, insolvency, winding-up or reorganization (under an applicable law relating to insolvency) of the Trust or H&R REIT (U.S.) or the taking of corporate action by the Trust or H&R REIT (U.S.) in furtherance of any such action or the admitting in writing by the Trust or H&R REIT (U.S.) of its inability to pay its debts generally as they become due. The Trustees shall use all reasonable efforts to obtain and maintain a listing for the Units and, unless an Event of Uncoupling has occurred, the Stapled Units, on one or more stock exchanges in Canada.

(3) Provided that an Event of Uncoupling has not occurred, in the event that H&R Finance:

- (i) subdivides, redivides or changes the then outstanding Units of H&R Finance into a greater number of Units of H&R Finance; or
- (ii) reduces, combines, consolidates or changes the then outstanding Units of H&R Finance into a lesser number of Units of H&R Finance; or
- (iii) reclassifies or otherwise changes the Units of H&R Finance;

(collectively, a “**Change to the Units of H&R Finance**”), the Trust (subject to any applicable regulatory approval) shall cause a corresponding change to simultaneously be made to, or in, the rights of the holders of the Units unless such Change to the Units of H&R Finance does not result in a holder of a Unit of H&R Finance holding an unequal number of Units of H&R Finance and Units, provided that, for the avoidance of doubt, this Section 5.10(3) shall not apply solely because of a distribution by H&R Finance in the form of Units of H&R Finance which is followed immediately by a consolidation after which each holder of a Unit holds an equal number of Units of H&R Finance.

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

At no time may non-residents of Canada (within the meaning of the Tax Act) and/or partnerships that are not “Canadian partnerships” within the meaning of the Tax Act (collectively, “**Non-Residents**”) be the beneficial owners of 49% or more of the Units and the Trustees shall inform the transfer agent and registrar of this restriction. The transfer agent and registrar may require declarations as to the jurisdictions in which beneficial owners of Units are resident. If the transfer agent and registrar becomes aware, as a result of requiring such declarations as to beneficial ownership, that the beneficial owners of 49% or more of the Units then outstanding are, or may be, Non-Residents or that such a situation is imminent, the transfer agent and registrar will advise the Trustees and, upon receiving direction from the Trustees, may make a public announcement thereof and shall not accept a subscription for Units from or issue or register a transfer of Units to a person unless the person provides a declaration that the person is not a Non-Resident. If, notwithstanding the foregoing, the transfer agent and registrar determines that 49% or more of the Units are held by Non-Residents, the transfer agent and registrar may, upon receiving a direction and suitable indemnity from the Trustees, send a notice to registered Non-Resident holders of Units, chosen in inverse order to the order of acquisition or registration or in such manner as the Trustees may consider equitable and practicable, requiring

them to sell their Units (or, prior to an Event of Uncoupling, Stapled Units) or a portion thereof within a specified period of not less than 60 days. If the Unitholders receiving such notice have not sold the specified number of Units (or, prior to an Event of Uncoupling, Stapled Units) or provided the Trustees with satisfactory evidence that they are not Non-Residents within such period, the transfer agent and registrar, upon receiving a direction from the Trustees, may on behalf of such Unitholders sell such Units (or, prior to an Event of Uncoupling, Stapled Units) and, in the interim, shall suspend the voting and distribution rights attached to such Units. Upon such sale the affected holders shall cease to be holders of Units (or, prior to an Event of Uncoupling, Stapled Units) and their rights shall be limited to receiving the net proceeds of sale upon surrender of the certificate representing such Units (or, prior to an Event of Uncoupling, Stapled Units).

The Trustees' Regulations may include provisions to implement the foregoing.

#### Section 5.12 Certificates.

Each Unitholder or his duly authorized agent is entitled to a certificate bearing an identifying serial number in respect of the Stapled 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 Stapled Unit or Stapled 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 Stapled Units. If an Event of Uncoupling has occurred, all references to "Stapled Units" in this Section 5.12 shall be read as references to "Units".

#### Section 5.13 Certificate Fee.

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

#### Section 5.14 Form of Certificate.

The form of certificate representing Units shall be in such form as is from time to time authorized by the Trustees. The form of certificate representing Stapled Units shall be in such form as is from time to time authorized by the Trustees. An existing certificate representing Units may be exchanged at any time for a new form of certificate representing a number of Stapled Units equal to the number of Units that such existing certificate represents.

#### Section 5.15 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 Stapled Units held by them, the certificate numbers of the certificates of such Stapled 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 Stapled Units in one or more places within Canada. In the event of such appointment, such transfer agents and registrars shall keep all necessary registers and other books (which may be kept in a bound or looseleaf book or may be entered or recorded by any system of mechanical or electronic data processing or any other information storage device)

for recording original issues and registering and transferring the Stapled Units. If the Trustees have appointed a registrar and transfer agent for its Stapled Units, no certificate for Stapled Units shall be valid unless countersigned by or on behalf of a transfer agent and/or registrar. Only persons 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. If an Event of Uncoupling has occurred, all references to “Stapled Units” in this Section 5.15 shall be read as references to “Units”.

Section 5.16 Entry on Register.

Upon any issue of Stapled Units, the name of the subscriber shall be promptly entered on the Register as the owner of the number of Stapled Units issued to such subscriber, or if the subscriber is already a Unitholder, the Register shall be amended to include his additional Stapled Units. If an Event of Uncoupling has occurred, all references to “Stapled Units” in this Section 5.16 shall be read as references to “Units”.

Section 5.17 Transfer of Units of H&R Finance.

Subject to the restriction in Section 5.10 hereof, 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 Stapled 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 Stapled Unit certificate, and the transferee has delivered to the transfer agent and/or registrar a Stapled Unit certificate representing the Stapled Units transferred. Subject to the foregoing, transfers shall be recorded on the Register and a new certificate for the Stapled Units so transferred shall be issued to the transferee and in case of a transfer of only part of the Stapled Units represented by any certificate, a new certificate for the remaining Stapled Units shall be issued to the transferor. If an Event of Uncoupling has occurred, all references to “Stapled Units” in this Section 5.17 shall be read as references to “Units”.

Section 5.18 Successors in Interest to Unitholders.

Any person becoming entitled to any Stapled Units as a consequence of the death, bankruptcy or incompetence of any Unitholder or otherwise by operation of law shall be recorded in the Register as the holder of such Stapled 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 of 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 Stapled Units for all purposes whether or not the Trust, the Trustees or the transfer agent or registrar of the Trust shall have actual or other notice of such death, bankruptcy, incompetence or other event. If an Event of Uncoupling has occurred, all references to “Stapled Units” in this Section 5.18 shall be read as references to “Units”.

Section 5.19 Stapled Units Held Jointly or in Fiduciary Capacity.

The Trust may treat two or more persons holding any Stapled Unit as joint tenants of the entire interest therein unless the ownership is expressly otherwise recorded on the Register of the Trust, but no entry shall be made in the Register or on any certificate that any person is in any other manner entitled to any future, limited or contingent interest in any Stapled Unit; provided, however, that any person recorded in the Register as a Unitholder may, subject to the provisions herein contained, be described in the Register or on any certificate as a fiduciary of any kind and any customary words may be added to the description of the holder to identify the nature of such fiduciary relationship. If an Event of Uncoupling has occurred, all references to “Stapled Units” in this Section 5.19 shall be read as references to “Units”.

Section 5.20 Performance of Trusts.

None of the Trustees, officers of the Trust, Unitholders or any transfer agent or other agent of the Trust or the Trustees shall have a duty to inquire into any claim that a transfer of a Unit or other security of the Trust was or would be wrongful or that a particular adverse person is the owner of or has an interest in the Unit or other security or any other adverse claim, or be bound to see to the performance of any trust, express, implied or constructive, or of any charge, pledge or equity to which any of the Units or other securities or any interest therein are or may be subject, or to ascertain or inquire whether any sale or transfer of any such Units or other securities or interest therein by any such Unitholder or holder of such security or his personal representatives is authorized by such trust, charge, pledge or equity, or to recognize any person as having any interest therein, except for the person recorded as Unitholder or holder of such security.

Section 5.21 Lost Certificates.

In the event that any certificate for Units or Stapled Units is lost, stolen, destroyed or mutilated, the Trustees may authorize the issuance of a new certificate for the same number of Units or, provided H&R Finance agrees, Stapled Units, as the case may be, 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 owner of the lost, stolen, destroyed or mutilated certificate shall pay all premiums and other sums of money payable for such purpose with such contribution, if any, by those insured as may be determined by the Trustees. If such blanket lost security bond is acquired, the Trustees may authorize and direct (upon such terms and conditions as they from time to time impose) any registrar, transfer agent, trustee or others to whom the indemnity of such bond extends to take such action to replace such lost, stolen, destroyed or mutilated certificates without further action or approval by the Trustees.

Section 5.22 Death of Unitholders.

The death of a Unitholder during the continuance of the Trust shall not terminate the Trust or give the personal representatives or the heirs of the estate of the deceased Unitholder a right to an accounting or to take any action in the courts or otherwise against other Unitholders or the Trustees, officers of the Trust or the property of the Trust, but shall only entitle the personal representatives or the heirs of the estate of the deceased Unitholder to demand and receive, pursuant to the provisions of Section 5.18 hereof, a new certificate for Stapled Units in place of the certificate held by the deceased Unitholder, and upon the acceptance thereof such personal representatives or the heirs of the estate of the deceased Unitholder shall succeed to all rights of the deceased Unitholder under this Declaration of Trust. If an Event of Uncoupling has occurred, all references to “Stapled Units” in this Section 5.22 shall be read as references to “Units”.

Section 5.23 Unclaimed Payments.

In the event that the Trustees hold any amounts to be paid to Unitholders, under Article IX or otherwise because such amounts are unclaimed or cannot be paid for any reason, neither the Trustees nor any distribution disbursing agent shall be under any obligation to invest or reinvest the same and shall only be obligated to hold the same in a current or other non-interest bearing account with a chartered bank or trust company, pending payment to the person or persons entitled thereto. The Trustees shall, as and when required by law, and may at any time prior to such required time, pay all or part of such amounts so held to a court in the province where the Trust has its principal office or to the Public Trustee (or other similar government official or agency) in the province where the Trust has its principal office whose receipt shall be a good acquaintance and discharge of the obligations of the Trustees.

Section 5.24 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 provided that in the case of a purchase of Units for cancellation, if an Event of Uncoupling has not occurred, H&R Finance must purchase for cancellation a corresponding number of Units of H&R Finance in accordance with the provisions of the H&R Finance Declaration of Trust.

Section 5.25 Instalment Receipts.

The Trust shall be entitled to exercise all rights to which it is entitled under instalment receipt agreements in the event of non-payment of the final instalment by a registered holder of an instalment receipt.

Section 5.26 Take-Over Bids.

- (a) If within 120 days after the date of a take-over bid the bid is accepted by the holders of not less than 90 percent of the Stapled Units, other than Stapled Units held at the date of the take-over bid by or on behalf of the offeror or an affiliate or

associate of the offeror, the offeror is entitled, on complying with this Section, to acquire the Stapled Units held by the dissenting offerees.

- (b) An offeror may acquire Stapled Units held by a dissenting offeree by sending by registered mail within 60 days after the date of termination of the take-over bid and in any event within 180 days after the date of the take-over bid, an offeror's notice to each dissenting offeree stating that:
  - (i) the offerees holding more than 90 per cent of the Stapled Units to which the bid relates accepted the take-over bid;
  - (ii) the offeror is bound to take up and pay for or has taken up and paid for the Stapled Units of the offerees who accepted the take-over bid;
  - (iii) a dissenting offeree is required to elect:
    - (A) to transfer his Stapled Units to the offeror on the terms on which the offeror acquired the Stapled Units of the offerees who accepted the take-over bid; or
    - (B) to demand payment of the fair value of his Stapled Units in accordance with subsections 5.26(h) to 5.26(q) by notifying the offeror within 20 days after he receives the offeror's notice;
  - (iv) a dissenting offeree who does not notify the offeror in accordance with subsection 5.26(b)(iii)(B) is deemed to have elected to transfer his Stapled Units to the offeror on the same terms that the offeror acquired the Stapled Units from the offerees who accepted the take-over bid; and
  - (v) a dissenting offeree must send his Stapled Units to which the take-over bid relates to the Trust within 20 days after he receives the offeror's notice.
- (c) Concurrently with sending the offeror's notice under subsection 5.26(b), the offeror shall send to the Trust and H&R Finance a notice of adverse claim disclosing the name and address of the offeror and the name of the dissenting offeree with respect to each Stapled Unit held by a dissenting offeree.
- (d) A dissenting offeree to whom an offeror's notice is sent under subsection 5.26(b) shall, within 20 days after he receives that notice, send the certificates representing his Stapled Units to the Trust.
- (e) Within 20 days after the offeror sends an offeror's notice under subsection 5.26(b), the offeror shall pay or transfer to the Trust the amount of money or other consideration that the offeror would have had to pay or transfer to a dissenting offeree if the dissenting offeree had elected to accept the take-over bid under subsection 5.26(b)(iii)(A).

- (f) The Trust is deemed to hold in trust for the dissenting Unitholder the money or other consideration it receives under subsection 5.26(e), 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.
- (g) Within 30 days after the offeror sends an offeror's notice under subsection 5.26(b), the Trust shall:
  - (i) issue to the offeror a certificate in respect of the Units and, provided the Trust is directed to do so by H&R Finance, Units of H&R Finance, that were held by dissenting offerees;
  - (ii) give to each dissenting offeree who elects to accept the take-over bid terms under subsection 5.26(b)(iii)(A) and who sends his certificates representing his Stapled Units as required under subsection 5.26(d), the money or other consideration to which he is entitled, disregarding fractional Stapled Units, if any, which may be paid for in money; and
  - (iii) send to each dissenting offeree who has not sent his certificates representing his Stapled Units as required under subsection 5.26(d) a notice stating that:
    - (A) his Stapled Units have been cancelled;
    - (B) 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 Stapled Units; and
    - (C) the Trust will, subject to subsections 5.26(h) to 5.26(q), send that money or other consideration to him forthwith after receiving his Stapled Units.
- (h) If a dissenting offeree has elected to demand payment of the fair value of his Stapled Units under subsection 5.26(b)(iii)(B), the offeror may, within 20 days after it has paid the money or transferred the other consideration under subsection 5.26(e), apply to a court to fix the fair value of the Stapled Units of that dissenting offeree.
- (i) If an offeror fails to apply to a court under subsection 5.26(h), a dissenting offeree may apply to a court for the same purpose within a further period of 20 days.
- (j) Where no application is made to a court under subsection 5.26(i) within the period set out in that subsection, a dissenting offeree is deemed to have elected to transfer his Stapled Units to the offeror on the same terms that the offeror acquired the Stapled Units from the offerees who accepted the take-over bid.

- (k) An application under subsection 5.26(h) or 5.26(i) 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.
- (l) A dissenting offeree is not required to give security for costs in an application made under subsection 5.26(h) or 5.26(i).
- (m) On an application under subsection 5.26(h) or 5.26(i):
  - (i) all dissenting offerees, referred to in subsection 5.26(b)(iii)(B) whose Stapled Units have not been acquired by the offeror shall be joined as parties and shall be bound by the decision of the court; and
  - (ii) the offeror shall notify each affected dissenting offeree of the date, place and consequences of the application and of his right to appear and be heard in person or by counsel.
- (n) On an application to a court under subsection 5.26(h) or 5.26(i) 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 Stapled Units of all dissenting offerees.
- (o) A court may in its discretion appoint one or more appraisers to assist the court to fix a fair value for the Stapled Units of a dissenting offeree.
- (p) The final order of the court shall be made against the offeror in favour of each dissenting offeree and for the amount for his Stapled Units as fixed by the court.
- (q) 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:
  - (i) fix the amount of money or other consideration that is required to be held in trust under subsection 5.26(f);
  - (ii) order that money or other consideration be held in trust by a person other than the Trust; and
  - (iii) allow a reasonable rate of interest on the amount payable to each dissenting offeree from the date he sends or delivers his Unit certificates under subsection 5.26(d) until the date of payment.

If an Event of Uncoupling has occurred, all references to “Stapled Units” in this Section 5.26 shall be read as references to “Units” and the references in this Section 5.26 to H&R Finance and to Units of H&R Finance shall be disregarded.

## **ARTICLE VI MEETINGS OF UNITHOLDERS**

### **Section 6.01 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 auditors of the Trust and transacting such other business as the Trustees may determine or as may properly be brought before the meeting. The annual meeting of Unitholders shall be held after delivery to the Unitholders of the annual report referred to in Section 15.06 and, in any event, within 180 days after the end of each fiscal year of the Trust. Notwithstanding the foregoing, the Trustees may apply to the court for an order extending the time for calling an annual meeting. The annual meeting of Unitholders may be held at the same time and place as the annual meeting of holders of Units of H&R Finance.

### **Section 6.02 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 and any such special meeting of Unitholders may be held coincident with a special meeting of holders of Units of H&R Finance. Unitholders holding in the aggregate not less than 5% of the outstanding Units of the Trust may requisition the Trustees to call a special meeting of the Unitholders for the purposes stated in the requisition. The requisition shall state in reasonable detail the business to be transacted at the meeting and shall be sent to each of the Trustees at the principal office of the Trust. Upon receiving the requisition, the Trustees shall call a meeting of Unitholders to transact the business referred to in the requisition, unless (a) a record date for a meeting of the Unitholders has been fixed and notice thereof has been given to each stock exchange in Canada on which the Units are listed for trading; (b) the Trustees have called a meeting of the Unitholders and have given notice thereof pursuant to Section 6.03; or (c) in connection with the business as stated in the requisition:

- (a) it clearly appears that the matter covered by the requisition submitted by the Unitholder is primarily for the purpose of enforcing a personal claim or redressing a personal grievance against the Trust or its Trustees, officers or security holders;
- (b) it clearly appears that the matter covered by the requisition does not relate in a significant way to the business or affairs of the Trust;
- (c) not more than the two years before the receipt of the requisition, a person failed to present, in person or by proxy, at a meeting of Unitholders, a matter covered by a requisition that at the person's request, had been included in an information circular relating to the meeting;
- (d) substantially the same matter covered by the requisition was submitted to Unitholders in an information circular (including a dissident's information circular) relating to a meeting of Unitholders held not more than two years before the receipt of the requisition and did not receive the minimum amount of support at the meeting as follows: (i) 3% of the total number of Units voted, if the

proposal was introduced at a meeting of Unitholders; (ii) 6% of the total number of Units voted at its last submission to Unitholders, if the proposal was introduced at two meetings of Unitholders; and (iii) 10% of the total number of Units voted at its last submission to Unitholders, if the proposal was introduced at three or more meetings of Unitholders; or

- (e) the rights conferred by this Section 6.02 are being abused to secure publicity.

If the Trustees do not within 21 days after receiving the requisition call a meeting, any Unitholder who signed the requisition may call the meeting in accordance with the provisions of Section 6.03 and Section 6.07 and the Trustees' Regulations, *mutatis mutandis*. If there shall be no Trustees, the officers of the Trust shall promptly call a special meeting of the Unitholders for the election of successor Trustees. The phrase "meeting of the Unitholders" wherever it appears in this Declaration of Trust shall mean and include both an annual meeting and any other meeting of Unitholders.

#### Section 6.03 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, to each Trustee and to the auditors of the Trust not less than 21 nor more than 50 days before the meeting. Notice of any meeting of the Unitholders shall state the purposes of the meeting.

#### Section 6.04 Quorum; Chairman.

A quorum for any meeting of Unitholders shall be individuals present not being less than two in number and being Unitholders, or representing by proxy Unitholders who hold in the aggregate not less than 10 per cent of the total number of outstanding Units as at the record date. The Chairman, or any Trustee determined by the Trustees, shall be the chairman of any meeting of the Unitholders.

#### Section 6.05 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 the Unitholders. Any action to be taken by the Unitholders shall, except as otherwise required by this Declaration of Trust, by any Property Management Agreement or by law, be authorized when approved by a majority of the votes cast at a meeting of the Unitholders. The Chairman of any such meeting shall not have second or casting vote.

#### Section 6.06 Matters on which Unitholders Shall 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) except as provided in Section 2.03, Section 2.05 or Section 2.06, the appointment, election or removal of Trustees;

- (b) except as provided in Section 15.04, the appointment or removal of auditors of the Trust;
- (c) any amendment to the Declaration of Trust (except as provided in Section 4.03 or Section 12.01);
- (d) the uncoupling of Stapled Units to provide for separate trading of the Units and the Units of H&R Finance, except as provided for in item (b) of the definition of an Event of Uncoupling in Section 5.10(2);
- (e) the sale or transfer 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
- (f) the termination of the Trust.

Nothing in this Section, however, shall prevent the Trustees from submitting to a vote of Unitholders any matter which they deem appropriate. Except with respect to the matters specified in this Section, Section 12.02, Section 12.03 and Section 13.02 or matters submitted to a vote of the Unitholders by the Trustees, no vote of the Unitholders shall in any way bind the Trustees.

#### Section 6.07 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 fix a date not more than 60 days prior to the date of any meeting of the 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 6.08 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. A proxy need not be a Unitholder. The Trustees may solicit such proxies from the Unitholders or any of them in any matter requiring or permitting the Unitholders' vote, approval or consent.

The Trustees may adopt, amend or repeal such rules relating to the appointment of proxyholders and the solicitation, execution, validity, revocation and deposit of proxies, as they in their discretion from time to time determine.

Section 6.09 Resolution in Lieu of Meeting.

Subject to Section 2.05, 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.

**ARTICLE VII  
MEETINGS OF THE TRUSTEES**

Section 7.01 Trustees May Act Without Meeting.

The Trustees may act with or without a meeting. Any action of the Trustees may be taken at a meeting by vote or without a meeting by written consent signed by all of the Trustees.

Section 7.02 Notice of Meeting.

Meetings of the Trustees may be held from time to time upon the giving of notice by the Chief Executive Officer, the Secretary or other officer of the Trust or any two Trustees. Regular meetings of the Trustees may be held without call or notice at a time and place fixed by the Trustees' Regulations. Notice of the time and place of any other meetings shall be mailed or otherwise given not less than 48 hours before the meeting but may be waived in writing by any Trustee either before or after such meeting. The attendance of a Trustee at a meeting shall constitute a waiver of notice of such meeting except where a Trustee attends a meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting has not been lawfully called or convened. Each committee of Trustees appointed by the Trustees may adopt its own rules or procedures for the calling, conduct, adjournment and regulation of the meetings of such committees as it sees fit and may amend or repeal such rules or procedures from time to time; provided, however, that the Trustees' Regulations and any such rules or procedures shall not be inconsistent with this Declaration of Trust.

Section 7.03 Quorum.

A quorum for all meetings of the Trustees or any committee thereof shall be at least a majority of the Trustees or of the Trustees on such committee, as the case may be.

Section 7.04 Voting at Meetings.

Questions arising at any meeting of the Trustees shall be decided by a majority of the votes cast; provided, however, that:

- (a) the approval required with respect to:
  - (i) a material change to any Property Management Agreement or any extension thereof at the end of its term or an increase in the fees payable to the Property Manager;
  - (ii) any changes in compensation of the Chief Executive Officer or the Chief Financial Officer; or

- (iii) the enforcement of any agreement entered into by the Trust with a Trustee who is not an Independent Trustee, with the Property Manager or any affiliate thereof or with an associate of a non-Independent Trustee or the Property Manager,

shall be only that of a majority of the Independent Trustees;

- (b) at least two-thirds of the Trustees voting on an acquisition or disposition of real property shall have had at least five years substantial experience in the real estate industry; and
- (c) the approval required with respect to any amendment to or deletion of the definition of religious holidays contained in the Trustees' Regulations shall be that of all of the Trustees.

In the case of an equality of votes, the chairman of the meeting, who shall be the Chairman if present, shall not have a second or casting vote in addition to his original vote, if any.

Section 7.05 Meeting by Telephone.

A Trustee may, if all the Trustees consent, participate in a meeting of Trustees or of a committee of Trustees by means of a telephonic, electronic or other communication facility that permits all participants to communicate adequately with each other during the meeting. A Trustee participating in such a meeting by such means is deemed for the purposes of this Declaration of Trust to be present at that meeting.

**ARTICLE VIII  
DELEGATION OF POWERS**

Section 8.01 General.

The Trustees may appoint from among their number a committee of Trustees and may delegate to such committee any of the powers of the Trustees. The Trustees shall have the power to appoint, employ or contract with any person for any matter relating to the Trust or its assets or affairs. The Trustees may grant or delegate such authority to a property manager (including the Property Manager) as the Trustees may in their sole discretion deem necessary or desirable without regard to whether such authority is normally granted or delegated by trustees. Subject to Section 7.04, the Trustees shall have the power to determine the term and compensation of a property manager or any other person whom they may employ or with whom they may contract. In no event shall the Trustees delegate authority with respect to any matter set out in Section 7.04 other than as may be permitted under Section 8.02. The Trustees shall have the power to grant powers of attorney as required in connection with any financing or security relating thereto.

Section 8.02 Investment Committee.

The Trustees may appoint an investment committee (the “**Investment Committee**”) to consist of not less than three Trustees, a majority of whom shall be Independent Trustees. At least two-thirds of the members of the Investment Committee shall have had at least five years substantial experience in the real estate industry. The duties of the Investment Committee will be to review all proposals regarding investments, to approve or reject proposed acquisitions and dispositions of investments by the Trust, to authorize proposed transactions on behalf of the Trust and to approve all borrowings and the assumption or granting of any mortgage or other security interest in real property (other than renewals of existing mortgages or security interests, which need not be approved by the Investment Committee or the Trustees), including any assignment of rents and other monies derived from or related to real property. Questions arising at any meeting of the Investment Committee shall be decided by a majority of the votes cast. Decisions may be taken by written consent signed by all of the members of the Investment Committee. Any member of the Investment Committee may call a meeting of the Investment Committee upon not less than 48 hours’ notice. Where for any reason a member of the Investment Committee is disqualified from voting on or participating in a decision, any other independent and disinterested Trustee not already a member of the Investment Committee may be designated by the Trustees to act as an alternate. Notwithstanding the appointment of the Investment Committee, the Trustees may consider and approve any matter which the Investment Committee has the authority to consider or approve.

Section 8.03 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. The Audit Committee shall review the financial statements of the Trust and report thereon to the Trustees. The auditors of the Trust are entitled to receive notice of every meeting of the Audit Committee and, at the expense of the Trust, to attend and be heard thereat and, if so requested by a member of the Audit Committee, shall attend any meeting of the Audit Committee held during the term of office of the auditors. Questions arising at any meeting of the Audit Committee shall be decided by a majority of the votes cast. Decisions may be taken by written consent signed by all of the members of the Audit Committee. The auditors of the Trust or a member of the Audit Committee may call a meeting of the Audit Committee on not less than 48 hours’ notice.

Section 8.04 Compensation and Governance Committee.

The Trustees shall appoint a compensation and governance committee (the “**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 will be to review management’s compensation and the governance of the Trust. Questions arising in any meeting of the Compensation and Governance Committee shall be decided by a majority of the votes cast. Decisions may be taken by written consent signed by all of the members of the Compensation and Governance Committee. Any member of the Compensation and Governance Committee may call a meeting of the Compensation and Governance Committee upon 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 not already a member of the

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

Section 8.05 Property Manager.

The Trustees may exercise broad discretion in allowing any property manager to manage the real properties of the Trust, including operating, maintaining, leasing and marketing the said properties, to act as agent for the Trust in respect thereof and to execute documents on behalf of the Trustees in respect thereof, all subject to the overriding authority of the Trustees over the management and affairs generally of the Trust.

**ARTICLE IX  
DISTRIBUTIONS**

Section 9.01 Distributions.

The Trust may distribute to Unitholders on each Distribution Date such amounts (“**Distributions**”) 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.

On each Distribution Date specified herein, or which may be otherwise determined by the Trustees, any Distributions 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 shall be due and payable, on the earlier of the last Distribution Date in respect of the year and 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 or deemed to be payable to a Unitholder in accordance with this Declaration of Trust.

At any time the Trustees may declare an extraordinary distribution of cash, Units or property of the Trust *in specie* (an “**Extraordinary Distribution**”). Distributions shall be made in cash or Units pursuant to any distribution reinvestment plan or distribution reinvestment and Unit purchase plan adopted by the Trustees pursuant to Section 9.07, or, in the case of an Extraordinary Distribution, in cash, Units or property of the Trust *in specie*. Any distribution, including an Extraordinary Distribution, of Units shall be subject to the restrictions in Section 5.10 and Section 5.11. Any distribution, including any Extraordinary Distribution, shall be made proportionately to persons who are Unitholders, on the record date for such distribution. Distributions, including Extraordinary Distributions, will be made to Unitholders of record on a date to be determined by the Trustees in accordance with Section 6.07 hereof. The Trustees, if they so determine when income has been accrued but not collected may, on a temporary basis, transfer sufficient monies from the capital to the income account of the Trust to permit distributions of income which are payable to be effected. Where the Trustees determine that the Trust does not have available cash in an amount sufficient to make payment of the full amount of any distribution which is payable hereunder on the due date for such payment or that it is otherwise in the Trust’s interest to not make available cash in such amount, the payment may, at the option of the Trustees, include the issuance of additional Units, or fractions of Units, if necessary, having a fair market value as determined by the Trustees equal to the difference between the amount of such distribution and the amount of cash which has been determined by the Trustees to be available, or in the Trust’s interest to make available, for the payment of such distribution; provided that any such issuance shall be subject to the restrictions in Section 5.10 and Section 5.11.

#### Section 9.02 Allocation.

Income and net taxable capital gains for purposes of the Tax Act will be allocated to Unitholders on the record date for such distribution in the same proportions as distributions received by Unitholders on the record date for such distribution, subject to the discretion of the Trustees to adopt an allocation method which the Trustees consider to be more reasonable in the circumstances.

#### Section 9.03 Payment of Cash Distributions.

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

Section 9.04 Withholding Taxes.

- (a) The Trust may deduct and withhold from each distribution payable to any Unitholder all amounts which the Trust is required or permitted by law to deduct or withhold therefrom.
- (b) In the case of any distribution of property of the Trust (or distribution in the form of an issuance of additional Units) (an “*in specie* distribution”), except as otherwise determined by the Trustees in their sole discretion, the provisions of this Section 9.04(b) shall apply.
  - (i) The transfer agent and registrar may require declarations as to the jurisdictions in which beneficial owners of Units are resident.
  - (ii) Each Unitholder that does not appear on the register as having a Canadian address shall be regarded for purposes hereof as a Non-Resident unless such Unitholder provides the Trust with satisfactory evidence that such Unitholder is not a Non-Resident prior to the record date for the *in specie* distribution (the “**Record Date**”).
  - (iii) Prior to the Record Date, the Trust shall make a public announcement of the amount of tax required to be withheld from the portion of the distribution that is payable to Non-Residents. Each Non-Resident Unitholder shall remit to the Trust an amount in Canadian currency equal to the amount of tax (the “**Withholding Tax**”) required to be withheld from the portion of the *in specie* distribution otherwise payable to such Unitholder, including without limitation any tax required to be so withheld pursuant to Part XIII or Part XIII.2 of the Tax Act, or any other provision of any applicable tax law.
  - (iv) The Trust shall have the right to recover from each Non-Resident Unitholder who does not comply with Section 9.04(b)(iii) the full amount of Withholding Tax attributable to the *in specie* distribution to such Unitholder. Without limiting the generality of the foregoing, the transfer agent and registrar may, upon receiving a direction and suitable indemnity from the Trustees, send a notice to such Unitholder requiring such Unitholder to, within a specified period of not less than 15 days, sell such Unitholder’s Stapled Units or a portion thereof and to remit sufficient proceeds of such sale to the Trust to enable the Trust to satisfy the Withholding Tax arising as a consequence of such *in specie* distribution. If the Unitholder receiving such notice has not sold the specified number of Stapled Units or provided the Trustees with satisfactory evidence that such Unitholder is not a Non-Resident within such period, the transfer agent and registrar, upon receiving a direction from the Trustees, may on behalf of such Unitholder, sell to a third party such a number of the Stapled Units owned by such Unitholder as gives rise to net proceeds that are no less than the amount of Withholding Tax arising as a consequence of such *in specie* distribution. If an Event of Uncoupling has occurred, all

references to “Stapled Units” in this Section 9.04(b)(iv) shall be read as references to “Units”.

Section 9.05 Income Tax Matters.

In reporting income for income tax purposes the Trust shall claim the maximum amount available to it as deductions under the relevant law, including but not limited to maximum capital cost allowance, unless the Trustees determine otherwise.

Section 9.06 Designations.

The Trustees shall make such designations for income tax purposes in respect of amounts paid or payable to Unitholders for such amounts that the Trustees consider to be reasonable, including designations relating to taxable dividends received by the Trust in the year on shares of taxable Canadian corporations, net taxable capital gains of the Trust in the year and foreign source income of the Trust for the year.

Section 9.07 Distribution Reinvestment and Unit or Stapled Unit Purchase Plan.

The Trustees may in their sole discretion establish a distribution reinvestment plan or a distribution reinvestment and Unit or Stapled Unit purchase plan at any time.

**ARTICLE X  
REDEMPTION OF TRUST UNITS**

Section 10.01 Right of Redemption.

Each Unitholder shall be entitled to require the Trust to redeem at any time or from time to time at the demand of the Unitholder all or any part of the Units registered in the name of the Unitholder at the prices determined and payable in accordance with the following conditions hereinafter provided. Provided that no Event of Uncoupling has occurred, a Unitholder who tenders a Unit for redemption shall be required to also tender for redemption a corresponding Unit of H&R Finance in accordance with the provisions of the H&R Finance Declaration of Trust.

Section 10.02 Exercise of Redemption Right.

- (a) To exercise a Unitholder’s right to require redemption under Section 10.01, a duly completed and properly executed notice requiring the Trust to redeem Units, in a form approved by the Trustees, shall be sent to the Trust at the head office of the Trust. No form or manner of completion or execution shall be sufficient unless the same is in all respects satisfactory to the Trustees and is accompanied by any further evidence that the Trustees may reasonably require with respect to the identity, capacity or authority of the person giving such notice.
- (b) Upon receipt by the Trust of the notice to redeem Units, the Unitholder shall thereafter cease to have any rights with respect to the Units tendered for redemption (other than to receive the redemption payment therefor) including the

right to receive any distributions thereon which are declared payable to the Unitholders of record on a date which is subsequent to the day of receipt by the Trust of such notice. Units shall be considered to be tendered for redemption on the date that the Trust has, to the satisfaction of the Trustees, received the notice and other required documents or evidence as aforesaid.

- (c) All Units which are redeemed pursuant to this Article X shall be cancelled, shall no longer be outstanding and shall not be reissued.

#### Section 10.03 Cash Redemption.

- (a) Subject to Section 10.04, upon receipt by the Trust of the notice to redeem Units in accordance with Section 10.01, the holder of the Units tendered for redemption shall be entitled to receive a price per Unit (the “**Redemption Price**”) equal to the amount by which the lesser of:

- (i) 90% of the “market price” of a Stapled Unit on the principal market on which the Stapled Units are listed or quoted for trading during the 10-trading day period commencing immediately prior to the Redemption Date; and
- (ii) 100% of the “closing market price” of a Stapled Unit on the Redemption Date on the principal market on which the Stapled Units are listed or quoted for trading;

exceeds the H&R Finance Redemption Price applicable on the Redemption Date, provided that if there has been an Event of Uncoupling, the Redemption Price shall mean an amount equal to the lesser of:

- (iii) 90% of the “market price” of a Unit on the principal market on which the Units are listed or quoted for trading during the 10-trading day period commencing immediately prior to the Redemption Date; and
- (iv) 100% of the “closing market price” of a Unit on the Redemption Date on the principal market on which the Units are listed or quoted for trading.

For the purposes of this calculation, the “market price” of a Stapled Unit (or Unit) will be an amount equal to the weighted average of the trading prices of the Stapled Units (or Units) for each of the trading days on which there was a trade of Stapled Units (or Units) during the specified 10-trading day period; provided that if there was trading on the applicable exchange or market for fewer than five of the 10 trading days, the “market price” shall be the simple average of the following prices established for each of the 10 trading days: for each day on which there was no trading, the average of the last bid and ask prices; for each day that there was trading, the weighted average trading prices of the Stapled Units (or Units).

The “closing market price” of a Stapled Unit (or Unit) for a particular date shall be an amount equal to: (i) the closing price of the Stapled Units (or Units) if there was a trade on that date and the exchange or market provides a closing price; (ii) the average of the highest and lowest prices of Stapled Units (or Units) if there was trading and the exchange or other market provides only the highest and lowest trading prices of Stapled Units (or Units) traded on that date; and (iii) the average of the last bid and last ask prices of the Stapled Units (or Units) if there was no trading on that date.

“H&R Finance Redemption Price” means, with respect to Units of H&R Finance tendered to H&R Finance for redemption on a particular Redemption Date, an amount per Unit of H&R Finance equal to the Canadian dollar equivalent (determined using the exchange rate posted on such date to convert U.S. currency to Canadian currency by a bank as selected by the Trust) of the outstanding principal amount of the U.S. Holdco Notes as of the Redemption Date, divided by the total number of Units of H&R Finance issued and outstanding immediately prior to the Redemption Date.

“Redemption Date” means the date on which a Unit is tendered to the REIT for redemption.

- (b) Subject to Section 10.04, the Redemption Price payable in respect of the Units tendered for redemption during any month shall be paid by cheque, drawn on a Canadian chartered bank or a trust company in lawful money of Canada, payable at par to or to the order of the Unitholder who exercised the right of redemption on or before the last day of the calendar month following the month in which the Units were tendered for redemption. Payments made by the Trust of the Redemption Price are conclusively deemed to have been made upon the mailing of a cheque in a postage prepaid envelope addressed to the former Unitholder unless such cheque is dishonoured upon presentment. Upon such payment, the Trust shall be discharged from all liability to the former Unitholder in respect of the Units so redeemed.

Section 10.04 No Cash Redemption in Certain Circumstances.

Section 10.03 shall not be applicable to Units tendered for redemption by a Unitholder, if:

- (a) the total amount payable by the Trust pursuant to Section 10.03 in respect of such Units and all other Units tendered for redemption prior thereto in the same calendar month exceeds the Monthly Limit set forth below; provided that the Trustees may, in their sole discretion, waive such limitation in respect of all Units tendered for redemption in any calendar month;
- (b) at the time the Units are tendered for redemption, the outstanding Stapled Units are not listed for trading or quoted on any stock exchange or market which, in the sole discretion of the Trustees, provides representative fair market value prices for the Stapled Units; or

- (c) the normal trading of the outstanding Stapled Units is suspended or halted on any stock exchange on which the Stapled Units are listed for trading or, if not so listed, on any market on which the Stapled Units are quoted for trading, on the Redemption Date for such Stapled Units or for more than five trading days during the 10-trading day period commencing immediately prior to the Redemption Date for such Stapled Units.

For the purpose of subsection 10.04(a), the Monthly Limit will be equal to \$50,000 less the total of any Shortfall Payments, if any, payable by the Trust pursuant to subsection 10.05(a) in respect of such Units and all other Units tendered for redemption prior thereto in the same calendar month. If an Event of Uncoupling has occurred, all references to “Stapled Units” in this Section 10.04 shall be read as references to “Units”.

Section 10.05 *In Specie* Redemption.

- (a) If, pursuant to Section 10.04, Section 10.03 is not applicable to Units tendered for redemption by a Unitholder, the Redemption Price per Unit to which the Unitholder is entitled shall be the fair market value thereof as determined by the Trustees and, subject to any applicable regulatory approvals, shall be paid out and satisfied by way of a distribution *in specie*. In such circumstances, the Trust shall exercise its right to require HRP Trust to redeem any combination or part of the Series 1 Notes and of the HRP Units of an aggregate principal amount and value, respectively, up to the Redemption Price per Unit, in consideration for the issuance to the Trust of Series 3 Notes and Series 2 Notes, respectively, having an aggregate principal amount equal to such amount. The Series 3 Notes and Series 2 Notes will then be delivered to the Unitholder in whole or partial satisfaction of the Redemption Price per Unit. To the extent that there is an insufficient outstanding principal amount under the Series 1 Notes or an insufficient number of HRP Units to wholly satisfy the Redemption Price per Unit, the Trust may, in the Trustees’ discretion, contribute further property to HRP Trust in exchange for Series 4 Notes and HRP Units. The Series 4 Notes will then be delivered to the Unitholder in satisfaction of any remaining balance of the Redemption Price per Unit. Notwithstanding the foregoing, there must at all times be one issued and outstanding HRP Unit which HRP Unit must be held by the Trust.

At the sole discretion of the Trustees, no fractional Series 2 Notes, Series 3 Notes or Series 4 Notes in integral multiples of less than \$100, or such other lower amount as the Trustees may establish from time to time (the “**Rounding Amount**”) will be so distributed on the redemption of Units registered in the name of any particular Unitholder and, where the number of such securities of HRP Trust to be received by a particular Unitholder includes a fraction or multiple less than the Rounding Amount, that number shall be rounded to the next lowest whole number or integral multiple of the Rounding Amount. Where an *in specie* distribution has been subject to rounding down to a Rounding Amount, the shortfall between the Redemption Price per Unit and the aggregate principal amount of Series 2 Notes, Series 3 Notes or Series 4 Notes distributed will be paid in cash (the “**Shortfall Payment**”) in the general manner set forth in subsection

10.03(b). A Shortfall Payment of less than \$10 will not be required to be made, unless the Unitholder has not more than one Unit registered in his or her name prior to redemption, in which case a Shortfall Payment will be required, rounded downwards to the nearest dollar.

The Trust shall be entitled to all interest paid on the HRP Trust Notes, if any, and distributions paid or payable on the HRP Units on or before the date of the distribution *in specie*. Where the Trust makes a distribution *in specie* of securities of HRP Trust on the redemption of Units, the Trust may, in the discretion of the Trustees, allocate to that Unitholder any capital gain or income realized by the Trust as a result of: (i) any contribution of additional property to HRP Trust in exchange for additional Series 4 Notes or HRP Units, (ii) a redemption of HRP Units and all or part of the Series 1 Note in exchange for Series 2 Notes and Series 3 Notes, or (iii) otherwise on a distribution of such securities to the Unitholder.

- (b) The Redemption Price payable pursuant to this Section 10.05 in respect of Units tendered for redemption during any month shall be paid by the transfer, to or to the order of the Unitholder who exercised the right of redemption, on the last day (the “**Transfer Date**”) of the calendar month following the month in which the Units were tendered for redemption, of the number of Series 2 Notes, Series 3 Notes and Series 4 Notes and other property determined as aforesaid. The Trust shall be entitled to all interest paid on the Series 2 Notes, Series 3 Notes and Series 4 Notes and income paid on other property being transferred up to and including the Transfer Date. Payments by the Trust of the Redemption Price per Unit are conclusively deemed to have been made upon the mailing of the *in specie* distribution of securities and other property by registered mail in a postage prepaid envelope addressed to the former Unitholder and/or any party having a security interest. Upon such payment, the Trust shall be discharged from all liability to the former Unitholder and any party having a security interest in respect of the Units so redeemed. No fractional Series 2 Notes, Series 3 Notes and Series 4 Notes will be distributed and, where the number of securities to be received by the former Unitholder includes a fraction or a principal amount less than a multiple of \$100, such number shall be rounded to the next lowest number or multiple of \$100, as the case may be. Where the Trust makes a distribution *in specie* of securities and other property of the Trust to a Unitholder on a redemption of Units pursuant to this Section in a particular year, the Trustees shall treat (i) the amount of any capital gain realized by the Trust as a result of the distribution of such property as an amount to be allocated to the redeeming Unitholder in that year out of the net realized capital gains of the Trust, and (ii) the amount of accrued income on or in respect of such property (other than capital gains described in (i)), as an amount to be allocated to the redeeming Unitholder in that year out of the net income of the Trust, except, with respect to both (i) and (ii), to the extent the Trustees determine otherwise in their sole discretion on or before December 31 of that year.

## **ARTICLE XI FEES AND EXPENSES**

### Section 11.01 Expenses.

The Trust shall pay all expenses incurred in connection with the administration and management of the Trust and its investments, 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 11.02 Payment of Real Property and Brokerage Commissions.

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

### Section 11.03 Property Management, Leasing and Financing Fees.

The Trust may pay property management fees, leasing fees and financing fees in respect of any real property owned by it. Such fees may be paid to a property manager (including the Property Manager) or to others.

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

### Section 12.01 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 as a “mutual fund trust” and a “registered investment” under the *Income Tax Act* (Canada) 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 which, in the opinion of the Trustees, are necessary or desirable to remove conflicts or inconsistencies between the disclosure in the (final) prospectus relating to the initial public offering of Units of the Trust and the Declaration of Trust;

- (e) 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;
- (f) such amendments to the Declaration of Trust as the Trustees in their discretion deem necessary or desirable (i) as a result of changes in the taxation laws from time to time which may affect the Trust, the Unitholders or annuitants under a plan of which a Unitholder acts as trustee or carrier, or to qualify for a particular status under taxation laws including to qualify as a “real estate investment trust” for purposes of the Tax Act or to otherwise prevent the Trust or any of its subsidiaries from becoming subject to SIFT Tax, or (ii) as a result of changes in accounting standards (including the implementation of IFRS) from time to time which may affect the Trust, the Unitholders or annuitants under a plan of which a Unitholder acts as trustee or carrier;
- (g) amendments which in the opinion of the Trustees are not prejudicial to Unitholders and are necessary or desirable (which, for greater certainty, exclude amendments in respect of which a Unitholder vote is specifically otherwise required); and
- (h) amendments which in the opinion of the Trustees are necessary or desirable to enable the Trust to issue Units for which the purchase price is payable on an instalment basis.

Section 12.02 Amendments by Unitholders.

Subject to Section 12.03, 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 12.03 Two-Thirds Unitholder Vote.

Subject to Section 6.06(b), none of the following shall occur unless the same has been duly approved by the affirmative vote of at least two-thirds of the votes cast at a meeting of Unitholders duly called and held:

- (a) any amendment to this Section 12.03;
- (b) any amendment to change a right with respect to any outstanding Units of the Trust to reduce the amount payable thereon upon termination of the Trust or to diminish or eliminate any voting rights pertaining thereto;
- (c) any amendment to the duration or termination provisions of the Trust;
- (d) any amendment to the provisions relating to staggered terms of the Trustees as provided for in Section 2.02;
- (e) any amendment relating to the powers, duties, obligations, liabilities or indemnification of the Trustees;

- (f) the uncoupling of Stapled Units to provide for separate trading of the Units and the Units of H&R Finance, except as provided for in item (b) of the definition of an Event of Uncoupling in Section 5.10(2);
- (g) any sale or transfer of the assets of the Trust as an entirety or substantially as an entirety (other than as part of an internal reorganization of the assets of the Trust as approved by the Trustees); or
- (h) any amendment to Section 4.01 or subsections 4.02(d), 4.02(f), 4.02(g), 4.02(h), 4.02(i) or 4.02(j), except for any amendment contemplated by subsection 12.01(h).

Section 12.04 No Termination.

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

**ARTICLE XIII  
TERMINATION OF THE TRUST**

Section 13.01 Duration of the Trust.

Unless the Trust is sooner terminated as otherwise provided herein, the Trust shall continue in full force and effect so long as any property of the Trust is held by the Trustees, and the Trustees shall have all the powers and discretions, expressed and implied, conferred upon them by law or by this Declaration of Trust.

Section 13.02 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 13.03 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 each, all as the Trustees in their sole discretion may determine.

**ARTICLE XIV  
LIABILITIES OF THE TRUSTEES AND OTHERS**

Section 14.01 Liability and Indemnification of the Trustees.

The Trustees shall at all times be indemnified and saved harmless out of the property of the Trust from and against all liabilities, damages, losses, debts and claims whatsoever, including costs, charges and expenses in connection therewith, sustained, incurred, brought, commenced or prosecuted against them for or in respect of any act, deed, matter or

thing whatsoever made, done, acquiesced in or omitted in or about or in relation to the execution of their duties as Trustees and also from and against all other liabilities, damages, losses, debts, claims, costs, charges, and expenses which they sustain or incur in or about or in relation to the affairs of the Trust. Further, the Trustees shall not be liable to the Trust or to any Unitholder or annuitant for any loss or damages relating to any matter regarding the Trust, including any loss or diminution in the value of the Trust or its assets. The Trust may advance moneys to a Trustee, officer or other individual for the costs, charges and expenses of a proceeding referred to above. The foregoing provisions of this Section 14.01 in favour of any Trustee do not apply unless:

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

#### Section 14.02 Liability of the Trustees.

The Trustees shall not be liable to the Trust or to any Unitholder, annuitant or any other person for the acts, omissions, receipts, neglects or defaults of any person, firm or corporation employed or engaged by it as permitted hereunder, or for joining in any receipt or act of conformity or for any loss, damage or expense caused to the Trust through the insufficiency or deficiency of any security in or upon which any of the monies of or belonging to the Trust shall be paid out or invested, or for any loss or damage arising from the bankruptcy, insolvency or tortious act of any person, firm or corporation with whom or which any monies, securities or property of the Trust shall be lodged or deposited, or for any loss occasioned by error in judgment or oversight on the part of the Trustees, or for any other loss, damage or misfortune which may happen in the execution by the Trustees of their duties hereunder, except to the extent the Trustees have not acted in accordance with subsections 14.01(a) and 14.01(b).

#### Section 14.03 Reliance Upon Advice.

A Trustee may rely in good faith on, and shall not be responsible or held liable for any loss or damage resulting from so relying on, (i) any financial statements of the Trust represented to the Trustee by an officer of the Trust or in a written report of the auditor of the Trust fairly to reflect the financial condition of the Trust or (ii) a report of a person whose profession lends credibility to a statement made by the professional person.

#### Section 14.04 Liability of Unitholders and Others.

- (a) No Unitholder or annuitant under a plan of which a Unitholder acts as trustee or carrier shall be held to have any personal liability as such, and no resort shall be had to, nor shall recourse or satisfaction be sought from, the private property of any Unitholder or annuitant for any liability whatsoever, in tort, contract or otherwise, to any person in connection with the Trust property or the affairs of the Trust, including, without limitation, for satisfaction of any obligation or claim arising out of or in connection with any contract or obligation of the Trust or of the Trustees or any obligation which a Unitholder or annuitant would otherwise

have to indemnify a Trustee for any personal liability incurred by the Trustee as such, but rather the assets of the Trust only are intended to be liable and subject to levy or execution for satisfaction of such liability. Each Unitholder and annuitant under a plan of which a Unitholder acts as trustee or carrier shall be entitled to be reimbursed out of the assets of the Trust in respect of any payment of a Trust obligation made by such Unitholder or annuitant.

- (b) (i) Any written instrument creating an obligation which is or includes the granting by the Trust of a mortgage and (ii) to the extent the Trustees determine to be practicable and consistent with their fiduciary duty to act in the best interests of the Unitholders, any written instrument which is, in the judgment of the Trustees, a material obligation shall contain a provision or be subject to an acknowledgement to the effect that the obligation being created is not personally binding upon, and that resort shall not be had to, nor shall recourse or satisfaction be sought from, the private property of any of the Unitholders, or annuitants under a plan of which a Unitholder acts as trustee or carrier, but the property of the Trust or a specific portion thereof only shall be bound. If the Trust makes any real property investment subject to existing contractual obligations, including obligations under mortgages, the Trustees shall use all reasonable efforts to have any such obligations modified so as to achieve the aforesaid disavowal of contractual liability. Further, the Trustees shall cause the operations of the Trust to be conducted, with the advice of counsel, in such a way and in such jurisdictions as to avoid, to the extent which they determine to be practicable and consistent with their fiduciary duty to act in the best interests of the Unitholders, any material risk of liability on the Unitholders for claims against the Trust, and shall, to the extent available on terms which they determine to be practicable, including in the cost of premiums, cause the insurance carried by the Trust, to the extent applicable, to cover the Unitholders and annuitants as additional insured. Any potential liability of the Trustees with respect to their foregoing obligations or their failure to perform the same shall be governed by the provisions of Section 14.01, Section 14.02 and Section 14.03.

## **ARTICLE XV GENERAL**

### **Section 15.01 Execution of Instruments.**

The Trustees shall have power from time to time to appoint any Trustee or Trustees or any person or persons on behalf of the Trust either to sign instruments in writing generally or to sign specific instruments in writing. Provisions respecting the foregoing may be contained in the Trustees' Regulations.

### **Section 15.02 Manner of Giving Notice.**

Any notice required or permitted by the provisions of this Declaration of Trust to be given to a Unitholder, a Trustee or the auditors of the Trust shall be deemed conclusively to have been given if given either by delivery or by prepaid first-class mail addressed to the Unitholder at his address shown on the Register, to the Trustee at the last address provided by

such Trustee to the Secretary of the Trust, or to the auditors of the Trust at the last address provided by such auditors to the Secretary of the Trust, as the case may be.

Section 15.03 Failure to Give Notice.

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

Section 15.04 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 15.05 Fiscal Year.

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

Section 15.06 Reports to Unitholders.

Within such time period as is acceptable under National Instrument 51-102 – *Continuous Disclosure Obligations*, as amended from time to time (or other equivalent applicable regulations or successors thereto), and at least 21 days prior to each annual meeting of Unitholders, upon a Unitholder's request or otherwise as required by applicable law, the Trustees shall send to such Unitholder audited comparative financial statements for such year, prepared in compliance with applicable securities laws. Within such time period as is acceptable under National Instrument 51-102 – *Continuous Disclosure Obligations*, as amended from time to time (or other equivalent applicable regulations or successors thereto) after the end of each of the first three fiscal quarters of each year, upon a Unitholder's request or otherwise as required by applicable law, the Trustees shall send unaudited comparative financial statements for the period then ended to such Unitholder. The Trustees will supply Unitholders with any information that may be required by them in connection with their obligations under the *Income Tax Act* (Canada) and equivalent provincial legislation.

Section 15.07 Trust Property to be Kept Separate.

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

Section 15.08 Trustees May Hold Units.

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

Section 15.09 Trust Records.

The Trustee shall prepare and maintain, at its principal office or at any other place in Canada designated by the Trustees, records containing (i) the Declaration of Trust; (ii) minutes of meetings and resolutions of Unitholders; and (iii) the Register. The Trust shall also prepare and maintain adequate accounting records and records containing minutes of meetings and resolutions of the Trustees and any committee thereof. Such records shall be kept at the principal office of the Trust or at such other place as the Trustees think fit and shall at all reasonable times be open to inspection by the Trustees.

Section 15.10 Right to Inspect Documents.

A Unitholder and any agent, consultant or creditor of the Trust shall have the right to examine the Declaration of Trust, the Trustees' Regulations, the minutes of meetings and resolutions of Unitholders, the Register 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*, as amended from time to time.

Section 15.11 Consolidations.

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

Section 15.12 Counterparts.

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

Section 15.13 Severability.

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

Section 15.14 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 15.15 Governing Law.

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

Section 15.16 Transition.

Notwithstanding any other provision hereof (a) neither the approval of the Investment Committee nor the approval of a majority of the Independent Trustees shall be required, and the provisions of Section 3.07, Section 7.04 and Section 8.02 shall not be operative or effective with respect to the entering into of, any material contract or transaction or proposed material contract or transaction disclosed under the heading “Material Contracts” in the preliminary prospectus of the Trust relating to an initial public offering of Units filed with one or more securities commissions or similar authorities in Canada, as the same may be amended by the final prospectus or any amendment to such preliminary or final prospectus, and (b) the provisions of this Declaration of Trust relating to the Property Manager shall not be operative or effective at such time as the Property Manager is not a property manager of assets of the Trust.

**[INTENTIONALLY LEFT BLANK – SIGNATURE PAGE FOLLOWS]**

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

WITNESS:

)  
) (signed) *Thomas J. Hofstedter* (l.s.)  
) Thomas J. Hofstedter  
)  
)  
) (signed) *Laurence A. Lebovic* (l.s.)  
) Laurence A. Lebovic  
)  
)  
) (signed) *Ronald C. Rutman* (l.s.)  
) Ronald C. Rutman  
)  
)  
) (signed) *Edward Gilbert* (l.s.)  
) Edward Gilbert  
)  
)  
) (signed) *Robert E. Dickson* (l.s.)  
) Robert E. Dickson