

**AMENDED AND RESTATED  
UNITHOLDER RIGHTS PLAN AGREEMENT**

**MADE AS OF MAY 15, 2009**

**(amending and restating the Amended and Restated Unitholder Rights Plan Agreement  
made as of October 1, 2008, which amended and restated the Unitholder Rights Plan  
Agreement made as of June 23, 2006)**

**respecting**

**H&R REAL ESTATE INVESTMENT TRUST**

**between**

**TRUSTEES OF H&R REAL ESTATE INVESTMENT TRUST**

**and**

**CIBC MELLON TRUST COMPANY**

**as Rights Agent**

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## UNITHOLDER RIGHTS PLAN AGREEMENT

MEMORANDUM OF AGREEMENT made as of the 15<sup>th</sup> day of May, 2009,

**B E T W E E N:**

**TRUSTEES OF H&R REAL ESTATE INVESTMENT TRUST**, a trust created under the laws of the Province of Ontario (the "**REIT**")

OF THE FIRST PART

- and -

**CIBC MELLON TRUST COMPANY**, a trust company incorporated under the laws of Canada (the "**Rights Agent**")

OF THE SECOND PART

**WHEREAS** the REIT and the Rights Agent entered into an amended and restated unitholder rights plan, made as of October 1, 2008, amending and restating the unitholder rights plan made as of June 23, 2006 (as amended and restated, the "**Original Plan**") that would be effective at the latest until the termination of the annual meeting of the unitholders of the REIT in the year 2009;

**AND WHEREAS** the trustees of the REIT (the "**REIT Trustees**") have determined that it is advisable that the REIT Trustees continue the Original Plan by adopting a further amended and restated unitholder rights plan to take effect immediately upon receipt of approval of the holders of REIT Units and of the Independent Unitholders to effect the continued distribution of rights under the Original Plan as further amended and restated herein (the "**Rights Plan**") in order to ensure, to the extent possible, that all the REIT's unitholders are treated fairly in connection with any take-over offer or bid for the REIT Units (as hereinafter defined), and to ensure that the REIT Trustees are provided with sufficient time to evaluate unsolicited take-over bids and to explore and develop alternatives to maximize unitholder value;

**AND WHEREAS** pursuant to the declaration of trust of each of the REIT and H&R Finance Trust ("**Finance Trust**"), the REIT Units and Finance Trust Units (as hereinafter defined) are stapled at a ratio of one REIT Unit to one Finance Trust Unit (a "**Stapled Unit**") and, as a result, unless an Event of Uncoupling (as hereinafter defined) has occurred, each REIT Unit trades together with a Finance Trust Unit as a Stapled Unit;

**AND WHEREAS** the REIT and Finance Trust have entered into an agreement dated as of October 1, 2008 to, among other things, support the implementation and administration of the Rights Plan;

**AND WHEREAS** in order to continue the Rights Plan, the REIT Trustees have:

- (a) confirmed the issuance of one Right (as hereinafter defined) in respect of each Stapled Unit outstanding immediately after completion, on October 1, 2008, of the steps set out in section 3.1 of the Plan of Arrangement (as hereinafter defined);
- (b) confirmed and authorized the issuance of one Right in respect of each Stapled Unit issued after the time referred to in (a) and prior to the earlier of the Separation Time (as hereinafter defined) and the Expiration Time (as hereinafter defined);

**AND WHEREAS** each Right entitles the holder thereof, after the Separation Time, to purchase Stapled Units pursuant to the terms and subject to the conditions set forth herein;

**AND WHEREAS** the REIT desires to confirm the appointment of the Rights Agent to act on behalf of the REIT and holders of Rights, and the Rights Agent is willing to so act, in connection with the issuance, transfer, exchange and replacement of Rights Certificates (as hereinafter defined), the exercise of Rights and other matters referred to herein;

**NOW THEREFORE**, in consideration of the premises and the respective covenants and agreements set forth herein, the parties hereby agree as follows:

## **ARTICLE 1** **INTERPRETATION**

### 1.1 **Certain Definitions**

For the purposes of this Agreement, the following terms have the meanings indicated:

- (a) "**ABCA**" shall mean the *Business Corporations Act* (Alberta), R.S.A. 2000, c. B-9, as amended, including the regulations promulgated thereunder;
- (b) "**Acquiring Person**" shall mean any Person who is or becomes the Beneficial Owner of 20% or more of the outstanding Stapled Units, provided, however, that the term "Acquiring Person" shall not include:
  - (i) the REIT, Finance Trust, any Subsidiary of the REIT or any Subsidiary of Finance Trust;
  - (ii) any Person who becomes the Beneficial Owner of 20% or more of the outstanding Stapled Units as a result of any one or a combination of:
    - (A) an acquisition or redemption or conversion by the REIT and/or Finance Trust of Stapled Units which, by reducing the number of

Stapled Units outstanding, increases the percentage of Stapled Units Beneficially Owned by such Person to 20% or more of the Stapled Units then outstanding (a "**Stapled Unit Reduction**");

- (B) an acquisition of Stapled Units made pursuant to a Permitted Bid or a Competing Permitted Bid (a "**Permitted Bid Acquisition**");
- (C) an acquisition of Stapled Units in respect of which the REIT Trustees have waived the application of section 4.1 pursuant to the provisions of section 6.1 (an "**Exempt Acquisition**"); or
- (D) a Pro Rata Acquisition;

provided, however, that if a Person shall become the Beneficial Owner of 20% or more of the Stapled Units then outstanding by reason of any one or a combination of a Stapled Unit Reduction, a Permitted Bid Acquisition, an Exempt Acquisition or a Pro Rata Acquisition and thereafter such Person, while such Person is the Beneficial Owner of 20% or more of the Stapled Units then outstanding, increases the number of Stapled Units Beneficially Owned by such Person by more than 1% of the number of Stapled Units outstanding (other than pursuant to any one or a combination of a Stapled Unit Reduction, a Permitted Bid Acquisition, an Exempt Acquisition or a Pro Rata Acquisition) then, as of the date such Person becomes the Beneficial Owner of such additional outstanding Stapled Units, such Person shall be an "Acquiring Person";

- (iii) for the period of 10 days after the Disqualification Date (as hereinafter defined), any Person who becomes the Beneficial Owner of 20% or more of the outstanding Stapled Units as a result of such Person becoming disqualified from relying on subclause 1.1(f)(iii)(B) hereof because such Person makes or announces an intention to make a Take-over Bid alone or by acting jointly or in concert with any other Person and, for this purpose, "**Disqualification Date**" means the first date of a public announcement of facts indicating that such Person is making or intends to make a Take-over Bid;
- (iv) an underwriter or member of a banking or selling group acting in such capacity that becomes the Beneficial Owner of 20% or more of the Stapled Units in connection with a distribution of securities of the REIT and/or Finance Trust; or
- (v) a Person (a "**Grandfathered Person**") who is the Beneficial Owner of more than 20% of the outstanding Stapled Units, determined as of the Effective Time; provided however that this exemption shall not be, and shall cease to be, applicable to a Grandfathered Person in the event that such Grandfathered Person shall, after the Effective Time: (1) cease to own more than 20% of the outstanding Stapled Units; or (2) become the

Beneficial Owner of additional Stapled Units that increases its Beneficial Ownership of Stapled Units by more than 1% of the number of Stapled Units outstanding as at the Effective Time, other than through any one or a combination of a Stapled Unit Reduction, a Permitted Bid Acquisition, an Exempt Acquisition or a Pro Rata Acquisition;

- (c) "**Affiliate**", when used to indicate a relationship with a specified Person, shall mean a Person who directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such specified Person;
- (d) "**Articles of Arrangement**" shall mean the articles of arrangement in respect of the Arrangement filed with the Registrar under subsection 193(10) of the ABCA to give effect to the Plan of Arrangement;
- (e) "**Associate**" shall mean, when used to indicate a relationship with a specified Person, a spouse of that Person, any Person of the same or opposite sex with whom that Person is living in a conjugal relationship outside marriage, a child of that Person or a relative of that Person who has the same residence as that Person;
- (f) A Person shall be deemed the "**Beneficial Owner**" of, and to have "**Beneficial Ownership**" of, and to "**Beneficially Own**":
  - (i) any securities as to which such Person or any of such Person's Affiliates or Associates is the owner at law or equity;
  - (ii) any securities as to which such Person or any of such Person's Affiliates or Associates has the right to acquire (where such right is exercisable within a period of 60 days thereafter, whether or not on condition or the happening of any contingency or the making of any payment) (A) pursuant to any agreement, arrangement, pledge or understanding, whether or not in writing (other than customary agreements with and between underwriters or banking group or selling group members with respect to a distribution of securities and other than pledges of securities in the ordinary course of business), or (B) upon the exercise of any conversion right, exchange right, security purchase right (other than a Right), warrant or option; and
  - (iii) any securities which are Beneficially Owned within the meaning of the foregoing provisions of this subsection 1.1(f) by any other Person with whom such Person is acting jointly or in concert;

provided, however, that a Person shall not be deemed the "Beneficial Owner" of or to have "Beneficial Ownership" of, or to "Beneficially Own", any security because:

- (A) such security has been deposited or tendered pursuant to a Lock-up Agreement or is otherwise deposited or tendered pursuant to any

Take-over Bid made by such Person, made by any of such Person's Affiliates or Associates or made by any Person acting jointly or in concert with such Person until such deposited or tendered security has been taken up or paid for, whichever shall occur first;

- (B) such Person, any of such Person's Affiliates or Associates or any other Person acting jointly or in concert with such Person holds such security, provided that:
- (1) the ordinary business of such Person (an "**Investment Manager**") includes the management of investment funds for others (which others, for greater certainty, may include or be limited to one or more employee benefit plans or pension plans) and/or includes the acquisition or holding of securities for a non-discretionary account of a Client (as defined below) by a dealer or broker registered under applicable securities laws to the extent required, and such security is held by the Investment Manager in the ordinary course of such business in the performance of such Investment Manager's duties for the account of any other Person or Persons (a "**Client**"); or
  - (2) such Person (a "**Trust Company**") is licensed to carry on the business of a trust company under applicable laws and, as such, acts as trustee or administrator or in a similar capacity in relation to the estates of deceased or incompetent Persons ("**Estate Accounts**") or in relation to other accounts ("**Other Accounts**") and holds such security in the ordinary course of such duties for such Estate Accounts or for such Other Accounts; or
  - (3) such Person is established by statute for purposes that include, and the ordinary business or activity of such Person (a "**Statutory Body**") includes, the management of investment funds for employee benefit plans, pension plans, insurance plans or various public bodies; or
  - (4) such Person (an "**Administrator**") is the administrator or the trustee of one or more pension funds or plans (each a "**Plan**") or is a Plan registered under applicable laws and holds such security for the purposes of its activity as such; or
  - (5) such Person is a Crown agent or agency;

provided that, in any of the above cases, the Investment Manager, the Trust Company, the Statutory Body, the Administrator, the

Plan, or the Crown agent or agency, as the case may be, is not then making and has not announced a current intention to make a Take-over Bid (other than an Offer to Acquire Stapled Units or other securities of the REIT and/or Finance Trust by means of a distribution by the REIT and/or Finance Trust or by means of ordinary market transactions (including pre-arranged trades entered into in the ordinary course of business of such Person executed through the facilities of a securities exchange)) alone or acting jointly or in concert with any other Person;

- (C) such Person is (1) a Client of the same Investment Manager as another Person on whose account the Investment Manager holds such security, (2) an Estate Account or an Other Account of the same Trust Company as another Person on whose account the Trust Company holds such security, or (3) a Plan which has the same Administrator as another Plan on whose account the Administrator holds such security;
  - (D) such Person is (1) a Client of an Investment Manager and such security is owned at law or in equity by the Investment Manager, or (2) an account of a Trust Company and such security is owned at law or in equity by the Trust Company, or (3) a Plan and such security is owned at law or in equity by the Administrator thereof; or
  - (E) such Person is the registered holder of securities as a result of carrying on the business or activity of a securities depository or as a result of being a nominee holder of such securities;
- (g) "**Business Day**" shall mean any day other than a Saturday, a Sunday or a day on which banking institutions in Toronto, Ontario are authorized or obligated by law to close;
  - (h) "**close of business**" on any date shall mean the time on such date (or, if such date is not a Business Day, the time on the next succeeding Business Day) at which the principal office in Toronto of the transfer agents for Stapled Units (or, after the Separation Time, the office in Toronto of the Rights Agent) is closed to the public;
  - (i) "**Competing Permitted Bid**" shall mean a Take-over Bid that:
    - (i) is made after a Permitted Bid or another Competing Permitted Bid has been made and prior to the expiry of the Permitted Bid or other Competing Permitted Bid;
    - (ii) satisfies all components of the definition of a Permitted Bid other than the requirements set out in subclause (ii)(A) of such definition; and

- (iii) contains, and the take-up and payment for securities tendered or deposited is subject to, an irrevocable and unqualified condition that no Stapled Units will be taken up or paid for pursuant to the Take-over Bid prior to the close of business on a date that is no earlier than the later of (A) 60 days after the date on which the earliest Permitted Bid then in existence was made and (B) 35 days after the date of the Take-over Bid constituting the Competing Permitted Bid;
- (j) **"control"**: a Person or two or more Persons acting jointly or in concert (first person) is considered to control another Person (second person) if:
  - (i) the first person, directly or indirectly, beneficially owns or exercises control or direction over securities of the second person carrying more than 50% of the votes for the election of the directors of the second person and which, if exercised, would entitle the first person to elect a majority of the directors of the second person, unless that first person holds the voting securities only to secure an obligation;
  - (ii) the second person is a partnership, other than a limited partnership, and the first person holds more than 50% of the interests of the partnership; or
  - (iii) the second person is a limited partnership and the general partner of the limited partnership is the first person,

and **"controls"**, **"controlling"** and **"under common control with"** shall be interpreted accordingly;

- (k) **"Effective Time"** shall have the meaning ascribed thereto in the Plan of Arrangement;
- (l) **"Election to Exercise"** shall have the meaning ascribed thereto in clause 3.1(e)(ii);
- (m) **"equivalent securities"** shall have the meaning ascribed thereto in subsection 3.2(b);
- (n) **"Event of Uncoupling"** shall have the meaning ascribed thereto in the REIT Declaration of Trust;
- (o) **"Exercise Price"** shall mean, as of any date, the price at which a holder of a Right may purchase the securities issuable upon exercise of such Right. Until adjustment thereof in accordance with the terms hereof, the Exercise Price for each Right shall be \$100;
- (p) **"Expiration Time"** shall mean the earlier of:
  - (i) the Termination Time; and

- (ii) the termination of the annual meeting of the unitholders of the REIT in the year 2012;

provided, however, that if the resolution referred to in Section 6.16 is approved by the holders of REIT Units or the Independent Unitholders, as the case may be, in accordance with Section 6.16 at or prior to such annual meeting, "Expiration Time" means the earlier of:

- (i) the Termination Time; and
  - (ii) the termination of the annual meeting of the unitholders of the REIT in the year that is three years after the year in which such approval occurs.
- (q) "**Finance Trust**" shall mean H&R Finance Trust, an open-ended limited purpose unit trust established under the laws of the Province of Ontario pursuant to the Plan of Arrangement;
  - (r) "**Finance Trust Trustees**" shall mean the trustees of Finance Trust or any duly constituted and empowered committee thereof as permitted pursuant to the declaration of trust of Finance Trust dated as of the date hereof, as amended, supplemented and/or amended and restated from time to time;
  - (s) "**Finance Trust Unit**" shall mean a unit of Finance Trust, including any unit of Finance Trust into which a unit of Finance Trust may be subdivided, consolidated, reclassified or changed and including, for greater certainty, a Finance Trust Unit forming part of a Stapled Unit;
  - (t) "**Flip-in Event**" shall mean a transaction in or pursuant to which any Person shall become an Acquiring Person;
  - (u) "**holder**" of any Right shall mean the registered holder of such Right (or if prior to the Separation Time, the registered holder of the associated Stapled Unit);
  - (v) "**Independent Unitholders**" shall mean holders of Stapled Units other than:
    - (i) any Acquiring Person;
    - (ii) any Offeror (other than a Person who pursuant to subclause 1.1(f)(iii)(B) is not deemed to Beneficially Own the Stapled Units held by such Person);
    - (iii) any Associate or Affiliate of such Acquiring Person or Offeror referred to in (ii) above;
    - (iv) any Person acting jointly or in concert with Persons referred to in (i) or (ii) above; and
    - (v) any employee benefit plan, Stapled Unit purchase plan, REIT Unit purchase plan, Finance Trust Unit purchase plan, deferred profit sharing

plan and any other similar plan or trust for the benefit of employees of the REIT, Finance Trust, a Subsidiary of the REIT or a Subsidiary of Finance Trust, unless the beneficiaries of such plan or trust direct the manner in which the Stapled Units are to be voted or direct whether the Stapled Units are to be tendered pursuant to a Take-over Bid;

- (w) **"Lock-up Agreement"** shall mean an agreement between an Offeror, any of its Affiliates or Associates or any other Person acting jointly or in concert with the Offeror and a Person (the **"Locked-up Person"**) who is not an Affiliate or Associate of the Offeror or a Person acting jointly or in concert with the Offeror whereby the Locked-up Person agrees to deposit or tender Stapled Units held by the Locked-up Person to the Offeror's Take-over Bid or to any Take-over Bid made by any of the Offeror's Affiliates or Associates or made by any other Person acting jointly or in concert with the Offeror (the **"Lock-up Bid"**), where the agreement:
- (i) (A) permits the Locked-up Person to withdraw the Stapled Units from the agreement in order to tender or deposit the Stapled Units to another Take-over Bid or support another transaction that contains an offering price per Stapled Unit that is higher than the offering price per Stapled Unit contained or proposed to be contained in the Lock-up Bid; or
  - (B) (a) permits the Locked-Up Person to withdraw the Stapled Units from the agreement in order to tender or deposit the Stapled Units to another Take-over Bid, or to support another transaction, that provides for a consideration for each Stapled Unit that exceeds by as much as or more than a specified amount (the **"Specified Amount"**) the consideration for each Stapled Unit contained in or proposed to be contained in, and is made for at least the same number of Stapled Units as, the Take-over Bid to which the Locked-up Person has agreed to deposit or tender Stapled Units pursuant to the Lock-up Agreement; and (b) does not by its terms provide for a Specified Amount that is greater than 7% over the consideration for each Stapled Unit contained in or proposed to be contained in the Lock-up Bid;
  - (ii) contains a right of first refusal or requires a period of delay to give the bidder an opportunity to match a higher price in another bid or another similar limitation on a Locked-Up Person's right to withdraw Stapled Units from the agreement, but does not preclude the exercise of the Locked-Up Person's right to withdraw Stapled Units during the period of another Take-over Bid or transaction; and
  - (iii) does not provide for any "break-up" fees, "top-up" fees, penalties, expenses or other amounts payable to the bidder that exceed in the aggregate  $\frac{1}{2}$  of the cash equivalent of the amount by which (A) the value

payable to the Locked-up Person under another Take-over Bid or transaction exceeds (B) the value payable to the Locked-up Person under the Lock-up Bid, such payment to be made in the event the Locked-Up Person fails to tender or deposit Staped Units pursuant to the Locked-up Bid in order to accept another Take-over Bid or support another transaction;

- (x) "**Market Price**" per security of any securities on any date of determination shall mean the weighted average trading price per security of such class of securities (determined as described below) during the 20 consecutive Trading Days through and including the Trading Day immediately preceding such date; provided, however, that if an event of a type analogous to any of the events described in section 3.2 shall have caused the sale prices used to determine the Market Price on any Trading Day not to be fully comparable with the sale prices on such date of determination or, if the date of determination is not a Trading Day, on the immediately preceding Trading Day, each such sale price so used shall be appropriately adjusted in a manner analogous to the applicable adjustment provided for in section 3.2 in order to make it fully comparable with the sale prices on such date of determination or, if the date of determination is not a Trading Day, on the immediately preceding Trading Day. The weighted average trading price per security of any securities during any period of 20 consecutive Trading Days (the "**pricing period**") shall be determined by dividing the aggregate sale price of all securities sold during the pricing period on the principal securities exchange on which such securities are listed or admitted to trading (as determined by volume of trading) by the total number of securities so sold, provided that if there are no sales of the securities on such principal securities exchange on more than 15 Trading Days during the applicable pricing period,
- (i) the Market Price shall be the average of the mid-points of the closing bid and asked prices for such security for the 20 Trading Days comprising the applicable pricing period as furnished by a professional market maker making a market in the securities selected in good faith by the REIT Trustees; and
  - (ii) if on any date the prices referred to in clause (i) are not available for any reason, the price in respect of such date for the purpose of the calculation of the Market Price as described in clause (i) shall be the fair value per security of such securities on such date as determined by a nationally or internationally recognized investment dealer or investment banker.

The Market Price shall be expressed in Canadian dollars and, if initially determined on any day forming part of the applicable pricing period in United States dollars, such amount shall be translated into Canadian dollars at the nominal noon exchange rate set by the Bank of Canada on such day for the conversion of one United States dollar into one Canadian dollar, or, if no such rate is set by the Bank of Canada, at the rate for such conversion which is set by the REIT Trustees acting in good faith;

- (y) **"Nominee"** shall have the meaning ascribed thereto in subsection 3.1(d);
- (z) **"Offer to Acquire"** shall include:
  - (i) an offer to purchase, or a solicitation of an offer to sell; and
  - (ii) an acceptance of an offer to sell, whether or not such offer to sell has been solicited,

or any combination thereof, and the Person accepting an offer to sell shall be deemed to be making an Offer to Acquire to the Person who made the offer to sell;
- (aa) **"Offeror"** shall mean a Person who has announced a current intention to make or who is making a Take-over Bid;
- (bb) **"Offeror's Securities"** shall mean Stapled Units Beneficially Owned on the date of an Offer to Acquire by an Offeror;
- (cc) **"Original Plan"** shall have the meaning ascribed thereto in the recitals hereof;
- (dd) **"Permitted Bid"** shall mean a Take-over Bid which is made by an Offeror by means of a take-over bid circular and which also complies with the following additional provisions:
  - (i) the Take-over Bid is made to all holders of Stapled Units, other than the Offeror;
  - (ii) the Take-over Bid contains, and the take-up and payment for securities tendered or deposited thereunder is subject to, irrevocable and unqualified conditions that (A) no Stapled Units shall be taken up or paid for pursuant to the Take-over Bid prior to the close of business on the date which is not less than 60 days following the date of the Take-over Bid and (B) no Stapled Units shall be taken up or paid for pursuant to the Take-over Bid unless, at the date referred to in (A) above, more than 50% of the Stapled Units held by Independent Unitholders shall have been deposited or tendered pursuant to the Take-over Bid and not withdrawn;
  - (iii) the Take-over Bid contains an irrevocable and unqualified provision that, unless the Take-over Bid is withdrawn, Stapled Units may be deposited pursuant to such Take-over Bid at any time prior to the close of business on the date of first take-up or payment for Stapled Units and that any Stapled Units deposited pursuant to the Take-over Bid may be withdrawn until taken up and paid for; and
  - (iv) the Take-over Bid contains an irrevocable and unqualified provision that if, on the date on which Stapled Units may be taken up or paid for, more than 50% of the Stapled Units held by Independent Unitholders shall have

been deposited or tendered pursuant to the Take-over Bid and not withdrawn, the Offeror will make a public announcement of that fact and the Take-over Bid will remain open for deposits and tenders of Stapled Units for not less than 10 Business Days from the date of such public announcement;

provided that if a Take-over Bid constitutes a Competing Permitted Bid, the term "Permitted Bid" shall also mean the Competing Permitted Bid;

- (ee) **"Person"** shall include any individual, body corporate, firm, partnership, association, cooperative, trust, trustee, executor, administrator, legal personal representative, group, unincorporated organization, syndicate, government or governmental agency or instrumentality, or other entity;
- (ff) **"Plan of Arrangement"** shall mean the plan of arrangement made pursuant to section 193 of the ABCA involving the REIT and H&R TT (LP) Inc., as effected October 1, 2008;
- (gg) **"Pro Rata Acquisition"** shall mean an acquisition of Stapled Units:
  - (i) as a result of a distribution to holders of Stapled Units, a split of the Stapled Units or other event pursuant to which a Person receives or acquires Stapled Units on the same *pro rata* basis as all other holders of Stapled Units;
  - (ii) pursuant to any regular distribution reinvestment plan or other plan made available by the REIT and/or Finance Trust to holders of REIT Units, Finance Trust Units or Stapled Units;
  - (iii) pursuant to the receipt and/or exercise of rights issued by the REIT and/or Finance Trust to all or substantially all the holders of Stapled Units to subscribe for or purchase Stapled Units, provided that such rights are acquired directly from the REIT and/or Finance Trust and not from any other Person and provided further that the Person does not thereby acquire a greater percentage of Stapled Units than the Person's percentage of Stapled Units Beneficially Owned prior to such acquisition or exercise; or
  - (iv) pursuant to a distribution by the REIT and/or Finance Trust of Stapled Units, or securities convertible into or exchangeable for Stapled Units (and the conversion or exchange of such convertible or exchangeable securities) made pursuant to a prospectus or by way of private placement by the REIT and/or Finance Trust, provided that the Person does not thereby acquire a greater percentage of Stapled Units, or securities convertible or exchangeable for Stapled Units, than the Person's percentage of Stapled Units Beneficially Owned prior to such acquisition;
- (hh) **"Redemption Price"** shall have the meaning ascribed thereto in subsection 6.1(a);

- (ii) "**Registrar**" shall mean the registrar appointed under Section 263 of the ABCA;
- (jj) "**REIT**" shall mean H&R Real Estate Investment Trust, a trust created under the laws of the Province of Ontario or, where the context so requires, the REIT Trustees acting in their capacity as trustees;
- (kk) "**REIT Declaration of Trust**" shall mean the amended and restated declaration of trust of the REIT dated as of the date hereof, as amended, supplemented and/or amended and restated from time to time;
- (ll) "**REIT Trustees**" shall mean the trustees of the REIT or any duly constituted and empowered committee thereof as permitted pursuant to the REIT Declaration of Trust;
- (mm) "**REIT Unit**" shall mean a unit of the REIT, including any unit of the REIT into which a unit of the REIT may be subdivided, consolidated, reclassified or changed and including, for greater certainty, a REIT Unit forming part of a Stapled Unit;
- (nn) "**Right**" shall mean the right to subscribe for additional Stapled Units as provided in Article 3 and Article 4 hereof;
- (oo) "**Rights Agent**" shall mean CIBC Mellon Trust Company, a trust company incorporated under the laws of Canada;
- (pp) "**Rights Certificates**" shall mean the certificates representing the Rights after the Separation Time, which shall be substantially in the form attached hereto as Exhibit A;
- (qq) "**Rights Plan**" shall have the meaning ascribed thereto in the recitals hereof;
- (rr) "**Rights Register**" and "**Rights Registrar**" shall have the respective meanings ascribed thereto in subsection 2.3(a);
- (ss) "**Securities Act (Ontario)**" shall mean the *Securities Act*, R.S.O. 1990, c. S.5 and the rules and regulations thereunder, each as may be amended from time to time, and any comparable or successor laws, rules or regulations thereto;
- (tt) "**securities exchange**" shall mean a stock exchange or stock quotation system;
- (uu) "**Separation Time**" shall mean, subject to subsection 6.1(c), the close of business on the eighth Trading Day after the earlier of:
  - (i) the Stapled Unit Acquisition Date;
  - (ii) the date of the commencement of, or first public announcement of, the intent of any Person (other than the REIT, Finance Trust, any Subsidiary of the REIT or any Subsidiary of Finance Trust) to commence a Take-over

Bid (other than a Permitted Bid or a Competing Permitted Bid), provided that, if any Take-over Bid referred to in this clause (ii) expires, is cancelled, terminated or otherwise withdrawn prior to the Separation Time, such Take-over Bid shall be deemed, for purposes of this subsection 1.1(uu), never to have been made; and

(iii) the date upon which a Permitted Bid ceases to be a Permitted Bid;

or such later date as may be determined by the REIT Trustees acting in good faith, provided that, if the foregoing results in the Separation Time being prior to the Effective Time, the Separation Time shall be the Effective Time;

- (vv) "**Stapled Unit**" shall have the meaning ascribed thereto in the recitals hereof;
- (ww) "**Stapled Unit Acquisition Date**" shall mean the date of the first public announcement (which for the purposes of this definition shall include, without limitation, the filing of a report pursuant to section 102.1 of the *Securities Act* (Ontario) or section 13(d) of the U.S. Exchange Act) by the REIT, Finance Trust or an Acquiring Person of facts indicating that a Person has become an Acquiring Person;
- (xx) "**Subsidiary**" shall mean a Person that is controlled directly or indirectly by another Person and includes a subsidiary of that subsidiary;
- (yy) "**Take-over Bid**" shall mean an Offer to Acquire Stapled Units or securities convertible into Stapled Units if, assuming that the Stapled Units or convertible securities subject to the Offer to Acquire are acquired and are Beneficially Owned at the date of such Offer to Acquire by the Person making such Offer to Acquire, such Stapled Units (including Stapled Units that may be acquired upon conversion of securities convertible into Stapled Units), together with any other of the Offeror's Securities, constitute in the aggregate 20% or more of the outstanding Stapled Units at the date of the Offer to Acquire;
- (zz) "**Termination Time**" shall mean the time at which the right to exercise Rights shall terminate pursuant to subsection 6.1(g) or section 6.16;
- (aaa) "**Trading Day**", when used with respect to any securities, shall mean a day on which the principal securities exchange on which such securities are listed or admitted to trading (as determined by volume of trading) is open for the transaction of business or, if the securities are not listed or admitted to trading on any securities exchange, a Business Day;
- (bbb) "**Transferee**" shall have the meaning ascribed thereto in clause 4.1(b)(ii); and
- (ccc) "**U.S. Exchange Act**" shall mean the United States *Securities Exchange Act of 1934*, as amended, and the rules and regulations thereunder, and any comparable or successor laws, rules or regulations thereto.

## 1.2 **Currency**

All sums of money which are referred to in this Agreement are expressed in lawful money of Canada, unless otherwise specified.

## 1.3 **Descriptive Headings**

Descriptive headings appear herein for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

## 1.4 **References to Agreement**

References to "this Agreement", "hereto", "herein" "hereby", "hereunder", "hereof" and similar expressions refer to this Agreement, as amended or supplemented from time to time, and not to any particular Article, section, subsection, clause, subclause, subdivision or other portion hereof and include any and every instrument supplemental or ancillary hereto.

## 1.5 **Calculation of Beneficial Ownership of Outstanding Stapled Units**

(a) For the purposes of this Agreement, in determining the percentage of the outstanding Stapled Units with respect to which a Person is or is deemed to be the Beneficial Owner, all unissued Stapled Units of which such Person is deemed to be the Beneficial Owner shall be deemed to be outstanding.

(b) The percentage of outstanding Stapled Units Beneficially Owned by any Person shall, for the purposes of this Agreement, be and be deemed to be the product determined by the following formula:

$$100 \times \frac{A}{B}$$

where:

A = the number of outstanding Stapled Units Beneficially Owned by such Person; and

B = the number of outstanding Stapled Units.

## 1.6 **Acting Jointly or in Concert**

For the purposes of this Agreement, a Person is acting jointly or in concert with another Person if such Person has any agreement, arrangement or understanding (whether formal or informal and whether or not in writing) with such other Person to acquire or offer to acquire any Stapled Units (other than customary agreements with and between underwriters or banking group or selling group members with respect to a distribution of securities and other than pledges of securities in the ordinary course of business).

## 1.7 **Event of Uncoupling**

If an Event of Uncoupling shall occur, unless the context otherwise requires, all references in this Agreement to “Stapled Units” shall be read as references to “REIT Units” and references to “Finance Trust”, “the Finance Trust Trustees” and “Finance Trust Units” shall be disregarded.

#### 1.8 **Finance Trust Units To Be Purchased at Fair Market Value**

Notwithstanding any other provision of this Agreement, (a) the price at which a holder of a Right may purchase a Finance Trust Unit forming part of a Stapled Unit issuable upon exercise of such Right shall be equal to the fair market value of a Finance Trust Unit at the time of the exercise of such Right, and such amount shall be payable by such holder, at the time of such exercise, to the REIT solely as agent for and on behalf of such holder so exercising such Right and the REIT shall pay such amount to Finance Trust on behalf of such holder in consideration of the issuance and delivery of the relevant Finance Trust Units to such holder, and (b) the remainder of the Exercise Price payable by a holder of such Right in accordance with this Agreement shall be payable by such holder to the REIT at the time of such exercise. For the avoidance of doubt, at all times the amount described above at (a) shall be no less than the fair market value, from time to time, of a Finance Trust Unit, such that a holders’s right to acquire Finance Trust Units shall, in and of itself, have no value.

### **ARTICLE 2** **THE RIGHTS**

#### 2.1 **Legend on Certificates**

Certificates for Stapled Units issued after the Effective Time but prior to the earlier of the Separation Time and the Expiration Time shall evidence, in addition to the Stapled Units, one applicable Right for each Stapled Unit evidenced thereby and shall have impressed on, printed on, written on or otherwise affixed to them (a) the legend set forth in Section 2.1 of the Original Plan, which legend shall be deemed to be amended for all purposes to read the same as the following legend, or (b) the following legend:

**UNTIL THE SEPARATION TIME (AS DEFINED IN THE RIGHTS AGREEMENT REFERRED TO BELOW), THIS CERTIFICATE ALSO EVIDENCES AND ENTITLES THE HOLDER HEREOF TO CERTAIN RIGHTS AS SET FORTH IN THE AMENDED AND RESTATED UNITHOLDERS RIGHTS PLAN AGREEMENT MADE AS OF THE 15<sup>TH</sup> DAY OF MAY, 2009 (AMENDING AND RESTATING THE UNITHOLDER RIGHTS PLAN AGREEMENT MADE AS OF THE 23<sup>RD</sup> DAY OF JUNE, 2006, AS AMENDED AND RESTATED AS OF THE 1<sup>ST</sup> DAY OF OCTOBER, 2008, THE "RIGHTS AGREEMENT") BETWEEN THE TRUSTEES OF H&R REAL ESTATE INVESTMENT TRUST (THE "REIT") AND CIBC MELLON TRUST COMPANY, AS RIGHTS AGENT (AS THE SAME MAY BE AMENDED OR SUPPLEMENTED FROM TIME TO TIME IN ACCORDANCE WITH THE TERMS THEREOF), THE TERMS OF WHICH ARE HEREBY INCORPORATED**

**HEREIN BY REFERENCE AND A COPY OF WHICH MAY BE INSPECTED BY HOLDERS OF "STAPLED UNITS", AS SUCH TERM IS DEFINED IN THE RIGHTS AGREEMENT, DURING NORMAL BUSINESS HOURS AT THE PRINCIPAL EXECUTIVE OFFICES OF THE REIT. UNDER CERTAIN CIRCUMSTANCES, AS SET FORTH IN THE RIGHTS AGREEMENT, SUCH RIGHTS MAY BE TERMINATED, MAY EXPIRE, MAY BECOME VOID (IF, IN CERTAIN CASES, THEY ARE "BENEFICIALLY OWNED" BY AN "ACQUIRING PERSON", AS SUCH TERMS ARE DEFINED IN THE RIGHTS AGREEMENT, WHETHER CURRENTLY HELD BY OR ON BEHALF OF SUCH PERSON OR ANY SUBSEQUENT HOLDER) OR MAY BE EVIDENCED BY SEPARATE CERTIFICATES AND MAY NO LONGER BE EVIDENCED BY THIS CERTIFICATE. THE REIT WILL MAIL OR ARRANGE FOR THE MAILING OF A COPY OF THE RIGHTS AGREEMENT TO THE HOLDER OF THIS CERTIFICATE WITHOUT CHARGE AS SOON AS IS PRACTICABLE AFTER THE RECEIPT OF A WRITTEN REQUEST THEREFOR.**

Certificates representing Stapled Units that are issued and outstanding at the date hereof shall evidence one applicable Right for each Stapled Unit evidenced thereby, notwithstanding the absence of the foregoing legend until the earlier of the Separation Time and the Expiration Time.

## **2.2 Execution, Authentication, Delivery and Dating of Rights Certificates**

(a) The Rights Certificates shall be executed on behalf of the REIT by any two REIT Trustees. The signature of any of these REIT Trustees on the Rights Certificates may be manual or facsimile. Rights Certificates bearing the manual or facsimile signatures of individuals who were at any time REIT Trustees shall bind the REIT, notwithstanding that such individuals or any of them have ceased to be REIT Trustees prior to the countersignature and delivery of such Rights Certificates.

(b) Promptly after the REIT learns of the Separation Time, the REIT will notify the Rights Agent of such Separation Time and will deliver Rights Certificates executed by the REIT to the Rights Agent for countersignature, together with a disclosure statement describing the Rights, and the Rights Agent shall countersign (manually or by facsimile signature) and deliver such Rights Certificates and statement to the holders of the Rights pursuant to subsection 3.1(d). No Rights Certificate shall be valid for any purpose until countersigned by the Rights Agent as aforesaid.

(c) Each Rights Certificate shall be dated the date of the countersignature thereof.

## **2.3 Registration, Registration of Transfer and Exchange**

(a) The REIT will cause to be kept a register (the "**Rights Register**") in which, subject to such reasonable regulations as it may prescribe, the REIT will provide for the

registration and transfer of Rights. The Rights Agent is hereby appointed the "**Rights Registrar**" for the purpose of maintaining the Rights Register for the REIT and registering Rights and transfers of Rights as herein provided. In the event that the Rights Agent shall cease to be the Rights Registrar, the Rights Agent will have the right to examine the Rights Register at all reasonable times. After the Separation Time and prior to the Expiration Time, upon surrender for registration of transfer or exchange of any Rights Certificate, and subject to the provisions of subsection (c) of this section 2.3, the REIT will execute, and the Rights Agent will countersign and deliver, in the name of the holder or the designated transferee or transferees, as required pursuant to the holder's instructions, one or more new Rights Certificates evidencing the same aggregate number of Rights as did the Rights Certificate so surrendered.

(b) All Rights issued upon any registration of transfer or exchange of Rights Certificates shall be valid obligations of the REIT, and such Rights shall be entitled to the same benefits under this Agreement as the Rights surrendered upon such registration of transfer or exchange.

(c) Every Rights Certificate surrendered for registration of transfer or exchange shall be duly endorsed, or be accompanied by a written instrument of transfer in form satisfactory to the REIT or the Rights Agent, as the case may be, duly executed by the holder thereof or such holder's attorney duly authorized in writing. As a condition to the issuance of any new Rights Certificate under this section 2.3, the REIT may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Rights Agent) in connection therewith.

#### 2.4 **Mutilated, Destroyed, Lost and Stolen Rights Certificates**

(a) If any mutilated Rights Certificate is surrendered to the Rights Agent prior to the Expiration Time, the REIT shall execute and the Rights Agent shall countersign and deliver in exchange therefor a new Rights Certificate evidencing the same number of Rights as the Rights Certificate so surrendered.

(b) If there shall be delivered to the REIT and the Rights Agent prior to the Expiration Time: (i) evidence to their satisfaction of the destruction, loss or theft of any Rights Certificate; and (ii) such security or indemnity as shall be required by them to save each of them and any of their agents harmless, then, in the absence of notice to the REIT or the Rights Agent that such Rights Certificate has been acquired by a *bona fide* purchaser, the REIT shall execute and upon its request the Rights Agent shall countersign and deliver, in lieu of any such destroyed, lost or stolen Rights Certificate, a new Rights Certificate evidencing the same number of Rights as did the Rights Certificate so destroyed, lost or stolen.

(c) As a condition to the issuance of any new Rights Certificate under this section 2.4, the REIT may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Rights Agent) in connection therewith.

(d) Every new Rights Certificate issued pursuant to this section 2.4 in lieu of any destroyed, lost or stolen Rights Certificate shall evidence the contractual obligation of the REIT,

whether or not the destroyed, lost or stolen Rights Certificate shall be at any time enforceable by anyone, and shall be entitled to all the benefits of this Agreement equally and proportionately with any and all other Rights duly issued by the REIT.

## 2.5 **Persons Deemed Owners of Rights**

The REIT, the Rights Agent and any agent of the REIT or the Rights Agent may deem and treat the Person in whose name a Rights Certificate (or, prior to the Separation Time, the associated Stapled Unit certificate) is registered as the absolute owner thereof and of the Rights evidenced thereby for all purposes whatsoever.

## 2.6 **Delivery and Cancellation of Certificates**

All Rights Certificates surrendered upon exercise or for redemption, registration of transfer or exchange shall, if surrendered to any Person other than the Rights Agent, be delivered to the Rights Agent and, in any case, shall be promptly cancelled by the Rights Agent. The REIT may at any time deliver to the Rights Agent for cancellation any Rights Certificates previously countersigned and delivered hereunder which the REIT may have acquired in any manner whatsoever, and all Rights Certificates so delivered shall be promptly cancelled by the Rights Agent. No Rights Certificate shall be countersigned in lieu of or in exchange for any Rights Certificates cancelled as provided for in this section 2.6, except as expressly permitted by this Agreement. The Rights Agent shall destroy all cancelled Rights Certificates and deliver a certificate of destruction to the REIT.

## 2.7 **Agreement of Rights Holders**

Every holder of Rights by accepting the same consents and agrees with the REIT and the Rights Agent and with every other holder of Rights:

(a) to be bound by and subject to the provisions of this Agreement, as amended from time to time in accordance with the terms hereof, in respect of the Rights held;

(b) that prior to the Separation Time, each Right will be transferable only together with, and will be transferred by a transfer of, the associated Stapled Unit certificate representing such Right;

(c) that after the Separation Time, the Rights Certificates will be transferable only upon registration of the transfer on the Rights Register as provided herein;

(d) that prior to due presentment of a Rights Certificate (or, prior to the Separation Time, the associated Stapled Unit certificate) for registration of transfer, the REIT, the Rights Agent and any agent of the REIT or the Rights Agent may deem and treat the Person in whose name the Rights Certificate (or, prior to the Separation Time, the associated Stapled Unit certificate) is registered as the absolute owner thereof and of the Rights evidenced thereby (notwithstanding any notations of ownership or writing on such Rights Certificate or the associated Stapled Unit certificate made by anyone other than the REIT or the Rights Agent) for all purposes whatsoever, and neither the REIT nor the Rights Agent shall be affected by any notice to the contrary;

(e) that such holder of Rights has waived his right to receive any fractional Rights, any fractional Stapled Units or other securities upon exercise of a Right (except as provided herein);

(f) that, subject to the provisions of section 6.4, without the approval of any holder of Rights and upon the sole authority of the REIT Trustees acting in good faith, this Agreement may be supplemented or amended from time to time pursuant to and as provided herein; and

(g) that notwithstanding anything in this Agreement to the contrary, neither the REIT nor the Rights Agent shall have any liability to any holder of a Right to any other Person as a result of its inability to perform any of its obligations under this Agreement by reason of any preliminary or permanent injunction or other order, decree or ruling issued by a court of competent jurisdiction or by a government, regulatory or administrative agency or commission, or any statute, rule, regulation or executive order promulgated or enacted by any governmental authority, prohibiting or otherwise restraining performance of such obligation.

## 2.8 **Rights Certificate Holder Not Deemed a Unitholder**

No holder, as such, of any Right or Rights Certificate shall be entitled to vote, receive distributions or be deemed for any purpose whatsoever the holder of any Stapled Unit or any other security of the REIT and/or Finance Trust which may at any time be issuable on the exercise of such Right, nor shall anything contained herein or in any Rights Certificate be construed or deemed to confer upon the holder of any Right or Rights Certificate, as such, any of the rights, titles, benefits or privileges of a unitholder of the REIT or Finance Trust or any right to vote at any meeting of unitholders of the REIT or Finance Trust whether for the election of REIT Trustees, Finance Trust Trustees or otherwise or upon any matter submitted to holders of REIT Units or Finance Trust Units at any meeting thereof, or to give or withhold consent to any action of the REIT or Finance Trust, or to receive notice of any meeting or other action affecting any holder of Stapled Units, REIT Units or Finance Trust Units or any other securities of the REIT and/or Finance Trust except as expressly provided herein, or to receive distributions or subscription rights, or otherwise, until the Right or Rights evidenced by any Rights Certificate shall have been duly exercised in accordance with the terms and provisions hereof.

## **ARTICLE 3** **EXERCISE OF THE RIGHTS**

### 3.1 **Initial Exercise Price; Exercise of Rights; Detachment of Rights**

(a) Subject to adjustment as herein set forth, from and after the Separation Time and prior to the Expiration Time, each Right will entitle the holder thereof to purchase one Stapled Unit for the Exercise Price (which Exercise Price and number of Stapled Units are subject to adjustment as set forth below).

(b) Until the Separation Time:

(i) the Rights shall not be exercisable and no Right may be exercised; and

(ii) each Right will be evidenced by the certificate for the associated Stapled Unit registered in the name of the holder thereof (which certificate shall also be deemed to be a Rights Certificate) and will be transferable only together with, and will be transferred by a transfer of, such associated Stapled Unit.

(c) From and after the Separation Time and prior to the Expiration Time:

(i) the Rights shall be exercisable; and

(ii) the registration and transfer of the Rights shall be separate from and independent of Stapled Units.

(d) Promptly following the Separation Time, the Rights Agent will mail to each holder of record of Stapled Units as of the Separation Time (other than an Acquiring Person and other than, in respect of any Rights Beneficially Owned by such Acquiring Person which are not held of record by such Acquiring Person, the holder of record of such Rights (a "**Nominee**")), at such holder's address as shown by the records of the REIT (and the REIT hereby agrees to furnish copies of such records to the Rights Agent for this purpose):

(i) a Rights Certificate representing the number of Rights held by such holder at the Separation Time in substantially the form of Exhibit A hereto, with registration particulars appropriately completed and having such marks of identification or designation and such legends, summaries or endorsements printed thereon as the REIT may deem appropriate and as are not inconsistent with the provisions of this Agreement, or as may be required to comply with any law, rule, regulation or judicial or administrative order or with any rule or regulation of any securities exchange on which the Rights may from time to time be listed or traded, or to conform to usage; and

(ii) a disclosure statement describing the Rights,

provided that a Nominee shall be sent the materials provided for in clauses (i) and (ii) only in respect of all Stapled Units held of record by it which are not Beneficially Owned by an Acquiring Person.

(e) Rights may be exercised in whole or in part on any Business Day after the Separation Time and prior to the Expiration Time by submitting to the Rights Agent (at its office in Toronto or any other office of the Rights Agent in the cities designated from time to time for that purpose by the REIT with the approval of the Rights Agent):

(i) the Rights Certificate evidencing such Rights;

(ii) an election to exercise such Rights (an "**Election to Exercise**") substantially in the form attached to the Rights Certificate, duly completed and executed by the holder or his executors or administrators or other personal representatives or his or their legal attorney duly appointed by an

instrument in writing in form and executed in a manner satisfactory to the Rights Agent; and

- (iii) payment by certified cheque, banker's draft or money order payable to the order of the REIT, of a sum equal to the Exercise Price multiplied by the number of Rights being exercised and a sum sufficient to cover any transfer tax or charge which may be payable in respect of any transfer involved in the transfer or delivery of Rights Certificates or the issuance or delivery of certificates for the relevant Stapled Units in a name other than that of the holder of the Rights being exercised.

(f) Upon receipt of the Rights Certificate which is accompanied by a completed Election to Exercise that does not indicate that such Right is null and void as provided by subsection 4.1(b) and payment as set forth in subsection 3.1(e), the Rights Agent (unless otherwise instructed in writing by the REIT in the event that the REIT is of the opinion that the Rights cannot be exercised in accordance with this Agreement) will thereupon promptly:

- (i) requisition from the transfer agents for Stapled Units certificates representing the number of such Stapled Units to be purchased (the REIT hereby irrevocably authorizing its transfer agent to comply with all such requisitions);
- (ii) when appropriate, requisition from the REIT the amount of cash to be paid in lieu of issuing fractional Stapled Units;
- (iii) after receipt of such Stapled Unit certificates, deliver the same to or to the order of the registered holder of such Rights Certificate, registered in such name or names as may be designated by such holder;
- (iv) when appropriate, after receipt, deliver such payment referred to in clause (ii) above to or to the order of the registered holder of the Rights Certificate; and
- (v) tender to the REIT all payments received on exercise of the Rights.

(g) In case the holder of any Rights shall exercise less than all the Rights evidenced by such holder's Rights Certificate, a new Rights Certificate evidencing the Rights remaining unexercised will be issued by the Rights Agent to such holder or to such holder's duly authorized assigns.

(h) The REIT covenants and agrees that it will:

- (i) take all such action as may be necessary and within its power to ensure that all Stapled Units delivered upon exercise of Rights shall, at the time of delivery of the certificates representing such Stapled Units (subject to payment of the Exercise Price), be duly and validly authorized, issued and delivered as fully paid and non-assessable;

- (ii) take all such actions as may be necessary and within its power to comply with any applicable requirements of the REIT Declaration of Trust, the *Securities Act* (Ontario) and the securities acts or comparable legislation of each of the other provinces of Canada and any other applicable law, rule or regulation, in connection with the issuance and delivery of the Rights Certificates and the issuance of any Stapled Units upon exercise of Rights;
- (iii) use reasonable efforts to cause all Stapled Units issued upon exercise of Rights to be listed on the principal securities exchanges on which the Stapled Units were traded immediately prior to the Stapled Unit Acquisition Date;
- (iv) cause to be reserved and kept available out of its authorized and unissued REIT Units the number of REIT Units that, as provided in this Agreement, will from time to time be sufficient to permit the exercise in full of all outstanding Rights;
- (v) use its commercially reasonable best efforts to ensure that Finance Trust reserves and keeps available out of its authorized and unissued Finance Trust Units the number of Finance Trust Units that, as provided in this Agreement, will from time to time be sufficient to permit the exercise in full of all outstanding Rights;
- (vi) pay when due and payable any and all federal and provincial transfer taxes (for greater certainty not including any income taxes of the holder or exercising holder or any liability of the REIT or Finance Trust to withhold tax) and charges which may be payable in respect of the original issuance or delivery of the Rights Certificates or certificates for the Stapled Units, provided that the REIT shall not be required to pay any transfer tax or charge which may be payable in respect of any transfer involved in the transfer or delivery of Rights Certificates, the issuance or delivery of certificates for Stapled Units in a name other than that of the holder of the Rights being transferred or exercised.

### 3.2 **Adjustments to Exercise Price; Number of Rights**

The Exercise Price, the number of Stapled Units or other securities subject to purchase upon the exercise of each Right and the number of Rights outstanding are subject to adjustment from time to time as provided in this section 3.2.

(a) In the event the REIT shall at any time after the Effective Time and prior to the Expiration Time:

- (i) declare or make a distribution on its REIT Units payable in REIT Units (or other securities exchangeable for or convertible into or giving a right to acquire REIT Units) other than pursuant to any distribution reinvestment plan made available by the REIT;

- (ii) subdivide or change the then outstanding REIT Units into a greater number of REIT Units;
- (iii) combine or change the then outstanding REIT Units into a smaller number of REIT Units;
- (iv) issue any REIT Units (or other securities exchangeable for or convertible into or giving a right to acquire REIT Units) in respect of, in lieu of or in exchange for, existing REIT Units in a reclassification, amalgamation, merger, statutory arrangement or consolidation; or
- (v) increase or decrease the number of outstanding REIT Units as a result of Finance Trust undertaking any of the foregoing,

and provided that immediately after such occurrence there shall be outstanding an equivalent number of Finance Trust Units as REIT Units, the number of Stapled Units or other securities, as the case may be, issuable at the time of the record date for such distribution or of the effective date of such subdivision, combination or other change shall be proportionately adjusted so that the holder of any Right exercised after such time shall be entitled to receive, upon payment of the applicable Exercise Price then in effect, the aggregate number of Stapled Units or other securities, as the case may be, which, if such Right had been exercised immediately prior to such date and at a time when the security transfer books of the REIT and Finance Trust were open, such holder would have been entitled to receive as a result of such distribution, subdivision, combination or reclassification.

(b) In case the REIT and/or Finance Trust shall at any time after the Effective Time and prior to the Expiration Time fix a record date for the issuance of rights, options or warrants to all holders of Stapled Units entitling them to subscribe for or purchase (for a period expiring within 60 calendar days after such record date) Stapled Units (or securities having the same rights, privileges and preferences as Stapled Units ("**equivalent securities**")) or securities convertible into Stapled Units or equivalent securities at a price per Stapled Unit or per equivalent security (or having a conversion price per Stapled Unit or per equivalent security, if applicable) less than 90% of the Market Price per Stapled Unit on the second Trading Day immediately preceding such record date, the Exercise Price in respect of the Rights to be in effect after such record date shall be determined by multiplying the Exercise Price in respect of the Rights in effect immediately prior to such record date by a fraction:

- (i) the numerator of which shall be the number of Stapled Units outstanding on such record date, plus the number of Stapled Units that the aggregate offering price of the total number of Stapled Units and/or equivalent securities so to be offered (and/or the aggregate initial conversion price of the convertible securities so to be offered) would purchase at such Market Price per Stapled Unit; and
- (ii) the denominator of which shall be the number of Stapled Units outstanding on such record date, plus the number of additional Stapled Units and/or equivalent securities to be offered for subscription or

purchase (or into which the convertible securities so to be offered are initially convertible).

In case such subscription price may be paid by delivery of consideration, part or all of which may be in a form other than cash, the value of such consideration shall be as determined in good faith by the REIT Trustees, whose determination shall be described in a statement filed with the Rights Agent and shall be binding on the Rights Agent and the holders of the Rights. Such adjustment shall be made successively whenever such a record date is fixed and, in the event that such rights or warrants are not so issued, the Exercise Price in respect of the Rights shall be readjusted to be the Exercise Price which would then be in effect if such record date had not been fixed.

(c) For purposes of this Agreement, the granting of the right to purchase Stapled Units, REIT Units or Finance Trust Units (whether from treasury or otherwise) pursuant to any distribution reinvestment plan made available by the REIT or Finance Trust, or any employee benefit, REIT Unit option, Finance Trust Unit option, Stapled Unit option or similar plans shall be deemed not to constitute an issue of rights, options or warrants by the REIT and/or Finance Trust; provided, however, that in all such cases the right to purchase Stapled Units is at a price per Stapled Unit of not less than 90% of the current market price per Stapled Unit (determined as provided in such plans).

(d) In case the REIT or Finance Trust shall at any time after the Effective Time and prior to the Expiration Time fix a record date for a distribution to all holders of Stapled Units, REIT Units or Finance Trust Units, as applicable, (including any such distribution made in connection with a merger in which the REIT and/or Finance Trust is/are the continuing entity /entities) of evidences of indebtedness or assets, including cash (other than a regular periodic cash distribution or a distribution paid in Stapled Units, but including any distribution payable in securities other than Stapled Units), or subscription rights or warrants entitling them to subscribe for or purchase Stapled Units (excluding those referred to in subsection 3.2(b)) at a price per Stapled Unit that is less than 90% of the Market Price per Stapled Unit on the second Trading Day immediately preceding such record date, the Exercise Price in respect of the Rights to be in effect after such record date shall be determined by multiplying the Exercise Price in respect of the Rights in effect immediately prior to such record date by a fraction:

- (i) the numerator of which shall be such Market Price per Stapled Unit, less the fair market value (as determined in good faith by the REIT Trustees, whose determination shall be described in a statement filed with the Rights Agent and shall be binding on the Rights Agent and the holders of the Rights) of the portion of the cash, assets or evidences of indebtedness so to be distributed or of such subscription rights or warrants applicable to a Stapled Unit; and
- (ii) the denominator of which shall be such Market Price per Stapled Unit.

Such adjustments shall be made successively whenever such a record date is fixed and, in the event that such distribution is not so made, the Exercise Price in respect of the Rights shall be

adjusted to be the Exercise Price in respect of the Rights which would have been in effect if such record date had not been fixed.

(e) Notwithstanding anything herein to the contrary, no adjustment in an Exercise Price shall be required unless such adjustment would require an increase or decrease of at least 1% in such Exercise Price; provided, however, that any adjustments which by reason of this subsection 3.2(e) are not required to be made shall be carried forward and taken into account in any subsequent adjustment. All calculations under this section 3.2 shall be made to the nearest cent or to the nearest ten-thousandth of a Stapled Unit or other security, as the case may be. Notwithstanding the first sentence of this subsection 3.2(e), any adjustment required by this section 3.2 shall be made no later than the earlier of:

- (i) three years from the date of the transaction which mandates such adjustment; and
- (ii) the Expiration Time.

(f) If, as a result of an adjustment made pursuant to section 4.1, the holder of any Right thereafter exercised shall become entitled to receive any securities other than Stapled Units, thereafter the number of such other securities so receivable upon exercise of any Right and the applicable Exercise Price thereof shall be subject to adjustment from time to time in a manner and on terms as nearly equivalent as is practicable to the provisions with respect to the Stapled Units contained in this section 3.2, and the provisions of this Agreement with respect to the Stapled Units shall apply on like terms to any such other securities.

(g) All Rights originally issued by the REIT subsequent to any adjustment made to an Exercise Price hereunder shall evidence the right to purchase, at the adjusted Exercise Price, that number of Stapled Units purchasable from time to time hereunder upon exercise of the Rights, all subject to further adjustment as provided herein.

(h) Unless the REIT shall have exercised its election as provided in subsection 3.2(i), upon each adjustment of an Exercise Price as a result of the calculations made in subsections 3.2(b) and (d), each Right outstanding immediately prior to the making of such adjustment shall thereafter evidence the right to purchase, at the adjusted Exercise Price, that number of Stapled Units (calculated to the nearest one ten-thousandth) determined by:

- (i) multiplying:
  - (A) the number of such Stapled Units which would have been issuable upon the exercise of a Right immediately prior to this adjustment; by
  - (B) the relevant Exercise Price in effect immediately prior to such adjustment of the relevant Exercise Price; and
- (ii) dividing the product so obtained by the relevant Exercise Price in effect immediately after such adjustment of the relevant Exercise Price.

(i) The REIT may elect on or after the date of any adjustment of an Exercise Price to adjust the number of Rights, in lieu of any adjustment in the number of Stapled Units purchasable upon the exercise of a Right. Each of the Rights outstanding after the adjustment in the number of Rights shall be exercisable for the number of Stapled Units for which such a Right was exercisable immediately prior to such adjustment. Each Right held of record prior to such adjustment of the number of Rights shall become that number of Rights (calculated to the nearest one ten-thousandth) obtained by dividing the relevant Exercise Price in effect immediately prior to adjustment of the relevant Exercise Price by the relevant Exercise Price in effect immediately after adjustment of the relevant Exercise Price. The REIT shall make a public announcement of its election to adjust the number of Rights, indicating the record date for the adjustment, and, if known at the time, the amount of the adjustment to be made. This record date may be the date on which the relevant Exercise Price is adjusted or any day thereafter, but, if the Rights Certificates have been issued, shall be at least 10 days later than the date of the public announcement. If Rights Certificates have been issued, upon each adjustment of the number of Rights pursuant to this subsection 3.2(i), the REIT shall, as promptly as is practicable, cause to be distributed to holders of record of Rights Certificates on such record date, Rights Certificates evidencing, subject to section 6.5, the additional Rights to which such holders shall be entitled as a result of such adjustment, or, at the option of the REIT, shall cause to be distributed to such holders of record in substitution and replacement for the Rights Certificates held by such holders prior to the date of adjustment, and upon surrender thereof, if required by the REIT, new Rights Certificates evidencing all the Rights to which such holders shall be entitled after such adjustment. Rights Certificates to be so distributed shall be issued, executed and countersigned in the manner provided for herein and may bear, at the option of the REIT, the relevant adjusted Exercise Price and shall be registered in the names of holders of record of Rights Certificates on the record date specified in the public announcement.

(j) Irrespective of any adjustment or change in an Exercise Price or the number of Stapled Units issuable upon the exercise of the Rights, the Rights Certificates theretofore and thereafter issued may continue to express the relevant Exercise Price per Stapled Unit and the number of Stapled Units which were expressed in the initial Rights Certificates issued hereunder.

(k) In any case in which this section 3.2 shall require that an adjustment in an Exercise Price be made effective as of a record date for a specified event, the REIT may elect to defer, until the occurrence of such event, the issuance to the holder of any Right exercised after such record date of the number of Stapled Units and other securities of the REIT and/or Finance Trust, if any, issuable upon such exercise over and above the number of Stapled Units and other securities of the REIT and/or Finance Trust, if any, issuable upon such exercise on the basis of the relevant Exercise Price in effect prior to such adjustment; provided, however, that the REIT shall deliver to such holder a due bill or other appropriate instrument evidencing such holder's right to receive such additional Stapled Units (fractional or otherwise) or other securities upon the occurrence of the event requiring such adjustment.

(l) Notwithstanding anything in this section 3.2 to the contrary, the REIT shall be entitled to make such reductions in each Exercise Price in addition to those adjustments expressly required by this section 3.2, as and to the extent that in its good faith judgment the REIT Trustees shall determine to be advisable in order that any:

- (i) consolidation or subdivision of Stapled Units, REIT Units and/or Finance Trust Units;
- (ii) issuance wholly for cash of any Stapled Units, REIT Units and/or Finance Trust Units or securities that by their terms are convertible into or exchangeable for Stapled Units, REIT Units and/or Finance Trust Units;
- (iii) distributions of additional Stapled Units to holders of Stapled Units
- (iv) distributions of additional REIT Units to holders of REIT Units;
- (v) distributions of additional Finance Trust Units to holders of Finance Trust Units;
- (vi) issuance of rights, options or warrants referred to in this section 3.2, hereafter made by the REIT to holders of REIT Units or Stapled Units; or
- (vii) issuance of rights, options or warrants referred to in this section 3.2, hereafter made by Finance Trust to holders of Finance Trust Units or Stapled Units,

shall not be taxable to such unitholders.

(m) The REIT covenants and agrees that, after the Separation Time, except as permitted by section 6.1 or 6.4, it will not take and not permit any Subsidiary of the REIT to take, any action if at the time such action is taken it is reasonably foreseeable that such action will diminish substantially or otherwise eliminate the benefits intended to be afforded by the Rights.

(n) Whenever an adjustment to the Exercise Price or a change in the securities purchasable upon exercise of the Rights is made pursuant to this section 3.2, the REIT shall, not later than the Separation Time, file with the Rights Agent a certificate specifying the particulars of such adjustment and cause notice of such adjustment to be given to the holders of the Rights. Failure to file such certificate or to cause such notice to be given, or any defect therein, shall not affect the validity of any such adjustment or change.

### 3.3 **Date on Which Exercise is Effective**

Each Person in whose name any certificate for Stapled Units is issued upon the exercise of Rights shall for all purposes be deemed to have become the holder of record of the Stapled Units represented thereby on, and such certificate shall be dated, the date upon which the Rights Certificate evidencing such Rights was duly surrendered (together with a duly completed Election to Exercise) and payment of the relevant Exercise Price for such Rights (and any applicable transfer taxes and other governmental charges payable by the exercising holder hereunder) was made; provided, however, that if the date of such surrender and payment is a date upon which the security transfer books of the REIT and/or Finance Trust are closed, such Person shall be deemed to have become the holder of record of such Stapled Units on, and such

certificate shall be dated, the next succeeding Business Day on which the relevant security transfer books of the REIT and Finance Trust are open.

**ARTICLE 4**  
**ADJUSTMENTS TO THE RIGHTS IN THE EVENT OF CERTAIN TRANSACTIONS**

**4.1 Flip-in Event**

(a) Subject to subsection 4.1(b) and section 6.1, in the event that prior to the Expiration Time a Flip-in Event shall occur, each Right shall constitute, effective at the close of business on the eighth Trading Day following the Stapled Unit Acquisition Date, the right to purchase from the REIT, upon payment of the Exercise Price and otherwise exercising such Right in accordance with the terms hereof, that number of Stapled Units having an aggregate Market Price on the date of consummation or occurrence of such Flip-in Event equal to twice the relevant Exercise Price for an amount in cash equal to the Exercise Price (such right to be appropriately adjusted in a manner analogous to the applicable adjustments provided for in section 3.2 upon each occurrence after the Stapled Unit Acquisition Date of any event analogous to any of the events described in section 3.2).

(b) Notwithstanding anything in this Agreement to the contrary, upon the occurrence of any Flip-in Event, any Rights that are or were Beneficially Owned on or after the earlier of the Separation Time and the Stapled Unit Acquisition Date by:

- (i) an Acquiring Person (or any Affiliate or Associate of an Acquiring Person or any Person acting jointly or in concert with an Acquiring Person or any Affiliate or Associate of an Acquiring Person); or
- (ii) a transferee or other successor in title, directly or indirectly (a "**Transferee**"), of Rights held by an Acquiring Person (or any Affiliate or Associate of an Acquiring Person or any Person acting jointly or in concert with an Acquiring Person or any Affiliate or Associate of an Acquiring Person) who becomes a Transferee concurrently with or subsequent to the Acquiring Person becoming an Acquiring Person in a transfer that the REIT Trustees have determined is part of a plan, arrangement or scheme of an Acquiring Person (or any Affiliate or Associate of an Acquiring Person or any Person acting jointly or in concert with an Acquiring Person or any Affiliate or Associate of an Acquiring Person), that has the purpose or effect of avoiding clause 4.1(b)(i),

shall become null and void without any further action, and any holder of such Rights (including any Transferee) shall not have any right whatsoever to exercise such Rights under any provision of this Agreement and shall not thereafter have any other rights whatsoever with respect to such Rights, whether under any provision of this Agreement or otherwise.

(c) Any Rights Certificate that represents Rights Beneficially Owned by a Person described in either clause (i) or (ii) of subsection 4.1(b) or transferred to any nominee of any such Person, and any Rights Certificate issued upon transfer, exchange, replacement or

adjustment of any other Rights Certificate referred to in this sentence, shall contain the following legend:

**THE RIGHTS REPRESENTED BY THIS RIGHTS CERTIFICATE WERE BENEFICIALLY OWNED BY A PERSON WHO WAS AN ACQUIRING PERSON OR WHO WAS AN AFFILIATE OR AN ASSOCIATE OF AN ACQUIRING PERSON (AS SUCH TERMS ARE DEFINED IN THE RIGHTS AGREEMENT) OR WAS ACTING JOINTLY OR IN CONCERT WITH ANY OF THEM. THIS RIGHTS CERTIFICATE AND THE RIGHTS REPRESENTED HEREBY SHALL BECOME VOID IN THE CIRCUMSTANCES SPECIFIED IN SUBSECTION 4.1(B) OF THE RIGHTS AGREEMENT.**

provided, however, that the Rights Agent shall not be under any responsibility to ascertain the existence of facts that would require the imposition of such legend but shall be required to impose such legend only if instructed to do so by the REIT in writing or if a holder fails to certify upon transfer or exchange in the space provided on the Rights Certificate that such holder is not a Person described in such legend.

## **ARTICLE 5** **THE RIGHTS AGENT**

### **5.1 General**

(a) The REIT hereby appoints the Rights Agent to act as agent for the REIT and the holders of Rights in accordance with the terms and conditions hereof, and the Rights Agent hereby accepts such appointment. The REIT may from time to time appoint one or more co-rights agents as it may deem necessary or desirable, subject to the approval of the Rights Agent. In the event the REIT appoints one or more co-rights agents, the respective duties of the Rights Agent and co-rights agents shall be as the REIT may determine, with the prior consent of the co-rights agents and the Rights Agent. The REIT also agrees to indemnify the Rights Agent, its officers, directors and employees for, and to hold them harmless against, any loss, liability or expense, incurred without negligence, bad faith or wilful misconduct on the part of the Rights Agent, its officers, directors and employees for anything done or omitted by the Rights Agent in connection with the acceptance and administration of this Agreement, including legal costs and expenses, which right to indemnification will survive the termination of this Agreement or the resignation or removal of the Rights Agent.

(b) The Rights Agent shall be protected and shall incur no liability for or in respect of any action taken, suffered or omitted by it in connection with its administration of this Agreement in reliance upon any certificate for Stapled Units, Rights Certificate, certificate for other securities of the REIT or Finance Trust, instrument of assignment or transfer, power of attorney, endorsement, affidavit, letter, notice, direction, consent, certificate, statement or other paper or document believed by it to be genuine and to be signed, executed and, where necessary, verified or acknowledged, by the proper Person or Persons.

(c) The REIT shall inform the Rights Agent in a reasonable timely manner of events which may materially affect the administration of this Agreement by the Rights Agent and, at any time upon request, shall provide to the Rights Agent an incumbency certificate certifying the then current REIT Trustees.

## 5.2 **Merger or Amalgamation or Change of Name of Rights Agent**

(a) Any corporation into which the Rights Agent or any successor Rights Agent may be merged or amalgamated or with which it may be consolidated, or any corporation resulting from any merger, amalgamation or consolidation to which the Rights Agent or any successor Rights Agent is a party, or any corporation succeeding to the unitholder or stockholder services business of the Rights Agent or any successor Rights Agent, will be the successor to the Rights Agent under this Agreement without the execution or filing of any paper or any further act on the part of any of the parties hereto, provided that such corporation would be eligible for appointment as a successor Rights Agent under the provisions of section 5.4 hereof. In case at the time such successor Rights Agent succeeds to the agency created by this Agreement any of the Rights Certificates have been countersigned but not delivered, any such successor Rights Agent may adopt the countersignature of the predecessor Rights Agent and deliver such Rights Certificates so countersigned; and in case at that time any of the Rights Certificates have not been countersigned, any successor Rights Agent may countersign such Rights Certificates either in the name of the predecessor Rights Agent or in the name of the successor Rights Agent; and in all such cases such Rights Certificates will have the full force provided in the Rights Certificates and in this Agreement.

(b) In case at any time the name of the Rights Agent is changed and at such time any of the Rights Certificates shall have been countersigned but not delivered, the Rights Agent may adopt the countersignature under its prior name and deliver Rights Certificates so countersigned; and in case at that time any of the Rights Certificates shall not have been countersigned, the Rights Agent may countersign such Rights Certificates either in its prior name or in its changed name; and in all such cases such Rights Certificates shall have the full force provided in the Rights Certificates and in this Agreement.

## 5.3 **Duties of Rights Agent**

The Rights Agent undertakes the duties and obligations imposed by this Agreement upon the following terms and conditions, all of which the REIT and the holders of Rights Certificates, by their acceptance thereof, shall be bound by:

(a) the Rights Agent may retain and consult with legal counsel (who may be legal counsel for the REIT) and the opinion of such counsel will be full and complete authorization and protection to the Rights Agent as to any action taken or omitted by it in good faith and in accordance with such opinion and the Rights Agent may also consult with such other experts as the Rights Agent shall consider necessary or appropriate to properly carry out the duties and obligations imposed under this Agreement (at the expense of the REIT) and the Rights Agent shall be entitled to act and rely in good faith on the advice of any such expert;

(b) whenever in the performance of its duties under this Agreement the Rights Agent deems it necessary or desirable that any fact or matter be proved or established by the REIT prior to taking or suffering any action hereunder, such fact or matter (unless other evidence in respect thereof be herein specifically prescribed) may be deemed to be conclusively proved and established by a certificate signed by a Person believed by the Rights Agent to be a REIT Trustee and delivered to the Rights Agent and such certificate shall be full authorization to the Rights Agent for any action taken or suffered in good faith by it under the provisions of this Agreement in reliance upon such certificate;

(c) the Rights Agent will be liable hereunder only for its own negligence, bad faith or wilful misconduct;

(d) the Rights Agent will not be liable for or by reason of any of the statements of fact or recitals contained in this Agreement or in the certificates for Stapled Units or the Rights Certificates (except its countersignature thereof) or be required to verify the same, but all such statements and recitals are and will be deemed to have been made by the REIT only;

(e) the Rights Agent will not be under any responsibility in respect of the validity of this Agreement or the execution and delivery hereof (except the due authorization, execution and delivery hereof by the Rights Agent) or in respect of the validity or execution of any Stapled Unit certificate or Rights Certificate (except its countersignature thereof); nor will it be responsible for any breach by the REIT of any covenant or condition contained in this Agreement or in any Rights Certificate, nor will it be responsible for any change in the exercisability of the Rights (including the Rights becoming void pursuant to subsection 4.1(b)) or any adjustment required under the provisions of section 3.2 or responsible for the manner, method or amount of any such adjustment or the ascertaining of the existence of facts that would require any such adjustment (except with respect to the exercise of Rights after receipt of the certificate contemplated by section 3.2 describing any such adjustment); nor will it by any act hereunder be deemed to make any representation or warranty as to the authorization of any Stapled Units to be issued pursuant to this Agreement or any Rights or as to whether any Stapled Units will, when issued, be duly and validly authorized, executed, issued and delivered as fully paid and non-assessable;

(f) the REIT agrees that it will perform, execute, acknowledge and deliver or cause to be performed, executed, acknowledged and delivered all such further and other acts, instruments and assurances as may reasonably be required by the Rights Agent for the carrying out or performing by the Rights Agent of the provisions of this Agreement;

(g) the Rights Agent is hereby authorized and directed to accept instructions in writing with respect to the performance of its duties hereunder from any Person believed by the Rights Agent to be a REIT Trustee, and to apply to such a Person for advice or instructions in connection with its duties, and it shall not be liable for any action taken or suffered by it in good faith in accordance with instructions of any such Person;

(h) the Rights Agent and any shareholder or stockholder, director, officer or employee of the Rights Agent may buy, sell or deal in Stapled Units, REIT Units, or Finance Trust Units, Rights or other securities of the REIT or Finance Trust or become pecuniarily

interested in any transaction in which the REIT or Finance Trust may be interested, or contract with or lend money to the REIT or Finance Trust or otherwise act as fully and freely as though it were not the Rights Agent under this Agreement. Nothing herein shall preclude the Rights Agent from acting in any other capacity for the REIT or Finance Trust or for any other legal entity; and

(i) the Rights Agent may execute and exercise any of the rights or powers hereby vested in it or perform any duty hereunder either itself or by or through its attorneys or agents, and the Rights Agent will not be answerable or accountable for any act, default, neglect or misconduct of any such attorneys or agents or for any loss to the REIT resulting from any such act, default, neglect or misconduct, provided reasonable care was exercised in the selection and continued employment thereof.

#### 5.4 **Change of Rights Agent**

The Rights Agent may resign and be discharged from its duties under this Agreement upon 60 days' notice in writing (or such lesser notice as is acceptable to the REIT) mailed to the REIT and to each transfer agent of Stapled Units by registered or certified mail, and to the holders of the Rights in accordance with section 6.8. The REIT may remove the Rights Agent upon 30 days' notice in writing, mailed to the Rights Agent and to each transfer agent of the Stapled Units by registered or certified mail, and to the holders of the Rights in accordance with section 6.8. If the Rights Agent should resign or be removed or otherwise become incapable of acting, the REIT will appoint a successor to the Rights Agent. If the REIT fails to make such appointment within a period of 30 days after such removal or after it has been notified in writing of such resignation or incapacity by the resigning or incapacitated Rights Agent or by the holder of any Rights (which holder shall, with such notice, submit such holder's Rights Certificate for inspection by the REIT), then the resigning Rights Agent or the holder of any Rights may apply to any court of competent jurisdiction for the appointment of a new Rights Agent at the REIT's expense. Any successor Rights Agent, whether appointed by the REIT or by such a court, shall be a corporation incorporated under the laws of Canada or a province thereof authorized to carry on the business of a trust company in the Province of Ontario. After appointment, the successor Rights Agent will be vested with the same powers, rights, duties and responsibilities as if it had been originally named as Rights Agent without further act or deed; but the predecessor Rights Agent shall deliver and transfer to the successor Rights Agent any property at the time held by it hereunder and execute and deliver any further assurance, conveyance, act or deed necessary for the purpose. Not later than the effective date of any such appointment, the REIT will file notice thereof in writing with the predecessor Rights Agent, each transfer agent of the Stapled Units, and mail a notice thereof in writing to the holders of the Rights. Failure to give any notice provided for in this section 5.4, however, or any defect therein, shall not affect the legality or validity of the resignation or removal of the Rights Agent or the appointment of the successor Rights Agent, as the case may be.

**ARTICLE 6**  
**MISCELLANEOUS**

**6.1 Redemption and Waiver**

(a) The REIT Trustees acting in good faith may, with the prior consent of the holders of REIT Units or of the holders of Rights, as the case may be, at any time prior to the provisions of section 4.1 becoming applicable as a result of the occurrence of a Flip-in Event, elect to redeem all but not less than all of the then outstanding Rights at a redemption price of \$0.0001 per Right, appropriately adjusted in a manner analogous to the applicable adjustment provided for in section 3.2, if an event of the type analogous to any of the events described in section 3.2 shall have occurred (such redemption price being herein referred to as the "**Redemption Price**").

(b) The REIT Trustees acting in good faith may, with the prior consent of the holders of REIT Units or the holders of Rights, as the case may be, determine, at any time prior to the occurrence of a Flip-In Event that may occur by reason of an acquisition of Stapled Units otherwise than pursuant to a Take-over Bid made by means of a take-over bid circular to all holders of record of Stapled Units and otherwise than in the circumstances set forth in subsection 6.1(d), to waive the application of section 4.1 to such Flip-in Event.

(c) The REIT Trustees acting in good faith may determine, at any time prior to the occurrence of a Flip-in Event that may occur by reason of a Take-over Bid made by take-over bid circular sent to all holders of record of Stapled Units, to waive the application of section 4.1 to such Flip-in Event, provided that if the REIT Trustees waive the application of section 4.1 to such a Flip-in Event, they shall be deemed to have waived the application of section 4.1 to any other Flip-in Event occurring by reason of any Take-over Bid made by take-over bid circular to all holders of record of Stapled Units which is made prior to the expiry of any Take-over Bid (as the same may be extended from time to time) in respect of which a waiver is, or is deemed to have been, granted under this subsection 6.1(c).

(d) The REIT Trustees acting in good faith may waive the application of section 4.1 in respect of any Flip-in Event, provided that both of the following conditions are satisfied:

- (i) the REIT Trustees have determined that the Person that became an Acquiring Person did so by inadvertence and without any intention to become, or knowledge that it would become, an Acquiring Person; and
- (ii) such Person has reduced its Beneficial Ownership of Stapled Units such that at the time of the granting of a waiver pursuant to this subsection 6.1(d), it is no longer an Acquiring Person and has provided the REIT Trustees with satisfactory evidence thereof,

and, in the event of any such waiver, for the purposes of this Agreement, such Flip-in Event shall be deemed not to have occurred and the Separation Time shall be deemed not to have occurred as a result of such Person having inadvertently become an Acquiring Person.

(e) The REIT Trustees shall, without further formality, be deemed to have elected to redeem the Rights at the Redemption Price on the date that a Person who has made a Permitted

Bid, a Competing Permitted Bid or Take-over Bid in respect of which the REIT Trustees have waived, or are deemed to have waived, pursuant to subsection 6.1(c), the application of section 4.1, takes up and pays for Stapled Units pursuant to the terms and conditions of such Permitted Bid, Competing Permitted Bid or Take-over Bid, as the case may be.

(f) Where a Take-over Bid that is not a Permitted Bid is withdrawn or otherwise terminated after the Separation Time has occurred and prior to the occurrence of a Flip-in Event, all of the provisions of this Agreement shall continue to apply as if the Separation Time had not occurred and as if Rights Certificates had not been mailed to each holder of Stapled Units as of the Separation Time and for all purposes of this Agreement the Separation Time shall be deemed not to have occurred. Under this circumstance and notwithstanding the foregoing, the REIT Trustees may elect to redeem all the then outstanding Rights at the Redemption Price and be deemed to have issued replacement Rights under this Agreement to holders of record of Stapled Units immediately following the time of such redemption.

(g) If the REIT Trustees elect or are deemed to have elected to redeem the Rights, the right to exercise the Rights will thereupon, without further action and without notice, terminate and the only right thereafter of the holders of Rights shall be to receive the Redemption Price.

(h) Within 10 Business Days after the REIT Trustees electing, or having been deemed to have elected, to redeem the Rights, the REIT shall give notice of redemption to the holders of the then outstanding Rights by mailing such notice to each such holder at such holder's last address as it appears upon the registry books of the Rights Agent or, prior to the Separation Time, on the registry books of the transfer agents for the Stapled Units. Any notice which is mailed in the manner herein provided shall be deemed given, whether or not the holder receives the notice. Each such notice of redemption will state the method by which the payment of the Redemption Price will be made. The REIT may not redeem, acquire or purchase for value any Rights at any time in any manner other than that specifically set forth in this section 6.1, and other than in connection with the purchase of Stapled Units prior to the Separation Time. If the Redemption Price payable to any holder of Rights includes a fraction of a cent, such Redemption Price shall be rounded up to the nearest cent.

## 6.2 Expiration

No Person shall have any rights pursuant to this Agreement or in respect of any Right after the Expiration Time, except the Rights Agent as specified in subsection 5.1(a).

## 6.3 Issuance of New Rights Certificate

Notwithstanding any of the provisions of this Agreement or of the Rights to the contrary, the REIT may, at its option, issue new Rights Certificates evidencing Rights in such form as may be approved by the REIT Trustees to reflect any adjustment or change in the number or kind or class of securities purchasable upon exercise of Rights made in accordance with the provisions of this Agreement.

#### 6.4 **Supplements and Amendments**

(a) The REIT may make amendments to this Agreement to correct any clerical or typographical error or which are required to maintain the validity of this Agreement as a result of any change in any applicable legislation, regulations or rules thereunder. The REIT may, prior to the date of the unitholders' meeting referred to in section 6.16, supplement, amend, vary, rescind or delete any of the provisions of this Agreement without the approval of any holders of Rights or REIT Units (provided that such action would not materially adversely affect the interests of the holders of Rights generally) in order to make any changes which the REIT Trustees acting in good faith deem necessary or desirable. Notwithstanding anything in this section 6.4 to the contrary, no supplement, amendment, rescission or deletion shall be made to the provisions of Article 5 except with the written concurrence of the Rights Agent to such supplement, amendment, rescission or deletion.

(b) Subject to subsection 6.4(a), the REIT may, with the prior consent of the holders of REIT Units obtained as set forth in this subsection 6.4(b), at any time prior to the Separation Time, supplement, amend, vary, rescind or delete any of the provisions of this Agreement and the Rights (whether or not such action would materially adversely affect the interests of the holders of Rights generally). Such consent shall be deemed to have been given if the action requiring such approval is authorized by the affirmative vote of a majority of the votes cast by Independent Unitholders present or represented at and entitled to be voted at a meeting of unitholders of the REIT duly called and held.

(c) Subject to subsection 6.4(a), the REIT may, with the prior consent of the holders of Rights, at any time on or after the Separation Time, supplement, amend, vary, rescind or delete any of the provisions of this Agreement and the Rights (whether or not such action would materially adversely affect the interests of the holders of Rights generally).

(d) Any approval or consent of the holders of Rights shall be deemed to have been given if the action requiring such approval or consent is authorized by the affirmative votes of the holders of Rights present or represented at and entitled to be voted at a meeting of the holders of Rights and representing a majority of the votes cast in respect thereof. For the purposes hereof, each outstanding Right (other than Rights which are void pursuant to the provisions hereof) shall be entitled to one vote, and the procedures for the calling, holding and conduct of the meeting shall be those, as nearly as may be, which are provided in the REIT Declaration of Trust with respect to meetings of unitholders of the REIT.

(e) Any amendments made by the REIT to this Agreement pursuant subsection 6.4(a), other than any amendment to correct any clerical or typographical error, shall:

- (i) if made before the Separation Time, be submitted to the holders of REIT Units at the next meeting of such holders, and such holders may, by the majority referred to in subsection 6.4(b), confirm or reject such amendment; or
- (ii) if made after the Separation Time, be submitted to the holders of Rights at a meeting to be called for on a date not later than immediately following

the next meeting of unitholders of the REIT, and the holders of Rights may, by resolution passed by the majority referred to in subsection 6.4(d), confirm or reject such amendment.

Any such amendment shall be effective from the date of the resolution of the REIT Trustees adopting such amendment, until it is confirmed or rejected or until it ceases to be effective (as described in the next sentence) and, where such amendment is confirmed, it continues in effect in the form so confirmed. If such amendment is rejected by the holders of the REIT Units or the holders of Rights or is not submitted to the holders of the REIT Units or holders of Rights as required, then such amendment shall cease to be effective from and after the termination of the meeting at which it was rejected or to which it should have been but was not submitted or from and after the date by which the meeting of holders of Rights should have been but was not held, and no subsequent resolution of the REIT Trustees to amend this Agreement to substantially the same effect shall be effective until confirmed by the holders of the REIT Units or holders of Rights as the case may be.

(f) Notwithstanding any other provision of this Agreement, any amendment made by the REIT to this Agreement by supplement or otherwise shall be subject to the prior approval of any governmental or regulatory authority having jurisdiction over the REIT, including without limitation any requisite approval of stock exchanges on which the Stapled Units are listed.

(g) The REIT shall be required to provide the Rights Agent with notice in writing of any amendment to this Agreement made pursuant to this section within five Business Days of effecting such amendment.

## 6.5 **Fractional Rights and Fractional Stapled Units**

(a) The REIT shall not be required to issue fractions of Rights or to distribute Rights Certificates which evidence fractional Rights. In lieu of such fractional Rights, there shall be paid to the registered holders of the Rights Certificates with regard to which such fractional Rights would otherwise be issuable, an amount in cash, rounded to the nearest cent, equal to the fraction of the Market Price of a whole Right that the fraction of a Right which would otherwise be issuable is of one whole Right. The Rights Agent shall have no obligation to make any payments in lieu of fractional Rights unless the REIT shall have provided the Rights Agent with the necessary funds to pay in full all amounts payable in accordance with subsection 3.1(f).

(b) The REIT shall not be required to deliver fractional Stapled Units upon exercise of the Rights or to distribute certificates which evidence fractional Stapled Units. In lieu of delivering fractional Stapled Units, the REIT shall pay to the registered holders of Rights Certificates, at the time such Rights are exercised as herein provided, an amount in cash, rounded to the nearest cent, equal to the same fraction of the Market Price of a whole Stapled Unit that the fraction of a Stapled Unit which would otherwise be deliverable upon the exercise of such right is of one whole Stapled Unit at the date of such exercise. The Rights Agent shall have no obligation to make any payments in lieu of fractional Stapled Units unless the REIT shall have provided the Rights Agent with the necessary funds to pay in full all amounts payable in accordance with subsection 3.1(f).

## 6.6 **Rights of Action**

Subject to the terms of this Agreement, all rights of action in respect of this Agreement, other than rights of action vested solely in the Rights Agent, are vested in the respective holders of the Rights; and any holder of any Rights, without the consent of the Rights Agent or of the holder of any other Rights, may, on such holder's own behalf and for such holder's own benefit and the benefit of other holders of Rights, enforce, and may institute and maintain any suit, action or proceeding against the REIT to enforce, or otherwise act in respect of, such holder's right to exercise such holder's Rights in the manner provided in such holder's Rights Certificate and in this Agreement. Without limiting the foregoing or any remedies available to the holders of Rights, it is specifically acknowledged that the holders of Rights would not have an adequate remedy at law for any breach of this Agreement and will be entitled to specific performance of the obligations of, and injunctive relief against actual or threatened violations of the obligations of, any Person subject to this Agreement.

## 6.7 **Notice of Proposed Actions**

In case the REIT shall propose after the Separation Time and prior to the Expiration Time:

- (i) to effect or permit (in cases where the REIT's permission is required) any Flip-in Event; or
- (ii) to effect the liquidation, dissolution or winding up of the REIT or the sale of all or substantially all of the REIT's assets,

then, in each such case, the REIT shall give to each holder of a Right, in accordance with section 6.8, and to Finance Trust, a notice of such proposed action, which shall specify the date on which such Flip-in Event, liquidation, dissolution or winding up is to take place, and such notice shall be so given at least 10 Business Days prior to the date of taking such proposed action.

## 6.8 **Notices**

Notices or demands authorized or required by this Agreement to be given or made by the Rights Agent or by the holder of any Rights to or on the REIT shall be sufficiently given or made if delivered or sent by mail, postage prepaid, or by fax (with, in the case of fax, an original copy of the notice or demand sent by first class mail, postage prepaid, to the REIT following the giving of the notice or demand by fax), addressed (until another address is filed in writing with the Rights Agent) as follows:

H&R Real Estate Investment Trust  
 3625 Dufferin Street  
 Suite 500  
 Toronto, Ontario  
 M3K 1N4

Attention: President  
 Fax: (416) 398-0040

Any notice or demand authorized or required by this Agreement to be given or made by the REIT or by the holder of any Rights to or on the Rights Agent shall be sufficiently given or made if delivered or sent by mail, postage prepaid, or by fax (with, in the case of fax, an original copy of the notice or demand sent by first class mail, postage prepaid, to the Rights Agent following the giving of the notice or demand by fax), addressed (until another address is filed in writing with the REIT) as follows:

CIBC Mellon Trust Company  
320 Bay Street  
P.O. Box 1  
Toronto, Ontario  
M5H 4A6

Attention: Vice President, Trust Services Eastern Region  
Fax: (416) 643-5570

Notices or demands authorized or required by this Agreement to be given or made by the REIT or the Rights Agent to or on the holder of any Rights shall be sufficiently given or made if delivered or sent by first-class mail or by postage prepaid, addressed to such holder at the address of such holder as it appears upon the registry books of the Rights Agent or, prior to the Separation Time, on the registry books of the REIT for the Stapled Units. Any notice which is mailed or sent in the manner herein provided shall be deemed given, whether or not the holder receives the notice.

Any notice given or made in accordance with this section 6.8 shall be deemed to have been given and to have been received on the day of delivery, if so delivered, and on the third Business Day (excluding each day during which there exists any general interruption of postal service due to strike, lockout or other cause) following the mailing thereof, if so mailed. Each of the REIT and the Rights Agent may from time to time change its address for notice by notice to the other given in the manner aforesaid.

If mail service is or is threatened to be interrupted at a time when the REIT or the Rights Agent wishes to give a notice or demand hereunder to or on the holders of the Rights, the REIT or the Rights Agent may, notwithstanding the foregoing provisions of this section 6.8, give such notice by means of publication once in each of two successive weeks in the national edition of The Globe and Mail and, so long as the REIT has a transfer agent in the United States, in a daily publication in the United States designated by the REIT, or in such other publication or publications as may be designated by the REIT, and notice so published shall be deemed to have been given on the date on which the first publication of such notice in any such publication has taken place.

## **6.9 Costs of Enforcement**

The REIT agrees that if it fails to fulfil any of its obligations pursuant to this Agreement, then the REIT will reimburse the holder of any Rights for the costs and expenses (including legal fees) incurred by such holder in actions to enforce its rights pursuant to any Rights or this Agreement.

#### 6.10 **Successors**

All the covenants and provisions of this Agreement by or for the benefit of the REIT or the Rights Agent shall bind and enure to the benefit of their respective successors and assigns hereunder.

#### 6.11 **Benefits of this Agreement**

Nothing in this Agreement shall be construed to give to any Person other than the REIT, the Rights Agent and the holders of the Rights any legal or equitable right, remedy or claim under this Agreement, and this Agreement shall be for the sole and exclusive benefit of the REIT, the Rights Agent and the holders of the Rights.

#### 6.12 **Governing Law**

This Agreement and each Right issued hereunder shall be deemed to be a contract made under the laws of the Province of Ontario and for all purposes shall be governed by and construed in accordance with the laws of such province applicable to contracts to be made and performed entirely within such province.

#### 6.13 **Counterparts**

This Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original, and all such counterparts shall together constitute one and the same instrument.

#### 6.14 **Severability**

If any term or provision hereof or the application thereof to any circumstance is, in any jurisdiction and to any extent, invalid or unenforceable, such term or provision shall be ineffective as to such jurisdiction to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining terms and provisions hereof or the application of such term or provision to circumstances other than those as to which it is held invalid or unenforceable.

#### 6.15 **Effective Date**

Notwithstanding its amendment and restatement as of the date hereof, this Agreement is effective from the Effective Time and replaces and supersedes the Original Plan.

#### 6.16 **Unitholder Review**

If required by the rules and regulations of any stock exchange on which the REIT Units are then listed, at or prior to the annual meeting of the unitholders of the REIT in the year 2012, provided that a Flip-in Event has not occurred prior to such time, the REIT Trustees shall submit a resolution ratifying the continued existence of this Agreement to all holders of REIT Units for their consideration and, if thought advisable, approval. If such approval is not required by the rules and regulations of any stock exchange on which the Stapled Units are then listed, at

or prior to the annual meeting of the unitholders of the REIT in the year 2012, provided that a Flip-in Event has not occurred prior to such time, the REIT Trustees shall submit a resolution ratifying the continued existence of this Agreement to the Independent Unitholders for their consideration and, if thought advisable, approval. Unless the majority of the votes cast by holders of REIT Units or the Independent Unitholders, as applicable, who vote in respect of such resolution are voted in favour of the continued existence of this Agreement, this Agreement and all outstanding Rights shall, immediately upon the confirmation by the Chairman of such unitholders' meeting of the results of the votes on such resolution and without further formality, terminate and be void and of no further force and effect.

#### **6.17 Determinations and Actions by the REIT Trustees**

All actions, calculations and determinations (including any omissions with respect thereto) made or done by the REIT Trustees in good faith pursuant to this Agreement shall not subject the REIT Trustees to any liability to the holders of Rights.

#### **6.18 Time of the Essence**

Time shall be of the essence in this Agreement.

#### **6.19 Regulatory Approvals**

Any obligation of the REIT or action or event contemplated by this Agreement shall be subject to the receipt of any requisite approval or consent from any applicable governmental or regulatory authority including, without limiting the generality of the foregoing, any necessary approvals of the Toronto Stock Exchange or any other exchange on which the Stapled Units may be listed.

#### **6.20 Declaration as to Non-Canadian Holders**

In no event has the REIT or the Rights Agent an obligation to issue or deliver Rights or securities issuable on exercise of Rights to Persons who are citizens, residents or nationals of any jurisdiction other than Canada or the United States, in which jurisdiction such issue or delivery would be unlawful without registration of the relevant Persons, securities or issue or delivery for such purposes.

#### **6.21 Personal Liability**

The obligations of the REIT hereunder are not personally binding upon any REIT Trustee, any registered or beneficial holder of Stapled Units, any annuitant under a plan of which a registered or beneficial holder of Stapled Units acts as trustee or carrier or any officer, employee or agent of the REIT, and resort shall not be had to, nor shall recourse or satisfaction be sought from, any of the foregoing, but the property of the REIT only shall be bound by such obligations. Any obligation of the REIT set out in this Agreement shall to the extent necessary to give effect to such obligation be deemed to constitute, subject to the provisions of the previous sentence, an obligation of the REIT Trustees in their capacity as trustees of the REIT.

*[Remainder of page intentionally left blank; signature page follows]*

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be duly executed as of the date first above written.

**TRUSTEES OF H&R REAL ESTATE  
INVESTMENT TRUST**

by: \_\_\_\_\_  
Name:

by: \_\_\_\_\_  
Name:

**CIBC MELLON TRUST COMPANY**

by: \_\_\_\_\_  
Authorized Officer

by: \_\_\_\_\_  
Authorized Officer

**EXHIBIT A**  
**FORM OF RIGHTS CERTIFICATE**  
**FOR HOLDERS OF STAPLED UNITS**

Certificate No. \_\_\_\_\_

\_\_\_\_\_ Rights

THE RIGHTS ARE SUBJECT TO REDEMPTION AND TERMINATION, AT THE OPTION OF THE REIT, ON THE TERMS SET FORTH IN THE RIGHTS AGREEMENT. IN CERTAIN CIRCUMSTANCES (SPECIFIED IN SUBSECTION 4.1(b) OF THE RIGHTS AGREEMENT), RIGHTS BENEFICIALLY OWNED BY AN ACQUIRING PERSON OR TRANSFEREES OF AN ACQUIRING PERSON OR ITS AFFILIATES OR ASSOCIATES (AS SUCH TERMS ARE DEFINED IN THE RIGHTS AGREEMENT) OR ANY PERSON ACTING JOINTLY OR IN CONCERT WITH ANY OF THEM, MAY BECOME VOID.

**RIGHTS CERTIFICATE**

This certifies that \_\_\_\_\_ is the registered holder of the number of Rights set forth above, each of which entitles the registered holder thereof, subject to the terms, provisions and conditions of the Amended and Restated Unitholder Rights Plan Agreement made as of the 15<sup>th</sup> day of May, 2009 (amending and restating the Unitholder Rights Plan Agreement made as of June 23, 2006, as amended and restated as of the 1<sup>st</sup> day of October, 2008, as the same may be further amended or further supplemented from time to time (the "**Rights Agreement**"), between the Trustees of H&R Real Estate Investment Trust, a trust created under the laws of Ontario (the "**REIT**"), and CIBC Mellon Trust Company, a trust company existing under the laws of Canada, as rights agent (the "**Rights Agent**", which term shall include any successor Rights Agent under the Rights Agreement) to purchase from the REIT one fully paid Stapled Unit (as such terms are defined in the Rights Agreement), at any time after the Separation Time and prior to the Expiration Time (as such terms are defined in the Rights Agreement), at the Exercise Price referred to below, upon presentation and surrender of this Rights Certificate together with the Form of Election to Exercise duly executed to the Rights Agent at its principal office in the city of Toronto or in such other cities as may be designated by the REIT from time to time. The Exercise Price shall initially be \$100 per Right and shall be subject to adjustment in certain events as provided in the Rights Agreement.

This Rights Certificate is subject to all of the terms, provisions and conditions of the Rights Agreement which terms, provisions and conditions are hereby incorporated herein by reference and made a part hereof and to which Rights Agreement reference is hereby made for a full description of the rights, limitations of rights, obligations, duties and immunities thereunder of the Rights Agent, the REIT and the holders of the Rights Certificates. Copies of the Rights Agreement are on file at the principal executive office of the REIT and are available upon written request.

This Rights Certificate, with or without other Rights Certificates, upon surrender at any of the offices of the Rights Agent designated for such purpose, may be exchanged for another Rights Certificate or Rights Certificates of like tenor and date evidencing an aggregate number of Rights equal to the aggregate number of Rights evidenced by the Rights Certificate or Rights Certificates surrendered. If this Rights Certificate shall be exercised in part, the registered

holder shall be entitled to receive, upon surrender hereof, another Rights Certificate or Rights Certificates for the number of whole Rights not exercised.

Subject to the provisions of the Rights Agreement, the Rights evidenced by this Rights Certificate may be redeemed by the REIT at a redemption price of \$0.0001 per Right, subject to adjustment in certain events, under certain circumstances at its option.

No fractional Stapled Units will be issued upon the exercise of any Right or Rights evidenced hereby, but in lieu thereof a cash payment will be made, as provided in the Rights Agreement.

No holder of this Rights Certificate, as such, shall be entitled to vote or receive distributions or be deemed for any purpose the holder of Stapled Units, REIT Units, units of H&R Finance Trust (“**Finance Trust**”) or of any other securities of the REIT or Finance Trust which may at any time be issuable upon the exercise hereof, nor shall anything contained in the Rights Agreement or herein be construed to confer upon the holder hereof, as such, any of the rights of a holder of Stapled Units, the rights of a unitholder of the REIT, the rights of a unitholder of Finance Trust or any right to vote for the election of trustees or upon any matter submitted to holders of REIT Units or units of Finance Trust at any meetings thereof, respectively, or to give or withhold consent to any corporate action, or to receive notice of meetings or other actions affecting holders of REIT Units or units of Finance Trust, or to receive distributions or subscription rights, or otherwise, until the Rights evidenced by this Rights Certificate shall have been exercised as provided in the Rights Agreement.

This Rights Certificate shall not be valid or obligatory for any purpose until it shall have been countersigned by the Rights Agent.

WITNESS the facsimile signature of two of the Trustees of the REIT.

Date: \_\_\_\_\_

**TRUSTEES OF H&R REAL ESTATE  
INVESTMENT TRUST**

by: \_\_\_\_\_

by: \_\_\_\_\_

Countersigned:

**CIBC MELLON TRUST COMPANY**

by: \_\_\_\_\_  
Authorized Signature

**FORM OF ELECTION TO EXERCISE**

**TO: TRUSTEES OF H&R REAL ESTATE INVESTMENT TRUST and CIBC  
MELLON TRUST COMPANY**

The undersigned hereby irrevocably elects to exercise \_\_\_\_\_ whole Rights represented by the attached Rights Certificate to purchase the Stapled Units (or other securities or property) issuable upon the exercise of such Rights and requests that certificates for such Stapled Units (or other securities or property) be issued in the name of:

\_\_\_\_\_  
Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
City and Province or State

\_\_\_\_\_  
Social Insurance Number or other taxpayer identification number

If such number of Rights shall not be all the Rights evidenced by this Rights Certificate, a new Rights Certificate for the balance of such Rights shall be registered in the name of and delivered to:

\_\_\_\_\_  
Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
City and Province or State

\_\_\_\_\_  
Social Insurance Number or other taxpayer identification number

Dated: \_\_\_\_\_

\_\_\_\_\_  
Signature Guaranteed

(Signature must be guaranteed in manner provided below if name of signatory is different from name in which Stapled Units or a new Rights Certificate are to be issued hereby.)

\_\_\_\_\_  
Signature

(Signature must correspond to name as written upon the face of this Rights Certificate in every particular, without alteration or enlargement or any change whatsoever.)

If applicable, the signature(s) on this form must also be guaranteed by one of the following methods:

*In Canada and the US:* a **Medallion Guarantee** obtained from a member of an acceptable Medallion Guarantee Program (STAMP, SEMP or MSP). The guarantor must affix a stamp in the space above bearing the actual words “Medallion Guaranteed”.

*In Canada:* a **Signature Guarantee** obtained from a major Canadian Schedule I bank that is not a member of a Medallion Guarantee Program. The guarantor must affix a stamp in the space above bearing the actual words “Signature Guaranteed”.

*Outside Canada and the US:* holders must obtain a guarantee from a local financial institution that has a corresponding affiliate in Canada or the US that is a member of an acceptable Medallion Guarantee Program. The corresponding affiliate must over-guarantee the guarantee provided by the local financial institution.

**(TO BE COMPLETED IF TRUE)**

The undersigned hereby represents, for the benefit of all holders of Rights and of Stapled Units, that the Rights evidenced by this Rights Certificate are not, and, to the knowledge of the undersigned, have never been, Beneficially Owned by an Acquiring Person or an Affiliate or Associate thereof or any Person acting jointly or in concert with any of the foregoing (as such terms are defined in the Rights Agreement).

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature

In the event the certification set forth above in the Form of Election to Exercise is not completed, the REIT will deem the Beneficial Owner of the Rights evidenced by this Rights Certificate to be an Acquiring Person or an Affiliate or Associate thereof (as defined in the Rights Agreement) and accordingly such Rights will be null and void.

**FORM OF ASSIGNMENT**

FOR VALUE RECEIVED \_\_\_\_\_

hereby sells, assigns and transfers unto \_\_\_\_\_

\_\_\_\_\_  
(Please print name and address of transferee)

the Rights represented by this Rights Certificate, together with all right, title and interest therein, and does hereby irrevocably constitute and appoint \_\_\_\_\_, as attorney, to transfer the within Rights on the books of the REIT, with full power of substitution.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Signature Guaranteed

\_\_\_\_\_  
Signature

(Signature must correspond to name as written upon the face of this Rights Certificate in every particular, without alteration or enlargement or any change whatsoever.)

The signature(s) on this form must also be guaranteed by one of the following methods:

*In Canada and the US:* a **Medallion Guarantee** obtained from a member of an acceptable Medallion Guarantee Program (STAMP, SEMP or MSP). The guarantor must affix a stamp in the space above bearing the actual words “Medallion Guaranteed”.

*In Canada:* a **Signature Guarantee** obtained from a major Canadian Schedule I bank that is not a member of a Medallion Guarantee Program. The guarantor must affix a stamp in the space above bearing the actual words “Signature Guaranteed”.

*Outside Canada and the US:* holders must obtain a guarantee from a local financial institution that has a corresponding affiliate in Canada or the US that is a member of an acceptable Medallion Guarantee Program. The corresponding affiliate must over-guarantee the guarantee provided by the local financial institution.

**(TO BE COMPLETED IF TRUE)**

The undersigned hereby represents, for the benefit of the REIT and all holders of Rights and Stapled Units, that the Rights evidenced by this Rights Certificate are not, and, to the knowledge of the undersigned, have never been, Beneficially Owned by an Acquiring Person or an Affiliate or Associate thereof or any Person acting jointly or in concert with any of the foregoing (as defined in the Rights Agreement).

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature

In the event the certification set forth above in the Form of Assignment is not completed, the REIT will deem the Beneficial Owner of the Rights evidenced by this Rights Certificate to be an Acquiring Person or an Affiliate or Associate thereof (as defined in the Rights Agreement) and accordingly such Rights will be null and void.