

H&R REAL ESTATE INVESTMENT TRUST

**2022 AMENDED AND RESTATED
DECLARATION OF TRUST**

(DATED AS OF MARCH 30, 2022)

BLAKE, CASSELS & GRAYDON LLP

TABLE OF CONTENTS

Page No.

RECITALS.....	1
DECLARATION	5
ARTICLE I THE TRUST AND DEFINITIONS.....	5
SECTION 1.01 DEFINITIONS AND INTERPRETATION.....	5
SECTION 1.02 NAME.....	10
SECTION 1.03 USE OF NAME.	11
SECTION 1.04 OFFICE.	11
SECTION 1.05 NATURE OF THE TRUST.	11
SECTION 1.06 TRUST INVESTMENTS.	11
SECTION 1.07 APPLICATIONS TO COURT.	12
ARTICLE II TRUSTEES AND OFFICERS	12
SECTION 2.01 NUMBER.	12
SECTION 2.02 TERM OF OFFICE.	12
SECTION 2.03 QUALIFICATIONS OF TRUSTEES.....	12
SECTION 2.04 ELECTION OF TRUSTEES.	13
SECTION 2.05 RESIGNATION, REMOVAL AND DEATH OF TRUSTEES.	13
SECTION 2.06 VACANCIES.	13
SECTION 2.07 SUCCESSOR AND ADDITIONAL TRUSTEES.	14
SECTION 2.08 COMPENSATION AND OTHER REMUNERATION.	14
SECTION 2.09 OFFICERS OF THE TRUST.	14
ARTICLE III TRUSTEES' POWERS AND DUTIES.....	15
SECTION 3.01 GENERAL POWERS.	15
SECTION 3.02 SPECIFIC POWERS AND AUTHORITIES.	15
SECTION 3.03 FURTHER POWERS OF THE TRUSTEES.....	18
SECTION 3.04 STANDARD OF CARE.	18
SECTION 3.05 RELIANCE UPON TRUSTEES.	19
SECTION 3.06 DETERMINATIONS OF TRUSTEES BINDING.	19
SECTION 3.07 CONFLICT OF INTEREST.....	19
ARTICLE IV INVESTMENT GUIDELINES AND OPERATING POLICIES	22
SECTION 4.01 INVESTMENT GUIDELINES.	22
SECTION 4.02 OPERATING POLICIES.	22
SECTION 4.03 REGULATORY MATTERS.	24
ARTICLE V TRUST UNITS AND SPECIAL VOTING UNITS.....	24
SECTION 5.01 UNITS AND SPECIAL VOTING UNITS.....	24
SECTION 5.02 RANKING OF UNITS.	25
SECTION 5.03 CONSIDERATION FOR UNITS AND SPECIAL VOTING UNITS.....	25
SECTION 5.04 NO PRE-EMPTIVE RIGHTS.	25
SECTION 5.05 FRACTIONAL UNITS AND SPECIAL VOTING UNITS.	25
SECTION 5.06 LEGAL OWNERSHIP OF ASSETS OF THE TRUST.	26
SECTION 5.07 ALLOTMENT AND ISSUE.	26
SECTION 5.08 RIGHTS, WARRANTS AND OPTIONS.	26
SECTION 5.09 COMMISSIONS AND DISCOUNTS.	26
SECTION 5.10 TRANSFERABILITY.	27

SECTION 5.11	NON-RESIDENT OWNERSHIP CONSTRAINT.....	27
SECTION 5.12	CERTIFICATES.....	27
SECTION 5.13	CERTIFICATE FEE.....	28
SECTION 5.14	FORM OF CERTIFICATE.....	28
SECTION 5.15	UNIT REGISTER AND TRANSFER LEDGERS TO BE MAINTAINED.....	28
SECTION 5.16	ENTRY ON REGISTER.....	28
SECTION 5.17	TRANSFER OF UNITS.....	29
SECTION 5.18	SUCCESSORS IN INTEREST TO UNITHOLDERS.....	29
SECTION 5.19	UNITS OR SPECIAL VOTING UNITS HELD JOINTLY OR IN FIDUCIARY CAPACITY.....	29
SECTION 5.20	PERFORMANCE OF TRUSTS.....	29
SECTION 5.21	LOST CERTIFICATES.....	30
SECTION 5.22	DEATH OF UNITHOLDERS.....	30
SECTION 5.23	UNCLAIMED PAYMENTS.....	31
SECTION 5.24	REPURCHASE OF UNITS.....	31
SECTION 5.25	INSTALMENT RECEIPTS.....	31
SECTION 5.26	TAKE-OVER BIDS.....	31
ARTICLE VI MEETINGS OF UNITHOLDERS AND SPECIAL VOTING UNITHOLDERS		35
SECTION 6.01	ANNUAL MEETING.....	35
SECTION 6.02	OTHER MEETINGS.....	35
SECTION 6.03	NOTICE OF MEETING OF UNITHOLDERS AND SPECIAL VOTING UNITHOLDERS.....	36
SECTION 6.04	UNITHOLDER PROPOSALS.....	37
SECTION 6.05	QUORUM; CHAIRMAN.....	40
SECTION 6.06	VOTING.....	40
SECTION 6.07	MATTERS ON WHICH UNITHOLDERS AND SPECIAL VOTING UNITHOLDERS SHALL VOTE.....	40
SECTION 6.08	RECORD DATES.....	41
SECTION 6.09	COURT REQUISITIONED MEETINGS.....	42
SECTION 6.10	PROXIES.....	42
SECTION 6.11	RESOLUTION IN LIEU OF MEETING.....	43
SECTION 6.12	NOMINATION OF TRUSTEES.....	43
ARTICLE VII MEETINGS OF THE TRUSTEES		46
SECTION 7.01	TRUSTEES MAY ACT WITHOUT MEETING.....	46
SECTION 7.02	NOTICE OF MEETING.....	46
SECTION 7.03	QUORUM.....	46
SECTION 7.04	VOTING AT MEETINGS.....	46
SECTION 7.05	MEETING BY TELEPHONE.....	47
ARTICLE VIII DELEGATION OF POWERS.....		47
SECTION 8.01	GENERAL.....	47
SECTION 8.02	INVESTMENT COMMITTEE.....	47
SECTION 8.03	AUDIT COMMITTEE.....	48
SECTION 8.04	COMPENSATION AND GOVERNANCE COMMITTEE.....	49
SECTION 8.05	PROPERTY MANAGER.....	49
SECTION 8.06	ADDITIONAL COMMITTEES AND POWERS THAT MAY NOT BE DELEGATED.....	49
ARTICLE IX DISTRIBUTIONS.....		50
SECTION 9.01	DISTRIBUTIONS.....	50
SECTION 9.02	ALLOCATION.....	51
SECTION 9.03	PAYMENT OF CASH DISTRIBUTIONS.....	51
SECTION 9.04	WITHHOLDING TAXES.....	51
SECTION 9.05	INCOME TAX MATTERS.....	52
SECTION 9.06	DESIGNATIONS.....	52
SECTION 9.07	DISTRIBUTION REINVESTMENT AND UNIT PURCHASE PLAN.....	53

ARTICLE X REDEMPTION OF TRUST UNITS.....	53
SECTION 10.01 RIGHT OF REDEMPTION.....	53
SECTION 10.02 EXERCISE OF REDEMPTION RIGHT.....	53
SECTION 10.03 CASH REDEMPTION.....	53
SECTION 10.04 NO CASH REDEMPTION IN CERTAIN CIRCUMSTANCES.....	54
SECTION 10.05 <i>IN SPECIE</i> REDEMPTION.....	55
ARTICLE XI FEES AND EXPENSES	57
SECTION 11.01 EXPENSES.....	57
SECTION 11.02 PAYMENT OF REAL PROPERTY AND BROKERAGE COMMISSIONS.....	57
SECTION 11.03 PROPERTY MANAGEMENT, LEASING AND FINANCING FEES.....	57
ARTICLE XII AMENDMENTS TO THE DECLARATION OF TRUST	57
SECTION 12.01 AMENDMENTS BY THE TRUSTEES.....	57
SECTION 12.02 RATIFYING AMENDMENTS TO DECLARATION OF TRUST.....	58
SECTION 12.03 AMENDMENTS BY UNITHOLDERS AND SPECIAL VOTING UNITHOLDERS.....	59
SECTION 12.04 TWO-THIRDS UNITHOLDER AND SPECIAL VOTING UNITHOLDER VOTE.....	59
SECTION 12.05 NO TERMINATION.....	60
ARTICLE XIII TERMINATION OF THE TRUST.....	60
SECTION 13.01 DURATION OF THE TRUST.....	60
SECTION 13.02 TERMINATION BY UNITHOLDERS AND SPECIAL VOTING UNITHOLDERS.....	60
SECTION 13.03 EFFECT OF TERMINATION.....	60
ARTICLE XIV LIABILITIES OF THE TRUSTEES AND OTHERS	60
SECTION 14.01 LIABILITY AND INDEMNIFICATION OF THE TRUSTEES.....	60
SECTION 14.02 LIABILITY OF THE TRUSTEES.....	61
SECTION 14.03 RELIANCE UPON ADVICE.....	61
SECTION 14.04 LIABILITY OF UNITHOLDERS, SPECIAL VOTING UNITHOLDERS AND OTHERS.....	61
ARTICLE XV UNITHOLDER REMEDIES.....	63
SECTION 15.01 DISSENT AND APPRAISAL RIGHTS.....	63
SECTION 15.02 OPPRESSION REMEDY.....	67
ARTICLE XVI GENERAL.....	69
SECTION 16.01 EXECUTION OF INSTRUMENTS.....	69
SECTION 16.02 MANNER OF GIVING NOTICE.....	69
SECTION 16.03 FAILURE TO GIVE NOTICE.....	69
SECTION 16.04 TRUST AUDITORS.....	69
SECTION 16.05 FISCAL YEAR.....	69
SECTION 16.06 REPORTS TO UNITHOLDERS AND SPECIAL VOTING UNITHOLDERS.....	70
SECTION 16.07 TRUST PROPERTY TO BE KEPT SEPARATE.....	70
SECTION 16.08 TRUSTEES MAY HOLD UNITS AND SPECIAL VOTING UNITS.....	70
SECTION 16.09 TRUST RECORDS.....	70
SECTION 16.10 RIGHT TO INSPECT DOCUMENTS AND RECORDS OF THE TRUST.....	70
SECTION 16.11 INFORMATION AVAILABLE TO UNITHOLDERS, SPECIAL VOTING UNITHOLDERS AND OTHER SECURITYHOLDERS.....	71
SECTION 16.12 AFFIDAVITS.....	72
SECTION 16.13 USE OF INFORMATION.....	72
SECTION 16.14 CONSOLIDATIONS.....	72
SECTION 16.15 COUNTERPARTS.....	72
SECTION 16.16 SEVERABILITY.....	72
SECTION 16.17 HEADINGS FOR REFERENCE ONLY.....	73

SECTION 16.18	GOVERNING LAW.....	73
SECTION 16.19	TRANSITION.	73

H&R REAL ESTATE INVESTMENT TRUST

2022 AMENDED AND RESTATED DECLARATION OF TRUST

THIS DECLARATION OF TRUST made in Toronto, Ontario as of the 4th day of November, 1996, as amended and restated as of the 8th day of August, 1997, the 27th day of May, 1999, the 24th day of May, 2001, the 21st day of July, 2005, the 23rd day of June, 2006, the 18th day of May, 2007, the 1st day of October, 2008, the 15th day of May, 2009, the 12th day of August, 2010, the 11th day of August, 2011, the 25th day of June, 2012, the 28th day of June, 2013, the 10th day of July, 2014, the 24th day of June, 2016, the 27th of June, 2017, the 31st day of August, 2018 and the 30th day of March, 2022.

RECITALS

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

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

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

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

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

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

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

AND WHEREAS the Trustees further amended the 1999 Amended and Restated Declaration of Trust to reflect the amendments adopted by the Unitholders and restated the Declaration of Trust to reflect such amendments as of the 24th day of May, 2001 (the “**2001 Amended and Restated Declaration of Trust**”);

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

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

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

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

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

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

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

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

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

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

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

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

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

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

AND WHEREAS at an annual and special meeting of Unitholders held on the 18th day of June, 2012, the Unitholders voted in favour of certain amendments to the 2011 Amended and Restated Declaration of Trust;

AND WHEREAS the Trustees further amended the 2011 Amended and Restated Declaration of Trust to reflect the amendments adopted by the Unitholders and approved by the Trustees and restated the Declaration of Trust to reflect such amendments as of the 25th day of June, 2012 (the “**2012 Amended and Restated Declaration of Trust**”);

AND WHEREAS at an annual and special meeting of Unitholders held on the 20th day of June, 2013, the Unitholders voted in favour of certain amendments to the 2012 Amended and Restated Declaration of Trust;

AND WHEREAS the Trustees further amended the 2012 Amended and Restated Declaration of Trust to reflect the amendments adopted by the Unitholders and approved by the Trustees and restated the Declaration of Trust to reflect such amendments as of the 28th day of June, 2013 (the “**2013 Amended and Restated Declaration of Trust**”);

AND WHEREAS at an annual and special meeting of Unitholders held on the 19th day of June, 2014, the Unitholders voted in favour of certain amendments to the 2013 Amended and Restated Declaration of Trust;

AND WHEREAS the Trustees further amended the 2013 Amended and Restated Declaration of Trust to reflect the amendments adopted by the Unitholders and approved by the Trustees and restated the Declaration of Trust to reflect such amendments as of the 10th day of July, 2014 (the “**2014 Amended and Restated Declaration of Trust**”);

AND WHEREAS at an annual and special meeting of Unitholders held on the 17th day of June, 2016, the Unitholders voted in favour of certain amendments to the 2014 Amended and Restated Declaration of Trust;

AND WHEREAS the Trustees further amended the 2014 Amended and Restated Declaration of Trust to reflect the amendments adopted by the Unitholders and approved by the Trustees and restated the Declaration of Trust to reflect such amendments as of the 24th day of June, 2016 (the “**2016 Amended and Restated Declaration of Trust**”);

AND WHEREAS at an annual meeting of Unitholders held on the 19th day of June, 2017, the Unitholders voted in favour of certain amendments to the 2016 Amended and Restated Declaration of Trust;

AND WHEREAS the Trustees further amended the 2016 Amended and Restated Declaration of Trust to reflect the amendments adopted by the Unitholders and approved by the Trustees and restated the Declaration of Trust to reflect such amendments as of the 27th day of June, 2017 (the “**2017 Amended and Restated Declaration of Trust**”);

AND WHEREAS at a special meeting of Unitholders held on the 7th day of December 2017, the Unitholders voted in favour of certain amendments to the 2017 Amended and Restated Declaration of Trust to, among other things, give effect to the 2018 Plan of Arrangement (as defined herein);

AND WHEREAS the Trustees further amended the 2017 Amended and Restated Declaration of Trust to reflect the amendments adopted by the Unitholders and approved by the Trustees and restated the Declaration of Trust to reflect such amendments as of the 31st day of August, 2018 (the “**2018 Amended and Restated Declaration of Trust**”)

AND WHEREAS following the spin-off of Primaris Real Estate Investment Trust, the number of votes associated with the 9,500,000 outstanding Special Voting Units increased to 13,013,698 as a result of the exercise of the Trustees of their gross-up option in respect of the outstanding Exchangeable Securities of the Trust;

AND WHEREAS in accordance with Section 12.01(e) of the 2018 Amended and Restated Declaration of Trust, the Trustees further amended the 2018 Amended and Restated Declaration of Trust to reflect the subdivision of the Special Voting Units to result in there being a total of 13,013,698 Special Voting Units outstanding, with each having one vote per Special Voting Unit for ease of administrative burden, as well as certain other clerical amendments, and restated the Declaration of Trust to reflect such amendments as of the 30th day of March, 2022 (the “**2022 Amended and Restated Declaration of Trust**”);

AND WHEREAS this 2022 Amended and Restated Declaration of Trust replaces and supersedes the Amended and Restated Declaration of Trust dated as of the 4th day of November, 1996, the 1997 Amended and Restated Declaration of Trust, the 1999 Amended and Restated Declaration of Trust, the 2001 Amended and Restated Declaration of Trust, the 2005 Amended and Restated Declaration of Trust, the 2006 Amended and Restated Declaration of Trust, the 2007 Amended and Restated Declaration of Trust, the 2008 Amended and Restated Declaration of Trust, the 2009 Amended and Restated Declaration of Trust, the 2010 Amended and Restated Declaration of Trust, the 2011 Amended and Restated Declaration of Trust, the 2012 Amended and Restated Declaration of Trust, the 2013 Amended and Restated Declaration of Trust, the 2014 Amended and Restated Declaration of Trust, the 2016 Amended and Restated Declaration of Trust, the 2017 Amended and Restated Declaration of Trust and the 2018 Amended and Restated Declaration of Trust;

AND WHEREAS for greater certainty, this 2022 Amended and Restated Declaration of Trust shall not be deemed to constitute a termination of the Trust or a resettlement of the Trust.

DECLARATION

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

ARTICLE I THE TRUST AND DEFINITIONS

Section 1.01 Definitions and Interpretation.

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

(a) “**2018 Plan of Arrangement**” means the plan of arrangement attached to the amended and restated arrangement agreement dated as of March 21, 2018, as amended, which has become effective on the date hereof;

(a) “**Affected Holder**” means a person holding or beneficially owning Units in contravention of the restrictions set out in Section 5.11;

(b) “**affiliate**” with relation to any person means an associate or an affiliated, controlled or subsidiary company of such person, all such terms (except person) having the

meaning ascribed thereto by National Instrument 45-106 – *Prospectus Exemptions* of the Canadian Securities Administrators, as amended from time to time;

(c) “**annuitant**” means the annuitant of a registered retirement savings plan or a registered retirement income fund, all as defined in the *Income Tax Act* (Canada);

(d) “**associate**” has the meaning ascribed thereto by the *Canada Business Corporations Act*, as amended from time to time;

(e) “**Associate**” where used to indicate a relationship between an individual and a corporation means an individual who beneficially owns, directly or indirectly, voting securities carrying more than 10% of the voting rights attached to all voting securities of the corporation for the time being outstanding, a spouse of such individual or an immediate family member of such individual;

(f) “**Audit Committee**” means the committee established pursuant to Section 8.03;

(g) “**business day**” means a day other than a Saturday, Sunday or any day on which the principal chartered banks located at Toronto, Ontario are not open for business during normal banking hours;

(h) “**Chairman**”, “**Honorary Chairman**”, “**Chief Executive Officer**”, “**Chief Financial Officer**”, “**President**”, “**Executive Vice-President**”, “**Senior Vice-President**”, “**Vice-President**” and “**Secretary**” shall mean the person(s) holding the respective office from time to time in accordance with Section 2.09;

(i) “**court**” means the Superior Court of Justice in the Province of Ontario;

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

(k) “**dissenting offeree**” means, where a take-over bid is made for all of the Units other than those held by the offeror, a holder of Units who does not accept the take-over bid and includes a subsequent holder of that Unit who acquires it from the first mentioned holder;

(l) “**Distribution Date**” means on or about April 15, July 15 and October 15 and on December 31 in each calendar year, in the case of quarterly distributions or, in the case of monthly distributions, on or about the last day of each month, or, in either case, such other date as may be determined from time to time by the Trustees;

(m) “**Exchangeable Securities**” means securities of any trust, limited partnership or corporation other than the Trust that are convertible or exchangeable directly for Units without the payment of additional consideration therefor;

(n) “**going-private transaction**” means an arrangement, consolidation or other transaction involving the Trust, other than an acquisition pursuant to Section 5.26 that results in the interest of a holder of participating securities of the Trust being terminated without the consent of the holder and without the substitution of an interest of equivalent value in participating securities of the Trust or of a person that succeeds to the business of the Trust, which participating securities have rights and privileges that are equal to or greater than the affected participating securities;

(o) “**herein**”, “**hereof**”, “**hereby**”, “**hereunder**” and similar expressions refer to this Declaration of Trust and include every instrument supplemental or ancillary to or in implementation of this Declaration of Trust and, except where the context otherwise requires, not to any particular article, section or other portion hereof or thereof;

(p) “**Hofstedter Family**” means Sandor Hofstedter, his wife, either of their children, the spouses of such children and the lineal descendants of such children;

(q) “**HRP Note Indenture**” means the trust indenture entered into between HRP Trust and the Note Trustee providing for the issuance of the HRP Trust Notes;

(r) “**HRP Trust**” means H&R Portfolio LP Trust, an open-ended unit trust established under the laws of the Province of Ontario on October 21, 2004;

(s) “**HRP Trust Notes**” means the Series 1 Notes, Series 2 Notes, Series 3 Notes and Series 4 Notes collectively;

(t) “**HRP Unit**” means a trust unit of HRP Trust, each such unit representing an equal undivided beneficial interest therein;

(u) “**IFRS**” means International Financial Reporting Standards issued by the International Accounting Standards Board, and as adopted by the Canadian Institute of Chartered Accountants, as amended from time to time;

(v) “**immediate family member**” where used to indicate a relationship with an individual means a parent, child or sibling of such individual;

(w) references to the “**Income Tax Act (Canada)**” or the “**Tax Act**” mean the *Income Tax Act* (Canada) and the regulations thereunder as the same may be amended from time to time and as the same may be proposed to be amended to the extent that any such proposed amendments are considered to have been “substantially enacted” for accounting purposes;

(x) “**Independent Trustee**” means a Trustee who is not a member of the Hofstedter Family, is not a member of the Rubinstein Family and is independent (as that term is used in National Instrument 58-101 – Disclosure of Corporate Government Practices) of the Trust;

(y) “**Investment Committee**” means the committee established pursuant to Section 8.02;

(z) “**mortgage**” means any mortgage, charge, hypothec, bond, debenture, note or other evidence of indebtedness, in each case which is directly or indirectly secured by real property;

(aa) “**net realized capital gains of the Trust**” for any year means the amount, if any, by which the amount of the capital gains of the Trust for the year exceeds the aggregate of (i) the amount of any capital losses of the Trust for the year and (ii) the amount of any net capital losses of the Trust carried forward from a previous year to the extent not previously deducted from realized capital gains of the Trust;

(bb) “**Nominating Unitholder**” has the meaning ascribed to it in Section 6.12;

(cc) “**Non-Resident**” has the meaning specified in Section 5.11;

(dd) “**Note Trustee**” means CIBC Mellon Trust Company or its successors as trustee under the HRP Note Indenture;

(ee) “**Notice Date**” has the meaning ascribed to it in Section 6.12;

(ff) “**offeree**” means a person to whom a take-over bid is made;

(gg) “**offeror**” means a person, other than an agent, who makes a take-over bid, and includes two or more persons who, directly or indirectly,

(i) make a take-over bid jointly or in concert; or

(ii) intend to exercise jointly or in concert voting rights attached to the Units for which a take-over bid is made;

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

(ii) “**person**” means and includes individuals, corporations, limited partnerships, general partnerships, joint stock companies, joint ventures, associations, companies, trusts, banks, trust companies, pension funds, land trusts, business trusts or other organizations, whether or not legal entities and governments and agencies and political subdivisions thereof;

(jj) “**Property Manager**” means H&R Property Management Ltd.;

(kk) “**Property Management Agreements**” means the agreements entered into between the Trust, the Property Manager and others pursuant to which the Property Manager provides property management services in respect of the properties of the Trust and shall include any renewal or extension of such agreements;

(ll) “**Public Trustee**” means the Office of the Public Guardian and Trustee, a part of Ontario’s Ministry of the Attorney General;

(mm) “**real property**” means property which in law is real property and includes, whether or not the same would in law be real property, leaseholds, mortgages, undivided joint interests in real property (whether by way of tenancy-in-common, joint tenancy, co-ownership, joint venture or otherwise), any interests in any of the foregoing and securities of corporations whose sole or principal purpose and activity is to invest in, hold and deal in real property;

(nn) “**Receiver General**” means the Receiver General for Canada;

(oo) “**Register**” means the register which shall be established and maintained pursuant to Section 5.15;

(pp) “**resident Canadian**” means an individual who is a resident of Canada for purposes of the *Income Tax Act* (Canada);

(qq) “**Rubinstein Family**” means Bill Rubinstein, his wife, Daniel Rubinstein, his wife, any of their respective children, the spouses of such children and the lineal descendants of such children;

(rr) “**Series 1 Notes**” means the interest bearing unsecured subordinated notes, series 1, of HRP Trust issued to the Trust dated November 1, 2004, as amended and restated from time to time;

(ss) “**Series 2 Notes**” means the interest bearing unsecured subordinated notes, series 2, of HRP Trust issuable to the Trust pursuant to the HRP Note Indenture;

(tt) “**Series 3 Notes**” means the interest bearing unsecured subordinated notes, series 3, of HRP Trust issuable pursuant to the HRP Note Indenture;

(uu) “**Series 4 Notes**” means the interest bearing unsecured subordinated notes, series 4, of HRP Trust issuable pursuant to the HRP Note Indenture;

(vv) “**SIFT Tax**” means the tax payable by a SIFT trust pursuant to paragraph 122(1)(b) of the Tax Act or by a SIFT partnership pursuant to section 197 of the Tax Act;

(ww) “**SIFT trust**” has the meaning given thereto in subsection 122.1(1) of the Tax Act;

(xx) “**Special Voting Unitholder**” means a person whose name appears on the Register as a holder of one or more Special Voting Units and includes, for the purposes of Section 14.01, Section 14.02 and Section 14.04 only, any person who is a beneficial holder of a Special Voting Unit;

(yy) “**Special Voting Unit**” means a non-participating special voting unit of the Trust more particularly described in Section 5.01, issued in accordance with the provisions hereof from time to time and includes a fraction of a Special Voting Unit;

(zz) “**Subsidiary**” means, with respect to any person (other than an individual), a person (other than an individual) the financial results of which are consolidated with those of the Trust’s in the preparation of the Trust’s consolidated financial statements, prepared in accordance with generally accepted accounting principles;

(aaa) “**take-over bid**” has the meaning ascribed to such term in the *Securities Act* (Ontario), as amended from time to time;

(bbb) “**Total Assets**” means, at any time, the sum of the assets as recorded on the most recent balance sheet of the Trust, prepared on a consolidated basis in accordance with generally accepted accounting principles;

(ccc) “**Trust**” means the H&R Real Estate Investment Trust established hereunder;

(ddd) “**Trustees**” means, as at any particular time, the trustees holding office under this Declaration of Trust at such time, whether they be the signatories hereto or additional or successor trustees;

(eee) “**Trustees’ Regulations**” means the regulations adopted by the Trustees pursuant to Section 3.03;

(fff) “**Unit**” means a participating unit of interest in the Trust more particularly described in Section 5.01, issued in accordance with the provisions hereof from time to time and includes a fraction of a Unit, but for the avoidance of doubt does not include a Special Voting Unit;

(ggg) “**Unitholder**” or “**holder of Units**” means a person whose name appears on the Register as a holder of Units and includes, for the purposes of Section 14.01, Section 14.02 and Section 14.04 only, any person who is a beneficial holder of a Unit;

(hhh) “**Withholding Tax**” has the meaning ascribed thereto in Section 9.04 hereof; and

(iii) any reference to “**property of the Trust**” or “**assets of the Trust**” includes, in each case, property and assets of the Trust.

Section 1.02 Name.

The name of the Trust is H&R Real Estate Investment Trust in its English form and Fonds de placement immobilier H&R in its French form. As far as practicable and except as otherwise provided in this Declaration of Trust, the Trustees shall conduct the affairs of the

Trust, hold property, execute all documents and take all legal proceedings under that name, in either its English form or its French form.

Section 1.03 Use of Name.

Should the Trustees determine that the use of the name H&R Real Estate Investment Trust or the name Fonds de placement immobilier H&R is not practicable, legal or convenient, they may use such other designation or they may adopt such other name for the Trust as they deem appropriate and the Trust may hold property and conduct its activities under such other designation or name.

Section 1.04 Office.

The principal office and centre of administration of the Trust shall be at Suite 500, 3625 Dufferin Street, Toronto, Ontario M3K 1N4 unless changed by the Trustees to another location. The Trust may have such other offices or places for the conduct of its affairs as the Trustees may from time to time determine as necessary or desirable.

Section 1.05 Nature of the Trust.

The Trust is an open-ended unincorporated investment trust. The Trust, the Units, the Special Voting Units and its property shall be governed by the general law of trusts, except as such general law of trusts has been or is from time to time modified, altered or abridged for the Trust by:

(a) applicable laws and regulations or other requirements imposed by applicable securities or other regulatory authorities; and

(b) the terms, conditions and trusts set forth in this Declaration of Trust.

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

Section 1.06 Trust Investments.

The Trust shall invest primarily in real property.

Section 1.07 Applications to Court.

As the rights (including the right to apply to a court) and remedies set out in Section 3.07(j), Section 5.26, Section 6.01, Section 6.04, Section 6.09, Section 15.01 and Section 15.02 of this Declaration of Trust are not statute-based, all references in this Declaration of Trust to Unitholder rights (or the rights of any other person) that may be enforced by the court or to remedies that may be granted by the court are subject to the court, in its discretion, accepting jurisdiction to consider and determine any proceeding commenced by an eligible Unitholder (or other eligible person as contemplated herein) applying to the court under such sections.

**ARTICLE II
TRUSTEES AND OFFICERS**

Section 2.01 Number.

There shall be no fewer than five nor more than eleven Trustees. The number of Trustees may be increased or decreased within such limits from time to time by the Unitholders and the Special Voting Unitholders, or, if authorized by the Unitholders and the Special Voting Unitholders, by the Trustees, provided that the Trustees may not, between meetings of Unitholders and Special Voting Unitholders, appoint an additional Trustee if, after such appointment, the total number of Trustees would be greater than one and one-third times the number of Trustees in office immediately following the last annual meeting of Unitholders and Special Voting Unitholders.

Section 2.02 Term of Office.

The Trustees shall hold office for a term expiring at the earlier of the close of the next annual meeting of the Unitholders and Special Voting Unitholders following their respective appointment or election, or, (except as provided in Section 2.05 or Section 2.06) until their respective successors are elected or appointed.

Section 2.03 Qualifications of Trustees.

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

Section 2.04 Election of Trustees.

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

(a) he was present at the meeting when the election or appointment took place and he did not refuse to hold office as a Trustee; or

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

Section 2.05 Resignation, Removal and Death of Trustees.

A Trustee may resign at any time by an instrument in writing signed by him and delivered or mailed to the President or Secretary. Such resignation shall take effect on the date such notice is given or at any later time specified in the notice. A Trustee may be removed at any time with or without cause by two-thirds of the votes cast at a meeting of Unitholders and Special Voting Unitholders called for that purpose or by the written consent of Unitholders and Special Voting Unitholders holding in the aggregate not less than two-thirds of the outstanding Units and Special Voting Units entitled to vote thereon or with cause by the resolution passed by an affirmative vote of not less than two-thirds of the remaining Trustees. The Declaration of Trust may only be amended to require a greater number of votes of Unitholders and Special Voting Unitholders to remove a Trustee other than the number set forth in this Section 2.05 with the unanimous consent of the Unitholders and Special Voting Unitholders. Any removal of a Trustee shall take effect immediately following the aforesaid vote or resolution and any Trustee so removed shall be so notified by the Secretary or another officer of the Trust forthwith following such removal. Upon the resignation or removal of any Trustee, or his otherwise ceasing to be a Trustee, he shall (i) cease to have the rights, privileges and powers of Trustees hereunder, (ii) execute and deliver such documents as the remaining Trustees shall reasonably require for the conveyance of any Trust property held in his name, (iii) account to the remaining Trustees as they may require for all property which he holds as Trustee and (iv) resign from all representative or other positions held by him on behalf of the Trust, including without limitation, as a director or officer of any corporation in which the Trust owns any securities (directly or indirectly), upon which he shall thereupon be discharged of his obligations as Trustee. Upon the incapacity or death of any Trustee, his legal representative shall execute and deliver on his behalf such documents as the remaining Trustees may require as provided in this Section.

Section 2.06 Vacancies.

The term of office of a Trustee shall terminate and a vacancy shall occur in the event of the death, resignation, bankruptcy, adjudicated incompetence or other incapacity to exercise the duties of the office or upon the removal of a Trustee. No such vacancy shall operate

to annul this Declaration of Trust or affect the continuity of the Trust. Until vacancies are filled, the remaining Trustee or Trustees (even if less than a quorum) may exercise the powers of the Trustees hereunder. In the case of a vacancy, the Unitholders and Special Voting Unitholders or a majority of the Trustees continuing in office may fill such vacancy. Any Trustee so elected by the Unitholders and Special Voting Unitholders or the Trustees shall hold office for the remaining term of the Trustee he is succeeding.

Section 2.07 Successor and Additional Trustees.

The right, title and interest of the Trustees in and to the property of the Trust shall vest automatically in all persons who may hereafter become Trustees upon their due election or appointment and qualification without any further act and they shall thereupon have all the rights, privileges, powers, obligations and immunities of Trustees hereunder. Such right, title and interest shall vest in the Trustees whether or not conveyancing documents have been executed and delivered pursuant to Section 2.05 or otherwise.

Section 2.08 Compensation and Other Remuneration.

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

Section 2.09 Officers of the Trust.

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

ARTICLE III
TRUSTEES' POWERS AND DUTIES

Section 3.01 General Powers.

The Trustees, subject only to the specific limitations contained in this Declaration of Trust, including without limitation Section 4.01 and Section 4.02, shall have, without further or other authorization and free from any power of control on the part of the Unitholders or the Special Voting Unitholders, full, absolute and exclusive power, control and authority over the assets of the Trust and over the affairs of the Trust to the same extent as if the Trustees were the sole owners of such assets in their own right, to do all such acts and things as in their sole judgment and discretion are necessary or incidental to, or desirable for, the carrying out of any of the purposes of the Trust or the conducting of the affairs of the Trust. In construing the provisions of this Declaration of Trust, presumption shall be in favour of the granted powers and authority to the Trustees. The enumeration of any specific power or authority herein shall not be construed as limiting the general powers or authority or any other specified power or authority conferred herein on the Trustees. Except as specifically required by such laws, the Trustees shall in carrying out investment activities not be in any way restricted by the provisions of the laws of any jurisdiction limiting or purporting to limit investments which may be made by trustees.

Section 3.02 Specific Powers and Authorities.

Subject only to the express limitations contained in this Declaration of Trust including, without limitation Section 4.01 and Section 4.02, and in addition to any powers and authorities conferred by this Declaration of Trust or which the Trustees may have by virtue of any present or future statute or rule of law, the Trustees without any action or consent by the Unitholders or Special Voting Unitholders shall have and may exercise at any time and from time to time the following powers and authorities which may or may not be exercised by them in their sole judgment and discretion and in such manner and upon such terms and conditions as they may from time to time deem proper:

(a) To retain, invest and re-invest the capital or other funds of the Trust in real or personal property of any kind, all without regard to whether any such properties are authorized by law for the investment of trust funds, and to possess and exercise all the rights, powers and privileges appertaining to the ownership of the property of the Trust and to increase the capital of the Trust at any time by the issuance of additional Units, or Special Voting Units in connection with issuances of Exchangeable Securities, for such consideration as they deem appropriate.

(b) For such consideration as they deem proper, to invest in, purchase or otherwise acquire for cash or other property or through the issuance of Units or through the issuance of notes, debentures, bonds or other obligations or securities of the Trust and hold for investment the entire or any participating interest in any mortgages. In connection with any such investment, purchase or acquisition, the Trustees shall have the power to acquire a share of rents, lease payments or other gross income from or a share of the profits from or a share in the equity or ownership of real property.

(c) To sell, rent, lease, hire, exchange, release, partition, assign, mortgage, pledge, hypothecate, grant security interests in, encumber, negotiate, convey, transfer or otherwise dispose of any or all of the property of the Trust by deeds, trust deeds, assignments, bills of sale, transfers, leases, mortgages, financing statements, security agreements and other instruments for any of such purposes executed and delivered for and on behalf of the Trust or Trustees by one or more of the Trustees or by a duly authorized officer, employee, agent or any nominee of the Trust.

(d) To enter into leases, contracts, obligations and other agreements for a term extending beyond the term of office of the Trustees and beyond the possible termination of the Trust or for a lesser term.

(e) To borrow money from or incur indebtedness to any person; to guarantee, indemnify or act as surety with respect to payment or performance of obligations of third parties; to enter into other obligations on behalf of the Trust; and to assign, convey, transfer, mortgage, subordinate, pledge, grant security interests in, encumber or hypothecate the property of the Trust to secure any of the foregoing.

(f) To lend money, whether secured or unsecured.

(g) To incur and pay out of the property of the Trust any charges or expenses and disburse any funds of the Trust, which charges, expenses or disbursements are, in the opinion of the Trustees, necessary or incidental to or desirable for the carrying out of any of the purposes of the Trust or conducting the affairs of the Trust including, without limitation, taxes or other governmental levies, charges and assessments of whatever kind or nature, imposed upon or against the Trustees in connection with the Trust or the property of the Trust or upon or against the property of the Trust or any part thereof and for any of the purposes herein.

(h) To deposit funds of the Trust in banks, trust companies and other depositories, whether or not such deposits will earn interest, the same to be subject to withdrawal on such terms and in such manner and by such person or persons (including any one or more Trustees, officers, agents or representatives) as the Trustees may determine.

(i) To possess and exercise all the rights, powers and privileges appertaining to the ownership of all or any mortgages or securities, issued or created by, or interest in, any person, forming part of the assets of the Trust, to the same extent that an individual might and, without limiting the generality of the foregoing, to vote or give any consent, request or notice, or waive any notice, either in person or by proxy or power of attorney, with or without power of substitution, to one or more persons, which proxies and powers of attorney may be for meetings or action generally or for any particular meeting or action and may include the exercise of discretionary power.

(j) To elect, appoint, engage or employ officers for the Trust (including a Chairman, an Honorary Chairman, a President, one or more Executive Vice-Presidents, one or more Senior Vice-Presidents, one or more Vice-Presidents and a Secretary and other officers as the Trustees may determine), who may be removed or discharged at the discretion of the Trustees, such officers to have, subject to Section 8.06, such powers and duties, and to serve

such terms as may be prescribed by the Trustees or by the Trustees' Regulations; to engage or employ any persons as agents, representatives, employees or independent contractors (including, without limitation, real estate advisors, investment advisors, registrars, underwriters, accountants, lawyers, real estate agents, property managers, appraisers, brokers, architects, engineers, construction managers, general contractors or otherwise) in one or more capacities, and to pay compensation from the Trust for services in as many capacities as such persons may be so engaged or employed; and except as prohibited by law and this Declaration of Trust, to delegate any of the powers and duties of the Trustees to any one or more Trustees, agents, representatives, officers, employees, independent contractors or other persons.

(k) To collect, sue for and receive sums of money coming due to the Trust, and to engage in, intervene in, prosecute, join, defend, compromise, abandon or adjust, by arbitration or otherwise, any actions, suits, proceedings, disputes, claims, demands or other litigation relating to the Trust, the assets of the Trust or the Trust's affairs, to enter into agreements therefor whether or not any suit is commenced or claim accrued or asserted and, in advance of any controversy, to enter into agreements regarding the arbitration, adjudication or settlement thereof.

(l) To renew, modify, release, compromise, extend, consolidate or cancel, in whole or in part, any obligation to or of the Trust.

(m) To purchase and pay for, out of the assets of the Trust, insurance contracts and policies insuring the assets of the Trust against any and all risks and insuring the Trust and/or any or all of the Trustees, the Unitholders, the Special Voting Unitholders or officers of the Trust against any and all claims and liabilities of any nature asserted by any person arising by reason of any action alleged to have been taken or omitted by the Trust or by the Trustees, the Unitholders, the Special Voting Unitholders or the officers.

(n) To cause legal title to any of the assets of the Trust to be held by and/or in the name of the Trustees, or by and/or in the name of the Trust or one or more of the Trustees or any other person, on such terms, in such manner with such powers in such person as the Trustees may determine and with or without disclosure that the Trust or Trustees are interested therein provided, however, that should legal title to any of the assets of the Trust be held by and/or in the name of any person or persons other than the Trust, the Trustees shall require such person or persons to execute a declaration of trust acknowledging that legal title to such assets is held in trust for the benefit of the Trust.

(o) To determine conclusively the allocation to capital, income or other appropriate accounts all receipts, expenses, disbursements and property of the Trust.

(p) To pay all taxes or assessments, of whatever kind or nature, whether within or outside Canada, imposed upon or against the Trustees in connection with the Trust's property, undertaking or income of the Trust, or imposed upon or against the Trust's property, undertaking or income of the Trust, or any part thereof, and to settle or compromise disputed tax liabilities and for the foregoing purposes to make such returns, take such deductions, and make such designations, elections and determinations in respect of net income or net realized capital

gains distributed to Unitholders in the year and any other matter as shall be permitted under the Tax Act (provided that to the extent necessary the Trustees will seek the advice of the Trust's legal counsel or the Trust's auditors), and do all such other acts and things as may be deemed by the Trustees in their sole discretion to be necessary, desirable or convenient.

(q) To prepare, sign and file or cause to be prepared, signed and filed a prospectus, offering memorandum or similar document, and any amendment thereto, relating to or resulting from an offering of the Units or other securities issued or held by the Trust and to pay the cost thereof and related thereto out of the property of the Trust whether or not such offering is or was of direct benefit to the Trust or those persons (if any) who were Unitholders immediately prior to such offering.

(r) To make or cause to be made application for the listing on any stock exchange of any Units or other securities of the Trust, and to do all things which in the opinion of the Trustees may be necessary or desirable to effect or maintain such listing or listings.

(s) To determine conclusively the value of any or all of the property of the Trust from time to time and, in determining such value, to consider such information and advice as the Trustees, in their sole judgment, may deem material and reliable.

(t) To do all such acts and things and to exercise such powers which are delegated to the Trustees by any person who co-owns real property with the Trust.

(u) To do all such other acts and things as are incidental to the foregoing, and to exercise all powers which are necessary or useful to carry on the business of the Trust, to promote any of the purposes for which the Trust is formed and to carry out the provisions of this Declaration of Trust.

Section 3.03 Further Powers of the Trustees.

The Trustees shall have the power to prescribe any form provided for or contemplated by this Declaration of Trust. The Trustees may make, adopt, amend, or repeal regulations containing provisions relating to the Trust, the conduct of its affairs, their rights or powers and the rights or powers of its Unitholders, Special Voting Unitholders or officers not inconsistent with law or with this Declaration of Trust. The Trustees shall also be entitled to make any reasonable decisions, designations or determinations not contrary to this Declaration of Trust which they may determine are necessary or desirable in interpreting, applying or administering this Declaration of Trust or in administering, managing or operating the Trust. Any regulations, decisions, designations or determinations made pursuant to this Section shall be conclusive and binding upon all persons affected thereby.

Section 3.04 Standard of Care.

The exclusive standard of care required of the Trustees in exercising their powers and carrying out their functions hereunder shall be that they exercise their powers and carry out their functions hereunder as Trustees honestly, in good faith and in the best interests of the Trust and that in connection therewith they exercise that degree of care, diligence and skill that a

reasonably prudent person would exercise in comparable circumstances. Unless otherwise required by law, no Trustee shall be required to give bond, surety or security in any jurisdiction for the performance of any duties or obligations hereunder. The Trustees in their capacity as Trustees shall not be required to devote their entire time to the affairs of the Trust.

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

Section 3.05 Reliance Upon Trustees.

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

Section 3.06 Determinations of Trustees Binding.

All determinations of the Trustees which are made in good faith with respect to any matters relating to the Trust, including, without limiting the generality of the foregoing, whether any particular investment or disposition meets the requirements of this Declaration of Trust, shall be final and conclusive and shall be binding upon the Trust and all Unitholders and Special Voting Unitholders (and, where the Unitholder or Special Voting Unitholder is a registered retirement savings plan, registered retirement income fund, deferred profit sharing plan, registered disability savings plan, registered education savings plan, tax-free savings account or registered pension fund or plan as defined in the *Income Tax Act* (Canada), or other such fund or plan registered under the *Income Tax Act* (Canada), upon plan beneficiaries and plan holders past, present and future) and Units and Special Voting Units of the Trust shall be issued and sold on the condition and understanding that any and all such determinations shall be binding as aforesaid.

Section 3.07 Conflict of Interest.

If a Trustee or an officer of the Trust:

(a) is a party to a material contract or transaction or proposed material contract or transaction with the Trust; or

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

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

- (c) The disclosure required in the case of a Trustee shall be made:
 - (i) at the meeting of Trustees or the Investment Committee, as the case may be, at which a proposed contract or transaction is first considered;
 - (ii) if the Trustee was not then interested in a proposed contract or transaction, at the first such meeting after he becomes so interested;
 - (iii) if the Trustee becomes interested after a contract is made or a transaction is entered into, at the first meeting after he becomes so interested; or
 - (iv) if a person who is interested in a contract or transaction later becomes a Trustee, at the first such meeting after he becomes a Trustee.

(d) The disclosure required in the case of an officer of the Trust who is not a Trustee:

- (i) immediately after such person becomes aware that the contract or transaction or proposed contract or transaction is to be considered or has been considered at a meeting of the Trustees or the Investment Committee;
- (ii) if such person becomes interested after a contract is made or a transaction is entered to, immediately after such person becomes so interested; or
- (iii) if a person who is interested in a contract or transaction later becomes an officer of the Trust who is not a Trustee, immediately after he becomes an officer of the Trust.

(e) Notwithstanding subsections 3.07(c) and 3.07(d), where this Section applies to any person in respect of a material contract or transaction or proposed material contract or transaction that, in the ordinary course of the affairs of the Trust, would not require approval by the Trustees, or the Unitholders and the Special Voting Unitholders, such person shall disclose in writing to the Trustees or request to have entered into the minutes of meetings of the Trustees the nature and extent of such person's interest immediately after such person becomes aware of the contract or transaction or proposed contract or transaction.

(f) A Trustee referred to in this Section shall not vote on any resolution to approve the said contract or transaction unless the contract or transaction is:

- (i) one relating primarily to his remuneration as a Trustee, officer, employee or agent of the Trust or any affiliate of the Trust; or
- (ii) one for indemnity under Section 14.01 hereof or the purchase of liability insurance.

(g) For the purposes hereof, a general notice to the Trustees by a Trustee or an officer of the Trust disclosing that he or it is a director or officer of or has a material interest in a person and is to be regarded as interested in any contract made or any transaction entered into with that person, is a sufficient disclosure of interest in relation to any contract so made or transaction so entered into. In the event that a meeting of Unitholders and Special Voting Unitholders is called to confirm or approve a contract or transaction which is the subject of a general notice to the Trustees, the notice and extent of the interest in the contract or transaction of the person giving such general notice shall be disclosed in reasonable detail in the notice calling the said meeting of Unitholders and Special Voting Unitholders or in any information circular required to be provided by this Declaration of Trust or by law.

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

- (i) such person is not accountable to the Trust, the Unitholders or the Special Voting Unitholders for any profit or gain realized from the contract or transaction; and
- (ii) the contract or transaction is not invalid,

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

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

- (i) the contract or transaction is confirmed or approved at a meeting of Unitholders and Special Voting Unitholders duly called for that purpose; and

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

(j) Subject to subsections 3.07(h) and 3.07(i), where a Trustee or an officer of the Trust fails to disclose his or its interest in a material contract or transaction in accordance with this Declaration of Trust or otherwise fails to comply with this Section, the Trustees or any Unitholder or Special Voting Unitholder, in addition to exercising any other rights or remedies in connection with such failure exercisable at law or in equity, may apply to a court for an order setting aside the contract or transaction or directing that such person account to the Trust for any profit or gain realized, or do both those things.

ARTICLE IV INVESTMENT GUIDELINES AND OPERATING POLICIES

Section 4.01 Investment Guidelines.

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

(a) the Trust will focus its investment activities on: (i) interests (including fee ownership, leasehold interests, mortgages and mortgage bonds) in real properties (including, for greater certainty, real properties which are intended for, have the potential for or are otherwise under, development) which are, may be or will be income-producing; (ii) assets ancillary thereto necessary for the operation of such real properties; and (iii) such other activities as may be determined by the Trustees; and

(b) notwithstanding any other provision of this Article IV, the Trust shall not, directly or indirectly, make any investment, take any action or omit to take any action where such investment, action or omission, as the case may be, (i) would result in Units or Special Voting Units of the Trust not being units of a "mutual fund trust" within the meaning of the Tax Act, (ii) would result in Units or Special Voting Units not being qualified investments under the Tax Act for trusts governed by registered retirement savings plans, registered retirement income funds, deferred profit sharing plans, registered education savings plans, registered disability savings plans and tax-free savings accounts, (iii) would result in the Trust being liable to pay tax under the registered investment provisions of the Tax Act imposed for exceeding certain investment limits, or (iv) would result in the Trust not being a "real estate investment trust" for purposes of the Tax Act.

Section 4.02 Operating Policies.

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

(a) (i) any written instrument creating an obligation which is or includes the granting by the Trust of a mortgage, and (ii) to the extent the Trustees determine to be

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

(b) the Trust shall not lease to any person any real property where that person and its affiliates would, after the contemplated lease, be leasing real property having an aggregate leasable area in excess of 20% of the aggregate leasable area of all real property held by the Trust;

(c) the limitation contained in subsection 4.02(b) shall not apply to the renewal of a lease and shall not apply where the lessee is, or where the lease is guaranteed by:

(i) the Government of Canada, the Government of the United States, any province or territory of Canada, any state of the United States or any municipality or city in Canada or the United States, or any agency or crown corporation thereof; or

(ii) any issuer, of which any of the bonds, debentures or other evidences of indebtedness or any other securities of, or guaranteed by, such issuer:

(A) are authorized as an investment for insurance companies pursuant to subsections 86(l)(k), (m) or (n) of the *Canadian and British Insurance Companies Act* in effect on December 31, 1991; or

(B) have received and continue to hold an “investment grade” rating from at least one recognized credit rating agency,

in each case at the time the lease is entered into, or at the time other satisfactory leasing arrangements (as determined by the Trustees in their discretion) were entered into; or

(iii) a Canadian chartered bank or a trust company or insurance company registered or licensed federally or under the laws of a province of Canada; and

(d) the Trust shall not incur or assume any indebtedness if, after giving effect to the incurring or assumption of the indebtedness, the total indebtedness of the Trust would be more than 65% of the Total Assets; for the purposes of this subsection, the term “indebtedness” means any obligation of the Trust for borrowed money to the extent that it appears as a liability on the balance sheet of the Trust calculated in accordance with generally accepted accounting

principles but does not include (1) convertible debt instruments issued by the Trust under which the principal amount owing may be satisfied by the Trust through the issuance of Units, (2) any preferred trust units that have not been called for redemption, (3) any trade accounts payable, distributions payable to Unitholders and accrued liabilities arising in the ordinary course of business, or (4) the fair value of any units, shares or other securities convertible into or exchangeable for Units without the payment of additional consideration therefor.

For greater certainty, each Subsidiary of the Trust shall comply with the foregoing policies, except that all percentage thresholds set forth in the foregoing paragraphs shall be calculated on a consolidated basis.

Section 4.03 Regulatory Matters.

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

ARTICLE V
TRUST UNITS AND SPECIAL VOTING UNITS

Section 5.01 Units and Special Voting Units.

(a) The beneficial interests in the Trust shall be divided into two classes, described and designated as “Units” (which may be represented by instalment receipts) and “Special Voting Units” which shall be entitled to the rights and subject to the limitations, restrictions and conditions set out herein. The number of Units which the Trust may issue is unlimited and the number of Special Voting Units which the Trust may issue is 13,013,698. Each Unit and Special Voting Unit when issued shall vest indefeasibly in the holder thereof. Subject to applicable regulatory approval, the issued and outstanding Units and Special Voting Units may be subdivided or consolidated from time to time by the Trustees.

(b) No Special Voting Unit shall be entitled to any legal or beneficial interest or share in the distributions or net assets of the Trust. Special Voting Units may be issued in series and shall only be issued concurrently with or in relation to the issuance of Exchangeable Securities on such terms and conditions as may be determined by the Trustees. Special Voting Units shall be automatically cancelled, without any further action of the Trustees or the Trust, and the former holder of such Special Voting Unit will cease to have any rights with respect thereto, concurrently with the issuance of Units on the conversion, exchange or cancellation of the related Exchangeable Securities. Subject to Section 6.08, a Special Voting Unit shall be entitled to that number of votes equal to the number of Units into which the Exchangeable Securities to which such Special Voting Unit relates are exchangeable or convertible (other than in respect of Exchangeable Securities which have been so exchanged, converted or cancelled) at all meetings of Unitholders and Special Voting Unitholders or in respect of any written

resolution of Unitholders and Special Voting Unitholders. For greater certainty, holders of Special Voting Units shall not be entitled to any distributions of any nature whatsoever from the Trust or have any legal or beneficial interests in any assets of the Trust on termination or winding-up of the Trust.

(c) Concurrently with the issuance of any Exchangeable Securities and related Special Voting Units, the Trust shall enter into such agreements, including voting and exchange trust agreements and support agreements as may be necessary or desirable to properly provide for the terms of the Exchangeable Securities, including to provide for voting of such Special Voting Units.

Section 5.02 Ranking of Units.

Each Unit shall represent an equal undivided interest in the Trust with all outstanding Units, all Units outstanding from time to time shall participate *pro rata* in any distributions by the Trust and, in the event of termination of the Trust, in the net assets of the Trust remaining after satisfaction of all liabilities and no Unit shall have any preference or priority over any other. Special Voting Units shall have no legal or beneficial interest in the distributions or assets of the Trust.

Section 5.03 Consideration for Units and Special Voting Units.

Subject to the last sentence of this Section 5.03, a Unit shall not be fully paid until the consideration therefor has been received in full by or on behalf of the Trust. The consideration for any Unit shall be paid in money or in property or in past services that are not less in value than the fair equivalent of the money that the Trust would have received if the Unit had been issued for money. In determining whether property or past services are the fair equivalent of consideration paid in money, the Trustees may take into account reasonable charges and expenses of organization and reorganization and payments for property and past services reasonably expected to benefit the Trust. Units may be issued and sold on an instalment basis, in which event beneficial ownership of such Units may be represented by instalment receipts, but shall otherwise be non-assessable. Special Voting Units shall only be issued in connection with the issuance of Exchangeable Securities.

Section 5.04 No Pre-Emptive Rights.

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

Section 5.05 Fractional Units and Special Voting Units.

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

restrictions, conditions and limitations attaching to whole Units or Special Voting Units in the proportion that they bear to a whole Unit or Special Voting Unit, as the case may be.

Section 5.06 Legal Ownership of Assets of the Trust.

The legal ownership of the assets of the Trust and the right to conduct the affairs of the Trust are vested exclusively in the Trustees, and the Unitholders shall have no interest therein other than the beneficial interest in the Trust conferred by their Units issued hereunder as described in Section 1.05, and they shall have no right to compel any partition, division, dividend or distribution of the Trust or any of the assets of the Trust. The Units and Special Voting Units shall be personal property and shall confer upon the holders thereof only the interest and rights specifically set forth in this Declaration of Trust. No Unitholder or Special Voting Unitholder has or is deemed to have any right of ownership in any of the assets of the Trust.

Section 5.07 Allotment and Issue.

Subject to Section 5.03, Section 5.10 and Section 5.11, the Trustees may allot and issue Units and Special Voting Units at such time or times and in such manner (including, in the case of Units, pursuant to any plan from time to time in effect relating to reinvestment by Unitholders of their distributions of the Trust in Units), and for such consideration and to such person, persons or class of persons as the Trustees in their sole discretion shall determine, excepting only that Special Voting Units shall only be issued in connection with or in relation to the issuance of Exchangeable Securities. In the event that Units or Special Voting Units are issued in whole or in part for consideration other than money, the resolution of the Trustees allotting and issuing such Units or Special Voting Units shall express the fair equivalent in money of the other consideration received.

Section 5.08 Rights, Warrants and Options.

The Trustees may create and issue rights, warrants or options to subscribe for fully paid Units which rights, warrants or options may be exercisable at such subscription price or prices and at such time or times as the Trustees may determine. The rights, warrants or options so created may be issued for such consideration or for no consideration, all as the Trustees may determine. A right, warrant or option shall not be a Unit and a holder thereof shall not be a Unitholder. Upon the approval by the Trustees of any unit option plan for trustees, officers and/or employees of the Trust, the Compensation and Governance Committee may, upon receiving authority from the Trustees, grant options upon the terms and subject to the conditions set forth in such plan.

Section 5.09 Commissions and Discounts.

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

Section 5.10 Transferability.

(1) The Units are freely transferable and, other than as provided herein, the Trustees shall not impose any restriction on the transfer of Units. The Trustees shall use all reasonable efforts to obtain and maintain a listing for the Units on one or more stock exchanges in Canada.

(2) Special Voting Units shall not be transferable separately and apart from the Exchangeable Securities to which they are attached, and in any event shall be subject to such restrictions on transfer as are stipulated in Section 5.11 and Section 5.17 hereof and/or in any agreement, document or other instrument providing for the creation, issuance and terms of the Exchangeable Securities to which such Special Voting Units are attached. Special Voting Units shall not be listed on any stock exchange.

Section 5.11 Non-Resident Ownership Constraint.

At no time may non-residents of Canada (within the meaning of the Tax Act) and/or partnerships that are not “Canadian partnerships” within the meaning of the Tax Act (collectively, “**Non-Residents**”) be the beneficial owners of 49% or more of the Units and the Trustees shall inform the transfer agent and registrar of this restriction. The transfer agent and registrar may require declarations as to the jurisdictions in which beneficial owners of Units are resident. If the transfer agent and registrar becomes aware, as a result of requiring such declarations as to beneficial ownership, that the beneficial owners of 49% or more of the Units then outstanding are, or may be, Non-Residents or that such a situation is imminent, the transfer agent and registrar will advise the Trustees and, upon receiving direction from the Trustees, may make a public announcement thereof and shall not accept a subscription for Units from or issue or register a transfer of Units to a person unless the person provides a declaration that the person is not a Non-Resident. If, notwithstanding the foregoing, the transfer agent and registrar determines that 49% or more of the Units are held by Non-Residents, the transfer agent and registrar may, upon receiving a direction and suitable indemnity from the Trustees, send a notice to registered Non-Resident holders of Units chosen in inverse order to the order of acquisition or registration or in such manner as the Trustees may consider equitable and practicable, requiring them to sell their Units or a portion thereof within a specified period of not less than 60 days. If the Unitholders receiving such notice have not sold the specified number of Units or provided the Trustees with satisfactory evidence that they are not Non-Residents within such period, the transfer agent and registrar, upon receiving a direction from the Trustees, may on behalf of such Unitholders sell such Units and, in the interim, shall suspend the voting and distribution rights attached to such Units. Upon such sale the Affected Holders shall cease to be holders of Units and their rights shall be limited to receiving the net proceeds of sale upon surrender of the certificate representing such Units.

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

Section 5.12 Certificates.

Each Unitholder or his duly authorized agent is entitled to a certificate bearing an identifying serial number in respect of the Units held by him, signed in the manner hereinafter

prescribed, but the Trust is not bound to issue more than one certificate in respect of a Unit or Units held jointly or in common by two or more persons and delivery of a certificate to one of them shall be sufficient delivery to all. No certificate shall be issued to evidence any fractional Units. The Special Voting Units will be evidenced only by the certificate(s) representing the Exchangeable Securities to which they are attached.

Section 5.13 Certificate Fee.

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

Section 5.14 Form of Certificate.

The form of certificate representing Units shall be in such form as is from time to time authorized by the Trustees; provided that from and after implementation of the 2018 Plan of Arrangement, certificates that previously represented “Stapled Units” of the Trust and H&R Finance Trust shall represent Units as provided in the 2018 Plan of Arrangement.

Section 5.15 Unit Register and Transfer Ledgers to be Maintained.

A register (the “**Register**”) shall be kept by, or on behalf and under the direction of the Trustees, which Register shall contain the names and addresses of Unitholders and Special Voting Unitholders, the respective numbers of Units and/or Special Voting Units held by them, the certificate numbers of the certificates of such Units and a record of all transfers of Units and/or Special Voting Units. The Trustees may appoint one or more chartered banks or trust companies to act as transfer agents and to act as registrars for Units and/or Special Voting Units and may provide for the transfer of Units and/or Special Voting Units in one or more places within Canada, subject in the case of Special Voting Units to Section 5.10(2). In the event of such appointment, such transfer agents and registrars shall keep all necessary registers and other books (which may be kept in a bound or looseleaf book or may be entered or recorded by any system of mechanical or electronic data processing or any other information storage device) for recording original issues and registering and transferring the Units and/or Special Voting Units. If the Trustees have appointed a registrar and transfer agent for the Units, no certificate for Units shall be valid unless countersigned by or on behalf of a transfer agent and/or registrar. Only persons whose Units are recorded on the Register shall be entitled to vote or to receive distributions or otherwise exercise or enjoy the rights of Unitholders. Only persons whose Special Voting Units are recorded on the Register shall be entitled to vote or enjoy the rights of Special Voting Unitholders.

Section 5.16 Entry on Register.

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

Section 5.17 Transfer of Units.

Subject to the restriction in Section 5.10 hereof, Units shall be for all purposes of the Trust and this Declaration of Trust, personal and moveable property, and shall be transferable at any time and from time to time by endorsement and delivery of the certificates representing the Units subject to such provisions and conditions as may be prescribed by the Trustees from time to time. No transfer shall be recorded on the Register unless the transferor has executed the instrument of transfer as reproduced in the Unit certificate and the transferee has delivered to the transfer agent and/or registrar a Unit certificate representing the Units transferred. Subject to the foregoing, transfers shall be recorded on the Register and a new certificate for the Units so transferred shall be issued to the transferee and in case of a transfer of only part of the Units represented by any certificate, a new certificate for the remaining Units shall be issued to the transferor.

Section 5.18 Successors in Interest to Unitholders.

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

Section 5.19 Units or Special Voting Units Held Jointly or in Fiduciary Capacity.

The Trust may treat two or more persons holding any Unit or Special Voting Unit as joint tenants of the entire interest therein unless the ownership is expressly otherwise recorded on the Register of the Trust, but no entry shall be made in the Register or on any certificate that any person is in any other manner entitled to any future, limited or contingent interest in any Unit or Special Voting Unit; provided, however, that any person recorded in the Register as a Unitholder or Special Voting Unitholder may, subject to the provisions herein contained, be described in the Register or on any certificate as a fiduciary of any kind and any customary words may be added to the description of the holder to identify the nature of such fiduciary relationship.

Section 5.20 Performance of Trusts.

None of the Trustees, officers of the Trust, Unitholders, Special Voting Unitholders or any transfer agent or other agent of the Trust or the Trustees shall have a duty to inquire into any claim that a transfer of a Unit, Special Voting Unit or other security of the Trust was or would be wrongful or that a particular adverse person is the owner of or has an interest in the Unit, Special Voting Unit or other security or any other adverse claim, or be bound to see to the performance of any trust, express, implied or constructive, or of any charge, pledge or equity

to which any of the Units, Special Voting Units or other securities or any interest therein are or may be subject, or to ascertain or inquire whether any sale or transfer of any such Units, Special Voting Units or other securities or interest therein by any such Unitholder, Special Voting Unitholder or holder of such security or his personal representatives is authorized by such trust, charge, pledge or equity, or to recognize any person as having any interest therein, except for the person recorded as Unitholder, Special Voting Unitholder or holder of such security.

Section 5.21 Lost Certificates.

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

Section 5.22 Death of Unitholders.

The death of a Unitholder or Special Voting Unitholder during the continuance of the Trust shall not terminate the Trust or give the personal representatives or the heirs of the estate of the deceased Unitholder or Special Voting Unitholder a right to an accounting or to take any action in the courts or otherwise against other Unitholders, Special Voting Unitholders or the Trustees, officers of the Trust or the property of the Trust, but shall only entitle the personal representatives or the heirs of the estate of the deceased Unitholder to demand and receive, pursuant to the provisions of Section 5.18 hereof, a new certificate for Units in place of the certificate held by the deceased Unitholder, or, in the case of a deceased Special Voting Unitholder, confirmation of the record of such deceased Special Voting Unitholder on the Register. Upon the acceptance of such certificate or confirmation by such personal representatives or the heirs of the estate of the deceased Unitholder or Special Voting Unitholder, such personal representatives or the heirs shall succeed to all rights of the deceased Unitholder or Special Voting Unitholder under this Declaration of Trust.

Section 5.23 Unclaimed Payments.

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

Section 5.24 Repurchase of Units.

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

Section 5.25 Instalment Receipts.

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

Section 5.26 Take-Over Bids.

(a) If within 120 days after the date of a take-over bid the bid is accepted by the holders of not less than 90 percent of the Units, other than Units held at the date of the take-over bid by or on behalf of the offeror or an affiliate or associate of the offeror, the offeror is entitled, on complying with this Section, to acquire the Units held by the dissenting offerees.

(b) An offeror may acquire Units held by a dissenting offeree by sending by registered mail within 60 days after the date of termination of the take-over bid and in any event within 180 days after the date of the take-over bid, an offeror's notice to each dissenting offeree stating that:

- (i) the offerees holding more than 90 per cent of the Units to which the bid relates accepted the take-over bid;
- (ii) the offeror is bound to take up and pay for or has taken up and paid for the Units of the offerees who accepted the take-over bid;
- (iii) a dissenting offeree is required to elect:

- (A) to transfer his Units to the offeror on the terms on which the offeror acquired the Units of the offerees who accepted the take-over bid; or
 - (B) to demand payment of the fair value of his Units in accordance with subsections 5.26(j) to 5.26(s) by notifying the offeror within 20 days after he receives the offeror's notice;
- (iv) a dissenting offeree who does not notify the offeror in accordance with subsection 5.26(b)(iii)(B) is deemed to have elected to transfer his Units to the offeror on the same terms that the offeror acquired the Units from the offerees who accepted the take-over bid; and
- (v) a dissenting offeree must send his Units to which the take-over bid relates to the Trust within 20 days after he receives the offeror's notice.
- (c) Concurrently with sending the offeror's notice under subsection 5.26(b), the offeror shall send to the Trust a notice of adverse claim disclosing the name and address of the offeror and the name of the dissenting offeree with respect to each Unit held by a dissenting offeree.
- (d) A dissenting offeree to whom an offeror's notice is sent under subsection 5.26(b) shall, within 20 days after he receives that notice:
- (i) send the certificates representing his Units to the Trust; and
 - (ii) elect
 - (A) to transfer the Units to the offeror on the terms on which the offeror acquired the Units of the Unitholders who accepted the take-over bid; or
 - (B) to demand payment of the fair value of the Units in accordance with subsections 5.26(j)–(s) by notifying the offeror within those 20 days.
- (e) A dissenting offeree who does not notify the offeror in accordance with subsection 5.26(d)(ii)(B) is deemed to have elected to transfer the Units to the offeror on the same terms on which the offeror acquired the Units from the Unitholders who accepted the take-over bid.
- (f) Within 20 days after the offeror sends an offeror's notice under subsection 5.26(b), the offeror shall pay or transfer to the Trust the amount of money or other consideration that the offeror would have had to pay or transfer to a dissenting offeree if the dissenting offeree had elected to accept the take-over bid under subsection 5.26(d)(ii)(A).

(g) The Trust is deemed to hold in trust for the dissenting Unitholder the money or other consideration it receives under subsection 5.26(f), and the Trust shall deposit the money in a separate account in a bank or other body corporate any of whose deposits are insured by the Canada Deposit Insurance Corporation or guaranteed by the Quebec Deposit Insurance Board, and shall place the other consideration in the custody of a bank or such other body corporate.

(h) If the Trust is the offeror, it is deemed to hold in trust for the dissenting offeree the money and other consideration that it would have had to pay or transfer to a dissenting offeree if the dissenting offeree had elected to accept the take-over bid under subsection 5.26(d)(ii)(A) and the Trust shall, within 20 days after the offeror's notice is sent, deposit the money in a separate account in a bank or other body corporate any of whose deposits are insured by the Canada Deposit Insurance Corporation or guaranteed by the Quebec Deposit Insurance Board, and shall place the other consideration in the custody of a bank or such other body corporate.

(i) Within 30 days after the offeror sends an offeror's notice under subsection 5.26(b), the Trust shall:

- (i) issue to the offeror a certificate in respect of the Units that were held by dissenting offerees;
- (ii) give to each dissenting offeree who elects to accept the take-over bid terms under subsection 5.26(d)(ii)(A) and who sends his certificates representing his Units as required under subsection 5.26(d)(i), the money or other consideration to which he is entitled, disregarding fractional Units, if any, which may be paid for in money; and
- (iii) send to each dissenting offeree who has not sent his certificates representing his Units as required under subsection 5.26(d) a notice stating that:
 - (A) his Units have been cancelled;
 - (B) the Trust or some designated person holds in trust for him the money or other consideration to which he is entitled as payment for or in exchange for his Units; and
 - (C) the Trust will, subject to subsections 5.26(j) to 5.26(s), send that money or other consideration to him forthwith after receiving his Units.

(j) If a dissenting offeree has elected to demand payment of the fair value of his Units under subsection 5.26(d)(ii)(B), the offeror may, within 20 days after it has paid the money or transferred the other consideration under subsection 5.26(f), apply to a court to fix the fair value of the Units of that dissenting offeree.

(k) If an offeror fails to apply to a court under subsection 5.26(j), a dissenting offeree may apply to a court for the same purpose within a further period of 20 days.

(l) Where no application is made to a court under subsection 5.26(k) within the period set out in that subsection, a dissenting offeree is deemed to have elected to transfer his Units to the offeror on the same terms that the offeror acquired the Units from the offerees who accepted the take-over bid.

(m) An application under subsection 5.26(j) or 5.26(k) shall be made to a court having jurisdiction in the place where the Trust has its registered office or in the province where the dissenting offeree resides if the Trust carries on business in that province.

(n) A dissenting offeree is not required to give security for costs in an application made under subsection 5.26(j) or 5.26(k).

(o) On an application under subsection 5.26(j) or 5.26(k):

(i) all dissenting offerees, referred to in subsection 5.26(d)(ii)(B) whose Units have not been acquired by the offeror shall be joined as parties and shall be bound by the decision of the court; and

(ii) the offeror shall notify each affected dissenting offeree of the date, place and consequences of the application and of his right to appear and be heard in person or by counsel.

(p) On an application to a court under subsection 5.26(j) or 5.26(k) the court may determine whether any other person is a dissenting offeree who should be joined as a party, and the court shall then fix a fair value for the Units of all dissenting offerees.

(q) A court may in its discretion appoint one or more appraisers to assist the court to fix a fair value for the Units of a dissenting offeree.

(r) The final order of the court shall be made against the offeror in favour of each dissenting offeree and for the amount for his Units as fixed by the court.

(s) In connection with proceedings under this Section, a court may make any order it thinks fit and, without limiting the generality of the foregoing, it may:

(i) fix the amount of money or other consideration that is required to be held in trust under subsection 5.26(g) or (h);

(ii) order that money or other consideration be held in trust by a person other than the Trust;

(iii) allow a reasonable rate of interest on the amount payable to each dissenting offeree from the date he sends or delivers his Unit certificates under subsection 5.26(d) until the date of payment; and

- (iv) order that any money payable to a Unitholder who cannot be found be paid to the Receiver General.
 - (t) If a Unitholder does not receive an offeror's notice under Section 5.26(b), the Unitholder may:
 - (i) within 90 days after the date of termination of the take-over bid; or
 - (ii) if the Unitholder did not receive an offer pursuant to the take-over bid, within 90 days after the later of:
 - (A) the date of termination of the take-over bid; and
 - (B) the date on which the Unitholder learned of the take-over bid,
- require the offeror to acquire those Units.
- (u) If a Unitholder requires the offeror to acquire the Units under Section 5.26(t), the offeror shall acquire the Units on the same terms under which the offeror acquired or will acquire the Units of the Unitholders who accepted the take-over bid.

ARTICLE VI MEETINGS OF UNITHOLDERS AND SPECIAL VOTING UNITHOLDERS

Section 6.01 Annual Meeting.

There shall be an annual meeting of the Unitholders and Special Voting Unitholders at such time and place as the Trustees shall prescribe for the purpose of electing Trustees, appointing the auditors of the Trust and transacting such other business as the Trustees may determine or as may properly be brought before the meeting. The annual meeting of Unitholders and Special Voting Unitholders shall be held after delivery to the Unitholders and Special Voting Unitholders of the annual report referred to in Section 16.06 and, in any event, within 180 days after the end of each fiscal year of the Trust. Notwithstanding the foregoing, the Trustees may apply to the court for an order extending the time for calling an annual meeting.

Section 6.02 Other Meetings.

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

notice thereof has been given to each stock exchange in Canada on which the Units are listed for trading; (b) the Trustees have called a meeting of the Unitholders and Special Voting Unitholders and have given notice thereof pursuant to Section 6.03; or (c) in connection with the business as stated in the requisition:

(a) it clearly appears that the matter covered by the requisition submitted by the Unitholder or Special Voting Unitholder is primarily for the purpose of enforcing a personal claim or redressing a personal grievance against the Trust or its Trustees, officers or security holders;

(b) it clearly appears that the matter covered by the requisition does not relate in a significant way to the business or affairs of the Trust;

(c) not more than the two years before the receipt of the requisition, a person failed to present, in person or by proxy, at a meeting of Unitholders and Special Voting Unitholders, a matter covered by a requisition that at the person's request, had been included in an information circular relating to the meeting;

(d) substantially the same matter covered by the requisition was submitted to Unitholders and Special Voting Unitholders in an information circular (including a dissident's information circular) relating to a meeting of Unitholders and Special Voting Unitholders held not more than two years before the receipt of the requisition and did not receive the minimum amount of support at the meeting as follows: (i) 3% of the total number of Units and Special Voting Units voted, if the proposal was introduced at a meeting of Unitholders and Special Voting Unitholders; (ii) 6% of the total number of Units and Special Voting Units voted at its last submission to Unitholders and Special Voting Unitholders, if the proposal was introduced at two meetings of Unitholders and Special Voting Unitholders; and (iii) 10% of the total number of Units and Special Voting Units voted at its last submission to Unitholders and Special Voting Unitholders, if the proposal was introduced at three or more meetings of Unitholders and Special Voting Unitholders; or

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

If the Trustees do not within 21 days after receiving the requisition call a meeting, any Unitholder or Special Voting Unitholder who signed the requisition may call the meeting in accordance with the provisions of Section 6.03 and Section 6.08 and the Trustees' Regulations, *mutatis mutandis*. If there shall be no Trustees, the officers of the Trust shall promptly call a special meeting of the Unitholders and Special Voting Unitholders for the election of successor Trustees. The phrase "meeting of the Unitholders and Special Voting Unitholders" wherever it appears in this Declaration of Trust shall mean and include both an annual meeting and any other meeting of Unitholders and Special Voting Unitholders.

Section 6.03 Notice of Meeting of Unitholders and Special Voting Unitholders.

Notice of all meetings of the Unitholders and Special Voting Unitholders shall be mailed or delivered by the Trustees to each Unitholder and Special Voting Unitholder at his

address appearing in the Register, to each Trustee and to the auditors of the Trust not less than 21 nor more than 60 days before the meeting. Notice of any meeting of the Unitholders and Special Voting Unitholders shall state the purposes of the meeting.

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

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

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

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

Section 6.04 Unitholder Proposals.

Subject to subsections (a) and (b), a registered holder or beneficial owner of Units or Special Voting Units may (i) submit written notice to the Trust of any matter that the person proposes to raise at an annual meeting of Unitholders and Special Voting Unitholders (a "**Proposal**") and (ii) discuss at the meeting any matter with respect to which the person would have been entitled to submit a Proposal.

(a) To be eligible to submit a Proposal, a person:

(i) must be, for at least the six-month period immediately before the day on which the person submits the Proposal, the registered holder or the beneficial owner of (i) not less than 1% of the combined total number of outstanding Units or Special Voting Units, as of the day on which the person submits a Proposal, or (ii) Units or Special Voting Units whose combined total fair market value, as determined at the close of business on the day before the person submits the Proposal, is at least \$2,000; or

(ii) must have the support of persons who, in the aggregate, and including or not including the person that submits the Proposal, have been, for at least the six-month period immediately before the day on which the person submits the Proposal, the registered holders or beneficial owners of (i) not less than 1% of the combined total number of outstanding Units or Special

Voting Units, as of the day on which the person submits the Proposal, or (ii) Units or Special Voting Units whose combined total fair market value, as determined at the close of business on the day before the person submits the Proposal, is at least \$2,000.

- (b) A Proposal must be accompanied by the following information:
 - (i) the name and address of the person submitting the Proposal and the person's supporters, if applicable; and
 - (ii) the number of Units or Special Voting Units held or owned by the person submitting the Proposal and the person's supporters, if applicable, and the date the Units or Special Voting Units were acquired.

(c) If requested by the Trust within 14 days of the receipt of the Proposal, a person who submits a Proposal must provide proof, within 21 days following the day on which the person receives the Trust's request, or if the request was mailed to the person, within 21 days after the postmark date stamped on the envelope containing the request, that the person meets the requirements set out in subsection (a).

(d) The Trust shall set out the Proposal in its proxy circular delivered in connection with its annual meeting or attach the Proposal thereto.

(e) If so requested by the person who submits the Proposal, the Trust shall include in, or attach to, its proxy circular delivered in connection with its annual meeting, a statement in support of the Proposal by the person and the name and address of the person making the Proposal. The statement and Proposal so included must not exceed 500 words excluding the information required by subsection (b).

(f) A Proposal may not include nominations for the election of Trustees and a Unitholder shall not have the right to make nominations at the meeting, unless such nomination is made in accordance with the provisions of Section 6.12.

- (g) The Trust shall not be required to comply with subsections (d) and (e) if:
 - (i) the Proposal is submitted less than 90 days before the anniversary date of the notice of meeting that was sent to Unitholders and Special Voting Unitholders in connection with the Trust's previous annual meeting of Unitholders and Special Voting Unitholders;
 - (ii) it clearly appears that (A) the primary purpose of the Proposal is to enforce a personal claim or redress a personal grievance against the Trust, the Trustees, its officers, the Unitholders or other securityholders of the Trust, or (B) the Proposal does not relate in a significant way to the business or affairs of the Trust;

- (iii) not more than two years preceding the receipt of such Proposal, the proposing person failed to present, in person or by proxy, at a meeting of Unitholders and Special Voting Unitholders, a Proposal that, at the person's request, had been included in a proxy circular relating to a meeting of the Unitholders;
- (iv) substantially the same proposal was submitted to Unitholders and Special Voting Unitholders in a proxy circular relating to a meeting of the Unitholders and Special Voting Unitholders held within five years preceding the receipt of the Proposal and the matter covered by the Proposal did not receive the required support at that meeting. For the purposes hereof, the required support for a Proposal is:
 - (A) 3% of the total number of Units and Special Voting Units voted, if the Proposal has been introduced at only one annual meeting of Unitholders and Special Voting Unitholders;
 - (B) 6% of the total number of Units and Special Voting Units voted at the last meeting at which the matter was submitted to Unitholders and Special Voting Unitholders, if the Proposal was introduced at two annual meetings of Unitholders and Special Voting Unitholders; and
 - (C) 10% of the total number of Units and Special Voting Units voted at the last meeting at which the matter was submitted to Unitholders and Special Voting Unitholders, if the Proposal was introduced at three or more annual meetings of Unitholders and Special Voting Unitholders; or
- (v) the rights conferred by this section are being abused to secure publicity.
- (h) If a person who submits a Proposal fails to continue to hold or own the number of Units or Special Voting Units referred to in subsection (a) up to and including the day of the meeting, the Trust is not required to set out in its proxy circular, or attach to it, any proposal submitted by that person for any meeting held within two years following the date of the meeting.
 - (i) Neither the Trust nor any person acting on its behalf will incur any liability to Unitholders or any other person by reason only of circulating a Proposal or statement in compliance with this section.
 - (j) If the Trust refuses to include a Proposal in its proxy circular, it shall, within 21 days of the later of receipt of the Proposal or proof of ownership under subsection (c), as the case may be, notify in writing the person submitting the Proposal of its intention to omit the Proposal from the Trust's proxy circular and of the reasons for the refusal.

(k) On the application of a person submitting a Proposal who claims to be aggrieved by the Trust's refusal under subsection (j), a court may restrain the holding of the meeting to which the Proposal is sought to be presented and make any further order it thinks fit.

(l) The Trust or any person claiming to be aggrieved by a Proposal may apply to a court for an order permitting the Trust to omit the Proposal from the proxy circular, and the court, if it is satisfied that subsection (g) applies, may make such order as it thinks fit.

Section 6.05 Quorum; Chairman.

A quorum for any meeting of Unitholders and Special Voting Unitholders shall be individuals present not being less than two in number and being Unitholders and/or Special Voting Unitholders, or representing by proxy Unitholders and/or Special Voting Unitholders who hold in the aggregate not less than 25 per cent of the combined total number of outstanding Units and Special Voting Units as at the record date. If a quorum is present at the opening of a meeting of Unitholders and Special Voting Unitholders, the Unitholders and/or Special Voting Unitholders present may proceed with the business of the meeting, notwithstanding that a quorum is not present throughout the meeting. If a quorum is not present at the opening of a meeting of Unitholders and Special Voting Unitholders, the Chairman or the Unitholders and Special Voting Unitholders present may adjourn the meeting to a fixed time and place but may not transact any business. The Chairman, or any Trustee determined by the Trustees, shall be the chairman of any meeting of the Unitholders and Special Voting Unitholders.

Section 6.06 Voting.

Holders of Units and Special Voting Units may attend and vote at all meetings of the Unitholders and Special Voting Unitholders either in person or by proxy. Each Unit shall be entitled to one vote at all meetings of the Unitholders and Special Voting Unitholders. Each Special Voting Unit shall be entitled to that number of votes equal to the number of Units into which the Exchangeable Securities to which such Special Voting Unit relates are exchangeable or convertible (other than in respect of Exchangeable Securities which have been so exchanged, converted or cancelled) at all meetings of Unitholders and Special Voting Unitholders or in respect of any written resolution of Unitholders and Special Voting Unitholders. Any action to be taken by the Unitholders and Special Voting Unitholders shall, except as otherwise required by this Declaration of Trust, by any Property Management Agreement or by law, be authorized when approved by a majority of the votes cast at a meeting of the Unitholders and Special Voting Unitholders by holders of Units and Special Voting Units (in aggregate) entitled to vote thereon. The Chairman of any such meeting shall not have second or casting vote.

Section 6.07 Matters on which Unitholders and Special Voting Unitholders Shall Vote.

Subject to Section 15.02(c), none of the following shall occur unless the same has been duly approved by the Unitholders and Special Voting Unitholders at a meeting duly called and held:

(a) except as provided in Section 2.01, Section 2.03, Section 2.05 or Section 2.06, the appointment, election or removal of Trustees;

- (b) except as provided in Section 16.04, the appointment or removal of auditors of the Trust;
- (c) any amendment to the Declaration of Trust (except as provided in Section 4.03 or Section 12.01 (but subject to Section 12.02));
- (d) the sale, lease, transfer, or exchange of all or substantially all of the property and assets of the Trust (other than in the ordinary course of business of the Trust or as a part of an internal reorganization of the assets of the Trust as approved by the Trustees), which shall require approval by the affirmative vote of at least two-thirds of the votes cast at a meeting of Unitholders and Special Voting Unitholders entitled to vote called for that purpose;
- (e) the termination of the Trust pursuant to Section 13.02; or
- (f) any other matters which
- (i) expressly require the approval of the Unitholders and Special Voting Unitholders pursuant to this Declaration of Trust; or
- (ii) the Trustees determine to present to the Unitholders and Special Voting Unitholders for their approval or ratification, notwithstanding that there is no express requirement for such approval or ratification hereunder.

Nothing in this Section, however, shall prevent the Trustees from submitting to a vote of Unitholders and Special Voting Unitholders any matter which they deem appropriate. Except with respect to the matters specified in this Section, Section 12.02, Section 12.04 and Section 13.02 or matters submitted to a vote of the Unitholders and Special Voting Unitholders by the Trustees, no vote of the Unitholders and Special Voting Unitholders shall in any way bind the Trustees.

Section 6.08 Record Dates.

For the purpose of determining the Unitholders and Special Voting Unitholders who are entitled to receive notice of and vote at any meeting or any adjournment thereof, or who are entitled to receive any distribution, or for the purpose of any other action, the Trustees may from time to time fix a date not more than 60 days prior to the date of any meeting of the Unitholders and Special Voting Unitholders or distribution or other action as a record date for the determination of Unitholders and Special Voting Unitholders entitled to receive notice of and to vote at such meeting or any adjournment thereof or (in the case of Unitholders only) to receive such distribution or to be treated as Unitholders and Special Voting Unitholders of record for purposes of such other action, and any Unitholder or Special Voting Unitholder who was a Unitholder or Special Voting Unitholder at the time so fixed shall be entitled to receive notice of and vote at such meeting or any adjournment thereof or (in the case of Unitholders only) to receive such distribution, even though he has since that date disposed of his Units or Special Voting Units, and no Unitholder or Special Voting Unitholder becoming such after that date shall be entitled to receive notice of and vote at such meeting or any adjournment thereof or (in

the case of Unitholders only) to receive such distribution or to be treated as a Unitholder or Special Voting Unitholder of record for purposes of such other action.

Section 6.09 Court Requisitioned Meetings.

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

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

Without restricting the generality of this Section 6.09, the court may order that the quorum required by this Declaration of Trust be varied or dispensed with at a meeting called, held and conducted pursuant to this section.

Section 6.10 Proxies.

Whenever the vote or consent of Unitholders and/or Special Voting Unitholders is required or permitted under this Declaration of Trust, such vote or consent may be given either directly by the Unitholder, Special Voting Unitholder or by a proxy in such form as the Trustees may prescribe from time to time. A proxy need not be a Unitholder or Special Voting Unitholder. The Trustees may solicit such proxies from the Unitholders or Special Voting Unitholders or any of them in any matter requiring or permitting the Unitholders' or Special Voting Unitholders' vote, approval or consent.

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

An instrument of proxy executed in compliance with the foregoing shall be valid unless challenged at the time of or prior to its exercise and the person challenging the instrument shall have the burden of proving, to the satisfaction of the Chairman of the meeting at which the instrument is proposed to be used, that the instrument of proxy is invalid. Any decision of the Chairman of the meeting in respect of the validity of an instrument of proxy shall be final and binding upon all persons. An instrument of proxy shall be valid only at the meeting with respect to which it was solicited or any adjournment(s) or postponement(s) thereof.

A vote cast in accordance with any proxy shall be valid notwithstanding the death, incapacity, insolvency or bankruptcy of the Unitholder or Special Voting Unitholder giving the

proxy or the revocation of the proxy unless written notice of the death, incapacity, insolvency or bankruptcy has been received by the Chairman of the meeting prior to the time the vote is cast or, in the case of revocation, the revocation of the proxy is effected pursuant to this Section 6.10.

A Unitholder or Special Voting Unitholder may revoke a proxy:

(a) by depositing an instrument or act in writing executed or, in Quebec, signed by the Unitholder or Special Voting Unitholder or by the Unitholder's or Special Voting Unitholder's personal representative authorized in writing:

- (i) at the principal office of the Trust at any time up to and including the last business day preceding the day of the meeting, or an adjournment thereof, at which the proxy is to be used; or
 - (ii) with the Chairman of the meeting on the day of the meeting prior to the time the vote is cast or any adjournment thereof; or
- (b) in any other manner permitted by law.

Section 6.11 Resolution in Lieu of Meeting.

Subject to Section 2.05, a resolution signed in writing by all of the Unitholders and Special Voting Unitholders entitled to vote on that resolution at a meeting of Unitholders and Special Voting Unitholders is as valid as if it had been passed at a meeting of Unitholders and Special Voting Unitholders.

Section 6.12 Nomination of Trustees.

- (a) Only persons who are nominated in accordance with the following procedures shall be eligible for election as Trustees of the Trust. Nominations of persons for election to the board of Trustees may be made at any annual meeting of Unitholders and Special Voting Unitholders, or at any special meeting of Unitholders and Special Voting Unitholders, if one of the purposes for which the special meeting was called was the election of Trustees:
- (i) by or at the direction of the board of Trustees, including pursuant to a notice of meeting;
 - (ii) by or at the direction or request of one or more Unitholders pursuant to a requisition of the Unitholders or Special Voting Unitholders made in accordance with Section 6.02; or
 - (iii) by any person (a "**Nominating Unitholder**") who
 - A. at the close of business on the date of the giving of the notice provided for below in this Section 6.12 and on the record date for notice of such meeting, is entered in the Register as a holder of one

or more Units or Special Voting Units carrying the right to vote at such meeting or who beneficially owns Units or Special Voting Units that are entitled to be voted at such meeting; and

- B. who complies with the notice procedures set forth below in this Section 6.12.
 - (b) In addition to any other applicable requirements, for a nomination to be made by a Nominating Unitholder, the Nominating Unitholder must have given timely notice thereof to the Trustees in the manner prescribed by this Declaration of Trust. Furthermore, if such notice is made on a day which is not a business day or later than 5:00 p.m. (Toronto Time) on a day which is a business day, then such notice shall be deemed to have been made on the subsequent day that is a business day.
 - (c) To be timely, a Nominating Unitholder's notice to the Trustees must be made:
 - (i) in the case of an annual meeting of Unitholders and Special Voting Unitholders, not less than 30 days prior to the date of the annual meeting of Unitholders and Special Voting Unitholders; provided, however, that in the event that the annual meeting of Unitholders and Special Voting Unitholders is to be held on a date that is less than 50 days after the date (the "**Notice Date**") on which the first public announcement of the date of the annual meeting was made, notice by the Nominating Unitholder may be made not later than the close of business on the tenth (10th) day following the Notice Date; and
 - (ii) in the case of a special meeting (which is not also an annual meeting) of Unitholders and Special Voting Units called for the purpose of electing Trustees (whether or not called for other purposes), not later than the close of business on the fifteenth (15th) day following the day on which the first public announcement of the date of the special meeting of Unitholders and Special Voting Unitholders was made.
 - (d) To be in proper written form, a Nominating Unitholder's notice to the Trustees must set forth:
 - (i) as to each person whom the Nominating Unitholder proposes to nominate for election as a Trustee:
 - A. the name, age, business address and residential address of the person;
 - B. the principal occupation or employment of the person;
 - C. the class or series and number of Units of the Trust which are controlled or which are owned beneficially or of record by the person as of the record date for the meeting of Unitholders and Special Voting Unitholders (if such date shall then have been made

publicly available and shall have occurred) and as of the date of such notice;

- D. any other information relating to the person that would be required to be disclosed in a dissident's proxy circular in connection with solicitations of proxies for election of Trustees pursuant to applicable securities laws; and
- (ii) as to the Nominating Unitholder giving the notice, any proxy, contract, arrangement, understanding or relationship pursuant to which such Nominating Unitholder has a right to vote any Units or Special Voting Units of the Trust and any other information relating to such Nominating Unitholder that would be required to be made in a dissident's proxy circular in connection with solicitations of proxies for election of Trustees pursuant to applicable securities laws.
 - (e) The Trust may require any proposed nominee to furnish such other information as may reasonably be required by the Trust to determine the eligibility of such proposed nominee to serve as an independent trustee of the Trust or that could be material to a reasonable Unitholder's or Special Voting Unitholders' understanding of the independence, or lack thereof, of such proposed nominee.
 - (f) No person shall be eligible for election as a Trustee of the Trust unless nominated in accordance with the provisions of this Section 6.12; provided, however, that nothing in this Section 6.12 shall be deemed to preclude discussion by a Unitholder or Special Voting Unitholder (as distinct from the nomination of Trustees) at a meeting of Unitholders and Special Voting Unitholders of any matter in respect of which it would have been entitled to submit to a vote pursuant to the terms and conditions contained in this Declaration of Trust. The chairperson of the applicable meeting shall have the power and duty to determine whether a nomination was made in accordance with the procedures set forth in the foregoing provisions and, if any proposed nomination is not in compliance with such foregoing provisions, to declare that such defective nomination shall be disregarded.
 - (g) For purposes of this Section 6.12, "public announcement" shall mean disclosure in a press release reported by a national news service in Canada, or in a document publicly filed by the Trust under its profile on the System of Electronic Document Analysis and Retrieval (SEDAR) at www.sedar.com.

Notwithstanding the foregoing, the Trustees may, in their sole discretion, waive any requirement in this Section 6.12.

**ARTICLE VII
MEETINGS OF THE TRUSTEES**

Section 7.01 Trustees May Act Without Meeting.

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

Section 7.02 Notice of Meeting.

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

Section 7.03 Quorum.

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

Section 7.04 Voting at Meetings.

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

- (a) the approval required with respect to:
 - (i) a material change to any Property Management Agreement or any extension thereof at the end of its term or an increase in the fees payable to the Property Manager;
 - (ii) any changes in compensation of the Chief Executive Officer or the Chief Financial Officer; or
 - (iii) the enforcement of any agreement entered into by the Trust with a Trustee who is not an Independent Trustee, with the Property Manager or any

affiliate thereof or with an associate of a non-Independent Trustee or the Property Manager,

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

(b) at least two-thirds of the Trustees voting on an acquisition or disposition of real property shall have had at least five years substantial experience in the real estate industry; and

(c) the approval required with respect to any amendment to or deletion of the definition of religious holidays contained in the Trustees' Regulations shall be that of all of the Trustees.

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

Section 7.05 Meeting by Telephone.

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

**ARTICLE VIII
DELEGATION OF POWERS**

Section 8.01 General.

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

Section 8.02 Investment Committee.

The Trustees may appoint an investment committee (the "**Investment Committee**") to consist of not less than three Trustees, a majority of whom shall be Independent

Trustees. At least two-thirds of the members of the Investment Committee shall have had at least five years substantial experience in the real estate industry. The duties of the Investment Committee will be to review all proposals regarding investments, to approve or reject proposed acquisitions and dispositions of investments by the Trust, to authorize proposed transactions on behalf of the Trust and to approve all borrowings and the assumption or granting of any mortgage or other security interest in real property (other than renewals of existing mortgages or security interests, which need not be approved by the Investment Committee or the Trustees), including any assignment of rents and other monies derived from or related to real property (collectively, “**Transactions**”) where the purchase price, estimated capital commitment, proceeds from disposition or principal amount of mortgage or other security, as applicable, is less than \$500 million. Questions arising at any meeting of the Investment Committee shall be decided by a majority of the votes cast. Decisions may be taken by written consent signed by all of the members of the Investment Committee. Any member of the Investment Committee may call a meeting of the Investment Committee upon not less than 48 hours’ notice. Where for any reason a member of the Investment Committee is disqualified from voting on or participating in a decision, any other independent and disinterested Trustee not already a member of the Investment Committee may be designated by the Trustees to act as an alternate.

The Investment Committee shall be entitled to delegate its responsibility to the management of the Trust for the foregoing matters provided that such matters do not exceed the applicable financial thresholds determined by the Trustees from time to time to be appropriate for management to consider and approve and may provide additional requirements, including setting out pre-determined financing terms, requiring management to review a matter with the Chair of the Investment Committee prior to approving such matter and requiring appropriate reporting requirements.

Notwithstanding the appointment of the Investment Committee, the Trustees may consider and approve any matter which the Investment Committee has the authority to consider or approve and, in the case of Larger Transactions (defined below), must consider and approve any Larger Transaction.

Any Transaction as approved in accordance with this Section 8.02 (whether by way of the Investment Committee, management of the Trust or the Trustees or otherwise) shall for all purposes have been duly authorized and approved by the Trustees.

For the purposes of this Section 8.02, “**Larger Transactions**” shall mean Transactions where the purchase price, estimated capital commitment, proceeds from disposition or principal amount of mortgage or other security, as applicable, exceeds \$500 million.

Section 8.03 Audit Committee.

The Trustees shall appoint an audit committee (the “**Audit Committee**”) to consist of not less than three Trustees, all of whom shall be Independent Trustees. The Audit Committee shall review the financial statements of the Trust and report thereon to the Trustees. The auditors of the Trust are entitled to receive notice of every meeting of the Audit Committee and, at the expense of the Trust, to attend and be heard thereat and, if so requested by a member

of the Audit Committee, shall attend any meeting of the Audit Committee held during the term of office of the auditors. Questions arising at any meeting of the Audit Committee shall be decided by a majority of the votes cast. Decisions may be taken by written consent signed by all of the members of the Audit Committee. The auditors of the Trust or a member of the Audit Committee may call a meeting of the Audit Committee on not less than 48 hours' notice.

Section 8.04 Compensation and Governance Committee.

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

Section 8.05 Property Manager.

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

Section 8.06 Additional Committees and Powers That May Not Be Delegated.

The Trustees may create such additional committees as they, in their discretion, determine to be necessary or desirable for the purposes of properly governing the affairs of the Trust; provided that the Trustees may not delegate to any committee or any officer any power or authority in respect of: (i) submitting to Unitholders and Special Voting Unitholders any question or matter requiring the approval of Unitholders and Special Voting Unitholders; (ii) filling a vacancy among the Trustees or appointing additional trustees; (iii) issuing Units or Special Voting Units except as authorized by the Trustees; (iv) declaring distributions; (v) approving a proxy circular; (vi) approving a take-over bid circular; and (vii) approving the annual financial statements of the Trust.

ARTICLE IX DISTRIBUTIONS

Section 9.01 Distributions.

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

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

Notwithstanding the foregoing, the total amount due and payable pursuant to this Section 9.01 on or before the last day of any taxation year of the Trust for purposes of the Tax Act shall not be less than the amount necessary to ensure that the Trust will not be liable to pay income tax under Part I of the Tax Act for such year. The amount, if any, which is required to be distributed to comply with the preceding sentence shall be due and payable, on the earlier of the last Distribution Date in respect of each year and the last day of such taxation year, to persons who are Unitholders of record on that date (which date, for greater certainty, shall be deemed to be the record date for such distribution for purposes of this Declaration of Trust), such amount to be payable in cash unless the Trustees determine in their absolute discretion to pay such amount in Units in any particular year, in which case such amount shall be payable in Units for that year, provided that the distribution of Units shall be subject to the restrictions in Section 5.10 and Section 5.11.

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

At any time the Trustees may declare an extraordinary distribution of cash, Units or property of the Trust *in specie* (an “**Extraordinary Distribution**”). Distributions shall be made in cash or Units pursuant to any distribution reinvestment plan or distribution reinvestment and Unit purchase plan adopted by the Trustees pursuant to Section 9.07, or, in the case of an Extraordinary Distribution, in cash, Units or property of the Trust *in specie*. Any distribution, including an Extraordinary Distribution, of Units shall be subject to the restrictions in Section 5.10 and Section 5.11. Any distribution, including any Extraordinary Distribution, shall be made proportionately to persons who are Unitholders, on the record date for such distribution. Distributions, including Extraordinary Distributions, will be made to Unitholders of record on a date to be determined by the Trustees in accordance with Section 6.08 hereof. The Trustees, if they so determine when income has been accrued but not collected may, on a temporary basis, transfer sufficient monies from the capital to the income account of the Trust to permit

distributions of income which are payable to be effected. Where the Trustees determine that the Trust does not have available cash in an amount sufficient to make payment of the full amount of any distribution which is payable hereunder on the due date for such payment, or where the Trustees otherwise determine in their absolute discretion that all or a portion of such distribution should not be paid in cash, the payment may, at the option of the Trustees, include the issuance of additional Units, or fractions of Units, if necessary, having a fair market value as determined by the Trustees equal to the difference between the amount of such distribution and the amount of cash which either has been determined by the Trustees in their absolute discretion to be available, or which the Trustees have otherwise determined shall be distributed in their absolute discretion as the case may be, for the payment of such distribution; provided that any such issuance shall be subject to the restrictions in Section 5.10 and Section 5.11.

Section 9.02 Allocation.

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

Section 9.03 Payment of Cash Distributions.

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

Section 9.04 Withholding Taxes.

(a) The Trust may deduct and withhold from each distribution payable to any Unitholder all amounts which the Trust is required or permitted by law to deduct or withhold therefrom.

(b) In the case of any distribution of property of the Trust (or distribution in the form of an issuance of additional Units) (an “*in specie distribution*”), except as otherwise determined by the Trustees in their sole discretion, the provisions of this Section 9.04(b) shall apply.

(i) The transfer agent and registrar may require declarations as to the jurisdictions in which beneficial owners of Units are resident.

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

Section 9.05 Income Tax Matters.

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

Section 9.06 Designations.

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

on shares of taxable Canadian corporations, net taxable capital gains of the Trust in the year and foreign source income of the Trust for the year.

Section 9.07 Distribution Reinvestment and Unit Purchase Plan.

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

ARTICLE X
REDEMPTION OF TRUST UNITS

Section 10.01 Right of Redemption.

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

Section 10.02 Exercise of Redemption Right.

(a) To exercise a Unitholder's right to require redemption under Section 10.01, a duly completed and properly executed notice requiring the Trust to redeem Units, in a form approved by the Trustees, shall be sent to the Trust at the head office of the Trust. No form or manner of completion or execution shall be sufficient unless the same is in all respects satisfactory to the Trustees and is accompanied by any further evidence that the Trustees may reasonably require with respect to the identity, capacity or authority of the person giving such notice.

(b) Upon receipt by the Trust of the notice to redeem Units, the Unitholder shall thereafter cease to have any rights with respect to the Units tendered for redemption (other than to receive the redemption payment therefor) including the right to receive any distributions thereon which are declared payable to the Unitholders of record on a date which is subsequent to the day of receipt by the Trust of such notice. Units shall be considered to be tendered for redemption on the date that the Trust has, to the satisfaction of the Trustees, received the notice and other required documents or evidence as aforesaid.

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

Section 10.03 Cash Redemption.

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

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

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

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

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

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

Section 10.04 No Cash Redemption in Certain Circumstances.

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

(a) the total amount payable by the Trust pursuant to Section 10.03 in respect of such Units and all other Units tendered for redemption prior thereto in the same calendar month exceeds the Monthly Limit set forth below; provided that the Trustees may, in their sole

discretion, waive such limitation in respect of all Units tendered for redemption in any calendar month;

(b) at the time the Units are tendered for redemption, the outstanding Units are not listed for trading or quoted on any stock exchange or market which, in the sole discretion of the Trustees, provides representative fair market value prices for the Units; or

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

For the purpose of subsection 10.04(a), the Monthly Limit will be equal to \$50,000 less the total of any Shortfall Payments, if any, payable by the Trust pursuant to subsection 10.05(a) in respect of such Units and all other Units tendered for redemption prior thereto in the same calendar month.

Section 10.05 *In Specie* Redemption.

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

At the sole discretion of the Trustees, no fractional Series 2 Notes, Series 3 Notes or Series 4 Notes in integral multiples of less than \$100, or such other lower amount as the Trustees may establish from time to time (the "**Rounding Amount**") will be so distributed on the redemption of Units registered in the name of any particular Unitholder and, where the number of such securities of HRP Trust to be received by a particular Unitholder includes a fraction or multiple less than the Rounding Amount, that number shall be rounded to the next lowest whole number or integral multiple of the Rounding Amount. Where an *in*

specie distribution has been subject to rounding down to a Rounding Amount, the shortfall between the Redemption Price per Unit and the aggregate principal amount of Series 2 Notes, Series 3 Notes or Series 4 Notes distributed will be paid in cash (the “**Shortfall Payment**”) in the general manner set forth in subsection 10.03(b). A Shortfall Payment of less than \$10 will not be required to be made, unless the Unitholder has not more than one Unit registered in his or her name prior to redemption, in which case a Shortfall Payment will be required, rounded downwards to the nearest dollar.

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

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

ARTICLE XI FEES AND EXPENSES

Section 11.01 Expenses.

The Trust shall pay all expenses incurred in connection with the administration and management of the Trust and its investments, including without limitation fees of auditors, lawyers, appraisers, registrars and transfer agents and other agents, stock exchanges, consultants and professional advisors employed by or on behalf of the Trust and the cost of reporting or giving notices to Unitholders and Special Voting Unitholders.

Section 11.02 Payment of Real Property and Brokerage Commissions.

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

Section 11.03 Property Management, Leasing and Financing Fees.

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

ARTICLE XII AMENDMENTS TO THE DECLARATION OF TRUST

Section 12.01 Amendments by the Trustees.

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

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

(b) amendments which, in the opinion of the Trustees, provide additional protection for Unitholders or Special Voting Unitholders;

(c) amendments which, in the opinion of the Trustees are necessary or desirable to remove conflicts or inconsistencies in the Declaration of Trust;

(d) amendments which, in the opinion of the Trustees, are necessary or desirable to remove conflicts or inconsistencies between the disclosure in the (final) prospectus relating to the initial public offering of Units of the Trust and the Declaration of Trust;

(e) amendments of a minor or clerical nature or to correct typographical mistakes, ambiguities or manifest omissions or errors which amendments in the opinion of the Trustees are necessary or desirable and not prejudicial to the Unitholders or Special Voting Unitholders;

(f) such amendments to the Declaration of Trust as the Trustees in their discretion deem necessary or desirable (i) as a result of changes in the taxation laws from time to time which may affect the Trust, the Unitholders, the Special Voting Unitholders or annuitants under a plan of which a Unitholder or Special Voting Unitholder acts as trustee or carrier, or to qualify for a particular status under taxation laws including to qualify as a “real estate investment trust” for purposes of the Tax Act or to otherwise prevent the Trust or any of its subsidiaries from becoming subject to SIFT Tax, or (ii) as a result of changes in accounting standards (including the implementation of IFRS) from time to time which may affect the Trust, the Unitholders, the Special Voting Unitholders or annuitants under a plan of which a Unitholder or Special Voting Unitholder acts as trustee or carrier;

(g) amendments which in the opinion of the Trustees are not prejudicial to Unitholders or Special Voting Unitholders and are necessary or desirable (which, for greater certainty, exclude amendments in respect of which a Unitholder and Special Voting Unitholder vote is specifically otherwise required); and

(h) amendments which in the opinion of the Trustees are necessary or desirable to enable the Trust to issue Units for which the purchase price is payable on an instalment basis.

Section 12.02 Ratifying Amendments to Declaration of Trust.

(a) The Trustees shall submit any amendment to the Declaration of Trust that has not been approved by the Unitholders and Special Voting Unitholders pursuant to Section 12.01, other than amendments pursuant to Section 4.03, Section 12.01(a), Section 12.01(e) or Section 12.01(f) and amendments the Trustees determine are necessary or advisable pursuant to or in connection with applicable tax laws, securities laws, accounting rules or other applicable laws or regulations or such amendments, the equivalent of which, would not otherwise be required to be ratified by shareholders pursuant to the *Canada Business Corporations Act*, to the Unitholders and Special Voting Unitholders at the next meeting of Unitholders and Special Voting Unitholders and the Unitholders and Special Voting Unitholders entitled to vote on the amendment may, by a vote representing at least a majority of the Units and Special Voting Units voted, in person or by proxy, confirm, reject or amend the amendment to the Declaration of Trust.

(b) An amendment to this Declaration of Trust which the Trustees are expressly empowered to make pursuant to the terms hereof is effective from the date the amended Declaration of Trust is signed which reflects the amendment approved by the Trustees until, if required, it is confirmed, confirmed as amended or rejected by the Unitholders and Special Voting Unitholders under subsection (a) or until it ceases to be effective under

subsection (c) and, where the amendment is confirmed or confirmed as amended, it continues in effect in the form in which it was so confirmed.

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

Section 12.03 Amendments by Unitholders and Special Voting Unitholders.

Subject to Section 2.05 and Section 12.04, this Declaration of Trust may be amended by the vote of a majority of the votes in the aggregate cast at a meeting of Unitholders and Special Voting Unitholders called for that purpose by holders of Units and Special Voting Units entitled to vote thereon.

Section 12.04 Two-Thirds Unitholder and Special Voting Unitholder Vote.

Subject to Section 6.07(b), none of the following shall occur unless the same has been duly approved by the affirmative vote of at least two-thirds of the votes cast at a meeting of Unitholders and Special Voting Unitholders duly called and held by holders of Units and Special Voting Units (in aggregate) entitled to vote thereon:

- (a) any amendment to this Section 12.04;
- (b) any amendment to change a right with respect to any outstanding Units or Special Voting Units of the Trust, to reduce the amount payable on the Units upon termination of the Trust, or to diminish or eliminate any voting rights pertaining to the Units of Special Voting Units;
- (c) any amendment to the duration or termination provisions of the Trust;
- (d) any amendment relating to the powers, duties, obligations, liabilities or indemnification of the Trustees;
- (e) any sale, lease, transfer or exchange of all or substantially all of the property or assets of the Trust (other than in the ordinary course of business of the Trust or as a part of an internal reorganization of the assets of the Trust as approved by the Trustees); or
- (f) any amendment to Section 4.01 or subsection 4.02(d) except for any amendment contemplated by subsection 12.01(h).

Section 12.05 No Termination.

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

ARTICLE XIII
TERMINATION OF THE TRUST

Section 13.01 Duration of the Trust.

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

Section 13.02 Termination by Unitholders and Special Voting Unitholders.

The Trust may be terminated by the vote of at least two-thirds of the votes in the aggregate cast at a meeting of Unitholders and Special Voting Unitholders, called for that purpose by holders of Units and Special Voting Units entitled to vote thereon.

Section 13.03 Effect of Termination.

Upon the termination of the Trust, the liabilities of the Trust shall be discharged with due speed and the net assets of the Trust shall be liquidated and the proceeds distributed proportionately to the Unitholders. Such distribution may be made in cash or in kind or partly in each, all as the Trustees in their sole discretion may determine.

ARTICLE XIV
LIABILITIES OF THE TRUSTEES AND OTHERS

Section 14.01 Liability and Indemnification of the Trustees.

The Trustees shall at all times be indemnified and saved harmless out of the property of the Trust from and against all liabilities, damages, losses, debts and claims whatsoever, including costs, charges and expenses in connection therewith, sustained, incurred, brought, commenced or prosecuted against them for or in respect of any act, deed, matter or thing whatsoever made, done, acquiesced in or omitted in or about or in relation to the execution of their duties as Trustees and also from and against all other liabilities, damages, losses, debts, claims, costs, charges, and expenses which they sustain or incur in or about or in relation to the affairs of the Trust. Further, the Trustees shall not be liable to the Trust or to any Unitholder, Special Voting Unitholder or annuitant for any loss or damages relating to any matter regarding the Trust, including any loss or diminution in the value of the Trust or its assets. The Trust may advance moneys to a Trustee, officer or other individual for the costs, charges and expenses of a proceeding referred to above. The foregoing provisions of this Section 14.01 in favour of any Trustee do not apply unless:

(a) the Trustee acted honestly and in good faith with a view to the best interests of the Trust; and

(b) in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, the Trustee had reasonable grounds for believing his conduct was lawful.

Section 14.02 Liability of the Trustees.

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

Section 14.03 Reliance Upon Advice.

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

Section 14.04 Liability of Unitholders, Special Voting Unitholders and Others.

(a) No Unitholder, Special Voting Unitholder or annuitant under a plan of which a Unitholder or Special Voting Unitholder acts as trustee or carrier shall be held to have any personal liability as such, and no resort shall be had to, nor shall recourse or satisfaction be sought from, the private property of any Unitholder or Special Voting Unitholder or annuitant for any liability whatsoever, in tort, contract or otherwise, to any person in connection with the Trust property or the affairs of the Trust, including, without limitation, for satisfaction of any obligation or claim arising out of or in connection with any contract or obligation of the Trust or of the Trustees or any obligation which a Unitholder, Special Voting Unitholder or annuitant would otherwise have to indemnify a Trustee for any personal liability incurred by the Trustee as such, but rather the assets of the Trust only are intended to be liable and subject to levy or execution for satisfaction of such liability. Each Unitholder, Special Voting Unitholder and annuitant under a plan of which a Unitholder or Special Voting Unitholders acts as trustee or carrier shall be entitled to be reimbursed out of the assets of the Trust in respect of any payment of a Trust obligation made by such Unitholder, Special Voting Unitholder or annuitant.

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

(c) To the extent that, notwithstanding the provisions of this Section, any Unitholder or Special Voting Unitholder, in its capacity as such, is determined by a judgment of a court of competent jurisdiction to be, or is otherwise held, personally liable in respect of any of the liabilities of the Trust or is required to indemnify the Trustees or any other person:

- (i) any such judgment, writ of execution or similar process in respect thereof will be enforceable only against, and will be satisfied only out of, the assets of the Trust; and
- (ii) in the event that, notwithstanding subsection (a), the judgment, writ of execution or similar process is enforceable against the Unitholder or Special Voting Unitholder, or the Unitholder or Special Voting Unitholder is otherwise held personally liable, the Unitholder or Special Voting Unitholder will be entitled to indemnity and reimbursement out of the assets of the Trust to the full extent of the liability and for all costs of any litigation or other proceedings in which such liability has been determined, including all fees and disbursements of counsel.

The rights accruing to a Unitholder or Special Voting Unitholder under this Section 14.04 and the limitations of a Unitholder's or Special Voting Unitholder's liability set out herein are in addition to, and do not exclude, any other rights or limitations of liability to which such Unitholder or Special Voting Unitholder may be lawfully entitled, pursuant to statute, regulation or otherwise, and nothing herein contained restricts the right of the Trustees to

indemnify or reimburse a Unitholder or Special Voting Unitholder out of the assets of the Trust in any appropriate situation not specially provided herein but, for greater certainty, the Trustees have no liability to reimburse Unitholders or Special Voting Unitholders for taxes assessed against them by reason of or arising out of their ownership of Units or Special Voting Units.

**ARTICLE XV
UNITHOLDER REMEDIES**

Section 15.01 Dissent and Appraisal Rights.

(a) Subject to Section 15.02(e), a Unitholder entitled to vote at a meeting of Unitholders and Special Voting Unitholders of the Trust who complies with this Section 15.01 may dissent:

- (i) if the Trust resolves to sell, lease, transfer or exchange all or substantially all the property and assets of the Trust;
- (ii) if the Trust resolves to carry out a going-private transaction; or
- (iii) if the Trust resolves to amend this Declaration of Trust to
 - (A) add, change or remove any provision restricting or constraining the issue, transfer or ownership of the Units;
 - (B) add, change or remove any restriction on the business that the Trust may carry on;
 - (C) add, change or remove the rights, privileges, restrictions or conditions attached to the Units of the class held by the dissenting Unitholder;
 - (D) increase the rights or privileges of any class of units having rights or privileges equal or superior to the class of Units held by the dissenting Unitholder;
 - (E) create a new class of units equal to or superior to the class of Units held by the dissenting Unitholder;
 - (F) make any class of units having rights or privileges inferior to the class of Units held by the dissenting Unitholder superior to that class; or
 - (G) effect an exchange or create a right of exchange in all or part of a class of Units into the class of Units held by the dissenting Unitholder.

(b) In addition to any other right the Unitholder may have, a Unitholder who complies with this section is entitled, when the action approved by the resolution from which the Unitholder dissents becomes effective, to be paid by the Trust the fair value of the Units held by the Unitholder in respect of which the Unitholder dissents, determined as of the close of business on the day before the resolution was adopted.

(c) A dissenting Unitholder may only claim under this section with respect to all the Units held by the dissenting Unitholder on behalf of any one beneficial owner and registered in the name of the dissenting Unitholder.

(d) A dissenting Unitholder shall send to the Trust, at or before any meeting of Unitholders and Special Voting Unitholders at which a resolution referred to in subsection (a) is to be voted on, a written objection to the resolution, unless the Trust did not give notice to the Unitholder of the purpose of the meeting and of the Unitholder's right to dissent.

(e) The Trust shall, within 10 days after the Unitholders adopt the resolution, send to each Unitholder who has filed the objection referred to in subsection (d) notice that the resolution has been adopted, but such notice is not required to be sent to any Unitholder who voted for the resolution or who has withdrawn its objection.

(f) A dissenting Unitholder shall, within 20 days after receiving a notice under subsection (e) or, if the Unitholder does not receive such notice, within 20 days after learning that the resolution has been adopted, send to the Trust a written notice containing:

- (i) the Unitholder's name and address;
- (ii) the number of, and class of, Units in respect of which the Unitholder dissents; and
- (iii) a demand for payment of the fair value of such Units.

(g) A dissenting Unitholder shall, within 30 days after the sending of a notice under subsection (f), send the certificates representing the Units in respect of which the Unitholder dissents to the Trust or its transfer agent.

(h) A dissenting Unitholder who fails to comply with subsection (g) has no right to make a claim under this section.

(i) The Trust or its transfer agent shall endorse on any certificate received under subsection (g) a notice that the holder is a dissenting Unitholder under this Section 15.01 and shall return forthwith the certificates to the dissenting Unitholder.

(j) On sending a notice under subsection (f), a dissenting Unitholder ceases to have any rights as a Unitholder other than the right to be paid the fair value of its Units as determined under this section except where:

- (i) the Unitholder withdraws that notice before the Trust makes an offer under subsection (k);
- (ii) the Trust fails to make an offer in accordance with subsection (k) and the dissenting Unitholder withdraws the notice; or
- (iii) the Trustees revoke the resolution which gave rise to the dissent rights under this section, and to the extent applicable, terminate the related agreements or abandon a sale, lease, transfer or exchange to which the resolution relates,

in which case the Unitholder's rights are reinstated as of the date the notice under subsection (f) was sent.

(k) The Trust shall, not later than 7 days after the later of the day on which the action approved by the resolution is effective or the day the Trust received the notice referred to in subsection (f), send to each dissenting Unitholder who has sent such notice a written offer to pay for the dissenting Unitholder's Units in an amount considered by the Trustees to be the fair value, accompanied by a statement showing how the fair value was determined.

(l) Every offer made under subsection (k) for Units of the same class shall be on the same terms.

(m) The Trust shall pay for the Units of a dissenting Unitholder within 10 days after an offer made under subsection (k) has been accepted, but any such offer lapses if the Trust does not receive an acceptance thereof within 30 days after the offer has been made.

(n) Where the Trust fails to make an offer under subsection (k), or if a dissenting Unitholder fails to accept an offer, the Trust may, within 50 days after the action approved by the resolution is effective or within such further period as a court may allow, apply to a court to fix a fair value for the Units of any dissenting Unitholder.

(o) If the Trust fails to apply to a court under subsection (n), a dissenting Unitholder may apply to a court for the same purpose within a further period of 20 days or within such further period as a court may allow.

(p) The court where an application under subsection (n) or (o) may be made is a court having jurisdiction in the place where the Trust has its registered office.

(q) A dissenting Unitholder is not required to give security for costs in an application made under subsection (n) or (o).

(r) On an application under subsection (n) or (o):

- (i) all dissenting Unitholders whose Units have not been purchased by the Trust shall be joined as parties and bound by the decision of the court; and

- (ii) the Trust shall notify each affected dissenting Unitholder of the date, place and consequences of the application and of the dissenting Unitholder's right to appear and be heard in person or by counsel.
- (s) On an application to a court under subsection (n) and (o), the court may determine whether any other person is a dissenting Unitholder who should be joined as a party, and the court shall fix a fair value for the Units of all dissenting Unitholders.
- (t) A court may in its discretion appoint one or more appraisers to assist the court to fix a fair value for the Units of the dissenting Unitholders.
- (u) The final order of a court in the proceedings commenced by an application under subsection (n) and (o) shall be rendered against the Trust in favour of each dissenting Unitholder and for the amount of the Units as fixed by the court.
- (v) A court may in its discretion allow a reasonable rate of interest on the amount payable to each dissenting Unitholder from the date the action approved by the resolution is effective until the date of payment.
- (w) If subsection (y) applies, the Trust shall, within ten days after the pronouncement of an order under subsection (u), notify each dissenting Unitholder that it is unable lawfully to pay dissenting Unitholders for their Units.
- (x) If subsection (y) applies, a dissenting Unitholder, by written notice delivered to the Trust within thirty days after receiving a notice under subsection (w), may
 - (i) withdraw their notice of dissent, in which case the Trust is deemed to consent to the withdrawal and the Unitholder is reinstated to their full rights as a Unitholder; or
 - (ii) retain a status as a claimant against the Trust, to be paid as soon as the Trust is lawfully able to do so or, in a liquidation, to be ranked subordinate to the rights of creditors of the Trust but in priority to its Unitholders.
- (y) The Trust shall not make a payment to a dissenting Unitholder under this section if there are reasonable grounds for believing that
 - (i) the Trust is or would after the payment be unable to pay its liabilities as they become due; or
 - (ii) the realizable value of the Trust's assets would thereby be less than the aggregate of its liabilities.
- (z) The provisions of Section 9.04 shall apply mutatis mutandis to any payment to a Unitholder under this Section 15.01.

(aa) In the event that the Trust is required to dispose of property in order to fund a payment to a Unitholder under this Section 15.01, the Trustees in their sole discretion shall be entitled to treat all or any portion of (i) any capital gain realized by the Trust as a consequence of such disposition and (ii) the amount of accrued income in respect of such property (other than capital gains described in (i)) as an amount to be allocated to such Unitholder in the year of payment out of the net income of the Trust.

Section 15.02 Oppression Remedy.

(a) Any registered holder or beneficial owner of Units or former registered holder or beneficial owner of Units or any securityholder, Trustee or officer or any other person who in the discretion of the court is a proper person to make an application (each, a "**Complainant**") may apply to a court under the provisions of this Section 15.02.

(b) If, on application, the court is satisfied that, in respect of the Trust:

- (i) any act or omission of the Trust effects a result;
- (ii) the business or affairs of the Trust or any Subsidiary are or have been carried on or conducted in a manner; or
- (iii) the powers of the Trustees are or have been exercised in a manner

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

(c) In connection with an application by a Complainant under Section 15.02(a) and without limiting subsection (b), a court may make any interim or final order it thinks fit including, without limiting the generality of the foregoing,

- (i) an order restraining the conduct complained of;
- (ii) an order appointing a receiver or receiver-manager;
- (iii) an order to regulate the Trust's affairs or those of a Subsidiary by amending this Declaration of Trust or the articles or by-laws of a Subsidiary;
- (iv) an order directing an issue or exchange of securities;
- (v) an order appointing Trustees or directors of a Subsidiary in place of or in addition to all or any of the Trustees or directors then in office;
- (vi) an order directing the Trust or any other person to purchase securities of a holder of securities;

- (vii) an order directing the Trust or any other person to pay a securityholder any part of the monies that the securityholder paid for securities;
- (viii) an order varying or setting aside a transaction or contract to which the Trust or a Subsidiary is a party and compensating the Trust or a Subsidiary or any other party to the transaction or contract;
- (ix) an order requiring the Trust or a Subsidiary, within a time specified by the court, to produce to the court or an interested person financial statements or an accounting in such form as the court may determine;
- (x) an order compensating an aggrieved person;
- (xi) an order directing rectification of the registers or other records of the Trust or a Subsidiary;
- (xii) an order directing an investigation to be made; and
- (xiii) an order requiring the trial of any issue;

provided that the court shall not make any order under this Section 15.02 that would, if such order were an action of the Trust, not be permitted under Section 4.01(b).

(d) If an order made under this section directs an amendment of this Declaration of Trust or to the constating documents of a Subsidiary, then:

- (i) the Trustees shall request the Trust, such Subsidiary and all directors, Trustees, officers and other persons responsible for management to take all steps necessary to carry out that direction; and
- (ii) no other amendment to this Declaration of Trust or such constating documents shall be made without the consent of the court, until a court otherwise orders.

(e) A Unitholder is not entitled to dissent under this Declaration of Trust or other applicable law if an amendment to the Declaration of Trust or such constating documents is effected under this section.

(f) A Complainant may apply in the alternative for an order to wind up the Trust or liquidate and dissolve a Subsidiary and a court may so order if the court is satisfied that it is just and equitable that such winding up, liquidation or dissolution occur.

**ARTICLE XVI
GENERAL**

Section 16.01 Execution of Instruments.

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

Section 16.02 Manner of Giving Notice.

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

Section 16.03 Failure to Give Notice.

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

Section 16.04 Trust Auditors.

The auditors of the Trust shall be appointed at each annual meeting. If at any time a vacancy occurs in the position of auditors of the Trust, the Trustees may appoint a firm of chartered accountants qualified to practice in all provinces of Canada to act as the auditors of the Trust until the next annual meeting of Unitholders and Special Voting Unitholders. The auditors of the Trust shall report to the Trustees, the Unitholders and the Special Voting Unitholders on the annual financial statements of the Trust and shall fulfil such other responsibilities as they may properly be called upon by the Trustees to assume. The auditors shall have access to all records relating to the affairs of the Trust. The remuneration of auditors shall be fixed by the Trustees.

Section 16.05 Fiscal Year.

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

Section 16.06 Reports to Unitholders and Special Voting Unitholders.

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

Section 16.07 Trust Property to be Kept Separate.

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

Section 16.08 Trustees May Hold Units and Special Voting Units.

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

Section 16.09 Trust Records.

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

Section 16.10 Right to Inspect Documents and Records of the Trust.

(a) A Unitholder, Special Voting Unitholder and any agent, consultant or creditor of the Trust shall have the right to examine the Declaration of Trust, the Trustees' Regulations, the minutes of meetings and resolutions of Unitholders and Special Voting Unitholders, the Register and any other documents or records which the Trustees determine should be available for inspection by such persons, during normal business hours at the principal office of the Trust. Unitholders, Special Voting Unitholders and creditors of the Trust shall have the right to obtain or make or cause to be made a list of all or any of the registered holders of

Units and Special Voting Units, to the same extent and upon the same conditions as those which apply to shareholders and creditors of a corporation governed by the *Canada Business Corporations Act*, as amended from time to time.

(b) Any person described in subsection (a) who wishes to examine the securities Register of the Trust must first make a request to the Trust or its agent or mandatary, accompanied by an affidavit referred to in Section 16.12. On receipt of the affidavit, the Trust or its agent or mandatary shall allow the applicant access to the securities Register during the normal business hours, and, on payment of a reasonable fee, provide the applicant with an extract from the securities Register.

Section 16.11 Information Available to Unitholders, Special Voting Unitholders and other Securityholders.

(a) Unitholders, Special Voting Unitholders, other securityholders of the Trust and creditors and their respective personal representatives, or any other person, on payment of a reasonable fee therefor and on sending the Trust or its agent or mandatary an affidavit referred to in Section 16.12 may on application require the Trust or its agent or mandatary to provide, where available, within 10 days after receipt of the affidavit a list (in this section referred to as the "basic list") made up to a date not more than 10 days before the receipt of the affidavit setting out the names of the Unitholders, the Special Voting Unitholders, the number of Units and/or Special Voting Units held by each Unitholder and Special Voting Unitholder and the address of each Unitholder and Special Voting Unitholder as shown in the records of the Trust.

(b) A person requiring the Trust to provide a basic list may, by stating in the affidavit referred to in subsection (a) that they require supplemental lists, require the Trust or its agent or mandatary on payment of a reasonable fee to provide supplemental lists, where available, setting out any changes from the basic list in the names or addresses of the Unitholders and Special Voting Unitholders and the number of Units or Special Voting Units owned by each Unitholder and Special Voting Unitholder for each business day following the date the basic list is made up to.

(c) The Trust or its agent or mandatary shall provide a supplemental list, where available, required under subsection (b):

- (i) on the date the basic list is furnished, where the information relates to changes that took place prior to that date; and
- (ii) on the business day following the day to which the supplemental list relates, where the information relates to changes that take place on or after the date the basic list is furnished.

(d) A person requiring the Trust to furnish a basic list or a supplemental list may also require the Trust to include in that list the name and address of any known holder of an option or right to acquire Units or Special Voting Units, where available.

Section 16.12 Affidavits.

- (a) An affidavit required under Section 16.10 or Section 16.11 shall state:
 - (i) the name and address of the applicant;
 - (ii) the name and address for service of the body corporate, if the applicant is a body corporate; and
 - (iii) that the information contained in the securities Register obtained pursuant to Section 16.10 or the basic list and any supplemental lists obtained pursuant to Section 16.11, as the case may be, will not be used except as permitted under Section 16.13.

Section 16.13 Use of Information.

A list of Unitholders or information from the securities Register obtained under Section 16.10 or Section 16.11 shall not be used by any person except in connection with

- (i) an effort to influence the voting of Unitholders or Special Voting Unitholders of the Trust;
- (ii) an offer to acquire securities of the Trust; or
- (iii) any other matter relating to the affairs of the Trust.

Section 16.14 Consolidations.

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

Section 16.15 Counterparts.

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

Section 16.16 Severability.

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

Section 16.17 Headings for Reference Only.

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

Section 16.18 Governing Law.

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

Section 16.19 Transition.

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

[INTENTIONALLY LEFT BLANK – SIGNATURE PAGE FOLLOWS]

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

WITNESS:

)
) (signed) “Jennifer Chasson” (l.s.)
) Jennifer Chasson
)
)
) (signed) “Mark Cowie” (l.s.)
) Mark Cowie
)
)
) (signed) “Stephen Gross” (l.s.)
) Stephen Gross
)
)
) (signed) “Brenna Haysom” (l.s.)
) Brenna Haysom
)
)
) (signed) “Thomas J. Hofstedter” (l.s.)
) Thomas J. Hofstedter
)
)
) (signed) “Ashi Mathur” (l.s.)
) Ashi Mathur
)
)
) (signed) “Juli Morrow” (l.s.)
) Juli Morrow
)
)
) (signed) “Marvin Rubner” (l.s.)
) Marvin Rubner
)
)
) (signed) “Ronald C. Rutman” (l.s.)
) Ronald C. Rutman