

GVEST REAL ESTATE TRUST

AMENDED AND RESTATED DECLARATION OF TRUST

MADE AS OF DECEMBER 31, 2015,
AS AMENDED AND RESTATED TO ~~SEPTEMBER 17~~ JUNE 20, 2020 2024

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GVEST REAL ESTATE TRUST

THIS DECLARATION OF TRUST is made as of the 31st day of December, 2015 as amended and restated to the ~~17th~~20th day of ~~September~~June, ~~2020~~2024.

WHEREAS it is desirable to settle a trust for the principal purpose of providing persons who may become holders of Units with an opportunity to participate directly or indirectly in the ownership of income-producing Real Property investments and related assets consistent with the Trust's Primary Activities;

AND WHEREAS the settlor, as Initial Unitholder, desires to settle the Trust with the Initial Contribution which the Trustees agree to hold in trust, in exchange for the Initial Unit;

NOW THEREFORE the undersigned Trustees, being all of the Trustees, hereby confirm and declare that they agree with the Initial Unitholder, and those who may be Unitholders from time to time, to hold in trust, as trustees, any and all property, real, personal or otherwise, tangible or intangible, which has been or is hereafter transferred, conveyed or paid to or otherwise received by the Trustees or to which the Trust is otherwise entitled, and all rents, income, profits and gains therefrom in trust for the use and benefit of the Unitholders in accordance with and subject to the express provisions of this Declaration of Trust.

ARTICLE 1 INTERPRETATION

1.1 Definitions

In this Declaration of Trust, including the recitals hereto, unless the context otherwise requires, the following terms shall have the meanings set forth below:

"**ABCA**" means the Business Corporations Act (Alberta);

"**Acquired Issuer**" has the meaning set out in Section 4.1(2)(c);

"**Acquisition Agreement**" means the agreement dated January 1, 2016 between GIT and the Trust, pursuant to which the Trust is to acquire the ARGL Interests from GIT;

"**AdminCo**" means GCAL and any successor, as administrator hereunder and under the Administration and Advisory Agreement;

"**Administration and Advisory Agreement**" means the agreement between the Trust and GCAL providing for certain administrative, support and advisory services to the Trust, from time to time, as such agreement may be amended, restated or supplemented;

"**Affiliate**" means, with respect to any Person, a Person who is an "affiliate" of that first mentioned Person as that term is defined in NI 45-106;

"**Annuitant**" means the annuitant or beneficiary of a Registered Plan, or of any plan of which a Unitholder acts as trustee or a carrier;

"**ARGL Interests**" means 12,339,025 units of AR GL Limited Partnership, 12,339,025 common shares of AR GL General Partner Ltd. and the interest of GGL in the option conversion agreement dated July 23, 2015, inter alia, with Artis Real Estate Investment Trust;

"**Associate**" means, with respect to any Person, a Person who is an "**associate**" of that first mentioned Person as that term is defined in the Securities Act;

"**Auditors**" means the firm of chartered accountants appointed as the auditors of the Trust, if any, from time to time in accordance with Section 16.4 and, initially, means Deloitte & Touche LLP;

"**Basic Basis**" means, at any time, the number of Units outstanding at such time, excluding Units issuable upon the surrender or exchange of Trust Exchangeable Securities;

"**Board**" or "**Board of Trustees**" means the board of trustees of the Trust as elected in accordance with Article 7;

"**Business Day**" means any day on which Canadian chartered banks are open for business in Calgary, Alberta, and Toronto, Ontario, other than a Saturday, a Sunday or statutory holiday;

"**Chairman**", "**Vice Chairman**", "**President**", "**Chief Executive Officer**", "**Chief Financial Officer**", "**Chief Operating Officer**", "**Executive Vice President**", "**Senior Vice President**", "**Vice President**" "**Treasurer**" and "**Secretary**" mean the Person(s) holding the respective offices from time to time if so elected, appointed, employed or engaged, directly or indirectly, by the Trustees;

"**Closing**" means the closing of the transaction contemplated by the Acquisition Agreement;

"**Closing Date**" means the date on which the Closing occurs;

"**Common Unit Cash Flow**" means for, or in respect of, any Distribution Period, an amount equal to the sum of:

- (a) all amounts which are received by the Trust for, or in respect of, the Distribution Period, including, without limitation, interest, dividends, distributions, proceeds from the disposition of securities, returns of capital and repayments of indebtedness;
- (b) the proceeds of any issuance of Units or any other securities of the Trust, net of the expenses of distribution, and, if applicable, the use of proceeds of any such issuance for the intended purpose; and
- (c) all amounts received by the Trust in any prior Distribution Period to the extent not previously distributed,

less the sum of:

- (d) all costs and expenses of the Trust which, in the opinion of the Trustees, may reasonably be considered to have accrued and become owing in respect of, or which relate to, such Distribution Period or a prior Distribution Period if not accrued or deducted in determining the Common Unit Cash Flow in such prior period;

- (e) all amounts which relate to the redemption of Units, including any portion of income of the Trust paid to the redeeming Unitholder, and which have become payable in cash by the Trust in such Distribution Period;
- (f) all debt repayments and interest costs and expenses, if any, incurred by the Trust between distributions;
- (g) all costs and expenses of the Trust relating to Capital Expenditures which, in the opinion of the Trustees, may reasonably be considered to have accrued and become owing during such Distribution Period or a prior Distribution Period if not accrued or deducted in such prior period;
- (h) all amounts contributed or loaned, or which the Trustees reasonably expect to contribute or loan, to an associate or affiliate of the Trust; and
- (i) any other amounts (including taxes) required by law or hereunder to be deducted, withheld or paid by or in respect of the Trust in such Distribution Period;

"**Consolidation**" means a Consolidation, combination or reduction (other than by way of purchase) in the number of outstanding Units into a lesser number of Units;

"**Control**" or "**Controlled**" has the meaning given to it in NI 45-106;

"**Declaration of Trust**" means this declaration of trust, as it may be amended, supplemented or restated from time to time;

"**Dissenting Offeree**" means, where a Take-over Bid is made for all of the Units other than those held by the Offeror (and its Affiliates and Associates), a holder of Units who does not accept the Take-over Bid and includes a subsequent holder of those Units that are the subject of the Take-over Bid;

"**Distribution Payment Date**" means, in respect of a Distribution Period, a Business Day on or about the ninetieth (90th) day following the Distribution Period or such date as may be determined from time to time by the Trustees;

"**Distribution Period**" means each calendar quarter from and including the first day thereof to and including the last day thereof whether or not such day is a Business Day;

"**Distribution Record Date**" means, in respect of a Distribution Period, such date as may be determined from time to time by the Trustees, except that December 31 shall in all cases be a Distribution Record Date;

"**Distribution Reinvestment Plan**" means any distribution reinvestment plan adopted by the Trust for Unitholders on or following the Closing Date;

"**Fair Value**" means;

- (a) with respect to Common Units, an amount per outstanding Common Unit as most recently determined by resolution of the Trustees, in their discretion, based upon various real estate valuation methodologies, including but not limited to one or a combination of, book value, discounted cash flow, income yield or comparable transaction methodologies, as may be considered appropriate by the Trustees in their sole discretion, which determination will be made by the Trustees no less than quarterly (failing which the most recent determination so made will apply), less the value of any distributions declared in cash or in kind since the prior determination, less an amount attributable to any Preferred Unit, and subject further to increases or decreases reflecting changes affecting Common Unit value not therein reflected in the aforesaid determination, as considered necessary or desirable by the Trustees in their discretion; and
- (b) with respect to Preferred Units, "Unit Value" as defined in the relevant Preferred Unit Terms;

"**First Preferred Units**" means the units of the Trust so described, referred to in subsection 3.1(a)(ii) and authorized, created and issued hereunder;

"**Fully-Diluted Basis**" means, for the purposes of Section 3.14, at any time, the number of (i) Units outstanding at such time and (ii) Units issuable upon the surrender or exchange of Trust Exchangeable Securities or Preferred Units convertible to Common Units at such time;

"**GAAP**" means generally accepted accounting principles in Canada, including IFRS, as applicable, determined with reference to The Handbook of the Canadian Institute of Chartered Accountants, as amended from time to time;

"**GCAL**" means Gracorp Capital Advisors Ltd., a corporation existing under the laws of the Province of Alberta;

"**GGL**" means Graham Group Ltd., a corporation existing under the laws of the Province of Alberta;

"**GIT**" means Graham Income Trust, a trust formed under the laws of the Province of Alberta;

"**GRET**" or "**Trust**" means the trust constituted hereunder but, for greater certainty, unless otherwise expressly provided, does not include any Subsidiaries or Affiliates thereof;

"**GRET Notes**" means notes of the Trust issued pursuant to a Note Indenture;

"**Gross Book Value**" means at any time the total assets of the GRET as shown in its then most recent consolidated balance sheet;

"**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;

"**Indebtedness**" has the meaning set out in Section 4.3;

"**Independent Trustee**" means, at any time, a Trustee who, in relation to the Trust from and after the Closing Date, is "independent" for purposes of National Instrument 58-101 - *Disclosure of Corporate Governance Practices*;

"**Initial Contribution**" means the amount of \$25 paid by the Initial Unitholder for one Unit for the purpose of settling the Trust;

"**Initial Unitholder**" means Daryl S. Fridhandler, an individual residing in the City of Calgary, in the Province of Alberta;

"**Joint Venturers**" has the meaning set out in Section 4.1(2)(e);

"**Joint Venture Entity**" has the meaning set out in Section 4.1(2)(e);

"**LP**" or "**Limited Partnership**" means any limited partnership that may be a direct or indirect Subsidiary of the Trust, from time to time;

"**LP Agreement**" means the limited partnership agreement for any limited partnership that may be a direct or indirect Subsidiary of the Trust, from time to time;

"**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;

"**Multilateral Instrument 61-101**" means Multilateral Instrument 61-101 — *Take-over Bids and Special Transactions*;

"**Net Realized Capital Gains**" has the meaning set out in Section 5.1;

"**NI 45-106**" means National Instrument 45-106 - *Prospectus and Registration Exemptions*;

"**NI 52-110**" means *National Instrument 52-110 - Audit Committees*;

"**Non-Resident**" means any Person that is not a Resident Canadian;

"**Note Indenture**" means an agreement entered into between the entity issuing the Notes and another Person, pursuant to which Notes may be issued from time to time;

"**Notes**" means the promissory notes, bonds, debentures, debt securities or similar evidence of indebtedness issued by a Person, any of which may be created to be convertible into Units;

"**Offeree**" means a Person to whom a Take-over Bid is made;

"**Offeror**" means a Person who makes a Take-over Bid, and includes two or more Persons who, directly or indirectly, (i) make Take-over Bids jointly or in concert, or (ii) intend to exercise jointly or in concert voting rights attached to securities for which a Take-over Bid is made;

"Ordinary Resolution" means a resolution proposed to be passed as an ordinary resolution at a meeting of Unitholders (including an adjourned meeting) duly convened for that purpose and held in accordance with the provisions hereof at which a quorum is present, which resolution is passed by the affirmative votes of a majority of the Units represented at the meeting in person or by proxy and voted upon such resolution;

"Person" includes an individual, body corporate, partnership, limited partnership, joint venture, trust or unincorporated organization, the Crown or any agency or instrumentality thereof, or any other entity recognized by law;

"Preferred Unitholders" mean the holders of Preferred Units, from time to time;

"Preferred Units" means the First Preferred Units and Second Preferred Units issued hereunder;

"Preferred Unit Terms" means the designation, rights, privileges, restrictions and conditions attaching to each series of the Preferred Units, as may be as established and/or amended by resolution of the Trustees, from time to time;

"Primary Activities" has the meaning set out in Section 4.1(1)(a);

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

"Redemption Date" means the date of delivery of the requisite notice in accordance with Section 6.2;

"Redemption Price" means "Private Redemption Price" or "Public Redemption Price", as the case may be, referenced in Section 6.3 and 6.4, respectively;

"Register" has the meaning set out in Section 3.19;

"Registered Plan" means, collectively, trusts governed by registered retirement savings plans, registered retirement income funds, registered disability savings plans, deferred profit sharing plans, tax-free savings accounts and registered education savings plans;

"Registrar" has the meaning set out in Section 3.19;

"Related Party" means, with respect to any person, a person who is a "related party" as that term is defined in Multilateral Instrument 61-101;

"Resident Canadian" means an individual (including a trust) or corporation who is a resident of Canada for purposes of the Tax Act, or a partnership that is a "Canadian partnership" for purposes of the Tax Act;

"Second Preferred Units" means the units of the Trust so described, referred to in subsection 3.1(a)(ii) and authorized, created and issued hereunder;

"**Securities Act**" means the *Securities Act* (Alberta);

"**Special Resolution**" means a resolution proposed to be passed as a special resolution at a meeting of Unitholders (including an adjourned meeting) duly convened for that purpose and held in accordance with the provisions hereof at which a quorum is present, which resolution is passed by the affirmative votes of the holders of at least two-thirds of the Units represented at the meeting in person or by proxy and voted upon such resolution;

"**Subdivision**" means a subdivision, split or redivision in the number of outstanding Units into a greater number of Units;

"**Subsidiary**" means, with respect to any Person, a Person who is a "**subsidiary**" of that first mentioned Person as that term is defined in NI 45-106;

"**Take-over Bid**" has the meaning given to such term in the Securities Act;

"**Tax Act**" means the Income Tax Act (Canada) and the regulations thereunder;

"**Transfer Agent**" has the meaning set out in Section 3.19;

"**Trust Exchangeable Securities**" has the meaning set out in Section 3.5(1);

"**Trust Income**" has the meaning set out in Section 5.1;

"**Trust Liability**" has the meaning set out in Section 15.4;

"**Trust Property**" means, at any particular time, any and all assets of the Trust, including all proceeds therefrom;

"**Trustees**" means, as of any particular time, all of the trustees holding office under and in accordance with this Declaration of Trust, in their capacity as trustees hereunder, and "**Trustee**" means any of them;

"**Trustees' Regulations**" means the regulations adopted by the Board of Trustees pursuant to 8.3 or Section 13.11 from time to time;

"**Unit**" means, collectively, the Common Units and the Preferred Units; and

"**Unitholder**" or "**Holder**" means a Person whose name appears on the Register as a holder of one or more Units, or a fraction thereof.

1.2 Construction

In this Declaration of Trust, unless otherwise expressly stated or the context otherwise requires:

- (1) references to "**herein**", "**hereby**", "**hereunder**", "**hereof**" and similar expressions are references to this Declaration of Trust and not to any particular Article or Section of this Declaration of Trust;
- (2) references to an "**Article**" or "**Section**" are references to an Article or Section of this Declaration of Trust;

- (3) words importing the singular shall include the plural and vice versa, and words importing gender shall include the masculine, feminine and neuter genders;
- (4) the use of headings is for convenience of reference only and shall not affect the construction or interpretation hereof;
- (5) the words "**includes**" and "**including**", when following any general term or statement, are not to be construed as limiting the general term or statement to the specific items or matters set forth or to similar items or matters, but rather as referring to all other items or matters that could reasonably fall within the broadest possible scope of the general term or statement;
- (6) references to any Person include such Person's successors and assigns (to the extent such assigns are permitted by the terms of any applicable agreement);
- (7) unless the context otherwise requires, any reference to a statute, regulation, policy, rule or instrument shall include, and shall be deemed to be a reference also to, all amendments made to such statute, regulation, policy, rule or instrument and to any statute, regulation, policy, rule or instrument that may be passed which has the effect of supplementing or superseding the statute, regulation, policy, rule or instrument so referred to;
- (8) any reference to this Declaration of Trust or any other agreement, document or instrument shall be construed as a reference to this Declaration of Trust or, as the case may be, such other agreement, document or instrument as the same may have been, or may from time to time be, amended, varied, replaced, amended and restated or supplemented;
- (9) for greater certainty, where any reference is made in this Declaration of Trust to an act to be performed or which may not be performed by the Trust, such reference shall be construed and applied for all purposes as if it referred to an act to be performed or which may not be performed by the Trustees on behalf of the Trust or by some other Person duly authorized to do so by the Trustees or pursuant to the provisions hereof, and where reference is made in this Declaration of Trust to actions, rights or obligations, of the Trustees, such reference shall be construed and applied for all purposes to refer to actions, rights or obligations of the Trustees in their capacity as Trustees, and not in their other capacities;
- (10) in the event that any day on which any amount is to be determined or any action is required to be taken hereunder is not a Business Day, then such amount shall be determined or such action shall be required to be taken at or before the requisite time on the next succeeding day that is a Business Day; and
- (11) unless otherwise specified, all references to "\$" or "dollars" are to lawful currency of Canada.

1.3 Accounting Principles

All accounting terms not specifically defined in this Declaration of Trust shall be interpreted in accordance with GAAP. Where the character or amount of any asset or liability or item of revenue or expense is required to be determined, or any Consolidation or other accounting computation is required to be made, for the purposes of this Declaration of Trust, such determination, Consolidation or computation shall, unless the Trustees otherwise determine or the context otherwise requires, be made in accordance with GAAP, and all financial data prepared pursuant to this Declaration of Trust shall be prepared in accordance with such principles, consistently applied.

1.4 Tax Act

Any reference herein to a particular provision of the Tax Act shall include a reference to that provision as it may be replaced, renumbered or amended from time to time. Where there are proposals for amendments to the Tax Act which have not been enacted into law or proclaimed into force on or before the date on which such proposals are to become effective, the Trustees may take such proposals into consideration and apply the provisions hereof as if such proposals had been enacted into law and proclaimed into force.

ARTICLE 2 THE TRUST

2.1 Establishment of Trust

The Trustees hereby agree to hold and administer the property, real, personal or otherwise, tangible or intangible, which has been or is hereafter transferred, conveyed or paid to or otherwise received by the Trust or to which the Trust is otherwise entitled, including the Initial Contribution, and all rents, income, profits and gains therefrom in trust for the use and benefit of the Unitholders, their successors, permitted assigns and personal representatives upon the trusts and subject to the terms and conditions hereinafter declared and set forth, such trust to constitute the Trust hereunder.

2.2 Initial Contribution

The Trustees hereby acknowledge and confirm that the Initial Unitholder has made the Initial Contribution to the Trustees for the purpose of establishing the Trust.

2.3 Name of the Trust

- (1) The name of the Trust is "GVest Real Estate Trust". 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. For greater certainty, where any reference is made in this Declaration of Trust, or any other instrument to which the Trust or the Trustees, as trustees of the Trust, are a party, to an act to be performed by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against, or a covenant, representation or warranty by or with respect to (i) the Trust; or (ii) the Trustees, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding taken by or against, or a covenant, representation or warranty by or with respect to the Trustees as trustees of the Trust.

2.4 Use of Name

Should the Trustees determine that the use of the name "GVest Real Estate Trust" in its English form 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.

2.5 Head Office

The principal, registered and head office and centre of administration of the Trust shall be located at 10840 – 27th Street S.W., Calgary, Alberta, T2Z 3R6, or at such other address in Canada as

may be determined by the Trustees in their discretion. The Trust may have such other offices or places for the conduct of its affairs as the Trustees or management of the Trust or any of its Subsidiaries may from time to time determine to be necessary or desirable.

2.6 Nature of the Trust

- (1) The Trust is a limited purpose unincorporated open-end investment trust. The Trust, its Trustees and the Trust 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 trusts or 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 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 company and the Trustees or the Unitholders or any of them or any officers or other employees of the Trust or any one of them for any purpose shall not be, or be deemed to be, treated in any way whatsoever to be, liable or responsible hereunder as partners or Joint Venturers. Neither the Trustees nor any officer or other employee of the Trust shall be, or be deemed to be, agents of the Unitholders or of any person holding a beneficial interest in a Unit.

- (2) The relationship of the Unitholders to the Trustees, to the Trust and to the Trust Property shall be solely that of beneficiaries of the Trust, and their rights shall be limited to those expressly conferred upon them by this Declaration of Trust.

2.7 Legal Ownership of Trust Property

The legal ownership of the Trust Property and the right to conduct the affairs of the Trust are vested exclusively in the Trustees. Except as specifically provided herein, no Unitholder(s) shall be entitled to interfere with or give any direction to the Trustees with respect to the affairs of the Trust or in connection with the exercise of any powers or authorities conferred upon the Trustees under this Declaration of Trust. No Unitholder has or shall be deemed to have any right of ownership in any of the Trust Property. The Unitholders shall have no right to compel any partition, division or distribution of the Trust or any of the Trust Property or of any particular monies or funds received by the Trustees. The Units shall be personal property and shall confer upon the holders thereof only the interest and rights, and impose upon the holders thereof only those liabilities and obligations, specifically set forth in this Declaration of Trust.

ARTICLE 3 UNITS

3.1 Nature of Units

- (a) The beneficial interests in the Trust shall be divided into interests of one or more classes, described and designated as:
 - (i) "**Common Units**" which shall be entitled to the rights and subject to the limitations, restrictions and conditions set out in Schedule "A" hereto; and

- (ii) **"Preferred Units"** which may, at any time and from time to time, be issued in one or more series of each class of First Preferred Units or Second Preferred Units subject to the limitations, restrictions and conditions set out in Schedule "A" hereto, each series of each class to consist of such number of Preferred Units as may, before the issue thereof, be determined by resolution of the Trustees, and the Trustees may by resolution fix and/or amend from time to time the designation, rights, privileges, restrictions and conditions attaching to each series of each class of the Preferred Units, provided, however,, the Preferred Units shall not carry the right to more than one (1) vote per Preferred Unit at any meeting of Unitholders and , then only if those voting Preferred Units are issued at a price of no less than the Fair Value or Common Units of the time of issue;

and the interest of each Unitholder shall be determined by the number and type of Units registered in the name of the Unitholder.

- (b) Subject to Section 6.5 and the rights attaching to any Preferred Units, each Common Unit represents an equal undivided beneficial interest in any:
 - (i) distribution from the Trust (whether of Common Unit Income, Common Unit Net Realized Capital Gains or other amounts); and
 - (ii) net assets of the Trust in the event of termination or winding-up of the Trust.
- (c) All Common Units shall rank among themselves equally and rateably without discrimination, preference or priority, whatever may be the actual date or terms of issue thereof and shall in all cases be subject to the rights attaching to the Preferred Units. Each Common Unit shall entitle the holder of record thereof to one vote at all meetings of Unitholders or in respect of any written resolution of Unitholders.
- (d) Notwithstanding anything otherwise herein contained, the rights of Common Unitholders is specifically subject to the rights of any Preferred Unitholders as set out in any Preferred Unit Terms. Without limiting the generality of the foregoing, and anything contained herein that is inconsistent with any Preferred Unit Terms shall be amended pursuant to Section 10.1.

3.2 Authorized Number of Units

The number of Units that the Trust may issue is unlimited. Units shall be issued only as fully paid and non-assessable. Each Unit when issued shall vest indefeasibly in the holder thereof and the interest of each Unitholder shall be determined by the number of Units registered in the name of the Unitholder. The issued and outstanding Units may be subdivided or consolidated from time to time by the Trustees with the approval of the Unitholders by Special Resolution, or as otherwise provided in Section 3.11.

3.3 Ranking of Units

Each Unit shall represent an equal undivided beneficial interest in the Trust, in any distribution from the Trust (whether of Trust Income, Net Realized Capital Gains or other amounts) and, in the event of termination or winding-up of the Trust, in the net assets of the Trust remaining after satisfaction of all liabilities. All Units rank among themselves equally and rateably without discrimination, preference or

priority. Each Unit shall entitle the holder of record thereof to receive notice of, to attend, and to one vote at all meetings of Unitholders or in respect of any written resolution of the Unitholders.

3.4 Allotment and Issue

The Trustees may allot and issue Units at such time or times and in such manner (including pursuant to any plan from time to time in effect relating to reinvestment by the Unitholders of distributions of the Trust in Units, and as consideration for the acquisition of new properties or assets) and to such Person, Persons or class of Persons as the Trustees in their sole discretion shall determine. The price or the value of the consideration for which Units may be issued and the terms and conditions of issuance of the Units shall be determined by the Trustees in their sole discretion.

3.5 Rights, Warrants, Options, Convertible Indebtedness and Other Securities

- (1) The Trust may create and issue rights, warrants, subscription receipts or options or other instruments or securities to subscribe for fully paid Units which rights, warrants, subscription receipts, options, instruments or securities may be exercisable at such subscription price or prices and at such time or times as the Trustees may determine ("**Trust Exchangeable Securities**"). Trust Exchangeable Securities so created may be issued for such consideration or for no consideration, as the Trustees may determine. A Trust Exchangeable Security shall not be a Unit and a holder thereof shall not be a Unitholder unless and until fully paid Units are issued in accordance with the terms of such securities. Upon the approval of any unit option plan, deferred unit incentive plan or other security based compensation arrangement for the Trustees, officers or employees of the Trust, any Subsidiary of the Trust or other Persons, the Trustees or any of its committees may recommend the granting of options, deferred units or other entitlements upon the terms and subject to the conditions set forth in such plan.
- (2) Subject to Section 4.1 and Section 4.2, the Trustees may create and issue indebtedness of the Trust in respect of which interest, premium or principal payable thereon may be paid, at the option of the Trust or the holder, in fully paid Units, or which indebtedness, by its terms, may be convertible into Units at such time and for such prices and on such terms as the Trustees may determine. Any indebtedness so created shall not be a Unit and a holder thereof shall not be a Unitholder unless and until fully paid Units are issued in accordance with the terms of such indebtedness.

3.6 Consideration for Units

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 (including the indebtedness of a Person) or in past services received by the Trust 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. In the event that Units are issued in whole or in part for consideration other than money, the resolution of the Trustees allotting and issuing such Units shall express the fair equivalent in money of the other consideration received.

3.7 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 other securities issued by the Trust or of their agreeing to procure subscriptions therefor, whether absolute or conditional.

3.8 Pre-Emptive Rights

No Person shall be entitled, as a matter of right, to any pre-emptive right to subscribe for or acquire any Unit, except as otherwise agreed to by the Trust pursuant to a binding agreement in writing.

3.9 Fractional Units

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

3.10 Repurchase of Units

The Trust shall be entitled to purchase for cancellation at any time and from time to time the whole or any part of the outstanding Units from any Holder, at a price per Unit and for such forms of consideration as may be determined by the Trustees in compliance with all applicable securities laws, regulations, rules, blanket orders, notices or policies or the rules or policies of any applicable stock exchange.

3.11 Consolidation of Units

- (1) Unless the Trustees determine otherwise, and subject to all necessary regulatory approvals, immediately after any pro rata distribution of additional Units to all Unitholders pursuant to Section 5.6(2), the number of the outstanding Units will automatically be consolidated such that each such holder will hold after the Consolidation the same number of Units as such holder held before the distribution of additional Units. In this case, each Unit certificate representing the number of Units prior to the distribution of additional Units is deemed to represent the same number of Units after the non-cash distribution of additional Units and the Consolidation.
- (2) Notwithstanding Section 3.11(1), where tax is required to be withheld from a Unitholder's share of the distribution contemplated by Section 3.11(1), the Consolidation will result in such Unitholder holding that number of Units equal to (i) the number of Units held by such Unitholder prior to the distribution plus the number of Units received by such Unitholder in connection with the distribution (net of the number of whole and part Units withheld on account of withholding taxes) multiplied by (ii) the fraction obtained by dividing the aggregate number of Units outstanding prior to the distribution by the aggregate number of Units that would be outstanding following the distribution and before the Consolidation if no withholding were required in respect of any part of the distribution payable to any Unitholder. Such Unitholder will be required to surrender the Unit certificates, if any, representing such Unitholder's original Units, in exchange for a Unit certificate representing such Unitholder's post- Consolidation Units.

3.12 Unclaimed Distributions

In the event that the Trustees hold any amounts to be paid to the Unitholders under Article 5 or Article 14 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 be obligated to hold the same only 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 of Alberta (or other similar government official or agency in the province where the Trust has its principal office) whose receipt shall be a fulfilment and discharge of the obligations of the Trustees.

3.13 Transferability

The Units are not transferable without the prior written approval of the Trustees, in their sole discretion, or AdminCo, on their behalf, and subject to compliance with applicable securities laws. Notwithstanding the foregoing, no transfer of Units shall be effective as against the Trustees or shall be in any way binding upon the Trustees until the transfer has been recorded on the Register and no transfer of a Unit shall be recognized unless such transfer is of a whole Unit.

3.14 Non-Resident Ownership Constraint

- (1) At no time may Non-Residents be the beneficial owners of more than 49% of any class of Units on either a Basic Basis or a Fully-Diluted Basis, and the Trust shall inform its Transfer Agent and/or Registrar of this restriction. The Trustees may require a registered holder of Units to provide the Trustees with a declaration as to the jurisdictions in which beneficial owners of the Units registered in such Unitholder's name are resident and as to whether such beneficial owners are Non-Residents. If the Trustees become aware, as a result of such declarations as to beneficial ownership or as a result of any other investigations, that the beneficial owners of more than 49% of the Units on a Basic Basis or a Fully-Diluted Basis are, or may be, Non-Residents or that such a situation is imminent, the Trustees may make a public announcement thereof and shall not accept a subscription for Units from or issue or register a transfer of Units to a Person unless the Person provides a declaration in form and content satisfactory to the Trustees that the Person is not a Non-Resident and does not hold such Units for the benefit of Non-Residents.
- (2) If, notwithstanding the foregoing, the Trustees determine that more than 49% of a class of Units on a Basic Basis or a Fully-Diluted Basis are held by Non-Residents, the Trustees may send, or cause to be sent, a notice to such Non-Resident holders of the Units chosen in inverse order to the order of acquisition or registration or in such other manner as the Trustees may consider equitable and practicable, requiring them to sell their Units or a portion thereof within a specified period of not more than thirty (30) 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 Trustees may on behalf of such Unitholders sell, or cause to be sold, such Units and, in the interim, shall suspend, or cause to be suspended, the voting and distribution rights attached to such Units (other than the right to receive the net proceeds from the sale). Upon such sale, the affected holders shall cease to be holders of the relevant Units and their rights shall be limited to receiving the net proceeds of sale upon surrender of the certificates, if any, representing such Units. The Trust may direct its Transfer Agent and/or Registrar to do any of the foregoing. Notwithstanding the foregoing, the Trustees may determine not to take any of the actions described above if the Trustees have been advised by legal counsel that the failure to take any of such actions would not adversely impact the status of the Trust as a mutual fund trust for purposes of the Tax Act or alternatively, may take such other action or actions as may be necessary to maintain the status of the Trust as a mutual fund trust for purposes of the Tax Act.

- (3) No liability shall accrue to the Trust or the Trustees if the Units of a Non-Resident Unitholder are sold at a loss to such Unitholder. Unless and until the Trustees shall have been required to do so under the terms hereof, the Trustees shall not be bound to take any proceedings or action with respect to this Section 3.14 by virtue of the powers conferred on them hereby. The Trustees shall use reasonable commercial efforts to monitor the ownership of Units by Non-Residents. It is acknowledged that the Trustees cannot definitively monitor the ownership of Units by Non-Residents if the Units are registered in the name of an intermediary. The Trustees shall not be liable for any violation of the Non-Resident ownership restriction which may occur during the term of the Trust.
- (4) The Trustees' Regulations may include provisions to implement the foregoing.

3.15 Certificates

Each Unitholder or its duly authorized agent is entitled to a fully registered certificate bearing an identifying number in respect of the Units held by it, 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 any one of them shall be sufficient delivery to all. No certificate shall be issued to evidence any fractional Units.

3.16 Certificate Fee

The Trustees may establish a reasonable fee to be charged for any certificate issued evidencing the ownership of Units.

3.17 Form of Certificate

The form of certificate representing Units shall be in such form as is from time to time authorized by the Trustees. Signatures of Trustees or officers of the Trust required on Unit certificates may be printed or otherwise mechanically reproduced thereon. If a Unit certificate contains a printed or mechanically reproduced signature of a Person, the Trust may issue the certificate even though the Person has ceased to be a Trustee or an officer of the Trust and such certificate is as valid as if the Person were a Trustee or an officer at the date of its issue.

3.18 Lost Certificates

In the event that any certificate for Units is lost, stolen, destroyed or mutilated, the Trustees or any officer of the Trust may authorize the issuance of a new certificate for the same number of Units in lieu thereof. The Trustees or any officers of the Trust in their discretion, before the issuance of such new certificate, may 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 or any officers of the Trust 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 or any officers of the Trust direct indemnifying the Trustees or any officers of the Trust, the Transfer Agent and Registrar for so doing. The Trustees or any officers of the Trust shall have the power to acquire from an insurer or insurers a blanket lost security bond or bonds in respect of the replacement of lost, stolen, destroyed or mutilated certificates. The Trust shall pay all premiums and other sums of money payable for such purpose out of the Trust Property with such contribution, if any, by those insured as may be determined by the Trustees or any officers of the Trust. If such blanket lost security bond is acquired, the Trustees or any officers of the Trust may authorize and direct (upon such terms and conditions as they may from time to time impose) any Registrar, Transfer Agent, trustee, or

others to whom the indemnity of such bond extends to take such action to replace such lost, stolen, destroyed or mutilated certificates without further action or approval by the Trustees or any officers of the Trust.

3.19 Register

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 the Unitholders, the respective numbers of Units held by them, the certificate numbers of the certificates of such Units, if applicable, and a record of all transfers thereof. The Trustees may appoint one or more Persons to act as transfer agents (each a "**Transfer Agent**") and to act as registrars (each a "**Registrar**") for Units and may provide for the transfer of Units in one or more places within Canada and additional places elsewhere as may be determined to be desirable by the Trustees. In the event of such appointment, such Transfer Agents and Registrars shall keep all necessary registers and other books (which may be kept on a computer or similar device) for recording original issues and registering and transferring the Units. If the Trustees have appointed a Transfer Agent and Registrar, no certificate for Units shall be valid unless countersigned by or on behalf of the Transfer Agent and/or Registrar. Only the Unitholders whose Units are recorded on the Register shall be entitled to vote or to receive distributions or otherwise exercise or enjoy the rights of the Unitholders.

3.20 Entry on Register

Subject to Section 3.14, upon any issue of Units, the name of the subscriber shall be promptly entered on the Register as the owner of the number of Units issued to such subscriber, or if the subscriber is already a Unitholder, the Register shall be amended to include such Unitholder's additional Units.

3.21 Successors in Interest to the Unitholders

Subject to Section 3.14, any Person becoming entitled to any Units as a consequence of the death, bankruptcy or incompetence of any Unitholder or otherwise by operation of law shall be recorded in the Register as the holder of such Units, but until such record is made, the Unitholder of record shall continue to be and shall be deemed to be the holder of such Units for all purposes whether or not the Trust, the Trustees or the Transfer Agent or Registrar shall have actual or other notice of such death, bankruptcy, incompetence or other event and the Persons becoming entitled to such Units shall be bound by every notice or other document in respect of the Units which shall have been duly given to the Persons from whom the Person derives its title to such Units. Once such record is made, the Trustees shall deal with the new holder of such Units as Unitholder from thereon and shall have no liability to any other person purporting to have been entitled to the Units prior to the making of such record.

3.22 Units Held Jointly or in Fiduciary Capacity

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

3.23 Performance of Trusts

None of the Trustees, the officers of the Trust, the Unitholders or any Transfer Agent, Registrar or other agent of the Trust or the Trustees shall have a duty to inquire into any claim that a transfer of a Unit or other security of the Trust was or would be wrongful or that a particular adverse Person is the owner of or has an interest in the Unit or other security or any other adverse claim, or be bound to see to the performance of any trust, express, implied or constructive, or of any charge, pledge or equity to which any of the Units or other securities or any interest therein are or may be subject, or to ascertain or inquire whether any sale or transfer of any such Units or other securities or interest therein by any such Unitholder or holder of such security or its 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 (or Persons, as applicable) recorded as the Unitholder or holder of such security.

3.24 Death of Unitholders

The death of a Unitholder during the continuance of the Trust shall not terminate the Trust or give the personal representatives or the heirs of the estate of the deceased Unitholder a right to an accounting or to take any action in the courts or otherwise against other Unitholders or the Trustees, officers of the Trust or Trust Property, but shall only entitle the personal representatives or the heirs of the estate of the deceased Unitholder, subject to Section 3.21, to succeed to all rights of the deceased Unitholder under this Declaration of Trust.

3.25 Take-over Bids

- (1) If within 120 days after the date of a Take-over Bid, the Take-over Bid is accepted by the holders of not less than 90% of a class of Units (including Units of that class issuable upon the surrender or exchange of Trust Exchangeable Securities), 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 shall be entitled, on complying with this Section 3.25, to acquire the Units of that class held by the Dissenting Offerees.
- (2) An Offeror may acquire Units held by a Dissenting Offeree by sending by registered mail within 60 days after the date of termination of the Take-over Bid and in any event within 180 days after the date of the Take-over Bid, an Offeror's notice to each Dissenting Offeree stating that:
 - (a) the Offerees holding not less than 90% of the Units to which the bid relates accepted the Take-over Bid;
 - (b) the Offeror is bound to take up and pay for, or has taken up and paid for, the Units of the Offerees who accepted the Take-over Bid;
 - (c) a Dissenting Offeree is required to elect:
 - (i) to transfer its Units to the Offeror on the terms on which the Offeror acquired the Units of the Offerees who accepted the takeover bid, or
 - (ii) to demand payment of the fair value of the Units in accordance with Section 3.25(9) to Section 3.25(18) by notifying the Offeror within 20 days after receiving the Offeror's notice;

- (d) a Dissenting Offeree who does not notify the Offeror in accordance with Section 3.25(4) is deemed to have elected to transfer its Units to the Offeror on the same terms that the Offeror acquired the Units from the Offerees who accepted the Take-over Bid; and
 - (e) a Dissenting Offeree must send its Units to which the Take-over Bid relates to the Offeror within 20 days after receiving the Offeror's notice.
- (3) Concurrently with sending the Offeror's notice under Section 3.25(2), the Offeror shall send to the Trust a notice of adverse claim disclosing the name and address of the Offeror and the name of the Dissenting Offeree with respect to each Unit held by a Dissenting Offeree.
- (4) A Dissenting Offeree to whom an Offeror's notice is sent under Section 3.25(2) shall, within 20 days after receiving that notice:
- (a) send the certificate(s) representing the Units to the Trust; and
 - (b) elect:
 - (i) to transfer the Units to the Offeror on the terms on which the Offeror acquired the Units of the Offerees who accepted the takeover bid; or
 - (ii) to demand payment of the fair value of the Units in accordance with Section 3.25(9) to Section 3.25(18).
- (5) A Dissenting Offeree who does not notify the Offeror in accordance with paragraph Section 3.25(4)(b)(ii) is deemed to have elected to transfer the Units to the Offeror on the same terms on which the Offeror acquired the Units from the Offerees who accepted the Take-over Bid.
- (6) Within 20 days after the Offeror sends an Offeror's notice under Section 3.25(2), the Offeror shall pay or transfer to the Trust the amount of money or other consideration that the Offeror would have had to pay or transfer to a Dissenting Offeree if the Dissenting Offeree had elected to accept the Take-over Bid under paragraph Section 3.25(4)(b)(i).
- (7) The Trust is deemed to hold in trust for the Dissenting Offeree the money or other consideration it receives under Section 3.25(6), and the Trust shall deposit the money in a separate account in a Canadian chartered bank and shall place the other consideration in the custody of a Canadian chartered bank or similar institution whose deposits are insured by the Canada Deposit Insurance Corporation.
- (8) Within 30 days after the Offeror sends an Offeror's notice under Section 3.25(2), the Trust shall:
- (a) if the payment or transfer required by Section 3.25(6) is made, transfer to the Offeror the Units that were held by Dissenting Offerees;
 - (b) give to each Dissenting Offeree who elects to accept the Take-over Bid terms under paragraph Section 3.25(4)(b)(i) and who transferred its Units as required under Section 3.25(2), the money or other consideration to which the Offeree is entitled, disregarding fractional Units, if any, which may be paid for in money; and

- (c) if the payment or transfer required by Section 3.25(6) is made and the money or other consideration is deposited as required by Section 3.25(7), send to each Dissenting Offeree who has not sent notice as required under Section 3.25(4) a notice stating that:
 - (i) the Dissenting Offeree's Units have been cancelled,
 - (ii) the Trust or some designated Person holds in trust for the Dissenting Offeree the money or other consideration to which the Dissenting Offeree is entitled as payment for or in exchange for the Units, and
 - (iii) the Trust will, subject to Section 3.25(9) to Section 3.25(18), send that money or other consideration to that Offeree without delay after receiving the Units.
- (9) If a Dissenting Offeree has elected to demand payment of the fair value of its Units under paragraph Section 3.25(4)(b)(ii), the Offeror may, within 20 days after it has paid the money or transferred the other consideration under Section 3.25(6), apply to a court to fix the fair value of the Units of that Dissenting Offeree.
- (10) If an Offeror fails to apply to a court under Section 3.25(9), a Dissenting Offeree may apply to a court for the same purpose within a further period of 20 days.
- (11) Where no application is made to a court under Section 3.25(10) within the period set out in that subsection, a Dissenting Offeree is deemed to have elected to transfer its Units to the Offeror on the same terms that the Offeror acquired the Units from the Offerees who accepted the Take-over Bid.
- (12) An application under Section 3.25(9) or Section 3.25(10) shall be made to a court having jurisdiction in the place where the Trust has its head office.
- (13) A Dissenting Offeree is not required to give security for costs in an application made under Section 3.25(9) or Section 3.25(10).
- (14) On an application under Section 3.25(9) or Section 3.25(10):
 - (a) all Dissenting Offerees referred to in paragraph Section 3.25(4)(b)(ii) whose Units have not been acquired by the Offeror shall be joined as parties and are bound by the decision of the court; and
 - (b) the Offeror shall notify each affected Dissenting Offeree of the date, place and consequences of the application and of its right to appear and be heard in person or by counsel.
- (15) On an application to a court under Section 3.25(9) or Section 3.25(10) the court may determine whether any other Persons 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.
- (16) 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.
- (17) The final order of the court shall be made against the Offeror in favour of each Dissenting Offeree and for the amount for the Units as fixed by the court.

- (18) In connection with proceedings under this Section 3.25, a court may make any order it thinks fit and, without limiting the generality of the foregoing, it may:
- (a) fix the amount of money or other consideration that is required to be held in trust under Section 3.25(7);
 - (b) order that money or other consideration be held in trust by a Person other than the Trust; and
 - (c) allow a reasonable rate of interest on the amount payable to each Dissenting Offeree from the date they send or deliver notice under Section 3.25(4) until the date of payment.

ARTICLE 4
INVESTMENT GUIDELINES AND OPERATING POLICIES OF THE TRUST

4.1 Investment Guidelines

- (1) The Trust Property may be invested, directly or indirectly, only in accordance with the following restrictions:
- (a) the Trust will focus its activities primarily on the acquisition, developing, holding, maintaining, improving, leasing, managing or otherwise dealing with income producing Real Property (directly and indirectly) exclusively in Canada and the United States and assets ancillary thereto necessary for the operation of such real estate and such other activities as are consistent with the other investment guidelines of the Trust (collectively, the "**Primary Activities**");
 - (b) notwithstanding anything else contained in this Declaration of Trust, the Trust shall not make or hold any investment, take any action or omit to take any action or permit a Subsidiary to make or hold any investment or take any action or omit to take any action that would result in:
 - (i) the Trust not qualifying as a "mutual fund trust" or a "unit trust" both within the meaning of the Tax Act; or
 - (ii) Units not qualifying as qualified investments for Registered Plans;
 - (c) the Trust may, directly or indirectly, make such investments, do all such things and carry out all such activities as are necessary or desirable in connection with the conduct of its activities provided they are not otherwise specifically prohibited by this Declaration of Trust;
 - (d) unless otherwise specifically prohibited by this Declaration of Trust, the Trust may invest in freehold, leasehold, or other interests in property (real, personal, moveable or immovable);
 - (e) the Trust may make its investments and conduct its activities, directly or indirectly, through an investment in one or more persons on such terms as the Trustees may from time to time determine, including by way of joint ventures, partnerships (general or limited) and limited liability companies;

- (f) the Trust will not invest directly in operating businesses unless such investment is incidental to a transaction (i) where revenue will be derived, directly or indirectly, principally from Real Property, or (ii) which principally involves the ownership, maintenance, improvement, leasing or management, directly or indirectly, of Real Property (in each case as determined by the Trustees); and
 - (g) the Trust may invest in a joint venture arrangement only if: (i) the Trust has a right of first offer or right of first refusal to buy the interests of the other Joint Venturers; and (ii) the joint venture arrangement provides an appropriate buy-sell mechanism to enable a Joint Venturer to purchase the other Joint Venturers' interests or to sell its interest, provided that, notwithstanding the foregoing, the Trust may from time to time enter into any joint venture arrangement which does not comply with either of the foregoing subparagraphs (i) or (ii) if the Trustees determine that the investment is desirable for the Trust and is otherwise in compliance with the investment restrictions and the operating policies established in accordance with this Declaration of Trust and in effect at such time;
- (2) In the event that the Trust becomes listed on a public stock exchange, then in addition to the restrictions contained in subsection (1) above, the following restrictions shall apply:
- (a) the Trust may not make or hold any investment, take any action or omit to take any action or permit a Subsidiary to make or hold any investment or take any action or omit to take any action that would result in the Trust not qualifying as a "real estate investment trust" within the meaning of the Tax Act if, as a consequence of the Trust not so qualifying, the Trust or any of its Subsidiaries would be liable to pay a tax imposed under either paragraph 122(1)(b) or Subsection 197(2) of the Tax Act, and the Trustees may make such amendments hereto as they consider necessary or advisable to ensure qualification as a "real estate investment trust";
 - (b) the Trust may invest an amount (which, in the case of an amount invested to acquire Real Property, is the purchase price less the amount of any debt incurred or assumed in connection with such investment) up to 10% of Gross Book Value of the Trust in investments which do not comply with one or more of paragraphs 4.1(1)(a) and 4.1(2)(c) of this Section 4.1;
 - (c) except for temporary investments held in cash, deposits with a Canadian chartered bank or trust company registered under the laws of a province or territory of Canada, deposits with a savings institution, trust company, credit union or similar financial institution that is organized or chartered under the laws of a state or of the United States, short-term government debt securities or money market instruments maturing prior to one year from the date of issue and except as permitted pursuant to these investment guidelines and operating policies of the Trust, the Trust may not hold securities of a Person other than to the extent such securities would constitute an investment in Real Property (as determined by the Trustees) and provided further that, notwithstanding anything contained in this Declaration of Trust to the contrary, but in all events subject to paragraph (b) above, the Trust may hold securities of a Person: (i) acquired in connection with the carrying on, directly or indirectly, of the Trust's activities or the holding of its assets; or (ii) which focuses its activities primarily on the activities described in paragraph (a) above, provided in the case of any proposed investment or acquisition which would result in the beneficial ownership of more than 20% of the outstanding securities of an issuer (the "**Acquired Issuer**"), the investment is made for the purpose of subsequently

effecting the merger or combination of the business and assets of the Trust and the Acquired Issuer or for otherwise ensuring that the Trust will Control the business and operations of the Acquired Issuer;

- (d) the Trust will not invest in rights to or interests in mineral or other natural resources, including oil or gas, except as incidental to an investment in Real Property;
- (e) the Trust may directly invest in a joint venture arrangement only if:
 - (i) the arrangement is one pursuant to which the Trust holds an interest in Real Property jointly or in common with others ("**Joint Venturers**") either directly or through the ownership of securities of a corporation or other entity (a "**Joint Venture Entity**") as co-owners and not as partners;
 - (ii) the Trust's interest in the joint venture arrangement is not subject to any restriction on transfer other than a right of first offer or right of first refusal, if any, in favour of the Joint Venturers;
- (f) the Trust shall not acquire interests in general partnerships or limited partnerships provided that the Trust may invest in a general partnership or Limited Partnership if:
 - (i) the general partnership or Limited Partnership is formed and operated solely for the purpose of acquiring, owning, maintaining, improving, developing, leasing or managing a particular Real Property or real properties or an interest therein;
 - (ii) the Trust's interest in the Limited Partnership is not subject to any restriction on transfer other than a right of first offer or right of first refusal, if any, in favour of any other partner or any affiliate thereof;
 - (iii) the Trust has a right of first offer or right of first refusal to buy the interests of the other partners; and
 - (iv) the Trust has received a legal opinion to the effect that the investment (a) would not disqualify the Trust as a "mutual fund trust" or a "real estate investment trust" within the meaning of the Tax Act, and (b) would not result in the Trust losing any status under the Tax Act that is otherwise beneficial to the Trust and its Unitholders;

provided that, notwithstanding the foregoing, the Trust may from time to time enter into any limited partnership arrangement which does not comply with either of Section 4.1(2)(f)(ii) or Section 4.1(2)(f)(iii) if the Trustees determine that the investment is desirable for the Trust and otherwise complies with the investment restrictions and operating policies established in accordance with this Declaration of Trust and in effect at such time;

- (g) subject to Section 4.2(1)(f), the Trust will not invest in raw land for development, except (i) for existing properties with additional development or properties adjacent to existing properties of the Trust for the purpose of the renovation or expansion of existing properties, or (ii) the development of new properties which will be capital property of the Trust, provided that the aggregate value of the investments of the Trust in raw land,

excluding raw land under development, after giving effect to the proposed investment, will not exceed 10% of Gross Book Value;

- (h) the Trust may invest in mortgages and mortgage bonds (including participating or convertible mortgages) and similar instruments where:
 - (i) the Real Property which is security therefor is income producing Real Property which otherwise meets the other investment guidelines of the Trust; and
 - (ii) the aggregate book value of the investments of the Trust in mortgages, after giving effect to the proposed investment, will not exceed 15% of Gross Book Value.
- (3) For the purpose of the foregoing guidelines and restrictions (other than subparagraph (b)), the assets, liabilities and transactions related to a joint venture accounted for using the equity method of accounting would be determined assuming proportionate Consolidation was used.

4.2 Operating Policies

- (1) The operations and affairs of the Trust are to be conducted in accordance with, and the Trust shall not permit any of its Subsidiaries to conduct its operations and affairs other than in accordance with, the following policies:
 - (a) the Trust shall not purchase, sell, market or trade in currency or interest rate futures contracts otherwise than for hedging purposes where, for this purpose, the term "hedging" has the meaning given by National Instrument 81-102 — Mutual Funds adopted by the Canadian Securities Administrators, as replaced or amended from time to time and, in all events, subject to Section 4.1(1)(b);
 - (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 duties to act in the best interest of the Unitholders, any written instrument which is, in the judgment of the Trustees, a material obligation, shall contain a provision, or be subject to an acknowledgement to the effect, that the obligation being created is not personally binding upon, and that resort must not be had to, nor will recourse or satisfaction be sought from, by lawsuit or otherwise the private property of any of the Trustees, Unitholders, annuitants or beneficiaries under a plan of which a Unitholder acts as a trustee or carrier, or officers, employees or agents of the Trust, but that only property of the Trust or a specific portion thereof is bound; the Trust, however, is not required, but must use all reasonable efforts, to comply with this requirement in respect of obligations assumed by the Trust upon the acquisition of Real Property;
 - (c) the Trust will not invest in any interest in a single Real Property if, after giving effect to the proposed investment, the cost to the Trust of such investment (net of the amount of debt incurred or assumed in connection with such investment) will exceed 60% of Gross Book Value at the time the investment is made;
 - (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 60% of Gross Book Value (or 65% of Gross Book Value including convertible Indebtedness);

- (e) the Trust may engage in construction or development of Real Property that is capital property to the Trust to maintain its real properties in good repair or to improve the income producing potential of properties in which the Trust has an interest;
- (f) the Trust may not engage in construction or development of new properties unless such new properties will be capital properties of the Trust on completion and the aggregate value of the investments of the Trust in such properties under development (which shall be inclusive of any investments in raw land as provided under Section 4.1(2)(g)), after giving effect to the proposed investment in the construction or development, shall not exceed 25% of Gross Book Value;
- (g) title to each Real Property shall be held by and registered in the name of the Trust, the Trustees or a Person wholly owned, directly or indirectly, by the Trust or jointly owned, directly or indirectly, by the Trust, with Joint Venturers or by any other Persons in such manner as the Trustees consider appropriate, taking into account advice of legal counsel; provided that, where land tenure will not provide fee simple title, the Trust, the Trustees or a corporation or other entity wholly owned, directly or indirectly, by the Trust or jointly owned, directly or indirectly, by the Trust or such Person as the Trustees consider appropriate shall hold a ground lease as appropriate under the land tenure system in the relevant jurisdiction;
- (h) the Trust shall not directly or indirectly guarantee any Indebtedness or liabilities of any Person unless such guarantee: (i) is given in connection with or incidental to an investment that is otherwise permitted by the Trust's investment guidelines; (ii) has been approved by the Trustees; and (iii) (A) would not disqualify the Trust as a "mutual fund trust" within the meaning of the Tax Act, and (B) would not result in the Trust losing any other status under the Tax Act that is otherwise beneficial to the Trust and its Unitholders;
- (i) the Trust shall directly or indirectly obtain and maintain at all times property insurance coverage in respect of potential liabilities of the Trust and the accidental loss of value of the assets of the Trust from risks, in amounts, with such insurers, and on such terms as the Trustees consider appropriate, taking into account all relevant factors, including the practice of owners of comparable properties;
- (j) the Trust shall have obtained an appraisal of each Real Property that it intends to acquire and an engineering survey with respect to the physical condition thereof, in each case, by an independent and experienced consultant, unless the requirement for such an appraisal or engineering survey is waived by the Independent Trustees; and
- (k) the Trust shall obtain and be entitled to rely on, in each case by an independent and experienced environmental consultant, either (i) a Phase I environmental site assessment or (ii) a Phase I environmental site assessment dated no earlier than 24 months prior to receipt by the Trust, of each Real Property to be acquired by it and, if the Phase I environmental site assessment report recommends that a further environmental investigation be conducted, the Trust shall either: (A) have conducted such further environmental investigation or (B) have a second independent and experienced environmental consultant, who did not participate in the preparation of the Phase I

environmental site assessment further evaluate such Real Property to be acquired using the following specific risk criteria to evaluate any identified significant risk using the following criteria: (w) foreseeable likelihood of material adverse effects due to off-site migration of contaminants; (x) foreseeable likelihood of material adverse effects due to on site human exposure to contaminants; (y) foreseeable likelihood of regulatory intervention; and (z) material detrimental impact on ability to sell, lease or finance the property to assess the potential implications to the Trust of the Phase I environmental site assessment findings; and, if such second consultant recommends that further environmental investigations be conducted, have conducted such further environmental investigations.

- (2) For the purpose of the foregoing policies, the assets, liabilities and transactions related to a joint venture accounted for using the equity method of accounting would be determined assuming proportionate Consolidation was used.

4.3 Calculation of Indebtedness

- (1) The term "**Indebtedness**" as used in this Article 4, where such term is used in reference to any Person, means (without duplication):
 - (a) any obligation of such Person for borrowed money (including, for greater certainty, the full principal amount of convertible debt, notwithstanding its presentation under GAAP);
 - (b) any obligation of such Person incurred in connection with the acquisition of property, assets or businesses;
 - (c) any obligation of such Person issued or assumed as the deferred purchase price of property;
 - (d) any capital lease obligation of such Person; and
 - (e) any obligations of the type referred to in clauses (a) through (d) of another Person, the payment of which such person has guaranteed or for which such Person is responsible or liable;

provided that, (A) for the purpose of clauses (a) through (e) (except in respect of convertible debt, as described above), an obligation will constitute Indebtedness of such Person only to the extent that it would appear as a liability on the consolidated balance sheet of such Person in accordance with GAAP, (B) obligations referred to in clauses (a) through (c) exclude trade accounts payable, distributions payable to Unitholders, accrued liabilities arising in the ordinary course of business which are not overdue or which are being contested in good faith, deferred revenues, intangible liabilities, deferred income taxes, deferred financing costs, tenant deposits and indebtedness with respect to the unpaid balance of installment receipts where such indebtedness has a term not in excess of 12 months.

4.4 Application of Investment Guidelines and Operating Policies

With respect to the guidelines and policies contained in Sections 4.1, 4.2 and 4.3,

- (1) investment in Real Property includes an investment in any joint arrangement that invests in Real Property, and

- (2) where any maximum or minimum percentage limitation is specified in any of the guidelines or policies therein contained, such guidelines or policies shall be applied on the basis of the relevant amounts calculated immediately after the making of such investment or the taking of such action; any subsequent change relative to any percentage limitation which results from a subsequent change in the amount of Gross Book Value, as the case may be, will not require the divestiture of any investment.

4.5 Amendments to Investment Guidelines and Operating Policies

Subject to Section 4.7 and Section 12.1, any of the investment guidelines set forth in Section 4.1(1) and 4.1(2) may be amended only by Special Resolution. Subject to Section 12.1, the operating policies set forth in Section 4.2(1)(a), Section 4.2(1)(d), Section 4.2(1)(h), Section 4.2(1)(j), and Section 4.2(1)(k) may be amended only by Special Resolution. The remaining operating policies may be amended by an Ordinary Resolution.

4.6 Tax Election

The Trustees shall cause the Trust to elect, in its return of income for the first taxation year of the Trust, pursuant to Subsection 132(6.1) of the Tax Act, that the Trust be deemed to be a "mutual fund trust" for the purposes of the Tax Act from the date it was established, provided that prior to filing such return of income the Trust has sufficient unitholders so as to be entitled to make such election and has otherwise complied with the requirements thereof.

4.7 Regulatory Matters

If at any time a government or regulatory authority having jurisdiction over the Trust or any Trust Property shall enact any law, regulation or requirement which is in conflict with any investment guidelines or operating policies of the Trust then in force, the investment guidelines or operating policies causing such 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 the Unitholders.

ARTICLE 5 DISTRIBUTIONS

5.1 Computation of Common Unit Income and Common Unit Net Realized Capital Gains

- (a) The "**Common Unit Income**" for any year shall be the income of the Trust for that year computed in accordance with the provisions of the Tax Act provided, however, that capital gains and capital losses shall be excluded and provided further that:
- (i) the portion of the Trust's income comprised of taxable dividends received from corporations resident in Canada shall be calculated on the basis that the amount included in the Trust's income is the actual amount of the dividend received, which excludes the gross-up adjustment provided in sub-section 82(1)(b) of the Tax Act;
 - (ii) no amount is deductible in respect of amounts paid or payable to Unitholders;
 - (iii) the Trust shall claim the maximum amount of deductions available to it in computing the Common Unit Income for the year, without generating a loss and

after taking into account all losses (other than net capital losses) of the Trust for prior years that may be deducted in computing the Trust's taxable income under the Tax Act for that year; and

- (iv) no amount shall be included in the Common Unit Income for that year if such amount is designated to a redeeming Unitholder pursuant to Section 6.10 or any Preferred Unit Terms.
- (b) The "**Common Unit Net Realized Capital Gains**" for any taxation year of the Trust shall be determined as the amount, if any, calculated after taking into account the provisions provided for in the Preferred Unit Terms and the rights, privileges and restrictions thereunder, by which the aggregate of the capital gains of the Trust, for the year exceeds: (i) the aggregate of the capital losses of the Trust for the year; (ii) any capital gains which are realized by the Trust as a result of a redemption of Trust Units pursuant to Article 6; and (iii) the amount determined by the Trustees in respect of any net capital losses for prior taxation years which the Trust is permitted by the Tax Act to deduct in computing the taxable capital gains of the Trust for the year.

5.2 Distributions of Common Unit Cash Flow

Subject to the rights of Preferred Unitholders under any Preferred Unit Terms, the Trustees shall, on or before each Distribution Record Date, declare payable to the holders of Common Units on such Distribution Record Date all or any part of the Common Unit Cash Flow for the Distribution Period which includes such Distribution Record Date as determined by the Trustees in their sole discretion. The proportionate share for each Common Unit of the amount of such Common Unit Cash Flow (or portion thereof declared payable) shall be determined by dividing such amount by the number of issued and outstanding Common Units on such Distribution Record Date. Each Common Unitholder's share of such Common Unit Cash Flow (or portion thereof declared payable) shall be an amount equal to the proportionate share for each Common Unit of the amount of such Common Unit Cash Flow (or portion thereof declared payable) multiplied by the number of Common Units owned of record by each such holder of Common Units on such Distribution Record Date. Subject to Sections 5.5 and 5.7, Common Unit Cash Flow which has been declared to be payable to holders of Common Units in respect of a Distribution Period shall be paid in Common Units, cash or any combination of Common Units and cash, as determined by the Trustees in their sole discretion, on the Distribution Payment Date in respect of such Distribution Period.

5.3 Other Distributions

- (a) In addition to the distributions which are made payable to holders of Common Units pursuant to Section 5.2, subject to the rights of Preferred Unitholders, the Trustees may declare to be payable and make distributions to holders of Common Units, from time to time, out of:
 - (i) Common Unit Income;
 - (ii) Common Unit Net Realized Capital Gains;
 - (iii) the capital of the Trust; or otherwise,

in any year, in such amount or amounts, and on such dates as the Trustees may determine.

- (b) Having regard to the present intention of the Trustees, subject to the rights of Preferred Unitholders, to allocate, distribute and make payable to holders of Common Units all of the Common Unit Income, Common Unit Net Realized Capital Gains and any other applicable amounts so that the Trust will not have any liability for tax under Part I of the Tax Act in any taxation year, the following amounts shall, subject to the rights of Preferred Unitholders but without any further actions on the part of the Trustees, be due and payable to holders of Common Units of record on December 31 in each such year:
 - (i) an amount equal to the amount, if any, by which the Common Unit Income for such year exceeds the aggregate of the portions, if any, of each distribution made by the Trust pursuant to Section 5.2 and subsection 5.3(a) which have been determined by the Trustees, pursuant to Section 5.4, to have been payable by the Trust out of Common Unit Income for such year; and
 - (ii) an amount equal to the amount, if any, by which the Common Unit Net Realized Capital Gains of the Trust for such year exceeds the aggregate of the portions, if any, of each distribution made by the Trust pursuant to Section 5.2 and subsection 5.3(a) which have been determined by the Trustees, pursuant to Section 5.4, to have been payable by the Trust out of Common Unit Net Realized Capital Gains for such year.
- (c) Subject to the rights of Preferred Unitholders under any Preferred Unit Terms, the proportionate share of each Common Unit of the amount of any distribution made pursuant to either or both of subsections 5.3(a) and (b) shall be determined by dividing such amount by the number of issued and outstanding Common Units on the applicable record date in respect of a distribution pursuant to subsection 5.3(a) and on December 31 in respect of a distribution pursuant to subsection 5.3(b). Each holder of Common Units' share of the amount of any such distribution shall be an amount equal to the proportionate share of each Common Unit of such amount multiplied by the number of Common Units owned of record by each such holder of Common Units on such applicable record date or December 31 in the year of such distribution, as the case may be. Subject to Section 5.6, amounts which are payable to holders of Common Units pursuant to either subsection 5.3(a) or (b) shall be paid in Common Units, cash or a combination of Common Units and cash on the Distribution Payment Date which immediately follows the applicable record date in respect of a distribution pursuant to subsection 5.3(a) or December 31 in the applicable year in respect of a distribution pursuant to subsection 5.3(b).

5.4 Character of Distributions and Designations

In accordance with and to the extent permitted by the Tax Act, the Trustees in each year shall make designations in respect of the amounts payable to holders of Trust Units for such amounts that the Trustees consider to be reasonable in all of the circumstances, including, without limitation, designations relating to taxable dividends received by the Trust in the year on shares of taxable Canadian corporations (or designated in respect of the Trust where the Trust is a beneficiary of another trust), net capital gains realized by the Trust in the year (or designated in respect of the Trust where the Trust is a beneficiary of another trust) and foreign source income of the Trust for the year, as well as elect under Subsections 104(13.1) and/or (13.2) of the Tax Act that income be taxed to the Trust, rather than to such Unitholders.

Distributions payable to holders of Trust Units pursuant to this Article 5 shall be deemed to be distributions of Common Unit Income, Common Unit Net Realized Capital Gains, trust capital or other items in such amounts as the Trustees shall, in their absolute discretion, determine. For greater certainty, it is hereby declared that any distribution of Common Unit Net Realized Capital Gains shall include the non-taxable portion of the capital gains of the Trust which are encompassed in such distribution.

5.5 Enforceability of Right to Receive Distributions

Each Unitholder shall have the legal right to enforce payment of any amount payable to such Unitholder as a result of any distribution which is declared or made payable to such Unitholder pursuant to Sections 5.6 and 5.7 as of the Distribution Record Date.

5.6 Method of Payment of Distributions

- (1) Cash distributions shall be made by cheque payable to or to the order of the holder of Units 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 holder of Units or to its agent duly authorized in writing or upon the mailing of a cheque by prepaid first-class mail addressed to the holder of Units at its address as it appears on the Register unless the cheque is not paid on presentation, or in any other manner determined by the Trustees in their discretion. In the case of joint registered Unitholders, any cash payment required hereunder to be made to a holder of Units shall be deemed to be required to be made to such Unitholders jointly and shall be paid by cheque or by such other manner of payment approved by the Trustees from time to time but may also be paid in such other manner as the joint registered Unitholders or any one of the joint registered Unitholders has designated to the Trustees and the Trustees have accepted. For greater certainty, a holder of Units or any one of the joint Unitholders shall designate that any payment required to be made hereunder shall be made by deposit to an account of such holder of Units or to a joint account of such holder of Units and any other Person or in the case of joint registered Unitholders to an account of joint registered Unitholders or to an account of any one of the joint registered Unitholders. A cheque or bank draft, unless the joint registered Unitholders otherwise direct, shall be made payable to the order of all of the said joint registered Unitholders, and if more than one address appears on the books of the Trust in respect of such joint Unitholders, the cheque or bank draft or payment in other acceptable manner as aforesaid shall satisfy and discharge all liability of the Trustees or the Trust for the amount so required to be paid unless the cheque or bank draft is not paid at par on presentation at any other place where it is by its terms payable. The receipt by the registered holder of Units in another acceptable manner of any payment not mailed or paid in accordance with this Section 5.6(1) shall be a valid and binding discharge to the Trust and to the Trustees for any payment made in respect of the registered Units and if several Persons are registered as joint registered Unitholders or, in consequence of the death, bankruptcy or incapacity of a holder of Units, one or several Persons are entitled so to be registered, subject to Section 3.21, in accordance with this Declaration of Trust, respectively, receipt of payment by any one of them shall be a valid and binding discharge to the Trust and to the Trustees for any such payment. 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. No holder of Units will be entitled to recover by action or other legal process against the Trust any distribution that is represented by a cheque that has not been duly presented to the Trust's banker for payment or that otherwise remains unclaimed for a

period of three years less one Business Day from the date on which such distribution was payable.

- (2) 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 that has been declared payable, or otherwise made payable, pursuant to this Article 5 on the due date for such payment, the payment may, at the option of the Trustees, include or consist entirely of 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 declared to be payable and the amount of cash that has been determined by the Trustees to be available for the payment of such distribution. Such additional Units will be issued pursuant to applicable exemptions under applicable securities laws, discretionary exemptions granted by applicable securities regulatory authorities or a prospectus or similar filing.

5.7 Withholding Taxes

The Trustees shall deduct or withhold from distributions payable to any holder of Units all amounts required by law to be withheld from such distributions, whether such distributions are in the form of cash or otherwise. In the event of a distribution in the form of additional Units, the Trustees may sell Units of such holder of Units to pay such withholding taxes and to pay all of the Trustees' reasonable expenses with regard thereto and the Trustees shall have the power of attorney of such holder of Units to do so. Any such sale shall be made on any stock exchange on which the Units are then listed, if so listed, or if not listed, in the private market, in such manner as the Trustees in their sole discretion shall determine, and upon such sale, the affected holder of Units shall cease to be the holder of such Units.

5.8 Character of Distributions and Designations

In accordance with and to the extent permitted by the Tax Act, the Trustees shall, in each year, make such designations for income tax purposes in respect of the amounts paid or payable or deemed to be paid to Unitholders for such amounts that the Trustees consider to be reasonable in all of the circumstances, including designations relating to taxable dividends received or deemed to be received by the Trust in the year on shares of taxable Canadian corporations, net taxable capital gains realized by the Trust in the year and foreign source income of the Trust for the year, if any, as well as elect under Subsection 104(13.1) and/or Subsection 104(13.2) of the Tax Act that income be taxed to the Trust, rather than to the Unitholders. Distributions paid or payable to Unitholders pursuant to this Article 5 will be deemed to be distributions of Trust Income, Net Realized Capital Gains, trust capital or other items in such amounts as the Trustees may, in their absolute discretion, determine. For greater certainty, it is hereby declared that any distribution of Net Realized Capital Gains will include the non-taxable portion of the capital gains of the Trust that are included in such distribution.

ARTICLE 6 REDEMPTION OF COMMON UNITS

6.1 Right of Redemption

- (1) Common Units may be redeemed by:
 - (a) the Trust, at any time and from time to time at the demand of the Trust, upon determination by the Trustees that to do so would be in the best interests of the Trust,

and need not be pro rata amongst holders of Common Units, but may be of one or more holders in such number of Common Units as the Trustees so determine; or

- (b) each holder of Common Units at any time or from time to time at the demand of such holder of Common Units all or any part of the Common Units registered in the name of such holder of Common Units at the prices determined and payable in accordance with the terms and conditions hereinafter provided.

In either instance, the Trustees shall be entitled in their discretion to determine and designate whether any payments in respect of any redemption are on account of income or capital.

6.2 Exercise of Redemption Right

- (a) To exercise a right to require redemption of Common Units under this Article 6, a duly completed and properly executed notice:
 - (i) by the Trust advising of its determination to redeem Common Units to the holder of Common Units specifying the number of Common Units to be so redeemed, to be sent by the Trust to the holder's address for notice; or
 - (ii) by the holder of Common Units requesting the Trust to redeem Common Units, in a form acceptable to the Trustees, acting reasonably, specifying the identity, capacity or authority of the person giving such notice and number of Common Units to be so redeemed, shall be sent by a holder of Common Units to the Trust at the head office of the Trust. The Trustees may request such further information or evidence, as they deem necessary, acting reasonably, to act on such redemption notice.
- (b) Upon receipt by the holder of Common Units or the Trust, as the case may be, of the notice to redeem

Common Units, the holder of Common Units shall thereafter cease to have any rights with respect to the Common Units to be redeemed (other than to receive the redemption payment therefore unless the redemption payment is not made as provided for herein) including the right to receive any distributions thereon which are declared payable to the holders of Common Units of record on a date which is subsequent to the day of receipt by the holders of Common Units or the Trust, as the case may be, of such notice. Common Units shall be considered to be tendered for redemption on the date that AdminCo. or the Trustees have, to their satisfaction, received the notice and other required documents or evidence as aforesaid together with Unit Certificates representing the applicable Common Units, if so determined by AdminCo or the Trustees.

6.3 Cash Redemptions if the Common Units are Not Listed

If the Redemption Date is at a time when the Common Units are not listed on a stock exchange, then subject to Section 6.6, the Unitholder of the Common Units to be redeemed shall be entitled to receive a price per Common Unit (hereinafter called the "**Private Redemption Price**") equal to:

- (1) the Fair Value per Common Unit as at the most recently completed quarterly fiscal period of the Trust immediately preceding the Redemption Date (the "**Unit Value**");

- (2) if deemed necessary or desirable by the Trustees in their sole and unfettered discretion, a value greater than the Unit Value, reflecting changes in the marketplace during the applicable period, by the Trustees in their sole discretion, acting reasonably; or
- (3) if deemed necessary or desirable by the Trustees in their sole and unfettered discretion, a value less than the Unit Value, reflecting changes in the marketplace during the applicable period, by the Trustees in their sole discretion, acting reasonably.

6.4 Cash Redemptions if the Common Units are Listed

- (1) If a Redemption Date is at a time when the Common Units are listed on a stock exchange, then subject to Section 6.6, the Unitholder of the Common Units tendered for redemption shall be entitled to receive a price per Common Unit (the "**Public Redemption Price**") equal to the lesser of:
 - (a) 90% of the "market price" of Common Units on the principal market on which the Common Units are listed or quoted for trading during the 10-trading day period commencing immediately prior to the Redemption Date; and
 - (b) 100% of the "closing market price" of Common Units on the principal market on which the Common Units are listed or quoted for trading on the trading day immediately prior to the Redemption Date.

For the purpose of this Section 6.4, "market price" of Common Units will be an amount equal to the weighted average of the trading prices of the Common Units for each of the trading days on which there was a trade of Common 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 of the Common Units and for each day that there was trading, the weighted average trading price of the Common Units.

The "closing market price" of Common Units 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 Common Units if there was trading and the exchange or other market provides only the highest and lowest trading prices of Common Units traded on that date; or (iii) the average of the last bid and last ask prices of the Common Units if there was no trading on that date.

- (2) Section 6.4(1) shall not be applicable to Common Units tendered for redemption by a Unitholder and Section 6.3 shall apply, if at the time the Common Units are tendered for redemption:
 - (a) the outstanding Common 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 Common Units; or
 - (b) the normal trading of the outstanding Common Units is suspended or halted on any stock exchange on which the Common Units are listed for trading or, if not so listed, on any market on which the Common Units are quoted for trading, on the Redemption Date for

such Common Units or for more than five trading days during the ten trading day period commencing immediately prior to the Redemption Date for such Common Units.

6.5 Cash Payment of Redemptions

Subject to Sections 6.6 and 6.7, the Private Redemption Price and the Public Redemption Price, as the case may be, payable in respect of the Common Units to be redeemed during any calendar month shall be satisfied by way of payment on or before the last day of the month after the calendar month in which the Redemption Date occurred. Payments made by the Trust of the Private Redemption Price and the Public Redemption Price, as the case may be, are conclusively deemed to have been made upon the mailing of a cheque drawn on a Canadian chartered bank or a trust company in lawful money of Canada, in a postage prepaid envelope addressed to the former Unitholder unless such cheque is dishonoured upon presentment. Upon such payment, the Trust shall be discharged from all liability to the former Unitholder in respect of the Common Units so redeemed.

6.6 No Cash Redemption in Certain Circumstances

- (1) Sections 6.3 and 6.4 shall not be applicable to Common Units tendered for redemption by a Unitholder, if the total amount payable by the Trust pursuant to Section 6.3 or 6.4, as the case may be, in respect of such Common Units and all other Common 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 or a fixed number of additional Common Units tendered for redemption in any calendar month;
- (2) For the purpose of subsection 6.6(1), the Monthly Limit will be equal to \$5,000 at present and for so long as the annualized pro forma cash flow projected by the Trustees is less than \$2,000,000, and \$10,000 if the annualized pro forma cash flow projected by Trustees is determined by the Trustees and authorized to the Unitholders is in excess of \$2,000,000 or such greater monthly amount as the Trustees may from time to time determined and provide notice thereof to Unitholders. Common Units tendered for redemption in any calendar month in which the total amount payable by the Trust pursuant to Section 6.5 exceeds the Monthly Limit will be redeemed for cash on a *pro rata* basis up to the Monthly Limit pursuant to Section 6.5 and, unless any applicable regulatory approvals are required, by a distribution *in specie* under Section 6.7, on a *pro rata* basis, for the balance.

6.7 In Specie Redemption

- (1) If, pursuant to Section 6.6, Section 6.5 is not applicable to any of the Common Units tendered for redemption by a holder of Common Units in a particular month, then such holder of Common Units shall, instead of receiving the Redemption Price per Common Unit specified in Section 6.3 or 6.4, as applicable, in cash, the Redemption Price per Common Unit, subject to all necessary regulatory approvals, if any, shall be paid and satisfied:
 - (a) by the Trust distributing:
 - (i) GRET Notes having such commercially reasonable terms as the Trustees may prescribe, subject to a maximum term of 14 years from the date of issue, or other assets held by the Trust, as determined in the sole discretion of the Trustees; or
 - (ii) by any combination of GRET Notes or other assets held by the Trust;

- (b) on the election of such Unitholder of such Common Units, to be registered on a list of Common Units tendered for redemption, and to be redeemed during the next succeeding calendar months in order of priority of the time originally tendered for redemption, subject always to the Monthly Limit and the discretion of Trustees to waive the Monthly Limit; provided that, unless and until the Redemption Price is paid, such Unitholders shall retain all rights associated with the Common Units for which redemption has been deferred.
- (2) The Redemption Price payable in respect of the Common Units tendered for redemption by a Unitholder during any calendar month shall be paid by the issuance or transfer, to or to the order of the Unitholder who exercised the right of redemption, on or before the last day of the month after the calendar month in which the Common Units were tendered for redemption, of Notes or Trust assets determined as aforesaid. In respect of any Trust assets being transferred in payment of the Redemption Price, the Trust shall be entitled to all interest paid or accrued and unpaid in respect of such Trust assets, to and including the date of transfer thereof. Payments by the Trust of the Redemption Price are conclusively deemed to have been made upon the mailing of the documents evidencing ownership of the property so distributed by registered mail in a postage prepaid envelope addressed to a former Unitholder; provided that if payment is not made as required such Unitholder shall retain all rights associated with the Common Units for which redemption has not been satisfied. Upon such payment, the Trust shall be discharged from all liability to the former holder of Common Units in respect of Common Units so redeemed.
- (3) For the purposes of Section 6.7(1)(a), no GRET Notes will be distributed in integral multiples of less than \$100 and, when GRET Notes to be received by a Unitholder include a multiple less than that number, the number of GRET Notes shall be issued to the next lowest integral multiple of \$100 and the balance shall be paid in cash.

6.8 Cancellation of all Redeemed Units

All Common Units which are redeemed under this Article 6 shall be cancelled and such Common Units shall no longer be outstanding and shall not be reissued.

6.9 Withholdings by the Trustees

The Trustees may deduct or withhold from all payments or other distributions payable to any Unitholder pursuant to this Article 6 all amounts required by applicable law to be so withheld.

6.10 Designation of Income upon Redemption

The Trustees have the sole and unfettered discretion to designate capital gains realized by the Trust in connection with an in specie redemption of Common Units or Income of the Trust to the redeeming Unitholders, as is reasonable in the circumstances.

6.11 Redemption on Undisclosed Confidential Information

A Unitholder who exercises a right of redemption with respect to Common Units pursuant to Section 6.2 and in connection with that redemption makes use of any specific confidential information for the Unitholder's own benefit or advantage that, if generally known, might reasonably be expected to affect materially the value of the Common Units, is accountable to the Trust for any direct benefit or advantage received or receivable by the Unitholder as a result of the transaction.

6.12 Trustee Election to become a Closed-Ended Trust

Notwithstanding any other provision of this Trust Indenture, concurrent with the Common Units being listed on a stock exchange, the Trustees shall have the exclusive power, without further or other authorization, and free from any control or direction on the part of the Unitholders, to elect and declare on 60 days prior notice to Unitholders that the redemption rights contained in Sections 6.1 and 6.2 hereof cease to be of any force or effect, and the Common Units and Unitholders shall cease to have any rights of redemption as provided for in this Article 6, and such election or declaration shall have no effect on any other rights associated with the Units, or held by the Unitholders under this Declaration of Trust.

ARTICLE 7 TRUSTEES AND OFFICERS

7.1 Number of Trustees

The Trust shall have a minimum of three (3) Trustees and a maximum of seven (7) Trustees. Subject to Section 7.3, at all times the majority of Trustees, (including the Chairman) must be "independent" for the purposes of National Instrument 58-101 - *Disclosure of Corporate Governance Practices and not Non-Residents*. Any increase or decrease to the maximum or minimum number of Trustees must be approved by a Special Resolution. The Trustees may, subject to compliance with Section 7.7, between annual meetings of the Unitholders, appoint one or more additional Trustees to serve until the next annual meeting of Unitholders; provided that the number of additional Trustees so appointed will not at any time exceed one-third of the number of Trustees who held such office at the conclusion of the immediately preceding annual meeting of Unitholders (rounding to the nearest whole number).

7.2 Term of Office

Each Trustee who executes this Declaration of Trust shall hold office for a term expiring at the close of the first annual meeting of the Unitholders or until his or her respective successor is elected or appointed and shall be eligible for re-election. Thereafter, the Trustees shall be elected at each annual meeting of the Unitholders for a term expiring at the conclusion of the next annual meeting or until their successors are elected or appointed and shall be eligible for re-election. Trustees appointed by the Trustees between meetings of the Unitholders or to fill a vacancy, in each case in accordance with Section 7.1, shall be appointed for a term expiring at the conclusion of the next annual meeting or until their successors are elected or appointed and shall be eligible for election or re-election.

7.3 Qualifications of Trustees

A Trustee shall be an individual at least 18 years of age, not under any legal disability and not been found to be of unsound mind or incapable of managing property by a court in Canada or elsewhere, and who does not have the status of bankrupt. Except as the Trustees, or a committee thereof, may otherwise determine, Trustees are not required to hold Units. A majority of Trustees shall be at all times Resident Canadians. If at any time a majority of Trustees are not Resident Canadians because of the death, resignation, bankruptcy, adjudicated incompetence, removal or change in circumstance of any Trustee who was a Resident Canadian, the remaining Trustees, whether or not they constitute a quorum, shall appoint a sufficient number of Resident Canadian Trustees to comply with this requirement. In addition to the foregoing, a majority of the Trustees shall be at all times Independent Trustees. If at any time a majority of 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 time the

remaining Trustees shall appoint a sufficient number of Independent Trustees to comply with this requirement.

7.4 Election of Trustees

The election of the Trustees shall be conducted by a vote of Unitholders at each annual meeting of Unitholders held in accordance with Section 13.1. The appointment or election of any Trustee (other than an individual who has already been appointed or elected as Trustee) shall not become effective unless and until such individual has in writing accepted his or her appointment or election and agreed to be bound by the terms of this Declaration of Trust.

7.5 Resignations, Removal and Death of Trustees

A Trustee may resign at any time by an instrument in writing signed by him or her and delivered or mailed to the Chairman or, if there is no Chairman, the Chief Executive Officer of the Trust or, if there is no Chief Executive Officer, the other Trustees then serving. 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 an Ordinary Resolution or with cause by a resolution passed by an affirmative vote of not less than two-thirds of the other Trustees. Any removal of a Trustee shall take effect immediately following the aforesaid vote or resolution and any Trustee so removed shall be so notified by the Chairman or another officer of the Trust, or if there is no officer of the Trust, by any remaining Trustee, or if there is no Trustee, then by the remaining Unitholders, forthwith following such removal. Upon the resignation or removal of any Trustee, or he or she otherwise ceasing to be a Trustee, he or she shall: (i) cease to have the rights, privileges and powers of a Trustee hereunder; (ii) execute and deliver such documents as the remaining Trustees shall reasonably require for the conveyance of any Trust property held in his or her name; (iii) account to the remaining Trustees as they may require for all property which he or she holds as Trustee; and (iv) resign from all representative or other positions held by him or her on behalf of the Trust, including as a director or officer of any Subsidiary, the General Partner or other corporation or entity in which the Trust owns any securities (directly or indirectly) unless agreed otherwise between the Trustee and the Trust; upon which he or she shall be discharged from his or her obligations as Trustee. Upon the incapacity or death of any Trustee, his or her legal representative shall execute and deliver on his or her behalf such documents as the remaining Trustees may require as provided in this section. In the event that a Trustee or his or her legal representative, as applicable, is unable or unwilling to execute and deliver such required documents, each of the remaining Trustees is hereby appointed as the attorney of such Trustee for the purpose of executing and delivering such required documents.

7.6 Vacancies

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

7.7 Successor and Additional Trustees

The right, title and interest of the Trustees in and to the Trust Property shall vest automatically in all individuals 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 7.5 or otherwise.

7.8 Remuneration and Expenses

Trustees who are not officers of, or otherwise employed by and receive a salary from the Trust or its Subsidiaries or Affiliates, may be paid such remuneration for their services in such amounts and in such form as the Trustees, or if applicable a committee thereof, may from time to time determine and shall be entitled to be reimbursed for their out-of-pocket expenses incurred in acting as Trustees. Nothing herein contained shall preclude any Trustee from serving the Trust in any other capacity and receiving remuneration therefor.

7.9 Officers of the Trust

The Trust shall have such officers as the Trustees may appoint from time to time, including a Chairman, President, Chief Executive Officer and Chief Financial Officer and, without prejudice to the rights of any such Person under any employment contract may remove any officer of the Trust. One Person may hold more than one office. The powers and duties of each officer of the Trust shall be those determined from time to time by the Trustees and, in the absence of such determination, shall be those usually applicable to the office held.

7.10 Validity of Acts

Any act of a Trustee is valid notwithstanding any irregularity in the appointment of the Trustees or any one of them or a defect in the qualifications of the Trustees or any one of them.

ARTICLE 8 TRUSTEES' POWERS AND DUTIES

8.1 General Powers

The Trustees, subject only to the specific limitations contained in this Declaration of Trust, shall have, without further or other authorization and free from any Control or direction on the part of the Unitholders, full, absolute and exclusive power, Control and authority over the Trust Property 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, there shall be a presumption in favour of the power and authority having been granted to the Trustees. The enumeration of any specific power or authority herein shall not be construed as limiting the general powers or authority or any other specified power or authority conferred herein on the Trustees. Except as specifically required by law, 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. Without limiting the generality of the foregoing, the Trustees may, subject to the terms and conditions contained in this Declaration of Trust, make any investments without

being required to adhere to all of, or any particular portion of the investment criteria or diversification requirements set forth in the Trustee Act (Alberta), including investments in mutual funds, common trust funds, unit trusts and similar types of investment vehicles, to alter or vary such investments from time to time in a like manner, to retain such investments for such length of time as the Trustees, in their discretion determine and to delegate management and authority to discretionary managers of investment funds as the Trustees in their discretion determine appropriate.

8.2 Specific Powers and Authorities

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

- (1) to retain, invest and re-invest the capital or other funds of the Trust in real or personal property of any kind, all without regard to whether any such properties are authorized by law for the investment of trust funds, and to possess and exercise all the rights, powers and privileges appertaining to the ownership of the Trust Property;
- (2) subject to Section 3.14, to increase the capital of the Trust at any time by the issuance of additional Units (or other securities convertible to or exchangeable for Units) for such consideration as they deem appropriate;
- (3) 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, or other obligations or securities of the Trust and hold for investment Notes, units or other obligations or securities of any Person;
- (4) 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 Trust Property 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 the Trustees by one or more of the Trustees or by a duly authorized officer, employee, agent or any nominee of the Trust;
- (5) 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, and perform the obligations of the Trust thereunder;
- (6) without limit as to amount, to issue any type of debt securities or convertible debt securities and 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 wholly-owned Subsidiaries; 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 Trust Property to secure any of the foregoing;
- (7) to lend money, whether secured or unsecured;

- (8) to complete the transactions contemplated by the Acquisition Agreement and, without limitation, to enter into and perform the Trust's direct and/or indirect obligations thereunder and under the agreements addressed therein;
- (9) to maintain records and provide reports to Unitholders;
- (10) to establish systems to monitor the qualification of the Trust as a "mutual fund trust", a "unit trust" and, at such time as the Trust may be listed on a stock exchange, a "real estate investment trust", within the meaning of the Tax Act and ensure that the Trust does not take any action or acquire, retain or hold any investment that would cause the Trust or a Subsidiary of the Trust to become liable to tax under paragraph 122(1)(b), Subsection 197(2) or Part XII.2 of the Tax Act;
- (11) 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 Property, the undertaking or taxable income of the Trust, or imposed upon or against the Trust Property, the undertaking or taxable 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 the Trust Income or Net Realized Capital Gains distributed to Unitholders 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 counsel or its 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 in connection with such matters;
- (12) to incur and pay out of the Trust Property 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 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 Trust Property or upon or against the Trust Property or any part thereof and for any of the purposes herein;
- (13) to deposit funds of the Trust in banks or trust companies, 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 one or more Trustees, officers, agents or representatives) as the Trustees may determine;
- (14) to possess and exercise all the rights, powers and privileges appertaining to the ownership of or interest in all or any mortgages or securities, issued or created by, or interest in, any Person, forming part of the Trust Property, 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;
- (15) to exercise any conversion privilege, subscription right, warrant or other right or option available in connection with any Trust Property at any time held by it and to make payments incidental thereto; to consent, or otherwise participate in or dissent from, the reorganization, Consolidation, amalgamation, merger or readjustment of the finances of any Person (other than the Trust), any of the securities of which may at any time be held, directly or indirectly, by the Trust or to the sale, Mortgage or lease of the property of any such Person; and to do any act with reference

thereto, including the delegation of discretionary powers, the exercise of options, the making of agreements or subscriptions and the payment of expenses, assessments or subscriptions, which it may consider necessary or advisable in connection therewith;

- (16) to elect, appoint, engage or employ officers for the Trust, who may be removed or discharged at the discretion of the Trustees, such officers to have such powers and duties, and to serve such terms as may be prescribed by the Trustees or by the Trustees' Regulations; to engage, appoint, employ or contract with any Persons as agents, representatives, employees or independent contractors or otherwise (including real estate advisors, investment advisors, registrars, underwriters, accountants, lawyers, real estate agents, property managers, asset 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 or this Declaration of Trust, to delegate any of the powers and duties of the Trustees (including the power of delegation) to any one or more Trustees, agents, representatives, officers, employees, independent contractors or other Persons without regard to whether such power, authority or duty is normally granted or delegated by trustees;
- (17) 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 Trust Property 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;
- (18) to renew, modify, release, compromise, extend, consolidate or cancel, in whole or in part, any obligation to or of the Trust;
- (19) to purchase and pay for, out of the Trust Property, insurance contracts and policies insuring the Trust Property against any and all risks and insuring the Trust and/or any or all of the Trustees, the Unitholders or officers or employees of the Trust against any and all claims and liabilities of any nature asserted by any Person arising by reason of any action alleged to have been taken or omitted by the Trust or by the Trustees, the Unitholders or the officers of the Trust;
- (20) to cause legal title to any of the Trust Property to be held by and/or in the name of the Trustees or, except as prohibited by law, by and/or in the name of the Trust or one or more of the Trustees or any other Person, on such terms, in such manner, with such powers in such Person as the Trustees may determine and with or without disclosure that the Trust or Trustees are interested therein; provided, however, that should legal title to any of the Trust Property be held by and/or in the name of any Person or Persons other than the Trust or the Trustees, 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;
- (21) to determine conclusively the allocation to capital, income or other appropriate accounts for all receipts, expenses, disbursements and Trust Property;
- (22) to issue Units and other securities of the Trust from time to time and, if necessary or desirable to prepare, sign and file or cause to be prepared, signed and filed a prospectus, offering memorandum or similar document and any amendment thereto and all agreements contemplated therein or ancillary thereto relating to or resulting from any 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

Trust Property 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;

- (23) 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;
- (24) to determine conclusively the value of any or all of the Trust Property 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;
- (25) subject to obtaining all required regulatory approvals, to establish one or more distribution reinvestment plans, Unit purchase plans, Unit option plans, deferred Unit plans, restricted Unit plans, performance unit plans or any other Unit compensation, incentive plan or similar plan with respect to the Units;
- (26) to the extent permitted by law, to indemnify, or enter into agreements with respect to the indemnification of any Person with whom the Trust has dealings including the Trustees, any directors or trustees of any Subsidiary of the Trust, officers or employees of the Trust or of any Subsidiary, the depositary, Registrar, Transfer Agent or any escrow agent, to such extent as the Trustees shall determine;
- (27) 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;
- (28) to vote in favour of the Trust's nominees to serve as directors or trustees, as applicable, of any Subsidiary of the Trust and to otherwise exercise the rights attached to any securities held by the Trust or any Subsidiary of the Trust; and
- (29) to do all such other acts and things as are incidental to the foregoing, and to exercise all powers that are necessary or useful to carry on the activities 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.

8.3 Further Powers of the Trustees

The Trustees shall have the power to prescribe any form provided for or contemplated by this Declaration of Trust. The Trustees may make, adopt, amend, or repeal regulations containing provisions relating to the Trust, the conduct of its affairs, the rights or powers of the Trustees and the rights or powers of the Unitholders or officers of the Trust, provided that such regulations shall not be inconsistent with law or with this Declaration of Trust and not, in the opinion of the Trustees, prejudicial to the Unitholders collectively. The Trustees shall also be entitled to make any reasonable decisions, designations or determinations not inconsistent with law or with 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. To the extent of any inconsistency between this Declaration of Trust and any regulation, decision, designation or determination made by the Trustees, this Declaration of Trust shall prevail and such regulation, decision, designation or determination shall be deemed to be modified to eliminate such inconsistency. Any regulations, decisions, designations or determinations made in accordance with this Section 8.3 shall be conclusive and binding upon all Persons affected thereby.

Subject to any agreement between the Trust and any Trustees and subject as otherwise herein provided, the Trustees may from time to time in their discretion appoint, employ, invest in, contract or deal with any Person including any Affiliate of any of them and any Person in which any one or more of them may be directly or indirectly interested and, without limiting the generality of the foregoing, any Trustee may purchase, hold, sell, invest in or otherwise deal with Real Property or other property of the same class and nature as may be held by the Trustees as Trust Property, whether for the Trustee's own account or for the account of another (in a fiduciary capacity or otherwise), without being liable to account therefor and without being in breach of his/her duties and responsibilities hereunder.

8.4 Standard of Care

The exclusive standard of care required of the Trustees in exercising their powers and carrying out their functions hereunder shall be that they exercise their powers and discharge their duties hereunder as Trustees honestly and in good faith with a view to the best interests of the Trust and the Unitholders and, in connection therewith, that they exercise the 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 provide any 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.

8.5 Reliance Upon Trustees

Any Person dealing with the Trust in respect of any matters pertaining to the Trust Property 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 a certificate or statutory declaration as to the passing of a resolution of the Trustees) executed by any single Trustee or, without limiting the foregoing, such other Persons as may be authorized by the Trustees as to the capacity, power and authority of the Trustees or any such other Persons 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.

8.6 Determinations of Trustees Binding

All determinations of the Trustees that are made in good faith with respect to any matters relating to the Trust, including 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, whether the Unitholder is a Registered Plan, registered pension plan as defined in the Tax Act, or other similar fund or plan registered under the Tax Act, upon plan beneficiaries and plan holders past, present and future) and Units of the Trust shall be issued and sold on the condition and understanding that any and all such determinations shall be binding as aforesaid.

8.7 Conflicts of Interest

A Trustee or an officer of the Trust shall disclose to the Trustees, in writing or by requesting to have it entered in the minutes of meetings of the Trustees or of meetings of committees of the Trustees, the nature and extent of any interest that he or she has in a material contract or material transaction, whether made or proposed, with the Trust or any of its Subsidiaries, if the Trustee or officer: (i) is a party to the contract or transaction; (ii) is a director, officer or employee, or an individual acting in a similar

capacity, of a party to the contract or transaction; or (iii) has a material interest in a party to the contract or transaction:

- (1) the disclosure required in the case of a Trustee shall be made:
 - (a) at the meeting of the Trustees or the applicable committee thereof, as the case may be, at which a proposed contract or transaction is first considered;
 - (b) if the Trustee was not then interested in a proposed contract or transaction, at the first such meeting after he/she becomes so interested;
 - (c) if the Trustee becomes interested after a contract is made or a transaction is entered into, at the first meeting after he/she becomes so interested;
 - (d) if an individual who is interested in a contract or transaction later becomes a Trustee, at the first meeting after he/she becomes a Trustee;
- (2) the disclosure required in the case of an officer of the Trust, who is not a Trustee, shall be made:
 - (a) forthwith after such officer 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 applicable committee thereof, as the case may be;
 - (b) if such officer becomes interested after a contract is made or transaction is entered into, forthwith after such individual becomes aware that he/she has become so interested; or
 - (c) if an individual who is interested in a contract or a transaction later becomes an officer of the Trust, forthwith after he/she becomes an officer of the Trust;
- (3) notwithstanding Section 8.7(1) and Section 8.7(2), if a material contract or material transaction, whether entered into or proposed, is one that, in the ordinary course of the affairs of the Trust, would not require approval by the Trustees or the Unitholders, a Trustee or officer of the Trust shall disclose, in writing to the Trustees or applicable committee thereof or request to have it entered into the minutes of the meeting of the Trustees or of the applicable committee thereof, the nature and extent of his or her interest immediately after he or she becomes aware of the contract or transaction;
- (4) a Trustee referred to in this Section 8.7 shall not vote on any resolution to approve such contract or transaction unless the contract or transaction:
 - (a) relates primarily to his or her remuneration as a Trustee, officer, employee or agent of the Trust or Subsidiary; or
 - (b) is for indemnity under Section 15.1 or the purchase of liability insurance;
- (5) for the purposes hereof, a general notice to the Trustees by a Trustee or an officer of the Trust disclosing that he/she is a director or officer of or has a material interest in a Person and is to be regarded as interested in any contract made or any transaction entered into with that Person, is sufficient disclosure of interest in relation to any contract so made or transaction so entered into. In the event that a meeting of the Unitholders is called to confirm or approve a contract or transaction which is the subject of a general notice to the Trustees, the nature and extent of the interest in the contract or transaction of the Persons giving such general notice shall be disclosed

in reasonable detail in the notice calling such meeting of the Unitholders or in any information circular to be provided by this Declaration of Trust or by law;

- (6) 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 in which a Trustee or an officer of the Trust has a material interest:
 - (a) such Trustee or officer of the Trust is not accountable to the Trust or to the Unitholders for any profit or gain realized from the contract or transaction; and
 - (b) the contract or transaction is neither void nor voidable, by reason only of that relationship or by reason only that such Trustee or officer is present at or is counted to determine the presence of a quorum at the meeting of the Board of Trustees or the applicable committee thereof, as the case may be, that authorized the contract or transaction, if such Trustee or officer of the Trust disclosed his/her interest in accordance with this Section 8.7, and the contract or transaction was reasonable and fair to the Trust at the time it was approved;
- (7) notwithstanding anything in this Section, but without limiting the effect of Section 8.7(6), a Trustee or an officer of the Trust, acting honestly and in good faith, is not accountable to the Trust or to the Unitholders for any profit or gain realized from any such contract or transaction by reason only of his/her holding such office or position, and the contract or transaction, if it was reasonable and fair to the Trust at the time it was approved or confirmed, is not by reason only of such Trustee's or officer's interest therein void or voidable, where:
 - (a) the contract or transaction is confirmed or approved at a meeting of the Unitholders duly called for that purpose; and
 - (b) the nature and extent of such Person's interest in the contract or transaction are disclosed in reasonable detail in the notice calling the meeting or in any information circular to be provided by this Declaration of Trust or by law; and
- (8) subject to Section 8.7(6) and Section 8.7(7), if a Trustee or an officer of the Trust fails to disclose his/her interest in a material contract or transaction in accordance with this Declaration of Trust or otherwise fails to comply with this Section 8.7, the Trustees or any Unitholder, in addition to exercising any other rights or remedies in connection with such failure exercisable at law or in equity, may apply to a court for an order setting aside the contract or transaction and directing that such Trustee or officer account to the Trust for any profit or gain realized.

ARTICLE 9 MEETINGS OF THE TRUSTEES

9.1 Trustees May Act Without Meeting

The Trustees may act with or without a meeting. Except as provided otherwise herein, any action of the Trustees or any committee of the Trustees may be taken at a meeting by majority vote of, or without a meeting by written original or facsimile and/or electronic mail consent or resolution signed by all of, the Trustees or the members of the applicable committee, as the case may be. Any such consent or resolution may be signed in counterpart.

9.2 Notice of Meeting

Meetings of the Trustees may be held from time to time upon the giving of notice by the Chairman or any Trustee. Regular meetings of the Trustees may be held without notice at a time and place fixed in accordance with the Trustees' Regulations or by the Trustees from time to time by resolution and provided, in such case, that a copy of such resolution is sent to each Trustee forthwith after being passed and forthwith after each Trustee's appointment or election, no other notice shall be required for any such regular meeting. Notice of the time and place of any other meetings shall be mailed or otherwise given by telephone or by other means of communication not less than 24 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.

9.3 Quorum

A quorum for all meetings of the Trustees or any committee thereof shall be a majority of the Trustees then holding office or of the Trustees of such committee, provided that a majority of Trustees comprising the quorum shall be Resident Canadians present at the meeting or participating from locations in Canada. If there is no quorum, the meeting may be adjourned to a Business Day on notice to all of the Trustees or members of such committee, as the case may be and, at the reconvened meeting, any number of Trustees shall constitute quorum, provided the majority of Trustees present at the meeting or participating from a location in Canada are Resident Canadian Trustees.

9.4 Voting at Meetings

Questions arising at any meeting of the Trustees or of a committee of Trustees shall be decided by a majority of the votes cast. In the case of an equality of votes at any meeting of Trustees or of a committee of Trustees, the chairman of the meeting shall not have a second or casting vote in addition to his or her original vote, if any. Every meeting of the Trustees or any committee thereof shall take place in Canada.

9.5 Meeting by Telephone

Any Trustee may participate in a meeting of the Trustees or any committee thereof by means of a conference telephone or other communications equipment by means of which all Trustees participating in the meeting can hear each other and a Trustee so participating shall be considered for the purposes of this Declaration of Trust to be present in person at that meeting, provided that the telephone or other communication is organized within Canada and the majority of Trustees participating in the meeting are physically present in Canada.

9.6 Meetings of Independent Trustees

The provisions of Sections 9.1, 9.2, 9.3, 9.4, and 9.5 and apply, *mutatis mutandis*, to any and all meetings of Independent Trustees called for the purposes contemplated in [the](#) Section ~~Error! Reference~~

~~source not found~~[9.6](#) or otherwise for purposes which the Independent Trustees reasonably determine to be necessary or desirable.

9.7 Chairman

The chairman of any meeting of the Trustees or any committee of Trustees (other than a meeting of the Independent Trustees or any committee of Independent Trustees) shall be, as applicable, the Trustee present at the meeting who holds the office of Chairman of Trustees or the chairman of the applicable committee, or, if such individual is not present, the Trustees present shall choose one of their number to act as the chairman. The chairman of any meeting of the Independent Trustees or any committee of the Independent Trustees shall be the trustee who holds the office of Chairman or chairman of the applicable committee, or, if such individual is not present, the Independent Trustees present shall choose one of their number to act as the chairman.

ARTICLE 10 DELEGATION OF POWERS

10.1 General

- (1) The Trustees may appoint from among their number a committee of Trustees for such purposes as they may determine in their discretion, to be necessary or desirable for the purposes of properly governing the affairs of the Trust, and may delegate to such committee any of the powers of the Trustees provided that a majority of the Trustees appointed to any committee shall be Resident Canadians and provided further that, for greater certainty, any such committee shall not be empowered to take any action or engage in any activity that the Trustees would be prohibited from taking or engaging in pursuant to this Declaration of Trust. 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. For greater certainty, the Trustees may delegate to any Person (including any one or more officers of the Trust) the power to execute any document or enter into any agreement on behalf of the Trust or exercise any discretion or make any amendment in relation thereto. The Trustees may grant or delegate such authority to an advisor 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. The Trustees shall have the power to determine the term, compensation and, to the extent permitted by law, rights to indemnification, of an advisor or any other Persons whom they may employ or with whom they may contract. The Trustees shall have the power to grant powers of attorney as required in connection with any financing or security relating thereto. Each member of a committee shall serve on such committee until he or she resigns from such committee or otherwise ceases to be a Trustee.
- (2) Notwithstanding subsection (1), no Trustee and no committee of Trustees has authority to:
 - (a) submit to the Unitholders any question or matter requiring the approval of the Unitholders;
 - (b) fill a vacancy among the Trustees or in the office of Auditors;
 - (c) appoint additional Trustees;
 - (d) issue securities except in the manner and on the terms authorized by the Trustees;
 - (e) declare distributions;

- (f) purchase, redeem or otherwise acquire Units issued by the Trust, except in the manner and on the terms authorized by the Trustees;
- (g) approve an information circular referred to in Section 13.11; or
- (h) approve any financial statements referred to in Section 16.7.

10.2 Committees and Procedure

Unless otherwise determined by the Trustees, a quorum for meetings of any committee shall be a majority of its members. Each committee shall have the power to appoint its chairman and delineate the duties and responsibilities of such chairman. The rules for calling (including, for greater certainty, the giving of notice), location, holding, conducting, participating in, voting at and adjourning meetings of the committee shall be the same as those governing meetings of the Trustees, except as the Trustees may otherwise determine. Each member of a committee shall serve at the pleasure of the Trustees and, in any event, only so long as he or she shall be a Trustee. The Trustees may fill vacancies in a committee by appointment from among their members. Provided that a quorum is maintained, a committee may continue to exercise its powers notwithstanding any vacancy among its members.

10.3 Management of the Trust

The Trustees may exercise broad discretion in hiring officers, employees, agents and consultants to administer the Trust's day-to-day operations, all subject to the overriding authority of the Trustees over the management and affairs generally of the Trust.

10.4 Administration and Advisory Agreement Services

Except as otherwise expressly provided herein, or as expressly prohibited by applicable law, the Trustees may grant or delegate to AdminCo such authority as the Trustees may in their sole discretion deem necessary or desirable to effect the actual administration of the duties of the Trustees under this Declaration of Trust, without regard to whether such authority is normally granted or delegated by trustees. The Trustees may, without in any way limiting or delegating any of the powers and duties of the Trustees hereunder or otherwise, delegate to AdminCo the power and authority to provide general administrative services and support to the Trust and the Trustees, to act as agent for the Trust, to execute documents on behalf of the Trust and to administer decisions of the Trustees which conform to general policies and general principles set forth herein or established by the Trustees. AdminCo shall have the powers and duties expressly provided for herein and in the Administration and Advisory Agreement, including the power to further delegate administration of the Trust, provided that no further delegation shall be effective until AdminCo shall have notified the Trustees of the name of the person or persons to whom such further delegation is made and the terms and conditions thereof the Trustees may enter into a contract with AdminCo relating to AdminCo's authority, term of appointment, compensation and any other matters deemed desirable by the Trustees. The Trustees are authorized to, and may, enter into the Administration and Advisory Agreement.

10.5 Liability of Trustees for Acts of AdminCo

The Trustees shall have no liability or responsibility for any matters delegated to AdminCo pursuant to the Administration and Advisory Agreement or hereunder, and the Trustees shall have no duty to supervise AdminCo and, in relying upon AdminCo, shall be deemed to have complied with its

obligations under Section 8.4 and shall be entitled to the benefit of the indemnity provided in Section 15.1.

ARTICLE 11 FEES AND EXPENSES

11.1 Expenses

The Trust shall pay out of the Trust Property all expenses incurred in connection with the administration and management of the Trust and its investments, including, without limitation:

- (1) fees and expenses in connection with administration of the Trust and any LPs, including fees and expenses under the Administration and Advisory Agreement, and any other bookkeeping and clerical work, communications to the Unitholders to maintain relations with the Unitholders, payments of distributions on Units, regulatory filings, coordinating meetings of Trustees or Unitholders and preparation or supervising of preparation of requisite materials for such meetings;
- (2) interest and other costs of borrowed money;
- (3) fees and expenses of lawyers, accountants, Auditors, appraisers and other agents or consultants employed by or on behalf of the Trust or the Trustees;
- (4) compensation, remuneration and expenses of the Trustees;
- (5) fees and expenses connected with the acquisition, disposition, ownership, leasing, management and financing of Trust Property permitted in this Declaration of Trust;
- (6) insurance, including Trustees and officers liability insurance, as considered necessary by the Trustees;
- (7) expenses in connection with payments of distributions of Units;
- (8) expenses of amending this Declaration of Trust or terminating the Trust;
- (9) fees and charges of Transfer Agents, Registrars, indenture trustees and other trustees and custodians; and
- (10) all fees, expenses, taxes and other costs incurred in connection with the issuance, distribution, transfer and qualification for distribution to the public of Units and other required governmental filings;

provided that the Trust will not incur any expense that would cause the Trust to fail or cease to qualify as a "mutual fund trust" or, if then listed on a stock exchange, a "real estate investment trust", as defined in the Tax Act.

ARTICLE 12
AMENDMENTS TO THE DECLARATION OF TRUST

12.1 Amendments by the Trustees

Subject to Section 12.2, the provisions of this Declaration of Trust, except where specifically otherwise herein provided, may be amended only by Ordinary Resolution; provided that the provisions of this Declaration of Trust may be amended by a majority of the Trustees without the consent, approval or ratification of the Unitholders or any other Person in the following circumstances:

- (a) ensuring continuing compliance with applicable laws (including the Tax Act and maintaining the status of the Trust as a "unit trust", "mutual fund trust" and, if then listed on a stock exchange, a "real estate investment trust" under the Tax Act) regulations, requirements or policies of any governmental authority having jurisdiction over: (i) the Trustees; (ii) the Trust or (iii) the distribution of Units;
- (b) providing additional protection or added benefits, which are, in the opinion of the Trustees necessary to maintain the rights of the Unitholders set out in this Declaration of Trust;
- (c) removing any conflicts or inconsistencies in this Declaration of Trust or making corrections, including the rectification of any ambiguities, defective provisions, errors, mistakes or omissions, which are, in the opinion of the Trustees necessary or desirable and not prejudicial to the Unitholders;
- (d) making amendments of a minor or clerical nature or to correct typographical mistakes, ambiguities or manifest omissions or errors, which amendments, in the opinion of the Trustees, are necessary or desirable and not prejudicial to the Unitholders;
- (e) making amendments which, in the opinion of the Trustees, are necessary or desirable as a result of changes in taxation or other laws or accounting standards from time to time which may affect the Trust or the Unitholders to ensure the Units qualify as equity for purposes of GAAP;
- (f) making amendments which, in the opinion of the Trustees are necessary or desirable to enable the Trust to implement a Unit option or purchase plan or a Distribution Reinvestment Plan;
- (g) making amendments deemed necessary or advisable to ensure that the Trust has not been established nor maintained primarily for the benefit of persons who are not Resident Canadians; or
- (h) making an amendment for any purpose (except one in respect of which a Unitholder vote is specifically otherwise required) which, in the opinion of the Trustees, is not prejudicial to Unitholders and is necessary or desirable.

In no event may the Trustees amend this Declaration of Trust if such amendment would: (i) amend this Article 12; (ii) amend the Unitholders' voting rights; (iii) cause the Trust to fail or cease to qualify as a "mutual fund trust", "real estate investment trust" after such time as Units are listed on a stock exchange, or "unit trust" under the Tax Act; or (iv) cause the Trust or a Subsidiary of the Trust to be subject to tax under paragraph 122(1)(b), Subsection 197(2) or Part XII.2 of the Tax Act.

12.2 Matters Requiring Approval by Special Resolution

- (1) Notwithstanding Section 12.1, at all times the following amendments to this Declaration of Trust shall require approval by Special Resolution:
 - (a) any amendment to this Section 12.2;
 - (b) any increase or decrease to the minimum or maximum number of Trustees required or permitted to serve on the Board;
 - (c) an exchange, reclassification or cancellation of all or part of the Units (other than as provided herein);
 - (d) the change or removal of the rights, privileges, restrictions or conditions attached to the Units and, including, without limiting the generality of the foregoing:
 - (i) the removal or change of rights to distributions;
 - (ii) the removal of or change to conversion privileges, options, voting, transfer or pre-emptive rights; or
 - (iii) the reduction or removal of a distribution preference or liquidation preference;
 - (e) the creation of new rights or privileges attaching to Units;
 - (f) any change to the existing constraints on the issue, transfer or ownership of the Units except as otherwise provided herein;
 - (g) the sale of all or substantially all of the Trust Property as an entirety or substantially as an entirety (other than as a part of an internal reorganization of the Trust Property including by way of the transfer of Trust Property or assets or property of the Subsidiaries of the Trust as approved by the Trustees);
 - (h) the combination, amalgamation or arrangement of any of the Trust or its Subsidiaries with any other entity that is not the Trust or a Subsidiary of the Trust (other than as part of an internal reorganization as approved by the Trustees); or
 - (i) any other matter expressly required by the terms of this Declaration of Trust to require approval by Special Resolution, including, without limitation, as set out in Section 4.5.

12.3 Supplemental Declaration of Trust

The Trustees are authorized to execute any supplemental Declaration of Trust to give effect to amendments to this Declaration of Trust made pursuant to this Article 12.

12.4 No Termination

No amendment to or amendment and restatement of this Declaration of Trust, whether pursuant to this Article 12 or otherwise, shall be construed as a termination of the Trust or the settlement or establishment of a new trust.

ARTICLE 13 MEETINGS OF THE UNITHOLDERS

13.1 Annual Meeting

There shall be an annual meeting of the Unitholders at such time and place and for such purposes as the Trustees shall prescribe for the purpose of electing Trustees, appointing or changing the Auditors, presenting the consolidated financial statements 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 the Unitholders shall be held after delivery to the Unitholders of the information referred to in Section 16.7 and, in any event, within ~~180 days~~ 15 months after the ~~end of each fiscal year of the Trust~~ previous annual meeting.

13.2 Special Meetings

The Trustees shall have power at any time to call special meetings of the Unitholders at such time and place as the Trustees may determine. Unitholders holding in the aggregate not less than 25% of the votes attaching to all Units then outstanding may requisition the Trustees to call a special meeting of the Unitholders for the purposes stated in the requisition. The requisition shall: (i) be in writing; (ii) set forth the name and address of, and the number of Units (and votes attached thereto which, in aggregate, shall not be less than 25% of all votes entitled to be voted at a meeting of Unitholders) held by, each Person who is supporting the requisition; and (iii) state in reasonable detail the business proposed to be transacted at the meeting. The requisition 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 the Unitholders to transact the business referred to in the requisition, unless:

- (1) a record date for a meeting of the Unitholders has been fixed and notice thereof has been given to each stock exchange in Canada on which the Units are then listed for trading;
- (2) the Trustees have called a meeting of the Unitholders and have given notice thereof pursuant to Section 13.3; or
- (3) in connection with the business as stated in the requisition:
 - (a) it clearly appears to the Trustees that the matter covered by the requisition is submitted by the Unitholder primarily for the purpose of enforcing a personal claim or redressing a personal grievance against the Trust, the Trustees, the officers of the Trust or its security holders;
 - (b) it clearly appears to the Trustees that the matter covered by the requisition does not relate in a significant way to the business or affairs of the Trust;
 - (c) the Trust, at the Unitholder's request, included a matter covered by a requisition in an information circular relating to a meeting of the Unitholders held within two years preceding the receipt of such request, and the Unitholder failed to present the matter, in person or by proxy, at the meeting;
 - (d) substantially the same matter covered by the requisition was submitted to the Unitholders in an information circular (including a dissidents information circular) relating to a meeting of the Unitholders held within two years preceding the receipt of the Unitholder's request and the matter covered by the requisition was defeated; or

- (e) the rights conferred by this Section 13.2 are being abused to secure publicity;
- (4) the Unitholder(s) submitting the requisition fail to continue to hold or own at least 25% of the outstanding Units up to and including the day of the meeting.

Subject to the foregoing, if the Trustees do not within 21 days after receiving the requisition call a meeting, any Unitholder who signed the requisition may call the meeting in accordance with the provisions of Section 13.3 and Section 13.10 and the Trustees' Regulations, mutatis mutandis. If there shall be no Trustees, the officers of the Trust shall promptly call a special meeting of the Unitholders for the election of successor Trustees. The phrase "**meeting of the Unitholders**" wherever it appears in this Declaration of Trust shall mean and include both an annual meeting and any other meeting of the Unitholders.

13.3 Notice of Meeting of the Unitholders

Notice of all meetings of the Unitholders shall be given in accordance with Section 16.2 mailed, emailed or delivered by other electronic means by the Trustees to each Unitholder at its address appearing in the Register, to each Trustee and to the Auditors not less than ~~21~~7 nor more than 60 days or within such other number of days as required by law or relevant stock exchange before the meeting. Such notice shall specify the time when, and the place where, such meeting is to be held and shall state the general nature of the business to be transacted at such meeting, and shall otherwise include such information as would be provided to shareholders of a corporation governed by the ABCA in connection with a meeting of shareholders. Notwithstanding the foregoing, the Trustees shall at all times be entitled to deliver notice and information to Unitholders in accordance with means permitted by applicable securities laws.

13.4 Quorum

At any meeting of the Unitholders, a quorum will consist of two or more individuals present either holding personally or representing as proxies in the aggregate not less than 10% of the votes attached to all outstanding Units, provided that if the Trust has only one Unitholder, the Unitholder present in person or by proxy constitutes a meeting and a quorum for such meeting. In the event of such quorum not being present at the appointed place on the date for which the meeting is called within 30 minutes after the time fixed for the holding of such meeting, the meeting, if convened on the requisition of the Unitholders, shall be dissolved, but in any other case shall stand adjourned to such day being not less than 10 days later and to such place and time as may be appointed by the chairman of the meeting. If at such adjourned meeting a quorum as above defined is not present, the Unitholders present either personally or by proxy will be deemed to form a quorum, and any business may be brought before or dealt with at such an adjourned meeting that might have been brought before or dealt with at the original meeting in accordance with the notice calling the same.

The chairman of any meeting at which a quorum of Unitholders is present may, with the consent of the majority of the Unitholders present in person or by proxy, adjourn any such meeting and no notice of any adjournment need be given.

13.5 Voting

Unitholders of record on the applicable record date for voting may attend and vote at all meetings of the Unitholders either in person or by proxy. Any action to be taken by the Unitholders shall, except as otherwise required by this Declaration of Trust, or by law, be authorized when approved by an Ordinary Resolution. The chairman of any meeting of Unitholders shall not have a second or casting vote. Every

question submitted to a meeting, other than a Special Resolution, shall, unless a poll vote is demanded, be decided by a show of hands, on which every Person present and entitled to vote shall be entitled to one vote.

At any such meeting, unless a poll is demanded, a declaration by the chairman that a resolution has been carried or carried unanimously or by a particular majority, or lost or not carried by a particular majority, shall be conclusive evidence of that fact. If a poll is demanded concerning the election of a chairman or an adjournment, it shall be taken immediately upon request and, in any other case, it shall be taken at such time as the chairman may direct. The demand for a poll shall not prevent the continuation of a meeting for the transaction of any business other than the question on which the poll has been demanded.

If Units are held jointly by two or more Persons, any one of them present in person or by proxy at the meeting may vote in the absence of the other or others; but if more than one of them is present in person or by proxy, they shall vote together with respect to the Units held jointly, provided that only one of them can vote on a show of hands, and, if they do not agree on how to exercise any vote to which they are jointly entitled (including a vote on a show of hands), they shall, for the purposes of the voting, be deemed not to be present.

13.6 Resolutions Binding on Trustees

Nothing in this Article 13, however, shall prevent the Trustees from submitting to a vote of the Unitholders any other matter which they deem appropriate. Except with respect to the matters specified in Section 12.2, or any other matters required by this Declaration of Trust or by law to be submitted to a vote of the Unitholders by the Trustees, no vote of the Unitholders shall in any way bind the Trust or Trustees.

13.7 No Breach

Notwithstanding any other provision of this Declaration of Trust, Unitholders shall have no power to effect any amendment to this Declaration of Trust which would require the Trustees to take action or conduct the affairs of the Trust in a manner which would constitute a breach or default by the Trust or the Trustees under any agreement binding on, or obligation of, the Trust or the Trustees.

13.8 Class Approval

If any business to be transacted at a meeting of Unitholders would affect the rights of Unitholders of one or more classes (or, subject to clause (b)(iii) below, series) in a manner different from the Unitholders of any other class (or, subject to clause (b) (iii) below, series) then:

- (1) reference to such fact, indicating each class so affected, shall be made in the notice of such meeting; and
- (2) Unitholders of a class so affected shall not be bound or adversely affected by any action to be taken at such meeting unless in addition to compliance with the other provisions of this Section:
 - (a) there are present in person or by proxy Unitholders of such class who hold in the aggregate not less than 10% of the votes attached to such class or series, subject to the provisions of this Declaration of Trust as to quorum at adjourned meetings; and
 - (b) the resolution is passed by the affirmative vote of a majority, or as applicable, two-thirds of the Unitholders of such class (depending upon whether the business which is the

subject of the resolution is one generally being conducted by way of, in the first instance, Ordinary Resolution, in the second case, Special Resolution); and

- (c) the Unitholders of a series of Units of a class are entitled to vote separately as a series under this Section 13.8 only if such series is affected by an amendment in a manner different from the other Units of the same class.

13.9 Meaning of "Outstanding"

Every Unit issued, certified and delivered hereunder will be deemed to be outstanding until it is cancelled or delivered to the Trustees or Transfer Agent for cancellation, provided that:

- (1) when a new certificate has been issued in substitution for a Unit certificate that has been lost, stolen, mutilated or destroyed, only the later of such Unit certificates will be counted for the purposes of determining the number of Units outstanding; and
- (2) for the purpose of any provision of this Declaration of Trust entitling holders of outstanding Units to vote, sign consents, requisitions or other instruments or take any action under this Declaration of Trust, Units owned directly or indirectly, legally or equitably, by the Trust, or any Subsidiary thereof will be disregarded, except that:
 - (a) for the purpose of determining whether the Trustees will be protected in relying on any such vote, consent, requisition or other instrument or action, only the Units that the Trustees know are so owned will be so disregarded; and
 - (b) Units so owned that have been pledged in good faith other than to the Trust or a Subsidiary thereof will not be so disregarded if the pledgee establishes to the satisfaction of the Trustees the pledgee's right to vote such Units in its discretion free from the Control of the Trust or any Subsidiary thereof; and
 - (c) for the purposes of Section 13.9(2), any Trustee, any officer of the Trust or the Transfer Agent will provide a certificate that will state the number of Units and the certificate numbers of certificates, if certificates are issued, held by the Trust or any Subsidiary thereof. The Trustees will be entitled to rely on such certificate in order to disregard the votes of any of the parties mentioned above.

13.10 Record Dates

For the purpose of determining the Unitholders who are entitled to receive notice of and vote at any meeting or any adjournment(s) or postponement(s) thereof or for the purpose of any other action, the Trustees may from time to time, without notice to the Unitholders, close the transfer books for such period, not exceeding 35 days, as the Trustees may determine; or without closing the transfer books the Trustees may fix a date not less than 21 days and not more than 60 days prior to the date of any meeting of the Unitholders or other action as a record date for the determination of the Unitholders entitled to receive notice of and to vote at such meeting or any adjournment(s) or postponement(s) thereof or to be treated as the Unitholders of record for purposes of such other action, and any Unitholder who was a Unitholder at the time so fixed shall be entitled to receive notice of and vote at such meeting or any adjournment(s) or postponement(s) thereof, even though such Unitholder has since that date disposed of his/her Units, and no Unitholder becoming such after that date shall be entitled to receive notice of and vote at such meeting or any adjournment(s) or postponement(s) thereof or to be treated as a Unitholder of record for purposes of such other action. If, in the case of any meeting of the Unitholders, no record date

with respect to voting has been fixed by the Trustees, the record date for voting shall be 5:00 p.m. (Calgary time) on the last Business Day before the meeting.

13.11 Proxies

Whenever the vote or consent of the Unitholders is required or permitted under this Declaration of Trust, such vote or consent may be given either directly by the Unitholder or by a proxy in such form as the Trustees may prescribe from time to time or, in the case of a Unitholder that is a body corporate or association, by an individual authorized by the board of directors or governing body of the body corporate or association to represent it at a meeting of the Unitholders. A proxyholder need not be a Unitholder. The Trustees may solicit such proxies from the Unitholders or any of them in any matter requiring or permitting the Unitholders' vote, approval or consent.

The Trustees may adopt, amend or repeal such regulations 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 Persons 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 giving the proxy or the revocation of the proxy unless written notice of the death, incapacity, insolvency, bankruptcy or revocation of the proxy has been received by the Chairman of the meeting prior to the time when the vote is cast.

13.12 Personal Representatives

Subject to Section 3.14, if a Unitholder is deceased, his or her personal representative, upon filing with the secretary of the meeting such proof of his or her appointment as the secretary considers sufficient, shall be entitled to exercise the same voting rights at any meeting of the Unitholders as the Unitholder would have been entitled to exercise if he or she were living and for the purpose of the meeting shall be considered to be a Unitholder. Subject to the provisions of the will of a deceased Unitholder, if there is more than one personal representative, the provisions of Section 3.22 relating to joint holders shall apply.

13.13 Attendance by Others

Any Trustee, officer of the Trust, representative of the Auditors, representative of the legal counsel of the Trust or other individual approved by the Trustees may attend and speak at any meeting of the Unitholders.

13.14 Conduct of Meetings of Unitholders

- (1) The chairman of any annual or special meeting of Unitholders shall be the Chairman of the Trustees or, in his absence, any other Trustee specified by resolution of the Trustees or, in the absence of any Trustee, any person appointed as chairman of the meeting by the Trustees to act

as chairman of the meeting. The chairman of the meeting shall appoint the secretary of the Trust or, in the absence of the secretary, an individual, who need not be a Unitholder, to act as secretary of the meeting. If desired, one or more scrutineers, who need not be Unitholders, may be appointed by the chairman.

- (2) To the extent that the rules and procedures for the conduct of a meeting of the Unitholders are not prescribed herein or in the Trustees' Regulations, the rules and procedures shall be such reasonable rules and procedures as are determined by the chairman of the meeting and such rules and procedures shall be binding upon all parties participating in the meeting.

13.15 Binding Effect of Resolutions on Unitholders

Every resolution passed at a meeting in accordance with the provisions of this Article 13 shall be binding upon all Unitholders, whether present at or absent from the meeting.

13.16 Resolution in Lieu of Meeting

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

ARTICLE 14 TERMINATION OF TRUST

14.1 Duration of the Trust

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

14.2 Termination with the Approval of the Unitholders

The Trust may be terminated by a Special Resolution at a meeting of the Unitholders duly called by the Trustees for the purpose of considering termination of the Trust. If the Unitholders vote to terminate the Trust, the Trustees will commence to wind-up the affairs of the Trust as soon as may be reasonably practicable. Such Special Resolution may contain such directions to the Trustees as the Unitholders determine, including a direction to distribute the Trust Property, in specie, subject to compliance with any agreements or securities or other laws applicable to such distributions.

14.3 Effect of Termination

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

14.4 Procedure Upon Termination

Forthwith upon being required to commence to wind-up the affairs of the Trust, the Trustees shall give notice thereof to the Unitholders, which notice shall designate the time or times at which Unitholders may surrender their Units for cancellation and the date at which the Registers shall be closed.

14.5 Powers of Trustees Upon Termination

After the date on which the Trustees are required to commence to wind-up the affairs of the Trust, the Trustees shall undertake no activities except for the purpose of winding-up the affairs of the Trust as hereinafter provided and, for this purpose, the Trustees shall continue to be vested with and may exercise all or any of the powers conferred upon the Trustees under this Declaration of Trust.

14.6 Further Notice to Unitholders

In the event that less than all of the Unitholders have surrendered their Units for cancellation within six months after the time specified in the notice referred to in Section 14.4, the Trustees shall give further notice to the remaining Unitholders to surrender their Units for cancellation and if, within one year after the further notice, all the Units shall not have been surrendered for cancellation, such remaining Units shall be deemed to be cancelled without prejudice to the rights of the holders of such Units to receive their pro rata share of the remaining property of the Trust, and the Trustees may either take appropriate steps, or appoint an agent to take appropriate steps, to contact such Unitholders (deducting all expenses thereby incurred from the amounts to which such Unitholders are entitled as aforesaid) or, in the discretion of the Trustees, may pay such amounts into court.

14.7 Responsibility of the Trustees after Sale and Conversion

The Trustees shall be under no obligation to invest the proceeds of any sale of investments or other assets or cash forming part of the Trust Property after the date referred to in Section 14.4 and, after such sale, the sole obligation of the Trustees under this Declaration of Trust shall be to hold such proceeds or assets in trust for distribution under Section 14.3.

ARTICLE 15 LIABILITIES OF THE TRUSTEES AND OTHERS

15.1 Liability and Indemnification of the Trustees

The Trustees shall at all times (including such time as they have ceased to be Trustees) be indemnified and held harmless out of the Trust Property from and against all liabilities, damages, losses, debts and claims whatsoever, including costs, charges and expenses in connection therewith, threatened, sustained, incurred, brought, commenced or prosecuted against them, and any appeal thereof, 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 or directors or trustees of any Subsidiary of the Trust and also from and against all other liabilities, damages, losses, debts, claims, costs, charges, expenses, fines, penalties and settlements (including legal fees and disbursements on a solicitor and its client basis) which they sustain or incur in or about or in relation to the affairs of the Trust. Further, the Trustees shall not be liable to the Trust or to any Unitholder or Annuitant for any loss or damages relating to any matter regarding the Trust, including any loss or diminution in the value of the Trust or

the Trust Property. The foregoing provisions of this Section 15.1 in favour of any Trustee do not apply unless:

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

15.2 Liability of the Trustees

The Trustees shall not be liable to the Trust or to any Unitholder, Annuitant or any other Person for the acts, omissions, receipts, neglects or defaults of any Person, firm or corporation employed or engaged by them 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 Trust Property shall be lodged or deposited, or for any loss occasioned by error in judgment or oversight on the part of the Trustees, or for any other loss, damage or misfortune which may happen in the execution by the Trustees of their duties hereunder, except to the extent the Trustees have not acted in accordance with Section 15.1(1) and Section 15.1(2).

15.3 Reliance Upon Advice

The Trustees may rely and act upon any statement, report or opinion prepared by or any advice received from the Auditors, lawyers or other professional advisors of the Trust and shall not be responsible or held liable for any loss or damage resulting from so relying or acting.

15.4 Liability of the Unitholders and Others

Notwithstanding any other provision of this Declaration of Trust, no Unitholder or Annuitant, in its capacity as such, shall be held to have any personal liability as such, and no resort shall be had to, nor shall recourse or satisfaction be sought from, the private property of any Unitholder or Annuitant for any liability whatsoever, in tort, contract or otherwise, to any Person in connection with the Trust Property or the affairs of the Trust, including for satisfaction of any obligation or claim arising out of or in connection with any contract or obligation of the Trust or of the Trustees or any obligation which a Unitholder or Annuitant would otherwise have to indemnify a Trustee for any personal liability incurred by the Trustee as such ("**Trust Liability**"), but rather the Trust Property only is intended to be liable and subject to levy or execution for satisfaction of such Trust Liability. Each Unitholder and Annuitant shall be entitled to be reimbursed out of the Trust Property in respect of any payment of such Trust Liability made by such Unitholder or Annuitant.

In addition to the guidelines and policies set out in Article 4, the Trustees shall cause the operations of the Trust to be conducted, with the advice of lawyers and other professional advisors, in such a way and in such jurisdictions as to avoid, to the extent which they determine to be practicable and consistent with their fiduciary duty to act in the best interests of the Unitholders, any material risk of liability on the Unitholders for claims against the Trust, and shall, to the extent available on terms which they determine to be practicable, including the cost of premiums, cause the insurance carried by the Trust, to the extent applicable, to cover the Unitholders and annuitants as additional insureds. Any

potential liability of the Trustees with respect to the foregoing obligations or their failure to perform the same shall be governed by the provisions of Section 15.1(1) and Section 15.1(2).

ARTICLE 16 GENERAL

16.1 Execution of Instruments

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

16.2 Manner of Giving Notice

Except as otherwise permitted herein, any notice required or permitted by the provisions of this Declaration of Trust to be given to the Trust, a Unitholder, a Trustee or the Auditors shall be deemed conclusively to have been given if given either by email or other electronic communication delivery or by prepaid first-class mail addressed to the Unitholder at its 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 at the last address provided by such Auditors to the Secretary of the Trust, as the case may be; provided that if there is a general discontinuance of postal service due to strike, lockout or otherwise, such notice may be given by publication twice in the business section of the national edition of The Globe and Mail or National Post or a similar section of any other newspaper having national circulation in Canada; provided further that if there is no such newspaper having national circulation, then by publishing twice in the business section of a newspaper in the city where the Register is maintained. Any notice so given shall be deemed to have been given on the day of hand delivery or the day following that on which the notice was mailed or, in the case of notice being given by publication, after publishing such notice twice in the designated newspaper or newspapers. In proving notice was mailed, it shall be sufficient to prove that such notice was properly addressed, stamped and mailed. Notice to any one of several joint holders of Units shall be deemed effective notice to the other joint holders. Any notice sent by mail to or left at the address of a Unitholder pursuant to this section shall, notwithstanding the death or bankruptcy of such Unitholder, and whether or not the Trustees have notice of such death or bankruptcy, be deemed to have been fully given and shall be deemed sufficient notice to all persons having an interest in the Units concerned.

16.3 Failure to Give Notice

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

16.4 Trust Auditors

The Auditors shall be appointed at each annual meeting of Unitholders by an Ordinary Resolution: unless the Unitholder, by Special Resolution, waive the requirement for Auditors, which waiver shall be effective until the next annual meeting of Unitholders. If at any time a vacancy occurs in the position of Auditors where the Trust carries on business, the Trustees may appoint a firm of chartered accountants qualified to practise in all provinces of Canada to act as the Auditors until the next annual meeting of the Unitholders. The Auditors shall report to the Trustees and the Unitholders on the annual financial statements of the Trust and shall fulfil such other responsibilities as they may properly be called

upon by the Trustees to assume. The Auditors shall have access to all records relating to the affairs of the Trust. The Auditors shall receive such remuneration as may be approved by the Trustees.

16.5 Change of Auditors

Subject to applicable laws, the Auditors may at any time be removed and new Auditors appointed by a majority of the Trustees.

16.6 Fiscal Year

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

16.7 Reports to the Unitholders

Prior to each annual and special meeting of Unitholders, the Trustees shall provide the Unitholders (along with notice of such meeting and a form of proxy) information similar to that required to be provided to shareholders of a public corporation governed by the ABCA and as required by applicable tax and securities laws.

16.8 Trust Property to be Kept Separate

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

16.9 Electronic Documents

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

16.10 Trustees May Hold Units

Any Trustee or Associate of a Trustee may be a Unitholder or may be an Annuitant, and may be required to hold Units as the Board of Trustees may determine from time to time.

16.11 Trust Records

The Trustees shall prepare and maintain, at the principal office of the Trust or at any other place designated in Canada by the Trustees, records containing: (i) this Declaration of Trust; and (ii) minutes of meetings and resolutions of the Unitholders. 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.

16.12 Right to Inspect Documents

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

all or any of the registered holders of Units, to the same extent and upon the same conditions as those which apply to shareholders and creditors of a corporation governed by the ABCA.

16.13 Taxation Information

On or before March 30 in each year, or such earlier date as is required by applicable legislation or regulation, the Trust will provide to Unitholders who received distributions from the Trust in the prior calendar year, such information regarding the Trust required by applicable law to be submitted to Unitholders for income tax purposes to enable Unitholders to complete their tax returns in respect of the prior calendar year.

16.14 Consolidations

Any one or more Trustees may prepare consolidated copies of this 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 this Declaration of Trust, as amended or amended and restated.

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.

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 this Declaration of Trust and shall not affect or impair any of the remaining provisions thereof. If any provision of this Declaration of Trust shall be held invalid or unenforceable in any jurisdiction, such invalidity or unenforceability shall attach only to such provision in such jurisdiction and shall not in any manner affect or render invalid or unenforceable such provision in any other jurisdiction or any other provision of this Declaration of Trust in any jurisdiction.

16.17 Governing Law

This Declaration of Trust shall be interpreted and governed by and take effect exclusively in accordance with the laws of the Province of Alberta and the federal laws of Canada applicable therein. 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 Alberta and each of the Trustees hereby irrevocably attorns, and each Unitholder shall be deemed to hereby irrevocably attorn, to the exclusive jurisdiction of the courts of such province.

16.18 Language

Les parties aux presentes ont exigés que la presente convention ainsi que tous les documents et avis qui s'y rattachent et/ou qui en decouleront soient rediges en la langue anglaise. The parties hereto have required that this Declaration of Trust and all documents and notices resulting herefrom be drawn up in English.

~~IN WITNESS WHEREOF the Trustees appearing below, having been duly authorized to execute and deliver this Declaration of Trust, have caused these presents to be signed and sealed as of the date first above written.~~

[Declaration of Trust made December 31, 2015, as amended and restated to June 20, 2024.](#)

~~Tim Heavenor, Trustee~~

~~Don Douglas, Trustee~~

~~Paul Kennedy, Trustee~~

SCHEDULE "A"

TO DECLARATION OF TRUST OF GVEST REAL ESTATE TRUST MADE AS OF DECEMBER 31, 2015 AS AMENDED AND RESTATED TO ~~SEPTEMBER 17~~JUNE 20, ~~2020~~2024.

The Trust is authorized to issue an unlimited number of Common Units, an unlimited number of First Preferred Units, issuable in series, and an unlimited number of Second Preferred Units, issuable in series.

I. COMMON UNITS

The rights, privileges, restrictions and conditions attaching to the Common Units shall be as follows:

1. *Voting*

1.1 Holders of Common Units shall be entitled to receive notice of and to attend and vote at all meetings of unitholders of the Trust, except meetings of holders of another class of Units. Each Common Unit shall entitle the holder thereof to one vote.

2. *Dividends*

2.1 Subject to the preferences accorded to holders of First Preferred Units, Second Preferred Units and any other Units of the Trust ranking senior to the Common Units from time to time with respect to the payment of dividends, holders of Common Units shall be entitled to receive, if, as and when declared by the Trustees, such dividends as may be declared thereon by the Trustees from time to time.

3. *Liquidation, Dissolution or Winding-up*

3.1 In the event of the voluntary or involuntary liquidation, dissolution or winding-up of the Trust, or any other distribution of its assets among its Unitholders for the purpose of winding-up its affairs (such event referred to herein as a "**Dispersal**"), holders of Common Units shall be entitled, subject to the preferences accorded to holders of the First Preferred Units, Second Preferred Units and any other Units of the Trust ranking senior to the Common Units from time to time with respect to payment on a Dispersal, to share equally, Unit for Unit, in the remaining property of the Trust.

II. FIRST PREFERRED UNITS

The rights, privileges, restrictions and conditions attaching to the First Preferred Units, as a class, shall be as follows:

1. *Issuance in Series*

1.1 The Trustees may at any time and from time to time issue the First Preferred Units in one or more series, each series to consist of such number of First Preferred Units as may, before the issuance thereof, be determined by the Trustees.

1.2 The Trustees may from time to time fix, before issuance, the designation, rights, privileges, restrictions and conditions attaching to each series of First Preferred Units including, without limiting the generality of the foregoing, the amount, if any, specified as being payable preferentially to such series on a Dispersal, the extent, if any, of further

participation on a Dispersal, voting rights, if any, and dividend rights (including whether such dividends be preferential, or cumulative or non-cumulative), if any.

2. *Liquidation*

2.1 In the event of a Dispersal, holders of each series of First Preferred Units shall be entitled, in priority to holders of Common Units, Second Preferred Units and any other Units of the Trust ranking junior to the First Preferred Units from time to time with respect to payment on a Dispersal, to be paid rateably with holders of each series of First Preferred Units the amount, if any, specified as being payable preferentially to the holders of such series on a Dispersal.

3. *Dividends*

3.1 The holders of each series of First Preferred Units shall be entitled, in priority to holders of Common Units, Second Preferred Units and any other Units of the Trust ranking junior to the First Preferred Units from time to time with respect to the payment of dividends, to be paid rateably with holders of each other series of First Preferred Units, the amount of accumulated dividends, if any, specified as being payable preferentially to the holders of such series.

III. SECOND PREFERRED UNITS

The rights, privileges, restrictions and conditions attaching to the Second Preferred Units, as a class, shall be as follows:

1. *Issuance in Series*

1.1 The Trustees may at any time and from time to time issue the Second Preferred Units in one or more series, each series to consist of such number of Second Preferred Units as may, before the issuance thereof, be determined by the Trustees.

1.2 The Trustees may from time to time fix, before issuance, the designation, rights, privileges, restrictions and conditions attaching to each series of Second Preferred Units including, without limiting the generality of the foregoing, the amount, if any, specified as being payable preferentially to such series on a Dispersal, the extent, if any, of further participation on a Dispersal, voting rights, if any, and dividend rights (including whether such dividends be preferential, or cumulative or non-cumulative), if any.

2. *Liquidation*

2.1 In the event of a Dispersal, holders of each series of Second Preferred Units shall be entitled, subject to the preference accorded to holders of First Preferred Units but in priority to holders of Common Units and any other Units of the Trust ranking junior to the Second Preferred Units from time to time with respect to payment on a Dispersal, to be paid rateably with holders of each other series of Second Preferred Units the amount, if any, specified as being payable preferentially to the holders of such series on a Dispersal.

3. *Dividends*

- 3.1 The holders of each series of Second Preferred Units shall be entitled, subject to the preference accorded to the holders of First Preferred Units but in priority to holders of Common Units and any other Units of the Trust ranking junior to the Second Preferred Units from time to time with respect to the payment of dividends, to be paid rateably with holders of each other series of Second Preferred Units, the amount of accumulated dividends, if any, specified as being payable preferentially to the holders of such series.

Summary report:	
Litera Compare for Word 11.7.0.54 Document comparison done on 5/27/2024 4:37:30 PM	
Style name: BDP Strikethrough, No Moves	
Intelligent Table Comparison: Active	
Original DMS: iw://dms-bdp-mobility-ca.imatech.com/ACTIVE/13852803/1	
Modified DMS: iw://dms-bdp-mobility-ca.imatech.com/ACTIVE/13852803/2	
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Delete	30
Move From	0
Move To	0
Table Insert	0
Table Delete	0
Table moves to	0
Table moves from	0
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Embedded Excel	0
Format changes	0
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