

CHOICE PROPERTIES REAL ESTATE INVESTMENT TRUST

AMENDED AND RESTATED DECLARATION OF TRUST

April 30, 2021

TORYS

LLP

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CHOICE PROPERTIES REAL ESTATE INVESTMENT TRUST

AMENDED AND RESTATED DECLARATION OF TRUST

THIS AMENDED AND RESTATED DECLARATION OF TRUST is made in Toronto, Ontario as of the 30th day of April, 2021.

RECITALS

WHEREAS the Trust was initially settled on May 21, 2013 and was established under the name “Choice Properties Real Estate Investment Trust”, pursuant to a declaration of trust dated May 21, 2013 (the “**Original Declaration of Trust**”), for the principal purpose of providing persons who may become the holders of Units with an opportunity to participate directly or indirectly in a portfolio of income-producing real property investments and related assets;

AND WHEREAS the Trustees agreed to hold the initial contribution of \$10.00 and all amounts and assets subsequently received under the Original Declaration of Trust, as amended, or in respect of the investment of the assets of the Trust in accordance with the provisions set forth in the Original Declaration of Trust, as amended;

AND WHEREAS at an annual and special meeting of the Unitholders of the Trust held on May 2, 2018, Unitholders voted to amend and restate the Original Declaration of Trust with the amended and restated declaration of trust dated May 2, 2018 (the “**First Amended and Restated Declaration of Trust**”);

AND WHEREAS at an annual and special meeting of the Unitholders of the Trust held on April 30, 2021, Unitholders voted to amend and restate the First Amended and Restated Declaration of Trust with this Amended and Restated Declaration of Trust;

AND WHEREAS the Trustees continue to desire that the Trust shall qualify as a “mutual fund trust” and as a “real estate investment trust” pursuant to subsections 132(6) and 122.1(1) of the Tax Act (as hereinafter defined), respectively;

AND WHEREAS the Trustees desire to set out the agreements, terms and conditions which shall govern their rights, powers and obligations with respect to the administration of the Trust;

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

NOW THEREFORE, each of the undersigned Trustees, hereby confirms and declares that he or she agrees to hold in trust any and all property, real, personal or otherwise, tangible or intangible, which has been at or prior to the date hereof or is hereafter transferred, conveyed or paid to or otherwise received by him or her as Trustee or to which the Trust is otherwise entitled and all rents, income, profits and gains therefrom for the benefit of the Unitholders hereunder in accordance with and subject to the express provisions of this Amended and Restated 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:

“**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;

“**Aggregate Adjusted Assets**” means, as at any date, as at the relevant Calculation Reference Date, the Aggregate Assets, provided that the component amount thereof that would otherwise comprise the amount shown on the Trust’s balance sheet as “Investment properties” (or its equivalent) shall be instead calculated as the amount obtained by applying the Capitalization Factor as at such Calculation Reference Date to determine the fair value of the Trust’s assets that would comprise “Investment properties” as at such date, using the valuation methodology described by the Trust in its then most recently published annual or interim financial statements or management’s discussion and analysis, applied consistently in accordance with past practice;

“**Aggregate Assets**” means, as of any date, the total assets of the Trust, excluding goodwill and future income tax assets, determined on a consolidated basis and in accordance with GAAP, and giving effect to Proportionate Consolidation Adjustments and, to the extent applicable, adjusted for any adjustments which correspond to those made in accordance with the definition of Consolidated EBITDA (other than fair value adjustments reflecting an increase or decrease in the fair value of investment properties);

“**Annuitant**” means the annuitant or beneficiary of a Deferred Income Plan, or of any plan of which a Trust Unitholder acts as trustee or a carrier;

“**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;

“**Audit Committee**” means the committee of the Trustees established pursuant to Section 9.2;

“**Auditors**” means the firm of chartered accountants appointed as the auditors of the Trust and its Subsidiaries from time to time in accordance with Section 16.4;

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

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

“Calculation Reference Date” means, with respect to any date, the last day of the most recently completed fiscal quarter of the Trust;

“Capital Lease Obligation” of any Person means the obligation of such Person, as lessee, to pay rent or other payment amounts under a lease of real or personal property which is required to be classified and accounted for as a finance lease or a liability on a consolidated balance sheet of such Person in accordance with GAAP;

“Capitalization Factor” means, as at the relevant Calculation Reference Date, the amount determined as the simple average of the weighted average capitalization rate published by the Trust in reference to the calculation of the fair value of its assets in the Trust’s annual or interim financial statements or management’s discussion and analysis published for each of the eight (8) most recently completed fiscal quarters (including the fiscal quarter in which the relevant Calculation Reference Date occurs);

“CBCA” means the *Canada Business Corporations Act*;

“CDS” means CDS Clearing and Depository Services Inc., together with its successors from time to time;

“Chair”, “Lead Trustee” “Vice-Chair”, “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;

“Class A LP Unit” means a unit of interest in the LP designated as a Class A LP Unit and having the rights and attributes described in the LP Agreement with respect thereto;

“Class B LP Unit” means a unit of interest in the LP designated as a Class B LP Unit and having the rights and attributes described in the LP Agreement with respect thereto, including the right of a holder thereof to exchange such unit for a Trust Unit;

“Class C LP Unit” means a unit of interest in the LP designated as a Class C LP Unit and having the rights and attributes described in the LP Agreement with respect thereto;

“Consolidated EBITDA” for any period means Consolidated Net Income for such period increased by the sum of, without duplication (i) Consolidated Interest Expense for such period, (ii) depreciation and amortization expense for such period, and (iii) Consolidated Income Tax Expense (other than income taxes, either positive or negative, attributable to unusual or non-recurring gains or losses or other non-cash gains or losses as adjusted for in calculating Consolidated Net Income);

“Consolidated Income Tax Expense” for any period means the income tax expense of the Trust for such period, determined on a consolidated basis and in accordance with GAAP and including Proportionate Consolidation Adjustments;

“Consolidated Indebtedness” has the meaning set out in Section 4.3;

“Consolidated Interest Expense” for any period means the aggregate amount of interest expense of the Trust, adjusted in all cases for Proportionate Consolidation Adjustments in respect of Consolidated Indebtedness, Capital Lease Obligations, the original issue discount (or, as applicable, premium) of any Consolidated Indebtedness issued at a price less than (or, as applicable, more than) the face amount thereof paid, accrued or scheduled to be paid or accrued by the Trust during such period and, to the extent interest has been capitalized on projects that are under development or held for future development during the period, the amount of interest so capitalized (including Proportionate Consolidation Adjustments), all as determined on a consolidated basis in accordance with GAAP; provided that (A) such amount shall be adjusted, as and to the extent applicable, for non-cash gains or losses related to the Transferor Notes and (B) notwithstanding its presentation under GAAP, all interest expense of the Trust in respect of convertible debenture Indebtedness will be included at the face rate of interest, respectively, and (C) for the avoidance of doubt, distributions in respect of the Class B LP Units and Class C LP Units will not be included in determining Consolidated Interest Expense;

“Consolidated Net Income” for any period means the net income (loss) of the Trust for such period determined on a consolidated basis in accordance with GAAP, excluding (i) any gain or loss attributable to the sale or other disposition of any asset or liability of the Trust, other than the sale or disposition of income properties held for resale, (ii) any non-cash changes in fair value and other non-cash gains and losses of the Trust, determined on a consolidated basis in accordance with GAAP, and (iii) other non-recurring items; and including (iv) any Proportionate Consolidation Adjustments; and including or excluding, as applicable, the related tax impact of items (i) to (iii);

“consolidation” means a consolidation, combination or reduction (other than by way of redemption or purchase) in the number of outstanding Trust Units into a lesser number of Trust Units;

“control” or **“controlled”** has the meaning given to it in NI 45-106;

“court” means the Superior Court of Justice in the Province of Ontario;

“Declaration of Trust” means this amended and restated declaration of trust, as it may be further amended, supplemented or restated from time to time;

“Deferred Income Plan” means any trust governed by a registered retirement savings plan, a registered retirement income fund, a deferred profit sharing plan, a registered disability savings plan, a tax-free savings account or a registered education savings plan, each as defined in the Tax Act;

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

“Distribution Payment Date” means, in respect of a Distribution Period, a Business Day on or about the fifteenth (15th) day of the immediately following month or such date as may be determined from time to time by the Trustees;

“Distribution Period” means each calendar month 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 the distribution reinvestment plan adopted by the Trust for Trust Unitholders that may be in effect from time to time;

“Exchange Agreement” means the exchange and support agreement dated as of July 5, 2013 and entered into by the Trust, the LP, and each holder of a Class B LP Unit, and each additional person who becomes, from time to time, a holder of Class B LP Units and agrees to be a party to and bound by such agreement, as it may be amended, supplemented or restated from time to time;

“Exchangeable Securities” means any securities of any trust, limited partnership or corporation other than the Trust that are convertible or exchangeable directly for Trust Units without the payment of additional consideration therefor and, for greater certainty, includes the Class B LP Units;

“First Amended and Restated Declaration of Trust” has the meaning set out in the Recitals;

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

“GAAP” means generally accepted accounting principles in Canada (including IFRS) as in effect from time to time and as adopted by the Trustees;

“General Partner” means Choice Properties GP Inc., a corporation existing under the laws of the Province of Ontario, and the general partner of the LP;

“GWL” means George Weston Limited, a company existing under the laws of Canada;

“going-private transaction” means an arrangement, consolidation or other transaction involving the Trust, other than an acquisition pursuant to Section 3.27, that results in the interest of a holder of participating securities of the Trust being terminated without the consent of the holder and without the substitution of an interest of equivalent value in participating securities of the Trust or of a person that succeeds to the business of the Trust, which participating securities have rights and privileges that are equal to or greater than the affected participating securities;

“**Governance Committee**” means the committee of the Trustees established pursuant to Section 9.3;

“**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;

“**Indebtedness Percentages**” has the meaning set out in Section 4.2;

“**Independent Trustee**” means, at any time, a Trustee who, in relation to the Trust, is “independent” for purposes of National Instrument 58-101 - *Disclosure of Corporate Governance Practices*;

“**LCL**” means Loblaw Companies Limited, a company existing under the laws of Canada;

“**Lead Trustee**” has the meaning set out in Section 6.11;

“**LP**” means Choice Properties Limited Partnership, a limited partnership formed under the laws of the Province of Ontario and, as the circumstances require, references to the “LP” shall include, as and to the extent applicable, such other limited partnerships that may be Subsidiaries of the Trust from time to time;

“**LP Agreement**” means the amended and restated limited partnership agreement of Choice Properties Limited Partnership, as such agreement may be further amended, supplemented or amended and restated from time to time, and, as the circumstances require, references to “**LP Agreement**” shall include, as and to the extent applicable, the limited partnership agreement for any such other limited partnership that may be a 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;

“**Monthly Limit**” has the meaning set out in Section 3.20;

“**Multilateral Instrument 61-101**” means Multilateral Instrument 61-101 - *Protection of Minority Security Holders in Special Transactions*;

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

“**NI 45-106**” means National Instrument 45-106 - *Prospectus Exemptions*;

“**Nominating Unitholder**” has the meaning set out in Section 6.8;

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

“**Notes**” means the promissory notes, bonds, debentures, debt securities or similar evidence of indebtedness issued by a Person;

“**Offer**” has the meaning set out in Section 3.28;

“**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;

“**Original Declaration of Trust**” has the meaning set out in the Recitals;

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

“**Permitted Indebtedness**” has the meaning set out in Section 4.3;

“**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 Unit**” means a preferred unit representing an interest in the Trust (other than a Trust Unit) created, authorized and issued hereunder and having the rights and attributes established by the Trustees from time to time in accordance with Section 3.3;

“**Proportionate Consolidation Adjustments**” means accounting adjustments to reflect assets, liabilities, equity, revenues and expenses on a proportionate basis in place of the Trust’s use of equity accounting in accordance with GAAP with respect to real estate investments or interests in which the Trust and its Subsidiaries participate;

“**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**” has the meaning set out in Section 3.20;

“**Redemption Price**” has the meaning set out in Section 3.20;

“**Register**” has the meaning set out in Section 3.21;

“**Registrar**” has the meaning set out in Section 3.21;

“**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;

“**Securities Act**” means the *Securities Act* (Ontario);

“**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;

“**Special Voting Unit**” means a special voting unit of the Trust that is authorized and issued pursuant to Section 3.1 to a holder of an Exchangeable Security;

“**Strategic Alliance Agreement**” means the agreement dated as of July 5, 2013 between the Trust, LCL, Loblaws Inc. and Loblaw Properties Limited, as such agreement may be amended, supplemented or restated from time to time;

“**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;

“**Subsidiary Notes**” means promissory notes of the LP, a trust all of the units of which, or a corporation all of the shares of which, are owned directly or indirectly by the Trust or another entity that would be consolidated with the Trust under GAAP, having a maturity date and interest rate determined by the Trustees at the time of issuance;

“**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 3.21;

“**Transferor Notes**” means the Indebtedness owing by the LP to noteholders pursuant to a trust indenture dated as of May 12, 2014 between the LP and Computershare Trust Company of Canada, as supplemented;

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

“**Trust Exchangeable Securities**” has the meaning set out in Section 3.5(a);

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

“**Trust Liability**” has the meaning set out in Section 15.4(a);

“**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 Section 7.3 or Section 13.13 from time to time;

“**Trust Unit**” means a unit of interest in the Trust authorized and issued hereunder as such and for the time being outstanding and includes a fraction of a Trust Unit but, for greater certainty, excludes a Special Voting Unit;

“**Trust Unitholder**” means a Person whose name appears on the Register as a holder of one or more Trust Units;

“**Units**” means, collectively, the Trust Units and the Special Voting Units; and

“**Unitholder**” or “**Holder**” means a Person whose name appears on the Register as a holder of one or more Trust Units or Special Voting Units, or a fraction thereof.

1.2 Construction

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

- (a) 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;
- (b) references to an “Article” or “Section” are references to an Article or Section of this Declaration of Trust;
- (c) words importing the singular shall include the plural and vice versa, and words importing gender shall include the masculine, feminine and neuter genders;
- (d) the use of headings is for convenience of reference only and shall not affect the construction or interpretation hereof;

- (e) 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;
- (f) 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);
- (g) 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;
- (h) 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;
- (i) 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;
- (j) 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
- (k) 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.

1.5 Applications to Court

As the rights (including the right to apply to a court) and remedies set out in Sections 3.27, 7.7(h), 10.1, 10.2 and 13.4 of this Declaration of Trust are not statute-based, all references in this Declaration of Trust to Unitholder rights (or the rights of any other person) that may be enforced by the court or to remedies that may be granted by the court are subject to the court, in its discretion, accepting jurisdiction to consider and determine any proceeding commenced by an eligible Unitholder (or any other eligible person contemplated herein) applying to the court under such Sections.

ARTICLE 2 THE TRUST

2.1 Establishment of Trust

The Trustees hereby declare themselves and agree to act as trustees of the Trust and to hold and administer the Trust Property in trust for the benefit of the Trust Unitholders on and subject to the terms and conditions of this Declaration of Trust.

2.2 Name of the Trust

The name of the Trust is “Choice Properties Real Estate Investment Trust” in its English form and “Fiducie de Placement Immobilier Propriétés de Choix” in its French form. As far as practicable and except as otherwise provided in this Declaration of Trust, the Trustees shall conduct the affairs of the Trust, hold property, execute all documents and take all legal proceedings under that name, in either its English or French form.

2.3 Use of Name

Should the Trustees determine that the use of the name Choice Properties Real Estate Investment Trust in its English form or Fiducie de Placement Immobilier Propriétés de Choix in its French 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.

2.4 Head Office

The principal office and centre of administration of the Trust shall be located at 22 St. Clair Avenue East, Suite 700, Toronto, Ontario, M4T 2S5 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.

2.5 Nature of the Trust

- (a) The Trust is a limited purpose unincorporated open-ended 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:
- (i) applicable laws and regulations or other requirements imposed by applicable securities or other regulatory authorities; and
 - (ii) 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 joint stock 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.

- (b) The relationship of the Trust 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.

2.6 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 Units

The units of the Trust shall be divided into two classes, described and designated as “Trust Units” and “Special Voting Units”, respectively, which will have attached thereto the rights, limitations, restrictions and conditions set out herein. In addition, the Trustees, subject to obtaining the advice of legal counsel, may from time to time cause Preferred Units be created and issued in one or more series. Before the issuance of Preferred Units of a series, the Trustees shall execute an amendment to this Declaration of Trust (which may be in the form of an amended and restated declaration of trust) containing a description of such series, including the designations, rights, privileges, restrictions and conditions determined by the Trustees. Only after Preferred Units of a series have been created pursuant to the execution of such an amendment will such series become a series of Units under this Declaration of Trust.

The number of Units that the Trust may issue is unlimited. Subject to Section 3.6(b), 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 majority of the Unitholders, or as otherwise provided in Section 3.11.

3.2 Ranking of Units

- (a) Each Trust 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 (other than Net Realized Capital Gains allocated and distributed to redeeming Trust Unitholders), 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 Trust Units rank among themselves equally and rateably without discrimination, preference or priority. Each Trust 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.
- (b) Each Special Voting Unit shall entitle the holder of record thereof to receive notice of, to attend, and to vote a number of votes at all meetings of the Unitholders or in respect of any written resolution of the Unitholders equal to the number of Trust Units into which the outstanding Exchangeable Securities to which such Special Voting Units relate are, directly or indirectly, exchangeable or convertible. Special Voting Units shall be issued only in connection with or in relation to Exchangeable Securities (including pursuant to any plan from time to time in effect relating to reinvestment by holders of Exchangeable Securities of distributions of the applicable entity in Exchangeable Securities). A Special Voting Unit shall be issued in tandem with the issuance of an Exchangeable Security and will be evidenced only by the certificate or certificates representing such Exchangeable Securities. Except for the right to attend and vote at meetings of the Unitholders or in respect of written resolutions of the Unitholders, the Special Voting Units shall not confer upon the holders

thereof any other rights; and for greater certainty, no Special Voting Unit will have any economic interest in the Trust or be entitled to any interest or share in the Trust, in any distribution from the Trust (whether of Trust Income, Net Realized Capital Gains or other amounts) or in any net assets of the Trust in the event of the termination or winding-up of the Trust.

- (c) Concurrently with the issue of the Special Voting Units, the Trust shall enter into an exchange agreement (including the Exchange Agreement) pursuant to which the Trust shall provide certain support in respect of the exchange feature of the Exchangeable Securities and in respect of distributions. It is hereby confirmed that the timing, amount and nature of distributions made to holders of Exchangeable Securities are intended to be made, and the Trustees shall take reasonably necessary steps to ensure they are so made, in accordance with the provisions of the applicable exchange agreement and the rights attaching to such Exchangeable Securities.
- (d) A Special Voting Unit shall not be transferable separately from the Exchangeable Security issued in tandem with it, and, upon any transfer of such Exchangeable Security, such Special Voting Unit shall automatically be transferred to the transferee of such Exchangeable Security. For greater certainty, a Special Voting Unit shall only be transferred to a permitted transferee of an Exchangeable Security under the terms and conditions of the constating documents of the entity that issued the Exchangeable Security.
- (e) As Exchangeable Securities are exchanged for Trust Units or redeemed or purchased for cancellation by the entity that issued the Exchangeable Security, the corresponding number of Special Voting Units shall be cancelled for no consideration and without any further action of the Trustees, and the former holder or holders of such Special Voting Units shall cease to have any rights with respect thereto.

3.3 Preferred Units

The Trustees may fix from time to time before issue the number of Preferred Units which is to comprise each class and series and the designation, rights, privileges, restrictions and conditions attaching to each class and series of Preferred Units including, any voting rights, the rate or amount of distributions (which may be cumulative or non-cumulative and variable or fixed) or the method of calculating distributions, the dates of payment thereof, the terms and conditions of redemption, purchase and conversion, if any, any rights on the liquidation, dissolution or winding-up of the Trust, and any sinking fund or other provisions.

The Preferred Units of each class and series shall, with respect to the payment of distributions (other than distributions paid solely through the distribution of additional Trust Units) and the distribution of assets of the Trust or return of capital in the event of liquidation, dissolution or winding-up of the Trust, whether voluntary or involuntary, or any other return of capital or distribution of assets of Trust among its Unitholders for the purpose of winding-up its affairs, be entitled to preference over the Units ranking by their terms junior to the Preferred Units. The Preferred Units of any series may also be given such other preferences, not inconsistent with this Declaration of Trust, over the Units ranking by their terms junior to the Preferred Units.

If any cumulative distributions or amounts payable on the return of capital in respect of a class or series of Preferred Units are not paid in full, all classes and series of Preferred Units of equal ranking shall participate rateably in respect of accumulated distributions and return of capital, based on the accumulated distributions and return of capital of a class and series of Preferred Units as a proportion of the accumulated distributions and return of capital of all classes and series of Preferred Units of equal ranking.

3.4 Allotment and Issue

- (a) Subject to the rights of GWL and its Affiliates contained in the Exchange Agreement, if applicable, the Trustees may allot and issue Trust 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 Trust 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 Trust Units may be issued and the terms and conditions of issuance of the Trust Units shall be determined by the Trustees in their sole discretion.
- (b) Special Voting Units may not be issued by the Trust or the Trustees other than pursuant to Section 3.2(b).
- (c) It is hereby confirmed that, unless otherwise provided, the Exchangeable Securities are intended to be economically equivalent to the Trust Units that the holder may acquire on the exchange of the Exchangeable Securities.

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

- (a) The Trust may create and issue rights, warrants, subscription receipts or options or other instruments or securities to subscribe for fully paid Trust 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 Trust Unit and a holder thereof shall not be a Unitholder unless and until fully paid Trust 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.
- (b) Subject to Sections 4.1 and 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 Trust Units, or which indebtedness, by its terms, may be convertible into Trust 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 Trust Unit

and a holder thereof shall not be a Unitholder unless and until fully paid Trust Units are issued in accordance with the terms of such indebtedness.

3.6 Consideration for Trust Units

- (a) Subject to Section 3.6(b), a Trust 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 Trust 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 Trust 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 Trust Units are issued in whole or in part for consideration other than money, the resolution of the Trustees allotting and issuing such Trust Units shall express the fair equivalent in money of the other consideration received.
- (b) Trust Units may be issued and sold on an instalment basis, in which event beneficial ownership of such Trust Units may be represented by instalment receipts, but shall otherwise be non-assessable. When Trust Units are issued and sold on an instalment basis, the Trust may take security over such Trust Units as security for unpaid instalments, including a pledge as contemplated by an instalment receipt agreement.

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 Trust 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 Trust Unit, except as set out in the Exchange Agreement, or 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 Trust 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 Trust Units, at a price per Trust 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

- (a) Unless the Trustees determine otherwise, and subject to all necessary regulatory approvals, immediately after any *pro rata* distribution of additional Trust Units to all Trust Unitholders pursuant to Section 5.6(b) or otherwise as determined by the Trustees, the number of the outstanding Trust Units will automatically be consolidated such that each such holder will hold after the consolidation the same number of Trust Units as such holder held before the distribution of additional Trust Units. In this case, each Trust Unit certificate representing the number of Trust Units prior to the distribution of additional Trust Units is deemed to represent the same number of Trust Units after the non-cash distribution of additional Trust Units and the consolidation.
- (b) Notwithstanding Section 3.11(a), where tax is required to be withheld from a Trust Unitholder's share of the distribution contemplated by Section 3.11(a), the consolidation will result in such Trust Unitholder holding that number of Trust Units equal to (i) the number of Trust Units held by such Trust Unitholder prior to the distribution plus the number of Trust Units received by such Trust Unitholder in connection with the distribution (net of the number of whole and part Trust Units withheld on account of withholding taxes) multiplied by (ii) the fraction obtained by dividing the aggregate number of Trust Units outstanding prior to the distribution by the aggregate number of Trust 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 Trust Unitholder. Such Trust Unitholder will be required to surrender the Trust Unit certificates, if any, representing such Trust Unitholder's original Trust Units, in exchange for a Trust Unit certificate representing such Trust Unitholder's post-consolidation Trust Units.

3.12 Unclaimed Distributions

In the event that the Trustees hold any amounts to be paid to the Trust 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 Guardian and Trustee of Ontario (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

Subject to Section 3.14, the Trust Units are freely transferable, and the Trustees shall not impose any restriction on the transfer of Trust Units. The Special Voting Units shall be transferable only together with the related Exchangeable Securities and in accordance with Section 3.2. 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

- (a) At no time may Non-Residents be the beneficial owners of more than 49% of the Trust 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 Trust Units to provide the Trustees with a declaration as to the jurisdictions in which beneficial owners of the Trust Units registered in such Trust 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 Trust 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 Trust Units from or issue or register a transfer of Trust 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 Trust Units for the benefit of Non-Residents.
- (b) If, notwithstanding the foregoing, the Trustees determine that more than 49% of the Trust 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 Trust 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 Trust Units or a portion thereof within a specified period of not more than thirty (30) days. If the Trust Unitholders receiving such notice have not sold the specified number of Trust Units or provided the Trustees with satisfactory evidence that they are not Non-Residents within such period, the Trustees may on behalf of such Trust Unitholders sell, or cause to be sold, such Trust Units and, in the interim, shall suspend, or cause to be suspended, the voting and distribution rights attached to such Trust 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 Trust Units and their rights shall be limited to receiving the net proceeds of sale upon surrender of the certificates, if any, representing such Trust 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.

- (c) No liability shall accrue to the Trust or the Trustees if the Trust Units of a Non-Resident Trust Unitholder are sold at a loss to such Trust 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 Trust Units by Non-Residents. It is acknowledged that the Trustees cannot definitively monitor the ownership of Trust Units by Non-Residents if the Trust 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.
- (d) The Trustees' Regulations may include provisions to implement the foregoing.

3.15 Certificates

Subject to Section 3.16, each Trust Unitholder or its duly authorized agent is entitled to a certificate bearing an identifying serial number in respect of the Trust 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 Trust Unit or Trust 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 Trust Units. No holder of a Special Voting Unit shall be entitled to a certificate or other instrument from the Trust evidencing the holder's ownership of such Special Voting Units. Such holder shall only be entitled to be entered on the Register in accordance with Sections 3.21 and 3.22.

3.16 Non-Certificated Inventory System

- (a) The provisions of this Section 3.16 shall not in any way alter the nature of Units or the relationships of a Unitholder to the Trustees and of one Unitholder to another but are intended only to facilitate the recording of all transactions in respect of Trust Units whether by the Trust, securities dealers, stock exchanges, transfer agents, registrars or other persons.
- (b) Except as otherwise provided in this Section 3.16, registration of interests in and transfers of Trust Units held through CDS, or its nominee, will be made electronically through the NCI system of CDS. Units held in CDS will be purchased, transferred and surrendered for redemption through a CDS participant. All rights of beneficial Trust Unitholders who hold Trust Units in CDS must be exercised through, and all payments or other property to which such beneficial Trust Unitholders are entitled will be made or delivered by CDS or the CDS participant through which the beneficial Trust Unitholder holds such Trust Units.
- (c) Except as described below, no purchaser of a Trust Unit will be entitled to a certificate or other instrument from the Trust evidencing that purchaser's ownership thereof, and no holder of a beneficial interest in a Trust Unit will be shown on the records maintained by CDS except through the accounts of CDS participants acting on behalf of the applicable beneficial owners. CDS will be responsible for establishing and maintaining accounts for CDS participants having interests in the Trust Units, and sales of interests in the Trust Units may only be completed through CDS participants.

- (d) Trust Units may be issued in fully registered form to holders or their nominees, if any, who purchase the Trust Units pursuant to a private placement of Trust Units made in reliance upon Rule 144A adopted under the United States Securities Act of 1933, and to transferees thereof in the United States who purchase such Trust Units in reliance upon Rule 144A. Likewise, any Trust Units transferred to a transferee within the United States or outside the United States to a “U.S. person” (within the meaning of Regulation S) may be evidenced in definitive certificates representing any such Trust Units unless the Trust otherwise agrees that such Trust Units need not be evidenced in definitive certificates. If any such Trust Units represented by definitive certificates are subsequently traded into Canada, or otherwise outside the United States in compliance with Regulation S, the Transfer Agent will electronically deliver such Trust Units registered to CDS or its nominee, and CDS will credit interests in such Trust Units to the accounts of the applicable CDS participants as directed by the Transfer Agent.
- (e) Except as noted in the foregoing paragraph, Trust Units will be issued in fully registered form to holders or their nominees, other than CDS or its nominee, only if: (i) the Trust is required to do so by applicable law; (ii) the depositary system of CDS ceases to exist; (iii) the Trustees determine that CDS is no longer willing, able or qualified to discharge properly its responsibility as depositary and the Trustees are unable to locate a qualified successor; (iv) the Trustees elect to prepare and deliver definitive certificates representing the Trust Units; or (v) the Trustees elect to terminate the NCI system in respect of the Trust Units through CDS.
- (f) All references herein to actions by, notices given or payments made to Trust Unitholders shall, where such Trust Units are held through CDS, refer to actions taken by, or notices given or payments made to, CDS upon instruction from the CDS participants in accordance with CDS’s rules and procedures. For the purposes of any provision hereof requiring or permitting actions with the consent of or at the direction of Unitholders evidencing a specified percentage of the aggregate Units outstanding, such direction or consent may be given by Trust Unitholders acting through CDS and the CDS participants beneficially owning Trust Units evidencing the requisite percentage of the Units, subject to the voting rights of holders of Special Voting Units. The rights of a Trust Unitholder whose Trust Units are held through CDS shall be exercised only through CDS and the CDS participants and shall be limited to those established by law and agreements between such Trust Unitholders and CDS and/ or the CDS participants or upon instruction from the CDS participants. Each of the Transfer Agent and the Trustees may deal with CDS for all purposes (including the making of payments) as the authorized representative of the respective Trust Unitholders and such dealing with CDS shall constitute satisfaction or performance, as applicable, towards their respective obligations hereunder.
- (g) For so long as Trust Units are held through CDS, if any notice or other communication is required to be given to Trust Unitholders, the Trustees and the Transfer Agent will give all such notices and communications to CDS.
- (h) If CDS resigns or is removed from its responsibilities as depositary and the Trustees are unable or do not wish to locate a qualified successor, CDS shall surrender the Trust Units held by it to the Transfer Agent with instructions from CDS for registration of Trust Units

in the name and in the amounts specified by CDS and the Trust shall issue and the Trustee and Transfer Agent shall execute and deliver the aggregate number of Trust Units then outstanding in the form of definitive certificates representing such Trust Units.

3.17 Certificate Fee

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

3.18 Form of Certificate

The form of certificate representing Trust 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 Trust Unit certificates may be printed or otherwise mechanically reproduced thereon. If a Trust 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.

3.19 Lost Certificates

In the event that any certificate for Trust 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 Trust Units in lieu thereof. The Trustees or any officers of the Trust may in their discretion, before the issuance of such new certificate, require the owner of the lost, stolen, destroyed or mutilated certificate, or the legal representative of the owner, to make such affidavit or statutory declaration, setting forth such facts as to the loss, theft, destruction or mutilation as the Trustees 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.

3.20 Redemption of Trust Units

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

- (a) To exercise a Trust Unitholder's right to require redemption under this Section 3.20, a duly completed and properly executed notice requiring the Trust to redeem Trust Units, in a form approved by the Trustees or their delegate, specifying the number of Trust Units to be so redeemed, shall be sent to the Trust at the head office of the Trust. No form or manner of completion or execution shall be sufficient unless the same is in all respects satisfactory to the Trustees and is accompanied by any further evidence that the Trustees may reasonably require with respect to the identity, capacity or authority of the Person giving such notice. A holder of Trust Units who is not a registered holder of Trust Units and who wishes to exercise the holder's redemption right will be required to follow the procedures of such intermediary for exercising such right.
- (b) Trust Units shall be considered to be tendered for redemption on the date that the Trust has, to the satisfaction of the Trustees, received the notice and other required documents or evidence as aforesaid. Upon receipt by the Trust of such satisfactory notice to redeem Trust Units and other required documents or evidence as aforesaid, such Trust Unitholder shall thereafter cease to have any rights with respect to the Trust Units tendered for redemption (other than to receive the redemption payment therefor) including ceasing to have the right to receive any distributions thereon which are declared payable to the Trust Unitholders of record on a date which is subsequent to the day of receipt by the Trust of such notice.
- (c) Upon receipt by the Trust of the notice to redeem Trust Units, in accordance with this Section 3.20, the holder of the Trust Units tendered for redemption shall be entitled to receive a price per Trust Unit (the "**Redemption Price**") equal to the lesser of:
 - (i) 90% of the "market price" of the Trust Units calculated as of the date on which the Trust Units were surrendered for redemption (the "**Redemption Date**"); and
 - (ii) 100% of the "closing market price" of the Trust Units on the principal exchange or market on which the Trust Units are quoted for trading on the Redemption Date.

For the purposes of this calculation, the "**market price**" as at a specified date will be:

- (A) an amount equal to the weighted average trading price of a Trust Unit on the principal exchange or market on which the Trust Units are listed or quoted for trading during the period of ten consecutive trading days ending on such date;
- (B) an amount equal to the weighted average of the closing market prices of a Trust Unit on the principal exchange or market on which the Trust Units are listed or quoted for trading during the period of ten consecutive trading days ending on such date, if the applicable exchange or market does not provide information necessary to compute a weighted average trading price; or
- (C) if there was trading on the applicable exchange or market for fewer than five of the ten trading days, an amount equal to the simple average of the following prices established for each of the ten consecutive trading days

ending on such date: the simple average of the last bid and last asking price of the Trust Units for each day on which there was no trading; the closing price of the Trust Units for each day that there was trading if the exchange or market provides a closing price; and the simple average of the highest and lowest prices of the Trust Units for each day that there was trading, if the market provides only the highest and lowest prices of Trust Units traded on a particular day

The “**closing market price**” of a Trust Unit for the purpose of the foregoing calculations, as at any date will be:

- (A) an amount equal to the weighted average trading price of a Trust Unit on the principal exchange or market on which the Trust Units are listed or quoted for trading on the specified date if the principal exchange or market provides information necessary to compute a weighted average trading price of the Trust Units on the specified date;
- (B) an amount equal to the closing price of a Trust Unit on the principal market or exchange on the specified date if there was a trade on the specified date and the principal exchange or market provides only a closing price of the Trust Units on the specified date;
- (C) an amount equal to the simple average of the highest and lowest prices of the Trust Units on the principal market or exchange, if there was trading on the specified date and the principal exchange or market provides only the highest and lowest trading prices of the Trust Units on the specified date; or
- (D) the simple average of the last bid and last asking prices of the Trust Units on the principal market or exchange, if there was no trading on the specified date.

If the Trust Units are not listed or quoted for trading in a public market, the Redemption Price will be the fair market value of the Trust Units, which will be determined by the Trustees in their sole discretion.

- (d) Subject to Subsections 3.20(e) and 3.20(g), the Redemption Price payable in respect of Trust Units tendered for redemption during any calendar month shall be paid by cheque, drawn on a Canadian chartered bank or trust company in lawful money of Canada, payable at par to, or to the order of, the Trust Unitholder who exercised the right of redemption on or before the last day of the calendar month following the month in which the Trust Units were tendered for redemption. Payments made by the Trust of the Redemption Price shall be conclusively deemed to have been made upon the mailing of a cheque in a postage prepaid envelope addressed to the former Trust Unitholder unless such cheque is dishonoured upon presentment. Upon such payment, the Trust shall be discharged from all liability to such former Trust Unitholder in respect of the Trust Units so redeemed.
- (e) Subsection 3.20(d) shall not be applicable to Trust Units tendered for redemption by a Trust Unitholder, if:

- (i) the total amount payable by the Trust pursuant to Subsection 3.20(c) in respect of such Trust Units and all other Trust Units tendered for redemption prior thereto in the same calendar month exceeds \$50,000 (the “**Monthly Limit**”); provided that the Trustees may, in their sole discretion, waive such limitation in respect of all Trust Units tendered for redemption in any calendar month and, in the absence of such a waiver, Trust Units tendered for redemption in any calendar month in which the total amount payable by the Trust pursuant to Subsection 3.20(c) exceeds the Monthly Limit will be redeemed for cash pursuant to Subsection 3.20(c) and, subject to any applicable regulatory approvals, by a distribution *in specie* of assets held by the Trust on a *pro rata* basis; or
 - (ii) at the time the Trust Units are tendered for redemption, the outstanding Trust Units are not listed for trading on the Toronto Stock Exchange or traded or quoted on any stock exchange or market which the Trustees consider, in their sole discretion, provides representative fair market value prices for the Trust Units; or
 - (iii) the normal trading of the outstanding Trust Units is suspended or halted on any stock exchange on which the Trust Units are listed for trading or, if not so listed, on any market on which the Trust Units are quoted for trading, on the Redemption Date for such Trust Units or for more than five trading days during the ten trading day period commencing immediately after the Redemption Date for such Trust Units.
- (f) If, pursuant to Paragraph 3.20(e)(i), Subsection 3.20(d) is not applicable to the Trust Units tendered for redemption by a Trust Unitholder, the Redemption Price per Trust Unit specified in Subsection 3.20(c) shall be paid and satisfied as follows:
- (i) a portion of the Redemption Price per Trust Unit equal to the Monthly Limit divided by the number of Trust Units tendered for redemption in the month shall be paid and satisfied in cash in accordance with Subsection 3.20(d) applied *mutatis mutandis*; and
 - (ii) subject to receipt of all necessary regulatory approvals (which the Trust shall use reasonable commercial efforts to obtain forthwith), the remainder of the Redemption Price per Trust Unit shall be paid and satisfied by way of a distribution *in specie* to such Trust Unitholder of Subsidiary Notes having a fair market value determined by the Trustees equal to the product of: (A) the remainder of the Redemption Price per Trust Unit of the Trust Units tendered for redemption and (B) the number of Trust Units tendered by such Trust Unitholder for redemption.
- (g) If, pursuant to Paragraphs 3.20(e)(ii) and 3.20(e)(iii), Subsection 3.20(d) is not applicable to the Trust Units tendered for redemption by a Trust Unitholder, the Redemption Price per Trust Unit specified in Subsection 3.20(c) shall, subject to receipt of all necessary regulatory approvals (which the Trust shall use reasonable commercial efforts to obtain forthwith), be paid and satisfied by way of a distribution *in specie* to such Trust Unitholder of Subsidiary Notes having a fair market value equal to the product of: (A) the

Redemption Price per Trust Unit of the Trust Units tendered for redemption and (B) the number of Trust Units tendered by such Trust Unitholder for redemption.

- (i) For purposes of this Subsection 3.20(g), no Subsidiary Notes in integral multiples of less than \$100 will be distributed and, where Subsidiary Notes to be received by a Trust Unitholder includes a multiple less than that number, the number of Subsidiary Notes shall be rounded to the next lowest integral multiple of \$100 and the balance shall be paid in cash.
 - (ii) The Redemption Price payable pursuant to this Subsection 3.20(g) in respect of the Trust Units tendered for redemption during any month shall, subject to receipt of all necessary regulatory approvals, be paid by the transfer to or to the order of the Trust Unitholder who exercised the right of redemption, of the Subsidiary Notes, if any, and the cash payment, if any, determined in accordance with the provisions of this Subsection 3.20(g), on or before the last day of the calendar month immediately following the month in which the Trust Units were tendered for redemption.
 - (iii) Payments by the Trust of the Redemption Price pursuant to Subsection 3.20(g) are conclusively deemed to have been made upon the mailing of the certificates representing the Subsidiary Notes, if any, and cheque, if any, by registered mail in a postage prepaid envelope addressed to the former Trust Unitholder and/or any party having a security interest and, upon such payment, the Trust shall be discharged from all liability to the former Trust Unitholder and any party having a security interest in respect of the Trust Units so redeemed.
 - (iv) The Trust shall be entitled to all accrued interest, paid or unpaid, on the Subsidiary Notes, if any, on or before the date of distribution *in specie* pursuant to this Subsection 3.20(g).
- (h) All Trust Units which are redeemed under this Section 3.20 shall be cancelled and such Trust Units shall no longer be outstanding and shall not be reissued. Upon such payment, the Trust shall be discharged from all liability to the former Trust Unitholder in respect of the Trust Units so redeemed.
- (i) Some or all of the Trust Income and the Net Realized Capital Gains may, for purposes of computing the Trust Income and the Net Realized Capital Gains under the Tax Act or other tax legislation be treated as having been paid in the year by the Trust to the Trust Unitholders redeeming Trust Units in such year and, to the extent that the amount thereof so treated as has been designated as taxable capital gains or income to such Trust Unitholders, the holder's redemption proceeds shall be reduced accordingly. Any such amounts shall be determined at the discretion of the Trustees; however, in all cases, a redeeming Trust Unitholder will be treated as having been paid an amount to which the holder of the Trust Units redeemed would be entitled to receive.

3.21 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 and redemptions thereof. The Trustees may appoint one or more chartered banks or trust companies 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. 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.

3.22 Entry on Register

Subject to Sections 3.14 and 3.16, 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.

3.23 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.

3.24 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.

3.25 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.

3.26 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 3.23, to succeed to all rights of the deceased Unitholder under this Declaration of Trust.

3.27 Take-Over Bids

- (a) 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 the Trust Units (including Trust Units issuable upon the surrender or exchange of Exchangeable Securities), other than Trust 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 3.27, to acquire the Trust Units held by the dissenting offerees.
- (b) An offeror may acquire Trust Units held by a dissenting offeree by sending by registered mail within 60 days after the date of termination of the take-over bid and in any event within 180 days after the date of the take-over bid, an offeror's notice to each dissenting offeree stating that:
 - (i) the offerees holding not less than 90% of the Trust Units to which the bid relates accepted the take-over bid;
 - (ii) the offeror is bound to take up and pay for, or has taken up and paid for, the Trust Units of the offerees who accepted the take-over bid;
 - (iii) a dissenting offeree is required to elect:
 - (A) to transfer its Trust Units to the offeror on the terms on which the offeror acquired the Trust Units of the offerees who accepted the take-over bid, or
 - (B) to demand payment of the fair value of the Trust Units in accordance with Subsections 3.27(j) to (s) by notifying the offeror within 20 days after receiving the offeror's notice;

- (iv) a dissenting offeree who does not notify the offeror in accordance with Subsection 3.27(d)(ii)(B) is deemed to have elected to transfer its Trust Units to the offeror on the same terms that the offeror acquired the Trust Units from the offerees who accepted the take-over bid; and
 - (v) a dissenting offeree must send its Trust Units to which the take-over bid relates to the offeror within 20 days after receiving the offeror's notice.
- (c) Concurrently with sending the offeror's notice under Subsection 3.27(b), the offeror shall send to the Trust a notice of adverse claim disclosing the name and address of the offeror and the name of the dissenting offeree with respect to each Trust Unit held by a dissenting offeree.
- (d) A dissenting offeree to whom an offeror's notice is sent under Subsection 3.27(b) shall, within 20 days after receiving that notice:
- (i) send the certificate(s) representing the Trust Units to the Trust; and
 - (ii) elect:
 - (A) to transfer the Trust Units to the offeror on the terms on which the offeror acquired the Trust Units of the Trust Unitholders who accepted the take-over bid; or
 - (B) to demand payment of the fair value of the Trust Units in accordance with Subsections 3.27(j) to (s) by notifying the offeror within those 20 days.
- (e) A dissenting offeree who does not notify the offeror in accordance with paragraph 3.27(d)(ii)(B) is deemed to have elected to transfer the Trust Units to the offeror on the same terms on which the offeror acquired the Trust Units from the Trust Unitholders who accepted the take-over bid.
- (f) Within 20 days after the offeror sends an offeror's notice under Subsection 3.27(b), the offeror shall pay or transfer to the Trust the amount of money or other consideration that the offeror would have had to pay or transfer to a dissenting offeree if the dissenting offeree had elected to accept the take-over bid under paragraph 3.27(d)(ii)(A).
- (g) The Trust is deemed to hold in trust for the dissenting offeree the money or other consideration it receives under Subsection 3.27(f), 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 or guaranteed by the Quebec Deposit Insurance Board.
- (h) If the Trust is the offeror, it is deemed to hold in trust for the dissenting offeree the money and other consideration that it would have had to pay or transfer to a dissenting offeree if the dissenting offeree had elected to accept the take-over bid under Subsection 3.27(d)(ii)(A) and the Trust shall, within 20 days after the offeror's notice is sent, deposit

the money in a separate account in a bank or other body corporate any of whose deposits are insured by the Canada Deposit Insurance Corporation or guaranteed by the Quebec Deposit Insurance Board, and shall place the other consideration in the custody of a bank or such other body corporate.

- (i) Within 30 days after the offeror sends an offeror's notice under Subsection 3.27(b), the Trust shall:
 - (i) if the payment or transfer required by Subsection 3.27(f) is made, transfer to the offeror the Trust Units that were held by dissenting offerees;
 - (ii) give to each dissenting offeree who elects to accept the take-over bid terms under paragraph 3.27(d)(ii)(A) and who transferred its Trust Units as required under Subsection 3.27(d)(i), the money or other consideration to which the offeree is entitled, disregarding fractional Trust Units, if any, which may be paid for in money; and
 - (iii) if the payment or transfer required by Subsection 3.27(f) is made and the money or other consideration is deposited as required by Subsection 3.27(g), send to each dissenting offeree who has not sent notice as required under Subsection 3.27(d) a notice stating that:
 - (A) the dissenting offeree's Trust Units have been cancelled,
 - (B) 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 Trust Units, and
 - (C) the Trust will, subject to Subsections 3.27(j) to 3.27(s), send that money or other consideration to that offeree without delay after receiving the Trust Units.
- (j) If a dissenting offeree has elected to demand payment of the fair value of its Trust Units under paragraph 3.27(d)(ii)(B), the offeror may, within 20 days after it has paid the money or transferred the other consideration under Subsection 3.27(f), apply to a court to fix the fair value of the Trust Units of that dissenting offeree.
- (k) If an offeror fails to apply to a court under Subsection 3.27(j), a dissenting offeree may apply to a court for the same purpose within a further period of 20 days.
- (l) Where no application is made to a court under Subsection 3.27(k) within the period set out in that subsection, a dissenting offeree is deemed to have elected to transfer its Trust Units to the offeror on the same terms that the offeror acquired the Trust Units from the offerees who accepted the take-over bid.
- (m) An application under Subsection 3.27(j) or 3.27(k) shall be made to a court having jurisdiction in the place where the Trust has its registered office.

- (n) A dissenting offeree is not required to give security for costs in an application made under Subsection 3.27(j) or 3.27(k).
- (o) On an application under Subsection 3.27(j) or 3.27(k):
 - (i) all dissenting offerees referred to in paragraph 3.27(d)(ii)(B) whose Trust Units have not been acquired by the offeror shall be joined as parties and are bound by the decision of the court; and
 - (ii) the offeror shall notify each affected dissenting offeree of the date, place and consequences of the application and of its right to appear and be heard in person or by counsel.
- (p) On an application to a court under Subsection 3.27(j) or 3.27(k) the court may determine whether any other Person is a dissenting offeree who should be joined as a party, and the court shall then fix a fair value for the Trust Units of all dissenting offerees.
- (q) A court may in its discretion appoint one or more appraisers to assist the court to fix a fair value for the Trust Units of a dissenting offeree.
- (r) The final order of the court shall be made against the offeror in favour of each dissenting offeree and for the amount for the Trust Units as fixed by the court.
- (s) In connection with proceedings under this Section 3.27, a court may make any order it thinks fit and, without limiting the generality of the foregoing, it may:
 - (i) fix the amount of money or other consideration that is required to be held in trust under Subsection 3.27(g) or 3.27(h);
 - (ii) order that money or other consideration be held in trust by a Person other than the Trust;
 - (iii) allow a reasonable rate of interest on the amount payable to each dissenting offeree from the date they send or deliver notice under Subsection 3.27(d) until the date of payment; and
 - (iv) order that any money payable to a Trust Unitholder who cannot be found be paid to the Receiver General.
- (t) If a Trust Unitholder does not receive an offeror's notice under subsection 3.27(b), the Trust Unitholder may:
 - (i) within 90 days after the date of termination of the take-over bid; or
 - (ii) if the Trust Unitholder did not receive an offer pursuant to the take-over bid, within 90 days after the later of:
 - (A) the date of termination of the take-over bid; and

- (B) the date on which the Trust Unitholder learned of the take-over bid, require the offeror to acquire those Trust Units.
- (u) If a Trust Unitholder requires the offeror to acquire Trust Units under subsection 3.27(t), the offeror shall acquire the Trust Units on the same terms under which the offeror acquired or will acquire the Trust Units of the Trust Unitholders who accepted the take-over bid.
- (v) Sections 3.27(a) to (v) inclusive shall apply *mutatis mutandis* to any series of Preferred Units that is the subject of a take-over bid (whether or not the Preferred Units are voting securities of equity securities for the purposes of the Securities Act).

3.28 Offers

If an offer, issuer bid (other than an issuer bid exempt from the formal bid requirements under the Securities Act), take-over bid (other than a take-over bid exempt from the formal bid requirements under the Securities Act) or similar transaction with respect to the Trust Units is proposed by the Trust or is proposed to the Trust or Trust Unitholders and is recommended by the Trustees, or is otherwise effected or to be effected, whether or not with the consent or approval of the Trustees (each, an “**Offer**”), and the Exchangeable Securities are not acquired by the related issuing entity in accordance with their terms or exchanged in accordance with the applicable exchange agreement, the Trust will, to the extent possible in the circumstances, expeditiously and in good faith, take all such actions and do all such things as are necessary or desirable to enable and permit holders of Exchangeable Securities to participate in such Offer to the same extent and on an economically equivalent basis as the Trust Unitholders without discrimination. Without limiting the generality of the foregoing, the Trust will, to the extent possible in the circumstances, expeditiously and in good faith, ensure that holders of Exchangeable Securities may participate in such Offer without being required to exercise their right to exchange their Exchangeable Securities (or, if so required, to ensure that any such exchange will be effective only upon, and will be conditional upon, the successful completion of the Offer and only to the extent necessary to tender to or deposit under the Offer).

ARTICLE 4

INVESTMENT GUIDELINES AND OPERATING POLICIES OF THE TRUST

4.1 Investment Guidelines

The Trust Property shall be invested, directly or indirectly (including, without limitation, through its Subsidiaries), only as follows:

- (a) the Trust will invest primarily, directly or indirectly, in interests (including fee ownership and leasehold interests) in real estate located in Canada, the United States or Europe and assets ancillary thereto necessary for the operation of such real estate and such other activities as may be determined by the Trustees that are consistent with the other investment restrictions of the Trust;

- (b) notwithstanding anything else contained in the 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;
 - (ii) Trust Units not qualifying as qualified investments for Deferred Income Plans;
 - (iii) 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; or
 - (iv) the Trust being liable to pay a tax under Part XII.2 of the Tax Act;
- (c) the Trust shall 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 20% of Aggregate Assets at the time the investment is made;
- (d) 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;
- (e) 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 the 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 10% 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;
- (f) the Trust shall not invest in rights to or interests in mineral or other natural resources, including oil or gas, except as incidental to an investment in real property;

- (g) the Trust shall not invest in 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 Aggregate Assets;
- (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 Aggregate Assets; and
- (i) 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 15% of the Aggregate Assets of the Trust in investments which do not comply with one or more of paragraphs (a), (d), (e), (g) and (h).

4.2 Operating Policies

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 — *Investment Funds* adopted by the Canadian Securities Administrators, as replaced or amended from time to time, and in all events, subject to paragraph (b) of the Investment Guidelines described above;
- (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 shall not lease or sublease to any tenant (other than LCL, any Affiliate thereof or, in the case of a lease or sublease in any province, a purchaser of all or substantially all of

- the assets and operations of Loblaws Inc. in that province) any real property, premises or space where that Person and its Affiliates would, after the contemplated lease or sublease, be leasing or subleasing real property, premises or space having a fair market value net of encumbrances in excess of 20% of Aggregate Assets;
- (d) the Trust may engage in construction or development of real property to maintain its real properties in good repair or to improve the income-producing potential of properties in which the Trust has an interest;
 - (e) the Trust may not engage in construction or development of new properties that will be capital properties of the Trust on completion unless the aggregate value of the investments of the Trust in such properties under development, after giving effect to the proposed investment in the construction or development, shall not exceed 15% of Aggregate Assets;
 - (f) title to each real property shall be held by and registered in the name of the Trust, the Trustees, a Subsidiary, a Person jointly-owned, directly or indirectly, by the Trust or a Subsidiary with joint venturers or by any other Person 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, a Subsidiary or a Person jointly owned, directly or indirectly, by the Trust or such other Person as the Trustees consider appropriate, as aforesaid, shall hold a land lease as appropriate under the land tenure system in the relevant jurisdiction;
 - (g) the Trust shall not incur or permit any Subsidiary to incur, any Indebtedness, other than Permitted Indebtedness, unless the quotient (expressed as a percentage) obtained by dividing Consolidated Indebtedness (excluding any convertible Indebtedness) by the amount of Aggregate Adjusted Assets (in the case of each such amount, less cash or cash equivalents on hand) and calculated on a *pro forma* basis in accordance with Section 4.4 below would be less than or equal to 60%, and the quotient (expressed as a percentage) obtained by dividing the sum of Consolidated Indebtedness (including, for certainty, any convertible Indebtedness) by the amount of Aggregate Adjusted Assets (in the case of each such amount, less cash or cash equivalents on hand) and calculated on a *pro forma* basis in accordance with Section 4.4 below would be less than or equal to 65% (“**Indebtedness Percentages**”); each such calculation (i) be made on each day that the Trust or any Subsidiary proposes to incur such Indebtedness, and (ii) to include Proportionate Consolidation Adjustments;
 - (h) except in connection with or related to the acquisition of the Trust Property on July 5, 2013, 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 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; and

- (j) the Trust shall either (i) obtain a Phase I environmental site assessment or (ii) be entitled to rely on an existing Phase I environmental site assessment, of each real property to be acquired by it and, if the Phase I environmental site assessment report recommends that a further environmental site assessment be conducted, the Trust shall have conducted such further environmental site assessments, in each case by an independent and experienced environmental consultant.

4.3 Calculation of Indebtedness

- (a) The term “Indebtedness” as used in this Article 4, where such term is used in reference to any Person, means (without duplication):
 - (i) any obligation of such Person for borrowed money (including, for greater certainty, the full principal amount of convertible debt, notwithstanding its presentation under GAAP),
 - (ii) any obligation of such Person incurred in connection with the acquisition of property, assets or businesses,
 - (iii) any obligation of such Person issued or assumed as the deferred purchase price of property,
 - (iv) any Capital Lease Obligation of such Person,
 - (v) any obligations of the type referred to in clauses (i) through (iv) of another Person, the payment of which such Person has guaranteed or for which such Person is responsible or reliable;

provided that (A) for the purposes of clauses (i) through (v) (except in respect of convertible debt, as described above), an obligation will constitute Indebtedness of a 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 (i) through (iii) exclude trade accounts payable, distributions payable to Trust 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 twelve months, and (C) Units, Class A LP Units, Class B LP Units, Class C LP Units and Exchangeable Securities will not constitute Indebtedness for the purpose of this definition and furthermore obligations referred to in clauses (i) through (v) shall be adjusted, as and to the extent applicable, for (a) any adjustments which correspond to those made in accordance with the definition of Consolidated EBITDA, and (b) Proportionate Consolidation Adjustments; and the term “**Consolidated Indebtedness**” as at any date means the consolidated Indebtedness of the Trust as at such date determined in accordance with GAAP and including Proportionate Consolidation Adjustments.

- (b) The term “Permitted Indebtedness” as used in this Article 4 means:
- (i) Indebtedness of (A) the Trust owed to any of its Subsidiaries and (B) any Subsidiary owed to the Trust and/or another of its Subsidiaries (each of the entities in (A), and (B) being for this purposes a “**related entity**”), provided, however, that the provisions of this subsection (i) will no longer be applicable,
 - (I) upon the subsequent transfer or other disposition of such Indebtedness to any Person that is not a related entity to the transferor, to the amount that was so transferred or otherwise disposed of to such other Person; or
 - (II) in the case of Indebtedness of the Trust owed to any of its Subsidiaries, upon the subsequent issuance or disposition of common shares (including, without limitation, by consolidation or merger) of such Subsidiary which results in such Subsidiary ceasing to be a Subsidiary of the Trust (and thereby for this purpose a “**third party**”), to the amount of such Indebtedness equal to the product obtained by multiplying the amount of such Indebtedness by the percentage of common shares of the third party owned immediately after such issuance or disposition of such common shares by Persons other than the Trust or one of its Subsidiaries,and, in each case, such amount of such Indebtedness will be deemed for the purpose of the calculation of the Indebtedness Percentages to have been incurred at the time of such transfer, issuance or disposition; and
 - (ii) Indebtedness of the Trust or any of its Subsidiaries which is incurred or the proceeds of which are used to renew, extend, repay, redeem, purchase, refinance or refund (each a “**refinancing**”) any Indebtedness of the Trust or any of its Subsidiaries outstanding on the date hereof or permitted to be incurred hereunder, provided, however, that the Indebtedness which is incurred will not exceed the aggregate principal amount of all Indebtedness which is so refinanced at such time, plus the amount of any premium required to be paid in connection with such refinancing pursuant to the terms of the Indebtedness which is so refinanced or the amount of any premium reasonably determined by the Trustees or the relevant Subsidiary as necessary to accomplish such refinancing by means of a tender offer or privately negotiated agreement, plus the expenses of the Trust and the relevant Subsidiary incurred in connection with such refinancing.
- (c) For the purpose of Section 4.2(g), the Indebtedness Percentages will be calculated on a pro forma basis as at the date of the Trust’s most recently published annual or interim consolidated balance sheet (the “**balance sheet date**”) giving effect to the incurrence of the Indebtedness to be incurred and the application of proceeds therefrom and to any other event that has increased or decreased Consolidated Indebtedness or Aggregate Adjusted Assets since the balance sheet date to the date of calculation.

4.4 Application of Investment Guidelines and Operating Policies

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

- (a) investment in real property includes an investment in any joint arrangement that invests in real property, and
- (b) 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 Aggregate Assets or Aggregate Adjusted Assets, as the case may be, will not require the divestiture of any investment.

4.5 Amendments to Investment Guidelines and Operating Policies

Subject to Sections 4.7 and 12.1, any of the investment guidelines set forth Section 4.1 may be amended only by Special Resolution. Subject to Section 12.1, the operating policies set forth in sub-paragraphs (a), (g), (h) and (j) may be amended only by Special 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 Income and Net Realized Capital Gains

The income of the Trust (the “**Trust Income**”) for any taxation year of the Trust will be the income for such year computed in accordance with the provisions of the Tax Act, other than paragraph 82(1)(b) and subsection 104(6) thereof, regarding the calculation of income for the purposes of determining the “**taxable income**” of the Trust subject to such adjustment as the Trustees may in their discretion determine; provided, however, that capital gains and capital losses will be excluded from the computation of Trust Income and, if an amount has been designated by the Trust under subsection 104(19) of the Tax Act, such designation shall be disregarded.

The net realized capital gains of the Trust (the “**Net Realized Capital Gains**”) for any taxation year of the Trust will be determined as the amount, if any, by which the aggregate of the capital gains of the Trust realized in such year exceeds the sum of (i) the aggregate of the capital losses of the Trust realized in such year, and (ii) each amount determined by the Trustees in respect of any net capital loss for a prior taxation year that the Trust is permitted by the Tax Act to deduct in computing the taxable income of the Trust for such year.

5.2 Distributions

- (a) The Trustees at their sole discretion may, in respect of each Distribution Period, on or before each Distribution Record Date, declare payable to Trust Unitholders of record at the close of business on each Distribution Record Date, all or any part of the cash flow of the Trust for the Distribution Period. The amount of the cash flow of the Trust (being the sum of all cash amounts received by the Trust in respect of such Distribution Period, other than, for greater certainty, the proceeds of any offering of Trust Units and/or installment receipts) to be distributed by the Trust in respect of a Distribution Period will be determined by, or in accordance with guidelines established from time to time by, the Trustees on or before the applicable Distribution Payment Date.
- (b) Distributions will be payable to each holder of Trust Units of record on the applicable Distribution Record Date *pro rata* in proportion to the number of Trust Units held as of record by such holder of Trust Units on such Distribution Record Date. Subject to Section 5.6(b)(i), Distributions that have been declared to be payable to Trust Unitholders in respect of a Distribution Period will be paid in cash on the Distribution Payment Date in respect of such Distribution Period.

5.3 Other Distributions

- (a) In addition to the distributions that are declared payable to Trust Unitholders pursuant to Section 5.2, the Trustees may declare to be payable and/or make distributions, from time to time, out of Trust Income, Net Realized Capital Gains, the capital of the Trust or otherwise, in any year, in such amount or amounts, and on such dates as the Trustees may determine, to Trust Unitholders of record on the Distribution Record Date. The Trustees may, in their discretion, determine that any distributions payable pursuant to this Section 5.3(a) may be paid wholly or partially in cash or Trust Units or any combination of cash or Trust Units.
- (b) Notwithstanding the foregoing, having regard to the present intention of the Trustees to allocate, distribute and make payable to Trust Unitholders all of the amount necessary to ensure that the Trust will not be liable to pay income tax under Part I of the Tax Act for any year, after taking into account any entitlement to a capital gains refund (such amount being known, in respect of any year, as the “**taxation distribution amount**”), on December 31 or any other day which is the last day of such taxation year, an amount equal to the taxation distribution amount shall, without any further action of the Trustees, be payable to Trust Unitholders of record at the close of business on such day (whether or not such day is a Business Day), subject to any adjustments the Trustees declare at their absolute discretion. For greater certainty, if the Trustees have exercised their absolute discretion to

not distribute the taxation distribution amount in respect of any year, the difference between amounts actually declared as distributions and the taxation distribution amount in respect of such year shall not be payable to Trust Unitholders.

- (c) Any distribution made pursuant to this Section 5.3 will be payable to each holder of Trust Units of record on the applicable Distribution Record Date pursuant to Section 5.3(a), or on December 31 in the year of distribution in respect of a distribution pursuant to Section 5.3(b) or the end of a taxation year if earlier, *pro rata* in proportion to the number of Trust Units held of record by such holder of Trust Units on such applicable Distribution Record Date or December 31 in the year of such distribution, as the case may be. Subject to Section 5.6, amounts that have been declared to be payable to Trust Unitholders pursuant to Section 5.3(a) will be paid on the Distribution Payment Date determined by the Trustees in respect of such distribution and amounts that are payable pursuant to Section 5.3(b) will be paid not later than January 31 of the following year.
- (d) In addition to any distributions which are made payable to Trust Unitholders, the Trustees may designate and make payable any income or capital gains realized by the Trust (including any income realized by the Trust on the redemption of Trust Units *in specie*) pursuant to Section 3.20 to the redeeming Trust Unitholders in accordance with Subsection 3.20(i).

5.4 Enforceability of Right to Receive Distributions

Each Trust Unitholder shall have the legal right to enforce payment of any amount payable to such Trust Unitholder as a result of any distribution which is declared or made payable to such Trust Unitholder pursuant to this Article 5 as of the Distribution Record Date.

5.5 Allocation

Unless the Trustees otherwise determine the Trust Income and Net Realized Capital Gains for a taxation year shall be allocated to Trust Unitholders for purposes of the Tax Act in the same proportions as the total distributions made to the Trust Unitholders in the taxation year under Sections 5.2 and 5.3. The Trustees shall in each year make such other designations for tax purposes in respect of distributions that the Trustees consider to be reasonable in all of the circumstances, including in accordance with Subsection 3.20(i).

5.6 Method of Payment of Distributions

- (a) Cash distributions shall be made by cheque payable to or to the order of the holder of Trust 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 Trust 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 Trust 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 Trust Unitholders, any cash payment required hereunder to be made to a holder of Trust Units shall be deemed to be required to be made to such Trust 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 Trust Unitholders or any one of the joint registered Trust Unitholders has designated to the Trustees and the Trustees have accepted. For greater certainty, a holder of Trust Units or any one of the joint Trust Unitholders shall designate that any payment required to be made hereunder shall be made by deposit to an account of such holder of Trust Units or to a joint account of such holder of Trust Units and any other Person or in the case of joint registered Trust Unitholders to an account of joint registered Trust Unitholders or to an account of any one of the joint registered Trust Unitholders. A cheque or bank draft shall, unless the joint registered Trust Unitholders otherwise direct, be made payable to the order of all of the said joint registered Trust Unitholders, and if more than one address appears on the books of the Trust in respect of such joint Trust 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 Trust Units in another acceptable manner of any payment not mailed or paid in accordance with this Section 5.6(a) shall be a valid and binding discharge to the Trust and to the Trustees for any payment made in respect of the registered Trust Units and if several Persons are registered as joint registered Trust Unitholders or, in consequence of the death, bankruptcy or incapacity of a holder of Trust Units, one or several Persons are entitled so to be registered, subject to Section 3.23, 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 Trust 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 six years from the date on which such distribution was payable.

- (b) Where (i) 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, or (ii) the Trustees otherwise determine in their discretion, the payment may, at the option of the Trustees, include or consist entirely of the issuance of additional Trust Units, or fractions of Trust Units, if necessary, having a fair market value as determined by the Trustees equal to, in the case of (i) above, 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, and in the case of (ii) above, the amount of such distribution declared to be payable. Such additional Trust 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 Trust 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 Trust Units, the Trustees may sell Trust Units of such holder of Trust 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 Trust Units to do so. Any such sale shall be made on any stock exchange on which the Trust Units are then listed and upon such sale, the affected holder of Trust Units shall cease to be the holder of such Trust Units.

5.8 Income Tax Matters

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

5.9 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 Trust 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 Trust Unitholders. Distributions paid or payable to Trust 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

TRUSTEES AND OFFICERS

6.1 Number of Trustees

The Trust shall have no fewer than five (5) and no more than twelve (12) Trustees, with the number of Trustees from time to time within such range being fixed by resolution of the Trustees. The number of Trustees may be increased or decreased within such limits from time to time by the Unitholders by Ordinary Resolution or by the Trustees, provided that the Trustees may not, between meetings of the Unitholders appoint an additional Trustee if, after such appointment, the total number of Trustees would be greater than one and one-third times the number of Trustees in office immediately following the last annual meeting of the Unitholders.

6.2 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 6.1, 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.

6.3 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.

6.4 Election of Trustees

The election of the Trustees shall require approval by an Ordinary Resolution. 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 shall have in writing accepted her or her appointment or election and agreed to be bound by the terms of this Declaration of Trust.

6.5 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 Lead Trustee, or if there is no Lead Trustee, to the Chair or, if there is no Chair, the President of the Trust or, if there is no President to the Unitholders. Such resignation shall take effect on the date such notice is given or at any later time specified in the notice. Subject to Section 6.7, 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 Lead Trustee, or by the Chair 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); 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.

6.6 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.

6.7 Nomination Rights of GWL

If at any time the aggregate direct and indirect beneficial ownership interest of GWL and its Affiliates in the Trust (on fully-diluted Basis) shall fall below a majority interest, GWL shall have the exclusive right to nominate a number of Trustees proportionate to the aggregate ownership interest in the Trust of GWL and its Affiliates (on a fully-diluted Basis), whether held directly or indirectly, rounded down to the nearest whole number, for election by Unitholders provided that, so long as GWL and its Affiliates own at least a 10% ownership interest in the Trust (on a fully-diluted Basis) in the aggregate, whether held directly or indirectly, GWL shall have the right to nominate not less than one Trustee. GWL shall exercise its nomination right by written notice delivered or mailed to the Lead Trustee, or, if there is no Lead Trustee, the Chair, the President or the Secretary. For purposes of this Section 6.7, in determining the number of Trust Units beneficially owned, directly or indirectly by GWL and its Affiliates (on a fully-diluted basis), the Trustees may rely on a certificate of an officer of GWL. Notwithstanding anything in this Article 6, GWL shall have the exclusive right to fill vacancies caused by one of its nominees ceasing to hold office, provided such replacement Trustee is qualified to serve as a Trustee and the Trustees shall only fill vacancies occurring by one of GWL's nominees ceasing to hold office by an individual so nominated by GWL and, upon such nominee being thereafter appointed by the Trustees, such individual shall serve as a Trustee in accordance with Section 6.6 and otherwise pursuant to this Declaration of Trust.

6.8 Nominations of Trustees

- (a) Only persons who are nominated in accordance with the following procedures shall be eligible for election as Trustees. Nominations of persons for election as Trustees may be made at any annual meeting of Unitholders, or at any special meeting of Unitholders, if one of the purposes for which the special meeting was called was the election of Trustees:
 - (i) by or at the direction of the Trustees, or as contemplated by Section 6.7, including pursuant to a notice of meeting; or
 - (ii) by or at the direction or request of one or more Unitholders pursuant to a requisition of the Unitholders made in accordance with Article 13; or
 - (iii) by any person (a “**Nominating Unitholder**”): (A) who, at the close of business on the date of the giving of the notice provided for below in this Section 6.8 and on the record date for notice of such meeting, is entered in the Register as a holder of one or more Units carrying the right to vote at such meeting or who beneficially owns Units that are entitled to be voted at such meeting; and (B) who complies with the notice procedures set forth below in this Section 6.8.
- (b) In addition to any other applicable requirements and subject to Section 6.7, for a nomination to be made by a Nominating Unitholder, the Nominating Unitholder must have given timely notice thereof to the Trustees in the manner prescribed by this Declaration of Trust. Furthermore, if such notice is made on a day which is not a Business Day or later than 5:00 p.m. (Toronto Time) on a day which is a Business Day, then such notice shall be deemed to have been made on the subsequent day that is a Business Day.
- (c) To be timely, a Nominating Unitholder’s notice to the Trustees must be made:
 - (i) in the case of an annual meeting of Unitholders, not less than 30 days prior to the date of the annual meeting of Unitholders; provided, however, that in the event that the annual meeting of Unitholders is to be held on a date that is less than 50 days after the date (the “**Notice Date**”) on which the first public announcement of the date of the annual meeting was made, notice by the Nominating Unitholder may be made not later than the close of business on the tenth (10th) day following the Notice Date; and
 - (ii) in the case of a special meeting (which is not also an annual meeting) of Unitholders called for the purpose of electing Trustees (whether or not called for other purposes), not later than the close of business on the fifteenth (15th) day following the day on which the first public announcement of the date of the special meeting of Unitholders was made.
- (d) To be in proper written form, a Nominating Unitholder’s notice to the Trustees must set forth:
 - (i) as to each person whom the Nominating Unitholder proposes to nominate for election as a Trustee: (A) the name, age, business address and residential address

of the person; (B) the principal occupation or employment of the person; (C) the class or series and number of Units in the capital of the Trust which are controlled or which are owned beneficially or of record by the person as of the record date for the meeting of Unitholders (if such date shall then have been made publicly available and shall have occurred) and as of the date of such notice; and (D) any other information relating to the person that would be required to be disclosed in a dissident's proxy circular in connection with solicitations of proxies for election of Trustees pursuant to the Securities Act; and

- (ii) as to the Nominating Unitholder giving the notice, any proxy, contract, arrangement, understanding or relationship pursuant to which such Nominating Unitholder has a right to vote any Units of the Trust and any other information relating to such Nominating Unitholder that would be required to be made in a dissident's proxy circular in connection with solicitations of proxies for election of Trustees pursuant to the Securities Act.
- (e) The Trust may require that any proposed nominee furnish such other information as may be required to be contained in a dissident proxy circular or by applicable law or regulation to determine the independence of the proposed nominee or his or her eligibility to serve as a Trustee of the Trust.
- (f) No person shall be eligible for election as a Trustee unless nominated in accordance with the provisions of this Section 6.8; provided, however, that nothing in this Section 6.8 shall be deemed to preclude discussion by a Unitholder (as distinct from the nomination of Trustees) at a meeting of Unitholders of any matter in respect of which it would have been entitled to submit to a vote pursuant to the terms and conditions contained in this Declaration of Trust. The chairperson of the applicable meeting shall have the power and duty to determine whether a nomination was made in accordance with the procedures set forth in the foregoing provisions and, if any proposed nomination is not in compliance with such foregoing provisions, to declare that such defective nomination shall be disregarded.
- (g) For purposes of this Section 6.8, "public announcement" shall mean disclosure in a press release reported by a national news service in Canada, or in a document publicly filed by the Trust under its profile on the System of Electronic Document Analysis and Retrieval at www.sedar.com.
- (h) Notwithstanding the foregoing, the Trustees may, in their sole discretion, waive any requirement in this Section 6.8.

6.9 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 6.5 or otherwise.

6.10 Remuneration and Expenses

Trustees who are not officers of, or otherwise employed by and receive a salary from the Trust or its Subsidiaries, shall 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.

6.11 Officers of the Trust

The Trust shall have such officers as the Trustees may appoint from time to time, including a Chair, a President, Chief Executive Officer, Chief Financial Officer and Chief Operating 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. If the Chair is not an Independent Trustee, a lead trustee (the “**Lead Trustee**”) shall be appointed from among the Independent Trustees. The Lead Trustee will act as an effective leader of the Trustees in respect of any matters required to be considered by the Independent Trustees, and will ensure that the Trustees’ agenda will enable them to successfully carry out their duties.

6.12 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 7

TRUSTEES’ POWERS AND DUTIES

7.1 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* (Ontario), 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.

7.2 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:

- (a) to retain, invest and re-invest the capital or other funds of the Trust in real or personal property of any kind, all without regard to whether any such properties are authorized by law for the investment of trust funds, and to possess and exercise all the rights, powers and privileges appertaining to the ownership of the Trust Property;
- (b) subject to Section 3.4(b), to increase the capital of the Trust at any time by the issuance of additional Trust Units (or other securities convertible to or exchangeable for Trust Units) for such consideration as they deem appropriate;
- (c) for such consideration as they deem proper, to invest in, purchase or otherwise acquire for cash or other property or through the issuance of Trust 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;
- (d) 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;
- (e) 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;
- (f) 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;

- (g) to lend money or other Trust Property, whether secured or unsecured;
- (h) to perform the Trust's obligations under the Exchange Agreement and the Strategic Alliance Agreement;
- (i) to maintain records and provide reports to Unitholders;
- (j) to establish systems to monitor the qualification of the Trust as a "mutual fund trust", a "unit trust" and 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;
- (k) 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 Trust 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;
- (l) 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;
- (m) 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;
- (n) 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;

- (o) 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;
- (p) 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;
- (q) 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;
- (r) to renew, modify, release, compromise, extend, consolidate or cancel, in whole or in part, any obligation to or of the Trust;
- (s) 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;

- (t) 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;
- (u) to determine conclusively the allocation to capital, income or other appropriate accounts for all receipts, expenses, disbursements and Trust Property;
- (v) to issue Trust Units and other securities of the Trust (by way of instalment receipts or otherwise) 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 Trust 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 Trust Unitholders immediately prior to such offering;
- (w) to make or cause to be made application for the listing on any stock exchange of any Trust 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;
- (x) to enter into any agreement relating to the issuance of Trust Units by way of instalment receipts and to take all actions necessary or desirable to obtain the benefits of and perform its obligations under such agreement;
- (y) 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;
- (z) subject to obtaining all required regulatory approvals, to establish one or more distribution reinvestment plans, Trust Unit purchase plans, Trust Unit option plans, deferred Trust Unit plans, restricted Trust Unit plans or any other Unit compensation, incentive plan or similar plan with respect to the Trust Units;
- (aa) 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 depository, Registrar, Transfer Agent or any escrow agent, to such extent as the Trustees shall determine;
- (bb) 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;

- (cc) 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
- (dd) 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.

7.3 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. 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 7.3 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.

7.4 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 Trust 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.

7.5 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.

7.6 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 Deferred Income Plan, registered pension fund or 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.

7.7 Conflicts of Interest

Except for agreements entered into on or before July 5, 2013 and/or the ownership of Units, 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:

- (a) the disclosure required in the case of a Trustee shall be made:
 - (i) 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;
 - (ii) if the Trustee was not then interested in a proposed contract or transaction, at the first such meeting after he/she becomes so interested;
 - (iii) if the Trustee becomes interested after a contract is made or a transaction is entered into, at the first meeting after he/she becomes so interested;
 - (iv) 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;

- (b) the disclosure required in the case of an officer of the Trust, who is not a Trustee, shall be made:
 - (i) 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;
 - (ii) 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
 - (iii) 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;
- (c) notwithstanding Subsections 7.7(a) and 7.7(b), 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;
- (d) a Trustee referred to in this Section 7.7 shall not vote on any resolution to approve such contract or transaction unless the contract or transaction:
 - (i) relates primarily to his or her remuneration as a Trustee, officer, employee or agent of the Trust or any Affiliate of the Trust; or
 - (ii) is for indemnity under Section 15.1 or the purchase of liability insurance;
- (e) 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;
- (f) 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:
 - (i) 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

- (ii) 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 7.7, and the contract or transaction was reasonable and fair to the Trust at the time it was approved;
- (g) notwithstanding anything in this Section, but without limiting the effect of Subsection 7.7(f), 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:
 - (i) the contract or transaction is confirmed or approved at a meeting of the Unitholders duly called for that purpose; and
 - (ii) the nature and extent of such Person's interest in the contract or transaction are disclosed in reasonable detail in the notice calling the meeting or in any information circular to be provided by this Declaration of Trust or by law; and
- (h) subject to Subsections 7.7(f) and 7.7(g), 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 7.7, 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.

7.8 Independent Trustee Matters

Notwithstanding anything herein to the contrary, in order to become effective the following matters shall require, in addition to the approval of a majority of the Trustees or a majority of an applicable committee, the approval of not less than a majority of the Independent Trustees holding office at such time and not otherwise disqualified from voting under Section 7.7, such approval to be given by a vote at a meeting of such Independent Trustees or by written consent signed by all of such Independent Trustees:

- (a) an acquisition of a property or an investment in a property, whether by co-investment or otherwise, or the provision of any financing, or development or leasing services in respect of a property, under the terms of the Strategic Alliance Agreement or otherwise in which or in respect of which LCL or any Affiliate of LCL or any Related Party of the Trust has any direct or indirect interest, whether as owner, operator or manager; or

- (b) a material change to any agreement with LCL or an Affiliate of LCL or a Related Party of the Trust or any approval, consent, waiver or other decision of the Trustees thereunder, or any renewal, extension or termination thereof or any increase in any fees (including any transaction fees) or distributions payable thereunder; or
- (c) the entering into of, or the waiver, exercise or enforcement of any rights or remedies under, any agreement entered into by the Trust or any of its Subsidiaries, or the making, directly or indirectly, of any co-investment, in each case, with (i) any Trustee, (ii) any entity directly or indirectly controlled by any Trustee in which any Trustee holds a significant interest, or (iii) any entity for which any Trustee acts as a director or in other similar capacity; or
- (d) the refinancing, increase or renewal of any indebtedness owed by or to (i) any Trustee, (ii) any entity directly or indirectly controlled by any Trustee or in which any Trustee holds a significant interest, or (iii) any entity for which any Trustee acts as a director or in other similar capacity; or
- (e) decisions relating to any claims by or against one or more parties to any agreement with LCL or Affiliate of LCL or any Related Party of the Trust;

provided, however, that the foregoing shall not apply with respect to any circumstance in respect of which the only parties to the relevant transaction or agreement are (i) the Trust and a wholly-owned Subsidiary or (ii) wholly-owned Subsidiaries of the Trust.

ARTICLE 8

MEETINGS OF THE TRUSTEES

8.1 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 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.

8.2 Notice of Meeting

Meetings of the Trustees may be held from time to time upon the giving of notice by the Chair, the Lead Trustee 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 48 hours before the meeting but may be waived in writing by any Trustee either before or after such meeting. The attendance of a Trustee at a meeting shall constitute a waiver of notice of such meeting except where a Trustee attends a meeting for the

express purpose of objecting to the transaction of any business on the ground that the meeting has not been lawfully called or convened. Each committee of Trustees appointed by the Trustees may adopt its own rules or procedures for the calling, conduct, adjournment and regulation of the meetings of such committees as it sees fit and may amend or repeal such rules or procedures from time to time; provided, however, that the Trustees' Regulations and any such rules or procedures shall not be inconsistent with this Declaration of Trust.

8.3 Quorum

A quorum for all meetings of the Trustees or any committee thereof shall be at least three Trustees or two Trustees on such committee, as the case may be, present in person, at least two of whom shall be Resident Canadians; provided that 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, the presence of one Resident Canadian Trustee or one Resident Canadian member of such committee, as the case may be, is required in order to constitute a quorum.

8.4 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 Chair 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.

8.5 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.

8.6 Meetings of Independent Trustees

The provisions of Sections 8.1, 8.2, 8.3, 8.4, 8.5 and 8.6 apply, *mutatis mutandis*, to any and all meetings of Independent Trustees called for the purposes contemplated in Section 7.8 or otherwise for purposes which the Independent Trustees reasonably determine to be necessary or desirable.

8.7 Chair

The chair 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 Chair of Trustees or the chair of the applicable committee, or, if such individual is not present, the Trustees present shall choose one of their number to act as the chair. The chair of any meeting of the Independent Trustees or any committee of the Independent Trustees shall be the trustee who holds the office of Lead Trustee or chair 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 chair.

ARTICLE 9

DELEGATION OF POWERS

9.1 General

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.

9.2 Audit Committee

Without limiting the generality of Section 9.1, the Trustees shall appoint an audit committee (the “**Audit Committee**”) consisting of at least three Trustees, all of whom shall be Independent Trustees. The Audit Committee shall have the duties and responsibilities set forth in the then-current Audit Committee charter, as may be amended by the Trustees from time to time. The Auditors are entitled to receive notice of every meeting of the Audit Committee and, at the expense of the Trust, to attend and be heard thereat and, if so requested by a member of the Audit Committee, shall attend any meeting of the Audit Committee held during the term of office of the Auditors. Questions arising at any meeting of the Audit Committee shall be decided by a majority of the votes cast. Decisions may be taken by written consent signed by all of the members of the Audit Committee. The Auditors or a member of the Audit Committee may call a meeting of the Audit Committee on not less than 48 hours’ notice.

9.3 Governance, Compensation and Nominating Committee

Without limiting the generality of Section 7.1, the Trustees shall appoint a Governance, Compensation and Nominating Committee (the “**Governance Committee**”) consisting of at least three Trustees, at least a majority of whom shall be Independent Trustees. The duties of the Governance Committee shall be to review the governance policies of the Trust, including being responsible for: (i) assessing the effectiveness of the Trustees and their committees;

(ii) considering questions of management succession; (iii) participating along with management in the recruitment and selection of candidates for Trustees; (iv) administering the Deferred Unit Incentive Plan and any unit option or purchase plan in any other compensation incentive programs; (v) assessing the performance of management of the Trust; and (vi) reviewing and making recommendations to the Trustees concerning the level and nature of the compensation payable to the Trustees, officers and senior management of the Trust. Questions arising in any meeting of the Governance Committee shall be decided by a majority of the votes cast. Decisions may be taken by written consent signed by all of the members of the Governance Committee. Any member of the Governance Committee may call a meeting of the Governance Committee upon not less than 48 hours' notice. Where for any reason a member of the Governance Committee is disqualified from voting on or participating in a decision, any other independent and disinterested Trustee not already a member of the Governance Committee may be designated by the Trustees to act as an alternate. Notwithstanding the appointment of the Governance Committee, the Trustees may consider and approve any matter which the Governance Committee otherwise has the authority to consider or approve.

9.4 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 chair and delineate the duties and responsibilities of such chair. 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.

9.5 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.

ARTICLE 10

UNITHOLDER REMEDIES

10.1 Dissent and Appraisal Rights

- (a) Subject to Section 10.2(e), a Trust Unitholder entitled to vote at a meeting of Unitholders who complies with this Section 10.1 may dissent if the Trust resolves to:
 - (i) sell, lease or exchange all or substantially all of the property and assets of the Trust;
 - (ii) carry out a going-private transaction; or

- (iii) except as permitted by Sections 3.3 and 12.1(g), amend this Declaration of Trust to:
 - (A) add, change or remove any provision restricting or constraining the issue, transfer or ownership of Trust Units;
 - (B) add, change or remove any restriction on the business that the Trust may carry on;
 - (C) add, change or remove the rights, privileges, restrictions or conditions attached to the Trust Units of the class held by the dissenting Trust Unitholder;
 - (D) increase the rights or privileges of any class of units of the Trust having rights or privileges equal or superior to the class of Trust Units held by the dissenting Trust Unitholder;
 - (E) create a new class of units of the Trust equal to or superior to the class of Trust Units held by the dissenting Trust Unitholder;
 - (F) make any class of units of the Trust having rights or privileges inferior to the class of Trust Units held by the dissenting Trust Unitholder superior to the class; or
 - (G) effect an exchange or create a right of exchange in all or part of a class of units of the Trust into the class of Trust Units held by the dissenting Trust Unitholder.
- (b) In addition to any other right the Trust Unitholder may have, a Trust Unitholder who complies with this Section is entitled, when the action approved by the resolution from which the Trust Unitholder dissents becomes effective, to be paid by the Trust the fair value of the Trust Units held by the Trust Unitholder in respect of which the Trust Unitholder dissents, determined as of the close of business on the day before the resolution was adopted.
- (c) A dissenting Trust Unitholder may only claim under this Section with respect to all the Trust Units held by the dissenting Trust Unitholder on behalf of any one beneficial owner and registered in the name of the dissenting Trust Unitholder.
- (d) A dissenting Trust Unitholder shall send to the Trust, at or before any meeting of Unitholders at which a resolution referred to in subsection (a) is to be voted on, a written objection to the resolution, unless the Trust did not give notice to the Trust Unitholder of the purpose of the meeting and of the Trust Unitholder's right to dissent.
- (e) The Trust shall, within 10 days after the Unitholders adopted the resolution, send to each Trust Unitholder who has filed the objection referred to in subsection (d) notice that the resolution has been adopted, but such notice is not required to be sent to any Trust Unitholder who voted for the resolution or who has withdrawn its objection.

- (f) A dissenting Trust Unitholder shall, within 20 days after receiving a notice under subsection (e) or, if the Trust Unitholder does not receive such notice, within 20 days after learning that the resolution has been adopted, send to the Trust a written notice containing:
 - (i) the Trust Unitholder's name and address;
 - (ii) the number of, and class/series of, Trust Units in respect of which the Trust Unitholder dissents; and
 - (iii) a demand for payment of the fair value of such Trust Units.
- (g) A dissenting Trust Unitholder shall, within 30 days after the sending of a notice under subsection (f), send the certificates representing the Trust Units in respect of which the Trust Unitholder dissents to the Trust or its transfer agent.
- (h) A dissenting Trust Unitholder who fails to comply with subsection (g) has no right to make a claim under this Section.
- (i) The Trust or its transfer agent shall endorse on any certificate received under subsection (g) a notice that the holder is a dissenting Trust Unitholder under this Section 10.1 and shall return forthwith the certificates to the dissenting Trust Unitholder.
- (j) On sending a notice under subsection (f), a dissenting Trust Unitholder ceases to have any rights as a Trust Unitholder other than the right to be paid the fair value of its Trust Units as determined under this Section except where:
 - (i) the Trust Unitholder withdraws that notice before the Trust makes an offer under subsection (k);
 - (ii) the Trust fails to make an offer in accordance with subsection (k) and the dissenting Trust Unitholder withdraws the notice; or
 - (iii) the Trustees revoke the resolution which gave rise to the dissent rights under this Section, and to the extent applicable, terminate the related agreements or abandon a sale, lease or exchange to which the resolution relates,

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

- (m) The Trust shall pay for the Trust Units of a dissenting Trust Unitholder within 10 days after an offer made under subsection (k) has been accepted, but any such offer lapses if the Trust does not receive an acceptance thereof within 30 days after the offer has been made.
- (n) Where the Trust fails to make an offer under subsection (k), or if a dissenting Trust Unitholder fails to accept an offer, the Trust may, within 50 days after the action approved by the resolution is effective or within such further period as a court may allow, apply to a court to fix a fair value for the Trust Units of any dissenting Trust Unitholder.
- (o) If the Trust fails to apply to a court under subsection (n), a dissenting Trust Unitholder may apply to a court for the same purpose within a further period of 20 days or within such further period as a court may allow.
- (p) The court where an application under subsection (n) or (o) may be made is a court having jurisdiction in the place where the Trust has its registered office.
- (q) A dissenting Trust Unitholder is not required to give security for costs in an application made under subsection (n) or (o).
- (r) On an application under subsection (n) or (o):
 - (i) all dissenting Trust Unitholders whose Trust Units have not been purchased by the Trust shall be joined as parties and bound by the decision of the court; and
 - (ii) the Trust shall notify each affected dissenting Trust Unitholder of the date, place and consequences of the application and of the dissenting Trust Unitholder's right to appear and be heard in person or by counsel.
- (s) On an application to a court under subsection (n) and (o), the court may determine whether any other person is a dissenting Trust Unitholder who should be joined as a party, and the court shall fix a fair value for the Trust Units of all dissenting Trust Unitholders.
- (t) A court may in its discretion appoint one or more appraisers to assist the court to fix a fair value for the Trust Units of the dissenting Trust Unitholders.
- (u) The final order of a court in the proceedings commenced by an application under subsection (n) and (o) shall be rendered against the Trust in favour of each dissenting Trust Unitholder and for the amount of the Trust Units as fixed by the court.
- (v) A court may in its discretion allow a reasonable rate of interest on the amount payable to each dissenting Trust Unitholder from the date the action approved by the resolution is effective until the date of payment.
- (w) If subsection (y) applies, the Trust shall, within 10 days after the pronouncement of an order under subsection (u), notify each dissenting Trust Unitholder that it is unable lawfully to pay dissenting Trust Unitholders for their Trust Units.

- (x) If subsection (y) applies, a dissenting Trust Unitholder, by written notice delivered to the Trust within 30 days after receiving a notice under subsection (w), may:
 - (i) withdraw their notice of dissent, in which case the Trust is deemed to consent to the withdrawal and the Trust Unitholder is reinstated to their full rights as a Trust Unitholder; or
 - (ii) retain a status as a claimant against the Trust, to be paid as soon as the Trust is lawfully able to do so or, in a liquidation, to be ranked subordinate to the rights of creditors of the Trust but in priority to its Trust Unitholders.
- (y) A Trust shall not make a payment to a dissenting Trust Unitholder under this Section if there are reasonable grounds for believing that:
 - (i) the Trust is or would after the payment be unable to pay its liabilities as they become due; or
 - (ii) the realizable value of the Trust's assets would thereby be less than the aggregate of its liabilities.

For greater certainty, all rights provided to Trust Unitholders in this Section 10.1 are in addition to any other rights that a Trust Unitholder may have under Section 3.27 hereof.

10.2 Oppression Remedy

- (a) Any registered holder or beneficial owner of Units or former registered holder or beneficial owner of Units or any security holder (each, a "Complainant") may apply to a court under the provisions of this Section 10.2.
- (b) If, on application, the court is satisfied that, in respect of the Trust:
 - (i) any act or omission of the Trust effects a result;
 - (ii) the business or affairs of the Trust or any subsidiary are or have been carried on or conducted in a manner; or
 - (iii) the powers of the Trustees are or have been exercised in a manner that is oppressive or unfairly prejudicial to or that unfairly disregards the interests of any Unitholder or security holder, the court may make an order to rectify the matters complained of by the Complainant.
- (c) In connection with an application by a Complainant under subsection (a) and without limiting subsection (b), a court may make any interim or final order it thinks fit including, without limiting the generality of the foregoing,
 - (i) an order restraining the conduct complained of;
 - (ii) an order appointing a receiver or receiver-manager;

- (iii) an order to regulate the Trust's affairs or those of a subsidiary by amending this Declaration of Trust or the articles or by-laws of a subsidiary;
 - (iv) an order directing an issue or exchange of securities;
 - (v) an order appointing Trustees or directors of a subsidiary in place of or in addition to all or any of the Trustees or directors then in office;
 - (vi) an order directing the Trust or any other person to purchase securities of a holder of securities;
 - (vii) an order directing the Trust or any other person to pay a security holder any part of the monies that the security holder paid for securities;
 - (viii) an order varying or setting aside a transaction or contract to which the Trust or a subsidiary is a party and compensating the Trust or a subsidiary or any other party to the transaction or contract;
 - (ix) an order requiring the Trust or a subsidiary, within a time specified by the court, to produce to the court or an interested person financial statements or an accounting in such form as the court may determine;
 - (x) an order compensating an aggrieved person;
 - (xi) an order directing rectification of the registers or other records of the Trust or a subsidiary;
 - (xii) an order directing an investigation to be made; and
 - (xiii) an order requiring the trial of any issue.
- (d) If an order made under this Section directs an amendment of this Declaration of Trust or to the constating documents of a subsidiary, then:
- (i) the Trustees shall request the Trust, such subsidiary and all Trustees, directors, officers and other persons responsible for management to take all steps necessary to carry out that direction; and
 - (ii) no other amendment to this Declaration of Trust or such constating documents shall be made without the consent of the court, until a court otherwise orders.
- (e) A Unitholder is not entitled to dissent under this Declaration of Trust or other applicable law if an amendment to the Declaration of Trust or such constating documents is effected under this Section.
- (f) A Complainant may apply in the alternative for an order to wind-up the Trust or liquidate and dissolve a subsidiary and a court may so order if the court is satisfied that it is just and equitable that such winding-up, liquidation or dissolution occur.

ARTICLE 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:

- (a) interest and other costs of borrowed money;
- (b) fees and expenses of lawyers, accountants, Auditors, appraisers and other agents or consultants employed by or on behalf of the Trust or the Trustees;
- (c) compensation, remuneration and expenses of the Trustees;
- (d) fees and expenses connected with the acquisition, disposition, ownership, leasing, management and financing of Trust Property permitted in this Declaration of Trust;
- (e) insurance, including Trustees and officers liability insurance, as considered necessary by the Trustees;
- (f) expenses in connection with payments of distributions of Trust Units;
- (g) expenses in connection with communications to the Unitholders and the other bookkeeping and clerical work necessary in maintaining relations with the Unitholders;
- (h) expenses of amending the Declaration of Trust or terminating the Trust;
- (i) fees and charges of Transfer Agents, Registrars, indenture trustees and other trustees and custodians; and
- (j) 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 “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 provided otherwise, 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 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 Trust 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 Trust Unit option or purchase plan, the Distribution Reinvestment Plan or to issue Trust Units for which the purchase price is payable in instalments;
- (g) to create and issue one or more new classes of Preferred Units (each of which may be comprised of unlimited series) that rank in priority to the Trust Units (in payment of distributions and in connection with any termination or winding-up of the Trust);
- (h) 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
- (i) 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” 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

- (a) Notwithstanding Section 12.1, at all times the following amendments to the Declaration of Trust shall require approval by Special Resolution:
- (i) any amendment to this Section 12.2;
 - (ii) an exchange, reclassification or cancellation of all or part of the Units (other than as provided herein);
 - (iii) the change or removal of the rights, privileges, restrictions or conditions attached to the Units and, including, without limiting the generality of the foregoing:
 - (A) the removal or change of rights to distributions;
 - (B) the removal of or change to conversion privileges, redemption privileges, options, voting, transfer or pre-emptive rights; or
 - (C) the reduction or removal of a distribution preference or liquidation preference;
 - (iv) the creation of new rights or privileges attaching to certain of the Units;
 - (v) any change to the existing constraints on the issue, transfer or ownership of the Units except as otherwise provided herein;
 - (vi) the sale of the Trust Property or the assets or property of the Subsidiaries 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);
 - (vii) 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);
 - (viii) a material change to the LP Agreement; or
 - (ix) 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 the 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.

12.5 Restriction on Amendments Affecting Certain Rights of GWL

Provided that GWL and its Affiliates hold in the aggregate, directly or indirectly, at least 10% of the outstanding Units on a fully-diluted basis, without the express consent of GWL, acting reasonably, no amendment shall be made to this Section 12.5 or that otherwise limits or alters the rights of GWL contained in Section 6.7.

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 after the end of each fiscal year of the Trust (unless otherwise agreed to by a majority of the Trustees and in compliance with applicable securities laws and any stock exchange requirements).

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 5% 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 5% 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:

- (a) a record date for a meeting of the Unitholders has been fixed and notice thereof has been given to each stock exchange in Canada on which the Trust Units are listed for trading;
- (b) the Trustees have called a meeting of the Unitholders and have given notice thereof pursuant to Section 13.3; or
- (c) in connection with the business as stated in the requisition:

- (i) 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;
 - (ii) 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;
 - (iii) 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;
 - (iv) 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
 - (v) the rights conferred by this Section 13.2 are being abused to secure publicity;
- (d) the Unitholder(s) submitting the requisition fail to continue to hold or own at least 5% 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 13.12 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 mailed or delivered by the Trustees to each Unitholder at its address appearing in the Register, to each Trustee and to the Auditors not less than 21 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 CBCA in connection with a meeting of shareholders. The Trustees shall at all times be entitled to deliver notice and information to Unitholders in accordance with means permitted by applicable securities laws.

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

notice of the adjourned meeting shall be given as for an original meeting.

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

- (a) the nature of the business in sufficient detail to permit a Unitholder to form a reasonable judgment thereon; and
- (b) the text of any resolution (or a summary thereof) that requires the approval of two-thirds of the votes cast by Unitholders who vote in respect of that resolution to be submitted to the meeting.

13.4 Unitholder Proposals

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

- (a) To be eligible to submit a Proposal, a person:
 - (i) must be, for at least the six-month period immediately before the day on which the person submits the Proposal, the registered holder or the beneficial owner of (i) at least 1% of the total number of outstanding Units, as of the day on which the person submits a Proposal, or (ii) Units whose fair market value, as determined at the close of business on the day before the person submits the Proposal, is at least \$2,000; or
 - (ii) must have the support of persons who, in the aggregate, and including or not including the person that submits the Proposal, have been, for at least the six-month period immediately before the day on which the person submits the Proposal, the registered holders or beneficial owners of (i) at least 1% of the total number of outstanding Units, as of the day on which the person submits the Proposal, or (ii) Units whose fair market value, as determined at the close of business on the day before the person submits the Proposal is at least \$2,000.
- (b) A Proposal must be accompanied by the following information:
 - (i) the name and address of the person submitting the Proposal and the person's supporters, if applicable; and
 - (ii) the number of Units held or owned by the person submitting the Proposal and the person's supporters, if applicable, and the date the Units were acquired.
- (c) If requested by the Trust within 14 days of the receipt of the Proposal, a person who submits a Proposal must provide proof, within 21 days following the day on which the person

receives the Trust's request, or if the request was mailed to the person, within 21 days after the postmark date stamped on the envelope containing the request, that the person meets the requirements set out in subsection (a).

- (d) The Trust shall set out the Proposal in its proxy circular delivered in connection with its annual meeting or attach the Proposal thereto.
- (e) If so requested by the person who submits the Proposal, the Trust shall include in, or attach to, its proxy circular delivered in connection with its annual meeting, a statement in support of the Proposal by the person and the name and address of the person making the Proposal. The statement and Proposal so included must not exceed 500 words excluding the information required by subsection (b).
- (f) A Proposal may not include nominations for the election of Trustees and a Unitholder shall not have the right to make nominations at the meeting, unless such nomination is made in accordance with the provisions of Section 6.8.
- (g) The Trust shall not be required to comply with subsections (d) and (e) if:
 - (i) the Proposal is submitted less than 90 days before the anniversary date of the notice of meeting that was sent to Unitholders in connection with the Trust's previous annual meeting of Unitholders;
 - (ii) it clearly appears that (A) the primary purpose of the Proposal is to enforce a personal claim or redress a personal grievance against the Trust, the Trustees, its officers, the Unitholders or other security holders of the Trust, or (B) the Proposal does not relate in a significant way to the business or affairs of the Trust;
 - (iii) not more than two years preceding the receipt of such Proposal, the proposing person failed to present, in person or by proxy, at a meeting of Unitholders, a Proposal that, at the person's request, had been included in a proxy circular relating to a meeting of the Unitholders;
 - (iv) substantially the same proposal was submitted to Unitholders in a proxy circular relating to a meeting of the Unitholders held within five years preceding the receipt of the Proposal and the matter covered by the Proposal did not receive the required support at that meeting. For the purposes hereof, the required support for a Proposal is:
 - (A) 3% of the total number of Units voted, if the Proposal has been introduced at only one annual meeting of Unitholders;
 - (B) 6% of the total number of Units voted at the last meeting at which the matter was submitted to Unitholders, if the Proposal was introduced at two annual meetings of Unitholders; and

- (C) 10% of the total number of Units voted at the last meeting at which the matter was submitted to Unitholders, if the Proposal was introduced at three or more annual meetings of Unitholders; or
- (v) the rights conferred by this Section are being abused to secure publicity.
- (h) If a person who submits a Proposal fails to continue to hold or own the number of Units referred to in subsection (a) up to and including the day of the meeting, the Trust is not required to set out in its proxy circular, or attach to it, any proposal submitted by that person for any meeting held within two years following the date of the meeting.
- (i) Neither the Trust nor any person acting on its behalf will incur any liability to Unitholders or any other person by reason only of circulating a Proposal or statement in compliance with this Section.
- (j) If the Trust refuses to include a Proposal in its proxy circular, it shall, within 21 days of the later of receipt of the Proposal or proof of ownership under subsection (c), as the case may be, notify in writing the person submitting the Proposal of its intention to omit the Proposal from the Trust's proxy circular and of the reasons for the refusal.
- (k) On the application of a person submitting a Proposal who claims to be aggrieved by the Trust's refusal under subsection (j), a court may restrain the holding of the meeting to which the Proposal is sought to be presented and make any further order it thinks fit.
- (l) The Trust or any person claiming to be aggrieved by a Proposal may apply to a court for an order permitting the Trust to omit the Proposal from the proxy circular, and the court, if it is satisfied that subsection (g) applies, may make such order as it thinks fit.

13.5 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 25% 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 chair 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 chair 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.

13.6 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 chair 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 chair that a resolution has been carried or carry 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 chair or an adjournment, it shall be taken immediately upon request and, in any other case, it shall be taken at such time as the chair 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.

13.7 Matters on which Unitholders may Vote

Subject to Section 10.2(c), none of the following shall occur unless the same has been duly approved by the Unitholders at a meeting duly called and held:

- (a) subject to Sections 6.1, 6.5 and 6.6, the election or removal of Trustees;
- (b) except as provided in Section 16.4, the appointment or removal of auditors of the Trust;
- (c) any amendment to the Declaration of Trust (except as provided in Section 4.7 or Section 12.1);
- (d) the sale of the assets of the Trust as an entirety or substantially as an entirety (other than as a part of an internal reorganization of the assets of the Trust as approved by the Trustees);
or
- (e) the termination of the Trust pursuant to Section 14.2.

13.8 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 Sections 12.2 and 13.7, or any other matters required by law to be submitted, or as are

otherwise submitted, to a vote of the Unitholders by the Trustees, no vote of the Unitholders shall in any way bind the Trust or Trustees.

13.9 No Breach

Notwithstanding any other provision of the 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.

13.10 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:

- (a) reference to such fact, indicating each class so affected, shall be made in the notice of such meeting; and
- (b) 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:
 - (i) there are present or 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
 - (ii) 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 or, in the second case, Special Resolution); and
 - (iii) the Unitholders of a series of Trust Units of a class are entitled to vote separately as a series under this Section 13.10 only if such series is affected by an amendment in a manner different from the other Trust Units of the same class.

13.11 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:

- (a) when a new certificate has been issued in substitution for a Trust Unit certificate that has been lost, stolen, mutilated or destroyed, only the later of such Trust Unit certificates will be counted for the purposes of determining the number of Units outstanding;
- (b) 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:

- (i) 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
- (ii) 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
- (iii) for the purposes of Section 13.11(b), any Trustee, any officer of the Trust or the Transfer Agent will provide a certificate that will state the number of Trust 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.

13.12 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. (Toronto time) on the last Business Day before the meeting.

13.13 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 Chair of the meeting at which the instrument is proposed to be used, that the instrument of proxy is invalid. Any decision of the Chair 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 Chair of the meeting prior to the time when the vote is cast.

13.14 Personal Representatives

Subject to Section 3.14, if a Unitholder is deceased, his/her personal representative, upon filing with the secretary of the meeting such proof of his/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/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 3.24 relating to joint holders shall apply.

13.15 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.

13.16 Conduct of Meetings of Unitholders

- (a) The chair of any annual or special meeting of Unitholders shall be the Chair of the Trustees or, in his absence, the Lead Trustee, or any other Trustee specified by resolution of the Trustees or, in the absence of any Trustee, any person appointed as chair of the meeting by the Trustees to act as chair of the meeting. The chair 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 chair.
- (b) 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 chair of the meeting and such rules and procedures shall be binding upon all parties participating in the meeting.

13.17 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.

13.18 Resolution in Lieu of Meeting

Notwithstanding any other provision of this Declaration of Trust, a resolution signed in writing by all the Unitholders holding a proportion of the outstanding Units equal to 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.

13.19 Meetings by Telephone, Electronic or Other Communications Facility

Any meeting of Unitholders may be held partially or entirely by means of a telephonic, electronic or other communication facility. A person who votes at the meeting or establishes a communications link to the meeting by such means is deemed to be present in person at the meeting. Any such meeting of Unitholders shall be deemed to be held at the place where the registered office of the Trust is located. The rules and procedures for any meeting of Unitholders held by means of a telephonic, electronic or other communication facility shall be such reasonable rules and procedures as are determined by the Trustees and such rules and procedures shall be binding upon all parties participating in the meeting.

ARTICLE 14

TERMINATION OF TRUST

14.1 Duration of the Trust

Subject to the other provisions of this Declaration of Trust, the Trust shall continue for a term ending 21 years after the date of the death of the last surviving issue of His Majesty King George V alive on May 21, 2013. For the purpose of terminating the Trust by such date, the Trustees will commence to wind-up the affairs of the Trust on such date as may be determined by the Trustees, being not more than two years prior to the end of the term of the 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 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 due speed, the net assets of the Trust shall be liquidated and the proceeds distributed to the Trust 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 saved 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:

- (a) the Trustee acted honestly and in good faith with a view to the best interests of the Trust and the Unitholders; and
- (b) in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, the Trustee had reasonable grounds for believing his 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 Sections 15.1(a) and 15.1(b).

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

- (a) 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.

- (b) In addition to the policies set out in Article 4, the Trustees shall cause the operations of the Trust to be conducted, with the advice of counsel, in such a way and in such jurisdictions as to avoid, to the extent which they determine to be practicable and consistent with their fiduciary duty to act in the best interests of the Unitholders, any material risk of liability on the Unitholders for claims against the Trust, and shall, to the extent available on terms which they determine to be practicable, including 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 Sections 15.1 and 15.2.

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 a Unitholder, a Trustee or the Auditors shall be deemed conclusively to have been given if given either by 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 Report on Business section of the National Edition of The Globe and Mail 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 and removed at each annual meeting of Unitholders by an Ordinary Resolution. If at any time a vacancy occurs in the position of Auditors, 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) information similar to that required to be provided to shareholders of a public corporation governed by the CBCA 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 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.

16.10 Trust Records

The Trustee 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) the 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.

16.11 Right to Inspect Documents

A Unitholder and any agent, consultant or creditor of the Trust shall have the right to examine the Declaration of Trust, the Trustees' Regulations, the minutes of meetings and resolutions of 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 CBCA.

16.12 Taxation Information

On or before March 30 in each year, or such earlier day as is required by applicable legislation or regulation, the Trust will provide to Trust Unitholders who received distributions from the Trust in either the prior calendar year or on or before January 31 of such year, such information regarding the Trust required by applicable law to be submitted to Trust Unitholders for income tax purposes to enable Trust Unitholders to complete their tax returns in respect of the prior calendar year.

16.13 Consolidations

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

16.14 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.

16.15 Severability

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

16.16 Governing Law

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

16.17 Language

Les parties aux présentes ont exigés que la présente convention ainsi que tous les documents et avis qui s'y rattachent et/ou qui en découleront soient rédigés 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.

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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 as of the date first above written.

"Kerry D. Adams"

Kerry D. Adams, Trustee

"Christie J. B. Clark"

Christie J. B. Clark, Trustee

"L. Jay Cross"

L. Jay Cross, Trustee

"Gordon A.M. Currie"

Gordon A.M. Currie, Trustee

"Graeme Eadie"

Graeme Eadie, Trustee

"Karen A. Kinsley"

Karen A. Kinsley, Trustee

"R. Michael Latimer"

R. Michael Latimer, Trustee

"Nancy H.O. Lockhart"

Nancy H.O. Lockhart, Trustee

"Dale R. Ponder"

Dale R. Ponder, Trustee