



**SMART REAL ESTATE INVESTMENT TRUST**

**Notice of Annual General and Special Meeting  
of Holders of Units and Special Voting Units to be held on**

**May 11, 2017**

**- and -**

**Management Information Circular**

**April 13, 2017**



# SMARTREIT®

## INVITATION TO UNITHOLDERS

April 13, 2017

Dear Fellow Unitholders,

Smart Real Estate Investment Trust (“**SmartREIT**” or “**we**”) is pleased to invite you to join our board of trustees and senior management team at the annual general and special meeting of the holders of our Units and Special Voting Units. The meeting will be held at 8:30 a.m. (Toronto time) on May 11, 2017 at St. Andrew’s Club & Conference Centre, 27th Floor, 150 King Street West, Toronto, Ontario.

The annual meeting provides SmartREIT’s unitholders with an important opportunity to consider and participate in key matters for SmartREIT. The accompanying management information circular describes the business to be conducted at the annual meeting and provides information on SmartREIT’s executive compensation and governance practices. At the annual meeting, there will be an opportunity to ask questions and meet with management and the board of trustees. Huw Thomas, the Chief Executive Officer of SmartREIT, will also provide an overview on the direction for SmartREIT in the coming years.

Throughout SmartREIT’s years as a publicly traded real estate investment trust it has always been committed to strong governance. This year, the board of trustees is proposing to amend SmartREIT’s declaration of trust to further align it with evolving governance best practices, which include introducing rights in favour of our unitholders consistent with certain of the rights available to shareholders of a corporation governed by the *Canada Business Corporations Act* and enhancing unitholders rights respecting the process for and procedures at unitholder meetings.

The accompanying Circular provides a detailed description of the proposed amendments to the declaration of trust as well as further information regarding SmartREIT. Please give this material your careful consideration.

On behalf of the board of trustees, management and employees, we would like to thank you for your consideration of these important matters and for your continued support. We look forward to seeing you at the annual meeting.

Sincerely,

Huw Thomas  
Trustee and Chief Executive Officer

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**SMART REAL ESTATE INVESTMENT TRUST**  
**NOTICE OF ANNUAL GENERAL AND SPECIAL MEETING OF UNITHOLDERS**  
**to be held on May 11, 2017**

**NOTICE IS HEREBY GIVEN** that an annual general and special meeting (the “**Meeting**”) of the holders of Units (“**Units**”) and Special Voting Units (“**Special Voting Units**”) of Smart Real Estate Investment Trust (“**SmartREIT**”) will be held at St. Andrew’s Club & Conference Centre, 27th Floor, 150 King Street West, Toronto, Ontario, on May 11, 2017 at 8:30 a.m. (Toronto time) for the following purposes:

1. To receive and consider the consolidated financial statements of SmartREIT for the year ended December 31, 2016 and the auditor’s report thereon;
2. To elect the persons named as proposed trustees in the management information circular accompanying this notice of meeting as trustees of SmartREIT for the ensuing year;
3. To re-appoint PricewaterhouseCoopers LLP, Chartered Professional Accountants, as the auditor of SmartREIT for the ensuing year and to authorize the trustees of SmartREIT to fix the remuneration of such auditor;
4. To consider and vote on an advisory resolution on SmartREIT’s approach to executive compensation, as more particularly set forth in the management information circular accompanying this notice of meeting;
5. To consider, and if thought advisable, to pass a resolution approving certain amendments to the declaration of trust of SmartREIT, as more particularly set forth in the management information circular accompanying this notice of meeting; and
6. To transact such other business as may properly come before the Meeting or any adjournment or postponement thereof.

The holders of Units and the holders of Special Voting Units are collectively referred to herein as the “**Unitholders**”.

The specific details of the matters proposed to be put before the Unitholders at the Meeting are set forth in the accompanying management information circular. The record date for determination of Unitholders entitled to receive notice of and to vote at the Meeting is March 31, 2017 (the “**Record Date**”). Only Unitholders whose names appear on the register of Unitholders at the close of business on the Record Date will be entitled to receive notice of and to vote at the Meeting.

**A registered Unitholder may attend the Meeting in person or may be represented by proxy. Registered Unitholders who are unable to attend the Meeting or any adjournment or postponement thereof in person are requested to date, sign and return the form of proxy accompanying this notice of meeting sent to them for use at the Meeting or any adjournment or postponement thereof. To be effective:**

- (a) **a form of proxy submitted by a registered holder of Units must be received by the Chief Financial Officer of SmartREIT, c/o Computershare Trust Company of Canada, 100 University Avenue, 8th Floor, Toronto, Ontario M5J 2Y1; and**
- (b) **a form of proxy submitted by a registered holder of Special Voting Units must be received by the Chief Financial Officer of SmartREIT at the head office of SmartREIT located at 700 Applewood Crescent, Suite 200, Vaughan, Ontario L4K 5X3;**

**in each case at least 48 hours (excluding Saturdays, Sundays and holidays) prior to the time set for the Meeting or any adjournment or postponement thereof.**

Non-registered Unitholders who have received a voting instruction form in connection with the Meeting should follow the instructions for completion and delivery as indicated on the form.

**DATED** at the City of Vaughan, in the Province of Ontario, this 13<sup>th</sup> day of April, 2017.

**BY ORDER OF THE BOARD OF TRUSTEES OF SMART  
REAL ESTATE INVESTMENT TRUST**

By:

A handwritten signature in black ink, appearing to read "Huw Thomas". The signature is written in a cursive style with a large initial "H".

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Huw Thomas  
Trustee and Chief Executive Officer

## Q&A RELATING TO THE MEETING

### 1. Where and when is the meeting?

The annual general and special meeting of unitholders of SmartREIT will take place at 8:30 a.m. (Toronto time) on May 11, 2017 at St. Andrew's Club & Conference Centre, 27<sup>th</sup> Floor, 150 King Street West, Toronto, Ontario. You can vote at the meeting in person (if you are a registered unitholder) or by proxy.

### 2. What are we voting upon at the meeting?

Unitholders are voting on the election of trustees for the coming year, the appointment of auditors and certain proposed amendments to SmartREIT's declaration of trust. We are seeking the approval of the first two matters by unitholders holding at least a majority of the votes cast at the meeting and the approval of the proposed amendments to the declaration of trust by unitholders holding at least two thirds of the votes cast at the meeting. Unitholders will also vote on a non-binding say-on-pay advisory resolution as set out in further detail below.

### 3. Why does the board of trustees want to amend the declaration of trust?

As described in further detail in the accompanying management information circular, the board of trustees of SmartREIT is of the view that it is appropriate and in the best interests of SmartREIT to further align the declaration of trust with evolving governance best practices, which include introducing rights in favour of unitholders consistent with certain of the rights available to shareholders of a corporation pursuant to the *Canada Business Corporations Act* and enhancing unitholders' rights respecting the process for and procedures at unitholder meetings. SmartREIT is also proposing to amend the declaration of trust to clarify certain rights of SmartREIT's significant unitholder as well as update SmartREIT's operating policies in respect of environmental audits.

### 4. Why does the board of trustees want to add an advance notice policy to the declaration of trust?

The proposed advance notice policy, which is reflected in the proposed amendments to the declaration of trust, sets out the procedures for any unitholder who intends to nominate any person for election as a trustee of SmartREIT. The advance notice policy stipulates a deadline by which unitholders must notify SmartREIT of their intention to nominate trustees and also sets out the information that unitholders must provide regarding each trustee nominee and the nominating unitholder in order for the advance notice requirement to be met. The board of trustees believes that requiring a unitholder to give advanced notice to SmartREIT of proposals relating to the nomination of trustees will facilitate a clear and equitable framework for nominating trustees and is consistent with ongoing developments in governance best practices. The proposed policy is intended to comply with the recommendations of the Institutional Shareholder Services concerning advance notice policies. Institutional Shareholder Services is an influential corporate governance and proxy advisor.

### 5. What is an advisory say-on-pay vote?

The advisory vote on say-on-pay is provided to allow unitholders to show their approval or disapproval of SmartREIT's executive compensation policies which are described in detail in the accompanying management information circular. An advisory vote is non-binding on SmartREIT and it remains the duty of the Board of Trustees and the Corporate Governance and Compensation Committee of SmartREIT to develop and implement appropriate executive compensation policies for SmartREIT. The Corporate Governance and Compensation Committee will take into account the results of the vote when considering future executive compensation arrangements. At SmartREIT's meeting of unitholders held on June 10, 2016, Unitholders holding over 98% of the votes cast at the meeting voted in favour of SmartREIT's approach to executive compensation.

### 6. How do I vote?

If you are a "non-registered" unitholder because your units and/or special voting units are not registered in your name but are instead registered in the name of Canadian Depository for Securities Limited, CDS Clearing and Depository Services Inc., CDS INC., CDS Innovations Inc. or their affiliates, or in the name of an intermediary that you deal with in respect of your units and/or special voting units (which may include banks, trust companies, securities dealers or brokers and trustees or administrators of self-administered registered retirement savings plans, registered retirement income funds, registered education savings plans and similar plans), SmartREIT has elected to send you copies of the notice of the meeting, the accompanying management information circular and the voting instruction form (collectively, the "meeting materials") indirectly through intermediaries.

Intermediaries will frequently use service companies to forward the meeting materials to non-registered unitholders. Generally, a non-registered unitholder who has not waived the right to receive meeting materials will be given a voting instruction form by the intermediary, which, when properly completed and signed by the non-registered unitholder and returned to the intermediary or its service company (as directed in such voting instruction form), will constitute voting instructions which the intermediary must follow.

Non-registered unitholders are kindly asked to return their voting instructions as specified in the voting instruction form.

If you are a registered unitholder, please refer to the accompanying management information circular for further instructions on how to vote.

**SMART REAL ESTATE INVESTMENT TRUST  
MANAGEMENT INFORMATION CIRCULAR**  
**For the Annual General and Special Meeting of Unitholders to be held on May 11, 2017**

**MEANING OF CERTAIN REFERENCES**

References to “**SmartREIT**” and “**we**” in this management information circular refer to Smart Real Estate Investment Trust. References to the “**Board**” means the board of trustees of SmartREIT and to “**Trustees**” means the trustees of SmartREIT.

In addition, references to “**Units**” means Variable Voting Units of SmartREIT, to “**Special Voting Units**” means the Special Voting Units of SmartREIT and to “**Voting Units**” means the Special Voting Units and Units. “**Unitholders**” means the holders of Units and Special Voting Units.

All dollar amounts in this management information circular are expressed in Canadian dollars.

**SOLICITATION OF PROXIES AND VOTING AT THE MEETING**

**Solicitation of Proxies**

This management information circular (the “**Circular**”) is furnished in connection with the solicitation of proxies by the management of SmartREIT to be used at the annual general and special meeting of Voting Unitholders (the “**Meeting**”) to be held at St. Andrew’s Club & Conference Centre, 27th Floor, 150 King Street West, Toronto, Ontario, on May 11, 2017 at 8:30 a.m. (Toronto time), and at any adjournment thereof, for the purposes set forth in the enclosed notice of meeting. Solicitations of proxies will be primarily by mail, but may also be by newspaper publication, in person or by telephone, telecopy or oral communication by trustees, officers, employees or agents of SmartREIT who may be specifically remunerated for such solicitations. All costs of the solicitation will be borne by SmartREIT. The information contained herein is given as of March 31, 2017 unless otherwise specified.

**Appointment and Revocation of Proxies**

If you are a registered Unitholder, you will have received a form of proxy with the notice of meeting. The persons named in the form of proxy are Trustees or officers of SmartREIT. **A registered Unitholder desiring to appoint a person (who need not be a Unitholder) to represent such Unitholder at the Meeting other than the persons designated in the form of proxy may do so either by inserting such person’s name in the blank space provided in the form of proxy and sending or delivering the completed form of proxy to the Chief Financial Officer of SmartREIT. To be effective:**

- (a) **a form of proxy submitted by a registered holder of Units must be received by the Chief Financial Officer of SmartREIT, c/o Computershare Trust Company of Canada, 100 University Avenue, 9th Floor, Toronto, Ontario M5J 2Y1; and**
- (b) **a form of proxy submitted by a registered holder of Special Voting Units must be received by the Chief Financial Officer of SmartREIT at the head office of SmartREIT located at 700 Applewood Crescent, Suite 200, Vaughan, Ontario L4K 5X3,**

**in each case at least 48 hours (excluding Saturdays, Sundays and holidays) prior to the time set for the Meeting or any adjournment thereof. Failure to so deposit a form of proxy shall result in its invalidation.**

**A registered Unitholder who has given a form of proxy may revoke it as to any matter on which a vote has not already been held pursuant to its authority by an instrument in writing executed by such Unitholder or by his or her attorney duly authorized in writing or, if the registered Unitholder is a corporation, by an officer or attorney thereof duly authorized, and deposited either at the abovementioned office of Computershare Trust Company of Canada on or before the last business day preceding the day of the Meeting or any adjournment thereof, or with the chairman of the Meeting on the day of the Meeting or any adjournment thereof. Notwithstanding the foregoing, if a registered Unitholder attends personally at the Meeting, such Unitholder may revoke the proxy and vote in person.**

Registered Unitholders of SmartREIT of record as at the close of business on March 31, 2017 (the “**Record Date**”) are entitled to receive notice of, to attend and to vote at the Meeting.

### **Signature of Proxy**

A form of proxy must be executed by the registered Unitholder or his or her attorney authorized in writing or, if such Unitholder is a corporation, the form of proxy should be signed in its corporate name under its corporate seal by an authorized officer whose title should be indicated. A form of proxy signed by a person acting as attorney or in some other representative capacity should reflect such person’s capacity following his or her signature and should be accompanied by the appropriate instrument evidencing qualification and authority to act (unless such instrument has been previously filed with SmartREIT).

### **Voting of Proxies**

The persons named in the form of proxy will vote the Voting Units in respect of which they are appointed in accordance with the direction of the Unitholder appointing them. **In the absence of such direction, such Voting Units will be voted in favour of the following resolutions:**

- 1. Electing the persons named as proposed trustees in the Circular as Trustees of SmartREIT for the ensuing year;**
- 2. Re-appointing PricewaterhouseCoopers LLP, Chartered Professional Accountants, as the auditor of SmartREIT for the ensuing year and authorizing the Trustees to fix the remuneration of the auditor;**
- 3. Accepting SmartREIT’s approach to executive compensation, as more particularly set forth in this Circular; and**
- 4. Approving certain amendments to SmartREIT’s declaration of trust, as more particularly set forth in this Circular.**

### **Exercise of Discretion of Proxy**

**The form of proxy confers discretionary authority upon the persons named therein with respect to amendments or variations to matters identified in the accompanying notice of meeting and the Circular and with respect to other matters that may properly come before the Meeting.** At the date of the Circular, management of SmartREIT knows of no amendments, variations or other matters to come before the Meeting other than the matters referred to in the notice of meeting.

### **Non-Registered Holders**

**Only registered Unitholders or duly appointed proxyholders are permitted to attend and vote at the Meeting. Most Unitholders are non-registered Unitholders (“Non-Registered Holders”) because the Voting Units they own are not registered in their names but are instead registered in the name of the brokerage firm, bank or trust company through which they purchased the Voting Units.** A person is a Non-Registered Holder in respect of Voting Units which are held on behalf of that person but which are registered either in the name of: (i) an intermediary (an “**Intermediary**”) that a Non-Registered Holder deals with in respect of its Voting Units (which may include banks, trust companies, securities dealers or brokers and trustees or administrators of self-administered registered retirement savings plans, registered retirement income funds, registered education savings plans and similar plans), or (ii) a clearing agency such as the Canadian Depository for Securities Limited, CDS Clearing and Depository Services Inc., CDS INC., CDS Innovations Inc. and their affiliates (collectively “**CDS**”), of which the Intermediary is a participant.

In accordance with the requirements of National Instrument 54-101 – *Communication with Beneficial Owners of Securities of a Reporting Issuer*, SmartREIT has elected to send copies of the meeting materials indirectly through Intermediaries to the non-objecting Non-Registered Holders. SmartREIT will pay all costs associated with the sending of the notice of meeting and the voting instruction form by the Intermediary to the Non-Registered Holders.

Intermediaries will frequently use service companies to forward the meeting materials to Non-Registered Holders. Generally, a Non-Registered Holder who has not waived the right to receive meeting materials will be given a voting instruction form by the Intermediary, which, when properly completed and signed by the Non-Registered Holder and returned to the Intermediary or its service company (as directed in such voting instruction form), will constitute voting instructions which the Intermediary must follow.

Non-Registered Holders are kindly asked to return their voting instructions as specified in the voting instruction form.

Voting instruction forms should be completed and returned in accordance with the specific instructions noted thereon. The purpose of this procedure is to permit Non-Registered Holders to direct the voting of the Voting Units which they beneficially own.

Should a Non-Registered Holder who received a voting instruction form wish to attend the Meeting or to specify someone else to attend on his or her behalf, the Non-Registered Holder may request a legal proxy as set forth in the voting instruction form, which will grant the Non-Registered Holder, or his or her nominee, the right to attend and vote at the Meeting.

**Non-Registered Holders should return their voting instructions as specified in the voting instruction form. Non-Registered Holders should carefully follow the instructions set out in the voting instruction form, including those regarding when and where the voting instruction form is to be delivered.**

## **INFORMATION RESPECTING SMART REAL ESTATE INVESTMENT TRUST**

### **General**

SmartREIT is an unincorporated “open-end” real estate investment trust constituted in accordance with the laws of the Province of Alberta pursuant to a declaration of trust (the “**Declaration of Trust**”). SmartREIT’s purpose is to develop, lease, construct, own and manage shopping centres that provide retailers with a platform to reach their customers through convenient locations, intelligent designs and a desirable tenant mix, and more recently to provide high quality office space for tenants to locate effective workspaces. SmartREIT is also now working on opportunities to provide residential (in various forms), senior housing and self-storage facilities at certain of its properties across Canada, as well as developing certain of its urban properties to provide a mix of retail, residential and office space. The principal and head office of SmartREIT is located at 700 Applewood Crescent, Suite 200, Vaughan, Ontario L4K 5X3.

### **Meetings of Unitholders**

The Declaration of Trust provides that meetings of Unitholders must be called and held for, among other matters, the election or removal of Trustees (except filling casual vacancies), the appointment or removal of the auditors of SmartREIT, the approval of amendments to the Declaration of Trust, an increase or decrease in the number of Trustees, the sale of the assets of SmartREIT in its entirety or substantially in its entirety (other than as part of an internal reorganization) or the termination of SmartREIT.

Registered Unitholders may attend and vote at all meetings of Unitholders either in person or by proxy and a proxyholder need not be a Unitholder. Two persons present in person or represented by proxy and representing in the aggregate at least 10% of the votes attaching to all outstanding Voting Units shall constitute a quorum for the transaction of business at all such meetings.

### **Authorized Capital**

The Declaration of Trust authorizes the issuance of an unlimited number of two classes of units: Units and Special Voting Units.

As of the Record Date, SmartREIT had 130,518,001 Units and 25,554,259 Special Voting Units (not including the Additional Special Voting Units, as defined below) outstanding for a total of 156,072,260 outstanding Voting Units (not including the Additional Special Voting Units).

As described below, pursuant to the Voting Top-Up Right held by (i) Mitchell Goldhar, (ii) any heir, executor, administrator or legal representative of Mitchell Goldhar; (iii) any individual who is the child, spouse, common law spouse, father, mother, brother, sister, niece or nephew of Mitchell Goldhar, or is married to any such individual; (iv) any trust in respect of which all of the beneficiaries shall be solely one or more of those persons referred to in clause (iii); (v) any combination of persons referred to in clauses (i), (ii), (iii) or (iv); and (vi) any person who is controlled by any person referred to in clauses (i), (ii), (iii) or (iv) or any combination thereof (collectively, the “**MG Entities**”), SmartREIT had 5,542,624 Additional Special Voting Units outstanding as of the Record Date.

Limited partnership subsidiaries of SmartREIT have issued 25,554,259 securities that are convertible or exchangeable directly for Units without the payment of additional consideration (“**Exchangeable Securities**”), including Class B limited partnership units (“**Class B LP Units**”) and Class D limited partnership units (“**Class D LP Units**”). Such Exchangeable Securities are economically equivalent to Units as they are entitled to distributions equal to those on the Units and are exchangeable for Units on a one-for-one basis. The issue of a Class B LP Unit and Class D LP Unit is accompanied by a Special Voting Unit that entitles the holder to vote at meetings of Unitholders, as described in more detail below.

## **Units**

An unlimited number of Units may be created and issued pursuant to the Declaration of Trust. Each Unit represents an equal fractional undivided beneficial interest in any distributions from SmartREIT, and in the net assets of SmartREIT in the event of termination or winding-up of SmartREIT. All Units are of the same class with equal rights and privileges, subject to the Voting Top-Up Right described below. Each Unit is transferable, entitles the holder thereof to participate equally in distributions, including the distributions of net income and net realized capital gains of SmartREIT and distributions on liquidation, is fully paid and non-assessable and entitles the holder thereof to one vote at all meetings of Unitholders for each Unit held.

## **Special Voting Units**

An unlimited number of Special Voting Units may be created and issued pursuant to the Declaration of Trust. Special Voting Units shall only be issued by SmartREIT from time to time in connection with or in relation to Exchangeable Securities on such terms and conditions as may be determined by the Trustees. Each Special Voting Unit shall entitle the holder of a Special Voting Unit to such number of votes at meetings of Unitholders as is equal to the number of Units into which the Exchangeable Security to which such Special Voting Unit relates (other than an Exchangeable Security owned by SmartREIT or any subsidiary of SmartREIT) is then exchangeable or convertible for. For greater certainty, holders of Special Voting Units shall not be entitled, by virtue of their holding of Special Voting Units, to distributions of any nature whatsoever from SmartREIT nor shall they have any beneficial interest in any assets of SmartREIT on termination or winding up of SmartREIT. Special Voting Units are not separately transferable from the Exchangeable Security to which they relate and are automatically redeemed and cancelled upon the exercise or conversion of such Exchangeable Security.

Notwithstanding the foregoing, if in any given 365 day period prior to July 1, 2020, the average weighted aggregate number of Special Voting Units plus Units held or controlled by Mitchell Goldhar (while he remains alive) or the MG Entities (if Mitchell Goldhar is not alive) (not including any Additional Special Voting Units issued to the MG Entities as described below) is equal to or greater than the lesser of (i) 20% of the aggregate issued and outstanding Units plus Special Voting Units and (ii) 20,000,000 Units plus Special Voting Units provided that such securities represent no less than 10% of the voting rights attached to all of the issued and outstanding Units and Special Voting Units, then so long as Mr. Mitchell Goldhar or another individual appointed by the MG Entities remains a Trustee and the MG Entities directly or indirectly beneficially own or control less than 25% of the voting rights attached to all voting securities of SmartREIT, SmartREIT shall issue such number of additional Special Voting Units (“**Additional Special Voting Units**”) which will entitle Mitchell Goldhar (while he remains alive) or the MG Entities (if Mitchell Goldhar is not alive) to cast 25% of the votes eligible to be cast at a meeting of the holders of Voting Units (the “**Voting Top-Up Right**”). Mitchell Goldhar beneficially owned or controlled 24.8% of the Voting Units as of March 24, 2017 (including all previously issued and outstanding Additional Special Voting Units). As a result, SmartREIT issued 361,215 Additional Special Voting Units to an entity controlled by Mitchell Goldhar so as to entitle Mitchell Goldhar to 25% of the votes to be cast at the Meeting.

## Principal Unitholders

To the knowledge of SmartREIT, as at March 31, 2017, no person or company beneficially owned, directly or indirectly, or exercised control or direction over, voting securities of SmartREIT carrying more than 10% of the voting rights attached to any class of voting securities of SmartREIT except as set out below:

Voting Unitholder and Municipality of Residence	Type of Ownership	Units		Special Voting Units <sup>(2)</sup>		Voting Units	
		Number	Percentage	Number	Percentage	Number	Percentage
Mitchell Goldhar <sup>(1)</sup> Vaughan, ON	Beneficial	13,769,471	10.5%	26,634,250	85.6%	40,403,721	25.0%

Notes:

- (1) These Voting Units are held by certain members of the Penguin group.
- (2) The Penguin group also own 21,091,626 Class B LP Units with which such Special Voting Units are associated and that are exchangeable on a one-for-one basis for Units (subject to any anti-dilution adjustments). The foregoing includes 5,542,624 Additional Special Voting Units issued to the MG Entities pursuant to the Voting Top-Up Right. See "Information Respecting Smart Real Estate Investment Trust – Special Voting Units".

## TRUSTEES

### Nominees for Election to the Board of Trustees

The following is a summary of relevant biographical and compensation information with respect to each of the individuals to be nominated for election as a trustee of SmartREIT at the Meeting or to be appointed by the MG Entities upon the conclusion of the Meeting (see "Particulars of Matters to be Acted Upon – Election of Trustees").



**HUW THOMAS, FCPA, FCA**

Age: 64

Ontario, Canada

Trustee since 2011, Chief Executive Officer since July 2013

**NOT INDEPENDENT<sup>(1)</sup>**

**Areas of Expertise:**

- Real estate
- Financial
- Investment
- Retail

**Principal Occupation**

Huw Thomas has been the Chief Executive Officer of SmartREIT since March 2013 and was also President from March 2013 to August 2016. Previously, Mr. Thomas served in various senior financial roles at Canadian Tire Corporation Limited, including nine years as Chief Financial Officer from 2000 to 2009 and, from November 2009 until December 2010, as Executive Vice-President, Financial Strategy and Performance. Member of the board of directors, a member of the Audit Committee and a member of the Nominating and Governance Committee of Dollarama Inc. since 2011. Chairman and Chairman of the Audit Committee of K.P. Tissue Inc. from December 2012 until March 2014. Member of the board of trustees and Chairman of the Audit Committee of Chartwell Retirement Residences since March 2012. Trustee of SmartREIT since April 1, 2011 and Chairman of the Audit Committee from April 1, 2011 to March 2013. Member of the board of trustees of Connors Bros. Income Fund from 2005 to 2008. Mr. Thomas holds a Bachelor of Science degree in Economics from the University of London (U.K.), and is a U.K. Chartered Accountant and a fellow of the Ontario Institute of Chartered Professional Accountants.

**Other Public Board Memberships**

Dollarama Inc.  
Chartwell Retirement Residences

Board/Committee Memberships		Attendance at Regular Meetings	Attendance at Special Meetings	Overall Attendance			
Board		4/4	11/11	100%			
Securities Beneficially Owned or Controlled as at March 31, 2017 <sup>(2)(3)</sup>							
Voting Units		Deferred Units		Total Units		Unit Ownership Requirement <sup>(4)</sup>	
Number	Market Value	Number <sup>(2)</sup>	Market Value <sup>(3)</sup>	Number	Market Value	Minimum Ownership Requirement	Complies with Minimum Ownership Requirement
0	\$0	83,410	\$2,703,052	83,410	\$2,703,052	\$2,163,000	Yes (1.2 times requirement)
Voting Results of 2016 Annual General Meeting							
# Votes For		% Votes For		# Votes Withheld		% Votes Withheld	
110,658,208		98.01		2,252,019		1.99	

Notes:

- (1) As a senior officer of SmartREIT, Mr. Thomas is deemed not to be independent under National Instrument 58-101 – *Disclosure of Corporate Governance Guidelines* (“NI 58-101”). See “Trustees – Independence”.
- (2) This amount includes both vested and unvested deferred units of SmartREIT (“Deferred Units”) held by Mr. Thomas pursuant to the Deferred Unit Plan of SmartREIT (the “Deferred Unit Plan”), including 22,132 Deferred Units and Matching Deferred Units granted on April 5, 2017 in connection with Mr. Thomas’ 2016 annual incentive bonus as Chief Executive Officer of SmartREIT. For further information, see “Executive Compensation – Equity Compensation Plan Information – Deferred Unit Plan”.
- (3) This amount was determined by multiplying 61,278 vested and unvested Deferred Units held by Mr. Thomas by the closing price of the Units on the Toronto Stock Exchange (“TSX”) on March 31, 2017 and 22,132 vested and unvested Deferred Units awarded to Mr. Thomas in connection with his 2016 annual incentive bonus as Chief Executive Officer of SmartREIT by the market value of a Unit based on the ten day volume weighted average trading price of the Units in accordance with the Deferred Unit Plan.
- (4) See “Corporate Governance – Alignment of Interests with Unitholders – Minimum Unit Ownership by the Chief Executive Officer”.
- (5) Mr. Thomas is also a member of the executive committee of SmartREIT (the “Executive Committee”) and real estate committee of SmartREIT (the “Real Estate Committee”), which are comprised of executive officers of SmartREIT.



**MITCHELL GOLDHAR**

Age: 55

Ontario, Canada

*Trustee since 2005, Chair effective May 28, 2015*

**NOT INDEPENDENT<sup>(1)</sup>**

**Areas of Expertise:**

- Real estate
- Financial
- Property development
- Retail

**Principal Occupation**

Mitchell Goldhar is the owner of the Penguin group of companies (formerly the SmartCentres group of companies). Mr. Goldhar has been in the real estate development business for over 30 years. Since opening the first new Canadian Walmart store in Barrie, Ontario in 1994, Mr. Goldhar has developed over 265 shopping centres across Canada (including the development of 175 Walmart stores). Mr. Goldhar is a graduate of York University with a Bachelor of Political Science (1985), a director of Indigo Books and Music Inc., a Director Emeritus with the SickKids Foundations and for 12 years has been an adjunct professor with the Joseph L. Rotman School of Management. Mr. Goldhar is also on the Advisory Board for the Canadian Sports Concussion Project and is owner of the Maccabi Tel Aviv Football Club. Trustee of SmartREIT since July 8, 2005 and Chair of the Board since May 28, 2015.

**Other Public Board Memberships**

Indigo Books & Music Inc.

Board/Committee Memberships	Attendance at Regular Meetings	Attendance at Special Meetings	Overall Attendance
Board (Chair)	4/4	11/11	100%
Investment Committee	1/1	n/a	

**Securities Beneficially Owned or Controlled as at March 31, 2017**

<u>Voting Units</u>		<u>Deferred Units</u>		<u>Total Units</u>		<u>Unit Ownership Requirement<sup>(5)</sup></u>	
Number <sup>(2)</sup>	Market Value <sup>(3)</sup>	Number	Market Value <sup>(4)</sup>	Number	Market Value	Minimum Ownership Requirement	Complies with Minimum Ownership Requirement
40,403,721	\$1,319,989,565	55,508	\$1,813,446	40,459,229	\$1,321,803,011	\$225,000	Yes (5,875 times requirement)

**Voting Results of 2016 Annual General Meeting**

Mr. Goldhar was appointed as a trustee by the MG Entities pursuant to their rights under the Declaration of Trust.

Notes:

- (1) Mr. Goldhar holds a controlling equity interest in the Penguin group of companies, certain members of which are party to a governance and investor rights agreement (the “**Governance and Investor Rights Agreement**”), a development services agreement, a services agreement, a trade-mark licence agreement and various other agreements with SmartREIT and its subsidiaries that are significant to SmartREIT. He is therefore not considered to be an independent Trustee under NI 58-101. See “Trustees – Independence”.
- (2) This amount includes 13,769,471 Units, 21,091,626 Special Voting Units and 5,542,624 Additional Special Voting Units beneficially owned or controlled by Mr. Goldhar. Mr. Goldhar beneficially owns or controls 21,091,626 Class B LP Units that are associated with the Special Voting Units and are exchangeable into Units.
- (3) This amount was determined by multiplying the number of Voting Units (other than Additional Special Voting Units) held by Mr. Goldhar by the closing price of the Units on the TSX on March 31, 2017. For these purposes, it has been assumed that Special Voting Units (other than Additional Special Voting Units) beneficially owned or controlled by Mr. Goldhar have a value equal to the value of the underlying Exchangeable Securities for which such Special Voting Units have been issued and it has been assumed that such Exchangeable Securities have a value equal to the value of the Units for which they may be exchanged. It has further been assumed that the Additional Special Voting Units have a value of \$nil as they are not coupled with any Exchangeable Securities.
- (4) This amount was determined by multiplying the aggregate number of Deferred Units held by Mr. Goldhar by the closing price of the Units on the TSX on March 31, 2017.
- (5) See “Corporate Governance – Alignment of Interests with Unitholders – Minimum Unit Ownership by Trustees”.
- (6) Mr. Goldhar also has the right to be an observer on the Real Estate Committee.



**JAMIE MCVICAR, M.B.A., LL.B**

Age: 59

Alberta, Canada

*Trustee since 2001*

**INDEPENDENT**

**Areas of Expertise:**

- Real estate
- Financial
- Legal
- Property development

**Principal Occupation**

Chief Financial Officer then Vice President Finance and Administration at Devonian Properties Inc., a property development company, from October 2000 to October 2011, whose job responsibilities included overseeing the preparation of audited financial statements for several joint venture investment vehicles and corporate financial statements. President of Newell Post Developments Ltd., a property development company, from June 1998 to June 2000. Legal counsel for Oxford Development Group, a property development company, from 1988 to June 1998. Mr. McVicar is currently a Director of Steel Reef Infrastructure Corp. Trustee of SmartREIT since December 4, 2001 and has served as a member of SmartREIT's Audit Committee since 2004. Mr. McVicar has a Bachelor of Commerce from the University of Alberta (1980), Bachelor of Laws from the University of Western Ontario (1981) and Masters of Business Administration from the University of Toronto (1982).

**Other Public Board Memberships**

None

<b>Board/Committee Memberships</b>	<b>Attendance at Regular Meetings</b>	<b>Attendance at Special Meetings</b>	<b>Overall Attendance</b>
Board	4/4	9/11	93%
Audit Committee	4/4	n/a	
Corporate Governance and Compensation Committee <sup>(1)</sup>	7/7	n/a	
Independent Trustees	n/a	1/1	

**Securities Beneficially Owned or Controlled as at March 31, 2017**

<b><u>Voting Units</u></b>		<b><u>Deferred Units</u></b>		<b><u>Total Units</u></b>		<b><u>Unit Ownership Requirement</u><sup>(4)</sup></b>	
Number	Market Value <sup>(2)</sup>	Number	Market Value <sup>(3)</sup>	Number	Market Value	Minimum Ownership Requirement	Complies with Minimum Ownership Requirement
52,850	\$1,726,610	58,974	\$1,926,681	111,824	\$3,653,290	\$142,500	Yes (25.6 times requirement)

**Voting Results of 2016 Annual General Meeting**

<b># Votes For</b>	<b>% Votes For</b>	<b># Votes Withheld</b>	<b>% Votes Withheld</b>
110,136,222	97.54	2,774,005	2.46

Notes:

- (1) Mr. McVicar is the chair of the corporate governance and compensation committee of SmartREIT (the "Corporate Governance and Compensation Committee").
- (2) This amount was determined by multiplying the number of Voting Units held by Mr. McVicar by the closing price of the Units on the TSX on March 31, 2017.
- (3) This amount was determined by multiplying the aggregate number of Deferred Units held by Mr. McVicar by the closing price of the Units on the TSX on March 31, 2017.
- (4) See "Corporate Governance – Alignment of Interests with Unitholders – Minimum Unit Ownership by Trustees".



**KEVIN PSHEBNISKI, LL.B**

Age: 54  
Arizona, USA

*Trustee since 2001*

**INDEPENDENT**

**Areas of Expertise:**

- Real estate
- Financial
- Legal
- Property development

**Principal Occupation**

Chief Executive Officer of Hopewell Development Corporation, a property development company, from September 2012 to present and Chief Executive Officer of Hopewell Development LP from September 2015 to present. President of Hopewell Development Corporation from September 2012 to September 2015. Chief Operating Officer of Hopewell Development Corporation from September 1997 to September 1998. Vice-President of Hopewell Group of Companies from January 1996 to September 1997. Trustee of SmartREIT since December 4, 2001 and has served on the Audit Committee since 2012. Mr. Pshebniski holds a Bachelor of Science (Geology Major) and a Bachelor of Laws from the University of Manitoba.

**Other Public Board Memberships**

None

Board/Committee Memberships	Attendance at Regular Meetings	Attendance at Special Meetings	Overall Attendance
Board	4/4	9/11	90%
Audit Committee	4/4	n/a	
Investment Committee	1/1	n/a	
Independent Trustees	n/a	1/1	

**Securities Beneficially Owned or Controlled as at March 31, 2017**

<u>Voting Units</u>		<u>Deferred Units</u>		<u>Total Units</u>		<u>Unit Ownership Requirement<sup>(3)</sup></u>	
Number	Market Value <sup>(1)</sup>	Number	Market Value <sup>(2)</sup>	Number	Market Value	Minimum Ownership Requirement	Complies with Minimum Ownership Requirement
27,263	\$890,682	75,138	\$2,454,758	102,401	\$3,345,441	\$120,000	Yes (27.9 times requirement)

**Voting Results of 2016 Annual General Meeting**

# Votes For	% Votes For	# Votes Withheld	% Votes Withheld
111,410,521	98.67%	1,499,706	1.33

Notes:

- (1) This amount was determined by multiplying the number of Voting Units held by Mr. Pshebniski by the closing price of the Units on the TSX on March 31, 2017.
- (2) This amount was determined by multiplying the aggregate number of Deferred Units held by Mr. Pshebniski by the closing price of the Units on the TSX on March 31, 2017.
- (3) See "Corporate Governance – Alignment of Interests with Unitholders – Minimum Unit Ownership by Trustees".



**MICHAEL YOUNG**

Age: 72  
Texas, USA

*Trustee since 2003, Lead Independent Trustee effective May 28, 2015*

**INDEPENDENT**

**Areas of Expertise:**

- Real estate
- Financial
- Investment

**Principal Occupation**

President of Quadrant Capital Partners Inc., a private equity firm in Dallas, Texas since November 2003. Managing Director for CIBC World Markets from 1994 to October 2003 and was appointed Global Head of Real Estate for CIBC World Markets in 1997. He was a Director of Brookfield Residential Properties Inc. from March 2011 until March 2015. Mr. Young has also been the Chairman of the board of trustees of Milestone Apartments Real Estate Investment Trust since January 2013. Trustee of SmartREIT since November 11, 2003, Chair of the Board from July 1, 2014 to May 28, 2015 and Lead Independent Trustee since May 28, 2015. Mr. Young holds a Bachelors degree from the University of Western Ontario (1967).

**Other Public Board Memberships**

Milestone Apartments Real Estate Investment Trust

Board/Committee Memberships	Attendance at Regular Meetings	Attendance at Special Meetings	Overall Attendance
Board (Lead Independent Trustee)	4/4	11/11	100%
Investment Committee <sup>(1)</sup>	1/1	n/a	
Corporate Governance and Compensation Committee	7/7	n/a	
Independent Trustees	n/a	1/1	

**Securities Beneficially Owned or Controlled as at March 31, 2017**

<u>Voting Units</u>		<u>Deferred Units</u>		<u>Total Units</u>		<u>Unit Ownership Requirement<sup>(4)</sup></u>	
Number	Market Value <sup>(2)</sup>	Number	Market Value <sup>(3)</sup>	Number	Market Value	Minimum Ownership Requirement	Complies with Minimum Ownership Requirement
175,350	\$5,728,685	20,916	\$683,326	196,266	\$6,412,010	\$240,000	Yes (26.7 times requirement)

**Voting Results of 2016 Annual General Meeting**

# Votes For	% Votes For	# Votes Withheld	% Votes Withheld
112,140,007	99.32	770,220	0.68

Notes:

- (1) Mr. Young is the chair of the investment committee of SmartREIT (the “**Investment Committee**”).
- (2) This amount was determined by multiplying the number of Voting Units held by Mr. Young by the closing price of the Units on the TSX on March 31, 2017.
- (3) This amount was determined by multiplying the aggregate number of Deferred Units held by Mr. Young by the closing price of the Units on the TSX on March 31, 2017.
- (4) See “Corporate Governance – Alignment of Interests with Unitholders – Minimum Unit Ownership by Trustees”.



**GREGORY HOWARD**

Age: 60

Ontario, Canada

Trustee since 2015

**NOT INDEPENDENT<sup>(1)</sup>**

**Areas of Expertise:**

- Real estate
- Financial
- Legal
- Property development

**Principal Occupation**

Greg Howard is a senior partner at Davies Ward Phillips & Vineberg LLP, one of Canada’s leading law firms, and is one of Canada’s pre-eminent real estate lawyers. His wide-ranging expertise includes commercial real estate acquisitions and dispositions, joint ventures, development projects, project financing, commercial leasing, real estate investment trusts, private equity funds, workouts, strategic planning and corporate matters. He has been recognized as one of the country’s leading real estate lawyers by Chambers Global, The Legal 500, Real Estate Law and numerous other sources. He obtained his LL.B. (with Honours) from the University of Toronto Faculty of Law in 1978 and was admitted to the Ontario Bar in 1980. Trustee of SmartREIT since July 2, 2015.

**Other Public Board Memberships**

None

Board/Committee Memberships	Attendance at Regular Meetings	Attendance at Special Meetings	Overall Attendance
Board	4/4	11/11	100%
Investment Committee	1/1	n/a	
Corporate Governance and Compensation Committee	7/7	n/a	

**Securities Beneficially Owned or Controlled as at March 31, 2017**

<u>Voting Units</u>		<u>Deferred Units</u>		<u>Total Units</u>		<u>Unit Ownership Requirement<sup>(3)</sup></u>	
Number	Market Value	Number	Market Value <sup>(2)</sup>	Number	Market Value	Minimum Ownership Requirement	Complies with Minimum Ownership Requirement
0	\$0	7,405	\$241,921	7,405	\$241,921	\$120,000	Yes (2.0 times requirement)

**Voting Results of 2016 Annual General Meeting**

Mr. Howard was appointed as a trustee by the MG Entities pursuant to their rights under the Declaration of Trust effective July 2, 2015.

Notes:

- (1) Mr. Howard is a partner at Davies Ward Phillips & Vineberg LLP, a law firm that provides legal services to SmartREIT and the MG Entities from time to time. He is also appointed to the Board by the MG Entities. Neither of these facts result in Mr. Howard not qualifying as independent under applicable securities laws for general purposes. However, under the TSX rules and the Institutional Shareholder Services guidelines, Mr. Howard may be considered not independent by virtue of his relationships to SmartREIT and the MG Entities. Accordingly, the Board has determined that Mr. Howard is not independent for the purposes of NI 58-101. See “Trustees – Independence”.
- (2) This amount was determined by multiplying the aggregate number of Deferred Units held by Mr. Howard by the closing price of the Units on the TSX on March 31, 2017.
- (3) See “Corporate Governance – Alignment of Interests with Unitholders – Minimum Unit Ownership by Trustees”.



**GARRY FOSTER**, FCPA, FCA

Age: 65

Ontario, Canada

*Trustee since 2013*

**INDEPENDENT**

**Areas of Expertise:**

- Real estate
- Financial
- Retail

**Principal Occupation**

Vice Chairman, Deloitte Canada from 2006 to 2013 and the National Managing Partner of Deloitte's Technology, Media and Telecommunication practice from 1998 to 2006. Mr. Foster was a member of Deloitte's board of directors from 2004 to 2012. He previously served as the President and Chief Executive Officer of Baycrest Foundation from September 2013 to February 2017, as well as the Chairman of the board of directors of Baycrest Centre for Geriatric Care. Mr. Foster has served as the Chair of the Presto Fare Card Committee since August 2015, is the Chair of the board of directors of Cognicity Inc. and sits on the board of directors of Real Matters Inc., a private company involved in real estate appraisal and title closing. Mr. Foster is also currently the Chief Executive Officer of Cortleigh Capital Inc. Mr. Foster is a Chartered Professional Accountant, holds a Bachelor of Business Administration (1974) and a Masters of Business Administration from Schulich School of Business (1975) and an ICD.D certification from the Rotman School of Business (2009). Trustee of SmartREIT since May 1, 2013.

**Other Public Board Memberships**

None

Board/Committee Memberships	Attendance at Regular Meetings	Attendance at Special Meetings	Overall Attendance
Board	4/4	11/11	100%
Investment Committee	1/1	n/a	
Audit Committee <sup>(1)</sup>	4/4	n/a	
Independent Trustees	n/a	1/1	

**Securities Beneficially Owned or Controlled as at March 31, 2017**

<u>Voting Units</u>		<u>Deferred Units</u>		<u>Total Units</u>		<u>Unit Ownership Requirement<sup>(4)</sup></u>	
Number	Market Value <sup>(2)</sup>	Number	Market Value <sup>(3)</sup>	Number	Market Value	Minimum Ownership Requirement	Complies with Minimum Ownership Requirement
790	\$25,809	35,711	\$1,166,678	36,501	\$1,192,488	\$150,000	Yes (7.9 times requirement)

**Voting Results of 2016 Annual General Meeting**

# Votes For	% Votes For	# Votes Withheld	% Votes Withheld
112,620,881	99.74	289,346	0.26

Notes:

- (1) Mr. Foster is the chair of the audit committee of SmartREIT (the "Audit Committee").
- (2) This amount was determined by multiplying the number of Voting Units held by Mr. Foster by the closing price of the Units on the TSX on March 31, 2017.
- (3) This amount was determined by multiplying the aggregate number of Deferred Units held by Mr. Foster by the closing price of the Units on the TSX on March 31, 2017.
- (4) See "Corporate Governance – Alignment of Interests with Unitholders – Minimum Unit Ownership by Trustees".

## Cease Trade Orders, Bankruptcies, Penalties or Sanctions

To the best of the knowledge of the management of SmartREIT, no person who is a proposed trustee of SmartREIT:

- (a) is, as at the date of the Circular, or has been, within 10 years before the date of the Circular, a director, chief executive officer or chief financial officer of any company (including SmartREIT) that,
  - (i) was subject to an order (as defined below) that was issued while the proposed trustee was acting in the capacity as director, chief executive officer or chief financial officer; or
  - (ii) was subject to an order that was issued after the proposed trustee ceased to be a director, chief executive officer or chief financial officer and which resulted from an event that occurred while that person was acting in the capacity as director, chief executive officer or chief financial officer; or
- (b) is, as at the date of the Circular, or has been within 10 years before the date of the Circular, a director or executive officer of any company (including SmartREIT) that, while that person was acting in that capacity, or within a year of that person ceasing to act in that capacity, became bankrupt, made a proposal under any legislation relating to bankruptcy or insolvency or was subject to or instituted any proceedings, arrangement or compromise with creditors or had a receiver, receiver manager or trustee appointed to hold its assets; or
- (c) has, within the 10 years before the date of the Circular, become bankrupt, made a proposal under any legislation relating to bankruptcy or insolvency, or become subject to or instituted any proceedings, arrangement or compromise with creditors, or had a receiver, receiver manager or trustee appointed to hold the assets of the proposed trustee.

For the purposes of (a) above, “**order**” means:

- (a) a cease trade order;
- (b) an order similar to a cease trade order; or
- (c) an order that denied the relevant company access to any exemption under securities legislation,

that was in effect for a period of more than 30 consecutive days.

## Independence

The principle factor underlying the determination of Trustee “independence” is whether or not a particular Trustee has a “material relationship” with SmartREIT which is a relationship which could be reasonably expected to interfere with the exercise of the Trustee’s independent judgement. Notwithstanding the foregoing, in the opinion of the Canadian Securities Administrators, as set out in NI 58-101, certain relationships are deemed to be “material relationships”. The following analysis has been based upon the definition of “material relationship” as set out in NI 58-101.

Gregory Howard was appointed to the Board by the MG Entities effective July 2, 2015. Mr. Howard is a partner at Davies Ward Phillips & Vineberg LLP, a law firm that provides legal services to SmartREIT and the MG Entities from time to time. Neither of these facts result in Mr. Howard not qualifying as independent under applicable securities laws for general purposes. However, under the TSX rules, Mr. Howard may be considered not independent by virtue of his relationships to SmartREIT and the MG Entities. Accordingly, the Board has determined that Mr. Howard is not independent for the purposes of NI 58-101.

As a senior officer of SmartREIT, Huw Thomas is deemed not to be independent under NI 58-101.

Mitchell Goldhar also does not qualify as independent under NI 58-101 because he owns the Penguin Group, which has entered into service, licensing and development agreements that are material to SmartREIT.

## Board and Committee Attendance

The table below shows the record of attendance by trustees at meetings of the Board and its committees, as well as the number of Board and Board committee meetings held during the 12-month period ended December 31, 2016.

Trustee	Number and % of Meetings Attended							Overall
	Board	Audit Committee	Investment Committee	Corporate Governance and Compensation Committee	Special Meetings of the Board	Special Meetings of the Independent Trustees	Committees (Total) <sup>(1)</sup>	
Huw Thomas	4/4 100%	4/4 <sup>(2)</sup>	1/1 <sup>(2)</sup>	n/a	11/11	n/a	5/5 100%	20/20 100%
Mitchell Goldhar	4/4 100%	n/a	1/1	n/a	11/11	n/a	1/1 100%	16/16 100%
Jamie McVicar	4/4 100%	4/4	n/a	7/7	9/11	1/1	11/11 100%	25/27 93%
Kevin Pshebniski	4/4 100%	4/4	1/1	n/a	9/11	1/1	5/5 100%	19/21 90%
Michael Young	4/4 100%	n/a	1/1	7/7	11/11	1/1	8/8 100%	24/24 100%
Gregory Howard	4/4 100%	n/a	1/1	7/7	11/11	n/a	8/8 100%	23/23 100%
Garry Foster	4/4 100%	4/4	1/1	n/a	11/11	1/1	5/5 100%	21/21 100%

Notes:

- (1) Does not include the special meetings of committees.
- (2) Huw Thomas attended these meetings as a member of management.

## Individual Voting in Trustee Elections

The Board has adopted a policy that allows for Unitholders to vote for the election of individual Trustees at each annual meeting of Unitholders rather than for a fixed slate of Trustees. In addition, the Board has adopted a policy stipulating that if the votes in favour of the election of a Trustee nominee at the Meeting represent less than a majority of the Units voted and withheld, the nominee will submit his or her resignation promptly after the Meeting for the consideration of the Corporate Governance and Compensation Committee. The Corporate Governance and Compensation Committee will make a recommendation to the Board after reviewing the matter, and the Board's decision to accept or reject the resignation offer will be disclosed to the public within 90 days of the Meeting. The nominee will not participate in any Corporate Governance and Compensation Committee or Board deliberations on the resignation offer. The policy does not apply in circumstances involving contested elections.

## Orientation and Continuing Education

The Board and management of SmartREIT have established an orientation and education program for new Trustees and new committee members regarding the role of the Board, its committees and the Trustees and the nature and operation of SmartREIT's business. This includes the provision of SmartREIT's core governance and financial reporting documents, comprised of the Declaration of Trust, the mandates and recent agendas, materials and minutes of the Board and its committees, the financial statements for the previous four quarters, the latest annual information form and management information circular, the codes of conduct and the disclosure policy, all of which are to be reviewed and discussed with a combination of representatives of management and the chairs of the committees. Further, every Trustee has access to management and relevant business information and management makes regular presentations to the Board on the main areas of SmartREIT's business. At least annually, the Board reviews the skills, knowledge and effectiveness of the Board, its committees and individual Trustees.

Trustees are encouraged to attend industry presentations, seminars and courses to deepen their understanding and knowledge of the business and operations of SmartREIT. In 2016, Trustees participated in the following:

Topic/Event	Date	Presented/Hosted By	Attended By
Focus on the Audit Committee	January 2016	Deloitte	Garry Foster
Citi Global Property CEO Conference	March 2016	Citi Global Markets	Huw Thomas
CIBC Real Estate Conference	April 2016	CIBC	Huw Thomas Garry Foster
BMO Capital Markets Fixed Income Real Estate Conference	April 2016	BMO Capital Markets	Huw Thomas
Payments Panorama Conference	June 2016	Payments Canada	Garry Foster
Pwc Technical Update	September 2016	PricewaterhouseCoopers LLP	Huw Thomas
BMO North American Real Estate Conference	September 2016	BMO Capital Markets	Huw Thomas
Scotiabank Real Estate Conference	September 2016	Scotiabank Global Banking and Markets	Huw Thomas
TD Canadian REIT Conference	September 2016	TD Securities	Huw Thomas
RealREIT Conference	September 2016	REALpac	Garry Foster
Shifting Enterprise Risk	October 2016	Deloitte	Garry Foster
RBC Unsecured Debt Conference	November 2016	RBC Capital Markets	Huw Thomas
Executive Compensation Alignment	December 2016	ICD	Jamie McVicar

### Nomination of Trustees

The Board has appointed the Corporate Governance and Compensation Committee which is responsible for, among other items: (i) reviewing the size and composition of the Board, (ii) recommending candidates for election to the Board, (iii) reviewing credentials of nominees for re-election, and (iv) recommending candidates for filling vacancies on the Board.

The Board reviews its size and composition from time to time to determine their impact on its effectiveness. The Board believes that a board of seven to nine Trustees is an appropriate size for a public entity with a capitalization and business of SmartREIT's size. The Board is currently comprised of seven Trustees. However, the Board may determine to increase the size of the board to nine Trustees, as discussed under the heading "Particulars of Matters to be Acted Upon – Election of Trustees". The Board believes that its current Trustees, and the proposed Trustees to be elected or appointed at the Meeting, comprise an appropriate mix of individuals with real estate, financial, legal, property development, non-real estate investment and retail industry experience. Set forth below is a skills matrix, as determined by the Board, with respect to the current members of the Board.

Trustee	Real Estate	Financial	Legal	Property Development	Investment	Retail Industry
Huw Thomas	x	x			x	x
Mitchell Goldhar	x	x		x		x
Jamie McVicar	x	x	x	x		
Kevin Pshebniski	x	x	x	x		
Michael Young	x	x			x	
Gregory Howard	x	x	x	x		
Garry Foster	x	x				x

With respect to recommending candidates for election to the Board, the Corporate Governance and Compensation Committee initially determines the preferred traits, skills and experience of potential candidates. All Trustees and members of management are encouraged to propose candidates to the Committee through their business networks and contacts, with the Committee reviewing and considering all prospects against the identified criteria. All

candidates are vetted by the full committee and selected based on majority vote, which selections are then recommended to the full Board for approval, where the majority of the Trustees are independent. A quorum for the transaction of business of the Corporate Governance and Compensation Committee is two and the Corporate Governance and Compensation Committee must be composed of a minimum of three Trustees, meaning that the member of the Corporate Governance and Compensation Committee appointed by the MG Entities (if any) does not have a veto in the case of nominating new Trustees.

## **CORPORATE GOVERNANCE**

The Board believes that sound governance practices are essential to achieve the best long-term interests of SmartREIT and the enhancement of value for all security holders. The Canadian Securities Administrators have issued National Policy 58-201 – *Corporate Governance Guidelines* and have also adopted NI 58-101, which requires Canadian reporting issuers to annually disclose their corporate governance practices. Below is a discussion on the current governance practices of SmartREIT.

### **Alignment of Interests with Unitholders**

The Board believes that an important element of sound governance is the alignment of interests between the Trustees, senior officers and Unitholders. This is achieved, in part, by encouraging investment in SmartREIT by the Trustees and senior officers through the Deferred Unit Plan (see “Executive Compensation – Equity Compensation Plan Information – Deferred Unit Plan”). As well, SmartREIT has a long term incentive plan that further aligns the incentives of certain senior officers of SmartREIT with the long-term interest of its Unitholders. See “Executive Compensation – Equity Compensation Plan Information – Long-Term Incentive Plan”.

#### *Minimum Unit Ownership by Trustees*

SmartREIT encourages its Trustees to hold an equity position in SmartREIT. To this end, all Trustee compensation is eligible for investment in the Deferred Unit Plan. For further information, see “Executive Compensation – Equity Compensation Plan Information – Deferred Unit Plan”.

The Board has adopted a policy whereby each Trustee is required to hold Units (and/or Deferred Units under the Deferred Unit Plan) with an aggregate value of not less than three times the annual retainer paid to the Trustee. Each Trustee will have three years from the date of that Trustee’s appointment to meet this ownership requirement. As of March 31, 2017, each of the Trustees then in office met this ownership requirement. Further, the Trustees, in aggregate, have increased the number of Units they hold by approximately 0.2% in the last 12 months. Please see the individual profiles on pages 6-12 of the Circular under the section “Trustees – Nominees for Election to the Board of Trustees” which set out the equity holdings, as at March 31, 2017, of each of the individuals to be nominated for election as a Trustee of SmartREIT at the Meeting or to be appointed by the MG Entities upon the conclusion of the Meeting.

#### *Minimum Unit Ownership by the Chief Executive Officer*

The Board has adopted a policy whereby the Chief Executive Officer of SmartREIT is required to hold Units (and/or Deferred Units under the Deferred Unit Plan, including both vested and unvested Deferred Units) with an aggregate value of not less than three times the annual base salary paid to the Chief Executive Officer. The Chief Executive Officer will have three years from the date of their appointment to meet this ownership guideline. Mr. Thomas was appointed the Chief Executive Officer of SmartREIT effective July 29, 2013.

The following table sets out a summary of Mr. Thomas’ ownership of Units and Unit equivalents as at March 31, 2017:

<b>Required Multiple</b>	<b>Voting Units (\$)</b>	<b>Deferred Units (\$)</b>	<b>Total Units and Unit Equivalents (\$)</b>	<b>Total Ownership as a Multiple of Base Salary</b>
3x	nil	2,703,052	2,703,052	3.75x

\* LTIP Units (as defined below) awarded to Mr. Thomas are not included in this tabulation, as the LTIP Units can only be settled for cash and therefore do not count towards Mr. Thomas’ Unit ownership. See “Executive Compensation – Equity Compensation Plan Information – Long Term Incentive Plan”. The value of Mr. Thomas’ Deferred Units includes 22,132 Deferred Units awarded to Mr. Thomas on April 5, 2017 in connection with his 2016 annual incentive bonus.

### ***Minimum Unit Ownership by Executive Officers***

In order to further align the interests of executives with the interests of Unitholders, SmartREIT has ownership guidelines for its executive officers. Under the ownership guidelines, each of the named executive officers (as defined in Form 51-102F6 – *Statement of Executive Compensation*) (other than the Chief Executive Officer, who is subject to the ownership requirements discussed under “– Minimum Unit Ownership by the Chief Executive Officer”) is required to hold Units (and/or Deferred Units under the Deferred Unit Plan) with an aggregate value of not less than 1.5 times the annual base salary paid to such named executive officer. Each named executive officer (other than the Chief Executive Officer) will have three years from the date of such named executive officer’s appointment to meet this ownership guideline. As of March 31, 2017, each named executive officer subject to the policy, excluding Mauro Pambianchi who has until 2018 to meet the requirement, met this ownership requirement.

### **Board Mandate**

The Board is responsible for the stewardship of SmartREIT. The Board supervises management of SmartREIT with the goal of providing stable and growing cash distributions and enhancing long-term Unitholder value. Management, in turn, is responsible for the day-to-day management of the business and affairs of SmartREIT and its subsidiaries. Management is also responsible for establishing strategic planning initiatives for SmartREIT. The Board assists in the development of these goals and strategies by acting as a sounding board and by contributing ideas. The Board ultimately approves the strategic plan, taking into account the risks and opportunities of the business of SmartREIT. The Board approves all significant decisions that affect SmartREIT before they are implemented, supervises the implementation and reviews the results.

The Board has specifically assumed responsibility for:

- (a) participating in the development of the strategic plan;
- (b) identifying and managing business risks;
- (c) verifying the integrity and adequacy of SmartREIT’s internal controls and management information systems;
- (d) defining the roles and responsibilities of management;
- (e) reviewing and approving the business and investment objectives to be met by management;
- (f) assessing the performance of management and the performance of its subsidiaries;
- (g) succession planning;
- (h) ensuring effective and adequate communication with Unitholders and other stakeholders as well as the public at large; and
- (i) establishing committees of the Board, where required, and defining their mandates.

In addition, the Board has adopted a mandate that expands upon its objectives and responsibilities. The full text of the Board mandate is attached as Schedule “A” to the Circular.

### **Independent Chairs and Independent Trustees**

SmartREIT believes that separating the position of Chair and the position of Chief Executive Officer and having a Lead Independent Trustee is important in effectively providing independent Board oversight and in holding management accountable to the Board for SmartREIT’s operations.

Each of the Chair, the Chief Executive Officer and the Lead Independent Trustee have separate position descriptions as outlined under the section “– Position Descriptions”.

In addition, the chair of each Board committee is an independent Trustee. Garry Foster is the Chair of the Audit Committee. Michael Young is the Chair of the Investment Committee. Jamie McVicar is the Chair of the Corporate Governance and Compensation Committee. Garry Foster is the primary contact under the Board’s “Whistleblower” policy as discussed under “Ethical Business Conduct”.

The independent Trustees meet at every Board meeting and otherwise as they deem necessary. The goal of the independent Trustees is to provide corporate governance by overseeing the activities of the Board and management

to ensure all decisions are made in the best interests of SmartREIT and its Unitholders. The independent Trustees report to the full Board after each meeting with any identified issues. Issues requiring further actions will be tabled, responsibility assigned and a reporting deadline agreed upon.

## **Position Descriptions**

### ***Chair of each Board Committee***

The Board has not developed written position descriptions for the chair of each Board committee. However, the Board has adopted written mandates for the Board and for each Board committee. The Board as a whole and the members of each Board committee are responsible for taking such steps as may be necessary to ensure that the Board and the committees of the Board fulfill their respective mandates.

### ***Chair***

The Board has developed a position description for the Chair of SmartREIT, which affirms that the Chair is expected to provide leadership to the Board in discharging its mandate.

The Chair is responsible for, among other things, overseeing the Board's discharge of its duties; governing the conduct of the Board; assisting Board committees; reviewing and monitoring the long term business plan, strategies and policies of SmartREIT; and presiding over meetings of the Board.

### ***Chief Executive Officer***

The Board has developed a position description for the Chief Executive Officer of SmartREIT involving the definition of the Chief Executive Officer's responsibilities, which are subject to the limits prescribed in the Executive Committee and Real Estate Committee mandates (see " – Executive Committee" and "– Real Estate Committee"). In addition, the Board has developed objectives which the Chief Executive Officer is responsible for meeting and the Board assesses the Chief Executive Officer against those objectives.

In addition, the Board has developed a procedure to manage succession for the position of Chief Executive Officer should that position become vacant for any reason. Pursuant to that succession planning procedure, it is contemplated that the Board will appoint an existing and duly qualified member of the Board or management to serve as interim Chief Executive Officer while an independent external executive management search firm is retained to canvass for qualified external candidates in addition to any qualified internal candidates that may be identified by the Board. See "Corporate Governance – Talent Management and Succession Planning Philosophy".

### ***Lead Independent Trustee***

The Board has developed a position description for the Lead Independent Trustee of SmartREIT, which affirms that the Lead Independent Trustee is expected to facilitate the functioning of the Board independently of management of SmartREIT and to provide independent leadership to the Board.

The Lead Independent Trustee is responsible for, among other things, acting as a leader for the independent Trustees; in the absence of the Chair, acting as chair of meetings of the Board; reviewing with the Chair and Chief Executive Officer items of importance for consideration by the Board; serving as an independent contact for independent Trustees on matters in respect of which the Chair has a conflict of interest; organizing and presenting the agenda for *in camera* meetings of the independent Trustees based on input from the Trustees and management; and communicating with the Chair and senior officers of SmartREIT so that they are aware of concerns of the independent Trustees, Unitholders and other stakeholders of SmartREIT.

## **Ethical Business Conduct**

The Board has adopted a written code of conduct for the Trustees and a written code of conduct for officers and employees of SmartREIT and its subsidiaries. A copy of each code of conduct may be obtained electronically at [www.sedar.com](http://www.sedar.com).

The SmartREIT Code of Business Conduct (the "**Code of Business Conduct for Associates**") stipulates that officers and employees of SmartREIT and its subsidiaries will deal openly and honestly with investors, tenants,

suppliers and colleagues. The Code of Business Conduct for Associates strives to create a culture in SmartREIT and its subsidiaries that values honesty, high ethical standards and compliance with laws, rules and regulations. In addition, the Code of Business Conduct for Associates includes SmartREIT's policies on human rights, equal opportunity employment, sexual harassment and workplace harassment. The Board has also adopted a separate insider trading policy effective November 9, 2015.

The SmartREIT Code of Business Conduct for Trustees (the "**Trustee Code of Conduct**") stipulates that the Trustees must act in an ethical and lawful manner while recognizing their responsibility to represent SmartREIT's best interests. The Trustee Code of Conduct provides that as fiduciaries of SmartREIT, the Trustees are expected to provide leadership in upholding and requiring adherence to applicable laws and must observe a high standard of morality in the conduct of their duties as Trustees regardless of their personal or financial interests. The Trustee Code of Conduct includes SmartREIT's policies on insider trading for Trustees, treatment of confidential information and intellectual property of SmartREIT, media statements, anti-corruption and the receiving and giving of gifts by Trustees.

The Board monitors compliance by having the Trustees and the officers and employees of SmartREIT and its subsidiaries annually certify that they have read and complied with the Trustee Code of Conduct or Code of Conduct for Associates, as applicable. The Trustees and the officers and employees of SmartREIT and its subsidiaries are encouraged to raise compliance concerns with the Board, the Chair or the chair of the Corporate Governance and Compensation Committee, in the case of the Trustees, and their manager or executive manager or the human resources department of SmartREIT, in the case of officers and employees of SmartREIT.

The Declaration of Trust contains "conflict of interest" provisions that serve to protect Unitholders without creating undue limitations on SmartREIT. Given that the Trustees of SmartREIT are engaged in a wide range of real estate and other business activities, the Declaration of Trust contains provisions, similar to those contained in the *Canada Business Corporations Act*, that require each Trustee to disclose to SmartREIT any interest in a material contract or transaction or proposed material contract or transaction with SmartREIT (including a contract or transaction involving the making or disposition of any investment in real property or a joint venture arrangement) or the fact that such person is a director or officer of or otherwise has a material interest in any person who is a party to a material contract or transaction or proposed material contract or transaction with SmartREIT. Such disclosure is required to be made at the first meeting at which a proposed contract or transaction is considered. In the event that a material contract or transaction or proposed material contract or transaction is one that in the ordinary course would not require approval by the Trustees, a Trustee is required to disclose in writing to SmartREIT or request to have entered into the minutes of the meeting of the Trustees the nature and extent of his or her interest forthwith after the Trustee becomes aware of the contract or transaction or proposed contract or transaction. In any case, a Trustee who has made disclosure to the foregoing effect is not entitled to vote on any resolution to approve the contract or transaction unless the contract or transaction is one relating primarily to his or her remuneration as a Trustee, officer, employee or agent of SmartREIT or one for indemnity under the provisions of the Declaration of Trust or liability insurance.

The Board has advised each of the executive officers of SmartREIT and its subsidiaries that the terms of their employment require such executive officers to follow the same disclosure procedures and practices outlined above when such executive officers are in a situation that is, or may be considered to be, a "conflict of interest".

The Audit Committee has also adopted a "whistleblower" policy that sets out procedures which allow Trustees, directors, officers and employees of SmartREIT and its subsidiaries to file reports on a confidential and anonymous basis with the appropriate arm's length third parties regarding any concerns about accounting, internal accounting controls or auditing matters.

### **Gender Diversity**

SmartREIT recognizes the value and importance of diversity at the Board level. For SmartREIT, diversity includes gender, sexual preference, disability, age, ethnicity, business experience, functional expertise, stakeholder expectations, culture and geography. The Board adopted a written board diversity policy in 2015 that memorializes SmartREIT's belief in diversity and the benefits that diversity can bring to the organization.

SmartREIT seeks to maintain a Board comprised of talented and dedicated Trustees whose skills and backgrounds reflect the diverse nature of the business environment in which it operates. Accordingly, the composition of the Board is intended to reflect a diverse mix of skills, experience, knowledge and backgrounds, including an

appropriate number of women Trustees. Board diversity promotes the inclusion of different perspectives and ideas, and ensures that SmartREIT has the opportunity to benefit from all available talent. The promotion of a diverse Board makes prudent business sense, helps maintain a competitive advantage and makes for better corporate governance.

In accordance with SmartREIT's board diversity policy, the Corporate Governance and Compensation Committee will periodically assess the skills, experience, knowledge and backgrounds of its Trustees in light of the needs of the Board, including the extent to which the current composition of the Board reflects a diverse mix of skills, experience, knowledge and backgrounds, including an appropriate number of female Trustees. The Corporate Governance and Compensation Committee reviews SmartREIT's board diversity policy annually and assesses its effectiveness in promoting a diverse Board with appropriate female representation.

SmartREIT also believes that a diversity of backgrounds, opinions and perspectives and a culture of inclusion at the operational level helps to create a healthy and dynamic workplace, which improves overall business performance. To this end, the Corporate Governance and Compensation Committee periodically reviews the succession plans relating to executive officers of SmartREIT to ensure that qualified personnel, reflecting a diverse population, are available for succession to senior management positions.

In identifying nominees for election at the Meeting and candidates for executive officer positions, the Corporate Governance and Compensation Committee does not target a specific representation of women. Gender diversity is one of several important factors that the Corporate Governance and Compensation Committee takes into consideration in identifying nominees for the Board and qualified candidates to serve as executive officers of SmartREIT. The Corporate Governance and Compensation Committee believes that each potential nominee should be evaluated based on his or her individual merits and experience, taking into account the needs of SmartREIT, the benefits of diversity and the current composition of the Board and management team.

### **Compensation**

The Board, through its Corporate Governance and Compensation Committee, periodically reviews the adequacy and form of compensation provided to its Trustees and executive officers. The Corporate Governance and Compensation Committee considers the time commitment, risks and responsibilities of Trustees and executive officers and takes into account the types of compensation and the amounts paid to directors and/or Trustees and executive officers of comparable publicly traded Canadian companies. No current or proposed member of the Corporate Governance and Compensation Committee is an officer of SmartREIT, and, as such, the Board feels that the Corporate Governance and Compensation Committee conducts its activities in an objective manner.

### **Board Committees**

The Trustees may appoint from among their number one or more committees of Trustees and may, subject to applicable law and to any provision in the Declaration of Trust to the contrary, delegate to such committee or committees any of the powers of the Trustees.

The Board has three standing committees: the Audit Committee, the Investment Committee and the Corporate Governance and Compensation Committee. The Board may establish additional or special committees from time to time in its discretion.

As two of the Trustees are currently appointed by the MG Entities, certain Trustees who are independent of the MG Entities meet separately from time to time to consider matters relating to strategy and SmartREIT's relationship with the MG Entities, among other matters.

#### ***Audit Committee***

Pursuant to the Declaration of Trust, the Trustees shall appoint an Audit Committee to consist of not less than three Trustees. The Audit Committee shall be composed of Trustees who comply with the provisions of National Instrument 52-110 – *Audit Committees* respecting financial literacy and independence. Subject to the delegation to the Audit Committee of such other responsibilities as are determined by the Trustees from time to time and subject to such changes to its form and function as may be mandated by any relevant regulatory authorities, the Audit Committee shall:

- (a) review SmartREIT's procedures for internal control with the external auditor and SmartREIT's Chief Financial Officer;
- (b) review the engagement of the external auditors;
- (c) review and recommend to the Trustees for approval annual and quarterly financial statements and accompanying notes and management's discussion and analysis of financial condition and results of operation;
- (d) assess SmartREIT's financial and accounting personnel; and
- (e) review any significant transactions outside SmartREIT's ordinary course of business, cash position and all pending litigation involving SmartREIT.

The external auditor of SmartREIT is entitled to receive notice of every meeting of the Audit Committee and, at the expense of SmartREIT, 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 external auditor.

For further details on the Audit Committee, please refer to the section entitled "Audit Committee" in the latest annual information form of SmartREIT.

### ***Investment Committee***

Pursuant to the Declaration of Trust, the Trustees shall appoint an Investment Committee to consist of not less than three Trustees and not more than five Trustees, a majority of whom shall be outside Trustees (i.e. independent of management), two of whom shall be Trustees appointed by the MG Entities for so long as the MG Entities are the beneficial owners in aggregate of in excess of 15% of the issued and outstanding Voting Units (unless the prior written consent to the contrary or a written waiver of the MG Entities, acting through one representative, is obtained) and Mitchell Goldhar remains alive and two-thirds of whom shall have had at least 5 years of substantive experience in the real estate industry. The duties of the Investment Committee are to:

- (a) review all proposals regarding investments;
- (b) review and approve or reject proposed acquisitions and dispositions of investments by SmartREIT or any of its subsidiaries or affiliates that do not exceed the applicable financial thresholds determined by the Trustees;
- (c) review and approve or reject proposed transactions on behalf of SmartREIT or any of its subsidiaries or affiliates that do not exceed the applicable financial thresholds determined by the Trustees; and
- (d) review and approve or reject all borrowings and the assumption or granting of any mortgage or other security interest in real property, including any assignment of rents and other monies derived from or related to real property, by SmartREIT or any of its subsidiaries and affiliates that do not exceed the applicable financial thresholds determined by the Trustees from time to time.

Where for any reason a member of the Investment Committee is disqualified from voting on or participating in a decision, any other independent and disinterested Trustee not already a member of the Investment Committee may be designated by the Trustees to act as an alternate. The Investment Committee shall be entitled to delegate its responsibility to the management of SmartREIT for the foregoing matters provided that such matters do not exceed the applicable financial thresholds determined by the Trustees from time to time to be appropriate for management to consider and approve and may provide additional requirements, including setting out pre-determined financing terms, requiring management to review a matter with the chair of the Investment Committee prior to approving such matter and requiring appropriate reporting requirements.

Notwithstanding the foregoing, in order to ensure compliance with the applicable securities laws relating to related party transactions, including the rules prescribed by Multinational Instrument 61-101 – *Take-Over Bids and Special Transactions*, all related party transactions will be approved by either the disinterested members of the Board or the disinterested members of the Investment Committee and any Trustees with an interest in such a transaction will abstain from voting.

Notwithstanding the appointment of the Investment Committee and its ability to delegate to the management of SmartREIT, the Trustees may consider and approve any matter which the Investment Committee or the management

of SmartREIT has the authority to consider or approve. The Trustees must also consider and approve any matter which exceeds the financial thresholds as determined by the Trustees from time to time.

### *Corporate Governance and Compensation Committee*

Pursuant to the Declaration of Trust and except as otherwise set forth below, the Trustees shall appoint a Corporate Governance and Compensation Committee to consist of not less than three Trustees and not more than four Trustees, one of whom shall be a Trustee appointed by the MG Entities for so long as the MG Entities are the beneficial owners in aggregate of in excess of 15% of the issued and outstanding Voting Units (unless the prior written consent to the contrary or a written waiver of the MG Entities, acting through one representative, is obtained) and Mitchell Goldhar remains alive. The duties of the Corporate Governance and Compensation Committee will be to review the governance of SmartREIT with the responsibility for SmartREIT's corporate governance, human resources and compensation policies. In particular, the Corporate Governance and Compensation Committee is responsible for:

- (a) assessing the effectiveness of the Board and each of its committees;
- (b) considering questions of management succession;
- (c) participating in the recruitment and selection of candidates as Trustees;
- (d) considering and approving proposals by the Trustees to engage outside advisers on behalf of the Board;
- (e) administering SmartREIT's long term incentive plans;
- (f) assessing the performance of the Chief Executive Officer of SmartREIT;
- (g) reviewing and approving the compensation of senior management and consultants of SmartREIT and its subsidiaries; and
- (h) reviewing and making recommendations to the Board concerning the level and nature of the compensation payable to the Trustees.

Where for any reason a member of the Corporate Governance and Compensation Committee is disqualified from voting on or participating in a decision, any other independent and disinterested Trustee not already a member of the Corporate Governance and Compensation Committee may be designated by the Trustees to act as an alternate.

Until the earlier of (i) May 28, 2020 and (b) the date on which the MG Entities no longer beneficially own at least 10% of the issued and outstanding Voting Units:

- (a) notwithstanding the foregoing, the Corporate Governance and Compensation Committee shall consist of not more than three Trustees, one of whom shall be a Trustee appointed by the MG Entities, who, for greater certainty, shall not be required to be independent for purposes of applicable securities laws, but, for greater certainty, at least two members of the Corporate Governance and Compensation Committee shall be independent for purposes of the applicable securities laws and shall be independent of Mitchell Goldhar and any MG Entity; and
- (b) the mandate of the Corporate Governance and Compensation Committee shall include the following responsibilities:
  - (i) the appointment and removal of the Chief Operating Officer and the Chief Development Officer of SmartREIT;
  - (ii) reviewing and approving any change in the compensation, including benefits, of the Chief Operating Officer and the Chief Development Officer of SmartREIT (other than any change to Unit based compensation plans generally applicable to all senior executives) where such change may be adverse to such officer; and
  - (iii) reviewing and approving significant changes in the responsibilities of the Chief Operating Officer and the Chief Development Officer of SmartREIT.

All decisions of the Corporate Governance and Compensation Committee relating to the matters described in paragraph (b) above require the unanimous approval of the members of the Corporate Governance and Compensation Committee. Notwithstanding the appointment of the Corporate Governance and Compensation Committee, the Trustees may consider and approve any matter which the committee has authority to consider or

approve.

The Corporate Governance and Compensation Committee is composed of Trustees who are knowledgeable about issues related to human resources, leadership, compensation, governance and risk management. Each committee member's understanding of these issues may be enhanced by participating in educational programs (see "Trustees – Orientation and Continuing Education"). For more information on the experiences of each committee member, as well as their occupations and education, please see the individual profiles on pages 6 – 12 of the Circular under the section "Trustees – Nominees for Election to the Board of Trustees".

#### *Executive Committee*

Pursuant to the terms of the Governance and Investor Rights Agreement, SmartREIT established the Executive Committee comprised of a maximum of seven senior employees of SmartREIT, including SmartREIT's Chief Executive Officer, President and Chief Operating Officer, Chief Financial Officer, Chief Development Officer, Executive Vice President, Portfolio Management and Investments and such other senior management as the Chief Executive Officer may designate. Under the direction of the Chief Executive Officer, the Executive Committee is responsible for overseeing all significant matters affecting SmartREIT. For so long as the MG Entities beneficially own at least 10% of the outstanding Voting Units, the Executive Committee will be maintained by SmartREIT and will include the Chief Executive Officer, the President and Chief Operating Officer and the Chief Development Officer.

#### *Real Estate Committee*

Pursuant to the terms of the Governance and Investor Rights Agreement, SmartREIT established the Real Estate Committee comprised of SmartREIT's Chief Executive Officer, President and Chief Operating Officer, Chief Financial Officer, Chief Development Officer, Executive Vice President, Portfolio Management and Investments and certain other executives and leaders of business units.

Until May 28, 2020 and during an additional five year period (if the term is extended by Mitchell Goldhar), so long as the MG Entities beneficially own at least 10% of the outstanding Voting Units:

- (a) SmartREIT will maintain the Real Estate Committee which will be comprised of the Chief Executive Officer, President and Chief Operating Officer, Chief Financial Officer, Chief Development Officer, Executive Vice President, Portfolio Management and Investments, the individuals who head up each business unit of SmartREIT, the individuals who head up each of the leasing and construction functions in SmartREIT, and such other persons as the Chief Executive Officer may designate; and
- (b) the following matters are subject to review by the Real Estate Committee:
  - (i) the acquisition or disposition of any property adjacent to an existing property owned by SmartREIT or any MG Entity or with a price in excess of \$5,000,000;
  - (ii) the commencement of any new development project with Walmart Canada Realty Inc. or any of its affiliates as a tenant;
  - (iii) all matters that are subject to the approval of the management committee, the investors committee or any co-owners committee in respect of the joint venture with Walmart Canada Realty Inc. or any of its affiliates;
  - (iv) any lease with, or parcel sale to, a tenant for premises with an area in excess of 35,000 square feet, or any buy out of, renewal or extension of, acceptance of surrender of, material amendment to or any other material dealing with, or exercise of remedies under, any such lease;
  - (v) any development project in excess of \$20,000,000 that actually or is forecast to exceed the then approved development budget for such project by more than 2%;
  - (vi) any redevelopment of a property involving estimated total expenditures in excess of \$5,000,000;
  - (vii) on a quarterly basis and at any other time as needed, the marketing and other plans to develop the brands of SmartREIT;

- (viii) the annual leasing plan of SmartREIT;
- (ix) on an annual basis, the portfolio of properties and land held by SmartREIT; and
- (x) any other real estate or brand related matter that (x) the Chief Executive Officer proposes be reviewed by the Real Estate Committee or (y) Mitchell Goldhar proposes be reviewed by the Real Estate Committee, subject to approval of such proposal by the Chief Executive officer, acting reasonably.

The Governance and Investor Rights Agreement provides Mitchell Goldhar with the right to be an observer on the Real Estate Committee and the right to receive notice of all meetings of the Real Estate Committee and all meeting materials at the same time as the members of the Real Estate Committee (except materials in respect of matters in which any MG Entity is the counterparty) and to attend and, in his capacity as an observer, participate at all meetings of the Real Estate Committee (except the portion of a meeting in respect of matters in which any MG Entity is the counterparty).

### **Assessments of Trustees**

The Corporate Governance and Compensation Committee annually conducts a peer evaluation process to provide feedback to individual Trustees, including the chairs of each Board committee, on their effectiveness. The survey requires that every Trustee assess the contribution of each of his peers. The Corporate Governance and Compensation Committee also conducts an annual evaluation of the effectiveness of the Board and each of the committees of the Board. The latter survey covers the operation of the Board and its committees, the adequacy of information provided to Trustees, Board structure and agenda planning for Board meetings. These assessments take into account the Board mandate and the relevant committee mandates. The results of the surveys form the basis of recommendations to the Board for change.

### **Board Renewal and Retirement**

SmartREIT does not have a mandatory age for the retirement of Trustees and there are no term limits. Instead, the Corporate Governance and Compensation Committee reviews the composition of the Board on a regular basis in relation to approved trustee criteria and skill requirements and recommends changes as appropriate to renew the Board. The chair of the Corporate Governance and Compensation Committee leads the effort to identify and recruit candidates to join the Board in current and future years, with a focus on enhancing the Board's diversity in accordance with SmartREIT's board diversity policy. While term limits can be a way to effect change on boards, the Corporate Governance and Compensation Committee believes that the imposition of trustee term limits implicitly discounts the value of experience and institutional memory on the Board and runs the risk of excluding effective Board members who have longstanding knowledge of SmartREIT and its operations as a result of an arbitrary determination. The Corporate Governance and Compensation Committee believes that it can achieve the right balance between continuity and encouraging turnover and independence without mandated term limits and relies on its annual trustee assessment procedures in this regard. See "– Assessment of Trustees" for further details on such procedures.

### **Talent Management and Succession Planning Philosophy**

SmartREIT has a talent management and succession planning process in place that ensures key positions in SmartREIT have the necessary bench strength for effective continuance of business activities. SmartREIT's philosophy is to develop and promote from within for these key positions. SmartREIT uses an approach that includes identification, assessment and development of high-performing associates who demonstrate a readiness for such key positions.

Interim successors are also identified for each key role, who can take over the role on an emergency-basis until a long-term successor can be identified. Such interim successor is distinct from a succession planning candidate.

To build ongoing bench strength, SmartREIT has:

- (a) implemented an extensive recruitment and onboarding process to ensure the right fit of the candidate for the role within SmartREIT, and to promote diversity and varied perspectives within SmartREIT;

- (b) developed an Individual Career Discussion program for qualifying associates that outlines future development and growth objectives that the associates work towards over a 3-5 year period. The program includes special assignments, mentoring, cross-training, increased responsibilities and leadership, attending and eventually presenting at key business and board meetings and ongoing internal and external training/courses;
- (c) implemented a nomination and sponsorship process for high-potential candidates for the identified key succession positions, based on past performance and formal assessments;
- (d) established formal managerial-leadership development curriculum that all managers are required to attend; and
- (e) implemented business-related training sessions and courses, administered both internally and externally.

SmartREIT's succession planning activities are the responsibility of the Succession Planning Committee, which is comprised of executive officers of SmartREIT. The committee:

- (a) plays a key role in partnering with the Corporate Governance and Compensation Committee to ensure that ongoing talent management and succession planning objectives are met annually;
- (b) meets annually to review and update the annual succession plan; and
- (c) provides bi-annual reports to the Corporate Governance and Compensation Committee.

In addition, the Chief Executive Officer and senior leaders of SmartREIT have specific performance objectives relating to talent management and succession planning and are held accountable through the performance review process and bonus program. See "Executive Compensation – Compensation Discussion and Analysis".

SmartREIT's philosophy of building ongoing bench strength reinforces its core values and culture, helps promote retention of talent and provides more opportunity for succession.

## EXECUTIVE COMPENSATION

### Letter from the Chair of the Corporate Governance and Compensation Committee

Fellow Unitholders,

On behalf of the Corporate Governance and Compensation Committee and the Board, we are pleased to provide you with an overview of our key accomplishments in 2016 and describe how our executive compensation program attracts and retains talent that is essential to delivering against our long-term strategy. Our goal is to provide you with clear information that helps you understand how our compensation program is structured and how we assess performance.

#### *Compensation Structure and Philosophy*

SmartREIT's compensation structure is intended to attract, retain, motivate and reward highly qualified executives. The interests of our executives and Unitholders must be aligned. The compensation structure promotes a pay-for-performance culture using performance objectives which are expected to deliver long term value for our Unitholders.

SmartREIT's compensation program consists of the following key components:

- *Base Salary:* Salary ranges are based on peer comparator groups with individual base pay reflecting merit and potential.
- *Annual Incentives:* SmartREIT rewards the achievement of annual trust-level and individual performance goals through the payment of annual incentive bonuses. The annual incentive opportunity is a percentage of base pay. Goals have performance objectives and target award payouts generally range from 50-60% of base salary.
- *Deferred Unit Plan:* Our named executive officers can elect to receive their annual incentive bonus in the form of Deferred Units and receive an equal contribution of Deferred Units from SmartREIT. The Deferred Unit Plan promotes a greater alignment of interests between our executives and Unitholders by more closely linking their compensation with the market price of SmartREIT's Units.
- *LTIP:* The LTIP encourages retention and rewards longer term value creation. There are annual grant award with specific measures and objectives that lead to long term value creation. Vesting and payout occur over a number of years.

SmartREIT also has in place ownership guidelines requiring each executive officer to maintain an equity position in SmartREIT to further align the interests of executives with the interests of Unitholders.

#### *SmartREIT's Performance in 2016*

SmartREIT measures the performance of its executive officers against a set of trust-level performance metrics and personal-level performance metrics reflective of SmartREIT's strategic goals. Trust-level performance metrics for 2016 include objectives that drive SmartREIT's overall financial and operating performance, including targets for Funds from Operations ("FFO"), acquisitions and developments, leasing and occupancy levels, financing and staff succession and turnover. SmartREIT's 2016 financial and operating performance highlights include the following:

- FFO increased by 12.1% to \$347.0 million and 6.2% to \$2.23 on a per Unit basis compared to the same period for 2015
- Maintained a high level of occupancy at 98.3%
- Completed developments and earnouts of 484,270 square feet of leasable area for \$154.5 million; providing unleveraged yield of 6.7%
- 3.0% increase in annual distributions to \$1.70 per Unit effective October 2016

### ***Pay and Performance***

In May 2015, we acquired the SmartCentres platform, subsequently changing our name to SmartREIT. Following the acquisition, the Board reviewed executive pay levels in light of the new focus of SmartREIT as a fully integrated real estate developer and operator. Based on their review, the Board approved moderate changes to salaries and incentive targets for 2016. See “Executive Compensation – Compensation Discussion and Analysis”.

Awards were granted in 2016 as part of the annual bonus for the named executive officers based on our annual performance as outlined above. Management delivered another year of strong results as evidenced by the 80.8% overall achievement of the target trust-level performance metrics and sub-metrics. Over the performance period from 2014 to 2016, we had strong relative total Unitholder return that was above the 92<sup>nd</sup> percentile of our performance peer group in the S&P/TSX Capped REIT Index. This resulted in a final payout multiplier of 200% for our 2014 performance units (being the LTIP Units) and a total payout (including distribution equivalents) of 295% of their original grant value.

### ***2016 Say-on-Pay***

At last year’s annual general meeting of Unitholders held on June 10, 2016, the advisory “say-on-pay” resolution received the support of 98.82% of the votes cast. Notwithstanding this positive result, we continue to seek Unitholder feedback on our executive compensation program. At the 2017 annual general meeting of Unitholders, we will again hold an advisory “say-on-pay” vote and the Board will continue to consider the results from this year’s and future advisory votes on executive compensation when considering future executive compensation arrangements.

### ***2017 Priorities***

The Corporate Governance and Compensation Committee believes that SmartREIT’s executive compensation philosophy and structure are effectively aligned with performance and Unitholder interests. We will continue to monitor the effectiveness of SmartREIT’s compensation program, taking into account feedback from our Unitholders during this year’s “say-on-pay” vote.

We are committed to providing you with complete information regarding our executive compensation program. On behalf of the Corporate Governance and Compensation Committee and the Board, we thank you for taking the time to read our disclosure and encourage you to vote in favour of our approach to executive compensation.

Sincerely,



Jamie McVicar  
Chair, Corporate Governance and Compensation Committee

## Compensation Discussion and Analysis

### *Objectives and Design*

SmartREIT's goal is to provide Unitholders with stable and growing cash distributions by focusing on the ownership and development of high quality retail properties, enhancing the value through effective management, leasing and development of its assets, and effective control of long-term cost of capital. The objective of SmartREIT's executive compensation program is to attract, retain and motivate qualified individuals to its senior management team. To achieve that goal, SmartREIT is committed to a compensation policy that is competitive, drives business performance and encourages Unit ownership.

SmartREIT's executive compensation program is designed to provide commensurate reward for services rendered and appropriate incentive for the senior management team to implement both short-term and long-term strategies aimed at increasing Unitholder value and creating economic value for SmartREIT. SmartREIT's executive compensation strategy is therefore significantly weighted towards pay-for-performance components. Actual incentive rewards are directly linked to the results of SmartREIT and its senior management team. Financial and operational performance targets set each year represent targeted improvements to SmartREIT's financial and operational results and are therefore aligned with Unitholder interests. While performance targets are set each year, the Corporate Governance and Compensation Committee is not tied to these criteria; it retains the discretion to alter the performance targets in response to outside economic conditions.

### *Components*

The main components of SmartREIT's executive compensation program are base salary, annual incentive bonuses and long-term incentives in the form of Deferred Units granted in accordance with the Deferred Unit Plan and LTIP Units granted in accordance with the LTIP.

#### *Base Salary*

SmartREIT reviews the compensation practices of other large Canadian publicly traded real estate entities with similar attributes to SmartREIT (and in particular those with market capitalizations in excess of \$2 billion) to ensure the base salary and annual and long term incentives that it is paying to its executive officers are competitive. Some of these large Canadian publicly traded real estate entities include:

- (a) Allied Properties Real Estate Investment Trust
- (b) Boardwalk Real Estate Investment Trust
- (d) Canadian Apartment Properties Real Estate Investment Trust
- (e) Canadian Real Estate Investment Trust
- (f) Cominar Real Estate Investment Trust
- (g) Dream Office Real Estate Investment Trust
- (h) First Capital Realty Inc.
- (i) H&R Real Estate Investment Trust
- (j) RioCan Real Estate Investment Trust

It also reviews the compensation practices of other real estate entities through the Real Property Association of Canada Compensation Survey. The survey is comprised of over 50 publicly traded and private real estate entities from Canada. The goal of the review is to allow SmartREIT to retain the flexibility to change compensation as it deems necessary, while providing a guideline to ensure compensation levels remain competitive and within the overall goals of SmartREIT. The survey data is only one factor in the determination of compensation.

#### *Annual Incentives – Bonuses*

SmartREIT pays annual incentive bonuses to its named executive officers in order to incentivize and reward them for the positive performance of SmartREIT and individually in a given year. Annual incentive bonuses are paid to a maximum, generally, of 50% to 60% of each executive officer's annual base salary (60% for the Chief Executive Officer of SmartREIT). Such annual incentive bonuses are based upon the assessment by the Board of the

performance of each executive officer. SmartREIT measures the performance of its executive officers against a set of trust-level performance metrics and personal-level (i.e. position specific) performance metrics reflective of SmartREIT's strategic goals. Generally speaking, the trust-level performance metrics, in aggregate, account for 80% of the maximum bonus payable to each named executive officer and the personal-level performance metrics, in aggregate, account for 20%, depending on the particular named executive officer's employment or service agreement. In the event of unforeseen or unusual circumstances, the Corporate Governance and Compensation Committee has the discretion to revise the weighting such that the trust-level performance metrics, in aggregate, account for 60% of the maximum bonus payable, the personal-level metrics, in aggregate, account for 20% and a subjective component accounts for the remaining 20%. In 2016, the Corporate Governance and Compensation Committee determined that there were no unforeseen or unusual circumstances warranting the exercise of its discretion. Throughout the year, the Board may review the underlying strategy of SmartREIT and re-evaluate the targets. These performance metrics are guidelines for gauging performance and are not intended to be inflexible targets. As such, the criteria for the calculation of bonuses and the payment of such bonuses remain at the discretion of the Board.

#### Trust-Level Performance Metrics

Trust-level performance metrics include the broad, trust-wide objectives that drive SmartREIT's overall financial and operating performance. Many of these metrics are similar to the prior year's targets and include Funds from Operations, acquisitions, leasing and occupancy levels, liquidity and staff turnover. Also for 2016, additional trust-wide objectives include new development initiatives that consist of both new types of developments and new development sites greater than five acres. The weighting of the metrics may be revised annually to reflect shifting priorities. Finally, targets may be introduced for limited timeframes relating to a particular initiative, such as the introduction of new accounting software.

For each of the trust-level performance metrics, where appropriate, SmartREIT establishes a "base" level of achievement, a "target" level of achievement and a "maximum" level of achievement. When established, it is expected by SmartREIT that the "base" levels of achievement for each performance metric are attainable with reasonable diligence while attainment of the "target" and "maximum" levels of achievement would result from superior performance. As a guideline, achievement of "base" levels would earn 50% of the particular metric, achievement of "target" levels would earn 100% of the particular metric and achievement of "maximum" levels would earn up to 150% of a particular metric. The Corporate Governance and Compensation Committee has discretion when the results fall between the "base" and "target" levels and the "target" and "maximum" levels to determine the achievement level.

For the fiscal year ended December 31, 2016, the trust-level performance metrics included the following items, respective weighting and results achieved by SmartREIT:

Target Performance Description	Specific Performance Measures	Weight	Specific Performance Measurement for Fiscal 2016 (Base – Target – Maximum)	Specific Performance Achievement in Fiscal 2016	
				Actual Performance	Weighting Achieved
<i>Financial Results</i>	Meet or exceed annual FFO per Unit budget, subject to limitations for lease termination settlements	40%	\$2.18 – \$2.21 – \$2.24 per Unit	\$2.21	40%
	Achieve acquisitions during the year	10%	\$75 – \$150 – \$225 million	\$77.4 million	5.16%
	Total	50%			45.16%
<i>Leasing/ Occupancy</i>	New leasing (committed leases only)	10%	400K – 500K – 600K sq. ft.	507.8K sq. ft.	10.39%
	Maintain occupancy level, as measured at end of each quarter	10%	98.0% – 98.3% – 98.7%	98.3% - 98.5%	11.88%
	Total	20%			22.27%
<i>Liquidity</i>	Achieve Total Debt to Adjusted EBITDA, as measured at end of each quarter	7.5%	8.7x – 8.4x – 8.1x	8.4x	7.5%
	Total	7.5%			7.5%
<i>New Development Initiatives</i>	New types of development initiatives underway	7.5%	1 – 2 – 3 types	0 types	0%
	Initiate new development sites greater than 5 acres	7.5%	1 – 2 – 3 sites	0 sites	0%
	Total	15.0%			0%
<i>Talent Management</i>	Maintain/increase staff retention	7.5%	12.5% – 10.0% – 7.5%	11.1%	5.87%
	Total	7.5%			5.87%
<b>AGGREGATE TOTAL</b>		<b>100%</b>			<b>80.8%</b>

During 2016, SmartREIT’s management delivered another year of strong results as evidenced by the 80.8% overall achievement of the target trust-level performance metrics and sub-metrics.

#### Personal-Level Performance Metrics

Personal-level performance metrics are job-specific and either build upon trust-level performance metrics or address specific priorities for each position so as to align with overall corporate strategy. As a result, the targets and weighting are more likely to vary year over year as they are tailored to emerging detailed initiatives.

For fiscal 2016, key priorities for each of the named executive officers were focused on each executive’s responsibilities under SmartREIT’s strategic plan, with an emphasis on sustaining and growing the existing business and developing new growth opportunities. In addition, each named executive officer was also evaluated against goals and objectives related to such named executive officer’s position and functional responsibilities.

For all five named executive officers, the weights given to the aggregate total trust-level versus personal-level performance metrics in respect of 2016 are 80% and 20%, respectively. Based on these weights, the overall achievement percentage of the total bonus for 2016 are as follows: Mr. Thomas, 81.0%; Mr. Forde, 82.2%; Mr. Sweeney, 77.2%; Mr. Gobin, 81.4% and Mr. Pambianchi, 78.8%.

In addition to the annual incentive bonuses described above, the Board may, in its discretion and from time to time, declare an additional cash bonus (not tied to any specific trust-level or personal level performance metric) in favour of one or more members of SmartREIT’s management team in circumstances where it is determined that the executive(s) in question have made an exceptional contribution to the performance of SmartREIT and other special circumstances during the fiscal year. In 2016, the Board did not exercise this discretion to grant additional bonuses to any of the executives.

## *Equity Incentive Plans*

### Deferred Unit Plan

SmartREIT provides its named executive officers with the right to participate in the Deferred Unit Plan in order to promote a greater alignment of interests between them and the Unitholders by more closely linking their compensation with the market price of the Units. For further information, including information about the vesting provisions, see “Executive Compensation – Equity Compensation Plan Information – Deferred Unit Plan”.

### Inducement Award Agreements

SmartREIT may grant awards of Deferred Units as an employment inducement to new officers of SmartREIT, provided that any such award recipient was not previously employed and not previously an insider of SmartREIT, all in accordance with the applicable laws and rules of the TSX (each, an “**Inducement Award**”). For further information, see “Executive Compensation – Equity Compensation Plan Information – Inducement Award Agreements”.

### Long Term Incentive Plan

The Corporate Governance and Compensation Committee believes that a significant component of the compensation of certain officers and employees of SmartREIT should be based on the total Unitholder return and the amount of monthly distributions paid on the Units. To that end, SmartREIT has a LTIP that its named executive officers may participate in at the discretion of the Board. The purpose of the LTIP is to promote a greater alignment of interests between senior executives and Unitholders by linking a component of the executives’ compensation to the total Unitholder return compared to a peer group of public entities (the “**Peer Group**”), which is currently comprised of the entities included in the S&P/TSX Capped REIT Index. The compensation of a participating senior executive under the LTIP will also be partly dependent on the amount of monthly distributions paid on the Units. For further information, including information about the vesting provisions, see “Executive Compensation – Equity Compensation Plan Information – Long Term Incentive Plan”.

### *Executive Compensation Claw-back*

The Board has adopted an executive compensation claw-back policy concerning future awards made under SmartREIT’s annual and equity incentive plans. Under this policy, which applies to all executives, the Board may, in its sole discretion, to the fullest extent permitted by governing laws and to the extent it determines that it is in SmartREIT’s best interest to do so, require reimbursement of all or a portion of annual and equity incentive compensation received by an executive. The Board may seek reimbursement of full or partial compensation from an executive or former executive officer in situations where:

- (a) the amount of incentive compensation received by the executive or former executive officer was calculated based upon, or contingent on, the achievement of certain financial results that were subsequently the subject of or affected by a restatement of all or a portion of SmartREIT’s financial statements;
- (b) the executive officer engaged in gross negligence, intentional misconduct or fraud that caused or partially caused the need for the restatement; and
- (c) the incentive compensation payment received would have been lower had the financial results been properly reported.

### *Perquisites and Personal Benefits*

Perquisites and personal benefits provided to senior management reflect competitive practices and particular business needs. Generally speaking they are not a significant component of SmartREIT’s executive compensation program.

### *Review / Modifications*

SmartREIT’s executive compensation program is reviewed and considered at least annually by the Corporate Governance and Compensation Committee to determine if the objectives of the executive compensation program are being achieved and whether any modifications to that program are required. This includes a review of base salaries

payable, incentive bonuses payable and the degree of participation in the Deferred Unit Plan and the LTIP. It also includes a review of the metrics used to assess performance, the targets established with respect to those performance metrics, whether previously established targets have been achieved and to what degree, and whether the performance metrics and targets are still appropriate in light of the then current real estate market, stock market and general economic conditions as well as the overall business strategy of SmartREIT. The Corporate Governance and Compensation Committee considers the establishment of new performance metrics and related targets to be used to assess executive officer performance and determines executive officer compensation on a going-forward basis. In completing this review, the Corporate Governance and Compensation Committee considers the recommendations of management and the Chief Executive Officer of SmartREIT in particular. The Corporate Governance and Compensation Committee structures management's incentive plan to reward both short and long-term objectives. This balanced approach mitigates the risk of management pursuing a strategy that would negatively impact the price of the Units over the long-term. SmartREIT also prohibits short selling of the Units and the purchasing of financial instruments to hedge a decrease in market value of the Units held by management. Upon completion of that review, the Corporate Governance and Compensation Committee makes its recommendations with respect to SmartREIT's executive compensation program to the full Board. The Board then approves the executive compensation program, including the individual components, subject to any modifications it deems necessary.

### ***Management of Compensation Risk***

In conjunction with its annual executive compensation review, the Corporate Governance and Compensation Committee considers the implications of the risks associated with SmartREIT's compensation policies and practices. In particular, the policies and practices of the incentive bonus structure are scrutinized focusing on the detailed bonus metrics and calculations, including:

- (a) the risks of the chosen metrics encouraging management to take inappropriate or excessive risks;
- (b) the risk of the chosen metrics being affected by variables beyond the control of management; and
- (c) the risks of possible errors and omissions in the input data and/or calculations used to determine achievement of bonuses.

In mitigating such risks, the Corporate Governance and Compensation Committee relies on, in part:

- (a) the limits on management's discretion to undertake material business transactions without the input and/or consent of the Board and/or its committees;
- (b) on the role of the Audit Committee, with the input from SmartREIT's auditors in its quarterly review of financial data, to ensure accuracy in such key measures that are used in bonus metrics such as FFO;
- (c) the role of the Investment Committee, in its review and approval of all major acquisitions and development proposals and financings, to ensure the same are in the best interests of SmartREIT; and
- (d) the receipt and review by the Corporate Governance and Compensation Committee of the input data and calculations used to determine achievement of bonuses.

In addition, SmartREIT's committee membership contains cross-representation whereby at least one member of the Corporate Governance and Compensation Committee sits on the Audit Committee and the Investment Committee. Finally, the core components of the trust-level performance metrics remain largely unchanged from year to year allowing the Corporate Governance and Compensation Committee to monitor management's performance in regard to inappropriate or excessive risks. As a result of the foregoing, the Corporate Governance and Compensation Committee is of the view that the risks arising from SmartREIT's compensation policies and practices are not reasonably likely to have a material adverse effect on SmartREIT and that such policies and practices are appropriate and consistent with industry standards.

### ***Hugessen Consulting Inc.***

In 2016, the Corporate Governance and Compensation Committee again retained the services of Hugessen Consulting Inc. ("**Hugessen**"), an independent executive compensation consultant, to provide advice on matters related to executive compensation and corporate governance. At the direction of the chair of the Corporate Governance and Compensation Committee, Hugessen worked with the Corporate Governance and Compensation Committee to provide the following services for the Corporate Governance and Compensation Committee during the year ended December 31, 2016:

- (a) Support the decision making process related to payouts under the executive annual and long-term incentive plans;
- (b) Assessment of SmartREIT’s governance and compensation practices; and
- (c) Review of SmartREIT’s management information circular disclosure for the year ended December 31, 2015.

Hugessen’s fees incurred during 2016 and 2015 regarding services provided to SmartREIT are as follows:

Year	Executive Compensation Related Fees
Year ended December 31, 2016	\$21,942
Year ended December 31, 2015	\$72,819

Hugessen does not provide any services to SmartREIT other than those provided to the Corporate Governance and Compensation Committee, and the fees paid to Hugessen represented less than 5% of SmartREIT’s annual revenue in each of fiscal 2016 and fiscal 2015.

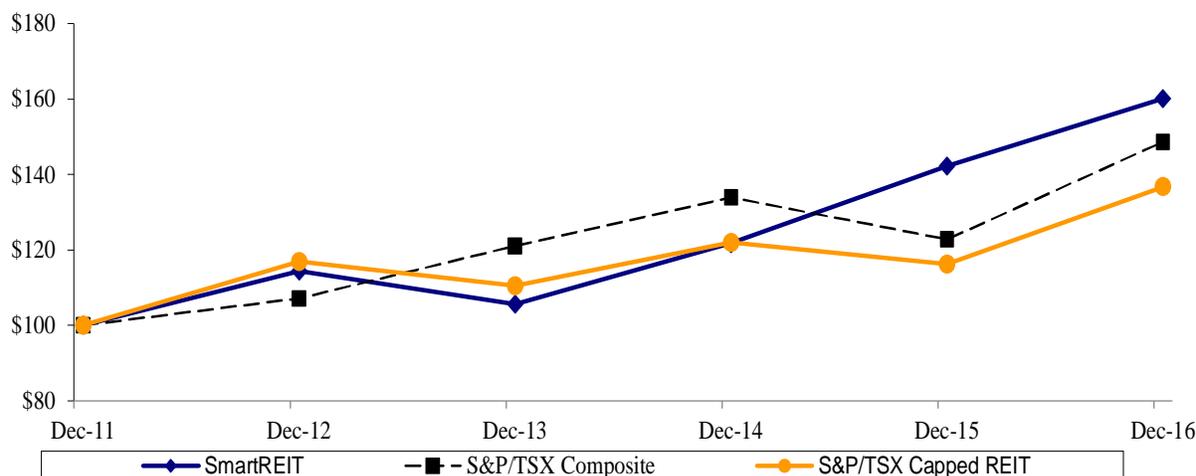
All of the executive compensation recommendations are made by the Corporate Governance and Compensation Committee alone and may reflect factors and considerations other than the information and advice provided by Hugessen.

***Non-IFRS Measures***

In the subsection “Annual Incentives – Bonuses” above, there are references to certain terms used in this Circular, such as “FFO” and “AFFO” which are not measures under generally accepted accounting principles and are not defined under International Financial Reporting Standards (“IFRS”). However these are measures sometimes used by Canadian real estate income trusts as indicators of financial performance. SmartREIT uses these measures to analyze operating performance. As one of the factors that may be considered relevant by prospective investors is the cash distributed by SmartREIT relative to the price of the units, management believes these measures are a useful supplemental measure that may assist Unitholders and prospective investors in assessing their holdings of or investment in Units. SmartREIT analyzes its cash distributions against these measures to assess the stability of the monthly cash distributions to Unitholders. As these measures are not standardized, as prescribed by IFRS, they may not be comparable to similar measures presented by other real estate investment trusts. These measures are not intended to represent operating profits for any period nor should they be viewed as an alternative to net income, cash flow from operating activities or other measures of financial performance calculated in accordance with IFRS. A full definition of certain of such non-IFRS terms and examples of reconciliations of such terms to the most directly comparable measure calculated in accordance with IFRS are provided in SmartREIT’s most recent management discussion and analysis.

**Performance Graph**

The following graph, and the table below it, compares the cumulative total Unitholder return on the Units of SmartREIT with (i) the cumulative total return of the S&P/TSX Composite Index for the five-year period ending December 31, 2016\* and (ii) the cumulative total return of the S&P/TSX Real Estate Capped Index for the five-year period ending December 31, 2016\*.



\* Assuming that the initial value of the investment in Units of SmartREIT on the TSX was \$100 at the close of trading on December 31, 2011. Values include distributions payable but exclude brokerage fees and all income taxes.

	31-Dec-11	31-Dec-12	31-Dec-13	31-Dec-14	31-Dec-15	31-Dec-16
SmartREIT	\$100.00	\$114.43	\$105.56	\$121.73	\$142.27	\$160.12
S&P/TSX Composite	\$100.00	\$107.19	\$121.11	\$133.90	\$122.76	\$148.64
S&P/TSX Capped REIT	\$100.00	\$116.97	\$110.51	\$121.95	\$116.28	\$136.78

### *Trends*

The trend of the performance of the Units has followed the general trend of the S&P/TSX Capped REIT Index, the index of SmartREIT's Peer Group, with the performance of the Units in each year except for 2013 and 2014 outpacing that of the S&P/TSX Composite Index, the broad market index of Canadian listed companies, and outpacing that of the S&P/TSX Capped REIT Index for 2015 and 2016. The total executive compensation paid by SmartREIT to its named executive officers has modestly reflected the superior performance of the Units compared to the broader market appearing in the S&P/TSX Composite Index in the past five years and to SmartREIT's industry peers appearing in the S&P/TSX Capped REIT Index in the past two years.

The total compensation value paid to the named executive officers of SmartREIT for the 2016 financial year was \$5,999,869 (2015 - \$5,564,767) which amounts to 1.82% (2015 - 1.87%) of SmartREIT's 2016 FFO (see "Executive Compensation - Compensation Discussion and Analysis - Non-GAAP Measures") and 2.32% (2015 - 2.32%) of SmartREIT's 2016 annual cash distributions to Unitholders. The increase in total compensation in 2016 compared to 2015 was in large part due to the payment of a full year's salary to SmartREIT's President and Chief Operating Officer and Chief Development Officer that were appointed in 2015.

### **2016 Compensation for the Named Executive Officers**

#### *Summary Compensation Table*

The following table sets forth the annual compensation earned by each of SmartREIT's named executive officers for the three most recently completed financial years.

Name and Principal Position	Year	Salary <sup>(1)</sup> (\$)	Unit-Based Awards (\$)		Annual Non-Equity Incentive Plan Compensation <sup>(4)</sup> (\$)	All Other Compensation <sup>(5)</sup> (\$)	Total Compensation (\$)
			Deferred Unit Plan <sup>(2)</sup>	LTIP <sup>(3)</sup>			
Huw Thomas <i>Chief Executive Officer</i> <sup>(6)</sup>	2016	721,000	350,550	639,320	350,550	26,659	2,088,079
	2015	700,000	397,460	620,000	472,460 <sup>(7)</sup>	26,356	2,216,276
	2014	662,404	345,870	600,000	345,870	26,173	1,980,317
Peter Forde <i>President and Chief Operating Officer</i>	2016	453,900	186,644	205,000	186,644	14,659	1,046,847
	2015	256,667	123,552	116,667	123,552	38,174 <sup>(8)</sup>	658,613
Peter Sweeney <i>Chief Financial Officer</i>	2016	432,900	167,186	247,000	167,186	14,659	1,028,931
	2015	420,000	265,884 <sup>(9)</sup>	240,000	205,884	14,356	1,146,124
	2014	48,461	620,000 <sup>(10)</sup>	nil	23,415	1,654	693,530
Rudy Gobin <i>Executive Vice President, Portfolio Management and Investments</i>	2016	376,400	153,270	103,000	153,270	18,659	804,599
	2015	365,000	254,912 <sup>(11)</sup>	100,000	179,912	17,479	917,303
	2014	318,048	149,421	nil	149,421	30,568	647,458
Mauro Pambianchi <i>Chief Development Officer</i>	2016	453,900	178,927	205,000	178,927	14,659	1,031,413
	2015	256,667	119,497	116,667	119,497	8,290	620,618

Notes:

- (1) Base salaries presented are actual amounts earned for 2016, 2015 and 2014, as applicable. For the named executive officers other than Mr. Thomas and Mr. Gobin, they represent pro-rated amounts of their respective annual base salaries for 2015 or 2014, as applicable, depending on the year they joined SmartREIT: Mr. Forde - \$440,000 (2015), Mr. Sweeney - \$420,000 (2014) and Mr. Pambianchi - \$440,000 (2015).
- (2) The value shown is determined as at the date of grant of each award and excludes distribution equivalent amounts earned on the Deferred Units. Amounts include Matching Deferred Units granted under the Deferred Unit Plan. For further information, see "Executive Compensation – Equity Compensation Plan Information – Deferred Unit Plan".
- (3) The value shown is determined as at the date of grant of each award and excludes distribution equivalent amounts earned on the LTIP Units. For further information, see "Executive Compensation – Equity Compensation Plan Information – Long Term Incentive Plan".
- (4) These amounts represent annual cash incentive bonuses awarded to the named executive officers. Mr. Sweeney's 2014 annual incentive bonus was pro-rated for the period of his employment in 2014 and was received by him in cash. Each of the named executive officers can elect to receive up to 100% of their annual incentive bonus in Deferred Units, in lieu of cash, pursuant to the Deferred Unit Plan. Each of the named executive officers elected to take 100% of their annual cash incentive bonus in Deferred Units for each of the years shown in the table, except Mr. Sweeney in respect of his 2014 bonus.
- (5) These amounts include vehicle allowances and medical, life and other insurance premiums. The amounts shown exclude dividend equivalent amounts earned on the Deferred Units and LTIP Units as the dividend equivalents were factored into the disclosed grant date fair value of the awards. The dividend equivalent amounts for the named executive officers were as follows: Mr. Thomas - \$103,816 in 2016, \$68,754 in 2015 and \$38,895 in 2014; Peter Forde \$45,913 in 2016 and \$Nil in 2015; Mr. Sweeney - \$36,325 in 2016, \$37,402 in 2015 and \$3,007 in 2014; Mr. Gobin \$182,296 in 2016, \$182,556 in 2015 and \$156,516 in 2014; Mauro Pambianchi - \$8,705 in 2016 and \$Nil in 2015
- (6) Mr. Thomas has been a Trustee of SmartREIT since April 1, 2011 but currently receives no compensation in that capacity as he is the Chief Executive Officer of SmartREIT.

- (7) This amount includes a \$75,000 discretionary cash bonus paid to Mr. Thomas in connection with the acquisition by SmartREIT of the SmartCentres development platform from Mitchell Goldhar and a significant portfolio of real estate from a number of vendors, including Mitchell Goldhar and certain members of the Penguin group of companies completed on May 28, 2015 (the "2015 Transactions").
- (8) This amount reflects \$30,000 in compensation earned by Mr. Forde in his capacity as Trustee and a member of the Corporate Governance and Compensation Committee and Investment Committee from January 1, 2015 to July 2, 2015.
- (9) This amount includes a \$60,000 bonus paid in the form of Deferred Units to Mr. Sweeney in connection with the 2015 Transactions.
- (10) Mr. Sweeney was granted 22,542.74 Deferred Units by SmartREIT under two separate Inducement Award agreements dated November 17, 2014 as an inducement to become the Chief Financial Officer of SmartREIT. Except as otherwise specified in such Inducement Award agreements, these awards were granted upon the terms and conditions set out in the Deferred Unit Plan. All of the 11,634.96 Deferred Units granted pursuant to Mr. Sweeney's first Inducement Award agreement vested on November 17, 2014. One-third of the 10,907.78 Deferred Units granted pursuant to Mr. Sweeney's second Inducement Award agreement vests each year, commencing on January 1, 2015.
- (11) This amount includes a \$75,000 bonus paid in the form of Deferred Units to Mr. Gobin in connection with the 2015 Transactions.

### ***Outstanding Unit-Based Awards***

The following table indicates for each named executive officer all Unit-based awards outstanding at December 31, 2016.

Name	Unit-Based Awards <sup>(1)</sup>		
	Number of Units That Have Not Vested <sup>(2)</sup> (#)	Market or Payout Value of Unit-Based Awards That Have Not Vested <sup>(3)</sup> (\$)	Market or Payout Value of Vested Unit-Based Awards Not Paid Out or Distributed <sup>(3)</sup> (\$)
Huw Thomas	66,433	2,125,833	2,595,771
Peter Forde	9,148	292,321	877,454
Peter Sweeney	23,163	740,455	230,496
Rudy Gobin	29,079	936,030	2,823,999
Mauro Pambianchi	9,012	287,936	129,225

Notes:

- (1) These figures include Deferred Units and LTIP Units received as distribution equivalents under the Deferred Unit Plan and LTIP, respectively.
- (2) These awards were issued pursuant to the Deferred Unit Plan, the LTIP, or Inducement Award agreements, although the awards granted under the LTIP are only settled in cash. As of December 31, 2016, each of the named executive officers were participants under the LTIP.
- (3) Based on the market value of the Units as at December 31, 2016.

### ***Incentive Plan Awards – Value Vested or Earned During the Year***

The following table indicates for each named executive officer the value of all indicated compensation awards that vested during 2016.

Name	Unit-Based Awards - Value Vested During the Year <sup>(1)(2)</sup> (\$)	Annual Non-Equity Incentive Plan Compensation – Value Earned During the Year (\$) <sup>(3)</sup>
Huw Thomas	1,770,827	350,550
Peter Forde	-	186,644
Peter Sweeney	116,592	167,186
Rudy Gobin	180,009	153,270
Mauro Pambianchi	-	178,927

Notes:

- (1) These awards were issued pursuant to the Deferred Unit Plan, the LTIP, or Inducement Award agreements, although the awards granted under the LTIP are only settled in cash. These figures include Deferred Units received as distribution equivalents under the Deferred Unit Plan. As of December 31, 2016, each of the named executive officers were participants under the LTIP.
- (2) Based on the market value of the Units as at the date of vesting.
- (3) This column includes the full amount of the annual incentive bonuses even if a named executive officer elected to receive all or a portion as Deferred Units.

## Termination and Change of Control Benefits

### *Huw Thomas, Chief Executive Officer*

The employment agreement of Mr. Thomas provides that he will be entitled to receive a specified cash payment in the case of resignation, termination without cause, death, disability or a “change of control” of SmartREIT.

If Mr. Thomas resigns, he will be eligible for a pro-rated annual bonus, based on the partial year worked, as determined by the Board in its sole discretion. Upon resignation, all LTIP Units awarded to Mr. Thomas but not yet vested as of the resignation date will be forfeited.

Upon termination without cause, Mr. Thomas is entitled to the greater of (i) a severance payment equal to one-twelfth of his then current annual base salary and one-twelfth of the actual annual bonus paid to him in the year preceding the termination, multiplied by the number of months between his termination and June 30, 2018 (provided that Mr. Thomas signs a release of liability in favour of SmartREIT at the time of such termination); and (ii) the statutory minimum amount required under applicable employment legislation.

Upon termination without cause, provided that the Board is satisfied that Mr. Thomas has left SmartREIT on agreed-upon terms, LTIP Units will continue to vest until June 30, 2018.

In the case of death or disability, Mr. Thomas’s employment will automatically end. He or his estate, as applicable, will be entitled to a pro-rated bonus for the partial year worked based on the annual bonus paid to him in the previous year. Additionally in the case of disability, Mr. Thomas will be entitled to any statutory amount required under applicable employment legislation. In the case of death, all LTIP Units awarded to date to Mr. Thomas will vest and be paid out to his estate. In the case of disability, however, the unvested LTIP Units awarded to Mr. Thomas will vest and be paid out according to the original schedule.

If Mr. Thomas is terminated without cause within six months of a change of control event, or if he is not offered continued employment on a comparable basis after a change of control event, he will be entitled to receive, instead of the severance payment described above, an amount equal to 1.5 times his then current annual base salary, plus an amount equal to 1.5 times the actual bonus paid to him for the previous year. LTIP Units awarded to Mr. Thomas will continue to vest for 1.5 years following the date of the termination of his employment.

The table below sets out the estimated incremental amounts that would have been payable by SmartREIT to Mr. Thomas, had his employment been terminated on December 31, 2016. The table includes base salary, bonus, car allowance and benefits, as applicable. For information on the treatment of any Deferred Units and LTIP Units held by Mr. Thomas in such circumstances, refer to “– Treatment of Deferred Units and LTIP Units” and “– Outstanding Unit Based Awards”.

<b>Resignation</b>	<b>Termination without Cause</b>	<b>Death</b>	<b>Disability</b>	<b>Change of Control</b>
\$397,460	\$1,678,891	\$397,460	\$397,460	\$1,685,496 <sup>(1)</sup>

Note:

- (1) Assuming that the Board does not exercise its discretion pursuant to the terms of the LTIP to accelerate the vesting of Mr. Thomas’s LTIP Units upon the change of control event.

### *Peter Forde, President and Chief Operating Officer*

Mr. Forde’s employment agreement provides that he will be entitled to receive a specified cash payment in the case of termination without cause or a “change of control” of SmartREIT.

Upon termination without cause, Mr. Forde is entitled to a severance payment, within 30 days of termination, that will be an amount equal to 2 times his then current annual compensation, including salary and bonus based on 100% target payout, and car allowance, plus continuing group health and welfare benefits for 24 months following the termination. All unvested Deferred Units under the Deferred Unit Plan credited to Mr. Forde will vest immediately and be redeemable by Mr. Forde upon termination without cause and any other amounts payable as of the date of termination under the LTIP will be redeemable in accordance with the terms of the LTIP.

If Mr. Forde is not offered continued employment on a comparable basis after a change of control event, he will be entitled to receive, within 30 days of such termination, an amount equal to 2 times his then current annual compensation, including base salary and bonus based on 100% target payout, and car allowance, plus continuing group health and welfare benefits for 24 months following such termination.

The table below sets out the estimated incremental amounts that would have been payable by SmartREIT to Mr. Forde, had his employment been terminated on December 31, 2016. The table includes base salary, bonus, car allowance and benefits, as applicable. For information on the treatment of any Deferred Units and LTIP Units held by Mr. Forde in such circumstances, refer to “– Treatment of Deferred Units and LTIP Units” and “– Outstanding Unit Based Awards”.

<b>Resignation</b>	<b>Termination without Cause</b>	<b>Death</b>	<b>Disability</b>	<b>Change of Control</b>
\$nil	n/a <sup>(1)</sup>	\$nil	\$nil <sup>(2)</sup>	\$1,401,312

Notes:

- (1) Mr. Forde’s employment agreement provides that Mr. Forde shall not be terminated by SmartREIT other than with cause prior to June 1, 2017.
- (2) Pursuant to SmartREIT’s employee disability policy, if the amount of employment insurance received by an employee upon short-term disability is less than 55% of that employee’s salary at the time that disability occurred, SmartREIT will pay to the employee an amount equal to the difference between the amount that is 55% of that employee’s salary at the time that disability occurred and the amount received by the employee pursuant to his or her employment insurance for a period of up to 16 weeks. The figure above does not include this additional payment.

***Peter Sweeney, Chief Financial Officer***

The employment agreement of Mr. Sweeney provides that he will be entitled to receive a specified cash payment in the case of termination without cause or a “change of control” of SmartREIT.

Upon termination without cause, Mr. Sweeney is entitled to a severance payment, within 30 days of his termination, that will be an amount equal to 1.5 times his then current annual base salary, plus an amount equal to 1.5 multiplied by the actual annual bonus paid to Mr. Sweeney in the year preceding the termination plus continuing group benefits for 8 weeks following termination.

If Mr. Sweeney is not offered continued employment on a comparable basis after a change of control event, he will be entitled to receive, within 30 days of such termination, an amount equal to 1.5 times his then current annual base salary, plus an amount equal to 1.5 multiplied by the actual annual bonus paid to Mr. Sweeney in the year preceding such termination.

The table below sets out the estimated incremental amounts that would have been payable by SmartREIT to Mr. Sweeney, had his employment been terminated on December 31, 2016. The table includes base salary, bonus, car allowance and benefits, as applicable. For information on the treatment of any Deferred Units and LTIP Units held by Mr. Sweeney in such circumstances, refer to “– Treatment of Deferred Units and LTIP Units” and “– Outstanding Unit Based Awards”.

<b>Resignation</b>	<b>Termination without Cause</b>	<b>Death</b>	<b>Disability</b>	<b>Change of Control</b>
\$nil	\$959,377	\$nil	\$nil <sup>(1)</sup>	\$958,176

Note:

- (1) Pursuant to SmartREIT’s employee disability policy, if the amount of employment insurance received by an employee upon short-term disability is less than 55% of that employee’s salary at the time that disability occurred, SmartREIT will pay to the employee an amount equal to the difference between the amount that is 55% of that employee’s salary at the time that disability occurred and the amount received by the employee pursuant to his or her employment insurance for a period of up to 16 weeks. The figure above does not include this additional payment.

***Rudy Gobin, Executive Vice President, Portfolio Management and Investments***

The employment agreement of Mr. Gobin provides that he will be entitled to receive a specified cash payment in the case of termination without cause or a “change of control” of SmartREIT.

Upon termination without cause, Mr. Gobin is entitled to a severance payment, within 30 days of his termination, that will be an amount equal to 1.5 times his then current annual compensation, including base salary and bonus based on the target amount for the relevant year, and car allowance, plus continuing group benefits for 18 months following termination.

If Mr. Gobin is not offered continued employment on a comparable basis after a change of control event, he will be entitled to receive, within 30 days of such termination, an amount equal to 1.5 times his then current annual compensation, including salary and target bonus for the relevant year, and car allowance, plus continuing group benefits for 18 months following such termination and all amounts due under the Deferred Unit Plan and LTIP in accordance with the terms of the plans.

The table below sets out the estimated incremental amounts that would have been payable by SmartREIT to Mr. Gobin, had his employment been terminated on December 31, 2016. The table includes base salary, bonus, car allowance and benefits, as applicable. For information on the treatment of any Deferred Units and LTIP Units held by Mr. Gobin in such circumstances, refer to “– Treatment of Deferred Units and LTIP Units” and “– Outstanding Unit Based Awards”.

<b>Resignation</b>	<b>Termination without Cause</b>	<b>Death</b>	<b>Disability</b>	<b>Change of Control</b>
\$nil	\$882,609	\$nil	\$nil <sup>(1)</sup>	\$882,609

Note:

- (1) Pursuant to SmartREIT’s employee disability policy, if the amount of employment insurance received by an employee upon short-term disability is less than 55% of that employee’s salary at the time that disability occurred, SmartREIT will pay to the employee an amount equal to the difference between the amount that is 55% of that employee’s salary at the time that disability occurred and the amount received by the employee pursuant to his or her employment insurance for a period of up to 16 weeks. The figure above does not include this additional payment.

***Mauro Pambianchi, Chief Development Officer***

Mr. Pambianchi’s employment agreement provides that he will be entitled to receive a specified cash payment in the case of termination without cause or a “change of control” of SmartREIT.

Upon termination without cause, Mr. Pambianchi is entitled to a severance payment, within 30 days of termination, that will be an amount equal to 1.5 times his then current annual compensation, including salary and bonus based on 100% target payout, and car allowance, plus continuing group health and welfare benefits for 18 months following the termination.

If Mr. Pambianchi is not offered continued employment on a comparable basis after a change of control event, he will be entitled to receive, within 30 days of such termination, an amount equal to 1.5 times his then current annual compensation, including base salary and bonus based on 100% target payout, and car allowance, plus continuing group health and welfare benefits for 18 months following such termination.

The table below sets out the estimated incremental amounts that would have been payable by SmartREIT to Mr. Pambianchi, had his employment been terminated on December 31, 2016. The table includes base salary, bonus, car allowance and benefits, as applicable. For information on the treatment of any Deferred Units and LTIP Units held by Mr. Pambianchi in such circumstances, refer to “– Treatment of Deferred Units and LTIP Units” and “– Outstanding Unit Based Awards”.

<b>Resignation</b>	<b>Termination without Cause</b>	<b>Death</b>	<b>Disability</b>	<b>Change of Control</b>
\$nil	n/a <sup>(1)</sup>	\$nil	\$nil <sup>(2)</sup>	\$1,050,984

Notes:

- (1) Mr. Pambianchi’s employment agreement provides that Mr. Pambianchi shall not be terminated by SmartREIT other than with cause prior to June 1, 2017.
- (2) Pursuant to SmartREIT’s employee disability policy, if the amount of employment insurance received by an employee upon short-term disability is less than 55% of that employee’s salary at the time that disability occurred, SmartREIT will pay to the employee an amount equal to the difference between the amount that is 55% of that employee’s salary at the time that disability occurred and the amount received by the employee pursuant to his or her employment insurance for a period of up to 16 weeks. The figure above does not include this additional payment.

### *Treatment of Deferred Units and LTIP Units*

Any Deferred Units and LTIP Units held by any of the named executive officers at the end of such named executive officer's employment will be treated in accordance with the Deferred Unit Plan, the LTIP and any Inducement Award agreement, as applicable, subject, in the case of LTIP Units, to a named executive officer's employment or service agreement. See "Executive Compensation – Equity Compensation Plan Information – Deferred Unit Plan", "Executive Compensation – Equity Compensation Plan Information – Long Term Incentive Plan" and "Executive Compensation – Equity Compensation Plan Information – Inducement Award Agreements".

### **Equity Compensation Plan Information**

The following table provides a summary as of December 31, 2016 of the security based compensation plans pursuant to which equity securities of SmartREIT may be issued.

<b>Plan Category</b>	<b>Units To Be Issued Upon Exercise of Outstanding Deferred Units (#)</b>	<b>Units Remaining Available for Future Issuance Under the Deferred Unit Plan (#)</b>
Equity compensation plans approved by Unitholders – <i>Deferred Unit Plan</i> <sup>(1)</sup>	655,302	641,076
Equity compensation plans not approved by Unitholders – <i>Long Term Incentive Plan and Inducement Awards</i> <sup>(2)</sup>	-	-

Notes:

- (1) Pursuant to the Deferred Unit Plan, the aggregate number of Units authorized for issuance upon the redemption of all Deferred Units granted under the Deferred Unit Plan is 2,000,000. A total of 703,622 Units have been issued upon the redemption of Deferred Units issued under the Deferred Unit Plan. SmartREIT has also issued a further 655,302 Deferred Units which have not yet been redeemed, leaving 641,076 Deferred Units available for future grants (assuming that all outstanding Deferred Units are redeemed for Units). The Deferred Units granted under any Inducement Award Agreement are deducted from the number of Deferred Units reserved for future grants under the Deferred Unit Plan.
- (2) SmartREIT may, from time to time, grant awards of Deferred Units under Inducement Award agreements. Except as otherwise specified in an Inducement Award agreement, such awards are granted upon the terms and conditions set out in the Deferred Unit Plan.
- (3) Under the LTIP, all LTIP Units are forthwith paid out in cash upon vesting. The LTIP does not entitle any participant thereunder to receive any Units, although the payout value of the LTIP Units are calculated in part by reference to the market value of the Units.

### *Deferred Unit Plan*

The Deferred Unit Plan is administered by the Corporate Governance and Compensation Committee. The purpose of the Deferred Unit Plan is to promote a greater alignment of interests between the Trustees, officers and employees of SmartREIT and/or its subsidiaries and Unitholders.

Each person eligible to participate is given the right to elect to be a participant of the Deferred Unit Plan. A person who elects to be a participant will be paid the amount set out in an election notice delivered by the participant to SmartREIT, which cannot exceed any limit in effect as determined by the Corporate Governance and Compensation Committee and initially cannot exceed:

- (b) in respect of a Trustee or a named executive officer, the annual bonus or annual board retainer (including committee fees, attendance fees and additional fees and retainers to committee chairs), as applicable, paid by SmartREIT to that Trustee or named executive officer for services rendered in a calendar year; and
- (c) in respect of other senior management, 50% of the annual bonus paid by SmartREIT to that employee for services rendered in a calendar year;

(the "**DUP Elected Amount**") in the form of Deferred Units in lieu of cash. SmartREIT will match the DUP Elected Amount for each participant such that the number of Deferred Units issued to each participant will be equal in value to two times the DUP Elected Amount ("**Matching Deferred Units**") (i.e., if a participant elects to be paid \$100 of their annual bonus or Trustee fees in the form of Deferred Units, SmartREIT matches that election by issuing that the participant a further \$100 worth of Matching Deferred Units, subject to certain vesting conditions).

The number of Deferred Units (including fractional Deferred Units) granted at any particular time under the Deferred Unit Plan will be calculated by dividing (i) the dollar amount of a participant's DUP Elected Amount by

(ii) the market value of a Unit on the award date calculated based on the ten day volume weighted average trading price of the Units.

Deferred Units are not considered Units and do not entitle a participant to any Unitholder rights. One Deferred Unit is equivalent to one Unit. A participant may designate a beneficiary for purposes of the Deferred Unit Plan by delivering a notice to the Chief Financial Officer of SmartREIT.

Generally, Deferred Units (other than Matching Deferred Units and Deferred Units received as distribution equivalents) granted to participants are fully vested when granted. Matching Deferred Units granted to Trustees vest immediately upon grant. Matching Deferred Units granted to other participants vest in accordance with the following schedule:

- (a) 50% of the Matching Deferred Units vest on the third anniversary of the grant;
- (b) 25% of the Matching Deferred Units vest on the fourth anniversary of the grant; and
- (c) 25% of the Matching Deferred Units vest on the fifth anniversary of the grant.

Unvested Deferred Units credited to a participant vest immediately and are redeemable by the participant (or his or her beneficiary) on the date the participant ceases to be an officer or employee of SmartREIT or a subsidiary of SmartREIT for any reason other than termination for cause or voluntary resignation unless otherwise provided for in the participant's employment agreement. In the case of termination for cause or voluntary resignation, all of the participant's unvested Deferred Units will be forfeited and cancelled as of the termination date.

A participant's vested Deferred Units may be redeemable in whole or in part on the date the participant files a written notice of redemption with the Chief Financial Officer of SmartREIT. The participant will receive, within five business days after the termination date or redemption date, as applicable, a whole number of Units equal to the whole number of vested Deferred Units of the participant, net of any applicable withholding taxes. Participants have no right to receive any fractional Units or any cash payment in lieu of fractional Units. The Deferred Units will be cancelled upon the issuance of Units upon redemption. Alternatively, a participant may elect to receive the cash equivalent of some or all of the Deferred Units to be redeemed, in which event SmartREIT will arrange to sell the Units issued upon redemption on behalf of the participant.

Whenever cash distributions are paid on Units, additional Deferred Units will be credited to the participant's Deferred Unit account as distribution equivalents. The number of additional Deferred Units will be calculated by dividing (i) the amount determined by multiplying (a) the number of Deferred Units in the participant's Deferred Unit account on the record date for the payment of the distribution by (b) the distribution paid per Unit, by (ii) 97% of the market value of a Unit on the distribution payment date calculated based on the ten day volume weighted average trading price of the Units. Such additional Deferred Units granted as distribution equivalents vest in the same manner in proportion to the underlying Deferred Units to which they relate.

As of December 31, 2016, SmartREIT had 130,132,036 Units outstanding (not including the 25,554,259 Units issuable upon the exercise or conversion of the Exchangeable Securities outstanding). The aggregate number of Units authorized for issuance upon redemption of all Deferred Units granted under the Deferred Unit Plan cannot exceed 2,000,000, or approximately 1.5% of the outstanding Units of SmartREIT as at December 31, 2016, or any greater number of Units as may be determined by the Board and approved by the Unitholders and, if required, by any relevant stock exchange or other regulatory authority. However, (i) at no time can the number of Units reserved for issuance to insiders of SmartREIT pursuant to outstanding Deferred Units, together with the number of Units reserved for issuance to such persons pursuant to any other compensation arrangements, exceed 10% of the then outstanding Units; and (ii) the number of Units issued to insiders of SmartREIT pursuant to outstanding Deferred Units together with the number of Units issued to such persons pursuant to any other compensation arrangements, within any one year period, cannot exceed 10% of the then outstanding Units.

#### ***Inducement Award Agreements***

SmartREIT may grant awards of Deferred Units to new officers of SmartREIT under an Inducement Award agreement with the approval of the Board. The purpose of the Inducement Award agreements is to induce persons not previously employed and not previously an insider of SmartREIT to become a member of SmartREIT's executive team. Except as otherwise specified in an Inducement Award agreement, the awards are granted upon the terms and conditions set out in the Deferred Unit Plan. Deferred Units granted under the Inducement Award agreements are deducted from the number of Deferred Units reserved for future grants under the Deferred Unit Plan.

### *Long Term Incentive Plan*

The LTIP is administered by the Board, which may delegate all or any of its powers to the Corporate Governance and Compensation Committee. The purpose of the LTIP is to provide officers and key employees of SmartREIT with the opportunity to acquire “Performance Units” under the LTIP (“**LTIP Units**”) in order to allow them to participate in the long-term success of SmartREIT and to promote a greater alignment of their interests with the interests of the Unitholders. These goals are achieved by linking a component of the participants’ compensation to the price performance of the Units compared to the Peer Group and to the distributions paid on the Units.

LTIP Units vest on the third calendar year-end after the grant date and are settled for cash, with the amount of the payment determined based on performance over the specified period of time as an incentive to contribute to SmartREIT’s long-term success. LTIP Units are non-transferable and non-assignable.

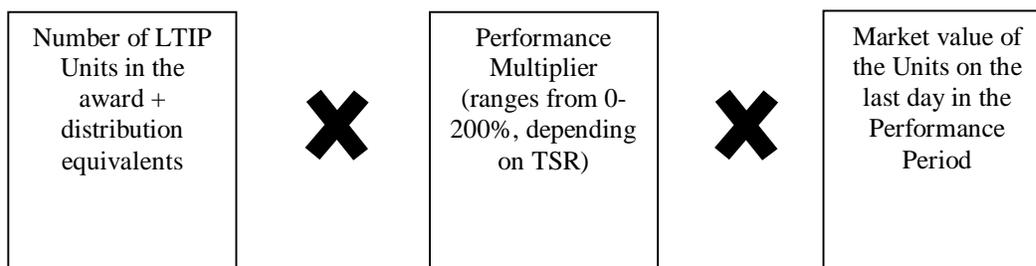
The Board may award LTIP Units to any eligible participant. The number of LTIP Units (including fractions) to be credited to each participant’s account is determined by the Board in its sole discretion in accordance with the LTIP and having regard to the market value of the Units at the time of the award calculated based on the ten day volume weighted average trading price of the units or shares.

LTIP Units are not considered Units or other securities of SmartREIT and do not entitle a participant to Unitholder or other securityholder rights.

Unless otherwise specified by the Board at the time of granting an award of LTIP Units as reflected in the applicable award notice, and except as otherwise provided under the LTIP, each LTIP Unit will vest on December 31 of the second year following the calendar year in which it is awarded.

LTIP Units that are vested will be settled for cash and paid out in immediately available funds within 90 days of the end of the Performance Period of the LTIP Units. The “**Performance Period**” of any series of LTIP Units awarded means the three year period commencing on the first day of the calendar year in which the LTIP Units are awarded and ending on the last day of the second calendar year following such year. For example, if a series of LTIP Units are awarded on February 1, 2016, the Performance Period for the LTIP Units will be the period commencing on January 1, 2016 and ending on December 31, 2018.

The amount that is payable to a participant at the conclusion of the Performance Period is a function of three factors: (1) a Performance Multiplier (defined below) based on the TSR (defined below) of SmartREIT relative to the Peer Group, (2) the market value of the Units on the last day of the Performance Period calculated based on the ten day volume weighted average trading price of the Units, and (3) the per Unit amount of monthly distributions on the Units during the Performance Period. The value paid to each participant is equal to:



Whenever cash distributions are paid on the Units, additional LTIP Units will be credited to the participant’s account as distribution equivalents based on the market value of the Units on the applicable distribution date calculated based on the ten day volume weighted average trading price of the Units. The distribution equivalents will vest and be settled for cash on the same schedule and in the same manner as, and in proportion to, the LTIP Units to which they relate.

The “**Performance Multiplier**” is determined with reference to the Peer Group as follows:

<i>Performance Multiplier</i>	<i>SmartREIT’s TSR Relative to the TSR for the Peer Group</i>
0%	Below 40 <sup>th</sup> percentile
75%	at 40 <sup>th</sup> percentile
100%	at 50 <sup>th</sup> percentile
200%	at 90 <sup>th</sup> percentile or above

“**TSR**” means, in respect of any entity for any Performance Period, the return that would have been realized on an investment in the units or shares of the entity over the Performance Period assuming the reinvestment of cash distributions or dividends paid during the period and shall be calculated by comparing the market Value of the units or shares of the entity on the first day in the Performance Period to the market value of the units or shares of the entity on the last day in the Performance Period, with distributions and dividends assumed to be reinvested based on the market value of the units or shares of the entity in effect on each dividend payment date, all as determined by the Board, provided that where the Performance Period of three years has elapsed and SmartREIT’s TSR for the Performance Period is less than 6.1%, the Performance Multiplier shall not exceed 100%. Market value is calculated based on the ten day volume weighted average trading price of the relevant security.

In addition, unless otherwise determined by the Board prior to payment in respect of an award of LTIP Units, if at any time in the final calendar year of the Performance Period the per Unit amount of monthly cash distributions paid on the Units (as adjusted for any subdivision, consolidation, dividends paid in the form of Units or units or stock of another entity, capital reorganization, reclassification, exchange or other change with respect to the Units, or a consolidation, amalgamation merger, spin-off, sale lease or exchange of all or substantially all of the property of SmartREIT or other distribution of SmartREIT’s assets to Unitholders) is below the per Unit amount of monthly distributions paid on the Units in effect on the award date for such LTIP Units, such LTIP Units shall be forfeited.

If a participant resigns (other than in the course of retirement) or is terminated for cause, any unvested LTIP Units will terminate without payment. In the case of the retirement of a participant, any unvested LTIP Units will terminate without payment unless the Board determines at its discretion that such LTIP Units will continue to vest in accordance with the original vesting schedule and will be settled for cash at the end of their respective Performance Periods in the manner described above. If a participant’s employment or service is terminated without cause, any vested LTIP Units will be settled for cash in the manner described above and any unvested LTIP Units will terminate without payment.

If a participant becomes disabled, any unvested LTIP Units will vest on a pro-rated basis, based on the whole number of months from the start of the Performance Period for such LTIP Units to the date that the participant ceased active employment, divided by 36, and such pro-rated LTIP Units will vest in accordance with their original vesting schedule and will be settled for cash following their respective Performance Period in the manner described above. Any of the participant’s LTIP Units not vested in accordance with the foregoing will terminate without payment.

If a participant dies, for LTIP Units awarded in the year of death, a pro-rated number of such LTIP Units based on the number of whole months lapsed in the Performance Period for such LTIP Units shall vest and become payable based on the market value of such LTIP Units on the date of death. For the LTIP Units awarded in a year prior to the year of death, the Performance Period in respect of such LTIP Units will be deemed to have ended on December 31 of the year prior to the year of death, and the amount payable in respect of such LTIP Units will be equal to (i) the number of such LTIP Units, multiplied by (ii) the applicable Performance Multiplier, multiplied by (iii) the market value of the Units at the end of the applicable Performance Period.

Notwithstanding the foregoing, the Board has the discretion to vary the manner in which LTIP Units vest for any participant. The participant’s employment or service agreement will govern in the event of any conflict between the provisions of the LTIP and the participant’s employment or service agreement relating to the treatment of LTIP Units on termination of employment.

As of December 31, 2016, 119,887 LTIP Units have been awarded pursuant to the LTIP.

## TRUSTEE COMPENSATION

### General

The Trustees, other than any Trustee who is an employee of SmartREIT, are entitled to compensation for their services rendered to SmartREIT in their capacities as Trustees. The following table summarizes the fees paid to such Trustees by SmartREIT for services during the 2016 financial year.

Item	Fee
Annual Retainer – Trustee	\$40,000
Annual Retainer – Chair of Board	Plus \$35,000
Annual Retainer – Lead Independent Trustee	Plus \$35,000
Annual Retainer – Chair of Investment Committee	Plus \$5,000
Annual Retainer – Chair of Corporate Governance and Compensation Committee	Plus \$7,500
Annual Retainer – Chair of the Audit Committee	Plus \$10,000
Attendance of Board or Committee Meetings (other than Audit Committee Meetings)	Plus \$2,000 per meeting
Attendance of Audit Committee Meetings	Plus \$2,500 per meeting
Out of Town Travel to Attend Board or Committee Meeting	Plus \$500 per meeting

The Trustees are also entitled to be reimbursed for reasonable travel and other expenses properly incurred by them in attending meetings of the Trustees or any committee thereof or otherwise incurred by them in connection with their services as Trustees.

### Deferred Unit Plan

SmartREIT provides its Trustees with the right to participate in the Deferred Unit Plan. All of the current Trustees have elected to be paid 100% of their Trustee fees in the form of Deferred Units in lieu of cash pursuant to the Deferred Unit Plan. This is representative of the Trustees being fully committed to SmartREIT's long-term success. Grants of Deferred Units to Trustees vest immediately. For further information, see "Executive Compensation – Equity Compensation Plan Information – Deferred Unit Plan".

### 2016 Compensation for Trustees

#### *Trustee Compensation Table*

The following table sets forth all compensation earned for the most recently completed financial year of SmartREIT to each of the Trustees, other than the Chief Executive Officer of SmartREIT.

Name <sup>(1)</sup>	Fees Breakdown						Allocation of Trustee Fees	
	Trustee Retainer (\$)	Committee Chair Retainer (\$)	Board and Committee Attendance Fees (\$)	Travel Fees (\$)	Unit-Based Awards (Deferred Units) (\$)	Total (\$)	Portion of Cash Fees taken in Deferred Units (%)	Total Value of Deferred Units <sup>(2)</sup> (\$)
Mitchell Goldhar	40,000	nil <sup>(3)</sup>	32,000	n/a	72,000	144,000	100	144,000
Jamie McVicar	40,000	7,500	52,000	2,000	101,500	203,000	100	203,000
Kevin Pshebniski	40,000	n/a	40,000	2,000	82,000	164,000	100	164,000
Michael Young	40,000	55,000 <sup>(4)</sup>	48,000	2,500	145,500	291,000	100	291,000
Gregory Howard	40,000	n/a	46,000	n/a	86,000	172,000	100	172,000
Gary Foster	40,000	10,000	44,000	n/a	94,000	188,000	100	188,000

Notes:

- (1) Huw Thomas, the Chief Executive Officer, has been a Trustee since April 1, 2011, but does not currently receive any compensation in that capacity. For a summary of the compensation paid by SmartREIT to Mr. Thomas, see the section titled "Executive Compensation – 2016 Compensation for the Named Executive Officers".

- (2) Includes the value at grant date of compensation paid in 2016 in the form of Deferred Units (including Matching Deferred Units), but does not include the value of Deferred Units received as distribution equivalents. For further information, see “Executive Compensation – Equity Compensation Plan Information – Deferred Unit Plan”.
- (3) Mr. Goldhar waived his right to the annual retainer payable to the Chair in respect of 2016.
- (4) Amount includes retainer earned as Lead Independent Trustee. Mr. Young was appointed Lead Independent Trustee effective May 28, 2015. The Board approved an annual retainer of \$35,000 for the Lead Independent Trustee; however, Mr. Young was paid a pro-rated retainer for services rendered in 2015 based on an annual retainer of \$5,000. The balance of the 2015 pro-rated retainer was paid in 2016.

### ***Incentive Plan Awards – Deferred Units***

The following table indicates the number of Deferred Units that vested during 2016 relating to compensation earned in 2015 and the total value of vested Deferred Units that have not been paid out as of December 31, 2016 for each Trustee, other than the Chief Executive Officer of SmartREIT. SmartREIT has combined information from two mandatory tables: *Incentive plan awards – Value vested or earned during the year* and *Outstanding unit-based and option-based awards*, into the table below.

Name <sup>(1)</sup>	Unit-Based Awards <sup>(2)</sup>	
	Value Vested During The Year <sup>(3)</sup> (\$)	Market or Payout Value of Vested Unit-Based Awards Not Paid Out or Distributed <sup>(4)</sup> (\$)
Mitchell Goldhar	93,915	1,622,156
Jamie McVicar	174,133	1,896,703
Kevin Pshebniski	242,613	2,228,228
Michael Young	274,081	371,017
Gregory Howard	54,783	61,362
Garry Foster	294,461	946,840

Notes:

- (1) Huw Thomas, the Chief Executive Officer, has been a Trustee since April 1, 2011, but does not currently receive any compensation in that capacity. For a summary of the compensation paid by SmartREIT to Mr. Thomas, see the section titled “Executive Compensation – 2016 Compensation for the Named Executive Officers”.
- (2) These awards were issued pursuant to the Deferred Unit Plan and the figures include Deferred Units received as distribution equivalents under the Deferred Unit Plan. For further information, see “Executive Compensation – Equity Compensation Plan Information – Deferred Unit Plan”.
- (3) Based on the market value of the Units as at the grant date.
- (4) Represents all of the Trustees’ Deferred Units that have vested and not been redeemed in accordance with the Deferred Unit Plan. Values are based on the market value of the Units as at December 31, 2016.

## **OTHER INFORMATION**

### **Indebtedness of Trustees and Officers**

The table below sets out, as at the date indicated, the aggregate indebtedness of the current and former Trustees, directors and executive officers of SmartREIT and its subsidiaries, any proposed Trustee, and any associate of any one of them, to:

- (a) SmartREIT or any of its subsidiaries; or
- (b) another entity which such indebtedness is the subject of a guarantee, support agreement, letter of credit or other similar arrangement or understanding provided by SmartREIT or any of its subsidiaries.

Aggregate Indebtedness as at March 15, 2017		
Purpose	To SmartREIT or its Subsidiaries (\$)	To Another Entity (\$)
Mortgages/Loans/Notes	138,425,000	n/a

Other than as set out in the table below, no individual who is, or at any time during the most recently completed financial year of SmartREIT was, a Trustee, director or executive officer of SmartREIT or one of its subsidiaries, nor any proposed Trustee, nor any associate of any one of them:

- (a) is, or was at any time since the beginning of the most recently completed financial year of SmartREIT, indebted to SmartREIT or any of its subsidiaries; or
- (b) is, or was at any time since the beginning of the most recently completed financial year of SmartREIT, indebted to another entity, which such indebtedness is, or was during such time, the subject of a guarantee, support agreement, letter of credit or other similar arrangement or understanding provided by SmartREIT or any of its subsidiaries.

Name and Principal Position	Involvement of SmartREIT or Subsidiary	Commitment (\$)	Largest Amount Outstanding During the Year Ending December 31, 2016 (\$)	Amount Outstanding as at March 15, 2017 (\$)	Security For Indebtedness
Penguin Group <sup>(1)</sup>	Lender	284,450,000	124,778,000 <sup>(2)</sup>	125,583,000	First or second charges on title, assignments of rents and leases, GSA, and indemnities and guarantees
Penguin Group <sup>(1)</sup>	Lender	2,979,000	2,979,000 <sup>(3)</sup>	2,979,000	Second charge against the property and guarantees
Penguin Group <sup>(1)</sup>	Lender	20,000,000	9,320,000 <sup>(4)</sup>	9,515,000	Unsecured. Borrower has directed that earn-out payments to the borrower will be paid to repay amounts owing under the facility.

Notes:

- (1) The Penguin group is controlled by Mitchell Goldhar, a Trustee.
- (2) Mortgages receivable of \$124,778,000 as at December 31, 2016 (2015 - \$127,333,000) have been provided pursuant to agreements with certain members of the Penguin group in which SmartREIT will lend up to \$284,450,000 (2015 - \$278,897,000) for use in acquiring and developing 9 (2015 - 9) properties in Ontario, Québec and British Columbia. These mortgages accrue interest monthly at both variable and fixed rates and the principal amounts are due at the maturity of the mortgages at various dates between 2017 and 2024. Six of these mortgages have variable rates ranging from bankers' acceptance rates plus 1.75% to 4.20% (2015 - 1.75% to 2.00%) (such total rates not to exceed 6.75% to 7.00% per annum), and for one of the mortgages, interest is determined based on a quarterly calculation of SmartREIT's weighted average cost of capital plus 25 basis points (such rate not to exceed 6.75% per annum). Two of the mortgages have fixed rates at an interest rate of 7.50% (2015 - 7.50%). The mortgages are secured by first or second charges on properties, assignments of rents and leases, and general security agreements. In addition, other members of the Penguin group have provided certain limited indemnities and guarantees on some mortgages receivable.
- During the year, \$7,494,000 (2015 - \$8,085,000) was funded, offset by repayments of \$10,049,000 (2015 - \$17,862,000).
- For five of these mortgages totalling \$89,605,000, SmartREIT has an option to acquire 50% of the Penguin group's interest in five properties, which represent a 50% interest in four of the properties and a 25% interest in one property, upon substantial completion at an agreed upon formula using the net operating rents and a calculated capitalization rate. For four of the five properties the capitalization rate is subject to a minimum rate ranging from 4.60% to 5.10% and a maximum rate ranging from 6.60% to 7.10%. For one of these properties, the capitalization rate is a market capitalization rate.
- (3) Notes receivable at December 31, 2016 of \$2,979,000 (2015 - \$2,928,000) have been provided to certain members of the Penguin group. These secured demand notes bear interest at 9% per annum. During the year, \$51,000 (2015 - \$nil) was funded.
- (4) Loan receivable at December 31, 2016 of \$9,320,000 (2015 - \$9,786,000) has been provided pursuant to a loan agreement with certain members of the Penguin group with a total loan facility of \$20,000,000. The loan bears interest at 10 basis points plus the lower of: (i) the Canadian prime rate plus 45 basis points, and (ii) the Canadian Dealer Offer Rate plus 145 basis points.

## **Interests of Management and Others in Material Transactions**

Except as set out below and in the section of the Circular entitled “Indebtedness of Trustees and Officers” or in the section entitled “Corporate Structure – Additional Agreements with the Penguin Group” in SmartREIT’s most recent annual information form, which section is incorporated by reference in the Circular, no Trustee, director or executive officer of SmartREIT or its subsidiaries, or insider of SmartREIT, or any associate or affiliate of any of the foregoing persons, has or had any material interest in any material transaction with SmartREIT since the commencement of SmartREIT’s last financial period. A copy of the annual information form may be found on SEDAR at [www.sedar.com](http://www.sedar.com).

## **Insurance for Trustees and Officers**

SmartREIT maintains trustees’ and officers’ liability insurance for the Trustees and officers of SmartREIT. The current trustees’ and officers’ liability insurance policies are in effect until July 1, 2017. The policy limit of \$15,000,000 is coupled with excess layers, to create a total full policy limit of \$50,000,000. There is an additional limit of \$20,000,000 of Excess Side A DIC (Difference in Conditions) coverage with an annual premium of \$25,950. Therefore, the total limit for the trustees’ and officers’ liability insurance policy is \$70,000,000. No portion of the premium is directly paid by any of the Trustees. Under the policy, there is no deductible for individual Trustees, but a deductible of \$100,000 per loss must be absorbed by SmartREIT, except for securities claims, which have a \$250,000 deductible. No claims have been made or paid under such policy to date.

## **Additional Information**

Additional information relating to SmartREIT may be found on SEDAR at [www.sedar.com](http://www.sedar.com) including additional financial information which is provided in SmartREIT’s consolidated comparative financial statements and management’s discussion and analysis for its most recently completed financial year. Unitholders may contact SmartREIT at any time to receive a copy of SmartREIT’s consolidated comparative financial statements and management’s discussion and analysis for its most recently completed financial year. Any such request should be made to the Chief Financial Officer of SmartREIT, 700 Applewood Crescent, Suite 200, Vaughan, Ontario L4K 5X3 Facsimile: 905-326-0783 or by email to [investorrelations@smartreit.com](mailto:investorrelations@smartreit.com).

## **PARTICULARS OF MATTERS TO BE ACTED UPON**

### **Financial Statements**

The audited financial statements of SmartREIT for the year ended December 31, 2016 and the auditor’s report thereon will be tabled before the Unitholders at the Meeting for the consideration of the Unitholders. The audited financial statements have been approved by the Audit Committee and by the Board.

### **Election of Trustees**

Pursuant to the Declaration of Trust, for so long as the MG Entities collectively beneficially own at least 5% but less than 15% of the issued and outstanding Units and Special Voting Units, in aggregate, they are entitled to appoint one Trustee to the Board and the number of Trustees on the Board will be limited to eight; for so long as the MG Entities collectively beneficially own at least 15% but less than 25% of the issued and outstanding Units and Special Voting Units, in aggregate, they are entitled to appoint a total of two Trustees to the Board and the number of Trustees on the Board will be limited to a maximum of eight; and for so long as the MG Entities are the beneficial owners of at least 25% of the issued and outstanding Units and Special Voting Units of SmartREIT, in aggregate, they are entitled to appoint a total of three Trustees to the Board and the number of Trustees on the Board will be limited to a maximum of nine.

At the Meeting, it is proposed that Huw Thomas, Jamie McVicar, Michael Young, Kevin Pshebniski and Garry Foster be elected as Trustees of SmartREIT. Mr. Goldhar has confirmed that Mitchell Goldhar and Gregory Howard will be the MG Entities’ appointees to the Board. Although the MG Entities have the right to appoint three Trustees under the Declaration of Trust, they have only appointed two Trustees. Each Trustee will cease to hold office following the closing of the Meeting, unless re-elected at the Meeting or re-appointed by the MG Entities.

In the event that (i) the MG Entities decide to have a third Trustee as its nominee, SmartREIT will add one further additional Trustee, or (ii) the Board decides to add an additional Trustee, the MG Entities will add a third Trustee as

its nominee, so that, in either case, the MG Entities will have a total of three Trustees on the board of nine total Trustees.

### **Re-Appointment of the Auditor**

It is proposed that PricewaterhouseCoopers LLP, Chartered Professional Accountants, of Toronto, Ontario, be re-appointed to serve as the auditor of SmartREIT until the next annual meeting of Voting Unitholders. It is further proposed that the Board be authorized to fix the auditor's remuneration. PricewaterhouseCoopers LLP has been SmartREIT's auditor since September 30, 2005.

### **Approach to Executive Compensation**

SmartREIT's executive compensation program has the objectives of attracting and retaining highly qualified executives, motivating their performance and aligning the interests of executives with the interests of Unitholders. Compensation under the program is linked to achieving both current and longer-term goals of SmartREIT and to optimizing long-term total Unitholder return through sustaining and growing SmartREIT's distributions. SmartREIT believes that its compensation programs are consistent with those objectives, and are in the best interest of Unitholders. See "Compensation Discussion and Analysis" for detailed disclosure of SmartREIT's executive compensation program.

The Board has adopted a policy to hold a non-binding advisory vote on the approach to executive compensation as disclosed in the management information circular at each annual meeting. This Unitholder vote forms an important part of the ongoing process of engagement between Unitholders and the Board on executive compensation. At the meeting of Voting Unitholders held on June 10, 2016, Voting Unitholders holding over 98% of the votes cast at the meeting voted in favour of SmartREIT's approach to executive compensation.

At the Meeting, Voting Unitholders will have an opportunity to vote on SmartREIT's approach to executive compensation through consideration of the following advisory resolution:

Be it resolved, on an advisory basis and not to diminish the role and responsibilities of the board of trustees of Smart Real Estate Investment Trust, that the approach to executive compensation disclosed in the management information circular of Smart Real Estate Investment Trust dated April 13, 2017 is accepted.

As the vote is advisory, it will not be binding upon the Board; however, the Corporate Governance and Compensation Committee will take into account the results of the vote when considering future executive compensation arrangements. **The Board recommends that Unitholders vote in favour of the above resolution.**

### **Amendments to the Declaration of Trust**

The Trustees customarily review the terms of the Declaration of Trust on a regular basis and, when appropriate propose amendments to the Declaration of Trust, certain of which require the approval of Unitholders. A broad range of amendments are proposed to the Declaration of Trust, which are described in greater detail below. Generally, the amendments are proposed in order to:

- (a) further align the Declaration of Trust with evolving governance best practices, which include introducing certain rights in favour of Unitholders in a manner generally consistent with those available to shareholders of a corporation pursuant to the *Canada Business Corporations Act* ("CBCA") and enhancing Unitholder rights respecting the process for and procedures at Unitholder meetings;
- (b) implement a policy requiring advance notice to be given to SmartREIT of Unitholder proposals relating to the nomination of Trustees;
- (c) clarify certain rights of SmartREIT's significant Unitholder;
- (d) update SmartREIT's operating policies in respect of environmental audits; and
- (e) make changes of a minor or clerical nature.

A blacklined copy of the Declaration of Trust showing the proposed amendments is attached hereto as Schedule “B”.

### *Canadian Coalition for Good Governance Best Practices*

SmartREIT assesses the continuing development of governance best practices on an ongoing basis, and in connection with its ongoing review it has assessed its current Declaration of Trust provisions and compared the rights and procedures available under it to the rights and procedures that are available to shareholders of a corporation under the CBCA. In connection with the foregoing, SmartREIT reviewed the draft provisions set forth in the Model Declaration of Trust Provisions prepared by the Canadian Coalition for Good Governance (the “CCGG”) in November 2015. The CCGG prepared the Model Declaration of Trust Provisions based on the CCGG’s prioritization of the investor rights which it believes to be important, with the stated objective of preparing a form of model declaration of trust provisions that can be adopted by all Canadian public trusts to ensure uniform rights to investors. The Trustees have determined that investors in SmartREIT should enjoy certain rights that are available to a shareholder of a corporation pursuant to the CBCA immediately while they further consider evolving governance practices. The Trustees believe that enhancing the procedures for and conduct at Unitholder meetings consistent with the provisions of the CBCA is a priority that is beneficial to Unitholders and SmartREIT. For a trust, these rights and procedures must be provided for in the declaration of trust because they are not provided pursuant to any statute as trusts are not subject to the provisions of the CBCA or any other corresponding statute. Consequently, the Trustees have determined that it is appropriate at this time for SmartREIT to seek the approval of Unitholders to amend the Declaration of Trust to include certain rights and procedures in favour of Unitholders in a manner that is consistent with those same rights as are available to shareholders of a corporation governed by the CBCA. The Trustees have primarily considered the provisions of the CBCA in their analysis due to its federal and national scope, rather than any particular provincial statute. The Trustees also believe that these changes will further enhance SmartREIT as an investment vehicle because it provides Unitholders with rights consistent with those afforded to shareholders under corporate statutes, particularly in relation to the conduct of meetings.

**Notwithstanding the foregoing, as a trust is governed by its declaration of trust (rather than statute), if the proposed amendments are adopted as contemplated they will be granted pursuant to the Declaration of Trust as a contractual right afforded to Unitholders. Similar to other existing rights contained in the Declaration of Trust (i.e. the take-over bid provisions and conflict of interest provisions), making these rights and certain procedures available by contract is structurally different from the manner in which the equivalent rights or procedures are made available to shareholders of a corporation, who benefit from those rights or procedures by the corporate statute that governs the corporation, such as the CBCA. As such, there is no certainty as to how these rights or procedures may be treated by the courts in the non-corporate context or that a Unitholder will be able to enforce the rights in the manner contemplated by the proposed amendments. Furthermore, the manner in which courts will treat these rights and procedures will be at the discretion of the courts, and the courts may choose to not accept jurisdiction to consider any claim contemplated in the proposed provisions.**

### *Proposed Amendments*

In order to further align the Declaration of Trust with evolving governance best practices, it is proposed that the Declaration of Trust be amended to incorporate the following proposed changes:

Proposed Amendments	Section(s) in the Revised Declaration of Trust
<p><b>Election of Trustees</b></p> <p>Clarification that Trustees shall be elected annually by the Unitholders for a term expiring at the close of the next annual meeting of Unitholders following their election consistent with SmartREIT’s current practice with respect to elected Trustees.</p>	3.2, 3.5
<p><b>Unitholder Meeting Matters</b></p> <p><i>Calling a Meeting</i></p> <ul style="list-style-type: none"> <li>• Provide SmartREIT with the ability to apply to a court for an order to extend the date for calling an annual meeting.</li> <li>• Reduce the ownership threshold for Unitholders to requisition SmartREIT Trustees to call a Unitholder meeting from 10% to 5%.</li> <li>• Provide that SmartREIT shall reimburse a Unitholder for expenses reasonably incurred by it in requisitioning, calling and holding a meeting if certain criteria are met.</li> </ul> <p><i>Notice of Meetings</i></p> <p>Amend the time period for giving notice to Unitholders of a Unitholder meeting, prescribe the information that must be included in a notice of special meeting, and require SmartREIT to provide notice of an adjourned meeting if the original meeting is adjourned (by one or more adjournments) for an aggregate of 30 days or more.</p> <p><i>Unitholder Proposals</i></p> <ul style="list-style-type: none"> <li>• Make changes to permit Unitholders to submit proposals consistent with the right of shareholders under the CBCA and the processes relating thereto in the CBCA.</li> <li>• Provide for the right of a Unitholder to submit notice to SmartREIT of any matter that the person proposes to raise at an annual meeting (a “<b>Proposal</b>”) and to discuss at the meeting any matter with respect to which the person would have been entitled to submit a Proposal.</li> <li>• Set out the procedures under which the Proposal process is governed, including, without limitation, the following: <ul style="list-style-type: none"> <li>○ a Proposal may include nominations for the election of Trustees if the Proposal is made in compliance with the Advance Notice Policy (as described below);</li> <li>○ to be eligible to submit a Proposal, a person must (i) be the beneficial owner, for at least the six-month period immediately prior to the day on which the Proposal is submitted, of at least 1% of the total number of outstanding Voting Units on the day the Proposal is submitted or Voting Units whose fair market value, as determined at the close of business on the day before the Proposal is submitted, is at least \$2,000; or (ii) have the support of persons who, in the aggregate (and whether or not including the person submitting the Proposal), for at least the same six-month period, are beneficial owners of an aggregate of at least 1% of the total number of outstanding Voting Units as of the date the Proposal is submitted or Voting Units whose fair market value, as determined at the close of business on the day before the Proposal is submitted, is at least \$2,000;</li> <li>○ a Proposal must be accompanied by certain prescribed information, including the name and address of the submitting person and such person’s supporters, if applicable, and the number of Voting Units held or owned by such person or persons; and</li> </ul> </li> </ul>	<p>8.1, 8.2</p> <p>8.4</p> <p>8.3</p>

Proposed Amendments	Section(s) in the Revised Declaration of Trust
<p>o SmartREIT shall set out the Proposal in its information circular delivered in connection with its annual meeting and, if requested by the submitting person, include a statement in support of the Proposal by such person. However, SmartREIT shall not be obligated to include such materials/information in its circular if (a) the Proposal is submitted to SmartREIT less than 90 days before the first anniversary date of the prior year's mailing of notice of meeting; (b) it clearly appears that the primary purpose of the Proposal is to enforce a personal claim or redress personal grievance or the Proposal does not relate in a significant way to the business or affairs of SmartREIT; (c) not more than two years prior to the receipt of the Proposal, the submitting person failed to vote at a meeting on a Proposal that, at such persons' request, was included in SmartREIT's circular; (d) substantially the same Proposal was submitted to Unitholders within the preceding five years and did not receive the required support (being 3% of total Voting Units voted if the Proposal introduced at one annual meeting, 6% of total Voting Units voted if the Proposal introduced at two annual meetings, and 10% of total Voting Units voted if the Proposal introduced at three or more annual meetings); or (e) the rights conferred pursuant to these new provisions are being abused to secure publicity.</p>	
<p><i>Quorum</i></p> <ul style="list-style-type: none"> <li>• Amend the quorum for Unitholder meetings from two Unitholders represented in person or by proxy who hold in aggregate at least 10% of the outstanding Voting Units to two Unitholders represented in person or by proxy who hold in aggregate at least 25% of the outstanding Voting Units.</li> <li>• Clarify the procedures where quorum is not present.</li> </ul>	8.5
<p><i>Units held by SmartREIT</i></p> <p>Proposed provisions provide that if SmartREIT or any subsidiary holds any Voting Units, it shall not vote or permit those Voting Units to be voted, absent certain specified circumstances.</p>	8.8
<p><i>Proxies</i></p> <ul style="list-style-type: none"> <li>• Clarify that the Trustees may specify in a notice calling a Unitholder meeting a time period (not exceeding 48 hours) during which time proxies to be used at the meeting must be deposited in order to be voted at the meeting.</li> <li>• Provides requirements for a valid instrument of proxy.</li> <li>• Provide procedures for a Voting Unitholder to revoke a proxy.</li> </ul>	8.10
<p><b>Take Over Bids</b></p> <p>Clarify certain procedural provisions with respect to a take-over bid in a manner consistent with the CBCA.</p>	1.1, 6.27
<p><b>Appointment of Auditors</b></p> <p>Clarification that remuneration of the auditors shall be approved by a majority vote of Unitholders, or may be fixed by the Trustees if not fixed by the Unitholders.</p>	16.4
<p><b>Information Available to Unitholders</b></p> <p>Expand information access rights of Unitholders.</p>	16.12, 16.13, 16.14

### *Advance Notice Policy*

SmartREIT is proposing to make certain changes to the Declaration of Trust to implement an advance notice policy (the “**Advance Notice Policy**”), which sets out the procedures for any Unitholder who intends to nominate any person for election as a Trustee. The Trustees believe that requiring a Unitholder to give advanced notice to SmartREIT of proposals relating to the nomination of Trustees will facilitate a clear and equitable framework for nominating Trustees and is consistent with ongoing developments in governance best practices, including the recommendations of Institutional Shareholder Services Inc., an influential corporate governance and proxy advisor.

#### *Proposed Amendments*

In order to implement the Advance Notice Policy, it is proposed that the Declaration of Trust be amended to incorporate the following proposed changes:

<b>Proposed Amendments</b>	<b>Section(s) in the Revised Declaration of Trust</b>
<p><b>Advance Notice Policy</b></p> <ul style="list-style-type: none"><li>• Introduce advance notice provisions requiring a Unitholder who wishes to nominate persons for election as a Trustee to provide advance notice of such nominations to the Trustees.</li><li>• In the case of an annual meeting, such notice must be given not less than 30 days prior to the date of the annual meeting, but 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 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 10th day following the date of that first public announcement.</li><li>• In the case of a special meeting (which is not also an annual meeting) of Unitholders, such notice must be given not later than the close of business on the 15th day following the day on which the first public announcement of the date of the special meeting was made.</li><li>• New provisions set forth the procedure for giving notice and the information that must be included in the notice.</li></ul>	3.6

### *Clarifying the Rights of SmartREIT’s Significant Unitholder*

SmartREIT is proposing to make certain changes to the Declaration of Trust to clarify procedural matters relating to the exercise of Mitchell Goldhar’s rights under the Declaration of Trust.

#### *Proposed Amendments*

In order to clarify procedural matters relating to the exercise of Mitchell Goldhar’s rights, it is proposed that the Declaration of Trust be amended to incorporate the following proposed changes:

<b>Proposed Amendments</b>	<b>Section(s) in the Revised Declaration of Trust</b>
<p><b>MG Entities Representative</b></p> <p>Updates to various provisions clarify that actions to be taken by a representative of the MG Entities under the Declaration of Trust are to be taken by Mitchell Goldhar (or another individual designated by Mitchell Goldhar) while he is alive and, if Mitchell Goldhar is not alive, by such individual designated by the MG Entities.</p>	1.1, 3.12, 6.1.5, 10.3, 10.4, 13.3
<p><b>Governance and Compensation Committee</b></p> <p>Provision which provides that the Trustees may consider and approve any matter that the Corporate Governance and Compensation Committee has authority to consider or approve is clarified to provide that such provision does not override the requirement that the actions regarding matters relating to the Chief Operating Officer and Chief Development Officer require unanimous approval of the Corporate Governance and Compensation Committee.</p>	10.4
<p><b>Officers of the Trust</b></p> <p>Changes to clarify that SmartREIT has separated the role of the Chief Executive Officer from the President.</p>	3.11

#### ***Changes to Operating Policies Relating to Environmental Audits***

SmartREIT is proposing to make certain changes to its operating policies contained in the Declaration of Trust to provide for greater flexibility in the acquisition of real property. The proposed changes enable SmartREIT to reasonably rely on recent Phase I environmental audits conducted in respect of properties SmartREIT is looking to acquire by providing the Investment Committee with discretion in determining whether SmartREIT must conduct its own Phase I environmental audit.

#### *Proposed Amendments*

In order to give effect to the foregoing, amendments to section 5.2.11 (*Operating Policies*) are proposed.

#### ***Changes of a Minor or Clerical Nature***

SmartREIT is proposing to make other changes to the Declaration of Trust of a minor or clerical nature, to remove inconsistencies or make minor corrections.

While the Trustees have the authority under section 13.1 of the Declaration of Trust to approve these proposed amendments without Unitholder approval, the Trustees have decided to include these amendments, together with the rest of the amendments being proposed, in the resolution submitted to the Unitholders for approval.

#### *Proposed Amendments*

In order to give effect to the foregoing, amendments to the following sections of the Declaration of Trust as shown in the enclosed blackline are proposed: 1.1 (*Definitions and Interpretation*), 3.3 (*Qualifications of Trustees*), 3.5 (*Election of Trustees*), 3.7 (*Resignation, Removal and Death of Trustees*), 3.12 (*Appointees of MG Entities*), 3.13 (*Certification of Holdings by MG Entities; Cancellation of Rights*), 4.4 (*Standard of Care*), 4.7 (*Conflict of Interest*), 6.1 (*Units*), 6.6 (*Title to Assets of the Trust*), 6.12 (*Certificates*), 6.15 (*Form of Certificate*), 6.17 (*Entry on Register*), 6.21 (*Performance of Trusts*), 6.27 (*Take-Over Bids*), 8.6 (*Voting*), 8.9 (*Record Dates*), 8.11 (*Personal Representatives*), 9.4 (*Voting at Meetings*), 10.3 (*Investment Committee*), 10.4 (*Corporate Governance and Compensation Committee*), 11.3 (*Payment of Distributions*), 15.1 (*Liability and Indemnification of the Trustees*), 15.4 (*Liability of Unitholders and Others*), 16.2 (*Manner of Giving Notice*).

### ***Proposed Resolution***

At the meeting, Unitholders will be asked to vote on the following resolution with or without variation:

#### **Be it resolved as a special resolution that:**

1. The amendments to the declaration of trust of Smart Real Estate Investment Trust (the “**Declaration of Trust**”) substantially as described in the management information circular of SmartREIT dated April 13, 2017 and substantially as reflected in the blackline of the Declaration of Trust attached as Schedule “B” to the management information circular, be and are hereby authorized and approved.
2. The Declaration of Trust is hereby further amended to the extent necessary to reflect and give effect to the foregoing.
3. Any trustee or officer of Smart Real Estate Investment Trust is hereby authorized, for and on behalf of Smart Real Estate Investment Trust, to execute and deliver all documents and instruments and to do all other things as in the opinion of such trustee or officer may be necessary or desirable to implement this resolution and the matters authorized hereby, such determination to be conclusively evidenced by the execution and delivery of any such document or instrument, and the taking of any such action.

The above resolution must be approved by the affirmative vote of two-thirds of the votes cast by all Unitholders entitled to vote at the Meeting present in person or represented by proxy at the Meeting. **The Board believes that the passing of the above resolution is in the best interests of SmartREIT and recommends that the Unitholders vote in favour of the resolution.**

#### **Interest of Certain Persons in Matters to be Acted Upon**

Other than the election of trustees of SmartREIT or as otherwise set out in the Circular, no Trustee, officer or insider of SmartREIT, or any associate or affiliate of any of the foregoing persons, has any material interest, direct or indirect, by way of beneficial ownership of securities or otherwise, in any matter to be acted upon at the Meeting.

#### **Other Business**

Management of SmartREIT is not aware of any matter to come before the Meeting other than the matters referred to in the notice of meeting. However, if any other matter properly comes before the Meeting, the accompanying forms of proxy confer discretionary authority to vote with respect to amendments or variations to matters identified in the notice of meeting and with respect to other matters that properly may come before the Meeting in the best judgement of the persons voting the proxy.

**APPROVAL OF TRUSTEES**

The contents of the Circular have been approved by the Board.

**DATED** at Vaughan, Ontario this 13<sup>th</sup> day of April, 2017.

**BY ORDER OF THE BOARD OF TRUSTEES OF SMART  
REAL ESTATE INVESTMENT TRUST**

By: 

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Huw Thomas  
Trustee and Chief Executive Officer

**SCHEDULE “A”  
MANDATE OF THE BOARD**

**1. Adoption**

The Board of Trustees (the “**Board**”) of SmartREIT Real Estate Investment Trust (the “**Trust**”) adopted this Mandate by resolution dated March 8, 2004.

**2. Policy Statement**

The Board of the Trust has, subject to all of the provisions of the Declaration of Trust of the Trust, as amended from time to time (the “**Declaration of Trust**”), the responsibility to oversee the conduct of the business of the Trust and to oversee the activities of management who are responsible for the day-to-day conduct of the business of the Trust.

**3. Composition and Operation**

The Board operates by delegating certain of its authorities to management and to Committees of the Board and by reserving certain powers to itself all as prescribed by the Declaration of Trust. The Board retains the responsibility of managing its own affairs including selecting its Chairman, nominating candidates for election to the Board, constituting committees of the full Board and determining compensation for the trustees. Subject to the Declaration of Trust and all amendments thereto, the Board may constitute, seek the advice of and delegate powers, duties and responsibilities to committees of the Board.

**4. Responsibilities**

The Board’s fundamental objectives are to enhance and preserve long-term unitholder value, to ensure the Trust meets its obligations on an ongoing basis and that the Trust operates in a reliable manner. In performing its functions, the Board should also consider the legitimate interests its other stakeholders such as employees, customers and communities may have in the Trust. In broad terms, the stewardship of the Trust involves the Board in strategic planning, financial reporting, risk management and mitigation, senior management determination, communication planning and internal control integrity.

**5. Specific Duties**

Subject only to the express limitations contained in the Declaration of Trust including, without limitation sections 5.1 and 5.2 of the Declaration of Trust, and in addition to any powers and authorities conferred by the Declaration of Trust or which the trustees may have by virtue of any present or future statute or rule or law, the Board shall have and may exercise the following powers and authorities (with all defined terms having the meaning prescribed by the Declaration of Trust):

- (a) To retain, invest and reinvest the capital or other funds of the Trust in Real Property of any kind, and to possess and exercise all the rights, powers and privileges appertaining to the ownership of the property of the Trust and to increase the capital of the Trust at any time by the issuance of additional Units for such consideration as they deem appropriate;
- (b) For such consideration as they deem proper, to invest in, purchase or otherwise acquire for cash or other property or through the issuance of Units or through the issuance of notes, debentures, bonds or other obligations or securities of the Trust and hold for investment the entire or any participating interest in mortgages. In connection with any such investment, purchase or acquisition, the Board shall have the power to acquire a share of rents, lease payments or other gross income from or a share of the profits from or a share in the equity or ownership of Real Property;
- (c) To sell, rent, lease, hire, exchange, release, partition, assign, mortgage, pledge, hypothecate, grant security interests in, encumber, negotiate, convey, transfer or otherwise dispose of any or all of the

property of the Trust by deeds, trust deeds, assignments, bills of sale, transfers, leases, mortgages, financing statements, security agreements and other instruments for any of such purposes executed and delivered for and on behalf of the Trust or Trustees by one or more of the Trustees or by a duly authorized officer, employee, agent or any nominee of the Trust;

- (d) To enter into leases, contracts, obligations and other agreements for a term extending beyond the term of office of the Trustees and beyond the possible termination of the Trust or for a lesser term;
- (e) To borrow money from or incur indebtedness to any person; to guarantee, indemnify or act as surety with respect to payment or performance of obligations of third parties; to enter into other obligations on behalf of the Trust; and to assign, convey, transfer, mortgage, subordinate, pledge, grant security interests in, or encumber, the property of the Trust to secure any of the foregoing;
- (f) To lend money, whether secured or unsecured;
- (g) To incur and pay out of the property of the Trust any charges or expenses and disburse any funds of the Trust, which charges, expenses or disbursements are, in the opinion of the Board, necessary or incidental to or desirable for the carrying out of any of the purposes of the Trust or conducting the affairs of the Trust including, without limitation, taxes or other governmental levies, charges and assessments of whatever kind or nature, imposed upon or against the Board in connection with the Trust or the property of the Trust or upon or against the property of the Trust or any part thereof and for any of the purposes herein;
- (h) To deposit funds of the Trust in banks, trust companies and other depositories, whether or not such deposits will earn interest, the same to be subject to withdrawal on such terms and in such manner and by such person or persons (including any one or more Trustees, officers, agents or representatives) as the Board may determine;
- (i) To possess and exercise all the rights, powers and privileges appertaining to the ownership of all or any mortgages or securities, issued or created by, or interest in, any person, forming part of the assets of the Trust, to the same extent that an individual might and, without limiting the generality of the foregoing, to vote or give any consent, request or notice, or waive any notice, either in person or by proxy or power of attorney, with or without power of substitution, to one or more persons, which proxies and powers of attorney may be for meetings or action generally or for any particular meeting or action and may include the exercise of discretionary power;
- (j) To elect, appoint, engage or employ officers for the Trust (including a Chairman, a President, one or more Vice-Presidents and a Secretary and other officers as the Board may determine), who may be removed or discharged at the discretion of the Board, such officers to have such powers and duties, and to serve such terms as may be prescribed by the Board; to engage or employ any persons as agents, representatives, employees or independent contractors (including, without limitation, real estate advisors, investment advisors, registrars, underwriters, accountants, lawyers, real estate agents, property managers, appraisers, brokers, architects, engineers, construction managers, general contractors or otherwise) in one or more capacities, and to pay compensation from the Trust for services in as many capacities as such persons may be so engaged or employed; and, except as prohibited by law, to delegate any of the powers and duties of the Board to any one or more Trustees, agents, representatives, officers, employees, independent contractors or other persons;
- (k) To collect, sue for and receive sums of money coming due to the Trust, and to engage in, intervene in, prosecute, join, defend, compromise, abandon or adjust, by arbitration or otherwise, any actions, suits, proceedings, disputes, claims, demands or other litigation relating to the Trust, the assets of the Trust or the Trust's affairs, to enter into agreements therefore 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 or settlement thereof,

- (l) To renew, modify, release, compromise, extend, consolidate or cancel, in whole or in part, any obligation to or of the Trust;
- (m) To purchase and pay for, out of the assets of the Trust, insurance contracts and policies insuring the assets of the Trust against any and all risks and insuring the Trust and/or any or all of the Trustees, the Unitholders or officers of the Trust against any and all claims and liabilities of any nature asserted by any person arising by reason of any action alleged to have been taken or omitted by the Trust or by the Trustees, the Unitholders or the officers or otherwise;
- (n) To cause title to any of the assets of the Trust to be drawn up in the name of the Trustees, and/or, to the extent permitted by applicable law, 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 Board may determine and with or without disclosure that the Trust or Trustees are interested therein provided, however, that should title to any of the assets of the Trust be held by and/or in the name of any person or persons other than the Trust or Trustees as aforesaid, the Board shall require such person or persons to execute a declaration of trust acknowledging that title to such assets is held in trust for the benefit of the Trust;
- (o) To determine conclusively the allocation to capital, income or other appropriate accounts of all receipts, expenses, disbursements and property of the Trust;
- (p) To prepare, sign and file or cause to be prepared, signed and filed any prospectus, information circular, offering memorandum or similar document, and any amendment thereto, relating to or resulting from an offering of the Units or other securities issued or held by the Trust and to pay the cost thereof and related thereto and any fees related thereto out of the property of the Trust whether or not such offering is or was of direct benefit to the Trust or those persons (if any) who were Unitholders immediately prior to such offering;
- (q) To make or cause to be made application for the listing on any stock exchange of any Units or other securities of the Trust, and to do all things which in the opinion of the Board may be necessary or desirable to effect or maintain such listing or listings;
- (r) To determine conclusively the value of any or all of the property of the Trust from time to time and, in determining such value, to consider such information and advice as the Board, in their sole judgement, may deem material and reliable;
- (s) To do all such acts and things and to exercise such powers which are delegated to the Board by any person who co-owns Real Property with the Trust; and
- (t) To do all such other acts and things as are incidental to the foregoing and to exercise all powers which are necessary or useful to carry on the affairs of the Trust, to promote any of the purposes for which the Trust is formed and to carry out the provisions of the Declaration of Trust.

## **6. Independence, Orientation and Evaluation**

The Board shall have the responsibility to:

- (a) implement appropriate structures and procedures to permit the Board to function independently of management;
- (b) implement a system which enables an individual trustee to engage an outside advisor at the expense of the Trust in appropriate circumstances;
- (c) provide an orientation and education program for newly appointed members of the Board;

- (d) implement a process for assessing the effectiveness of the Board as a whole, the committees of the Board and the contribution of individual trustees;
- (e) examine the size of the Board and the impact of the number of trustees upon the effectiveness of the Board; and
- (f) review the adequacy and form of the compensation provided to the trustees to ensure it adequately reflects the responsibilities and risks involved in being an effective trustee.

## **7. Strategy Determination**

The Board shall:

- (a) adopt and annually review a strategic planning process and approve the strategic plan of the Trust, which takes into account, among other things, the opportunities and risks of the business; and
- (b) annually review operating and financial performance results relative to established strategy, budgets and objectives.

## **8. Managing Risk**

The Board has the responsibility to understand the principal risks of the business in which the Trust is engaged, to achieve a proper balance between risks incurred and the potential return to unitholders, and to confirm that there are systems in place which effectively monitor and manage those risks with a view to the long-term viability of the Trust.

## **9. Appointment, Training and Monitoring of Senior Management**

The Board shall:

- (a) appoint the Chief Executive officer (“CEO”) and senior officers, develop position descriptions for such persons, approve (upon recommendations from the Compensation Committee) their compensation, and monitor the CEO’s performance against a set of mutually agreed corporate objectives directed at maximizing unitholder value;
- (b) ensure that a process is established that adequately provides for succession planning including the appointment, training and monitoring of senior management; and
- (c) establish limits of authority delegated to management.

## **10. Reporting and Communication**

The Board has the responsibility to:

- (a) verify that the Trust has in place policies and programs to enable the Trust to communicate effectively with its unitholders, other stakeholders and the public generally;
- (b) verify the integrity of the Trust’s internal controls and management information systems;
- (c) verify that the financial performance of the Trust is adequately reported to unitholders, other security holders and regulators on a timely and regular basis;
- (d) verify that the financial results are reported fairly and in accordance with generally accepted accounting standards;

- (e) verify the timely reporting of any other developments that have a significant and material impact on the value of the Trust; and
- (f) report annually to unitholders on its stewardship of the affairs of the Trust for the preceding year.

**11. Monitoring and Acting**

The Board has the responsibility to:

- (a) review and approve the Trust's financial statements and oversee the Trust's compliance with applicable audit, accounting and reporting requirements;
- (b) verify that the Trust operates at all times within applicable laws and regulations to the highest ethical and moral standards;
- (c) approve and monitor compliance with significant policies and procedures by which the Trust is operated;
- (d) monitor the Trust's progress towards its goals and objectives and to revise and alter its direction through management in response to changing circumstances;
- (e) take such action as it determines appropriate when performance falls short of its goals and objectives or when other special circumstances warrant; and
- (f) verify that the Trust has implemented adequate internal control and information systems which ensure the effective discharge of its responsibilities.

**12. Committees**

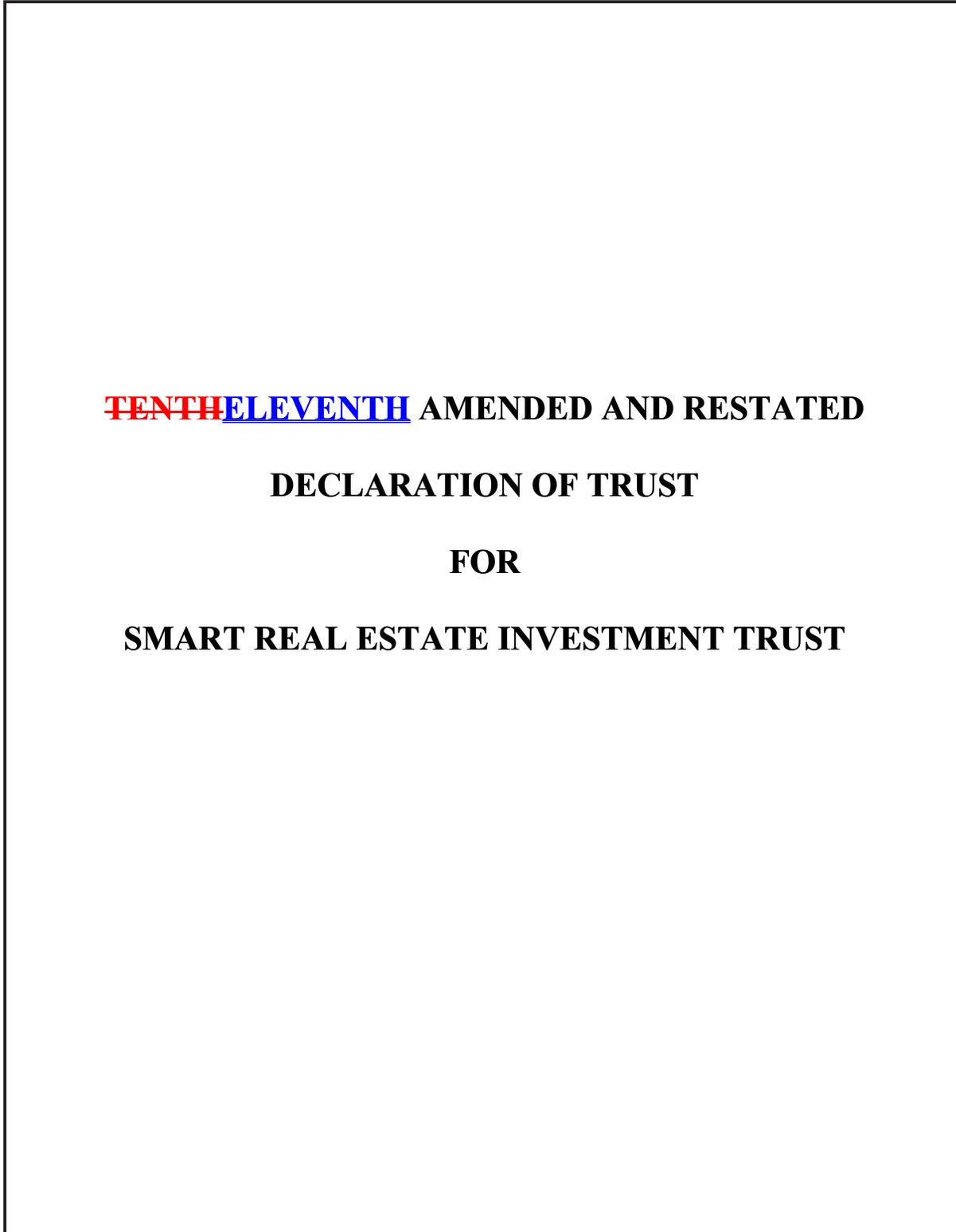
- (a) There shall be three committees of the Board; the investment committee, the audit committee and the compensation and corporate governance committee. The Board may establish any other committee as it may deem appropriate from time to time.
- (b) The Board shall establish a mandate for each of the committees of the Board required by section 12(a) above.

**13. Other Activities**

- (a) The Board shall prepare and distribute the schedule of Board meetings for each upcoming year.
- (b) The Board may perform any other activities consistent with this mandate, the Declaration of the Trust and all amendments thereto and any other governing laws as the Board determines necessary or appropriate.

**SCHEDULE "B"**  
**BLACKLINE OF AMENDED AND RESTATED DECLARATION OF TRUST**

The following is a blackline evidencing the proposed amendments to the Declaration of Trust.



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## SMART REAL ESTATE INVESTMENT TRUST

### ~~TENTH~~ELEVENTH AMENDED AND RESTATED DECLARATION OF TRUST

THIS DECLARATION OF TRUST made the 4<sup>th</sup> day of December, 2001, as amended and restated as of the 24<sup>th</sup> day of October, 2002, as further amended and restated as of the 31<sup>st</sup> day of October, 2003, as further amended and restated as of the 16<sup>th</sup> day of January, 2004, as further amended and restated as of the 7<sup>th</sup> day of July, 2005, as further amended and restated as of the 16<sup>th</sup> day of May 2006, as further amended and restated as of the 14<sup>th</sup> day of September, 2009, as further amended and restated as of the 10<sup>th</sup> day of May, 2012, as further amended and restated as of the 29<sup>th</sup> day of December, 2014, as further amended and restated as of the 28<sup>th</sup> day of May, ~~2015~~ and 2015, as further amended and restated as of the 3<sup>rd</sup> day of July, ~~2015-2015~~ and as further amended and restated as of the ● day of May, 2017.

#### RECITAL

WHEREAS the Trust was established for the principal purpose of providing persons who may become the holders of Units (“Unitholders”) of the Trust with an opportunity to invest in a trust owning a diversified portfolio of income-producing real property investments;

AND WHEREAS on December 4, 2001, ten initial Units of the Trust were issued to Laxus Holdings Inc. (the “Settlor”);

AND WHEREAS, the Trust first amended this Declaration of Trust on October 24, 2002 upon receipt of approval by the Unitholders for such amendment at a meeting of Unitholders held on September 24, 2002;

AND WHEREAS, the Trust again amended this Declaration of Trust on October 31, 2003 upon receipt of approval by the Unitholders for such amendment at a meeting of Unitholders held on September 23, 2003;

AND WHEREAS, the Trust again amended this Declaration of Trust on January 16, 2004 upon receipt of approval by the Unitholders for such amendment at a meeting of Unitholders held on January 16, 2004;

AND WHEREAS, the Trust again amended this Declaration of Trust on July 7, 2005 upon receipt of approval by the Unitholders for such amendment at a meeting of Unitholders held on July 7, 2005;

AND WHEREAS, the Trust again amended this Declaration of Trust on May 16, 2006 upon receipt of approval by the Unitholders for such amendment at a meeting of Unitholders held on May 16, 2006;

AND WHEREAS the Trust again amended this Declaration of Trust on September 14, 2009 upon receipt of approval by the Unitholders for such amendment at a meeting of Unitholders held on May 7, 2009;

AND WHEREAS the Trust again amended this Declaration of Trust on May 10, 2012 upon receipt of approval by the Unitholders for such amendment at a meeting of Unitholders held on May 10, 2012;

AND WHEREAS the Trust again amended this Declaration of Trust on December 29, 2014 pursuant to section 13.1;

AND WHEREAS the Trust again amended this Declaration of Trust on May 28, 2015 upon receipt of approval by the Unitholders for such amendment at a meeting of Unitholders held on May 26, 2015;

AND WHEREAS the Trust again amended this Declaration of Trust on July 3, 2015 pursuant to section 13.1;

AND WHEREAS the Trust again amended this Declaration of Trust on May ●, 2017 upon receipt of approval by the Unitholders for such amendment at a meeting of Unitholders held on May 11, 2017;

AND WHEREAS, for greater certainty, the restatement of this Declaration of Trust shall not be deemed to constitute a termination of the Trust or a resettlement of this Declaration of Trust created hereby;

## DECLARATION

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

### Article 1 DEFINITIONS

#### 1.1 Definitions and Interpretation

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

- 1.1.1 “**Adjusted Unitholders’ Equity**” of the Trust, at any time, means the aggregate of the Carrying Value of Equity plus (i) the aggregate of the Carrying Values of the (a) earnout options, (b) deferred unit plan, (c) limited partnership units and (d) conversion feature of convertible debentures, to extent such items are classified as liabilities; and (ii) current and deferred income tax provision, if any; less the difference between (a) the Carrying Value of investment properties included on the consolidated balance sheet and (b) the Cost Value of investment properties;
- 1.1.2 “**Affiliate**” has the meaning ascribed thereto in ~~the *Securities Act (Alberta)*, as amended from time to time~~ [National Instrument 45-106 – Prospectus and Registration Requirements](#);
- 1.1.3 “**Aggregate Assets**” of the Trust, at any time, means the aggregate of (i) the total Carrying Value of the assets of the Trust plus (ii) accumulated amortization on property, plant and equipment; less (iii) the Carrying Value of goodwill; less (iv) the excess\shortfall between (a) the Carrying Value of investment properties presented on the consolidated balance sheet and (b) the Cost Value of investment properties presented on the consolidated balance sheet;
- 1.1.4 “**Annuitant**” means the annuitant of a registered retirement savings plan or a registered retirement income fund or a deferred profit sharing plan, all as defined in the *Income Tax Act* (Canada), or any other plan of which a Unitholder acts as trustee or carrier;
- 1.1.5 “**Associate**” means, where used to indicate a relationship between an individual and a corporation, an individual who beneficially owns, directly or indirectly, voting securities carrying more than 10% of the voting rights attached to all voting securities of the corporation, a spouse of such individual or an immediate family member of such individual and, where used to indicate a relationship between an individual and a partnership, a partner of that partnership and, if such partner is an individual, a spouse of such individual or an immediate family member of such individual;
- 1.1.6 “**Audit Committee**” means the committee established pursuant to section 10.2;
- 1.1.7 “**Business Day**” means any day other than a Saturday, Sunday or a day on which the principal chartered banks located at Calgary, Alberta are not open for business during normal banking hours;
- 1.1.8 “**Carrying Value**” means the amounts determined in accordance with GAAP;
- 1.1.9 “**Chairman**”, “**President**”, “**Vice-President**” and “**Secretary**” shall mean the Person(s) holding the respective office from time to time in accordance with section ~~3-103.11~~;

- 1.1.10 “**Control**” of a corporation means ownership, directly or indirectly, of the voting securities which carry more than 50% of the votes for the election of directors of such corporation and such votes are sufficient, if exercised, to elect a majority of the board of directors of such corporation, and “**Control**” of a partnership, trust, joint venture, ownership arrangement or other business entity means effective voting control of the decision-making of the partnership, trust, joint venture, ownership arrangement or other business entity, as the case may be and “**Controlled**” and “**Controls**” shall have corresponding meanings;
- 1.1.11 “**Cost Value**” of investment properties means the sum of (a) the original cost of investment properties, (b) the additional costs recorded in respect of subsequent expenditures eligible for capitalization under GAAP, and (c) less the original and additional costs of parts of such investment properties disposed or otherwise derecognized, for investment properties included on the consolidated balance sheet; all determined on a consolidated basis in accordance with GAAP. For greater certainty, for purposes of this definition, the cost of investment properties includes initial direct leasing costs that are added to investment properties under GAAP;
- 1.1.12 ~~“**court**” means the Court of Queen’s Bench of Alberta;~~
- 1.1.13 ~~1.1.12~~ “**Declaration of Trust**” means this declaration of trust, as amended, supplemented or amended and restated from time to time;
- 1.1.14 ~~1.1.13~~ “**Dissenting Offeree**” means, where a ~~Take-over~~ b Bid is made ~~for all of the Units other than those held by the Offeror, a holder of Units, a Unitholder~~ who does not accept the ~~Take-over~~ b Bid and includes a subsequent ~~holder of that Unit~~ Unitholder who acquires ~~it from~~ the Units held by the first mentioned ~~holder~~ Unitholder;
- 1.1.15 ~~1.1.14~~ “**Distribution Date**” means, with respect to a distribution by the Trust, a business day determined by the Trustees for any calendar month to be on or about the 15<sup>th</sup> day of the following month;
- 1.1.16 ~~1.1.15~~ “**Equity**” means, the residual between Total Assets and Total Liabilities determined in accordance with GAAP;
- 1.1.17 ~~1.1.16~~ “**Equity Value**” means the fair market value of the Units;
- 1.1.18 ~~1.1.17~~ “**Exchangeable Securities**” means any securities of any trust, limited partnership or corporation other than the Trust that are convertible or exchangeable directly for Units without the payment of additional consideration therefore;
- 1.1.19 ~~1.1.18~~ “**Fair Market Value**” means, at any time, at the option of the Trustees of the Trust either: (i) the fair market value of the assets of the Trust at such time, as determined by the Trustees of the Trust; or (ii) the fair market value of the Trust calculated as the aggregate outstanding indebtedness of the Trust at such time plus the value obtained when the aggregate number of Units and Exchangeable Securities outstanding at such time is multiplied by the weighted average trading price of the Units on the Toronto Stock Exchange, or such other exchange upon which the Units of the Trust may be listed for trading, for the ten trading days immediately preceding such time;
- 1.1.20 ~~1.1.19~~ “**GAAP**” means, as at any date of determination, generally accepted accounting principles in effect in Canada as of the date thereof that are applicable to the Trust;
- 1.1.21 ~~1.1.20~~ “**Immediate Family Member**”, when used to indicate a relationship with an individual, means a parent, child or sibling of such individual;
- 1.1.22 ~~1.1.21~~ “**Initial Contribution**” means the amount of \$10.00 transferred and paid by the Settlor to the Trustees on December 4, 2001 for the purpose of establishing the Trust;

1.1.23 ~~1.1.22~~ “**MG Entities Representative**” ~~\*shall have the meaning ascribed thereto in section \*3.12.1;~~ means (i) while Mitchell Goldhar remains alive, Mitchell Goldhar or such other individual as may from time to time be designated in writing by Mitchell Goldhar and (ii) if Mitchell Goldhar is not alive, such individual as may from time to time be designated in writing by the MG Entities;

1.1.24 ~~1.1.23~~ “**MG Entity**” means (i) Mitchell Goldhar, (ii) any heir(s), executor(s), administrator(s) or legal representative(s) of Mitchell Goldhar; (iii) any individual who is the child, spouse, common law spouse, father, mother, brother, sister, niece or nephew of Mitchell Goldhar, or is married to any such individual; (iv) any trust(s) in respect of which all of the beneficiaries shall be solely one or more of those Persons referred to in clause (iii) above; (v) any combination of Persons referred to in clauses (i), (ii), (iii) or (iv) above; and (vi) any Person who is Controlled by any Person referred to in clauses (i), (ii), (iii) or (iv) above or any combination thereof;

1.1.25 ~~1.1.24~~ “**Mortgage**” means, under applicable law, any mortgage, charge, bond, debenture, note or other evidence of indebtedness, in each case, which is directly or indirectly secured by Real Property;

1.1.26 ~~1.1.25~~ “**Net Realized Capital Gains of the Trust**” for any year means the amount, if any, by which the amount of the capital gains of the Trust for the year exceeds the aggregate of (i) the amount of any capital losses of the Trust for the year and (ii) the amount of any net capital losses of the Trust carried forward from a previous year to the extent not previously deducted from realized capital gains of the Trust;

1.1.27 ~~1.1.26~~ “**Net Recapture Income of the Trust**” for any year means the amount, if any, by which the amount required to be included in the income of the Trust for income tax purposes for such year in respect of recapture of capital cost allowance exceeds the amount permitted to be deducted under subsection 20(16) of the *Income Tax Act* (Canada) for such year;

1.1.28 “**Nominating Unitholder**” shall have the meaning ascribed thereto in section 3.6.1.3;

1.1.29 ~~1.1.27~~ “**Non-Resident**” means any Person that is neither a Resident Canadian nor a Canadian partnership for the purposes of the *Income Tax Act* (Canada);

1.1.30 “**Notice Date**” ~~\*shall have the meaning ascribed thereto in section \*3.6.3.1;~~

1.1.31 ~~1.1.28~~ “**Offeree**” means a Person to whom a Take-over Bid is made;

1.1.32 ~~1.1.29~~ “**Offeror**” means a Person, other than an agent, who makes a Take-over Bid, and includes two or more Persons who, directly or indirectly,

1.1.32.1 ~~1.1.29.1~~ make a Take-over Bid jointly or in concert; or

1.1.32.2 ~~1.1.29.2~~ intend to exercise jointly or in concert voting rights attached to the Units for which a Take-over Bid is made;

1.1.33 ~~1.1.30~~ “**Outside Trustee**” means a Trustee that is not a member of management of the Trust or any of its subsidiaries;

1.1.34 ~~1.1.31~~ “**Person**” means an individual, partnership, limited partnership, corporation, company, unlimited liability company, trust, unincorporated organization, association, government, or any department or agency thereof and the successors and assigns thereof or the heirs, executors, administrators or other legal representatives of an individual;

1.1.35 ~~1.1.32~~ “**PPI Property Purchase Agreement Proposal**” shall have the meaning ascribed thereto in section ~~6.1.5~~ 8.3.1;

- 1.1.36 ~~1.1.33~~ “**Real Property**” means property which in law is real property and includes, whether or not the same would in law be real property, leaseholds, mortgages, undivided joint interests in real property (whether by way of tenancy-in-common, joint tenancy, co-ownership, joint venture or otherwise), any interests in any of the foregoing and securities of corporations, trusts, limited partnerships or other legal entities whose sole or principal purpose and activity is to invest in, hold and deal in real property;
- 1.1.37 ~~1.1.34~~ “**Register**” means the register which shall be established and maintained pursuant to section 6.16;
- 1.1.38 ~~1.1.35~~ “**Reorganization**” shall have the meaning ascribed thereto in section 2.10;
- 1.1.39 ~~1.1.36~~ “**Resident Canadian**” means an individual who is a resident of Canada for purposes of the *Income Tax Act* (Canada);
- 1.1.40 ~~1.1.37~~ “**SEDI**” means the System for Electronic Disclosure by Insiders;
- 1.1.41 ~~1.1.38~~ “**Settlor**” means Laxus Holdings Inc.;
- 1.1.42 ~~1.1.39~~ “**Special Unitholder**” means the holder of Special Voting Units;
- 1.1.43 ~~1.1.40~~ “**Special Voting Unit**” means the non-participating, voting unit of the Trust, other than a Unit, as designated under Section 6.1.1.2 and that are more particularly described in section 6.1.3 that has been authorized and issued hereunder;
- 1.1.44 ~~1.1.41~~ “**Subsidiary Trust**” shall have the meaning ascribed thereto in section 2.10;
- 1.1.45 ~~1.1.42~~ “**Subsidiary Units**” shall have the meaning ascribed thereto in section 2.10;
- 1.1.46 ~~1.1.43~~ “**Take-over Bid**” ~~has the meaning ascribed to such term in the *Securities Act* (Alberta), as amended from time to time;~~ means an offer made by an Offeror to Unitholders at approximately the same time to acquire all of the Units (other than Units held by or on behalf of the Offeror or an Affiliate or associate of the Offeror);
- 1.1.47 ~~1.1.44~~ “**Trust**” means Smart Real Estate Investment Trust, the trust established hereunder;
- 1.1.48 ~~1.1.45~~ “**Trust Property**”, at any time, shall, unless the contrary intention appears in any particular instance or instances in this Declaration of Trust, mean such of the following moneys, properties and assets as are at such time held by the Trust or by the Trustees on behalf of the Trust:
- 1.1.48.1 ~~1.1.45.1~~ the Initial Contribution;
- 1.1.48.2 ~~1.1.45.2~~ all funds realized from the sale of Units from time to time;
- 1.1.48.3 ~~1.1.45.3~~ all property of whatsoever nature and kind substituted by the Trustees for the foregoing moneys, properties or assets, in whole or in part, at any time and from time to time, all additional property of whatsoever nature and kind acquired, from time to time, by the Trustees that is to be held upon the trusts herein and all property substituted therefore, all property substituted for substituted property and shall include without limitation, all resultant assets and property, movable or immovable, tangible or intangible, and wheresoever situate anywhere in the world of any nature whatsoever and without limiting the generality of the foregoing, the Trust Property shall include all proceeds of policies of insurance, securities, shares, whether common or preferred or otherwise ranking, share warrants, bonds, debentures, bills of exchange or any other forms or evidence of title which may at any time hereafter be purchased or acquired by exchange or in any other manner whatsoever by the Trustees directly or indirectly as well as all interest, revenues and fruits which may at any time hereafter derive or accrue

from any of the foregoing or from any part or parts thereof and shall further include the interest, revenue and fruits which may at any time ever be derived or accrued from dealing in or the investment of or the reinvestment or exchange, without limit, of the investments and the proceeds thereof flowing from the property of the Trust in any manner whatsoever;

1.1.48.4 ~~1.1.45.4~~ any proceeds of disposition of any of the foregoing property; and

1.1.48.5 ~~1.1.45.5~~ all income, interest, profit, gains and accretions and additional assets, rights and benefits of any kind or nature whatsoever arising directly or indirectly from or in connection with or accruing to the foregoing monies, properties or assets or such proceeds of disposition;

1.1.49 ~~1.1.46~~ “**Trustee**” means, at any time, an individual who is, in accordance with the provisions hereof, a trustee of the Trust at that time; and “**Trustees**” means, at any time, all of the individuals each of whom is at that time a Trustee;

1.1.50 ~~1.1.47~~ “**Trustees’ Regulations**” means the regulations adopted by the Trustees pursuant to section 4.3;

1.1.51 ~~1.1.48~~ “**Unit**” means a participating unit interest in the Trust as designated under ~~S~~section 6.1.1.1 and that is more particularly described in section 6.1.2 below issued from time to time in accordance with the provisions hereof and includes a fraction of a participating unit interest in the Trust;

1.1.52 ~~1.1.49~~ “**Unit Certificate**” shall have the meaning ascribed thereto in section 6.15;

1.1.53 ~~1.1.50~~ “**Unitholder**” means a Person whose name appears on the Register as a holder of Units and includes, for the purposes of sections 15.1, 15.2 and 15.4 only, any Person who is a beneficial owner of a Unit;

1.1.54 ~~1.1.51~~ any reference to “**property**” or “**property of the Trust**” or “**assets**” or “**assets of the Trust**” includes, in each case, property and assets of the Trust and the Trust Property; and

1.1.55 ~~1.1.52~~ “**herein**”, “**hereof**”, “**hereby**”, “**hereunder**” and similar expressions refer to this Declaration of Trust and include every instrument supplemental or ancillary to or in implementation of this Declaration of Trust and, except where the context otherwise requires, not to any particular article, section or other portion hereof or thereof.

## 1.2 References to Acts Performed by the Trust or Rights of the Trust

For greater certainty, where any reference is made in this Declaration of Trust to an act to be performed by the Trust or to rights of the Trust, such reference shall be construed and applied for all purposes as if it referred to an act to 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, or to rights of the Trustees, in their capacity as Trustees of the Trust, as the case may be.

## 1.3 Income Tax Act

In this Declaration of Trust, any reference to the “*Income Tax Act (Canada)*” or the “*Income Tax Act*” shall refer to the *Income Tax Act*, Revised Statutes of Canada 1985, Chapter 1 (5th Supplement) and the regulations thereunder as amended from time to time applicable with respect thereto. Any reference herein to a particular provision of the *Income Tax Act* shall include a reference to that provision as it may be renumbered or amended from time to time. Where there are proposals for amendments to the *Income 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. Any reference

herein to the *Income Tax Act* (Canada) or the *Income Tax Act* shall also include a reference to any applicable and corresponding provision under the income tax laws of a province or territory of Canada.

## **Article 2 THE TRUST**

### **2.1 Initial Contribution, Acceptance and Trust Property**

On December 4, 2001, the Settlor, irrevocably transferred the Initial Contribution to the Trustees for the purpose of establishing the Trust. Receipt of the Initial Contribution was acknowledged by the Trustees and in consideration thereof the Settlor was thereby issued ten initial Units of the Trust. The Settlor thereby fully and finally, unconditionally and irrevocably, divested itself of the Initial Contribution and of any other property which is to be comprised within the Trust Property and further fully and finally, unconditionally and irrevocably, divested itself of all rights of ownership, possession, enjoyment or administration of the Trust Property and the Trustees thereby accepted the Initial Contribution and all other property or assets which may become the Trust Property on behalf of and for the benefit of the Unitholders, subject to the terms and provisions hereof (including any discretionary rights and powers granted the Trustees) such acceptance to include not merely the receipt or future receipt of the Trust Property but also the acceptance for the benefit of the Unitholders pursuant to the terms hereof, of all rights of ownership, possession, use, enjoyment and administration of the said Trust Property as referred to in the definition of Trust Property herein.

### **2.2 Seizen**

The Trustees are hereby seized of the Trust Property, in trust, for the purpose of having, holding, using and administering the same as trustees for the account and benefit of the Unitholders pursuant to the terms hereof.

### **2.3 Establishment of Trust**

The Trustees hereby accept the Trust hereby constituted and agree to hold the Trust Property transferred to them in trust from time to time for the use and benefit of the Unitholders, their permitted assigns and personal representatives upon the trust and subject to the terms and conditions hereinafter set forth, such trust to constitute the Trust hereunder. The Trustees acknowledge that the Trust results from this Declaration of Trust, the transfer by the Settlor hereby made of the Initial Contribution from its patrimony to the patrimony of the Trust hereby constituted by the Settlor which the Settlor has appropriated to the particular purposes set forth herein, and each of the Trustees hereby undertakes and accepts to hold and administer such trust patrimony in accordance with the provisions hereof. Each of the Settlor and the Trustees confirms that the patrimony of the Trust has been hereby transferred in trust and constitutes a patrimony by appropriation, autonomous and distinct from that of the Settlor, the Trustees or any Unitholder. By the original Declaration of Trust, the Settlor appointed the Initial Trustees (as defined in the original Declaration of Trust) as Trustees. Article 3 hereof provides the mode of appointment and replacement of the Trustees. Subject to the provisions hereof, each of the Trustees elected or appointed pursuant to this Declaration of Trust shall have all of the powers set forth herein. To the extent required by applicable law, the Settlor hereby appoints the Unitholders as the sole beneficiaries of the Trust. The Units shall be issued upon the terms and subject to the conditions of the Declaration of Trust, and this Declaration of Trust shall be binding upon all Unitholders and by acceptance of the certificate representing any such Units, the Unitholder thereof shall be deemed to agree to be bound by this Declaration of Trust.

### **2.4 Name**

The Trust shall be known and designated as the “Smart Real Estate Investment Trust” (and may also use the short form name “SmartREIT”) or by such other name as the Trustees determine, in their discretion, from time to time.

## **2.5 Use of Name**

If the Trustees determine that there are circumstances where the use of the name determined under section 2.4 above is not practicable, legal or convenient, the Trust may use such other designation or may adopt such other name as the Trustees deem appropriate, and the Trust may hold property and conduct and transact its affairs under such other designation or name.

## **2.6 Office**

The head office of the Trust is located at 700 Applewood Crescent, Suite 200, Vaughan, Ontario L4K 5X3, unless changed by the Trustees to another location. The Trust may have such other offices or places for the conduct of its affairs as the Trustees may from time to time determine as necessary or desirable.

## **2.7 Nature of the Trust**

The Trust is an unincorporated open-end mutual fund trust. The Trust, the Units and the Trust's property shall be governed by the general law of trusts, except as such general law of trusts have been or is from time to time modified, altered or abridged for the trust by:

2.7.1 applicable laws and regulations or other requirements; and

2.7.2 the terms, conditions and trusts set forth in this Declaration of Trust.

The interest and rights generally of a Unitholder in the Trust shall be limited to the right to participate equally and rateably in distributions when and as declared by the Trustees as contemplated by Article 11 and distributions upon the termination of the Trust as contemplated in Article 14. The Trust is not and is not intended to be, shall not be deemed to be and shall not be treated as a general partnership, limited partnership, syndicate, association, joint venture, company, corporation or joint stock company nor shall the Trustees or any individual Trustee or the Unitholders or any of them for any purpose be, or be deemed to be treated in any way whatsoever to be, liable or responsible hereunder as partners or joint venturers. The Trustees shall not be, or be deemed to be, agents of the Unitholders. The relationship of the Unitholders and the Trustees, to the Trust and to the property of the Trust shall be solely that of beneficiaries in accordance with this Declaration of Trust.

## **2.8 Trust Investments**

In accordance with paragraph 132(6)(b) of the *Income Tax Act*, the only undertaking of the Trust shall be as contemplated by the aforesaid provision of the *Income Tax Act*.

## **2.9 Control and Administration of the Trust Property**

The control and administration of the Trust Property and the right to conduct the affairs of the Trust are vested exclusively in the Trustees and the Unitholders and Special Unitholders shall have no rights therein other than the rights specifically set forth in this Declaration of Trust and they shall have no right to compel any partition, division, dividend or distribution of the Trust Property or any of the other assets of the Trust, except as specifically provided herein. The Units and Special Voting Units shall be movable property and shall confer upon the holders thereto only the interest and rights specifically set forth in this Declaration of Trust.

## **2.10 Distribution and Redemption of Subsidiary Mutual Fund Trust Units**

The Trustees may make a distribution in kind of the units of any subsidiary trust of the Trust (such units, "**Subsidiary Units**", and such subsidiary trust, a "**Subsidiary Trust**") to the Unitholders and may provide for the issuance of Units as consideration for the acquisition of assets acquired from such Subsidiary Trust and the delivery of such Units in payment of the redemption price in respect of, and upon the redemption of, such Subsidiary Units, to the extent that they deem it appropriate to do so, all as part of any plan to reorganize the manner by which the Trust holds its assets (a "**Reorganization**"). Following the issuance and

delivery of any additional Units pursuant to this section 2.10, the number of the outstanding Units will be consolidated such that each Unitholder will hold, after the consolidation, the same number of Units as such Unitholder held before the Reorganization.

### **Article 3 TRUSTEES AND OFFICERS**

#### **3.1 Number**

There shall be no fewer than seven (7) nor more than twelve (12) Trustees. Subject to section ~~3.11~~3.12, the number of Trustees may be increased or decreased within such limits from time to time by the Trustees or the Unitholders, provided that the Trustees may not, between meetings of Unitholders, appoint an additional Trustee if, after such appointment, the total number of Trustees would be greater than one and one-third of the number of Trustees in office immediately following the last annual meeting of Unitholders.

#### **3.2 Trustees**

A Trustee, having been appointed, shall hold office until the next annual meeting of Unitholders, until such Trustee's removal or until such Trustee's successor is elected or appointed. Any one or more of the Trustees may be changed at any time or from time to time.

#### **3.3 Qualifications of Trustees**

A Trustee shall be an individual. The following Persons are disqualified from being a Trustee of the Trust:

- 3.3.1 Anyone who is less than eighteen years of age;
- 3.3.2 Anyone who does not have the full exercise of his or her civil rights;
- 3.3.3 Anyone who is of unsound mind and has been so found by a Court in Canada or elsewhere;
- 3.3.4 Anyone who has been placed under protective supervision; and
- 3.3.5 A Person who has the status of a bankrupt.

Notwithstanding anything herein contained to the contrary, and, to the fullest extent permitted by applicable law, all the acts of the Trustees otherwise in accordance with this Declaration of Trust shall be valid notwithstanding any temporary failure to comply with the provisions of this paragraph.

A majority of the Trustees shall be Resident Canadians.

#### **3.4 Intentionally deleted**

#### **3.5 Election of Trustees**

Subject to sections 3.1, 3.2, 3.3, ~~3.7, 3.8~~ and ~~3.11~~, ~~the election of the Trustees shall be by the vote of Unitholders at meetings of the Unitholders.~~ 3.12, the Trustees shall be elected (including the re-election of incumbent Trustees) at each annual meeting of Unitholders, and may be elected at a special meeting of Unitholders, in each case to hold office, subject to section 3.7, for a term expiring at the close of the next annual meeting of Unitholders following such an election. Any such election shall be made by a resolution approved by a majority of the votes cast at a meeting of Unitholders. The appointment or election of any Trustee (other than an individual who is serving as a Trustee immediately prior to such appointment or election) shall not become effective unless and until such Person has either before or after such appointment or election, executed and delivered to the Trust an acceptance substantially as follows:

“To: Smart Real Estate Investment Trust (the “Trust”)

And to: The Trustees thereof

The undersigned hereby accepts to act as a trustee of the Trust and hereby agrees, upon the later of the date of this acceptance and the date of the undersigned's appointment or election as a trustee of the Trust, to thereby become a party, as a trustee, to the ~~Tenth~~Eleventh Amended and Restated Declaration of Trust made as of May ~~28, 2015~~, 2017, as amended from time to time, constituting the Trust."

Upon the later of a person being appointed or elected a Trustee hereunder and executing and delivering to the Trust an acceptance substantially as set forth above, such person shall become a Trustee hereunder and shall be deemed to be a party (as a Trustee) to this Declaration of Trust, as amended from time to time. For greater certainty, a Person who is a Trustee and is re-appointed as a Trustee does not have to provide any additional consents.

An act of a Trustee is valid notwithstanding an irregularity in the appointment or election of the Trustee or a defect in the qualifications of the Trustee.

### 3.6 Nomination of Trustees

3.6.1 Subject to section 3.12, only Persons who are nominated in accordance with the following procedures (and who comply with the requirements of section 3.3) shall be eligible for election as Trustees. Nominations of Persons for election as a Trustee 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:

3.6.1.1 by or at the direction of the Trustees, including pursuant to a notice of meeting;

3.6.1.2 by or at the direction or request of one or more Unitholders or Special Unitholders pursuant to a requisition of the Unitholders or Special Unitholders made in accordance with this Declaration of Trust; or

3.6.1.3 by any Person (a "Nominating Unitholder") who (A) at the close of business on the date of the giving of the notice provided for below in this section 3.6 and on the record date for notice of such meeting, is a Unitholder or Special Unitholder or who beneficially owns one or more Units or Special Voting Units; and (B) who complies with the procedures set forth below in this section 3.6.

3.6.2 In addition to any other applicable requirements, for a nomination to be made by a Nominating Unitholder, the Nominating Unitholder must have given timely notice thereof to the Trustees in the manner prescribed by this Declaration of Trust. Furthermore, if such notice is made on a day which is not a Business Day or later than 5:00 p.m. (Toronto Time) on a day which is a Business Day, then such notice shall be deemed to have been made on the next day that is a Business Day.

3.6.3 To be timely, a Nominating Unitholder's notice to the Trustees must be made:

3.6.3.1 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 10th day following the Notice Date; and

3.6.3.2 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 15th day following the day on which the first public announcement of the date of the special meeting of Unitholders was made.

3.6.4 A Nominating Unitholder's notice to the Trustees must set forth:

- 3.6.4.1 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 number of Units and Special Voting Units 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 applicable securities laws; and
- 3.6.4.2 as to the Nominating Unitholder giving the notice, any proxy, contract, arrangement, understanding or relationship pursuant to which such Nominating Unitholder has a right to vote any Units or Special Voting Units and any other information relating to such Nominating Unitholder that would be required to be made in a dissident's proxy circular in connection with solicitations of proxies for election of Trustees pursuant to applicable securities laws.
- 3.6.5 The Trust may require any proposed nominee to furnish such other information as may reasonably be required by the Trust to determine the eligibility of such proposed nominee to serve as an independent Trustee or that could be material to a reasonable Unitholder's understanding of the independence, or lack thereof, of such proposed nominee.
- 3.6.6 Subject to section 3.12, no Person shall be eligible for election as a Trustee unless nominated in accordance with the provisions of this section 3.6 and unless such Person complies with the requirements of section 3.3; provided, however, that nothing in this section 3.6 shall be deemed to preclude discussion by a Unitholder or Special 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 chair 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.
- 3.6.7 \*For purposes of this section\* 3.6, "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](http://www.sedar.com).
- 3.6.1 Notwithstanding the foregoing, the Trustees may, in their sole discretion, waive any requirement in this section 3.6.

### 3.7 ~~3.6~~ **Resignation, 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 President or Secretary. Such resignation shall take effect on the date such notice is given or at any later time specified in the notice, provided that if, upon the resignation becoming effective, the number of remaining Trustees would be less than the number necessary to constitute a quorum for a meeting of Trustees, the resignation is not effective until the resigning Trustee's successor is duly appointed as a Trustee. A Trustee may be removed at any time with or without cause by the affirmative vote of at least a majority of the votes cast at a meeting of Unitholders called for that purpose or with cause by resolution passed by an affirmative vote of not less than a majority of the remaining Trustees. Any removal of a Trustee shall take effect immediately following the aforesaid vote or resolution and any Trustee so removed shall be so notified by the Secretary or another officer of the Trust forthwith following such removal. Upon the resignation or removal of any Trustee, or his or her otherwise ceasing to be a Trustee, he shall (i) cease to have rights, privileges and powers of Trustees hereunder, (ii) execute and deliver such documents as the remaining Trustees shall reasonably require for the conveyance of any Trust Property held in his 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 without limitation, as a director or officer of any corporation in which the Trust owns any securities (directly or indirectly), upon which he or she shall thereupon be discharged of his 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. Upon a Trustee ceasing, to hold office as such hereunder, such Trustee shall cease to be a party (as a Trustee) to this Declaration of Trust; provided however that such Trustee shall continue to be entitled to be paid any amounts owing by the Trust to the Trustee and to the benefits of the indemnity provided in section 15.1.

**3.8     ~~3.7~~ Vacancies**

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

**3.9     ~~3.8~~ Successor and Additional Trustees**

The rights of the Trustees to control and exclusively administer the Trust and to have the titles to the Trust Property drawn up in their names and all other rights of the Trustees at law shall vest automatically in all Persons who may hereafter become Trustees upon their due election or appointment and qualification without any further act and they shall thereupon have all the rights, privileges, powers, obligations and immunities of Trustees hereunder. Such rights shall vest in the Trustees whether or not conveyancing or transfer documents have been executed and delivered pursuant to section 3.6 or otherwise.

**3.10    ~~3.9~~ Compensation and Other Remuneration**

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

**3.11    ~~3.10~~ Officers of the Trust**

The Trust may have a Chairman, a Chief Executive Officer, a President, one or more Vice-Presidents and a Secretary and such other officers as the Trustees may appoint from time to time. One Person may hold two or more offices. Any officer of the Trust may, but need not, be a Trustee. The Chairman, if not a Trustee, shall be entitled to receive notice of and attend all meetings of the Trustees but, unless he or she is a Trustee, shall not be entitled to vote at any such meeting. Officers of the Trust shall be appointed and discharged and their remuneration determined by the Trustees provided that the Chief Executive Officer and/or President shall be appointed on an annual basis and with the consent of not less than 75% of the Trustees.

**3.12    ~~3.11~~ Appointees of MG Entities**

~~For~~ Notwithstanding section 3.6, for so long as the MG Entities collectively beneficially own at least 5% in aggregate of the issued and outstanding Units and Special Voting Units of the Trust, the MG Entities, ~~acting through one representative~~ Representative, shall be entitled to appoint one trustee to the Board of Trustees of the Trust and the number of trustees on the Board of Trustees shall be limited to eight; for so long as the

MG Entities collectively beneficially own at least 15% in aggregate of the issued and outstanding Units and Special Voting Units of the Trust, the MG Entities, ~~acting through one representative,~~ Representative shall be entitled to appoint a total of two trustees to the Board of Trustees of the Trust and the number of trustees on the Board of Trustees shall be limited to a maximum of eight; and for so long as the MG Entities collectively beneficially own at least 25% in aggregate of the issued and outstanding Units and Special Voting Units of the Trust, the MG Entities, ~~acting through one representative,~~ Representative shall be entitled to appoint a total of three trustees to the Board of Trustees of the Trust and the number of trustees on the Board of Trustees shall be limited to a maximum of nine. The rights of the MG Entities pursuant to this section ~~3.11~~3.12 are not assignable other than to other MG Entities. The MG Entities shall exercise their rights under this section ~~3.11~~3.12 collectively through ~~one representative~~the MG Entities Representative.

### 3.13 ~~3.12~~ **Certification of Holdings by MG Entities; Cancellation of Rights**

3.13.1 ~~3.12.1~~ The Trust may, at any time upon written notice (but no more frequently than monthly), require that a representative of the MG Entity which then beneficially owns the largest number of Units and Special Voting Units (as shown on SEDI or in the absence of such filing, the last such MG Entity as shown on SEDI) ~~(the "MG Entities Representative")~~ deliver on behalf of all MG Entities a certificate to the Trust certifying the aggregate number of Units and Special Voting Units owned on a beneficial basis as of the date of such notice by the MG Entities.

3.13.2 ~~3.12.2~~ Without limiting section ~~3.12~~3.13.1, if, at any time, the minimum ownership requirements of the MG Entities in each of sections 10.3 and 10.4.6 are not met for a period of 15 consecutive days (or, if the Trust has put in place a black-out period during which insiders of the Trust may not trade in securities of the Trust, for a period of 15 consecutive days following the expiry of such black-out period), the rights and privileges granted to the MG Entities (other than any rights granted generally to Unitholders) in respect of which such minimum ownership requirements that are not met shall be irreversibly cancelled and be of no further force or effect.

## **Article 4 TRUSTEES' POWERS AND DUTIES**

### **4.1 General Powers**

The Trustees, subject only to the specific limitations contained in this Declaration of Trust, including without limitation sections 5.1 and 5.2, shall have, without further or other authorization and free from any power of control on the part of the Unitholders, full, absolute and exclusive power, control and authority over the assets of the Trust and over the affairs of the Trust to the same extent as if the Trustees were the sole owners of such assets in their own right, to do all such acts and things as in their sole judgement and discretion are necessary or incidental to, or desirable for, the carrying out of any of the purposes of the Trust or the conducting of the affairs of the Trust. In construing the provisions of this Declaration of Trust, presumption shall be in favour of the powers and authority 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 laws which are of public order, 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.

### **4.2 Specific Powers and Authorities**

Subject only to the express limitations contained in this Declaration of Trust including, without limitation sections 5.1 and 5.2, and in addition to any powers and authorities conferred by this Declaration of Trust or which the Trustees may have by virtue of any present or future statute or rule of law, the Trustees without any action or consent by the Unitholders shall have and may exercise at any time and from time to time the following powers and authorities which may or may not be exercised by them in their sole judgement and discretion and in such manner and upon such terms and conditions as they may from time to time deem proper:

- 4.2.1 To retain, invest and reinvest the capital or other funds of the Trust in Real Property of any kind, and to possess and exercise all the rights, powers and privileges appertaining to the ownership of the property of the Trust and to increase the capital of the Trust at any time by the issuance of additional Units for such consideration as they deem appropriate;
- 4.2.2 For such consideration as they deem proper, to invest in, purchase or otherwise acquire for cash or other property or through the issuance of Units or through the issuance of notes, debentures, bonds or other obligations or securities of the Trust and hold for investment the entire or any participating interest in mortgages. In connection with any such investment, purchase or acquisition, the Trustees shall have the power to acquire a share of rents, lease payments or other gross income from or a share of the profits from or a share in the equity or ownership of Real Property;
- 4.2.3 To sell, rent, lease, hire, exchange, release, partition, assign, mortgage, pledge, hypothecate, grant security interests in, encumber, negotiate, convey, transfer or otherwise dispose of any or all of the property of the Trust by deeds, trust deeds, assignments, bills of sale, transfers, leases, mortgages, financing statements, security agreements and other instruments for any of such purposes executed and delivered for and on behalf of the Trust or Trustees by one or more of the Trustees or by a duly authorized officer, employee, agent or any nominee of the Trust;
- 4.2.4 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;
- 4.2.5 To borrow money from or incur indebtedness to any Person; to guarantee, indemnify or act as surety with respect to payment or performance of obligations of third parties; to enter into other obligations on behalf of the Trust; and to assign, convey, transfer, mortgage, subordinate, pledge, grant security interests in, or encumber, the property of the Trust to secure any of the foregoing;
- 4.2.6 To lend money, whether secured or unsecured;
- 4.2.7 To incur and pay out of the property of the Trust any charges or expenses and disburse any funds of the Trust, which charges, expenses or disbursements are, in the opinion of the Trustees, necessary or incidental to or desirable for the carrying out of any of the purposes of the Trust or conducting the affairs of the Trust including, without limitation, taxes or other governmental levies, charges and assessments of whatever kind or nature, imposed upon or against the Trustees in connection with the Trust or the property of the Trust or upon or against the property of the Trust or any part thereof and for any of the purposes herein;
- 4.2.8 To deposit funds of the Trust in banks, trust companies and other depositories, whether or not such deposits will earn interest, the same to be subject to withdrawal on such terms and in such manner and by such Person or Persons (including any one or more Trustees, officers, agents or representatives) as the Trustees may determine;
- 4.2.9 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 any Person, forming part of the assets of the Trust, to the same extent that an individual might and, without limiting the generality of the foregoing, to vote or give any consent, request or notice, or waive any notice, either in Person or by proxy or power of attorney, with or without power of substitution, to one or more Persons, which proxies and powers of attorney may be for meetings or action generally or for any particular meeting or action and may include the exercise of discretionary power;
- 4.2.10 To elect, appoint, engage or employ officers for the Trust (including a Chairman, a President, one or more Vice-Presidents and a Secretary and other officers as the Trustees may determine), who may be removed or discharged at the discretion of the Trustees, such officers to have such powers and duties, and to serve such terms as may be prescribed by the Trustees or by the Trustees' Regulations; to engage or employ any Persons as agents, representatives, employees or independent contractors (including, without limitation, real estate advisors, investment advisors, registrars, underwriters, accountants, lawyers, real estate agents, property managers, appraisers,

brokers, architects, engineers, construction managers, general contractors or otherwise) in one or more capacities, and to pay compensation from the Trust for services in as many capacities as such Persons may be so engaged or employed; and, except as prohibited by law, to delegate any of the powers and duties of the Trustees to any one or more Trustees, agents, representatives, officers, employees, independent contractors or other Persons;

- 4.2.11 To collect, sue for and receive sums of money coming due to the Trust, and to engage in, intervene in, prosecute, join, defend, compromise, abandon or adjust, by arbitration or otherwise, any actions, suits, proceedings, disputes, claims, demands or other litigation relating to the Trust, the assets of the Trust or the Trust's affairs, to enter into agreements therefore 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,
- 4.2.12 To renew, modify, release, compromise, extend, consolidate or cancel, in whole or in part, any obligation to or of the Trust;
- 4.2.13 To purchase and pay for, out of the assets of the Trust, insurance contracts and policies insuring the assets of the Trust against any and all risks and insuring the Trust and/or any or all of the Trustees, the Unitholders or officers of the Trust against any and all claims and liabilities of any nature asserted by any Person arising by reason of any action alleged to have been taken or omitted by the Trust or by the Trustees, the Unitholders or the officers or otherwise;
- 4.2.14 To cause title to any of the assets of the Trust to be drawn up in the name of the Trustees, and/or, to the extent permitted by applicable law, 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 title to any of the assets of the Trust be held by and/or in the name of any Person or Persons other than the Trust or Trustees as aforesaid, the Trustees shall require such Person or Persons to execute a declaration of trust acknowledging that title to such assets is held in trust for the benefit of the Trust;
- 4.2.15 To determine conclusively the allocation to capital, income or other appropriate accounts of all receipts, expenses, disbursements and property of the Trust;
- 4.2.16 To prepare, sign and file or cause to be prepared, signed and filed any prospectus, information circular, offering memorandum or similar document, and any amendment thereto, relating to or resulting from an offering of Units or other securities issued or held by the Trust and to pay the cost thereof and related thereto and any fees related thereto out of the property of the Trust whether or not such offering is or was of direct benefit to the Trust or those Persons (if any) who were Unitholders or holders of Exchangeable Securities, immediately prior to such offering;
- 4.2.17 To make or cause to be made application for the listing on any stock exchange of any Units or other securities of the Trust, and to do all things which in the opinion of the Trustees may be necessary or desirable to effect or maintain such listing or listings;
- 4.2.18 To determine conclusively the value of any or all of the property of the Trust from time to time and, in determining such value, to consider such information and advice as the Trustees, in their sole judgement, may deem material and reliable;
- 4.2.19 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;
- 4.2.20 To do all such other acts and things as are incidental to the foregoing and to exercise all powers which are necessary or useful to carry on the affairs 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.

#### **4.3 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, their rights or powers and the rights or powers of its Unitholders or officers not inconsistent with law or with this Declaration of Trust and not, in the opinion of the Trustees, prejudicial to Unitholders. The Trustees shall also be entitled to make any reasonable decisions, designations or determinations not contrary to this Declaration of Trust which they may determine are necessary or desirable in interpreting, applying or administering this Declaration of Trust or in administering, managing or operating the Trust. Any regulations, decisions, designations or determinations made pursuant to this section shall be conclusive and binding upon all Persons affected thereby.

#### **4.4 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 carry out their functions hereunder as Trustees honestly, in good faith with a view to the best interests of the Trust and the Unitholders as a whole and that in connection therewith they exercise that degree of care, diligence and skill that a reasonably prudent Person would exercise in comparable circumstances. A Trustee shall not be liable in carrying out his or her duties under this Declaration of Trust except in cases where a Trustee fails to act honestly and in good faith with a view to the best interests of the Trust and the Unitholders or to exercise the degree of care, diligence and skill that a reasonably prudent Person would exercise in comparable circumstances. Unless otherwise required by law, no Trustee shall be required to give bond, surety or security in any jurisdiction for the performance of any duties or obligations hereunder. The Trustees in their capacity as Trustees shall not be required to devote their entire time to the affairs of the Trust.

For greater certainty, to the extent that the Trustees have contracted or delegated the performance of certain activities to a property manager, they shall be deemed to have satisfied the aforesaid standard of care.

#### **4.5 Reliance Upon Trustees**

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

#### **4.6 Determinations of Trustees Binding**

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

#### **4.7 Conflict of Interest**

If a Trustee or an officer of the Trust:

4.7.1 is a party to a material contract or transaction or proposed material contract or transaction with the Trust (including a contract or transaction involving the making, or disposition of any investment in Real Property or a joint venture arrangement); or

4.7.2 is a director or officer of, or otherwise has a material interest in, any Person who is a party to a material contract or transaction or proposed material contract or transaction with the Trust,

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

4.7.3 The disclosure required in the case of a Trustee shall be made:

4.7.3.1 at the meeting of Trustees at which a proposed contract or transaction is first considered;

4.7.3.2 if the Trustee was not then interested in a proposed contract or transaction, at the first such meeting after he becomes so interested;

4.7.3.3 if the Trustee becomes interested after a contract is made or a transaction is entered into, at the first meeting after he becomes so interested; or

4.7.3.4 if a Person who is interested in a contract or transaction later becomes a Trustee, at the first such meeting after he becomes a Trustee;

4.7.4 The disclosure required in the case of an officer of the Trust who is not a Trustee shall be made:

4.7.4.1 forthwith after such Person becomes aware that the contract or transaction or proposed contract or transaction is to be considered or has been considered at a meeting of the Trustees;

4.7.4.2 if such Person becomes interested after a contract is made or a transaction is entered to, forthwith after such Person becomes so interested; or

4.7.4.3 if a Person who is interested in a contract or transaction later becomes an officer of the Trust who is not a Trustee, forthwith after he becomes an officer of the Trust;

4.7.5 Notwithstanding subsections 4.7.3 and 4.7.4, where this section applies to any Person in respect of a material contract or transaction or proposed material contract or transaction that, in the ordinary course of the affairs of the Trust, would not require approval by the Trustees or the Unitholders, such Person shall disclose in writing to the Trustees or request to have entered into the minutes of meetings of the Trustees the nature and extent of such Person's interest forthwith after such Person becomes aware of the contract or transaction or proposed contract or transaction;

4.7.6 A Trustee referred to in this section shall not vote on any resolution to approve the said contract or transaction unless the contract or transaction is:

4.7.6.1 one relating primarily to his or her remuneration as a Trustee, officer, employee or agent of the Trust; or

4.7.6.2 one for indemnity under section 15.1 or the purchase of liability insurance;

4.7.7 For the purposes hereof, a general notice to the Trustees by a Trustee or an officer of the Trust disclosing that he or 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 a sufficient disclosure of interest in relation to any contract so made or transaction so entered into. In the event that a meeting of Unitholders is called to confirm or approve a contract or transaction which is the subject of a general notice to the Trustees, the notice and extent of the interest in the

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

4.7.8 Where a material contract is made or a material transaction is entered into between the Trust and a Trustee or an officer of the Trust, or between the Trust and another Person of which a Trustee or an officer of the Trust is a director or officer or in which he or she has a material interest:

4.7.8.1 such Person is not accountable to the Trust or to the Unitholders for any profit or gain realized from the contract or transaction; and

4.7.8.2 the contract or transaction is neither void nor voidable;

by reason only of that relationship or by reason only that such Person is present at or is counted to determine the presence of a quorum at the meeting of the Trustees that authorized the contract or transaction, if such, Person disclosed his or her interest in accordance with this section 4.7, and the contract or transaction was approved by the Trustees or the Unitholders and was reasonable and fair to the Trust at the time it was so approved;

4.7.9 Notwithstanding anything in this section, but without limiting the effect of subsection 4.7.8, 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 or 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, is not by reason only of such Person's interest therein void or voidable, where:

4.7.9.1 the contract or transaction is confirmed or approved at a meeting of Unitholders duly called for that purpose; and

4.7.9.2 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 required to be provided by this Declaration of Trust or by law; and

4.7.10 Subject to subsections 4.7.8 and 4.7.9, where a Trustee or an officer of the Trust fails to disclose his or her interest in a material contract or transaction in accordance with this Declaration of Trust or otherwise fails to comply with this section, the Trustees or any Unitholder, in addition to exercising any other rights or remedies in connection with such failure exercisable at law or in equity, may apply to a court for an order setting aside the contract or transaction and/or directing that such Person account to the Trust for any profit or gain realized.

## **Article 5 INVESTMENT GUIDELINES AND OPERATING POLICIES**

### **5.1 Investment Guidelines**

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

5.1.1 the Trust will focus its acquisition activities on existing income-producing properties that are capital property of the Trust, including office, retail, industrial and mixed use properties, that are substantially leased;

5.1.2 notwithstanding section 5.1.1, the Trust may acquire, hold, develop, maintain, improve, lease or manage real property which is being utilized or intended to be utilized to provide living accommodation;

5.1.3 notwithstanding anything in this Declaration of Trust to the contrary, the Trust shall not make any investment or take any action or omit to take any action that would result in Units not being units

of a “mutual fund trust” and of a “unit trust” within the meaning of the *Income Tax Act*, that would result in Units being disqualified for investment by registered retirement savings plans, registered retirement income funds, deferred profit sharing plans or registered education savings plans, or that would result in the Trust paying a tax under the registered investment provisions of the *Income Tax Act* imposed for exceeding certain investment limits;

- 5.1.4 the Trust may, directly or indirectly, invest in a joint venture arrangement for the purposes of owning interests or investments otherwise permitted to be held by the Trust, provided that such joint venture arrangement contains terms and conditions which, in the opinion of the Trustees, are commercially reasonable, including without limitation such terms and conditions relating to restrictions on transfer and the acquisition and sale of the Trust’s and any joint venturer’s interest in the joint venture arrangement, provisions to provide liquidity to the Trust, such as buy-sell mechanisms, provisions that limit the liability of the Trust to third parties, and provisions that provide for the participation of the Trust in the management of the joint venture arrangement. For purposes of this provision, a joint venture arrangement is an arrangement between the Trust and one or more other Persons (“**joint venturers**”) pursuant to which the Trust, directly or indirectly, conducts an undertaking for one or more of the purposes set out above and in respect of which the Trust may hold its interest jointly or in common or in another manner with others either directly or through the ownership of securities of a corporation or other entity (a “joint venture entity”), including without limitation a general partnership, limited partnership or limited liability company;
- 5.1.5 except for temporary investments held in cash, deposits with a Canadian chartered bank or trust company registered under the laws of a province of Canada, short-term government debt securities, or in money market instruments of, or guaranteed by, a Schedule 1 Canadian chartered bank maturing prior to one year from the date of issue, the Trust may not hold securities other than securities of a joint venture entity, trust or limited partnership or an entity or corporation wholly owned by the Trust formed and operated for the purpose of holding a particular Real Property or Real Properties or for any other purpose relating to the activities of the Trust, and provided further that, notwithstanding anything contained in this Declaration of Trust to the contrary, the Trust may acquire securities of other real estate investment trusts;
- 5.1.6 except as otherwise prohibited in this Declaration of Trust, the Trust may invest in interests (including fee ownership and leasehold interests) in income-producing Real Property that is capital property of the Trust;
- 5.1.7 the Trust shall not acquire any single investment in real property (whether directly or indirectly through its interest in a trust, limited partnership or corporation) if the cost to the Trust of such acquisition (including encumbrances assumed) will exceed 20% of the Aggregate Assets calculated following such purchase;
- 5.1.8 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 that is capital property of the Trust;
- 5.1.9 the Trust shall not invest directly in operating businesses unless such investment is through a corporation, limited partnership or trust;
- 5.1.10 subject to sections 5.1.3, 5.1.13 and 5.1.14 the Trust may invest indirectly in raw land for development properties provided such investment is through a corporation, limited partnerships or trust established for the purpose of (i) the renovation or expansion of existing facilities that are capital property of the Trust, or (ii) the development of new facilities which will be capital property of the Trust;
- 5.1.11 subject to sections 5.1.13 and 5.1.14, the Trust may invest in mortgages or mortgage bonds (including, with the consent of a majority of the Trustees, a participating or convertible mortgage) where:

- 5.1.11.1 the Real Property which is security therefore is income-producing Real Property which otherwise meets the general investment guidelines of the Trust adopted by the Trustees from time to time in accordance with this Declaration of Trust and the restrictions set out therein; and
- 5.1.11.2 the aggregate value of the investments of the Trust in these mortgages, after giving effect to the proposed investment, will not exceed 15% of the Equity Value;
- 5.1.12 the Trust may invest in mortgages if the primary intention is to use the acquisition of the mortgages as a method of acquiring control of income-producing Real Property which would otherwise meet the investment guidelines of the Trust and provided the aggregate value of the investments of the Trust in these mortgages, after giving effect to the proposed investment, will not exceed 15% of the Equity Value; and
- 5.1.13 subject to sections 5.1.3 and 5.1.14, the Trust may acquire property that is “eligible resale property” as defined for purposes of the *Income Tax Act*, property described in sections 5.1.10 and 5.1.11 or property that would not comply with section 5.1.4, 5.1.5 or 5.2.3 provided that the aggregate fair value of all such property does not exceed 20% of Equity Value; and
- 5.1.14 notwithstanding anything in this Declaration of Trust to the contrary, the Trust shall not make any investment or take any action or omit to take any action that would result in the Trust not being a “real estate investment trust” within the meaning of the *Income Tax Act*.

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

Except as specifically set forth herein to the contrary, all of the foregoing prohibitions, limitations or requirements for investment shall be determined as at the date of investment by the Trust.

## **5.2 Operating Policies**

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

- 5.2.1 (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 duty to act in the best interests of the Unitholders, any written instrument which is, in the judgement of the Trustees, a material obligation, shall contain a provision or be subject to an acknowledgement to the effect that the obligation being created is not personally binding upon, and that resort shall not be had to, nor shall recourse or satisfaction be sought from, the private property of any of the Trustees, Unitholders, Annuitants under a plan of which a Unitholder acts as a trustee or carrier, or officers, employees or agents of the Trust, but that only property of the Trust or a specific portion thereof shall be bound; the Trust, however, is not required, but shall use all reasonable efforts, to comply with this requirement in respect of obligations assumed by the Trust upon the acquisition of Real Property;
- 5.2.2 the Trust shall not lease or sublease to any Person any Real Property, premises or space where that Person and its Affiliates would, after the contemplated lease or sublease, be leasing or subleasing Real Property, premises or space having a fair market value net of encumbrances in excess of 20% of the Adjusted Unitholders’ Equity of the Trust;
- 5.2.3 the limitation contained in subsection 5.2.2 shall not apply to the renewal or extension of a lease or sublease and shall not apply where the lessee or sublessee is, or where the lease or sublease is guaranteed (or an indemnity has been given) by:

- 5.2.3.1 the Government of Canada, the Government of the United States, any province of Canada, any state of the United States or any municipality in Canada or the United States, or any agency thereof;
  - 5.2.3.2 any corporation, the bonds, debentures or other evidences of indebtedness of, or guaranteed by which, has received a rating from Standard & Poors of no less than investment grade (or equivalent from any other recognized credit rating agency) in each case, at the time the lease or sublease is entered into, or at the time other satisfactory leasing arrangements as determined by the Trustees, in their discretion, are entered into;
  - 5.2.3.3 a Canadian chartered bank registered federally or under the laws of a province of Canada; or
  - 5.2.3.4 Wal-Mart Canada Corp. and its related associates and affiliates.
- 5.2.4 the Trust may engage directly in construction or development to maintain its properties in good repair or to enhance the income producing ability of properties in which the Trust has an interest;
- 5.2.5 title to each Real Property shall be drawn up in the name of the Trustees or, to the extent permitted by applicable law, the Trust or a corporation or other entity wholly owned, directly or indirectly, by the Trust or jointly, directly or indirectly, by the Trust with joint venturers;
- 5.2.6 the Trust will not incur or assume any indebtedness if, after the incurring or assuming of the indebtedness, the total indebtedness of the Trust would be more than 60% of the Aggregate Assets (65% if convertible debentures are outstanding). The Trustees may in their discretion use Fair Market Value in place of Aggregate Assets for the purposes of this subsection. For the purposes of this subsection the term “**indebtedness**” means (without duplication and excluding “non-controlling interests”) on a consolidated basis:
- 5.2.6.1 any obligation of the Trust for borrowed money;
  - 5.2.6.2 any obligation of the Trust incurred in connection with the acquisition of property, assets or business;
  - 5.2.6.3 any obligation of the Trust issued or assumed as the deferred purchase price of property;
  - 5.2.6.4 any capital lease obligation of the Trust; and
  - 5.2.6.5 any obligation of the type referred to in clauses 5.2.6.1 through 5.2.6.4 of another Person, the payment of which the Trust has guaranteed or for which the Trust is responsible for or liable;
- provided that (a) for the purposes of clauses 5.2.6.1 through 5.2.6.4, an obligation (other than convertible debentures) will constitute indebtedness only to the extent that it would appear as a liability on the consolidated balance sheet of the Trust in accordance with generally accepted accounting principles; (b) obligations referred to in clauses 5.2.6.1 through 5.2.6.3 exclude trade accounts payable, distributions payable to Unitholders and accrued liabilities arising out of the ordinary course of business; and (c) convertible debentures will constitute indebtedness to the extent of the principal amount thereof outstanding;
- 5.2.7 the Trust shall not incur debt aggregating more than 20% of Aggregate Assets (other than unsecured trade payables, accrued expenses and distributions payable) at floating interest rates or having a maturity of less than one year, not including term debt falling due in the next twelve months or variable rate debt for which the Trust has entered into interest rate swap agreements to fix the interest rate for a one year period or greater;

- 5.2.8 the Trust may directly or indirectly guarantee indebtedness or liabilities of a third party provided that such guarantee is related to the direct or indirect ownership or acquisition by the Trust of Real Property that would otherwise comply with the investment restrictions and operating guidelines contained in sections 5.1 and 5.2;
- 5.2.9 the Trust shall be obliged to obtain an independent appraisal of any property acquired by the Trust that the Investment Committee determines, in its discretion, should be supported by an independent appraisal;
- 5.2.10 the Trust shall obtain and maintain at all times insurance coverage in respect of potential liabilities of the Trust and the accidental loss of value of the assets of the Trust from risks, in amounts, with such insurers, and on such terms as the Trustees consider appropriate, taking into account all relevant factors including the practices of owners of comparable properties; and
- 5.2.11 the Trust shall have conducted a Phase I environmental audit of each Real Property to be acquired by it that the Investment Committee determines, in its discretion, should be supported by a Phase I environmental audit and, if the Phase I environmental audit report recommends a Phase II environmental audit be conducted and the Investment Committee determines, in its discretion, that a Phase II environmental audit is necessary, the Trust shall have conducted a Phase II environmental audit, in each case by an independent and experienced environmental consultant; such audit as a condition to any acquisition, shall be satisfactory to the ~~Trustees~~Investment Committee. All new leases granted by the Trust shall contain appropriate covenants from the lessee respecting environmental matters as determined by the ~~Trustees~~Investment Committee from time to time.

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

All of the foregoing prohibitions, limitations or requirements pursuant to the foregoing policies shall be determined as at the date of investment or other action by the Trust.

### **5.3 Registered Investments**

The Trustees shall cause the Trust to do all such things and take all such action as may be necessary from time to time to ensure that the Trust obtains and retains its status as a “registered investment” under the *Income Tax Act*. The Trustees shall take all steps necessary to ensure that the Trust does not make or hold any investment that would result in the Trust being liable for tax under Part XI or Part X.2 of the *Income Tax Act*.

### **5.4 Application of Investment Restrictions and Operating Guidelines**

With respect to the investment restrictions and operating guidelines contained in Sections 5.1 and 5.2, where any maximum or minimum percentage limitation is specified in any of the restrictions therein contained, such restrictions shall be applied on the basis of the relevant amounts calculated immediately after the making of such investment. Any subsequent change relative to any percentage limitation which results from a subsequent change in the book value of the assets of the Trust or the amount of Adjusted Unitholders’ Equity will not require divestiture of any investment

### **5.5 Regulatory Matters**

If at any time a government or regulatory authority having jurisdiction over the Trust or any property of the Trust shall enact any law, regulation or requirement which is in conflict with any investment restriction of the Trust then in force, such restriction in conflict shall, if the Trustees on the advice of legal counsel to the Trust so resolve, be deemed to have been amended to the extent necessary to resolve any such conflict and,

notwithstanding anything to the contrary herein contained, any such resolution of the Trustees shall not require the prior approval of Unitholders.

## Article 6 TRUST UNITS

### 6.1 Units

6.1.1 The beneficial interests in the Trust shall be divided into interests of two classes as follows:

6.1.1.1 the first of such classes shall be designated as “Variable Voting Units” until (but not including) July 1, 2020 and thereafter as “Units”, and

6.1.1.2 the second of such classes shall be designated as “Special Voting Units”.

The aforementioned classes of beneficial interests in the Trust shall be entitled to the rights and subject to the limitations, restrictions and conditions set out herein, and the interest of each Unitholder and Special Unitholder shall be determined by the number of Units and/or Special Voting Units registered in the name of the Unitholder or Special Unitholder.

6.1.2 Each Unit represents an equal undivided interest in the Trust. All Units outstanding from time to time shall be entitled to participate pro rata in any distributions by the Trust and, in the event of termination or winding-up of the Trust, in the net assets of the Trust. All Units shall rank among themselves equally and rateably without discrimination, preference or priority.

6.1.3 No Special Voting Unit shall be entitled to any interest or share in the distributions or net assets of the Trust. Special Voting Units may be issued in series and shall only be issued in connection with or in relation to Exchangeable Securities on such terms and conditions as may be determined by the Trustee. A Special Voting Unit shall be issued in conjunction with Exchangeable Securities issued and shall be automatically cancelled on the issuance of Units on exercise, conversion or cancellation of Exchangeable Securities. Subject to section ~~8.6.3~~8.7.3, each Special Voting Unit shall entitle the Special Unitholder of record thereof to a number of votes at all meetings of Unitholders or in respect of any written resolution of Unitholders equal to the number of Units into which the Exchangeable Securities to which such Special Voting Unit relates are, directly or indirectly, exchangeable or convertible (other than in respect of Exchangeable Securities which have been so exchanged, converted or cancelled). For greater certainty, holders of Special Voting Units shall not be entitled to any distributions of any nature whatsoever from the Trust or have any legal or beneficial interests in any assets of the Trust on termination or winding-up of the Trust.

6.1.4 Concurrently with the issuance of any Exchangeable Securities and associated Special Voting Units, the Trust shall enter into such agreements, including voting and exchange trust agreements and Exchangeable Security support agreements, as may be necessary or desirable to properly provide for the terms of the Exchangeable Securities, including to provide for voting of such Special Voting Units;

6.1.5 If in any given 365 day period in the five year period beginning on ~~the later of (a) July 1, 2015, and (b) the closing of the purchase and sale transaction contemplated by the PPI Property Purchase Agreement~~July 1, 2015:

6.1.5.1 the average weighted aggregate number of Units and Special Voting Units (excluding any Additional Special Voting Units) beneficially owned or controlled by Mitchell Goldhar (while he remains alive) or the MG Entities (if Mitchell Goldhar is not alive) is equal to or greater than the lesser of (A) 20% of the voting rights attached to the issued and outstanding voting securities of the Trust (excluding any Additional Special Voting Units) and (B) 20,000,000 voting securities of the Trust, provided that such 20,000,000 voting securities represent no less than 10% of the voting rights attached to the issued

and outstanding voting securities of the Trust (excluding any Additional Special Voting Units); and

- 6.1.5.2 Mitchell Goldhar or another individual appointed by the MG Entities pursuant to section ~~3.11~~3.12 is a Trustee;

the Trust shall issue such number of additional Special Voting Units (the “**Additional Special Voting Units**”) to Mitchell Goldhar or such other MG Entity as is designated in writing to the Trust by the MG Entities Representative prior to such issue, which will entitle Mitchell Goldhar (while he remains alive) or the MG Entities (if Mitchell Goldhar is not alive) to directly or indirectly cast 25% of the aggregate votes eligible to be cast at a meeting of the Unitholders and Special Voting Unitholders. ~~\*For purposes of this section\* 6.1.5, the “PPI Property Purchase Agreement” means the property purchase agreement dated April 16, 2015 between Penguin Properties Inc., SmartCentres Management Inc., the Trust and Calloway Limited Partnership IV.~~

The rights of Mitchell Goldhar and the MG Entities pursuant to this section 6.1.5 are not assignable other than to other MG Entities. ~~The~~If Mitchell Goldhar is not alive or Mitchell Goldhar has assigned his rights under this section 6.1.5 to a MG Entity that he does not Control, the MG Entities shall exercise their voting rights collectively as Unitholders and not as individual Unitholders

## 6.2 Ranking of Units

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

## 6.3 Consideration for Units

6.3.1 Subject to the last two sentences of this section 6.3.1, a Unit shall not be fully paid until the consideration therefore has been received in full by or on behalf of the Trust. The consideration for any Unit shall be paid in money or in property or in past services that are not less in value than the fair equivalent of the money that the Trust would have received if the Unit had been issued for money. In determining whether property or past services are the fair equivalent of consideration paid in money, the Trustees may take into account reasonable charges and expenses of organization and reorganization and payments for property and past services reasonably expected to benefit the Trust. Units may be issued and sold on an instalment basis, in which event beneficial ownership of such Units may be represented by instalment receipts, but shall otherwise be non-assessable. When Units are issued and sold on an instalment basis, the Trust may take security over such Units as security for unpaid instalments, including, without limitation, a pledge as contemplated by an instalment receipt agreement.

6.3.2 Special Voting Units shall only be issued in connection with the issuance of Exchangeable Securities or pursuant to the operation of section 6.1.5 above.

## 6.4 No Pre-Emptive Rights

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

## 6.5 Fractional Units

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

attached thereto the rights, restrictions, conditions and limitations attaching to whole Units in the proportion that they bear to a whole Unit.

#### **6.6 Title to Assets of the Trust**

The titles to the assets of the Trust and the right to conduct the affairs of the Trust are vested exclusively in the Trustees, subject to the provisions of this Declaration of Trust, and the Unitholders and Special Unitholders shall have no interest therein other than the interest in the Trust conferred by their Units or Special Voting Units issued hereunder as described in section 2.7. No Unitholder or Special Unitholder has or is deemed to have any right of ownership in any of the assets of the Trust.

#### **6.7 Allotment and Issue**

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

#### **6.8 Rights, Warrants and Options**

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

#### **6.9 Commissions and Discounts**

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

#### **6.10 Transferability**

Subject to section 6.11, the Units are freely transferable and the Trustees shall not impose any restriction on the transfer of Units. The Trustees shall use all reasonable efforts to obtain and maintain a listing for the Units on one or more stock exchanges in Canada. Special Voting Units and Exchangeable Securities shall be non-transferable without the consent of the Trust and shall not be listed on any exchange.

#### **6.11 Limitation of Ownership by Non-Residents**

6.11.1 At no time may Non-Residents be the beneficial owners of more than 49.9% of the Units, on a basic or fully-diluted basis (and for greater certainty, including Units into which Exchangeable Securities may be converted or exchanged), and the Trustees shall inform the transfer agent of this restriction. The Trustees may require a registered holder of Units and/or Special Voting Units to provide the Trustees with a declaration as to the jurisdictions in which beneficial owners of the Units or Special Voting Units registered in such Unitholder's or Special Unitholder's name are resident and as to whether such beneficial owners are Non-Residents (or in the case of a partnership, whether the partnership is a Non-Resident). If the Trustees become aware, as a result of acquiring such declarations as to beneficial ownership or as a result of any other investigations, that the beneficial owners of 49.9% of the Units (on a basic or fully-diluted basis, including Units

into which Exchangeable Securities may be converted or exchanged) are, or may be, Non-Residents or that such a situation is imminent, the Trustees may make a public announcement thereof and shall not accept a subscription for Units from or issue or register a transfer of Units to a Person unless the Person provides a declaration in form and content satisfactory to the Trustees that the Person is not a Non-Resident and does not hold such Units for the benefit of Non-Residents. If, notwithstanding the foregoing, the Trustees determine that more than 49.9% of the Units (on a basic or fully-diluted basis, including Units into which Exchangeable Securities may be converted or exchanged) are held by Non-Residents, the Trustees may send a notice to such Non-Resident holders of the Units or Exchangeable Securities, as the case may be, chosen in inverse order to the order of acquisition or registration or in such other manner as the Trustees may consider equitable and practicable, requiring them to sell their Units or Exchangeable Securities or a portion thereof within a specified period of not more than 30 days. If the Unitholders receiving such notice have not sold the specified number of Units or Exchangeable Securities or provided the Trustees with satisfactory evidence that they are not Non-Residents within such period, the Trustees may on behalf of such Unitholders sell such Units or Exchangeable Securities and, in the interim, shall suspend the voting and distribution rights attached to such Units or Exchangeable Securities (other than the right to receive the net proceeds from the sale). Upon such sale or conversion, the affected holders shall cease to be holders of the relevant Units or Exchangeable Securities and their rights shall be limited to receiving the net proceeds of sale upon surrender of the certificates, if any, representing such securities. The Trust may direct the Transfer Agent to do any of the foregoing.

- 6.11.2 No liability shall accrue to the Trust or the Trustees if the Units of a Non-Resident Unitholder are sold at a loss to such Unitholder. Unless and until the Trustees shall have been required to do so under the terms hereof, the Trustees shall not be bound to do or take any proceeding or action with respect to this section 6.11 by virtue of the powers conferred on them hereby. The Trustees shall use reasonable commercial efforts to actively monitor the ownership of Units by Non-Residents. It is acknowledged that the Trustees cannot definitively monitor the ownership of Units by Non-Residents if the Units are registered in the name of CDS. The Trustees shall not be liable for any violation of the Non-Resident ownership restriction which may occur during the term of the Trust.
- 6.11.3 In order to ensure the Trust's continued compliance with subsection 132(7) of the *Income Tax Act* or any legislative amendments to subsection 132(7) of the *Income Tax Act* as finally enacted, the Trustees may, at any time and in their sole discretion, amend the Declaration of Trust in any manner they deem necessary to ensure compliance.

## 6.12 Certificates

Each Unitholder and Special Unitholder or his or her duly authorized agent is entitled to a certificate bearing an identifying serial number in respect of the Units or Special Voting Units held by him or her, signed in the manner hereinafter prescribed, but the Trust is not bound to issue more than one certificate in respect of a Unit or Units held jointly or in common by two or more Persons and delivery of a certificate to one of them shall be sufficient delivery to all. No certificate shall be issued to evidence any fractional Units. ~~A single certificate shall be issued for the Special Voting Units as directed by the MG Entities.~~

## 6.13 Execution of Certificates

Certificates representing Units shall be signed manually by at least one Trustee or officer of the Trust holding office at the time of signing, provided, however, that if the Trustees have appointed a registrar and transfer agent which countersigns manually such Unit Certificate, signatures of Trustees or officers of the Trust required on Unit Certificates may be printed or otherwise mechanically reproduced thereon and certificates so signed are as valid as if they had been signed manually. If a Unit Certificate contains a printed or mechanically reproduced signature of a Person, the Trust may issue the certificate even though the Person has ceased to be a Trustee or an officer of the Trust and such certificate is as valid as if the Person were a Trustee or an officer of the Trust at the date of its issue.

#### **6.14 Certificate Fee**

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

#### **6.15 Form of Certificate**

The form of certificate representing Units (sometimes called the “**Unit Certificates**”) shall be in such form as is from time to time authorized by the Trustees. The Unit Certificates may be engraved, printed or lithographed, or partly in one form and partly in another, as the Trustees may determine, ~~and the Unit Certificate issued in respect of the Initial Contribution (and any Unit Certificate issued to a transferee of such Unit) may be typewritten.~~ The form of certificate representing Special Voting Units shall be in a form authorized by the Trustees.

#### **6.16 Unit Register and Transfer Ledgers to be Maintained**

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

#### **6.17 Entry on Register**

Upon any issue of Units, the name of the subscriber or other Person entitled thereto shall be promptly entered on the Register as the owner of the number of Units issued to such subscriber or other Person, or if the subscriber is already a Unitholder, the Register shall be amended to include his or her additional Units.

#### **6.18 Transfer of Units**

Units shall be for all purposes of the Trust and this Declaration of Trust, personal and moveable property, and shall be transferable at any time and from time to time by the Unitholder by endorsement and delivery of the certificates representing the Units subject to such provisions and conditions as may be prescribed by the Trustees from time to time. No transfer shall be recorded on the Register unless the transferor has executed the instrument of transfer as reproduced in the Unit Certificate and the transferee has delivered to the transfer agent and/or registrar a Unit Certificate representing the Units transferred. Subject to the foregoing, transfers shall be recorded on the Register and a new Unit Certificate for the Units so transferred shall be issued to the transferee and in case of a transfer of only part of the Units represented by any Unit Certificate, a new Unit Certificate for the remaining Units shall be issued to the transferor. Special Voting Units shall be non-transferable (except to another MG Entity) without the consent of the Trust and the Toronto Stock Exchange.

#### **6.19 Successors in Interest to Unitholders**

Any Person becoming entitled to any Units or Special Voting Units, as the case may be, as a consequence of the death, bankruptcy or incapacity of any Unitholder or otherwise by operation of law shall be recorded in the Register as the holder of such Units or Special Voting Units and shall receive a new certificate therefore upon production of evidence thereof satisfactory to the Trustees and delivery of the existing certificate to the Trustees or a transfer agent or registrar of the Trust, but until such record is made, the Unitholder or Special Unitholder of record shall continue to be and be deemed to be the holder of such Units or Special

Voting Units for all purposes whether or not the Trust, the Trustees or the transfer agent or registrar of the Trust shall have actual or other notice of such death, bankruptcy, incapacity or other event.

#### **6.20 Units Held Jointly or in Fiduciary Capacity**

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

#### **6.21 Performance of Trusts**

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

#### **6.22 Lost Certificates**

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

#### **6.23 Death of Unitholders**

The death of a Unitholder or Special Unitholder during the continuance of the Trust shall not terminate the Trust or give the personal representatives or the heirs of the estate of the deceased Unitholder or Special Unitholder a right to an accounting or to take any action in the courts or otherwise against other Unitholders, Special Unitholders or the Trustees, officers of the Trust or the property of the Trust, but shall only entitle the personal representatives or the heirs of the estate or succession of the deceased Unitholder or Special Unitholder to demand and receive, pursuant to the provisions of section 6.19, a new certificate for Units in place of the certificate held by the deceased Unitholder or Special Unitholder, and upon the acceptance thereof such personal representatives or the heirs of the estate or succession of the deceased Unitholder or Special Unitholder shall succeed to all rights of the deceased Unitholder or Special Unitholder under this Declaration of Trust.

#### **6.24 Unclaimed Payments**

In the event that the Trustees hold any amounts to be paid to Unitholders under Article 11 or otherwise because such amounts are unclaimed or cannot be paid for any reason, neither the Trustees nor any distribution disbursing agent shall be under any obligation to invest or reinvest the same and shall only be obligated to hold the same in a current or other non-interest bearing account with a chartered bank or trust company, pending payment to the Person or Persons entitled thereto. The Trustees shall, as and when required by law, and may at any time prior to such required time, pay all or part of such amounts so held to a court in the province where the Trust has its head office or to the Public Curator (or other similar government official or agency) in the province where the Trust has its head office whose receipt shall be a good release, acquittance and discharge of the obligations of the Trustees.

#### **6.25 Repurchase of Units**

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

#### **6.26 Instalment Receipts**

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

#### **6.27 Take-Over Bids**

6.27.1 If within 120 days after the date of a Take-over Bid the bid is accepted by the holders of not less than 90% of the aggregate of the Units and Special Voting Units, other than Units held at the date of the Take-over Bid by or on behalf of the Offeror or an Affiliate or Associate of the Offeror, the Offeror is entitled, on complying with this section, to acquire the Units held by the Dissenting Offerees.

6.27.2 An Offeror may acquire Units held by a Dissenting Offeree by sending by registered mail within 60 days after the date of termination of the Take-over Bid and in any event within 180 days after the date of the Take-over Bid, an Offeror's notice to each Dissenting Offeree stating that:

6.27.2.1 the Offerees holding more than 90% of the Units and Special Voting Units to which the bid relates accepted the Take-over Bid;

6.27.2.2 the Offeror is bound to take up and pay for or has taken up and paid for the Units of the Offerees who accepted the Take-over Bid;

6.27.2.3 a Dissenting Offeree is required to elect:

6.27.2.3.1 to transfer his or her Units to the Offeror on the terms on which the Offeror acquired the Units of the Offerees who accepted the Take-over Bid, or

6.27.2.3.2 to demand payment of the fair value of his or her Units in accordance with subsections ~~6.27.86.27.9~~ to ~~6.27.176.27.18~~ by notifying the Offeror within 20 days after he or she receives the Offeror's notice;

6.27.2.4 a Dissenting Offeree who does not notify the Offeror in accordance with subparagraph 6.27.2.3.2 is deemed to have elected to transfer his or her Units to the Offeror on the same terms that the Offeror acquired the Units from the Offerees who accepted the Take-over Bid; and

- 6.27.2.5 a Dissenting Offeree must send his or her Units to which the Take-over Bid relates to the Trust within 20 days after he or she receives the Offeror's notice.
- 6.27.3 Concurrently with sending the Offeror's notice under subsection 6.27.2, the Offeror shall send to the Trust a notice of adverse claim disclosing the name and address of the Offeror and the name of the Dissenting Offeree with respect to each Unit held by a Dissenting Offeree.
- 6.27.4 A Dissenting Offeree to whom an Offeror's notice is sent under subsection 6.27.2 shall, within 20 days after he or she receives that notice:
- 6.27.4.1 send his or her Unit Certificates to the Trust; and
- 6.27.4.2 elect
- 6.27.4.2.1 to transfer his or her Units to the Offeror on the terms on which the Offeror acquired the Units of the Offerees who accepted the Take-over Bid; or
- 6.27.4.2.2 to demand payment of the fair value of his or her Units in accordance with subsections 6.27.9 to 6.27.18 by notifying the Offeror within those 20 days.
- 6.27.5 A Dissenting Offeree who does not notify the Offeror in accordance with subparagraph 6.27.2.3.2 is deemed to have elected to transfer his or her Units to the Offeror on the same terms that the Offeror acquired the Units from the Offerees who accepted the Take-over Bid.
- 6.27.6 ~~6.27.5~~ Within 20 days after the Offeror sends an Offeror's notice under subsection 6.27.2, the Offeror shall pay or transfer to the Trust the amount of money or other consideration that the Offeror would have had to pay or transfer to a Dissenting Offeree if the Dissenting Offeree had elected to accept the Take-over Bid under subparagraph 6.27.2.3.1.
- 6.27.7 ~~6.27.6~~ The Trust is deemed to hold in trust for the Dissenting Offeree the money or other consideration it receives under subsection ~~6.27.5~~ 6.27.6, and the Trust shall deposit the money in a separate account in a bank or other body corporate any of whose deposits are insured by the Canada Deposit Insurance Corporation (or any successor thereto) 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.
- 6.27.8 ~~6.27.7~~ Within 30 days after the Offeror sends an Offeror's notice under subsection 6.27.2, the Trust shall:
- 6.27.8.1 ~~6.27.7.1~~ if the payment or transfer required by subsection 6.27.6 is made, issue to the Offeror a Unit Certificate in respect of the Units that were held by Dissenting Offerees;
- 6.27.8.2 ~~6.27.7.2~~ give to each Dissenting Offeree who elects to accept the Take-over Bid terms under subparagraph 6.27.2.3.1 and who sends his or her Unit Certificates as required under subsection 6.27.4, the money or other consideration to which he is entitled, disregarding fractional Units, if any, which may be paid for in money; and
- 6.27.8.3 ~~6.27.7.3~~ if the payment or transfer required by subsection 6.27.6 is made and the money or other consideration is deposited as required by subsection 6.27.7, send to each Dissenting Offeree who has not sent his or her Unit Certificates as required under subsection 6.27.4 a notice stating that:
- 6.27.8.3.1 ~~6.27.7.3.1~~ his or her Units have been cancelled,
- 6.27.8.3.2 ~~6.27.7.3.2~~ the Trust or some designated Person holds in trust for him or her the money or other consideration to which he or she is entitled as payment for or in exchange for his or her Units, and

- 6.27.8.3.3 ~~6.27.7.3.3~~ the Trust will, subject to subsections ~~6.27.8~~6.27.9 to ~~6.27.17~~6.27.18, send that money or other consideration to him or her forthwith after receiving his or her Units.
- 6.27.9 ~~6.27.8~~ If a Dissenting Offeree has elected to demand payment of the fair value of his or her Units under subparagraph 6.27.2.3.2, the Offeror may, within 20 days after it has paid the money or transferred the other consideration under subsection ~~6.27.5~~6.27.6, apply to a court to fix the fair value of the Units of that Dissenting Offeree.
- 6.27.10 ~~6.27.9~~ If an Offeror fails to apply to a court under subsection ~~6.27.8~~6.27.9, a Dissenting Offeree may apply to a court for the same purpose within a further period of 20 days.
- 6.27.11 ~~6.27.10~~ Where no application is made to a court under subsection ~~6.27.9~~6.27.10 within the period set out in that subsection, a Dissenting Offeree is deemed to have elected to transfer his or her Units to the Offeror on the same terms that the Offeror acquired the Units from the Offerees who accepted the Take-over Bid.
- 6.27.12 ~~6.27.11~~ An application under subsection ~~6.27.8~~ ~~or~~ 6.27.9 or 6.27.10 shall be made to a court having jurisdiction in the place where the Trust has its head office or in the province where the Dissenting Offeree resides if the Trust carries on its affairs in that province.
- 6.27.13 ~~6.27.12~~ A Dissenting Offeree is not required to give security for costs in an application made under subsection ~~6.27.8~~ ~~or~~ 6.27.9 or 6.27.10.
- 6.27.14 ~~6.27.13~~ On an application under subsection ~~6.27.8~~ ~~or~~ 6.27.9 or 6.27.10:
- 6.27.14.1 ~~6.27.13.1~~ all Dissenting Offerees referred to in subparagraph 6.27.2.3.2 whose Units have not been acquired by the Offeror shall be joined as parties and shall be bound by the decision of the court; and
- 6.27.14.2 ~~6.27.13.2~~ the Offeror shall notify each affected Dissenting Offeree of the date, place and consequences of the application and of his or her right to appear and be heard in Person or by counsel.
- 6.27.15 ~~6.27.14~~ On an application to a court under subsection ~~6.27.8~~ ~~or~~ 6.27.9 or 6.27.10 the court may determine whether any other Person is a Dissenting Offeree who should be joined as a party, and the court shall then fix a fair value for the Units of all Dissenting Offerees.
- 6.27.16 ~~6.27.15~~ A court may in its discretion appoint one or more appraisers to assist the court to fix a fair value for the Units of a Dissenting Offeree.
- 6.27.17 ~~6.27.16~~ The final order of the court shall be made against the Offeror in favour of each Dissenting Offeree and for the amount for his Units as fixed by the court.
- 6.27.18 ~~6.27.17~~ In connection with proceedings under this section, a court may, make any order it thinks fit and, without limiting the generality of the foregoing, it may:
- 6.27.18.1 ~~6.27.17.1~~ fix the amount of money or other consideration that is required to be held in trust under subsection ~~6.27.6~~6.27.7;
- 6.27.18.2 ~~6.27.17.2~~ order that money or other consideration be held in trust by a Person other than the Trust; and
- 6.27.18.3 ~~6.27.17.3~~ allow a reasonable rate of interest on the amount payable to each Dissenting Offeree from the date he sends or delivers his Unit Certificates under subsection 6.27.4 until the date of payment.

6.27.19 If a Unitholder does not receive an Offeror's notice under subsection 6.27.2, the Offeror's Take-over Bid has been accepted by the holders of not less than 90% of the aggregate of the Units and Special Voting Units in accordance with section 6.27.1 and the Offeror has not exercised its compulsory acquisition right pursuant to section 6.27.1, the Unitholder may:

6.27.19.1 within 90 days after the date of termination of the Take-over Bid; or

6.27.19.2 if the Unitholder did not receive an offer pursuant to the Take-over Bid, within 90 days after the later of:

6.27.19.2.1 the date of termination of the Take-over Bid; and

6.27.19.2.2 the date on which the Unitholder learned of the Take-over Bid.

require the Offeror to acquire those Units.

6.27.20 If a Unitholder requires the Offeror to acquire Units under subsection 6.27.19, the Offeror shall acquire the Units on the same terms under which the Offeror acquired or will acquire the Units of the Unitholders who accepted the Take-over Bid.

## **6.28 Power of Attorney**

Each Unitholder hereby grants to the Trustees and each of them, their successors and assigns, a power of attorney constituting the Trustees, and each of them, with full power of substitution, as his true and lawful attorney to act on his behalf, with full power and authority in his name, place and stead, and to execute, under seal or otherwise, swear to, acknowledge, deliver, make or file or record when, as and where required:

- 6.28.1 this Declaration of Trust, any amendment to this Declaration of Trust and any other instrument required or desirable to qualify, continue and keep in good standing the Trust as a "mutual fund trust", a "unit trust" or as a "registered investment", all within the meaning of the *Income Tax Act*;
- 6.28.2 any instrument, deed, agreement or document in connection with carrying on the activities and affairs of the Trust as authorized in this Declaration of Trust,
- 6.28.3 all conveyances, transfers and other documents required in connection with the dissolution, liquidation or termination of the Trust in accordance with the terms of this Declaration of Trust; and
- 6.28.4 any and all elections, determinations or designations whether jointly with third parties or otherwise, under the *Income Tax Act* or any other taxation or other legislation or similar laws of Canada or of any other jurisdiction in respect of the affairs of the Trust or of a Unitholder's interest in the Trust.

The Power of Attorney granted herein is an attorney coupled with an interest, to the extent permitted by applicable law, irrevocable and will survive the assignment by the Unitholder of all or part of his interest in the Trust and will extend to and bind the heirs, executors, administrators and other legal representatives and successors and assigns of the Unitholder.

## **Article 7 REDEMPTION OF UNITS**

### **7.1 Right of Redemption**

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

## 7.2 Exercise of Redemption Right

- 7.2.1 To exercise a Unitholder's right to require redemption under this Article 7, a duly completed and properly executed notice requiring the Trust to redeem Units, in a form approved by the Trustees, shall be sent to the Trust at the head office of the Trust.
- 7.2.2 Upon receipt by the Trust of the notice to redeem Units, the Unitholder shall thereafter cease to have any rights with respect to the Units tendered for redemption (other than to receive the redemption payment therefor) including the right to receive any distributions thereon which are declared payable to the Unitholders of record on a date which is subsequent to the day of receipt by the Trust of such notice. Units shall be considered to be tendered for redemption on the date that the Trust has received the notice and other required documents or evidence as aforesaid.

## 7.3 Cash Redemption

- 7.3.1 Upon receipt by the Trust of the notice to redeem Units in accordance with section 7.2 the holder of the Units tendered for redemption shall be entitled to receive a price per Unit (hereinafter called the "**Redemption Price**") equal to the lesser of:
- 7.3.1.1 90% of the "market price" of the Units on the principal market on which the Units are quoted for trading during the 10 trading day period ending on the date on which the Units were surrendered to the Trust for redemption; and
- 7.3.1.2 100% of the "closing market price" on the principal market on which the Units are quoted for trading on the date on which the Units were surrendered to the Trust for redemption.

For the purposes hereof, "market price" shall be an amount equal to the weighted average of the closing price of the Units for each of the trading days on which there was a closing price; provided that if the applicable exchange or market does not provide a closing price but only provides the highest and lowest prices of the Units traded on a particular day, the "market price" shall be an amount equal to the weighted average of the average of the highest and lowest prices for each of the trading days on which there was a trade; and provided further that if there was trading on the applicable exchange or market for fewer than five of the 10 trading days, the "market price" shall be the weighted average of the following prices established for each of the 10 trading days: the average of the last bid and last ask prices for each day on which there was no trading; the closing price of the Units for each day that there was trading if the exchange or market provides a closing price; and the weighted average of the highest and lowest prices of the Units for each day that there was trading, if the market provides only the highest and lowest prices of Units traded on a particular day. For the purposes of section 7.3.1.2, the "closing market price" shall be: an amount equal to the closing price of the Units if there was a trade on the date and the exchange or market provides a closing price; an amount equal to the weighted average of the highest and lowest prices of Units if there was trading and the exchange or other market provides only the highest and lowest trading prices of Units traded on a particular day; and the weighted average of the last bid and last ask prices if there was no trading on the date. During the period of time, if any, after the date on which the Units were surrendered to the Trust for redemption, that the Units issued are subject to payment of an instalment of the issue price and are represented by instalment receipts, unless a market for trading in the Units (other than those so represented by instalment receipts) develops which the Trustees consider fairly reflects the market value of the Units, the "market price" for purposes of section 7.3.1.1 and the "closing market price" for purposes of section 7.3.1.2 shall equal the aggregate of the "market price" or "closing market price" for such instalment receipts (calculated as aforesaid as if the instalment receipts were Units) plus the amount of the unpaid instalment of the issue price per Unit.

- 7.3.2 Subject to sections 7.4 and 7.5, the Redemption Price payable in respect of the Units tendered for redemption during any month shall be paid by cheque, drawn on a Canadian chartered bank or a trust company in lawful money of Canada, payable at par to or to the order of the Unitholder who

exercised the right of redemption on or before the last day of the calendar month following the month in which the Units were tendered for redemption. Payments made by the Trust of the Redemption Price are conclusively deemed to have been made upon the mailing of a cheque in a postage prepaid envelope addressed to the former Unitholder and/or any party having a security interest unless such cheque is dishonoured upon presentment. Upon such payment, the Trust shall be discharged from all liability to the former Unitholder in respect of Trust Units redeemed.

#### **7.4 No Cash Redemption in Certain Circumstances**

Section 7.3.2 shall not be applicable to Units tendered for redemption by a Unitholder, if:

- 7.4.1 the total amount payable by the Trust pursuant to Section 7.3 in respect of such Units and all other Units tendered for redemption prior thereto in the same calendar month exceeds \$50,000 (“**Monthly Limit**”); provided that the Trustees may, in their sole discretion, waive such limitation in respect of all Units tendered for redemption in any calendar month. In the absence of such a waiver, Units tendered for redemption in any calendar month in which the total amount payable by the Trust pursuant to section 7.3.2 exceeds the Monthly Limit will be redeemed for cash pursuant to section 7.3.2 and, subject to any applicable regulatory approvals, in accordance with section 7.5 on a pro rata basis;
- 7.4.2 at the time the Units are tendered for redemption, the outstanding Units (or, as applicable, instalment receipts) are not listed for trading or quoted on any stock exchange or market which the Trustees consider, in their sole discretion, provides representative fair market value prices for the Units (or, as applicable, instalment receipts); or
- 7.4.3 the normal trading of the outstanding Units (or, as applicable, instalment receipts) is suspended or halted on any stock exchange on which the Units (or, as applicable, instalment receipts) are listed for trading or, if not so listed, on any market on which the Units (or, as applicable, instalment receipts) are quoted for trading, on the date that such Units tendered for redemption were tendered to the Trust for redemption or for more than five trading days during the 10 trading day period commencing immediately after the date on which such Units tendered for redemption were tendered to the Trust for redemption.

#### **7.5 Alternate Redemption**

If, pursuant to section 7.4, section 7.3.2 is not applicable to Units tendered for redemption by a Unitholder, the Redemption Price per Unit specified in section 7.3 to which the Unitholder would otherwise be entitled shall, subject to receipt of all necessary regulatory approvals, be paid and satisfied by way of a distribution to such Unitholder of unsecured promissory notes with interest at a market rate to be determined by the Trustees, payable monthly, issued by the Trust (the “**Notes**”), each in the principal amount of \$1, on the basis of such number of Notes for such Units tendered for redemption equal to the product of (i) number of Units tendered for redemption multiplied by (ii) the Redemption Price per Unit specified in section 7.3, which product will then be divided by \$1 on the date the Units were tendered for redemption. The Redemption Price payable pursuant to this section 7.5 in respect of 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 Unitholder who exercised the right of redemption, on the last day (the “**Transfer Date**”) of the calendar month following the month in which the Units were tendered for redemption. Payments by the Trust of the Redemption Price are conclusively deemed to have been made upon the mailing of the Notes by registered mail in a postage prepaid envelope addressed to the former Unitholder. Upon such payment, the Trust shall be discharged from all liability to the former Unitholder in respect of the Units so redeemed. No fractional Notes in a principal amount less than \$1 will be distributed and where the number of Notes to be received by the former Unitholder includes a fraction or a principal amount less than a multiple of \$1, such number shall be rounded to the next lowest number or multiple of \$1, as the case may be.

## 7.6 Cancellation of all Redeemed Units

All Units which are redeemed under this Article 7 shall be cancelled and such Units shall no longer be outstanding and shall not be reissued.

## 7.7 Subordination

Following any in specie redemption pursuant to the operation of section 7.5, holders of Notes will be required to acknowledge that they are subject to any applicable subordination agreements as may be determined by the Trustees prior to delivery of such Notes to the Unitholder.

## Article 8 MEETINGS OF UNITHOLDERS

### 8.1 Annual Meeting

There shall be an annual meeting of the Unitholders at such time and place as the Trustees shall prescribe for the purpose of electing Trustees, appointing the auditors of the Trust and transacting such other business as the Trustees may determine or as may properly be brought before the meeting. The annual meeting of Unitholders shall be held after delivery to the Unitholders of the annual report referred to in section 16.6 and, in any event, within 180 days after the end of each fiscal year of the Trust. Notwithstanding the foregoing, the Trust may apply to the court for an order extending the time for calling an annual meeting.

### 8.2 Other Meetings

The Trustees shall have power at any time to call special meetings of the Unitholders at such time and place as the Trustees may determine. Unitholders and Special Unitholders holding in the aggregate not less than ~~10~~5% of the outstanding Special Voting Units and Units entitled to vote at a meeting of the Unitholders of the Trust may requisition the Trustees to call a special meeting of the Unitholders for the purposes stated in the requisition. The requisition shall state in reasonable detail the business to be transacted at the meeting and shall be sent to each of the Trustees at the head office of the Trust. Upon receiving the requisition, the Trustees shall call a meeting of Unitholders to transact the business referred to in the requisition, unless (i) a record date for a meeting of the Unitholders has been fixed and notice thereof has been given to each stock exchange in Canada on which the Units are listed for trading; (ii) the Trustees have called a meeting of the Unitholders and have given notice thereof pursuant to section ~~8.3~~8.4; or (iii) in connection with the business as stated in the requisition:

8.2.1 it clearly appears that the matter covered by the requisition (i) 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 Unitholders or other securityholders, or primarily for the purpose of promoting general economic, political, racial, religious, social or similar causes; or (ii) does not relate in a significant way to the business or affairs of the Trust;

8.2.2 the Trust, at the Unitholder's request, included a matter covered by a requisition in an information circular relating to a meeting of Unitholders held within two years preceding the receipt of such request and the Unitholder failed to present the matter, in ~~P~~person or by proxy, at the meeting;

8.2.3 substantially the same matter covered by the requisition was submitted to Unitholders in an information circular (including a dissidents information circular) relating to a meeting of Unitholders held within two years preceding the receipt of the Unitholder's request and the matter covered by the requisition was defeated; or

8.2.4 the rights conferred by this section 8.2 are being abused to secure publicity.

Subject to the foregoing, if the Trustees do not within 21 days after receiving the requisition call a meeting, any Unitholder entitled to vote at a meeting of the Unitholders or any Special Unitholders who signed the requisition may call the meeting in accordance with the provisions of sections ~~8.3~~8.4 and ~~8.7~~8.9 and the

Trustees' Regulations, *mutatis mutandis*. If there shall be no Trustees, the officers of the Trust shall promptly call a special meeting of the Unitholders for the election of successor Trustees. The phrase "meeting of the Unitholders" wherever it appears in this Declaration of Trust shall mean and include both an annual meeting and any other meeting of Unitholders entitled to vote at a meeting of the Unitholders. Unless the Unitholders otherwise resolve at a meeting called under this section 8.2, the Trust shall reimburse the Unitholders who have signed a valid requisition the expenses reasonably incurred by them in requisitioning, calling and holding the meeting.

### **8.3 Unitholder Proposals**

8.3.1 Subject to sections 8.3.2 and 8.3.3, a Unitholder or a Special Unitholder 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.

8.3.2 To be eligible to submit a Proposal, a Person:

8.3.2.1 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 (A) at least 1% of the total number of outstanding Units and Special Voting Units, as of the day on which the person submits a Proposal, or (B) Units and Special Voting Units whose fair market value, as determined at the close of business on the Business Day before the Person submits the Proposal, is at least \$2,000; or

8.3.2.2 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 (A) at least 1% of the total number of outstanding Units and Special Voting Units, as of the day on which the Person submits the Proposal, or (B) Units and Special Voting Units whose fair market value, as determined at the close of business on the Business Day before the Person submits the Proposal, is at least \$2,000.

8.3.3 A Proposal must be accompanied by the following information:

8.3.3.1 the name and address of the Person submitting the Proposal and the Person's supporters, if applicable; and

8.3.3.2 the number of Units and Special Voting Units, as applicable, held or owned by the Person submitting the Proposal and the Person's supporters, if applicable, and the date the Units and Special Voting Units were acquired.

8.3.4 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 section 8.3.2.

8.3.5 The Trust shall set out the Proposal in its information circular delivered in connection with its annual meeting or attach the Proposal thereto.

8.3.6 If so requested by the Person who submits the Proposal, the Trust shall include in, or attach to, its information 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 section 8.3.3.

- 8.3.7 A Proposal may not include nominations for the election of Trustees and a Unitholder or Special Unitholder shall not have the right to make nominations at the meeting, unless such nomination is made in accordance with the provisions of section 3.6.
- 8.3.8 The Trust shall not be required to comply with subsections 8.3.5 and 8.3.6 if:
- 8.3.8.1 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;
- 8.3.8.2 it clearly appears that (A) the primary purpose of the Proposal is to enforce a personal claim or redress a personal grievance against the Trust, the Trustees, its officers, the Unitholders or other securityholders of the Trust, or (B) the Proposal does not relate in a significant way to the business or affairs of the Trust;
- 8.3.8.3 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 an information circular relating to a meeting of the Unitholders;
- 8.3.8.4 substantially the same proposal was submitted to Unitholders in an information 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:
- 8.3.8.4.1 3% of the total number of Units and Special Voting Units voted, if the Proposal has been introduced at only one annual meeting of Unitholders;
- 8.3.8.4.2 6% of the total number of Units and Special Voting 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
- 8.3.8.4.3 10% of the total number of Units and Special Voting 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
- 8.3.8.5 the rights conferred by this section are being abused to secure publicity.
- 8.3.9 If a Person who submits a Proposal fails to continue to hold or own the number of Units and Special Voting Units referred to in section 8.3.2 up to and including the day of the meeting, the Trust is not required to set out in its information circular, or attach to it, any proposal submitted by that Person for any meeting held within two years following the date of the meeting.
- 8.3.10 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.
- 8.3.11 If the Trust refuses to include a Proposal in its information circular, it shall, within 21 days of the later of receipt of the Proposal or proof of ownership under subsection 8.3.4, as the case may be, notify in writing the person submitting the Proposal of its intention to omit the Proposal from the Trust's information circular and of the reasons for the refusal.
- 8.3.12 On the application of a Person submitting a Proposal who claims to be aggrieved by the Trust's refusal under section 8.3.8, a court may order the inclusion of the Proposal in the information circular delivered in connection with the Trust's annual meeting if such order is granted 30 days prior to the meeting or its inclusion in the information circular to be delivered in connection with the Trust's next subsequent annual meeting if such order is granted less than 30 days prior to the annual meeting and make any further order it thinks fit.

8.3.13 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 information circular, and the court, if it is satisfied that subsection 8.3.8 applies, may make such order as it thinks fit.

#### **8.4 ~~8.3~~ Notice of Meeting of Unitholders**

Notice of all meetings of the Unitholders shall be mailed or delivered by the Trustees to each Unitholder entitled to vote at a meeting of the Unitholders at his address appearing in the Register, to each Trustee and to the auditors of the Trust not less than 21 nor more than ~~50 days before~~ 60 days before the meeting, provided that a notice of meeting is not required to be sent to Unitholders who were not registered on the records of the Trust or its transfer agent on the record date for the meeting, but failure to receive notice does not deprive a Unitholder of the right to vote at the meeting. Notice of any meeting of the Unitholders shall state the purposes of the meeting. If a meeting is postponed or adjourned for less than thirty days it is not necessary to give notice of the postponed or adjourned meeting, other than by announcement at the earliest meeting that is postponed or adjourned. If a meeting of Unitholders is postponed or adjourned by one or more postponements or adjournments for an aggregate of thirty days or more, notice of the postponed or adjourned meeting shall be given as for an original meeting.

The business transacted at an annual meeting of Unitholders shall include the presentation of the audited financial statements of the Trust for the immediately preceding fiscal year, the appointment and election of the Trustees for the ensuing year, re-appointment of the incumbent auditor and the transaction of such other business as Unitholders may be entitled to vote upon as hereinafter provided in this Article 8 or as the Trustees may determine. Notice of a meeting of Unitholders at which special business is to be transacted shall state (i) the nature of the business in sufficient detail to permit a Unitholder to form a reasonable judgment thereon; and (ii) the text of any special resolution (or a summary thereof) to be submitted to the meeting.

#### **8.5 ~~8.4~~ Quorum; Chairman**

A quorum for any meeting of Unitholders shall be individuals present not being less than two in number and being Unitholders or Special Unitholders or representing by proxy Unitholders or Special Unitholders who hold in the aggregate not less than ~~10~~ 25% of the total number of outstanding Units entitled to vote at a meeting of the Unitholders and Special Voting Units. The Chairman, or any Trustee determined by the Trustees, shall be the chairman of any meeting of the Unitholders. If quorum is present at the opening of a meeting of Unitholders, the Unitholders and Special Unitholders present may proceed with the business of the meeting, notwithstanding that a quorum is not present throughout the meeting. If quorum is not present at the opening of a meeting of Unitholders, the chairman or the Unitholders and Special Unitholders present may adjourn the meeting to a fixed time and place but may not transact any business.

#### **8.6 ~~8.5~~ Voting**

Holders of Units and ~~or~~ Special ~~\*Voting Units\*~~ \*Voting Units\* entitled to vote at a meeting of the Unitholders ~~and~~ ~~or~~ Special ~~\*Voting Units\*~~ \*Voting Units\* Unitholders may attend and vote at all meetings of the Unitholders and Special Unitholders, either in Person or by proxy. Subject to the provisions of section ~~8-68.7~~, each Unit entitled to vote at a meeting of the Unitholders and each Special Voting Unit shall be entitled to one vote at all meetings of the Unitholders and Special Unitholders, provided that notwithstanding the foregoing or anything else herein contained, any action to be taken by the Unitholders and the Special Unitholders shall, except as otherwise required by this Declaration of Trust or by law, be authorized when approved by a majority of the votes cast at a meeting of the Unitholders and Special Unitholders. The chairman of any such meeting shall not have a second or casting vote.

#### **8.7 ~~8.6~~ Matters on which Unitholders Shall Vote**

None of the following shall occur unless the same has been duly approved by the Unitholders entitled to vote at a meeting of Unitholders duly called and held:

- 8.7.1 ~~8.6.1~~ except as provided in sections 3.1, 3.6, ~~3.7~~3.8 and ~~3.11~~3.12, the appointment, election or removal of Trustees;
- 8.7.2 ~~8.6.2~~ except as provided in section 16.4, the appointment or removal of auditors of the Trust;
- 8.7.3 ~~8.6.3~~ any amendment to the Declaration of Trust (except as provided in section 5.5 or section 13.1, provided that Special Unitholders shall not be entitled to vote the Special Voting Units on any amendment which directly or indirectly adds, removes or changes any of the rights, privileges, restrictions and conditions in respect of the Units and further provided that any amendment which directly or indirectly adds, removes or changes any of the rights, privileges, restrictions and conditions in respect of the Special Voting Units cannot occur without the consent of the holders of a majority of the Special Voting Units);
- 8.7.4 ~~8.6.4~~ an increase or decrease in the number of Trustees pursuant to section 3.1;
- 8.7.5 ~~8.6.5~~ the sale or transfer of the assets of the Trust as an entirety or substantially as an entirety (other than as a part of an internal reorganization of the assets of the Trust as approved by the Trustees); or
- 8.7.6 ~~8.6.6~~ the distribution pursuant to section ~~14.2~~14.3 of all the Trust Property.

Except with respect to the foregoing matters specified in this section ~~8.6~~8.7 or matters submitted to a vote of the Unitholders by the Trustees, no vote of the Unitholders shall in any way bind the Trustees. In particular, under no circumstances may Unitholders authorize the forgiveness of the obligation of holders of any instalment receipts to pay amounts owing thereunder in respect of Units represented by such instalment receipts. Nothing in this section, however, shall prevent the Trustees from submitting to a vote of Unitholders any matter which they deem appropriate.

## 8.8 Units Held by the Trust

- 8.8.1 ~~If the Trust holds any Units or Special Voting Units, the Trust shall not vote or permit those Units or Special Voting Units to be voted unless:~~
- 8.8.1.1 ~~the Trust holds the Units or Special Voting Units for the benefit of the beneficial owner;~~
- 8.8.1.2 ~~the Trust, without delay following the filing or receipt by the Trust, as applicable, of the notice of the meeting, financial statements, management proxy circular, dissident's proxy circular and any other documents (other than the form of proxy) sent to registered Unitholders entitled to vote at the applicable meeting by or on behalf of any person for use in connection with the applicable meeting, sends a copy of the document to the beneficial owner of the Units or Special Voting Units and, except where the Trust has received written voting instructions from the beneficial owner of the Units or Special Voting Units, a written request for such instructions; and~~
- 8.8.1.3 ~~the Trust receives written voting instructions from the beneficial owner of the Units or Special Voting Units;~~
- ~~in which case the Trust shall vote, or appoint a proxyholder to vote, any such Units or Special Voting Units in accordance with any written voting instructions received from the beneficial owner thereof.~~
- 8.8.2 ~~A Unitholder or Special Unitholder by or on behalf of whom a solicitation is made shall provide, at the request of the Trust, without delay, to the Trust at the Unitholder's or Special Unitholder's expense the necessary number of copies of the documents referred to in section 8.8.1, other than copies of the document requesting voting instructions.~~

8.8.3 If a beneficial owner of Units or Special Voting Units held by the Trust so requests and provides the Trust with appropriate documentation, the Trust must appoint the beneficial owner or a nominee of the beneficial owner as proxyholder.

8.8.4 The Trust, the Trustees, the Unitholders and the Special Unitholders agree that the failure of the Trust to comply with this section does not render void any meeting of Unitholders or any action taken at the meeting.

8.8.5 Nothing in this section gives the Trust the right to vote Units or Special Voting Units that the Trust is otherwise prohibited from voting.

8.8.6 The Trust shall not permit any of its subsidiaries holding Units or Special Voting Units to vote, or permit those Units or Special Voting Units to be voted, unless the subsidiary satisfies the requirements of section 8.8.1.

## 8.9 **8.7-Record Dates**

For the purpose of determining the Unitholders who are entitled to receive notice of and vote at any meeting or any adjournment thereof, or who are entitled to receive any distribution, or for the purpose of any other action, the Trustees may from time to time, without notice to Unitholders, close the transfer books for such period, not exceeding 30 days, as the Trustees may determine; or with or without closing the transfer books the Trustees may fix a date not more than 60 days prior to the date of any meeting of the Unitholders or distribution or other action as a record date for the determination of Unitholders entitled to receive notice of and to vote at such meeting or any adjournment thereof or to receive such distribution or to be treated as Unitholders of record for purposes of such other action, as the case may be, and any Unitholder who was a Unitholder at the time so fixed shall be entitled to receive notice of and vote at such meeting or any adjournment thereof or to receive such distribution, even though he has since that date disposed of his or 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 thereof or to receive such distribution or to be treated as a Unitholder of record for purposes of such other action.

## 8.10 **8.8-Proxies**

8.10.1 Whenever the vote or consent of Unitholders is required or permitted under this Declaration of Trust, such vote or consent may be given either directly by the Unitholder or Special Unitholder or by a proxy ~~in such form as the Trustees may prescribe from time to time.~~ The instrument appointing a proxy must be in writing and either substantially in a form which may be approved by the Trustees acting reasonably or as may be satisfactory to the chairman of the meeting at which it is sought to be exercised. The instrument of proxy must be executed, or in Quebec, signed by the Unitholder giving the proxy or by his or her agent duly authorized in writing and, if given on behalf of joint holders, must be executed by all of them and may be revoked by any of them, and, if given by a Unitholder or Special Unitholder which is a body corporate, must be executed or, in Quebec, signed on its behalf by a person duly authorized in writing. A proxy need not be a Unitholder or Special Unitholder. The Trustees may solicit such proxies from the Unitholders, Special Unitholders or any of them in any matter requiring or permitting the Unitholders' or Special Unitholders' vote, approval or consent. The Trustees may specify in a notice calling a meeting of Unitholders a time not exceeding forty-eight hours, excluding Saturdays, Sundays and holidays, before the meeting or postponement or adjournment before which time proxies to be used at the meeting must be deposited with the Trust or its agent or mandatary in order to be voted at the meeting, provided that the Trustees may, in their discretion, waive such deadline. In any event, no proxy shall be voted at any meeting unless it shall have been received by the Trust or its agent or mandatary prior to the commencement of the meeting. A proxy is valid only at the meeting in respect of which it is given or any postponement or adjournment thereof.

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

8.10.2 A Unitholder or Special Unitholder may revoke a proxy:

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

8.10.2.1.1 at the principal office of the Trust at any time up to and including the last business day preceding the day of the meeting, or a postponement or adjournment thereof, at which the proxy is to be used;

8.10.2.1.2 with the chairman of the meeting on the day of the meeting or any postponement or adjournment thereof; or

8.10.2.1.3 in any other manner permitted by law.

8.10.3 A vote cast in accordance with any proxy shall be valid notwithstanding the death, incapacity, insolvency or bankruptcy of the Unitholder or Special Unitholder giving the proxy or the revocation of the proxy unless written notice of the death, incapacity, insolvency, bankruptcy of the Unitholder or Special Unitholder or revocation of the proxy has been received by the chairman of the meeting prior to the time the vote is cast.

**8.11 ~~8.9~~ Personal Representatives**

If a Unitholder is deceased, his or her personal representative, upon filing with the secretary of the meeting such proof of his or her appointment as the secretary considers sufficient, shall be entitled to exercise the same voting rights at any meeting of Unitholders as the Unitholder would have been entitled to exercise if he or she were living and for the purpose of the meeting shall be considered to be a Unitholder. Subject to the provisions of the will of a deceased Unitholder, if there is more than one personal representative, the provisions of section 6.20 relating to joint holders shall apply.

**8.12 ~~8.10~~ Attendance by Others**

Any Trustee, officer, director or employee of the Trust, representative of the auditors of the Trust or other individual approved by the Trustees may attend and speak at any meeting of Unitholders.

**8.13 ~~8.11~~ Conduct of Meeting**

To the extent that the rules and procedures for the conduct of a meeting of Unitholders are not prescribed herein, the rules and procedures shall be such reasonable rules and procedures as are determined by the chairman of the meeting and such rules and procedures shall be binding upon all parties participating in the meeting

**8.14 ~~8.12~~ Binding Effect of Resolutions**

Every resolution passed at a meeting in accordance with the provisions of this Article 8 shall be binding upon all Unitholders, whether present at or absent from the meeting. Subject to section ~~8.6~~8.7, no action taken by Unitholders at any meeting of Unitholders shall in any way bind the Trust or Trustees without the approval of the Trustees.

**8.15 ~~8.13~~ Actions by Unitholders**

Any action, change, approval, decision or determination required or permitted to be taken or made by the Unitholders hereunder shall be effected by a resolution passed by the Unitholders at a duly constituted meeting (or a special resolution in lieu thereof) in accordance with this Article 8.

**8.16 ~~8.14~~ Resolution in Lieu of Meeting**

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

**Article 9  
MEETINGS OF TRUSTEES**

**9.1 Trustees May Act Without Meeting**

The Trustees may act with or without a meeting. Any action of the Trustees may be taken at a meeting by vote or without a meeting by written consent or resolution signed by all of the Trustees, or members of the applicable committee, as the case may be. Any such consent or resolution may be signed in counterpart.

**9.2 Notice of Meeting**

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

**9.3 Quorum**

A quorum for all meetings of the Trustees or any committee thereof shall be at least a majority of the Trustees or of the Trustees on such committee, as the case may be, present in Person, provided that if there is no quorum, the meeting may be adjourned to another 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 two-fifths of the Trustees or members of such committee, as the case may be, is required in order to constitute a quorum.

**9.4 Voting at Meetings**

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

**9.5 Meeting by Telephone**

Any Trustee may participate in a meeting of the Trustees or any committee thereof by means of a conference telephone or other communications equipment by means of which all Persons 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.

**Article 10  
DELEGATION OF POWERS**

**10.1 General**

The Trustees may appoint from among their number one or more committees of Trustees and may, subject to applicable law and to any provision hereof to the contrary, delegate to such committee or committees any

of the powers of the Trustees. The Trustees shall have the power to appoint, employ or contract with any Person for any matter relating to the Trust or its assets or affairs. The Trustees may grant or delegate such authority to a property manager as the Trustees may, subject to applicable law, in their sole discretion deem necessary or desirable without regard to whether such authority is normally granted or delegated by trustees. Subject to section 10.4, the Trustees shall have the power to determine the term and compensation of a property manager or any other Person whom they may employ or with whom they may contract. The Trustees shall have the power to grant powers of attorney as required in connection with any financing or security relating thereto.

## 10.2 Audit Committee

The Trustees shall appoint an audit committee (the “**Audit Committee**”) to consist of not less than three Trustees. The Audit Committee shall be composed of Trustees who comply with the provisions of Multilateral Instrument 52-110. Subject to the delegation to the Audit Committee of such other responsibilities as are determined by the Trustees from time to time and subject such changes to its form and function as may be mandated by any relevant regulatory authorities, the Audit Committee shall:

- 10.2.1 review the Trust’s procedures for internal control with the Auditors and the Trust’s Chief Financial Officer;
- 10.2.2 review the engagement of the Auditors;
- 10.2.3 review and recommend to the Trustees for approval annual and quarterly financial statements and management’s discussion and analysis of financial condition and results of operation;
- 10.2.4 assess the Trust’s financial and accounting personnel; and
- 10.2.5 review any significant transactions outside the Trust’s ordinary course of business and all pending litigation involving the Trust.

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

## 10.3 Investment Committee

The Trustees shall appoint an investment committee (the “**Investment Committee**”) to consist of not less than three Trustees and not more than five Trustees, a majority of whom shall be Outside Trustees, two of whom shall be Trustees appointed by the MG Entities pursuant to section ~~3.11~~ 3.12 hereof for so long as the MG Entities are the beneficial owners in aggregate of in excess of 15% of the issued and outstanding Units and/or Special Voting Units of the Trust (unless the prior written consent to the contrary or a written waiver of the MG Entities, ~~acting through one representative~~ Representative, is obtained) and Mitchell Goldhar remains alive and two-thirds of whom shall have had at least 5 years of substantive experience in the real estate industry. The duties of the Investment Committee will be to:

- 10.3.1 review all proposals regarding investments;
- 10.3.2 review and approve or reject proposed acquisitions and dispositions of investments by the Trust or any of its subsidiaries or Affiliates that do not exceed the applicable financial thresholds determined by the Trustees from time to time;

- 10.3.3 review and approve or reject proposed transactions on behalf of the Trust or any of its subsidiaries or Affiliates that do not exceed the applicable financial thresholds determined by the Trustees from time to time; and
- 10.3.4 review and approve or reject all borrowings and the assumption or granting of any mortgage or other security interest in Real Property, including any assignment of rents and other monies derived from or related to Real Property, by the Trust or any of its subsidiaries and Affiliates that do not exceed the applicable financial thresholds determined by the Trustees from time to time.

Questions arising at any meeting of the Investment Committee shall be decided by a majority of the votes cast. Decisions may be taken by written consent signed by all of the members of the Investment Committee. Any member of the Investment Committee may call a meeting of the Investment Committee upon not less than 48 hours notice. Where for any reason a member of the Investment Committee is disqualified from voting on or participating in a decision, any other independent and disinterested Trustee not already a member of the Investment Committee may be designated by the ~~Trustees~~Board to act as an alternate.

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

Notwithstanding the foregoing, in order to ensure compliance with the applicable securities laws relating to related party transactions, including the rules prescribed by Multinational Instrument 61-101 – Take-Over Bids and Special Transactions, all related party transactions will be approved by either the Board or the Investment Committee.

Notwithstanding the appointment of the Investment Committee and its ability to delegate to the management of the Trust, the Trustees may consider and approve any matter which the Investment Committee or the management of the Trust has the authority to consider or approve. The Trustees must also consider and approve any matter which exceeds the financial thresholds as determined by the Trustees from time to time.

#### **10.4 Corporate Governance and Compensation Committee**

- 10.4.1 The Trustees shall appoint a corporate governance and compensation committee (the “**Corporate Governance and Compensation Committee**”) to consist of, subject to section 10.4.6.1, not less than three Trustees and not more than four Trustees, one of whom shall be a Trustee appointed by the MG Entities pursuant to section ~~3.11~~3.12 hereof for so long as the MG Entities are the beneficial owners in aggregate of in excess of 15% of the issued and outstanding Units and/or Special Voting Units of the Trust (unless the prior written consent to the contrary or a written waiver of the MG Entities, ~~acting through one representative~~ Representative, is obtained) and Mitchell Goldhar remains alive.
- 10.4.2 Subject to section 10.4.6.3, questions arising in any meeting of the Corporate Governance and Compensation Committee shall be decided by a majority of the votes cast.
- 10.4.3 Decisions of the Corporate Governance and Compensation Committee may be taken by written consent signed by all of the members of the Corporate Governance and Compensation Committee.
- 10.4.4 Any member of the Corporate Governance and Compensation Committee may call a meeting of the Corporate Governance and Compensation Committee upon not less than 48 hours notice.
- 10.4.5 Where for any reason a member of the Corporate Governance and Compensation Committee is disqualified from voting on or participating in a decision, any other independent and disinterested Trustee not already a member of the Corporate Governance and Compensation Committee may be designated by the Trustees to act as an alternate.

10.4.6 Until the earlier of (a) the date that is five years from the date of the Closing (as defined in the management information circular of the Trust dated April 27, 2015) and (b) the date that the MG Entities no longer beneficially own Units and Special Voting Units representing at least 10% of the outstanding Units and Special Voting Units:

10.4.6.1 notwithstanding section 10.4.1, the Corporate Governance and Compensation Committee shall consist of not more than three Trustees, one of whom shall be a Trustee appointed by the MG Entities pursuant to section ~~3.11~~3.12, who, for greater certainty, shall not be required to be independent for purposes of applicable securities laws, but, for greater certainty, at least two members of the Corporate Governance and Compensation Committee shall be independent for purposes of the applicable securities laws and shall be independent of Mitchell Goldhar and any MG Entity;

10.4.6.2 the mandate of the Corporate Governance and Compensation Committee shall include the following responsibilities:

10.4.6.2.1 the appointment and removal of the Chief Operating Officer and the Chief Development Officer of the Trust;

10.4.6.2.2 reviewing and approving any change to the compensation, including benefits, of the Chief Operating Officer and the Chief Development Officer of the Trust (other than any changes to Unit based compensation plans generally applicable to all senior executives) where such change may be adverse to such officer; and

10.4.6.2.3 reviewing and approving any significant changes in the responsibilities of the Chief Operating Officer and the Chief Development Officer of the Trust; and

10.4.6.3 notwithstanding section 10.4.2 and 10.4.7, all decisions of the Corporate Governance and Compensation Committee related to the matters described in section 10.4.6.2 shall require unanimous approval of the members thereof.

10.4.7 Notwithstanding the appointment of the Corporate Governance and Compensation Committee, and subject to section 10.4.6.3, the Trustees may consider and approve any matter which the Corporate Governance and Compensation Committee has authority to consider or approve.

## 10.5 Property Manager

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

## Article 11 DISTRIBUTIONS

### 11.1 Distributions

The Trust shall pay or declare payable to holders of Units monthly, and the holders of Units will have a right to receive, on each Distribution Date a pro rata share of such portion of the revenue of the Trust for the preceding calendar month then ended as the Trustees determine to distribute to the holders of Units. Distributions shall be made in cash or Units pursuant to any distribution reinvestment plan or distribution reinvestment and Unit purchase plan adopted by the Trustees pursuant to section 11.6. Any distribution shall be made proportionately to Persons who are holders of Units as at the close of business on the record date for such distribution which shall be the last business day of the calendar month preceding the month in which the Distribution Date falls, or if such date is not a business day then the next following business day,

or such other date, if any, as is fixed in accordance with section ~~8.78.9~~. The Trustees, if they so determine when income has been accrued but not collected may, on a temporary basis, transfer sufficient moneys from the capital to the income account of the Trust to permit distributions under this section 11.1 to be effected.

#### **11.2 Allocation**

Income and net taxable capital gains for purposes of the *Income Tax Act* will be allocated to Unitholders in the same proportions as distributions received by Unitholders.

#### **11.3 Payment of Distributions**

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

#### **11.4 Income Tax Matters**

In reporting income for income tax purposes the Trust shall claim, and shall cause any partnership controlled by the Trust to claim, the maximum amount available to it as deductions under the relevant law, including but not limited to maximum capital cost allowance, unless the Trustees determine otherwise, provided, however, that for purposes of determining the income of the Trust for purposes of the *Income Tax Act* as contemplated by clause (ii) of section ~~11.1.1.1~~, the income shall be computed on the basis of the Trust claiming the maximum amount available to it as deductions under the *Income Tax Act* (but without reference to section 104(6) of the *Income Tax Act*), including, but not limited to, maximum capital cost allowance, unless the Trustees determine otherwise prior to the end of the relevant taxation year.

#### **11.5 Designations**

The Trustees shall make such designations, determinations and allocations for income tax purposes in respect of amounts paid or payable to Unitholders for such amounts that the Trustees consider to be reasonable, including, without limitation, designations relating to taxable dividends received by the Trust in the year on shares of taxable Canadian corporations, net taxable capital gains of the Trust in the year, and foreign source income of the Trust for the year, as well as elect under subsections 104(13.1) and (13.2) of the *Income Tax Act* that income be taxed to the Trust, rather than to such Unitholder.

#### **11.6 Distribution Reinvestment and Unit Purchase Plan**

Subject to any required regulatory approvals, the Trustees may in their sole discretion establish one or more distribution reinvestment plans, distribution reinvestment and Unit purchase plans or Unit option plans at any time and from time to time.

#### **11.7 Withholding Taxes**

The Trustees may deduct or withhold from the distributions payable to any Unitholder amounts required by law to be withheld from such Unitholder's distributions.

**Article 12  
FEES AND EXPENSES**

**12.1 Expenses**

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

**12.2 Payment of Real Property and Brokerage Commissions**

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

**12.3 Property Management, Leasing and Financing Fees**

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

**Article 13  
AMENDMENTS TO THE DECLARATION OF TRUST**

**13.1 Amendments by the Trustees**

The Trustees may, without the approval of or any notice to Unitholders, make amendments to this Declaration of Trust:

- 13.1.1 for the purpose of ensuring continuing compliance with applicable laws, regulations, requirements or policies of any governmental authority having jurisdiction over the Trustees or over the Trust, including respecting its status as a “**unit trust**” a “**mutual fund trust**” and a “**registered investment**” under the *Income Tax Act* or the distribution of its Units;
- 13.1.2 which, in the opinion of the Trustees, provide additional protection for or benefit to the Unitholders;
- 13.1.3 to remove any conflicts or inconsistencies in the Declaration of Trust or to make minor corrections which are, in the opinion of the Trustees, necessary or desirable and not prejudicial to the Unitholders;
- 13.1.4 which, in the opinion of the Trustees, are necessary or desirable as a result of changes in taxation laws from time to time, including, without limiting the generality of the foregoing, amendments which may affect the Trust, the Unitholders or Annuitants under a plan of which a Unitholder acts as trustee or carrier or which may permit the Trust to qualify for any status under the *Income Tax Act* which would benefit the Trust or the Unitholders;
- 13.1.5 for any purpose (except one in respect of which a Unitholder vote is specifically otherwise required), if the Trustees are of the opinion that the amendment is not prejudicial to Unitholders and is necessary or desirable; and
- 13.1.6 which, in the opinion of the Trustees, are necessary or desirable to enable the Trust to issue Units for which the purchase price is payable on an instalment basis.

### 13.2 Amendments by Unitholders

Subject to sections ~~8-6.8.7~~, 13.1, 13.3 and 13.4, this Declaration of Trust may be amended by the vote of a majority of the votes cast at a meeting of Unitholders called for that purpose.

### 13.3 Two-Thirds Unitholder Vote

Subject to section ~~8-6.38.7.3~~, none of the following shall occur unless the same has been duly approved by the affirmative vote of at least two-thirds of the votes of Unitholders entitled to vote cast at a meeting of Unitholders duly called and held:

- 13.3.1 any amendment to this section 13.3;
- 13.3.2 any amendment to change a right with respect to any outstanding Units of the Trust to reduce the amount payable thereon upon termination of the Trust or to diminish or eliminate any voting rights pertaining thereto;
- 13.3.3 any amendment to the duration or term of the Trust;
- 13.3.4 any amendment relating to the powers, duties, obligations, liabilities or indemnification of the Trustees;
- 13.3.5 any sale or transfer of the assets of the Trust as an entirety or substantially as an entirety (other than as part of an internal reorganization of the Assets of the Trust as approved by the Trustees);
- 13.3.6 any amendment to sections 5.1 and 5.2 except for any amendment contemplated by section 13.1; or
- 13.3.7 any approval pursuant to section ~~8-6.68.7.6~~ or 14.2;
- 13.3.8 any amendments to sections ~~3-11~~3.12, 6.1.5, 10.3 or 10.4, provided the written consent of the MG Entities Representative is first obtained in respect of such amendment;
- 13.3.9 any amendment to section 6.27;
- 13.3.10 the combination, amalgamation, merger or arrangement of the Trust or any of its subsidiaries with or into any other Person, other than an internal reorganization involving the Trust and/or one or more of its subsidiaries; or
- 13.3.11 an exchange, reclassification or cancellation of all or part of the Units or Special Voting Units or any addition, change or removal of the rights, privileges, restrictions and conditions in respect to the Units or Special Voting Units;

except for any amendment contemplated by section 5.3 or section 13.1.

### 13.4 Trustees to Sign Amendment

When a vote of the Unitholders approves an amendment to this Declaration of Trust which, pursuant to the provisions of this Declaration of Trust, binds the Trustees to make such amendment, the Trustees shall sign such documents as may be necessary to effect such amendment.

**Article 14**  
**TERMINATION OF THE TRUST**

**14.1 Term of the Trust**

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

**14.2 Termination by Unitholders and Special Unitholders**

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

**14.3 Effect of Termination**

Upon the termination of the Trust or the affirmative vote referred to in section ~~13.2~~14.2, the liabilities of the Trust shall be discharged with due speed and the net assets of the Trust shall be liquidated and the proceeds distributed proportionately to the holders of the Units. Such distribution may be made in cash or in kind or partly in each, all as the Trustees in their sole discretion may determine.

**Article 15**  
**LIABILITIES OF THE TRUSTEES AND OTHERS**

**15.1 Liability and Indemnification of the Trustees**

The Trustees shall at all times be indemnified and saved harmless out of the property of the Trust from and against all liabilities, damages, losses, debts, claims, actions, suits and proceedings whatsoever, including costs, charges and expenses in connection therewith, sustained, incurred, brought, commenced or prosecuted against them for or in respect of any act, deed, matter or thing whatsoever made, done, acquiesced in or omitted in or about or in relation to the execution of their duties as Trustees and also from and against all other liabilities, damages, losses, debts, claims, costs, charges and expenses which they sustain or incur in or about or in relation to the affairs of the Trust. Further, the Trustees shall not be liable to the Trust or to any Unitholder or an Annuitant for any loss or damages relating to any matter regarding the Trust, including any loss or diminution in the value of the Trust or its assets. The foregoing provisions of this section 15.1 in favour of any Trustee do not apply unless:

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

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

The provisions of this section 15.1 with respect to indemnification and saving harmless shall apply, *mutatis mutandis*, to any former Trustee and to any officer or former officer of the Trust.

**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 the Trust 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 moneys 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 moneys, securities or property of the Trust shall be lodged or deposited, or for any loss occasioned by error in judgement or oversight on the part of the Trustees, or for any other loss, damage or misfortune which

may happen in the execution by the Trustees of their duties hereunder, except to the extent the Trustees have not acted in accordance with subsections 15.1.1 and 15.1.2.

### **15.3 Reliance Upon Advice**

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

### **15.4 Liability of Unitholders and Others**

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

15.4.2 ~~(ii)~~ 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 obligations to act in the best interests of the Unitholders, any written instrument which is, in the judgement of the Trustees, a material obligation, shall contain a provision or be subject to an acknowledgement to the effect that the obligation being created is not personally binding upon, and that resort shall not be had to, nor shall recourse or satisfaction be sought from, the private property of any of the Unitholders or Annuitants under a plan of which a Unitholder acts as trustee or carrier, but the property of the Trust or a specific portion thereof only shall be bound. If the Trust makes Real Property investment subject to existing contractual obligations, including obligations under mortgages, the Trustees shall use all reasonable efforts to have any such obligations modified so as to achieve the aforesaid disavowal of contractual liability. Further, the Trustees shall cause the operations of the Trust to be conducted, with the advice of counsel, in such a way and in such jurisdictions as to avoid, to the extent which they determine to be practicable and consistent with their obligations 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 their foregoing obligations or their failure to perform the same shall be governed by the provisions of sections 15.1, 15.2 and 15.3.

## **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

Any notice required or permitted by the provisions of this Declaration of Trust to be given to a Unitholder, a Trustee or the auditors of the Trust shall be deemed conclusively to have been given if given either by hand delivery or by prepaid first-class mail addressed to the Unitholder at his or her address shown on the Register, to the Trustee at the last address provided by such Trustee to the Secretary of the Trust, or to the auditors of the Trust at the last address provided by such auditors to the Secretary of the Trust, as the case may be, 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 of the Trust any notice provided for herein shall not affect the validity, effect, taking effect or time of taking effect of any action referred to in such notice, and the Trustees shall not be liable to any Unitholder for any such failure.

## 16.4 Trust Auditors

The auditors of the Trust shall be appointed at each annual meeting, ~~save that, until the first such annual meeting, such auditors shall be appointed by the Trustees.~~ by a majority of the votes cast by Unitholders and Special Unitholders present in person or by proxy at the meeting. If at any time a vacancy occurs in the position of auditors of the Trust, the Trustees may appoint a firm of chartered accountants qualified to practice in all provinces of Canada to act as the auditors of the Trust until the next annual meeting of Unitholders. The remuneration of the auditors shall be fixed by approval of a majority of the votes cast by Unitholders and Special Unitholders at a meeting of Unitholders duly called for that purpose, or if not fixed by the Unitholders and Special Unitholders, may be fixed by the Trustees. The auditors of the Trust shall report to the Trustees and the Unitholders on the annual financial statements of the Trust and shall fulfil such other responsibilities as they may properly be called upon by the Trustees to assume. The auditors shall have access to all records relating to the affairs of the Trust.

## 16.5 Fiscal Year

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

## 16.6 Reports to Unitholders

The Trustees shall send to Unitholders (i) for each completed fiscal year of the Trust, a report, including audited comparative financial statements for the year, as required by and prepared in compliance with applicable securities regulations; and (ii) for each of the first three quarters of each year, a report, including unaudited comparative financial statements for the period then ended, as required by and prepared in compliance with applicable securities regulations. The Trustees will supply Unitholders with any information that may be required by them in connection with their obligations under the *Income Tax Act* and equivalent provincial legislation.

### 16.7 Trust Property to be Kept Separate

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

### 16.8 Trustees May Hold Units

Any Trustee or associate of a Trustee may be a Unitholder or Special Unitholder or may be an Annuitant.

### 16.9 Income Tax: Obligations of the Trustees

The Trustees shall satisfy, perform and discharge all obligations and responsibilities of the Trustees under the *Income Tax Act* and neither the Trust nor the Trustees shall be accountable or liable to any Unitholder by reason of any act or acts of the Trustees consistent with any such obligations or responsibilities.

### 16.10 Day not a Business Day

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. This section is not applicable to any distributions which are to be made hereunder on December 31.

### 16.11 Income Tax: Elections

In respect of the first taxation year of the Trust, the Trust shall, within the time prescribed, elect pursuant to subsection 132(6)(6.1) and/or (6.2) as the relevant case may be, of the *Income Tax Act* (as same may be amended) that the Trust be deemed to be a mutual fund trust for the entire year.

The Trust shall also apply to be a registered investment for the purposes of the *Income Tax Act* in accordance with section 204.4 thereof such that the Trust shall be a “registered investment”.

### 16.12 Trust Records

16.12.1 The Trustees shall prepare and maintain, at the head office of the Trust or at any other place in Canada designated by the Trustees, records containing ~~(i) the~~

16.12.1.1 ~~this~~ Declaration of Trust ~~and any amendments thereto;~~ ~~(ii)~~

16.12.1.2 minutes of meetings and resolutions of ~~Trustees and Unitholders; and (iii) the Register.~~  
~~Unitholders; and~~

16.12.1.3 ~~a securities register which records the Units, Special Voting Units and any other securities issued by the Trust in registered form, showing with respect to each class of securities;~~

16.12.1.3.1 ~~the names, alphabetically arranged, and the latest known address of each Person who is or has been a securityholder;~~

16.12.1.3.2 ~~the number of securities held by each securityholder; and~~

16.12.1.3.3 ~~the date and particular of the issue and transfer of each security.~~

16.12.2 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 head 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.

### 16.13 Right to Inspect Documents

A Unitholder, other securityholder of the Trust and any agent, consultant or creditor of the Trust shall have the right to examine the ~~Declaration of Trust~~ records described in subsection 16.12.1, the Trustees' Regulations, ~~the minutes of meetings and resolutions of Unitholders, the Register~~ and any other documents or records which the Trustees determine should be available for inspection by such Persons, during normal business hours at the head office of the Trust. ~~Unitholders and creditors of the Trust shall have the right to obtain or make or cause to be made a list of all or any of the registered holders of Units, to the same extent and upon the same conditions as those which apply to shareholders and creditors of a corporation governed by the Business Corporations Act (Alberta), as amended from time to time, and take extracts from the records, free of charge; provided that any such Person who wishes to examine the securities register of the Trust must first make a request to the Trust or its agent or mandatary, accompanied by an affidavit referred to in section 16.14.6. On receipt of the affidavit, the Trust or its agent or mandatary shall allow the applicant access to the securities register during the normal business hours, and, on payment of a reasonable fee, provide the applicant with an extract from the securities register.~~

### 16.14 Information Available to Unitholders

16.14.1 Each Unitholder and other securityholders of the Trust and their respective personal representatives, on payment of a reasonable fee therefor and on sending the Trust or its agent or mandatary an affidavit required by section 16.14.6, may on application require the Trust or its agent or mandatary to provide within 10 days after receipt of the affidavit a list (in this section referred to as the "basic list") made up to a date not more than 10 days before the receipt of the affidavit setting out the names of the Unitholders and Special Unitholders, the number of Units and Special Voting Units held by each Unitholder and Special Unitholder, respectively, and the address of each Unitholder and Special Unitholder as shown in the records of the Trust.

16.14.2 A person requiring the Trust to provide a basic list may, by stating in the affidavit referred to in subsection 16.14.1 that they require supplemental lists, require the Trust or its agent or mandatary on payment of a reasonable fee to provide supplemental lists setting out any changes from the basic list in the names or addresses of the Unitholders and Special Unitholder and the number of Units and Special Voting Units owned by each Unitholder and Special Unitholder, respectively, for each Business Day following the date the basic list is made up to.

16.14.3 The Trust or its agent or mandatary shall provide a supplemental list required under subsection 16.14.2:

16.14.3.1 on the date the basic list is furnished, where the information relates to changes that took place prior to that date; and

16.14.3.2 on the Business Day following the day to which the supplemental list relates, where the information relates to changes that take place on or after the date the basic list is furnished.

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

16.14.5 A list of Unitholders or Special Unitholders or information from a securities register obtained pursuant to the provisions of this Declaration of Trust shall not be used by any person except in connection with:

16.14.5.1 an effort to influence the voting of Unitholders and Special Unitholders;

16.14.5.2 an offer to acquire securities of the Trust; or

16.14.5.3 any other matter relating to the affairs of the Trust.

16.14.6 An affidavit required under this section 16.14 or section 16.13 shall state:

16.14.6.1 the name and address of the applicant:

16.14.6.2 the name and address for service of the body corporate, if the applicant is a body corporate; and

16.14.6.3 that the information contained in the securities register obtained pursuant to this section 16.14 or section 16.13, as the case may be, will not be used except as permitted under subsection 16.14.5.

**16.15 ~~16.14~~ Execution and Effect of Restated Declaration of Trust**

Subject to Article 13, a restated Declaration of Trust, setting forth the terms of this Declaration of Trust, as amended to the time of execution, may be executed at any time or from time to time by the Trustees and such restated Declaration of Trust as so executed shall thereafter be effective and may thereafter be referred to in lieu of the original Declaration of Trust as so amended; provided, however, that no such execution of a restated Declaration of Trust shall be deemed to constitute a termination of the Trust or this Declaration of Trust.

**16.16 ~~16.15~~ Consolidations**

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

**16.17 ~~16.16~~ 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.

**16.18 ~~16.17~~ 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.

**16.19 ~~16.18~~ Headings for Reference Only and Preamble**

The headings preceding the articles and sections hereof have been inserted for convenience and reference only and shall not be construed to affect the meaning, construction or effect of this Declaration of Trust. The preamble and recitals hereto (and all definitions therein contained) shall form an integral part of this Declaration of Trust.

**16.20 ~~16.19~~ Successors and Assigns**

The provisions of this Declaration of Trust shall enure to the benefit of, and be binding upon, the parties and their heirs, executors, administrators, personal representatives, successors and assigns.

**16.21** ~~16.20~~ **Time of the Essence**

Time shall be of the essence of this Declaration of Trust. The mere lapse of time in the performance of the terms of this Declaration of Trust by any Person shall have the effect of putting such Person in default.

**16.22** ~~16.21~~ **Language**

The parties acknowledge that they have requested that this agreement and all documents, notices, correspondence and legal proceedings arising from this agreement or relating hereto be drawn up in English.

**16.23** ~~16.22~~ **Governing Law**

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

**16.24** **Applications to Court**

As the rights (including the right to apply to a court) and remedies set out in sections 8.1 and 8.3 of this Declaration of Trust are not statute-based, all references in this Declaration of Trust to Unitholder rights (or the rights of any other person) that may be enforced by the court or to remedies that may be granted by the court are subject to the court, in its discretion, accepting jurisdiction to consider and determine any proceeding commenced by an eligible Unitholder (or other eligible person as contemplated herein) applying to the court under such sections. Notwithstanding anything else contained herein, a Unitholder shall not apply for, nor shall it be entitled to enforce, any order which would result in the Trust not qualifying as a "unit trust" or as a "mutual fund trust" within the meaning of the *Income Tax Act* (Canada).

IN WITNESS WHEREOF each of the parties has caused these presents to be executed on the date first above written.

Witness

**HUW THOMAS**

Witness

\_\_\_\_\_  
**KEVIN PSHEBNISKI**

Witness

\_\_\_\_\_  
**JAMIE McVICAR**

Witness

\_\_\_\_\_  
**GREG HOWARD**

Witness

\_\_\_\_\_  
**MITCHELL GOLDHAR**

Witness

\_\_\_\_\_  
**MICHAEL YOUNG**

Witness

\_\_\_\_\_  
**GARRY FOSTER**



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