

**TWELFTH AMENDED AND RESTATED
DECLARATION OF TRUST
FOR
SMARTCENTRES REAL ESTATE INVESTMENT TRUST**

TABLE OF CONTENTS

	Page
ARTICLE 1 DEFINITIONS	2
1.1 Definitions and Interpretation	2
1.2 References to Acts Performed by the Trust or Rights of the Trust.....	6
1.3 Income Tax Act.....	6
ARTICLE 2 THE TRUST	7
2.1 Initial Contribution, Acceptance and Trust Property	7
2.2 Seizen.....	7
2.3 Establishment of Trust	7
2.4 Name	7
2.5 Use of Name	7
2.6 Office	8
2.7 Nature of the Trust.....	8
2.8 Trust Investments.....	8
2.9 Control and Administration of the Trust Property	8
2.10 Distribution and Redemption of Subsidiary Mutual Fund Trust Units.....	8
ARTICLE 3 TRUSTEES AND OFFICERS.....	9
3.1 Number	9
3.2 Trustees	9
3.3 Qualifications of Trustees	9
3.4 Intentionally deleted.....	9
3.5 Election of Trustees	9
3.6 Nomination of Trustees.....	10
3.7 Resignation, Removal and Death of Trustees.....	11
3.8 Vacancies	12
3.9 Successor and Additional Trustees	12
3.10 Compensation and Other Remuneration	12
3.11 Officers of the Trust.....	12
3.12 Appointees of MG Entities	12
3.13 Certification of Holdings by MG Entities; Cancellation of Rights.....	13
ARTICLE 4 TRUSTEES' POWERS AND DUTIES	13
4.1 General Powers	13
4.2 Specific Powers and Authorities.....	13
4.3 Further Powers of the Trustees	15
4.4 Standard of Care	16
4.5 Reliance Upon Trustees	16
4.6 Determinations of Trustees Binding	16
4.7 Conflict of Interest	16
ARTICLE 5 INVESTMENT GUIDELINES AND OPERATING POLICIES	18
5.1 Investment Guidelines	18
5.2 Operating Policies	20

TABLE OF CONTENTS

(continued)

	Page
5.3 Registered Investments	22
5.4 Application of Investment Restrictions and Operating Guidelines	22
5.5 Regulatory Matters.....	22
ARTICLE 6 TRUST UNITS	23
6.1 Units	23
6.2 Ranking of Units	24
6.3 Consideration for Units.....	24
6.4 No Pre-Emptive Rights	24
6.5 Fractional Units.....	24
6.6 Title to Assets of the Trust.....	24
6.7 Allotment and Issue	25
6.8 Rights, Warrants and Options	25
6.9 Commissions and Discounts	25
6.10 Transferability.....	25
6.11 Limitation of Ownership by Non-Residents	25
6.12 Certificates	26
6.13 Execution of Certificates.....	26
6.14 Certificate Fee.....	26
6.15 Form of Certificate.....	26
6.16 Unit Register and Transfer Ledgers to be Maintained.....	27
6.17 Entry on Register	27
6.18 Transfer of Units	27
6.19 Successors in Interest to Unitholders.....	27
6.20 Units Held Jointly or in Fiduciary Capacity	27
6.21 Performance of Trusts.....	28
6.22 Lost Certificates	28
6.23 Death of Unitholders.....	28
6.24 Unclaimed Payments	28
6.25 Repurchase of Units.....	29
6.26 Instalment Receipts.....	29
6.27 Take-Over Bids.....	29
6.28 Power of Attorney.....	32
ARTICLE 7 REDEMPTION OF UNITS	32
7.1 Right of Redemption.....	32
7.2 Exercise of Redemption Right	32
7.3 Cash Redemption	33
7.4 No Cash Redemption in Certain Circumstances.....	33
7.5 Alternate Redemption	34
7.6 Cancellation of all Redeemed Units	34
7.7 Subordination	34

TABLE OF CONTENTS
(continued)

	Page
ARTICLE 8 MEETINGS OF UNITHOLDERS	35
8.1 Annual Meeting	35
8.2 Other Meetings.....	35
8.3 Unitholder Proposals.....	36
8.4 Notice of Meeting of Unitholders	38
8.5 Quorum; Chairman	38
8.6 Voting	38
8.7 Matters on which Unitholders Shall Vote.....	38
8.8 Units Held by the Trust.....	39
8.9 Record Dates.....	40
8.10 Proxies.....	40
8.11 Personal Representatives	41
8.12 Attendance by Others.....	41
8.13 Conduct of Meeting	41
8.14 Binding Effect of Resolutions.....	41
8.15 Actions by Unitholders	41
8.16 Resolution in Lieu of Meeting	41
ARTICLE 9 MEETINGS OF TRUSTEES.....	42
9.1 Trustees May Act Without Meeting	42
9.2 Notice of Meeting	42
9.3 Quorum	42
9.4 Voting at Meetings.....	42
9.5 Meeting by Telephone	42
ARTICLE 10 DELEGATION OF POWERS.....	42
10.1 General.....	42
10.2 Audit Committee.....	43
10.3 Investment Committee	43
10.4 Corporate Governance and Compensation Committee.....	44
10.5 Property Manager.....	45
ARTICLE 11 DISTRIBUTIONS	45
11.1 Distributions.....	45
11.2 Allocation.....	46
11.3 Payment of Distributions	46
11.4 Income Tax Matters	46
11.5 Designations.....	46
11.6 Distribution Reinvestment and Unit Purchase Plan.....	46
11.7 Withholding Taxes.....	46
ARTICLE 12 FEES AND EXPENSES	46
12.1 Expenses	46
12.2 Payment of Real Property and Brokerage Commissions.....	47

TABLE OF CONTENTS
(continued)

	Page
12.3 Property Management, Leasing and Financing Fees	47
ARTICLE 13 AMENDMENTS TO THE DECLARATION OF TRUST	47
13.1 Amendments by the Trustees.....	47
13.2 Amendments by Unitholders	47
13.3 Two-Thirds Unitholder Vote	47
13.4 Trustees to Sign Amendment.....	48
ARTICLE 14 TERMINATION OF THE TRUST	48
14.1 Term of the Trust	48
14.2 Termination by Unitholders and Special Unitholders	48
14.3 Effect of Termination.....	48
ARTICLE 15 LIABILITIES OF THE TRUSTEES AND OTHERS	49
15.1 Liability and Indemnification of the Trustees.....	49
15.2 Liability of the Trustees	49
15.3 Reliance Upon Advice	49
15.4 Liability of Unitholders and Others	49
ARTICLE 16 GENERAL.....	50
16.1 Execution of Instruments	50
16.2 Manner of Giving Notice	50
16.3 Failure to Give Notice.....	51
16.4 Trust Auditors	51
16.5 Fiscal Year	51
16.6 Reports to Unitholders	51
16.7 Trust Property to be Kept Separate.....	51
16.8 Trustees May Hold Units	51
16.9 Income Tax: Obligations of the Trustees.....	51
16.10 Day not a Business Day	51
16.11 Income Tax: Elections	52
16.12 Trust Records	52
16.13 Right to Inspect Documents.....	52
16.14 Information Available to Unitholders.....	52
16.15 Execution and Effect of Restated Declaration of Trust	53
16.16 Consolidations.....	53
16.17 Counterparts.....	54
16.18 Severability	54
16.19 Headings for Reference Only and Preamble.....	54
16.20 Successors and Assigns.....	54
16.21 Time of the Essence	54
16.22 Language.....	54
16.23 Governing Law	54
16.24 Applications to Court.....	54

SMARTCENTRES REAL ESTATE INVESTMENT TRUST
TWELFTH AMENDED AND RESTATED DECLARATION OF TRUST

THIS DECLARATION OF TRUST made the 4th day of December, 2001, as amended and restated as of the 24th day of October, 2002, as further amended and restated as of the 31st day of October, 2003, as further amended and restated as of the 16th day of January, 2004, as further amended and restated as of the 7th day of July, 2005, as further amended and restated as of the 16th day of May 2006, as further amended and restated as of the 14th day of September, 2009, as further amended and restated as of the 10th day of May, 2012, as further amended and restated as of the 29th day of December, 2014, as further amended and restated as of the 28th day of May, 2015, as further amended and restated as of the 3rd day of July, 2015, as further amended and restated as of the 11th day of May, 2017 and as further amended and restated as of the 20th day of October, 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 11, 2017 upon receipt of approval by the Unitholders for such amendment at a meeting of Unitholders held on May 11, 2017;

AND WHEREAS the Trust again amended this Declaration of Trust on October 20, 2017 pursuant to section 13.1;

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 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 3.11;
- 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 **“Declaration of Trust”** means this declaration of trust, as amended, supplemented or amended and restated from time to time;
- 1.1.14 **“Dissenting Offeree”** means, where a Take-over Bid is made, a Unitholder who does not accept the Take-over Bid and includes a subsequent Unitholder who acquires the Units held by the first mentioned Unitholder;
- 1.1.15 **“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 15th day of the following month;
- 1.1.16 **“Equity”** means, the residual between Total Assets and Total Liabilities determined in accordance with GAAP;
- 1.1.17 **“Equity Value”** means the fair market value of the Units;
- 1.1.18 **“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 **“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 **“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 **“Immediate Family Member”**, when used to indicate a relationship with an individual, means a parent, child or sibling of such individual;

- 1.1.22 “**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 “**MG Entities Representative**” 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 “**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 “**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 “**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 “**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 “**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 “**Offeree**” means a Person to whom a Take-over Bid is made;
- 1.1.32 “**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 make a Take-over Bid jointly or in concert; or
- 1.1.32.2 intend to exercise jointly or in concert voting rights attached to the Units for which a Take-over Bid is made;
- 1.1.33 “**Outside Trustee**” means a Trustee that is not a member of management of the Trust or any of its subsidiaries;
- 1.1.34 “**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 “**Proposal**” shall have the meaning ascribed thereto in section 8.3.1;

- 1.1.36 “**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 “**Register**” means the register which shall be established and maintained pursuant to section 6.16;
- 1.1.38 “**Reorganization**” shall have the meaning ascribed thereto in section 2.10;
- 1.1.39 “**Resident Canadian**” means an individual who is a resident of Canada for purposes of the *Income Tax Act* (Canada);
- 1.1.40 “**SEDI**” means the System for Electronic Disclosure by Insiders;
- 1.1.41 “**Settlor**” means Laxus Holdings Inc.;
- 1.1.42 “**Special Unitholder**” means the holder of Special Voting Units;
- 1.1.43 “**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 “**Subsidiary Trust**” shall have the meaning ascribed thereto in section 2.10;
- 1.1.45 “**Subsidiary Units**” shall have the meaning ascribed thereto in section 2.10;
- 1.1.46 “**Take-over Bid**” 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 “**Trust**” means SmartCentres Real Estate Investment Trust, the trust established hereunder;
- 1.1.48 “**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 the Initial Contribution;
 - 1.1.48.2 all funds realized from the sale of Units from time to time;
 - 1.1.48.3 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 any proceeds of disposition of any of the foregoing property; and
- 1.1.48.5 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 “**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 “**Trustees’ Regulations**” means the regulations adopted by the Trustees pursuant to section 4.3;
- 1.1.51 “**Unit**” means a participating unit interest in the Trust as designated under 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 “**Unit Certificate**” shall have the meaning ascribed thereto in section 6.15;
- 1.1.53 “**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 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 “**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 "SmartCentres Real Estate Investment Trust" (and may also use the short form names "SmartCentresREIT" and "SmartCentres") 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 3.12, 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, 3.8 and 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: SmartCentres 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 Twelfth Amended and Restated Declaration of Trust made as of October 20, 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.
- 3.6.1 Notwithstanding the foregoing, the Trustees may, in their sole discretion, waive any requirement in this section 3.6.

3.7 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 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 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 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 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 Appointees of MG Entities

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 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 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 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 3.12 are not assignable other than to other MG Entities. The MG Entities shall exercise their rights under this section 3.12 collectively through the MG Entities Representative.

3.13 Certification of Holdings by MG Entities; Cancellation of Rights

3.13.1 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) 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 Without limiting section 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 Investment Committee. All new leases granted by the Trust shall contain appropriate covenants from the lessee respecting environmental matters as determined by the 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 8.7.3, 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 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 3.12 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.

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. 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.

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. 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 6.27.9 to 6.27.18 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 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 The Trust is deemed to hold in trust for the Dissenting Offeree the money or other consideration it receives under subsection 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 Within 30 days after the Offeror sends an Offeror's notice under subsection 6.27.2, the Trust shall:
 - 6.27.8.1 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 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 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 his or her Units have been cancelled,
 - 6.27.8.3.2 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 the Trust will, subject to subsections 6.27.9 to 6.27.18, send that money or other consideration to him or her forthwith after receiving his or her Units.
- 6.27.9 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 6.27.6, apply to a court to fix the fair value of the Units of that Dissenting Offeree.
- 6.27.10 If an Offeror fails to apply to a court under subsection 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 Where no application is made to a court under subsection 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 An application under subsection 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 A Dissenting Offeree is not required to give security for costs in an application made under subsection 6.27.9 or 6.27.10.
- 6.27.14 On an application under subsection 6.27.9 or 6.27.10:
- 6.27.14.1 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 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 On an application to a court under subsection 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 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 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 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 fix the amount of money or other consideration that is required to be held in trust under subsection 6.27.7;
 - 6.27.18.2 order that money or other consideration be held in trust by a Person other than the Trust; and
 - 6.27.18.3 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 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 8.4; 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 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 8.4 and 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 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 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 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 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 Voting

Holders of Units and/or Special Voting Units entitled to vote at a meeting of the Unitholders and Special 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 8.7, 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 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 except as provided in sections 3.1, 3.6, 3.8 and 3.12, the appointment, election or removal of Trustees;
- 8.7.2 except as provided in section 16.4, the appointment or removal of auditors of the Trust;

- 8.7.3 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 an increase or decrease in the number of Trustees pursuant to section 3.1;
- 8.7.5 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 the distribution pursuant to section 14.3 of all the Trust Property.

Except with respect to the foregoing matters specified in this section 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 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 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. 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.
- 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 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 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 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 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 8.7, 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 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 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 3.12 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 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 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 3.12 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 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 3.12, 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 8.9. 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, 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 8.7, 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 8.7.3, 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 8.7.6 or 14.2;
- 13.3.8 any amendments to sections 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 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 Any written instrument creating an obligation which is or includes the granting by the Trust of a mortgage and 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 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:

16.12.1.1 this Declaration of Trust and any amendments thereto;

16.12.1.2 minutes of meetings and resolutions of 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 records described in subsection 16.12.1, the Trustees’ Regulations 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, 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 mandatory 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 mandatory 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 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 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 Counterparts

This Declaration of Trust maybe 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 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 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 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 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 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 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.

"Huw Thomas"

HUW THOMAS

"Kevin Pshebniski"

KEVIN PSHEBNISKI

"Jamie McVicar"

JAMIE McVICAR

"Greg Howard"

GREG HOWARD

"Mitchell Goldhar"

MITCHELL GOLDHAR

"Michael Young"

MICHAEL YOUNG

"Garry Foster"

GARRY FOSTER