

**CROMBIE REAL ESTATE INVESTMENT TRUST**

**AMENDED AND RESTATED  
DECLARATION OF TRUST**

**dated as of June 30, 2017**

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## **CROMBIE REAL ESTATE INVESTMENT TRUST**

**THIS EIGHTH AMENDED AND RESTATED DECLARATION OF TRUST** made in Stellarton, Nova Scotia as of the 30<sup>th</sup> day of June, 2017.

### **RECITALS**

**WHEREAS** the Trust was established pursuant to a declaration of trust dated the 1<sup>st</sup> day of January, 2006 under the name “**Crombie Real Estate Investment Trust**”, as amended and restated effective as of the 24<sup>th</sup> day of January, 2006, as of the 23<sup>rd</sup> day of March, 2006, as of the 8<sup>th</sup> day of November, 2007, as of the 14<sup>th</sup> day of April, 2008, as of 7<sup>th</sup> day of May, 2009, as of the 5<sup>th</sup> day of November, 2009, and, as of the 14<sup>th</sup> day of May, 2014 (the “**Original Declaration of Trust**”);

**AND WHEREAS** the Trust Unitholders and the Trustees desire that the Trust shall qualify as a “mutual fund trust” pursuant to Subsection 132(6) of the Tax Act;

**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 the Original Declaration of Trust or the Trust created thereby;

**AND WHEREAS** the Trustees wish to amend and restate the Original Declaration of Trust by executing this amended and restated Declaration of Trust;

**AND WHEREAS** the parties hereto desire to set out the agreements, terms and conditions which shall govern their mutual and respective rights, powers and obligations with respect to the settlement and administration of the Trust;

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

### **ARTICLE 1 THE TRUST AND 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. In this Declaration of Trust, except where the context otherwise requires, the following terms shall have the following meanings:

- (a) “**Adjusted Unitholders Equity**” means, at any time, the aggregate of the amount of Unitholders’ equity, non-controlling interest and the amount of accumulated depreciation and amortization recorded in the books and records of the Trust in respect of its properties, in all cases calculated in accordance with GAAP;
- (b) “**affiliate**” of a person means any person or company that would be deemed to be an affiliated entity of such person within the meaning of NI 45-106, as replaced or amended from time to time;
- (c) “**Annuitant**” means the annuitant or beneficiary of a Plan or any other plan of which a Unitholder acts as trustee or carrier;
- (d) “**associate**” when used to indicate a relationship with a person or company has the meaning ascribed thereto in the *Securities Act* (Ontario), as replaced or amended from time to time;
- (e) “**Audit Committee**” has the meaning given thereto in Subsection 10.1(a);
- (f) “**Auditors**” means the firm of chartered accountants appointed as the auditors of the Trust from time to time in accordance with the provisions hereof;
- (g) “**Beneficial Owner**” has the meaning given thereto in Section 7.14;
- (h) “**Book-Entry System**” means the record-entry securities transfer and pledge system known, as of the date hereof, by such name, which is administered by CDS in accordance with the operating rules and procedures of the Securities Settlement Service of CDS in force from time to time, or any successor system which CDS may offer from time to time.
- (i) “**Business Day**” means any day other than a Saturday, Sunday or statutory holiday in the Provinces of Ontario or Nova Scotia;
- (j) “**CDS**” means The Canadian Depository for Securities Limited and its successors;
- (k) “**CDS Participant**” means a broker, dealer, bank, other financial institution or other person who, directly or indirectly, from time to time, effects book-based transfers with CDS and pledges of securities deposited with CDS;
- (l) “**Chair**”, “**President**”, “**Lead Trustee**”, “**Vice-Chair**”, “**Chief Executive Officer**”, “**Chief Financial Officer**”, “**Chief Operating Officer**”, “**Treasurer**” and “**Secretary**” mean the person(s) holding the respective office from time to time if so elected, appointed, engaged or employed by the Trustees;
- (m) “**Class B Exchange Agreement**” means the amended and restated exchange agreement entered into on June 30, 2017 among the Trust, Crombie General Partner Limited, the Limited Partnership and ECL, as such agreement may be amended, supplemented or amended and restated from time to time;
- (n) “**Class B LP Unit**” means a class B limited partnership unit of the Limited Partnership;

- (o) “**Class C Exchange Agreement**” means the agreement to be entered into among the Trust, Crombie General Partner Limited, the Limited Partnership and any holder of a Class C LP Unit in the Limited Partnership and any other parties agreeing to be bound by such agreement regarding the exchange rights attaching to the Class C LP Units in the Limited Partnership, as such agreement may be amended, supplemented or amended and restated from time to time;
- (p) “**Class C LP Unit**” means a class C limited partnership unit of the Limited Partnership;
- (q) “**Class C Special Voting Units**” means the special voting units of the Trust attached to the class C limited partnership units of the Limited Partnership;
- (r) “**Consolidation**” means a consolidation, combination or reduction (other than by way of redemption or purchase) in outstanding Trust Units into a lesser number of Trust Units;
- (s) “**court**” means a court having jurisdiction in the province of the Trust's principal office;
- (t) “**Declaration of Trust**” means this amended and restated declaration of Trust as amended, supplemented or amended and restated from time to time;
- (u) “**dissenting offeree**” means, where a take-over bid is made for all of the Trust Units other than those held by the offeror (its affiliates and associates), a holder of Trust Units who does not accept the take-over bid and includes a subsequent holder of those Trust Units who acquires them from the first mentioned holder;
- (v) “**Distribution Date**” means, in respect of any Distribution Period and subject to Section 12.1, on or about the 15<sup>th</sup> day of the immediately following month;
- (w) “**Distribution Period**” means each calendar month in each calendar year from and including the first day thereof and to and including the last day thereof whether or not such days are Business Days;
- (x) “**ECL**” means ECL Developments Limited, a company existing under the laws of the Province of Nova Scotia (as assignee of ECL Properties Limited), or its assignee;
- (y) “**ECL Trustees**” has the meaning given thereto in Subsection 3.8(b);
- (z) “**Empire**” means Empire Company Limited, a company existing under the laws of Nova Scotia;
- (aa) “**environmental assessment**” or “**ESA**” means an environmental assessment conducted by an independent and experienced environmental consultant;
- (bb) “**Exchange Agreements**” means the Class B Exchange Agreement and the Class C Exchange Agreement;
- (cc) “**Exchangeable Units**” means the Class B LP Units and the Class C LP Units;
- (dd) “**Fiscal Year**” means each fiscal year of the Trust;



- (ee) “**generally accepted accounting principles**” or “**GAAP**” means Canadian generally accepted accounting principles determined with reference to the Handbook of the Canadian Institute of Chartered Accountants, as amended from time to time. Except as otherwise specified, all accounting terms used in this Declaration of Trust shall be construed in accordance with GAAP;
- (ff) “**Global Unit Certificate**” has the meaning given thereto in Section 7.14;
- (gg) “**going-private transaction**” means an arrangement, consolidation or other transaction involving the Trust, other than an acquisition pursuant to Section 7.28, that results in the interest of a holder of participating securities of the Trust being terminated without the consent of the holder and without the substitution of an interest of equivalent value in participating securities of the Trust or of a person that succeeds to the business of the Trust, which participating securities have rights and privileges that are equal to or greater than the affected participating securities;
- (hh) “**Governance and Nominating Committee**” has the meaning given thereto in Subsection 10.1(b);
- (ii) “**Gross Book Value**” means, at any time, the book value of the assets of the Trust and its consolidated subsidiaries, as shown on its then most recent consolidated balance sheet, plus accumulated depreciation and amortization in respect of the Trust's properties (and related intangible assets) shown thereon or in the notes thereto, less (i) the amount of any receivable reflecting interest rate subsidies on any debt assumed by the Trust and (ii) the amount of future income tax liability arising out of the fair value adjustment in respect of the indirect acquisitions of certain properties; provided, however, if approved by a majority of the Independent Trustees, the appraised value of the assets of the Trust and its consolidated subsidiaries may be used instead of book value;
- (jj) “**Head Lease**” means the head lease agreement entered into on March 23, 2006, between Crombie Developments Limited, as lessor, and ECL, as lessee, in respect of the Highland Square Mall, as such agreement may be amended, supplemented or amended and restated from time to time;
- (kk) “**herein**”, “**hereof**”, “**hereby**”, “**hereunder**”, “**this Declaration of Trust**”, “**this Declaration**” 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, does not refer to any particular article, section or other portion hereof or thereof;
- (ll) “**Human Resources Committee**” has the meaning given thereto in Subsection 10.1(c);
- (mm) “**IFRS**” means International Financial Reporting Standards, issued by the International Accounting Standards Committee, and as adopted by the Canadian Institute of Chartered Accountants, as amended from time to time;
- (nn) “**including**” means “including, without limitation”;
- (oo) “**indebtedness**” means (without duplication) on a consolidated basis

- (i) any obligation of the Trust for borrowed money (excluding any premium in respect of indebtedness assumed by the Trust for which the Trust has the benefit of an interest rate subsidy, but only to the extent an amount receivable has been excluded in the calculation of Gross Book Value with respect to such interest rate subsidy);
- (ii) any obligation of the Trust incurred in connection with the acquisition of property, assets or business other than the amount of future income tax liability arising out of indirect acquisitions;
- (iii) any obligation of the Trust issued or assumed as the deferred purchase price of property;
- (iv) any capital lease obligation of the Trust; and
- (v) any obligation of the type referred to in clauses (i) through (iv) 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 (i) through (iv), an obligation 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 GAAP; and (B) obligations referred to in clauses (i) through (iii) exclude trade accounts payable, distributions payable to Trust Unitholders and accrued liabilities arising in the ordinary course of business.

- (pp) “**Independent Trustee**” means a Trustee who, in relation to the Trust is “independent” within the meaning of National Instrument 58-101 – *Disclosure of Corporate Governance Practices*, as replaced or amended from time to time;;
- (qq) “**Initial Contribution**” means the amount of \$10 for the purpose of establishing the Trust;
- (rr) “**Investment Committee**” has the meaning given thereto in Subsection 10.1(d);
- (ss) “**Limited Partnership**” means Crombie Limited Partnership, a limited partnership formed under the laws of Nova Scotia;
- (tt) “**LP Units**” means the class A, class B and class C limited partnership units of the Limited Partnership;
- (uu) “**Material Agreements**” means, collectively, the Head Lease, the Omnibus Subsidy Agreement, and the Class B Exchange Agreement;
- (vv) “**MI 61-101**” means Multilateral Instrument 61-101 - *Protection of Minority Security Holders in Special Transactions*, as replaced or amended from time to time;
- (ww) “**Monthly Limit**” has the meaning given thereto in Paragraph 7.15(d)(i);

- (xx) “**mortgage**” means any mortgage, charge, hypothec, bond, debenture, note or other evidence of indebtedness, in each case which is directly or indirectly secured by real property;
- (yy) “**NCI**” means the non-certificated inventory system of CDS;
- (zz) “**net realized capital gains of the Trust**” for any period means the amount, if any, by which the amount of the realized capital gains of the Trust for the period exceeds the aggregate of (i) the amount of any realized capital losses of the Trust for the period determined in accordance with the Tax Act, and (ii) the amount of any net capital losses of the Trust carried forward from a previous period to the extent not previously deducted from realized capital gains of the Trust determined in accordance with the Tax Act;
- (aaa) “**NI 45-106**” means National Instrument 45-106 - *Prospectus and Registration Exemptions*, as replaced or amended from time to time;
- (bbb) “**Non-Resident**” means a person who is not a Resident and, for the purposes of Section 7.13, includes a partnership that is not a Canadian partnership within the meaning of the Tax Act;
- (ccc) “**offeree**” means a person to whom a take-over bid is made;
- (ddd) “**offeror**” means a person, other than an agent, who makes a take-over bid; and includes two or more persons who, directly or indirectly:
  - (i) make a take-over bid jointly or in concert; or
  - (ii) intend to exercise jointly or in concert voting rights attached to the Trust Units for which a take-over bid is made;
- (eee) “**Omnibus Subsidy Agreement**” means the omnibus subsidy agreement entered into on March 23, 2006 between ECL, the Limited Partnership and Crombie Developments Limited, as such agreement may be amended, supplemented or amended and restated from time to time;
- (fff) “**Original Declaration of Trust**” has the meaning given thereto in the Recitals;
- (ggg) “**person**” means and includes any individual, general partnership, limited partnership, joint venture, syndicate, sole proprietorship, company or corporation with or without share capital, joint stock company, association, trust, trust company, bank, pension fund, trustee, executor, administrator or other legal personal representative, regulatory body or agency, government or governmental agency, authority or other organization or entity, whether or not a legal entity, however designated or constituted;
- (hhh) “**Plans**” means, collectively, trusts governed by registered retirement savings plans, registered retirement income funds, a registered disability savings plans, a registered education savings plans, tax-free savings accounts or deferred profit sharing plans, each as described in the Tax Act;

- (iii) “**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 trusts, corporations or partnerships the sole or principal purpose and activity of which is to invest in, hold and deal in real property;
- (jjj) “**Redemption Date**” has the meaning given thereto in Paragraph 7.15(c)(i);
- (kkk) “**Redemption Notes**” means unsecured subordinated promissory notes of the Trust having a maturity date to be determined at the time of issuance by the Trustees (provided that in no event shall the maturity date be set at a date subsequent to the first Business Day following the fifth anniversary of the date of issuance of such note), bearing interest from the date of issue at a market rate of interest determined at the time of issuance by the Trustees, payable for each month during the term on the 15th day of each subsequent month with all principal being due on maturity, such promissory notes to provide that the Trust shall at any time be allowed to prepay all or any part of the outstanding principal without notice or bonus;
- (lll) “**Redemption Price**” has the meaning given thereto in Paragraph 7.15(c)(i);
- (mmm) “**Register**” has the meaning given thereto in Section 7.20;
- (nnn) “**Related Party**” means, with respect to any person, a person who is a “related party” as that term is defined in MI 61-101;
- (ooo) “**Residents**” means persons who are resident in Canada for purposes of the Tax Act;
- (ppp) “**Retiring Trustee**” has the meaning given thereto in Section 3.7;
- (qqq) “**Securities Laws**” means, collectively, the applicable securities laws of each of the provinces of Canada and the respective regulations and rules made under those securities laws together with all published policy statements, instruments, blanket orders and rulings of Canadian securities commissions and all discretionary orders or rulings, if any, of Canadian securities commissions made in connection with the transactions contemplated by the Prospectus and this Declaration of Trust;
- (rrr) “**Sobeys**” means Sobeys Inc., and its subsidiaries;
- (sss) “**Special Resolution**” has the meaning given thereto in Section 8.18;
- (ttt) “**Special Voting Units**” means the special voting units of the Trust attached to the class B limited partnership units of the Limited Partnership;
- (uuu) “**Special Voting Unitholders**” means at any time the holders at that time of one or more Special Voting Units or the Class C Special Voting Units, as shown on the register of such holders maintained by the Transfer Agent on behalf of the Trust;
- (vvv) “**subsidiary**” and “**subsidiaries**” with the respect to any person means a person who is a “subsidiary” of that first mentioned person as that term is defined in NI 45-106;

- (www) “**Subsidiary Securities**” means any securities of a subsidiary of the REIT as the Trustees may determine from time to time;
- (xxx) “**take-over bid**” has the meaning given thereto in the *Securities Act* (Ontario) as replaced or amended from time to time;
- (yyy) “**Tax Act**” means the *Income Tax Act* (Canada) and the regulations thereunder, as replaced or amended from time to time;
- (zzz) “**Taxation Year**” means the taxation year of the Trust for the purposes of the Tax Act;
- (aaaa) “**Transfer Agent**” means any such company as may from time to time be appointed by the Trust to act as registrar and transfer agent of the Units, together with any sub-transfer agent duly appointed by the Transfer Agent;
- (bbbb) “**Trust**” means Crombie Real Estate Investment Trust, a trust created pursuant to the Original Declaration of Trust and governed by this Declaration of Trust pursuant to the laws of the Province of Ontario;
- (cccc) “**Trust Unit**” means a unit of interest in the Trust but, for greater certainty, excludes a Special Voting Unit and a Class C Special Voting Unit;
- (dddd) “**Trust Unitholder**” means a person whose name appears on the Register as a holder of one or more Trust Units;
- (eeee) “**Trustees**” means the trustee or trustees of the Trust holding office under and in accordance with this Declaration of Trust from time to time and “**Trustee**” means any one of them.
- (ffff) “**Trustees’ Regulations**” means the regulations adopted by the Trustees pursuant to Section 4.4;
- (gggg) “**TSX**” means the Toronto Stock Exchange;
- (hhhh) “**Units**” means, collectively, the Trust Units, the Special Voting Units and the Class C Special Voting Units;
- (iiii) “**Unit Certificate**” means a certificate, in the form stipulated by Article 7, evidencing one or more Trust Units, issued and certified in accordance with the provisions hereof;
- (jjjj) “**Unitholder**” means a person whose name appears on the Register as a holder of one or more Trust Units, Special Voting Units or Class C Special Voting Units; and

## 1.2 Tax Act

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

into consideration and apply the provisions hereof as if such proposals had been enacted into law and proclaimed into force.

**1.3 Day Not a Business Day**

Except as expressly specified in this Declaration of Trust, 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. Notwithstanding the foregoing, this Section 1.3 is not applicable to Sections 12.1, 12.2 and 12.3.

**1.4 Time of Essence**

Time shall be of essence in this Declaration of Trust.

**1.5 Applications to Court**

As the rights (including the right to apply to a court) and remedies set out in sections 4.11(j), 7.28, 8.5, 8.11, 11.1 and 11.2 of this Declaration of Trust are not statute-based, all references in this Declaration of Trust to Unitholder rights (or the rights of any other person) that may be enforced by the court or to remedies that may be granted by the court are subject to the court, in its discretion, accepting jurisdiction to consider and determine any proceeding commenced by an eligible Unitholder (or other eligible person as contemplated herein) applying to the court under such sections.

**ARTICLE 2  
DECLARATION OF TRUST**

**2.1 Establishment of the Trust**

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

**2.2 Initial Contribution**

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

**2.3 Name**

The name of the Trust is Crombie Real Estate Investment Trust or, where appropriate, Fonds de placement immobilier Crombie. As far as practicable and except as otherwise provided in this Declaration of Trust, the Trustees shall conduct the affairs of the Trust, hold property, execute all documents and take all legal proceedings under that name. For greater certainty, where any reference is made in this Declaration of Trust, or any other instrument to which the Trust or the Trustees, as trustees of the Trust, are a party, to an act to be performed by, an appointment to be made by, an obligation or

liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against, or a covenant, representation or warranty by or with respect to (i) the Trust; or (ii) the Trustees, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding taken by or against, or a covenant, representation or warranty by or with respect to the Trustees as trustees of the Trust.

#### **2.4 Use of Name**

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

#### **2.5 Office**

The principal, registered and head office and centre of administration of the Trust shall be located at 610 East River Road, Suite 200, New Glasgow, Nova Scotia, unless changed by the Trustees to another location in Canada. 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.

#### **2.6 Nature of the Trust**

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

- (a) applicable laws, regulations or other requirements imposed by applicable securities or other regulatory authorities; and
- (b) the terms, conditions and trusts set forth in this Declaration of Trust.

The Trust is not and is not intended to be, shall not be deemed to be and shall not be treated, as a general partnership, limited partnership, syndicate, association, joint venture, company, corporation or joint stock company nor shall the Trustees or the Unitholders or any of them or any officers or other employees of the Trust or any one of them for any purpose be, or be deemed to be, treated in any way whatsoever to be, liable or responsible hereunder as partners or joint venturers. Neither the Trustees nor any officer or other employee of the Trust shall be, or be deemed to be, agents of the Unitholders. The relationship of the Unitholders to the Trustees, to the Trust and to the property of the Trust shall be solely that of beneficiaries of the Trust and their rights shall be limited to those conferred upon them by this Declaration of Trust. In filing a return of income for the Trust with respect to its first taxation year, the Trust shall elect, assuming that the requirements for such election are met, that the Trust shall be deemed a "mutual fund trust" for purposes of the Tax Act throughout such year.

#### **2.7 Rights of Unitholders**

The rights of each Unitholder to call for a distribution or division of assets, monies, funds, income and capital gains held, received or realized by the Trustees are limited to those contained herein and, except as provided herein, no Unitholder shall be entitled to call for any partition or division of the Trust's property or for a distribution of any particular asset forming part of the Trust's property or

of any particular monies or funds received by the Trustees. The legal ownership of the property of the Trust and the right to conduct the activities of the Trust are vested exclusively in the Trustees, and no Unitholder has or is deemed to have any right of ownership in any of the property of the Trust, except as specifically provided herein. Except as specifically provided herein, no Unitholder shall be entitled to interfere with or give any direction to the Trustees with respect to the affairs of the Trust or in connection with the exercise of any powers or authorities conferred upon the Trustees under this Declaration of Trust. The Units shall be personal property and shall confer upon the holders thereof only the interest and rights specifically set forth in this Declaration of Trust.

### **ARTICLE 3 TRUSTEES AND OFFICERS**

#### **3.1 Number**

There shall be a minimum of three and a maximum of 12 Trustees. Subject to Subsection 3.8(b), the number of Trustees within such minimum and maximum numbers may be changed by the Unitholders, unless otherwise provided herein.

#### **3.2 Term**

Other than the ECL Trustees, Trustees elected at an annual meeting will be elected for a term expiring at the close of the next annual meeting and will be eligible for re-election. Trustees appointed by the Trustees between meetings of Unitholders in accordance with Subsection 3.9(a) shall be appointed for a term expiring at the conclusion of the next annual meeting and will be eligible for election or re-election, as the case may be.

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

A Trustee shall be an individual that is at least 18 years of age, not under any legal disability and not found to be of unsound mind or incapable of managing property by a court in Canada or elsewhere, and not have the status of bankrupt.

#### **3.4 Residency of Trustees**

A majority of the Trustees must be Residents. If at any time a majority of the Trustees or a majority of the Trustees of any committee of the Trustees are not Residents because of the death, resignation, insolvency, bankruptcy, adjudicated incompetence or incapacity, removal or change in circumstance of any Trustee who was a Resident Trustee, or there are no Trustees who are Residents, the Trustee or Trustees who are Non-Residents shall, immediately before that time, be deemed to have resigned and shall cease to be Trustees with effect from the time of such deemed resignation and the remaining Trustees shall appoint a sufficient number of Resident Trustees to comply with this requirement. If at any time the number of Trustees is less than the number required under this Declaration of Trust and the remaining Trustee or Trustees fail or are unable to act in accordance with Section 3.7 and/or Section 3.12 to appoint one or more additional Trustees or if, upon the resignation or deemed resignation of one or more Trustees there would be no Trustees, then the board of Trustees of the Trust shall appoint one or more Trustees so that following such appointment a majority of the Trustees are Residents and, failing such appointment, any remaining Trustee or Unitholder or officer of the Trust or the Auditors, as the case may be, may apply to a court in the jurisdiction of the Trust's principal office for an order appointing one or more Trustees so that following such appointment a majority of the Trustees are Residents, to act until the next annual meeting of Unitholders or on such other terms as the court may



order. Any Trustee who is a Resident who proposes to become a Non-Resident shall notify the other Trustees thereof as soon as reasonably practicable and shall resign as a Trustee effective upon the day of such notification and shall be replaced with a Trustee who is a Resident.

### **3.5 Election of Trustees**

Subject to Sections 3.1, 3.3, 3.8 and 3.12, the election of the Trustees shall be by the vote 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 shall have in writing accepted such appointment or election and agreed to be bound by the terms of this Declaration of Trust.

### **3.6 Independent Trustees**

A majority of the Trustees must be Independent Trustees provided, however, that if at any time a majority of the Trustees are not Independent Trustees because of the death, resignation, bankruptcy, adjudicated incompetence, removal or change in circumstance of any Trustee who was an Independent Trustee, this requirement shall not be applicable for a period of 60 days thereafter, during which time the remaining Trustees shall appoint a sufficient number of Independent Trustees to comply with the requirement.

### **3.7 Resignations, Removal, Incapacity and Death of Trustees**

- (a) A Trustee may resign at any time by an instrument in writing signed by the Trustee and delivered or mailed to the board of Trustees or the President or, if there is no President, the Chief Executive Officer, or, if there is no Chief Executive Officer, the Unitholders. A resignation of a Trustee becomes effective at the time a written resignation is received by the Trust upon 30 days' written notice, or at the time specified in the resignation, whichever is later, 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, except in the case of a deemed resignation under Section 3.4 which shall be effective at the time therein prescribed.
- (b) A Trustee may be removed at any time with or without cause by a majority of the votes cast at a meeting of Unitholders called for that purpose or with cause by the resolution passed by an affirmative vote of not less than two-thirds of the remaining Trustees. Any removal of a Trustee shall take effect immediately following the aforesaid vote or resolution or at any later time specified in the notice without need for prior accounting, and any Trustee so removed shall be so notified by the Chief Executive Officer or another officer of the Trust or if there is no officer of the Trust, by any remaining Trustee or if there is no Trustee then remaining, by the Unitholders, following such removal.
- (c) Upon the resignation or removal of any Trustee, or such Trustee otherwise ceasing to be a Trustee (in each case, a "**Retiring Trustee**"), such Retiring Trustee shall cease to have the rights, privileges and powers of a Trustee hereunder, shall account to the remaining Trustees as they may require for all property which he or she holds as Trustee and do all such other things as may be required pursuant to Subsection 3.11(b) hereof; provided however that notwithstanding any other provision of this Declaration of Trust, each such

Retiring Trustee shall always continue to have the protections afforded to Trustees in Article 17.

- (d) Upon the incapacity or death of any Trustee, such Retiring Trustee's legal representative shall execute and deliver on such Trustee's behalf such documents as the remaining Trustees may require as provided in this Section 3.7. In the event that a Trustee or his legal representatives, as applicable, are unable or unwilling to execute and deliver such required documents, each of the remaining Trustees is hereby appointed as the attorney of such Trustee for the purpose of executing and delivering such required documents.

### **3.8 Appointment of Trustees**

- (a) Except as otherwise provided herein, 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. Any such election shall be made either by a resolution approved by a majority of the votes cast at a meeting of Unitholders or shall be made by resolution in writing in the manner set out in Section 8.16. Notwithstanding the foregoing:
  - (i) if no Trustees are elected at the annual meeting of Unitholders held immediately before the term of office of the then existing Trustees expires, such existing Trustees shall continue to hold the office of Trustees under this Declaration of Trust until successors have been appointed or they cease to hold office; and
  - (ii) the Trustees may, between annual meetings of the Unitholders, appoint one or more additional Trustees to serve until the next annual meeting of Unitholders; provided that the number of additional Trustees so appointed will not at any time exceed one-third of the number of Trustees who held such office at the conclusion of the immediately preceding annual meeting of Unitholders (rounding to the nearest whole number).
- (b) ECL shall have the exclusive right to appoint certain Trustees (the "**ECL Trustees**") based on the proportion of outstanding Units held, directly or indirectly, by ECL at the time of such appointments and the size of the board of Trustees at such time, all in accordance with the following table, by written notice delivered or mailed to the Chair of Trustees, the President or the Secretary, to hold office for such period as ECL shall provide, subject to the appointment of any successors by ECL; provided that upon any reduction in the number of Units held by ECL which would result in ECL being entitled to appoint less Trustees than the number of ECL Trustees then in place, ECL shall forthwith deliver to the Chair, the President or the Secretary a written notice specifying the ECL Trustees which ECL shall be required to remove so that the number of ECL Trustees then in place is equal to the number determined in accordance with the following table. ECL Trustees shall be required to meet the requirements of Sections 3.3 and 3.4.

<b>ECL's Proportion of Outstanding Units Held</b>	<b>Total Number of Trustees of the Trust</b>	<b>Number of ECL Appointees</b>
	Greater than 10	5
Greater than 30%	10	4
	7 to 9	3
	5 to 6	2
	Less than 5	1
	Greater than 10	4
20% - 30%	10	3
	7 to 9	2
	Less than 7	1
10% - 19.99%	10 or greater than 10	2
	Less than 10	1
Less than 10%	Any	0

### 3.9 Consent to Act

- (a) A person who is appointed a Trustee hereunder shall not become a Trustee until the person has, either before or after such appointment, executed and delivered to the Trust a consent, or such consent is evidenced in minutes of a meeting of Trustees, substantially in the form as follows:

“To: Crombie Real Estate Investment Trust (the “Trust”)  
And to: The Trustees thereof

The undersigned hereby certifies that he or she or it is/is not a resident of Canada within the meaning of the *Income Tax Act* (Canada) and consents to act as a Trustee of the Trust and hereby agrees, upon the later of the date of this consent

and the date of the undersigned's appointment as a Trustee of the Trust, to thereby become a party, as a Trustee, to the Declaration of Trust dated the 1<sup>st</sup> day of January, 2006, as amended, supplemented or amended and restated from time to time, constituting the Trust.

Dated: \_\_\_\_\_

[Signature]

Dated: \_\_\_\_\_

[Print Name]"

- (b) Upon the later of a person being appointed a Trustee hereunder and executing and delivering to the Trust a form of consent substantially as set forth in Subsection 3.9(a), 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, supplemented or amended and restated from time to time.
- (c) An act of a Trustee is valid notwithstanding an irregularity in the appointment or election of the Trustee or a defect in the qualification of the Trustee.

### **3.10 Failure to Elect Minimum Number of Trustees**

If a meeting of Unitholders fails to elect the minimum number of Trustees required by this Declaration of Trust by reason of the disqualification or death of any nominee, the Trustees elected at the meeting may exercise all of the powers of the Trustees if the number of Trustees so elected constitutes a quorum.

### **3.11 Ceasing to Hold Office**

- (a) A Trustee ceases to hold office when:
  - (i) the Trustee ceases to be duly qualified to act as a Trustee as provided under Section 3.3;
  - (ii) the Trustee ceases to be a Trustee in accordance with Section 3.4;
  - (iii) the Trustee dies or resigns; or
  - (iv) the Trustee is removed in accordance with Sections 3.7.
- (b) 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 17.2. Such Trustee shall execute and deliver such documents as the remaining Trustees shall reasonably require for the conveyance of any Trust property held in that Trustee's name, shall account to the remaining Trustees as they may reasonably require for all property which that Trustee holds as Trustee, shall resign from all directorship or similar positions held by such

Trustee in any entity in which the Trust has an interest and shall thereupon be discharged as Trustee. Upon the incapacity or death of any Trustee, his legal representative shall execute and deliver on his behalf such documents as the remaining Trustees may reasonably require as provided in this Subsection 3.11(b). In the event that a Trustee or his legal representatives, as applicable, are unable or unwilling to execute and deliver such required documents, each of the remaining Trustees is hereby appointed as the attorney of such Trustee for the purposes of executing and delivering such required documents. This power of attorney granted to each of the remaining Trustees is not intended to be a continuing power of attorney within the meaning of the *Substitute Decisions Act, 1992* (Ontario), exercisable during a Trustee's incapacity to manage property, or any similar power of attorney under equivalent legislation in any of the provinces or territories of Canada (a "CPOA"). The execution of this power of attorney will not terminate any CPOA granted by the Trustee previously and will not be terminated by the execution by the Trustee in the future of a CPOA, and the Trustee hereby agrees not to take any action in future which results in the termination of this power of attorney.

### **3.12 Vacancies by Trustees**

The death, resignation, bankruptcy, adjudicated incompetence or other incapacity to exercise the duties of the office of a Trustee or the removal or other cessation to hold office of a Trustee shall not operate to annul this Declaration of Trust or affect the continuity of the Trust. Until vacancies are filled, the remaining Trustee or Trustees (even if less than a quorum) may exercise the powers of the Trustees hereunder. In the case of a vacancy, the Unitholders or, so long as they constitute a quorum and a majority of the Trustees constituting such quorum are Residents, a majority of the Trustees continuing in office may fill such vacancy, except a vacancy resulting from an increase in the number of Trustees or from a failure of the Unitholders to elect the minimum number of Trustees fixed by or pursuant to this Declaration of Trust. If there is not such a quorum of Trustees and there is a failure by the Unitholders to elect the minimum number of Trustees required by or pursuant to this Declaration of Trust, the Trustees then in office shall forthwith call a special meeting of Unitholders to fill the vacancy and, if they fail to call a meeting or if there are no Trustees then in office, the meeting may be called by any Unitholder. A Trustee appointed to fill a vacancy holds office, subject to Section 3.7 and Section 3.11, until the close of the next annual meeting of the Unitholders, unless such Trustee is elected at the next annual meeting.

### **3.13 Successor and Additional Trustees**

The right, title and interest of the Trustees in and to the property and assets of the Trust shall vest automatically in all persons who may hereafter become Trustees upon their due election or appointment and qualification and acceptance thereof without any further act and they shall thereupon have all the rights, privileges, powers, obligations and immunities of Trustees hereunder. Such right, title and interest shall vest in the Trustees whether or not conveyancing documents have been executed and delivered pursuant to Section 3.11 or otherwise.

### **3.14 Compensation and Other Remuneration**

Only Trustees who are not employees of and who do not receive salary from the Trust, or any of its subsidiaries shall receive such fees and other reasonable compensation (including, without limitation, fees for serving as Chair of the Trust, for serving as chair of any committee of Trustees and for attendance at each meeting of Trustees and of each committee of Trustees) as the Trustees may determine

from time to time, as well as reimbursement of their reasonable travel and out-of-pocket expenses properly incurred in acting as a Trustee.

Each of the Trustees, either directly or indirectly, shall also be entitled to receive remuneration for services rendered to the Trust in any other capacity. Such services may include, without limitation, services as an officer of the Trust, legal, accounting or other professional services or services as a broker, transfer agent or underwriter, whether performed by a Trustee or any Person affiliated with a Trustee. Trustees who are employees of and who receive salary from the Trust or 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.

### **3.15 Validity of Acts**

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

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

### **4.1 General Powers**

The Trustees, subject only to the terms and conditions contained in this Declaration of Trust, including without limitation, Sections 4.2, 6.1, 6.2 and 8.8, shall have, without further or other authorization and free from any control or direction on the part of the Unitholders full, absolute and exclusive power, control and authority over the assets of the Trust and over the operations of the Trust to the same extent as if the Trustees were the sole and absolute legal and beneficial owners of such assets in their own right, to do all such acts and things as in their sole judgment and discretion are necessary or incidental to, or desirable for, the carrying out of any of the purposes of the Trust or the conducting of the affairs of the Trust. In construing the provisions of this Declaration of Trust, there shall be a presumption in favour of the power and authority having been granted to the Trustees. The enumeration of any specific power or authority herein shall not be construed as limiting the general powers or authority or any other specified power or authority conferred herein on the Trustees. Except as specifically required by such laws, the Trustees shall in carrying out investment activities not be in any way restricted by the provisions of the laws of any jurisdiction limiting or purporting to limit investments which may be made by trustees. Without limiting the generality of the foregoing, the Trustees may, subject to the terms and conditions contained in this Declaration of Trust, make any investments without being required to adhere to all of, or any particular portion of the investment criteria or diversification requirements set forth in the *Trustee Act* (Ontario), as replaced or amended from time to time, including, without limitation, investments in mutual funds, common trust funds, unit trusts and similar types of investment vehicles, to alter or vary such investments from time to time in a like manner, to retain such investments for such length of time as the Trustees, in their discretion determine and to delegate management and authority to discretionary managers of investment funds as the Trustees in their discretion determine appropriate.

### **4.2 Independent Trustee Matters**

Notwithstanding anything herein to the contrary, the following matters shall require, in addition to the approval of a majority of the Trustees present in person or by phone at a meeting of the board of Trustees, the prior approval of a majority of the Independent Trustees holding office as such at the time (given by vote at a meeting of Trustees or by a written resolution signed by all of the Independent Trustees), in order to become effective:

- (a) an acquisition or disposition of a property or an investment in a property, whether by co-investment or otherwise, in which any Related Party has any direct or indirect interest;
- (b) a material change to any Material Agreement or any renewal, extension or termination thereof or any increase in any fees payable thereunder (including transaction fees);
- (c) the entering into of, or the waiver, exercise or enforcement of any rights or remedies under, any agreement entered into by the Trust or any of its subsidiaries, or the making, directly or indirectly, of any co-investment, in each case with (i) any Trustee, (ii) any entity directly or indirectly controlled by any Trustee or in which any Trustee holds a significant interest, or (iii) any entity for which any Trustee acts as a director or other similar capacity;
- (d) the refinancing, increase or renewal of any indebtedness owed by or to (i) any Trustee, (ii) any entity directly or indirectly controlled by any Trustee or in which any Trustee holds a significant interest, or (iii) any entity for which any Trustee acts as a director or other similar capacity;
- (e) the grant of options or issuing of Units under any option or purchase plan, or any amendment thereto, provided to any Trustee, any officer and/or others;
- (f) a change in the number of Trustees;
- (g) decisions relating to compensation of Trustees; and
- (h) decisions relating to any claims by or against one or more parties to any of the Material Agreements, or any Related Party.

#### **4.3 Specific Powers and Authorities**

Subject only to the terms and conditions contained in this Declaration of Trust including, without limitation in Sections 4.2, 6.1, 6.2 and 8.8, and in addition to any powers and authorities conferred by this Declaration of Trust or which the Trustees may have by virtue of any present or future statute or rule of law, the Trustees, without any action or consent by the Unitholders, shall have and may exercise, on behalf of the Trust or otherwise, at any time and from time to time the following powers and authorities which may or may not be exercised by them in their sole judgment and discretion and in such manner and upon such terms and conditions as they may from time to time deem proper:

- (a) to retain, invest and re-invest the capital or other funds of the Trust in real or personal property of any kind, all without regard to whether any such properties are authorized by law for the investment of trust funds, and to possess and exercise all the rights, powers and privileges appertaining to the ownership of the property of the Trust and to increase the capital of the Trust at any time by the issuance of additional Units for such consideration as they deem appropriate.
- (b) for such consideration as they deem proper, to invest in, purchase or otherwise acquire for cash or other property or through the issuance of Units or through the issuance of notes, debentures, bonds or other obligations or securities of the Trust and hold for investment the entire or any participating interest in any mortgages. In connection with any such investment, purchase or acquisition, the Trustees shall have the power to

acquire a share of rents, lease payments or other gross income from or a share of the profits from or a share in the equity or ownership of real property;

- (c) to sell, rent, lease, hire, exchange, release, partition, assign, mortgage, pledge, hypothecate, grant security interests in, encumber, negotiate, convey, transfer or otherwise dispose of any or all of the property of the Trust by deeds, trust deeds, assignments, bills of sale, transfers, leases, mortgages, financing statements, security agreements and other instruments for any of such purposes executed and delivered for and on behalf of the Trust by one or more of the Trustees or by a duly authorized officer, employee, agent or any nominee of the Trust;
- (d) to enter into leases, contracts, obligations and other agreements for a term extending beyond the term of office of the Trustees and beyond the possible termination of the Trust or for a lesser term;
- (e) to borrow money from or incur indebtedness to any person, to guarantee, indemnify or act as surety with respect to payment or performance of obligations of third parties; to enter into other obligations on behalf of the Trust; and to assign, convey, transfer, mortgage, subordinate, pledge, grant security interests in, encumber or hypothecate the property of the Trust to secure any of the foregoing;
- (f) without limit as to amount, to issue any type of debt securities or convertible debt securities and to borrow money or incur any other form of indebtedness for the purpose of carrying out the purposes of the Trust or for other expenses incurred in connection with the Trust and for such purposes may draw, make, execute and issue promissory notes and other negotiable and non-negotiable instruments or securities and evidences of indebtedness, secure the payment of sums so borrowed or indebtedness incurred and mortgage, pledge, assign or grant a security interest in any money owing to the Trust or its property or engage in any other means of financing the Trust;
- (g) to lend money or other property of the Trust, whether secured or unsecured;
- (h) 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;
- (i) 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, without limitation, any one or more Trustees, officers, agents or representatives) as the Trustees may determine;
- (j) to possess and exercise all the rights, powers and privileges appertaining to the ownership of or interest in all or any mortgages or securities, issued or created by, or interest in, any person, forming part of the 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;

- (k) to exercise any conversion privilege, subscription right, warrant or other right or option available in connection with any property of the Trust at any time held by it and to make payments incidental thereto; to consent, or otherwise participate in or dissent from, the reorganization, consolidation, amalgamation, merger or readjustment of the finances of any person (other than the Trust), any of the securities of which may at any time be held, directly or indirectly, by the Trust, including LP Units, or to the sale, mortgage or lease of the property of any such person; and to do any act with reference thereto, including (without limitation) the delegation of discretionary powers, the exercise of options, the making of agreements or subscriptions and the payment of expenses, assessments or subscriptions which it may consider necessary or advisable in connection therewith;
- (l) to elect, appoint, engage or employ officers for the Trust (including, without limitation, the Chair of Trustees, Lead Trustee, Vice-Chair, President, Chief Executive Officer, Chief Operating Officer, Chief Financial Officer, Secretary, Treasurer and such vice-presidents 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, appoint, employ or contract with any persons as agents, representatives, employees or independent contractors or otherwise (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 or this Declaration of Trust, to delegate any of the powers and duties of the Trustees (including, without limitation, the power of delegation) to any one or more Trustees, agents, representatives, officers, employees, independent contractors or other persons without regard to whether such power, authority or duty is normally granted or delegated by Trustees;
- (m) to collect, sue for and receive sums of money coming due to the Trust, and to engage in, intervene in, prosecute, join, defend, compromise, abandon or adjust, by arbitration or otherwise, any actions, suits, proceedings, disputes, claims, demands or other litigation relating to the Trust, the assets of the Trust or the Trust's affairs, to enter into agreements therefor whether or not any suit is commenced or claim accrued or asserted and, in advance of any controversy, to enter into agreements regarding the arbitration, adjudication or settlement thereof;
- (n) to renew, modify, release, compromise, extend, consolidate or cancel, in whole or in part, any obligation to or of the Trust;
- (o) 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 of the Trust;

- (p) to cause legal title to any of the assets of the Trust to be held by and/or in the name of the Trustees, or by and/or in the name of the Trust or one or more of the Trustees or any other person, on such terms, in such manner with such powers in such person as the Trustees may determine and with or without disclosure that the Trust or Trustees are interested therein provided, however, that should legal title to any of the assets of the Trust be held by and/or in the name of any person or persons other than the Trust, the Trustees shall require such person or persons to execute a declaration of trust acknowledging that legal title to such assets is held in trust for the benefit of the Trust;
- (q) to determine conclusively the allocation to capital, income or other appropriate accounts for all receipts, expenses, disbursements and, property of the Trust;
- (r) to issue Units for such consideration as the Trustees may deem appropriate in their sole discretion, such issuance to be subject to the terms and conditions of this Declaration of Trust;
- (s) 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;
- (t) to prepare, sign and file or cause to be prepared, signed and filed any prospectus, offering memorandum or similar document, and any amendment thereto and all agreements contemplated therein or ancillary thereto or relating to or resulting from any offerings of the Units or other securities issued or held by the Trust and to pay the cost thereof and related thereto out of the property of the Trust whether or not such offering is or was of direct benefit to the Trust or those persons (if any) who were Unitholders immediately prior to such offering;
- (u) in addition to the mandatory indemnification provided for in Section 17.2, to the extent permitted by law, to indemnify, or enter into agreements with respect to the indemnification of any person with whom the Trust has dealings including, without limitation, the Trustees, the depository, the Transfer Agent or any escrow agent, to such extent as the Trustees shall determine;
- (v) to determine conclusively the value of any or all of the property of the Trust from time to time and, in determining such value, to consider such information and advice as the Trustees, in their sole judgment, may deem material and reliable;
- (w) to do all such acts and things and to exercise such powers as may be delegated to the Trustees by any person who co-owns real property with the Trust; and
- (x) to do all such other acts and things as are incidental to the foregoing, and to exercise all powers that are necessary or useful to carry on the business of the Trust, to promote any of the purposes for which the Trust is formed and to carry out the provisions of this Declaration of Trust.

#### **4.4 Further Powers of the Trustees**

The Trustees shall have the power to prescribe any form provided for or contemplated by this Declaration of Trust. The Trustees may make, adopt, amend, or repeal regulations containing provisions relating to the Trust, the conduct of its affairs, the rights or powers of the Trustees and the rights or powers of the Unitholders or officers, provided that such regulations shall not be inconsistent with law or with this Declaration of Trust and not, in the opinion of the Trustees, prejudicial to Unitholders. The Trustees shall also be entitled to make any reasonable decisions, designations or determinations not inconsistent with law or with this Declaration of Trust which they may determine are necessary or desirable in interpreting, applying or administering this Declaration of Trust or in administering, managing or operating the Trust. To the extent of any inconsistency between this Declaration of Trust and any regulation, decision, designation or determination made by the Trustees, this Declaration of Trust shall prevail and such regulation, decision, designation or determination shall be deemed to be modified to eliminate such inconsistency. Any regulations, decisions, designations or determinations made in accordance with this Section 4.4 shall be conclusive and binding upon all persons affected thereby.

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

#### **4.5 Banking**

The banking activities of the Trust, or any part thereof, including, but without restricting the generality of the foregoing, the operation of the Trust's accounts; the making, signing, drawing, accepting, endorsing, negotiation, lodging, depositing or transferring of any cheques, promissory notes, drafts, acceptances, bills of exchange and orders for the payment of money; the giving of receipts for orders relating to any property of the Trust; the execution of any agreement relating to any property of the Trust; the execution of any agreement relating to any such banking activities and defining the rights and powers of the parties thereto; and the authorizing of any officer of such bank to do any act or thing on the Trust's behalf to facilitate such banking activities, shall be transacted with such bank, trust company, or other firm or corporation carrying on a banking business as the Trustees may designate, appoint or authorize from time to time and shall be transacted on the Trust's behalf by one or more officers of the Trust as the Trustees may designate, appoint or authorize from time to time.

#### **4.6 Standard of Care**

The exclusive standard of care required of the Trustees in exercising their powers and carrying out their functions hereunder shall be that they exercise their powers and discharge their duties hereunder as Trustees honestly, in good faith and in the best interests of the Trust and the Unitholders and in connection therewith, that they 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 investments, business or affairs of the Trust.

No Trustee shall be liable in carrying out such Trustee's duties under this Declaration of Trust except in cases where the Trustee fails to act honestly, in good faith and in the best interests of the Trust and the Unitholders or, in connection therewith, fails to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. The duties and standard of care of the Trustees provided as aforesaid are intended to be similar to, and not to be any greater than, those imposed on a director of a corporation governed by the *Canada Business Corporations Act*.

#### **4.7 Fees and Expenses**

As part of the expenses of the Trust, the Trustees may pay or cause to be paid out of the Trust's property, reasonable fees, costs and expenses incurred in connection with the administration and management of the Trust, including (without limitation) real property and brokerage commissions in respect of investments and dispositions of real property made by the Trust, fees of auditors, accountants, lawyers, engineers, appraisers and other agents, consultants and professional advisors employed by or on behalf of the Trust, fees of stock exchanges and the cost of reporting or giving notices to Unitholders. All costs, charges and expenses properly incurred by the Trustees on behalf of the Trust shall be payable out of the Trust's property.

#### **4.8 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 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 single Trustee or officer of the Trust 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 such other person to act for and on behalf and in the name of the Trust. No person dealing with the Trustees or officers of the Trust 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 or officers of the Trust for monies or other consideration shall be binding upon the Trust.

#### **4.9 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 limitation, 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 Plan, or other similar fund or plan registered under the Tax Act, upon plan beneficiaries and plan holders past, present and future) and Units of the Trust shall be issued and sold on the condition and understanding that any and all such determinations shall be binding as aforesaid.

#### **4.10 Limitations on Liability of Trustees**

- (a) Subject to the standard of care set forth in Section 4.6, none of the Trustees nor any officers, employees or agents of the Trust shall be liable to any Unitholder or any other person in tort, contract or otherwise for any action taken or not taken in good faith in

reliance on any documents that are, *prima facie*, properly executed; for any depreciation of, or loss to, the Trust incurred by reason of the sale of any security; for the loss or disposition of monies or securities; for any action or failure to act by any person to whom the Trustees are permitted to delegate and have delegated any of their duties hereunder; or for any other action or failure to act including, without limitation, the failure to compel in any way any former Trustee to redress any breach of trust or any failure by any person to perform obligations or pay monies owed to the Trust, unless such liabilities arise out of a breach of the standard of care, diligence and skill as set out in Section 4.6. If the Trustees have retained an appropriate expert, advisor or legal counsel with respect to any matter connected with their duties under this Declaration of Trust, the Trustees may act or refuse to act based on the advice of such expert, advisor or legal counsel and, notwithstanding any provision of this Declaration of Trust, including, without limitation, the standard of care, diligence and skill set out in Section 4.6 hereof, the Trustees shall not be liable for and shall be fully protected from any action or refusal to act based on the advice of any such expert, advisor or legal counsel which it is reasonable to conclude is within the expertise of such expert or advisor to give.

- (b) The Trustees shall not be subject to any personal liability for any debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses against or with respect to the Trust arising out of anything done or permitted or omitted to be done in respect of the execution of the duties of the office of Trustees for or in respect to the affairs of the Trust unless such Trustee shall have failed to meet the standard of care set out in Section 4.6. No property or assets of the Trustees, owned in their personal capacity or otherwise, will be subject to any levy, execution or other enforcement procedure with regard to any obligations under this Declaration of Trust or under any other related agreements unless such Trustee shall have failed to meet the standard of care set out in Section 4.6. No recourse may be had or taken, directly or indirectly, against the Trustees in their personal capacity or against any incorporator, shareholder, director, officer, employee or agent of the Trustees or any successor of the Trustees unless such Trustee shall have failed to meet the standard of care set out in Section 4.6. The Trust shall be solely liable therefor and resort shall be had solely to the Trust's property for payment or performance thereof unless such Trustee shall have failed to meet the standard of care set out in Section 4.6.

In the exercise of the powers, authorities or discretion conferred upon the Trustees under this Declaration of Trust, the Trustees are and shall be conclusively deemed to be acting as trustees of the Trust's property.

#### **4.11 Conflict of Interest**

If a Trustee or officer of the Trust:

- (a) is a party to a material contract or transaction or proposed material contract or transaction with the Trust (or an affiliate thereof), including a material contract or transaction involving the making or disposition of any investment in real property or a joint venture agreement; or
- (b) 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 (or an affiliate thereof),

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

- (c) The disclosure required in the case of a Trustee shall be made:
  - (i) at the meeting of Trustees or the Governance and Nominating Committee, as the case may be, at which a proposed contract or transaction is first considered;
  - (ii) if the Trustee was not then interested in a proposed contract or transaction, at the first such meeting after he becomes so interested;
  - (iii) if the Trustee becomes interested after a contract is made or a transaction is entered into, at the first meeting after he becomes so interested; or
  - (iv) if a person who is interested in a contract or transaction later becomes a Trustee, at the first such meeting after he becomes a Trustee.
- (d) The disclosure required in the case of an officer of the Trust who is not a Trustee shall be made:
  - (i) 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 or the Governance and Nominating Committee;
  - (ii) if such person becomes interested after a contract is made or transaction is entered into, forthwith after such person becomes aware that he has become so interested; or
  - (iii) if a person who is interested in a contract or a transaction later becomes an officer of the Trust, forthwith after he becomes an officer of the Trust.
- (e) Notwithstanding Subsections 4.11(a) and 4.11(b), 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.
- (f) A Trustee referred to in this Section 4.11 shall not vote on any resolution to approve the said contract or transaction unless the contract or transaction is:
  - (i) one relating primarily to such Trustee's remuneration as a Trustee, officer, employee or agent of the Trust; or
  - (ii) one for indemnity of such Trustee under Section 17.1 hereof or the purchase of liability insurance,

provided, however, that the presence of such Trustee at the relevant meeting or the written recognition by such Trustee of any resolution in writing shall be counted toward any quorum requirement or requirement that at least a minimum number of Trustees or Independent Trustees act.

- (g) For the purposes hereof, a general notice to the Trustees by a Trustee or an officer of the Trust disclosing that such person 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 to be provided by this Declaration of Trust or by law.
- (h) Where a material contract is made or a material transaction is entered into between the Trust and a Trustee or an officer of the Trust, or between the Trust and another person in which a Trustee or an officer of the Trust is a director or officer or in which he or she has a material interest:
  - (i) such person is not accountable to the Trust or to the Unitholders for any profit or gain realized from the contract or transaction; and
  - (ii) the contract or transaction is neither void nor voidable, by reason only of that relationship or by reason only that such person is present at or is counted to determine the presence of a quorum at the meeting of the Trustees or Investment Committee that authorized the contract or transaction, if such person disclosed such person's interest in accordance with this Section 4.11, and the contract or transaction was reasonable and fair to the Trust at the time it was so approved.
- (i) Notwithstanding anything in this Section 4.11, but without limiting the effect of Subsection 4.11(f) hereof, 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 such person 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:
  - (i) the contract or transaction is confirmed or approved at a meeting of Unitholders duly called for that purpose; and
  - (ii) the nature and extent of such person's interest in the contract or transaction are disclosed in reasonable detail in the notice calling the meeting or in any information circular to be provided by this Declaration of Trust or by law.
- (j) Subject to Subsections 4.11(f), 4.11(h) and 4.11(i) hereof, where a Trustee or an officer of the Trust fails to disclose such person's interest in a Material Agreement or material contract or transaction in accordance with this Declaration of Trust or otherwise fails to comply with this Section 4.11, the Trustees or any Unitholder, in addition to exercising

any other rights, or remedies in connection with such failure exercisable at law or in equity, may apply to a court for an order setting aside the contract or transaction and directing that such person account to the Trust for any profit or gain realized.

#### **4.12 Related Party Transactions**

- (a) Notwithstanding anything contained elsewhere in this Declaration of Trust to the contrary, the provisions of this Section 4.12 shall apply:
- (i) to any person who is a Related Party; and
  - (ii) to any person who is:
    - (A) a Trustee or an associate of a Trustee;
    - (B) a substantial security holder of the Trust or any affiliate of such substantial security holder (where the term “substantial security holder” shall have the meaning ascribed thereto in Part XXI of the *Securities Act* (Ontario)); or
    - (C) an officer, director or employee of the Trust or of any of its subsidiaries or affiliates
- (such persons being referred to herein as a Related Party).
- (b) In the event of any proposed purchase or sale of real property from or to a Related Party, the Trust shall comply with the provisions of MI 61-101 requiring the preparation of and provision of an independent valuation.
- (c) Without limitation and in addition to the requirement, if any, under MI 61-101 or this Declaration of Trust to obtain the approval of Unitholders, or to obtain minority approval within the meaning of MI 61-101, for any related party transaction within the meaning of MI 61-101, the Trust shall not carry out a proposed purchase or sale of real property from or to a Related Party, or otherwise effect a transaction or enter into a material agreement with a Related Party unless such transaction or agreement is determined to be on commercially reasonable terms and is approved by a majority of the Trustees who are (i) not parties to such transaction, or (ii) who are not directors, officers or employees of any person (other than the Trust) who is a party, or (iii) who do not have a material interest in, any person (other than the Trust) who is a party to such transaction, or (iv) appointed as a Trustee by a Related Party that is a party to the transaction.

#### **4.13 Conditions Precedent**

The obligation of the Trustees to commence or continue any act, action, suit or proceeding or to represent the Trust in any action, suit or proceeding shall be conditional upon sufficient funds being available to the Trustees from the Trust’s property to commence or continue such act, action, suit or proceeding or to represent the Trust in any action, suit or proceeding and an indemnity reasonably satisfactory to the Trustees to protect and hold harmless the Trustees against the costs, charges and expenses and liabilities to be incurred therein and any loss and damage it may suffer by reason thereof. None of the provisions contained in this Declaration of Trust shall require the Trustees to expend or risk



their own funds or otherwise incur financial liability in the performance of their duties or in the exercise of any of their rights or powers unless they are given an indemnity and funding satisfactory to the Trustees, acting reasonably.

## **ARTICLE 5 OFFICERS OF THE TRUST**

### **5.1 General**

The Trust shall have a Chair of Trustees, and may have one or more other officers as the Trustees may appoint from time to time, including without limitation a Chief Executive Officer and Chief Financial Officer. Any officer of the Trust, other than the Chair of Trustees may, but need not be, a Trustee. One person may hold two or more offices. Officers of the Trust may be appointed and, without prejudice to rights under any employment contract, removed or discharged, and their powers, responsibilities and remuneration determined by the Trustees and, in the absence of such determination, their responsibilities shall be those usually applicable to the office held. All officers so appointed shall be Residents.

### **5.2 Chair of Trustees**

The Chair of Trustees shall be appointed from among the Trustees provided that the Chair of Trustees shall be a non-executive appointment. When present, the Chair of Trustees shall be chairperson of meetings of Trustees and Unitholders and shall have such other powers and duties as the Trustees may determine from time to time to manage the affairs of the board of Trustees and monitor the effectiveness of the Trustees, subject to those powers granted to the Lead Trustee.

### **5.3 Lead Trustee**

The Lead Trustee shall be appointed from among the Trustees provided that the Lead Trustee must be an Independent Trustee. The Lead Trustee will act as an effective leader of the board of Trustees in respect of matters required to be considered by the Independent Trustees only, and will ensure that the board of Trustee's agenda will enable it to successfully carry out its duties.

### **5.4 Senior Management**

The responsibilities of senior management of the Trust shall include, but not be limited to, the following activities:

- (a) providing the board of Trustees with information and advice relating to the operation of the Trust's properties, acquisitions and financings;
- (b) establishing, at least on an annual basis, investment and operating plans for the ensuing period;
- (c) conducting and supervising the due diligence required in connection with proposed acquisitions and completing any acquisitions or dispositions;
- (d) maintaining the books and financial records of the Trust;

- (e) determining and preparing designations, elections and determinations to be made in connection with the income and capital gains of the Trust for tax and accounting purposes;
- (f) preparing reports and other information required to be sent to Unitholders and other persons, including investment dealers, lenders and professionals; and
- (g) administering or supervising the administration, on behalf of the board of Trustees, of the payment of distributions by the Trust.

### **5.5 Term of Office**

The Chair of Trustees, Lead Trustee and any officer appointed by the Trustees shall hold such position until his or her successor is elected or appointed, provided, without prejudice to rights under any employment contract, that the Trustees may at any time remove an officer from office at any time in their sole discretion.

### **5.6 Independent Contractors**

Any office of the Trust appointed by the Trustees may be held by an individual who is not an employee of the Trust but has been retained by the Trust to hold such office pursuant to an independent service agreement entered into between the Trust and that individual or that individual's employer.

## **ARTICLE 6 INVESTMENT GUIDELINES AND OPERATING POLICIES**

### **6.1 Investment Guidelines**

Notwithstanding any other provision hereof, the assets of the Trust may be invested only with the approval of the Trustees and only in accordance with the following restrictions:

- (a) the Trust is intended to invest primarily, directly or indirectly (including by investments by its subsidiaries), in interests (including fee ownership and leasehold interests) in income producing real property that is or will be primarily commercial, residential or retail in nature and assets ancillary thereto necessary for the acquisition, holding, development, maintaining, improving, leasing, managing or otherwise dealing with such real estate and such other activities as are consistent with the other investment guidelines of the Trust;
- (b) notwithstanding anything else contained in the Declaration of Trust, the Trust shall not make or hold, directly or indirectly (including by investments by its subsidiaries), any investment, take any action or omit to take any action where such investment, action or omission would result in:
  - (i) the Trust not qualifying as a "mutual fund trust" (effective the date it was established and thereafter) or a "unit trust" both within the meaning of the Tax Act;
  - (ii) Units not qualifying as qualified investments for Plans;

- (iii) the Trust not qualifying as a “real estate investment trust” within the meaning of the Tax Act if, as a consequence of the Trust not so qualifying, the Trust or any of its subsidiaries would be liable to pay a tax imposed under either paragraph 122(1)(b) or subsection 197(2) of the Tax Act; or
- (iv) the Trust being liable to pay a tax under Part XII.2 of the Tax Act;
- (c) the Trust shall not invest, directly or indirectly (including by investments by its subsidiaries), in any interest in a single real property if, after giving effect to the proposed investment, the cost to the Trust of such investment (net of the amount of debt incurred or assumed in connection with such investment) will exceed 15% of Gross Book Value at the time the investment is made;
- (d) the Trust may, directly or indirectly (including by investments by its subsidiaries), 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 management, are commercially reasonable, including without limitation such terms and conditions relating to restrictions on the transfer, 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, provisions to limit the liability of the Trust and its Unitholders to third parties, and provisions to provide for the participation of the Trust in the management of the joint venture arrangement. For purposes hereof, a joint venture arrangement is an arrangement between the Trust and one or more other persons pursuant to which the Trust, directly or indirectly, conducts an undertaking for one or more of the purposes set out in the investment guidelines of the Trust 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;
- (e) 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 money market instruments maturing prior to one year from the date of issue and except as permitted pursuant to the investment guidelines and operating policies of the Trust, the Trust may not hold, directly or indirectly (including by investments by its subsidiaries), securities of a person other than to the extent such securities would constitute an investment in real property (as determined by the Trustees) and provided further that, notwithstanding anything contained in the Declaration of Trust to the contrary, but in all events subject to Subsection (b) above, the Trust may acquire securities of other real estate investment trusts, “mutual fund trusts” (as such term is defined in the Tax Act) and “mutual fund corporations” (as such term is defined in the Tax Act);
- (f) the Trust shall not invest, directly or indirectly (including by investments by its subsidiaries), in rights to or interests in mineral or other natural resources, including oil or gas, except as incidental to an investment in real property;
- (g) the Trust shall not invest, directly or indirectly (including by investments by its subsidiaries), in operating businesses unless such investment is an indirect investment and is incidental to a transaction:

- (A) where revenue will be derived, directly or indirectly, principally from real property; or
  - (B) which principally involves the ownership, maintenance, development, improvement, leasing or management, directly or indirectly, of real property (in each case as determined by the Trustees);
- (h) the Trust may invest, directly or indirectly (including by investments by its subsidiaries), in mortgages and mortgage bonds (including participating or convertible mortgages) and similar instruments where:
- (i) the real property which is security therefor is real property which otherwise meets the other investment guidelines of the Trust; and
  - (ii) the aggregate book value of the investments of the Trust in mortgages, after giving effect to the proposed investment, will not exceed 15% of Gross Book Value;

For the purpose of the foregoing restrictions, the assets, liabilities and transactions of a corporation, trust or partnership, 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 that invests in real property.

## **6.2 Operating Policies**

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

- (a) the Trust shall not purchase, sell, market or trade, directly or indirectly (including by investments by its subsidiaries), in currency or interest rate futures contracts otherwise than for hedging purposes where, for the purposes hereof, the term “hedging” has the meaning ascribed thereto by National Instrument 81-102 adopted by the Canadian Securities Administrators, as replaced or amended from time to time;
- (b)
  - (i) any written instrument creating an obligation which is or includes the granting by the Trust or subsidiary of a mortgage; and
  - (ii) to the extent the Trustees determine to be practicable and consistent with their fiduciary duties to act in the best interest of the Unitholders, any written instrument which is, in the judgment of the Trustees, a material obligation,

shall contain a provision, or be subject to an acknowledgement to the effect, that the obligation being created is not personally binding upon, and that resort must not be had to, nor will recourse or satisfaction be sought from, by lawsuit or otherwise the private property of any of the Trustees, Unitholders, annuitants or beneficiaries under a plan of which a Unitholder acts as a trustee or carrier, or officers, employees or agents of the Trust, but that only property of the Trust or a specific portion thereof is bound; the Trust, however, is not required, but must use all reasonable efforts, to comply with this

requirement in respect of obligations assumed by the Trust upon the acquisition of real property;

- (c) the Trust shall not lease or sublease, directly or indirectly (including by investments by its subsidiaries), to any person (other than Sobeys) 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 15% of Gross Book Value;
- (d) the limitation contained in Subsection (c) will not apply to the renewal of a lease or sublease and will not apply where the lessee or sublessee is, or where the lease or sublease is guaranteed by: (i) the Government of Canada, any province or territory of Canada, any municipality or city in Canada or any agency or crown corporation thereof; (ii) any entity, of which any of the bonds, debentures or other evidences of indebtedness of, or guaranteed by, such entity, or any of the other securities of such entity, have received and continue to hold, an investment grade rating from a recognized credit rating agency, in each case at the time the lease or sublease is entered into, or at the time other satisfactory leasing or pre-leasing arrangements (as determined by the Trustees) were entered into; or (iii) a Canadian chartered bank or a trust company or insurance company registered or licensed federally or under the laws of a province of Canada;
- (e) title to each real property shall be held by and registered in the name of the Trust, the Trustees or a corporation or other entity wholly-owned, directly or indirectly, by the Trust or jointly-owned, directly or indirectly, by the Trust, with joint venturers;
- (f) the Trust shall not incur or assume any indebtedness (other than by the assumption of existing indebtedness) or renew or refinance any indebtedness under a mortgage on any of the real property of the Trust where (i) in the case of an individual property, the total amount of indebtedness, excluding operating lines, secured by mortgages on such property exceeds 75% of the market value of such individual property; or (ii) in the case of more than one property or a pool or portfolio of properties, the total amount of indebtedness, excluding operating lines, secured by mortgages on such properties exceeds 75% of the market value of such properties on an aggregate basis;
- (g) the Trust shall not incur or assume, directly or indirectly (including by investments by its subsidiaries), any indebtedness if, after giving effect to the incurrence or assumption of such indebtedness, the total indebtedness of the Trust would be more than 60% of Gross Book Value (65% including any convertible debentures of the Trust);
- (h) at no time shall the Trust incur, directly or indirectly (including by investments by its subsidiaries), indebtedness aggregating more than 20% of its Gross Book Value (excluding debt with an original maturity of one year or more falling due in the next 12 months or variable rate debt for which the Trust or a subsidiary has entered into interest rate swap agreements to fix the interest rate for a one year period or more) at floating interest rates or having maturities of less than one year;
- (i) the Trust shall not directly or indirectly (including by investments by its subsidiaries) guarantee any indebtedness or liabilities of any kind of a third party, except indebtedness or liabilities assumed or incurred by an entity in which the Trust holds an interest, directly or indirectly (including by investments by its subsidiaries), or by an entity jointly

owned by the Trust or a subsidiary with joint venturers and operated solely for the purpose of holding a particular property or properties, where such indebtedness, if granted by the Trust directly, would cause the Trust to contravene its investment guidelines or operating policies. The Trust is not required but shall use its reasonable best efforts to comply with this requirement (i) in respect of obligations assumed by the Trust pursuant to the acquisition of real property or (ii) if doing so is necessary or desirable in order to further the initiatives of the Trust permitted under the Declaration of Trust;

- (j) Unless the acquisition or development has been approved by the Investment Committee in accordance with its mandate which had been approved by the Trustees, no acquisition of a value greater than \$5 million may be made nor any development undertaken unless and until the officers of the Trust have prepared and presented to the board of Trustees a written report containing their recommendation that the Trust, directly or indirectly (including by investments by its subsidiaries), make the investment together with a financial analysis of the estimated cost and projected return from the investment and such supplementary information and data (including, without limitation, underlying assumptions, proposed financial arrangements and leasing, economic and market data) as is reasonably necessary to the investment decision;
- (k) the Trust shall directly or indirectly (including by investments by its subsidiaries) obtain and maintain at all times property insurance coverage in respect of potential liabilities of the Trust and the accidental loss of value of the assets of the Trust from risks, in amounts, with such insurers, and on such terms as the Trustees consider appropriate, taking into account all relevant factors including the practice of owners of comparable properties;
- (l) Unless the requirement for such an appraisal or engineering survey is waived by the Trustees, the Trust shall obtain an independent appraisal of each property it intends to acquire and an engineering survey with respect to the physical condition thereof (including capital replacement programs); and
- (m) Unless the requirement for such environmental site assessment is waived by the Trustees, the Trust shall (i) obtain a Phase I environmental site assessment, or (ii) be entitled to rely on a Phase I environmental site assessment dated no earlier than 24 months prior to receipt by the Trust, of each real property to be acquired by it, and, if the Phase I environmental site assessment report recommends that a further environmental site assessment be conducted, the Trust shall conduct such further environmental site assessments, in each case by an independent and experienced environmental consultant;

For the purpose of the foregoing restrictions, the assets, liabilities and transactions of a corporation, trust or partnership, 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 that invests in real property.

### **6.3 Amendments to Investment Guidelines and Operating Policies**

All of the investment guidelines set out in Section 6.1 and the operating policies contained in Subsections 6.2(a), 6.2(c), 6.2(d), 6.2(f), 6.2(g), 6.2(h), 6.2(i), 6.2(k), 6.2(l) and 6.2(m) may be amended only with the approval of two-thirds of the votes cast by Unitholders at a meeting called for

such purpose. The remaining operating policies may be amended with the approval of a majority of the votes cast by Unitholders at a meeting called for such purpose.

#### **6.4 Application of Investment Guidelines and Operating Policies**

With respect to the investment guidelines and operating policies contained in Sections 6.1 and 6.2 and where any maximum or minimum percentage limitation is specified in any of the guidelines and policies therein contained, such guidelines and policies shall, unless otherwise specified, be applied on the basis of the relevant amounts calculated immediately after the making of such investment or the taking of such action. Any subsequent change relative to any percentage limitation, which results from a subsequent change in the Gross Book Value, will not require divestiture of any investment.

#### **6.5 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 guideline of the Trust then in force (other than Subsection 6.1(b)), such guideline 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.

#### **6.6 Approval Rights**

For so long as ECL or its affiliates hold or control at least 20% of the outstanding Units, none of the Trust or its subsidiaries may issue any securities that, in the aggregate, would result in the dilution of ECL's voting interest to a level less than that required to be maintained pursuant to any agreements to which the Trust is a party without the approval of ECL.

### **ARTICLE 7 UNITS**

#### **7.1 Units**

- (a) The beneficial interests in the Trust shall be divided into interests of three classes, described and designated as "Trust Units", "Special Voting Units" and "Class C Special Voting Units", respectively, which shall be entitled to the rights and subject to the limitations, restrictions and conditions set out herein. Each Trust Unit, Special Voting Unit and Class C Special Voting Unit shall vest indefeasibly in the holder thereof and the interest of each Unitholder shall be determined by the number of Trust Units, Special Voting Units and Class C Special Voting Units registered in the name of the Trust Unitholder and Special Voting Unitholder, respectively.
- (b) The interest of each Unitholder shall be determined by the number of Units registered in the name of the Unitholder. The number of Trust Units, Special Voting Units and Class C Special Voting Units that the Trust may issue shall be unlimited.
- (c) The issued and outstanding Trust Units, Special Voting Units and Class C Special Voting Units may be subdivided or consolidated from time to time by the Trustees without notice

to or approval of the holders of Trust Units, holders of Special Voting Units or holders of Class C Special Voting Units.

## **7.2 Special Voting Units and Class C Special Voting Units**

- (a) Special Voting Units and Class C Special Voting Units shall have no economic entitlement in the Trust but shall entitle the holder to one vote per Special Voting Unit or Class C Special Voting Unit at any meeting of the Unitholders. Special Voting Units may only be issued in connection with or in relation to Class B LP Units and Class C Special Voting Units may only be issued in connection with or in relation to Class C LP Units, in each case for the purpose of providing voting rights with respect to the Trust to the holders of such securities.
- (b) Special Voting Units and Class C Special Voting Units shall not be transferable separately from the Exchangeable Units to which they are attached and will automatically be transferred upon the transfer of any such Exchangeable Unit.
- (c) Upon the exchange or surrender of an Exchangeable Unit for a Trust Unit, the Special Voting Unit or Class C Special Voting Unit attached to such Exchangeable Unit will automatically be redeemed and cancelled for no consideration without any further action of the Trustees, and the former holder of such Special Voting Unit or Class C Special Voting Unit will cease to have any rights with respect thereto.
- (d) Concurrently with the issuance of Special Voting Units or Class C Special Voting Units attached to Exchangeable Units issued from time to time by the Limited Partnership, the Trust shall enter into such agreements (including the Exchange Agreements, as applicable, and the agreement of limited partnership of the Limited Partnership) as may be necessary or desirable to properly provide for the terms of the Exchangeable Units, including to provide for the voting of such Special Voting Units and Class C Special Voting Units .

## **7.3 Trust Units**

Each Trust Unit shall represent a proportionate, undivided beneficial ownership interest in the Trust and shall confer the right to one vote at any meeting of Unitholders and 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 remaining after satisfaction of all liabilities. No Trust Unit shall have any preference or priority over any other. Trust Units shall rank among themselves equally and rateably without discrimination, preference or priority. Trust Units will be fully paid and non-assessable when issued (unless issued on an instalment receipt basis) and are transferable.

## **7.4 Consideration for Units**

No Units shall be issued other than as fully paid and non-assessable. A Unit shall not be fully paid until the consideration therefor has been received in full by or on behalf of the Trust. The consideration for any Unit shall be paid in money or in property or in past services that are not less in value than the fair equivalent of the money that the Trust would have received if the Unit had been issued for money. In determining whether property or past services are the fair equivalent of consideration paid in money, the Trustees may take into account reasonable charges and expenses of organization and reorganization and payments for property and past services reasonably expected to benefit the Trust.



## **7.5 Pre-Emptive Rights**

Subject to any binding agreement entered into by the Trust, no person shall be entitled, as a matter of right, to subscribe for or purchase any Units of the Trust. There are no pre-emptive rights attaching to the Units except as set out in the Exchange Agreements.

## **7.6 Fractional Units**

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

## **7.7 Automatic Consolidation of Trust Units**

Unless the Trustees determine otherwise, immediately after any pro rata issuance of additional Trust Units to all holders of Trust Units, pursuant to a distribution contemplated by Section 12.3 or otherwise, the number of the outstanding Trust Units will automatically be consolidated such that each such holder will hold after the Consolidation the same number of Trust Units as such holder held before the issuance of additional Trust Units. In this case, each Trust Unit certificate representing the number of Trust Units prior to the issuance of additional Trust Units is deemed to represent the same number of Trust Units after the issuance of additional Trust Units and the Consolidation.

Notwithstanding the foregoing, where tax is required to be withheld from a Unitholder's share of a distribution completed by the issue of Units, the Consolidation will result in such Unitholder holding that number of Units equal to (i) the number of Units held by such Unitholder prior to the issuance plus the number of Units received by such Unitholder in connection with the issuance (net of the number of whole and part Units withheld on account of withholding taxes) multiplied by (ii) the fraction obtained by dividing the aggregate number of Units outstanding prior to the issuance by the aggregate number of Units that would be outstanding following the issuance and before the Consolidation if no withholding were required in respect of any part of the distribution payable to any Unitholder. Such Unitholder will be required to surrender the Unit certificates, if any, representing such Unitholder's original Units, in exchange for a Unit certificate representing such Unitholder's post-Consolidation Units.

## **7.8 Allotment and Issue**

Subject to approval rights of ECL contained in the Class B Exchange Agreement, the Trustees may allot and issue Units at such time or times and in such manner (including, without limitation, pursuant to any plan from time to time in effect relating to reinvestment by Unitholders of distributions of the Trust in Units and as consideration for the acquisition of new properties or assets, at a price or for such consideration as determined by the Trustees) and for such consideration and to such person, persons or class of persons as the Trustees in their sole discretion shall determine, except that Special Voting Units may only be issued in connection with or in relation to Class B LP Units and Class C Special Voting Units may only be issued in connection with or in relation to Class C LP Units for the purpose of providing voting rights to the holders of such securities with respect to the Trust. In the event that Units are issued in whole or in part for a consideration other than money, the resolution of the Trustees allotting and issuing such Units shall express the fair equivalent in money of the other consideration received. The price or value of the consideration for which Units may be issued will be

determined by the Trustees in their sole discretion, generally in consultation with investment dealers or brokers who may act as underwriters in connection with offerings of Units.

### **7.9 Rights, Warrants and Options**

The Trust may create and issue rights, warrants or options or other instruments or securities to subscribe for fully paid Units which rights, warrants, options, instruments or securities may be exercisable at such subscription price or prices and at such time or times as the Trustees may determine. The rights, warrants, options, instruments or securities so created may be issued for such consideration or for no consideration, all as the Trustees may determine. A right, warrant, option, instrument or security shall not be a Unit and a holder thereof shall not be a Unitholder. Upon the approval by the Independent Trustees of any unit option plan for the Trustees, officers and/or employees of the Trust or any subsidiary of the Trust and/or their personal holding companies or family trusts and/or persons who provide services to the Trust (including pursuant to the Management Cost Sharing Agreement), the Governance and Nominating Committee and Human Resources Committee may, upon receiving authority from the Trustees, recommend to the Trustees the granting of options upon the terms and subject to the conditions set forth in such plan.

Subject to the provisions of Article 6 hereof, the Trustees may create and issue indebtedness of the Trust in respect of which interest, premium or principal payable thereon may be paid, at the option of the Trust or the holder, in fully paid Units, or which indebtedness, by its terms, may be convertible into Units at such time and for such prices as the Trustees may determine. Any indebtedness so created shall not be a Unit and a holder thereof shall not be a Unitholder unless and until fully paid Units are issued in accordance with the terms of such indebtedness.

### **7.10 Commissions and Discounts**

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

### **7.11 Transferability**

The Trust Units are freely transferable and, except as stipulated in Section 7.12, the Trustees shall not impose any restriction on the transfer of Trust Units by any Trust Unitholder except with the consent of such Trust Unitholder. Special Voting Units and Class C Special Voting Units will not be transferable separately from the Exchangeable Units to which they are attached and will be automatically transferred upon the transfer of such Exchangeable Unit.

### **7.12 Transfer of Units**

- (a) Subject to the provisions of this Article 7, the Units shall be for all purposes of the Trust and this Declaration of Trust, personal and moveable property, and the Units shall be fully transferable without charge as between persons, but no transfer of Units shall be effective as against the Trustees or shall be in any way binding upon the Trustees until the transfer has been recorded on the Register maintained by the Trustees, the Trust or the Transfer Agent. No transfer of a Unit shall be recognized unless such transfer is of a whole Unit.

- (b) Subject to the provisions of this Article 7, Units shall be transferable on the Register only by the holders of record thereof or their executors, administrators or other legal representatives or by their agents or attorneys duly authorized in writing, and only upon delivery to the Trust or to the Transfer Agent of the certificate therefor, properly endorsed or accompanied by a duly executed instrument of transfer or power of attorney and accompanied by all necessary transfer or other taxes imposed by law, together with such evidence of the genuineness of such endorsement, execution and authorization and other matters that may reasonably be required by the Trustees or the Transfer Agent. Upon such delivery the transfer shall be recorded on the Register or branch transfer registers and a new Unit Certificate for the Units shall be issued to the transferee and a new Unit Certificate for the balance of Units not transferred shall be issued to the transferor.
- (c) Unit Certificates representing any number of Trust Units may be exchanged without charge for Unit Certificates representing an equivalent number of Trust Units in the aggregate. Any exchange of Unit Certificates may be made at the offices of the Trust or the Transfer Agent where registers are maintained for Unit Certificates pursuant to the provisions of this Article 7. Any Unit Certificates tendered for exchange shall be surrendered to the Trustees or appropriate Transfer Agent and then shall be cancelled.

### **7.13 Non-Resident Ownership Constraint**

At no time may Non-Residents be the beneficial owners of more than 49% of the Units then outstanding and the Trustees will inform the Transfer Agent and Registrar of this restriction. The Trustees may require declarations as to the jurisdictions in which beneficial owners of Units are resident. If the Trustees become aware, as a result of requiring such declarations as to beneficial ownership or otherwise, that the beneficial owners of 49% of the Units then outstanding are, or may be, Non-Residents or that such a situation is imminent, the Trustees may make a public announcement thereof and the Transfer Agent shall not accept a subscription for Units from or issue Units to a person unless the person provides a declaration that the person is not a Non-Resident.

If, notwithstanding the foregoing, the Trustees determines that more than 49% of the Units are held by Non-Residents, the Trustees may send a notice to Non-Resident holders of Units, chosen in inverse order to the order of acquisition or registration or in such other manner as the Trustees may consider equitable and practicable, requiring them to sell their Units or a portion thereof within a specified period of not less than 60 days. If the Unitholders receiving such notice have not sold the specified number of Units or provided the Trustees with satisfactory evidence that they are not Non-Residents within such period, the Trustees may, on behalf of such Unitholders sell such Units without further notice and, in the interim, must suspend the voting and distribution rights attached to such Units. Upon such sale the affected holders shall cease to be holders of Units and their rights will be limited to receiving the net proceeds of sale, subject to the right to receive payment of any distribution declared by the Trustees which is unpaid and owing to such Unitholders. The Trustees shall have no liability for the amount received provided that they act in good faith.

Special Voting Units (together with the Class B LP Units to which they are attached) may not be transferred to Non-Residents.

For greater certainty, the Trust may sell Units in accordance with the terms hereof despite the fact that the Trust does not possess the Unit Certificate or Unit Certificates, if any, representing the Units at the time of the sale. Where, in accordance with this Section 7.13, Units are sold by the Trust

without possession of the Unit Certificate or Unit Certificates, if any, representing the same and, after the sale, a person establishes that it is a bona fide purchaser without notice of the Units from the Unitholder, then, subject to applicable law:

- (a) the Trust shall be entitled to treat the Units so purchased by the bona fide purchaser as validly issued and outstanding Units in addition to the Units sold by the Trust; and
- (b) notwithstanding any other provisions of this Declaration of Trust, the Trust is entitled to the deposit made with respect to such sale and shall add the amount of the deposit to the capital account maintained by the Trust in respect of outstanding Units.

The Trustees shall have the sole right and authority to make any determination required or contemplated under this Section 7.13. The Trustees shall make all determinations necessary for the administration of the provisions of this Section 7.13 and, without limiting the generality of the foregoing, if the Trustees consider that there are reasonable grounds for believing that a contravention of the non-resident ownership restriction has occurred or will occur, the Trustees shall make a determination with respect to the matter. Any such determination shall be conclusive, final and binding except to the extent modified by any subsequent determination by the Trustees. Notwithstanding the foregoing, the Trustees may delegate, in whole or in part, their power to make a determination to any officer of the Trust.

The transfer of Units shall be restricted such that the Units shall not be transferred except as permitted under U.S. federal and state securities laws, and no Unit shall be subject to registration under the *United States Securities Act of 1933*, as amended (the “**U.S. Securities Act**”). The Trust shall not be subject to registration as an “investment company” under the *United States Investment Company Act of 1940*, as amended (the “**U.S. Investment Company Act**”). Each Unit issued to a purchaser within the United States will bear a legend referring to these restrictions. Without the prior written consent of the Trust, no transfer of Units (or any interest therein) shall be permitted (i) within the United States unless the transfer is made in accordance with U.S. federal and state securities laws and the transferee is a “**Qualified Purchaser**” (within the meaning of Section 2(a)(51) of the U.S. Investment Company Act), or (ii) outside the United States unless the transfer is made in accordance with U.S. federal securities laws and such transfer will not result in the Trust being required to register as an “investment company” under the U.S. Investment Company Act.

At no time may a Unitholder (i) within the United States be a person other than a “Qualified Purchaser” (within the meaning of Section 2(a)(51) of the U.S. Investment Company Act), or (ii) outside the United States be a person which by holding Units would cause the Trust to be required to register as an “investment company” under the U.S. Investment Company Act, and the Trustees shall inform the Transfer Agent and Registrar of this restriction. The Trustees shall be authorized to require declarations as to whether any beneficial owner of Units is a “U.S. Person” (within the meaning of Regulation S under the U.S. Securities Act) and such person’s status relative to the above described restrictions. If the Trustees become aware, as a result of requiring such declarations as to beneficial ownership or otherwise, that holder of the Units (A) within the United States is not, or may not be, a “Qualified Purchaser” (within the meaning of Section 2(a)(51) of the U.S. Investment Company Act) or (B) outside the United States is, or may be, a “U.S. Person” (within the meaning of Regulation S under the U.S. Securities Act) and, in each case, if this would result in the Trust being required to register as an “investment company” under the U.S. Investment Company Act, or that such a situation is imminent, the Trustees may make a public announcement thereof and the Transfer Agent shall not accept a subscription for Units from or issue or register a transfer of Units to a person unless such person provides a declaration, in form and content satisfactory to the Trustees, that the transfer would not result in the Trust

being required to register as an “investment company” under the U.S. Investment Company Act. If, notwithstanding the foregoing, the Trustees determine that the transfer would result in the Trust being required to register as an “investment company” under the U.S. Investment Company Act, the Trustees shall send a notice to the holders of Units proposing such transfers, requiring them to sell their Units or a portion thereof within a specified period of not less than 60 days on a basis that does not result in a contravention of this Section 7.13. The notice shall also require such Unitholder to notify the Trust of the transfer when completed. If the Unitholder receiving such notice has not provided the Trustees with satisfactory evidence that the transfer would not result in the Trust being required to register as an “investment company” under the U.S. Investment Company Act, the Trustees may, on behalf of such Unitholder, sell such Units without further notice and, in the interim, shall suspend the voting and distribution rights attached to such Units. For all purposes of such sale, the Trustees and any Registrar or Transfer Agent shall be deemed to be the agents and lawful attorneys of such Unitholder. Upon such sale, the affected holder shall cease to be a holder of Units and its rights shall be limited to receiving the net proceeds of sale upon surrender of the Unit Certificates representing such Units, subject to the right to receive payment of any distribution declared by the Trustees which is unpaid and owing to such Unitholder. The Trustees shall have no liability for the amount received provided that they act in good faith.

#### **7.14 Book Based System and Non-Certificated Inventory System**

The provisions of this Section 7.14 shall not in any way alter the nature of Units or the relationships of a Unitholder to the Trustees and of one Unitholder to another but are intended only to facilitate the issuance of certificates evidencing the ownership of Units, if desirable to issue them to Unitholders, and the recording of all transactions in respect of Units and Unit Certificates whether by the Trust, securities dealers, stock exchanges, transfer agents, registrars or other persons.

Except as otherwise provided below, the Units will be represented in the form of one or more fully registered global unit certificates (each a “**Global Unit Certificate**”) held by, or on behalf of, CDS, as depository of the Global Unit Certificates for the participants of CDS, registered in the name of CDS or its nominee, and registration of ownership and transfers of the Units will be effected only through the book-based system administered by CDS.

The Trust may, in its sole discretion, have its Units represented electronically through the NCI system of CDS. If the Units are held electronically through the NCI system of CDS, the Trust, via its Transfer Agent, will electronically transfer the Units registered to CDS or its nominee through the Global Unit Certificate to the NCI system of CDS, and CDS will credit interests in such Units to the accounts of such current Unitholders.

Except as described below, no purchaser of a Unit will be entitled to a certificate or other instrument from the Trust evidencing that purchaser’s ownership thereof, and no holder of a beneficial interest in a Unit (a “**Beneficial Owner**”) will be shown on the records maintained by CDS except through book-entry accounts of a participant of CDS acting on behalf of the Beneficial Owners. CDS will be responsible for establishing and maintaining book-entry accounts for its participants having interests in the Global Unit Certificates. Sales of interests in the Global Unit Certificates or electronically through the NCI system of CDS, if applicable, can only be completed through participants in the depository services of CDS.

Units will be issued in fully registered form to holders or their nominees, if any, who purchase the Units pursuant to the private placement of Units made in reliance upon Rule 144A adopted under the *United States Securities Act of 1933*, and to transferees thereof in the United States who

purchase such Units in reliance upon such Rule. Likewise, any Units transferred to a transferee within the United States or outside the United States to a “U.S. Person” (within the meaning of Regulation S) will be evidenced in definitive certificates representing any such Units unless the Trust otherwise agrees that such Units need not be evidenced in definitive securities. If any such Units represented by definitive certificates are subsequently traded into Canada or otherwise outside the United States in compliance with Regulation S, the Transfer Agent will deliver a certificate registered in the name of CDS or its nominee representing such Units and, thereafter, registration of ownership and transfers of such Units will be made through the book-based system administered by CDS. Without the prior written consent of the Trust, no Units may be transferred within the United States unless the transferee is a “Qualified Purchaser” (within the meaning of Section 2(a)(51) of the U.S. Investment Company Act) and the transfer is in compliance with U.S. federal and state securities laws. Without the prior written consent of the Trust, no Units may be transferred outside the United States if such transfer would result in the Trust being required to register as an “investment company” under the U.S. Investment Company Act; and (B) unless in accordance with Regulation S under the U.S. Securities Act.

Except in the case of United States purchasers, Units will be issued in fully registered form to holders or their nominees, other than CDS or its nominee, only if: (i) the Trust is required to do so by applicable law; (ii) the depository system of CDS ceases to exist; (iii) the Trust determines that CDS is no longer willing or able or qualified to discharge properly its responsibility as depository and the Trust is unable to locate a qualified successor; or (iv) the Trust at its option elects to terminate the Book-Entry System in respect of the Units through CDS.

All references herein to actions by, notices given or payments made to Unitholders shall, where such Units are held through CDS, refer to actions taken by, or notices given or payments made to, CDS upon instruction from the CDS Participants in accordance with CDS’s rules and procedures. For the purposes of any provision hereof requiring or permitting actions with the consent of or at the direction of Unitholders evidencing a specified percentage of the aggregate Units outstanding, such direction or consent may be given by Unitholders acting through CDS and the CDS Participants owning Units evidencing the requisite percentage of the Units. The rights of a Unitholder whose Units are held through CDS shall be exercised only through CDS and the CDS Participants and shall be limited to those established by law and agreements between such Unitholders and CDS and/or the CDS Participants or upon instruction from the CDS Participants. Each of the Transfer Agent and the Trustees may deal with CDS for all purposes (including the making of payments) as the authorized representative of the respective Unitholders and such dealing with CDS shall constitute satisfaction or performance, as applicable, towards their respective obligations hereunder.

For so long as Units are held through CDS, if any notice or other communication is required to be given to Unitholders, the Trustees and the Transfer Agent will give all such notices and communications to CDS.

If CDS resigns or is removed from its responsibilities as depository and the Trustees are unable or do not wish to locate a qualified successor, CDS shall surrender the Global Unit Certificate, or if held electronically through the NCI system of CDS, the Units held by it, to the Transfer Agent with instructions from CDS for registration of Units in the name and in the amounts specified by CDS and the Trust shall issue and the Trustee and Transfer Agent shall execute and deliver the aggregate number of Units then outstanding in the form of definitive Unit Certificates representing such Units.

## 7.15 Redemption of Trust Units

- (a) Each Trust Unitholder shall be entitled to require the Trust to redeem at any time or from time to time at the demand of the Trust Unitholder all or any part of the Trust Units registered in the name of the Trust Unitholder at the prices determined and payable in accordance with the conditions hereinafter provided.
- (b)
  - (i) To exercise a Trust Unitholder's right to require redemption under this Section 7.15, a duly completed and properly executed notice requiring the Trust to redeem Trust Units, in a form reasonably acceptable to the Trustees, together with written instructions as to the number of Trust Units to be redeemed, shall be sent to the Transfer Agent with a copy to the Trust at the head office of the Trust. A Unitholder not otherwise holding a registered Trust Unit certificate that wishes to exercise the redemption right will be required to obtain a redemption notice form from the Unitholder's investment dealer who will be required to deliver the completed redemption notice form to the Trust and to CDS. No form or manner of completion or execution shall be sufficient unless the same is in all respects reasonably acceptable to the Trustees and is accompanied by any further evidence that the Trustees may reasonably require with respect to the identity, capacity or authority of the person giving such notice.
  - (ii) Upon receipt by the Transfer Agent and the Trust of the notice to redeem Trust Units, the Trust Unitholder shall thereafter cease to have any rights with respect to the Trust Units tendered for redemption (other than to receive the redemption payment therefor) including the right to receive any distributions thereon which are declared payable to the Trust Unitholders of record on a date which is subsequent to the day of receipt by the Trust of such notice. Trust Units shall be considered to be tendered for redemption on the date that the Trust has, to the satisfaction of the Trustees, received the notice and other required documents or evidence as aforesaid.
- (c)
  - (i) Upon receipt by the Transfer Agent and the Trust of the notice to redeem Trust Units in accordance with this Section 7.15, the holder of the Trust Units tendered for redemption shall be entitled to receive a price per Trust Unit (the "**Redemption Price**") equal to the lesser of:
    - (A) 90% of the "market price" of the Trust Units calculated on the date (the "**Redemption Date**") on which the Trust Units were surrendered for redemption; and
    - (B) 100% of the "closing market price" on the principal market on which the Trust Units are listed for trading, on the Redemption Date;

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

- (C) an amount equal to the weighted average trading price of a Trust Unit on the principal exchange or market on which the Trust Units are listed or quoted for trading during the period of ten consecutive trading days ending on such date;
- (D) an amount equal to the weighted average of the closing market prices of a Trust Unit on the principal exchange or market on which the Trust Units are listed or quoted for trading during the period of ten consecutive trading days ending on such date, if the applicable exchange or market does not provide information necessary to compute a weighted average trading price; or
- (E) if there was trading on the applicable exchange or market for fewer than five of the ten trading days, an amount equal to the simple average of the following prices established for each of the ten consecutive trading days ending on such date: the simple average of the last bid and last asking price of the Trust Units for each day on which there was no trading; the closing price of the Trust Units for each day that there was trading if the exchange or market provides a closing price; and the simple average of the highest and lowest prices of the Trust Units for each day that there was trading, if the market provides only the highest and lowest prices of Trust Units traded on a particular day.

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

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

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



- (ii) Subject to Subsections 7.15(d) and 7.15(e), the Redemption Price payable in respect of the Trust Units tendered for redemption during any calendar 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 within 30 days after the end of the calendar month in which the Trust Units were tendered for redemption. Payments made by the Trust of the Redemption Price are conclusively deemed to have been made upon the mailing of a cheque in a postage prepaid envelope addressed to the former Unitholder unless such cheque is dishonoured upon presentment. Upon such payment, the Trust shall be discharged from all liability to the former Unitholder in respect of the Trust Units so redeemed.
- (d) Paragraph 7.15(c)(ii) shall not be applicable to Trust Units tendered for redemption by a Trust Unitholder, if:
  - (i) the total amount payable by the Trust pursuant to Subsection 7.15(c) in respect of such Trust Units and all other Trust Units tendered for redemption in the same calendar month exceeds \$50,000 (the “**Monthly Limit**”); provided that the Trustees may, in their sole discretion, waive such limitation in respect of all Trust Units tendered for redemption in any calendar month and, in the absence of such a waiver, Trust Units tendered for redemption in any calendar month in which the total amount payable by the Trust pursuant to Paragraph 7.15(c)(ii) exceeds the Monthly Limit will be redeemed for cash pursuant to Paragraph 7.15(c)(ii) and, subject to any applicable regulatory approvals, by a distribution *in specie* of assets held by the Trust on a *pro rata* basis;
  - (ii) at the time the Trust Units are tendered for redemption, the outstanding Trust Units are not listed for trading on the TSX or traded or quoted on any stock exchange or market which the Trustees consider, in their sole discretion, provides representative fair market value prices for the Trust Units; or
  - (iii) the normal trading of the outstanding Trust Units is suspended or halted on any stock exchange on which the Trust Units are listed for trading or, if not so listed, on any market on which the Trust Units are quoted for trading, on the Redemption Date for such Trust Units or for more than five trading days during the 10 trading day period commencing immediately after the Redemption Date for such Trust Units.
- (e) To the extent that Paragraph 7.15(c)(ii) is not applicable to all of the Trust Units tendered for redemption by a Unitholder pursuant to Subsection 7.15(d), the balance of the Redemption Price per Trust Unit specified in Subsection 7.15(c) shall, subject to receipt of all necessary regulatory approvals (which the Trust shall use reasonable commercial efforts to obtain forthwith), be paid and satisfied by way of the issuance, at the discretion of the Trustees, to such Trust Unitholder of Redemption Notes. Upon such payment, together with any cash payable to the Trust Unitholder pursuant to Paragraph 7.15(c)(ii), the Trust shall be discharged from all liability to such former Trust Unitholder and any party having a security interest in respect of the Trust Units so redeemed. In the event of the issuance of Redemption Notes, each Redemption Note so issued to the redeeming holder of Trust Units shall be in the principal amount of \$100 or such other amount as may be determined by the Trustees. No fractional Redemption Notes shall be issued and

where the number of Redemption Notes to be received upon redemption by a holder of Trust Units would otherwise include a fraction, that number shall be rounded down to the next lowest whole number, and the balance shall be paid in cash . The Trustees may deduct or withhold from all payments or other distributions payable to any Trust Unitholder pursuant to this Article VII all amounts required by law to be so withheld.

- (f) All Trust Units which are redeemed under this Section 7.15 shall be cancelled and such Trust Units shall no longer be outstanding and shall not be reissued.
- (g) At the discretion of the Trustees, the payment of the Redemption Price to any Unitholder as provided in this Section 7.15 may be satisfied *in specie* by the delivery of Subsidiary Securities of the Trust having a fair market value, as determined by the Trustees in their sole discretion, equal to the applicable Redemption Price.

**7.16 Certificate Fee**

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

**7.17 Form of Unit Certificate**

The form of certificate representing Trust Units and the instrument of transfer, if any, on the reverse side thereof shall be in such form as is from time to time authorized by the Trustees.

**7.18 Trust Unit Certificates**

- (a) Unit Certificates shall, subject to the provisions hereof, be in such form as is authorized from time to time by the Trustees.
- (b) If issued, Unit Certificates are issuable only in fully registered form.
- (c) The definitive form of the Unit Certificates shall:
  - (i) be in the English language or in the English language and the French language;
  - (ii) be dated as of the date of issue thereof; and
  - (iii) contain such distinguishing letters and numbers as the Trustees shall prescribe.
- (d) In the event that the Unit Certificate is translated into the French language and any provision of the Unit Certificate in the French language shall be susceptible of an interpretation different from the equivalent provision in the English language, the interpretation of such provision in the English language shall be determinative.
- (e) Each Unit Certificate shall be signed on behalf of the Trustees and if so decided by the Trustees, signed or certified by the Transfer Agent of the Trust. The signature of the Trustees required to appear on such certificate may be printed, lithographed or otherwise mechanically reproduced thereon and, in such event, certificates so signed are as valid as if they had been signed manually. If a Unit Certificate contains the printed or mechanically reproduced signature of a person, then the Trust may issue the Unit

Certificate even though such person has ceased to be a Trustee or an authorized representative thereof and such Unit Certificate is a valid as if such person continued to be a Trustee or an authorized representative thereof at the date of its issue.

**7.19 Contents of Trust Unit Certificates**

- (a) Until otherwise determined by the Trustees, each Unit Certificate shall legibly set forth on the face thereof, *inter alia*, the following:
  - (i) the name of the Trust and the words “A trust governed under the laws of the Province of Ontario governed by a Declaration of Trust made the 1<sup>st</sup> day of January, 2006, as amended from time to time” or words of like effect;
  - (ii) the name of the person to whom the Unit Certificate is issued as Unitholder;
  - (iii) the number of Units represented thereby and whether or not the Units represented thereby are fully paid;
  - (iv) that the Units represented thereby are transferable;
  - (v) “The Units represented by this certificate are issued upon the terms and subject to the conditions of the Declaration of Trust, which Declaration of Trust is binding upon all holders of Units and, by acceptance of this certificate, the holder assents to the terms and conditions of the Declaration of Trust. A copy of the Declaration of Trust, pursuant to which this certificate and the Units represented thereby are issued, may be obtained by a Unitholder on demand and without fee from the head office of the Trust” or words of like effect; and
  - (vi) “For information as to personal liability of a Unitholder, see the reverse side of this certificate” or words of like effect.
  
- (b) Until otherwise determined by the Trustees, each such certificate shall legibly set forth on the reverse side thereof, *inter alia*, the following:
  - (i) “The Declaration of Trust provides that no Unitholder shall be subject to any personal liability whatsoever, in tort, contract or otherwise, to any person in connection with the assets of the Trust or the obligations or the affairs of the Trust and all such persons shall look solely to the assets of the Trust for satisfaction of claims of any nature arising out of or in connection therewith and the assets of the Trust only shall be subject to levy or execution”, or words of like effect; and
  - (ii) appropriate forms of notice of exercise of the right of redemption and of powers of attorney for transferring Units.

The Unit Certificates may be engraved, printed or lithographed, or partly in one form and partly in another, as the Trustees may determine.

## **7.20 Register of Unitholders**

A register (the “**Register**”) shall be kept at the principal office of the Trust, which Register shall contain the names and addresses of the Unitholders, the respective numbers of Units held by them, the certificate numbers of certificates representing such Units and a record of all transfers and redemptions thereof. Only Unitholders whose certificates are so recorded shall be entitled to receive distributions or to exercise or enjoy the rights of Unitholders hereunder. The Trustees shall have the right to treat the person registered as a Unitholder on the Register as the owner of such Units for all purposes, including, without limitation, payment of any distribution, giving notice to Unitholders and determining the right to attend and vote at meetings of Unitholders.

## **7.21 Successors in Interest to Unitholders**

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

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

The Trust may treat two or more persons holding any Unit as joint tenants of the entire interest therein unless the ownership is expressly otherwise recorded in the Register, but no entry shall be made in the Register 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 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.

## **7.23 Performance of Trusts**

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

#### **7.24 Lost Unit Certificates**

In the event that any Unit Certificate is lost, stolen, destroyed or mutilated, the Trustees may authorize the issuance of a new Unit Certificate for the same number of Trust Units in lieu thereof. The Trustees may in their discretion, before the issuance of such new Unit Certificate, require the owner of the lost, stolen, destroyed or mutilated Unit Certificate, or the legal representative of the owner, to make such affidavit or statutory declaration, setting forth such facts as to the loss, theft, destruction or mutilation as the Trustees or any officers of the Trust deem necessary and may require the applicant to surrender any mutilated Unit Certificate and to require the applicant to supply to the Trust a “lost certificate bond” or similar bond in such reasonable amount as the Trustees direct indemnifying the Trustees or any officers of the Trust and the Transfer Agent for so doing. The Trustees or any officers of the Trust shall have the power to acquire from an insurer or insurers a blanket lost security bond or bonds in respect of the replacement of lost, stolen, destroyed or mutilated Unit 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 or any officers of the Trust. If such blanket lost security bond is acquired, the Trustees or any officers of the Trust may authorize and direct (upon such terms and conditions as they 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 Unit Certificates without further action or approval by the Trustees or any officers of the Trust.

#### **7.25 Death of Unitholders**

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

#### **7.26 Unclaimed Payments**

In the event that the Trustees hold any amounts to be paid to Trust Unitholders under Article 12 or otherwise because such amounts are unclaimed or cannot be paid for any reason, neither the Trustees nor any distribution disbursing agent shall be under any obligation to invest or reinvest the same and shall only be obligated to hold the same in a current or other non-interest bearing account with a chartered bank or trust company, pending payment to the person or persons entitled thereto. The Trustees shall, as and when required by law, and may at any time prior to such required time, pay all or part of such amounts so held to a court in the province where the Trust has its principal office or to the Public Guardian and Trustee (or other similar government official or agency) in the province where the Trust has its principal office whose receipt shall be a good and sufficient discharge of the obligations of the Trustees.

#### **7.27 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 Laws or the rules or policies of any applicable stock exchange.

**7.28 Take-Over Bids**

- (a) If within 120 days after the date of a take-over bid the bid is accepted by the holders of not less than 90% of the Trust Units, other than Trust Units held at the date of the take-over bid by or on behalf of the offeror or an affiliate or associate of the offeror, the offeror is entitled, on complying with this Section 7.28, to acquire the Trust Units held by the dissenting offerees.
- (b) An offeror may acquire Trust Units held by a dissenting offeree by sending by registered mail within 60 days after the date of termination of the take-over bid and in any event within 180 days after the date of the take-over bid, an offeror's notice to each dissenting offeree stating that:
  - (i) the offerees holding more than 90% of the Trust Units to which the bid relates accepted the take-over bid;
  - (ii) the offeror is bound to take up and pay for or has taken up and paid for the Trust Units of the offerees who accepted the take-over bid;
  - (iii) a dissenting offeree is required to elect:
    - (A) to transfer his Trust Units to the offeror on the terms on which the offeror acquired the Trust Units of the offerees who accepted the takeover bid, or
    - (B) to demand payment of the fair value of his Trust Units in accordance with Subsections 7.28(h) to 7.28(q) by notifying the offeror within 20 days after he receives the offeror's notice;
  - (iv) a dissenting offeree who does not notify the offeror in accordance with Subparagraph 7.28(b)(iii)(B) is deemed to have elected to transfer his Trust Units to the offeror on the same terms that the offeror acquired the Trust Units from the offerees who accepted the take-over bid; and
  - (v) a dissenting offeree must send his Trust Units to which the take-over bid relates to the Trust within 20 days after he receives the offeror's notice.
- (c) Concurrently with sending the offeror's notice under Subsection 7.28(b), the offeror shall send to the Trust a notice of adverse claim disclosing the name and address of the offeror and the name of the dissenting offeree with respect to each Trust Unit held by a dissenting offeree.
- (d) A dissenting offeree to whom an offeror's notice is sent under Subsection 7.28(b) shall, within 20 days after he receives that notice, send his Unit Certificates to the Trust.
- (e) Within 20 days after the offeror sends an offeror's notice under Subsection 7.28(b), the offeror shall pay or transfer to the Trust the amount of money or other consideration that the offeror would have had to pay or transfer to a dissenting offeree if the dissenting offeree had elected to accept the take-over bid under Subparagraph 7.28(b)(iii)(A).

- (f) The Trust is deemed to hold in trust for the dissenting offeree the money or other consideration it receives under Subsection 7.28(e), and the Trust shall deposit the money in a separate account in a bank or other body corporate any deposits of which are insured by the Canada Deposit Insurance Corporation or guaranteed by the Québec Deposit Insurance Board, and shall place the other consideration in the custody of a bank or such other body corporate.
- (g) Within 30 days after the offeror sends an offeror's notice under Subsection 7.28(b), the Trust shall:
  - (i) issue to the offeror a Unit Certificate in respect of the Trust Units that were held by dissenting offerees;
  - (ii) give to each dissenting offeree who elects to accept the take-over bid terms under Subparagraph 7.28(b)(iii)(A) and who sends his Unit Certificates as required under Subsection 7.28(d), the money or other consideration to which he is entitled, disregarding fractional Trust Units, if any, which may be paid for in money; and
  - (iii) send to each dissenting offeree who has not sent his Unit Certificates as required under Subsection 7.28(d) a notice stating that:
    - (A) his Trust Units have been cancelled,
    - (B) the Trust or some designated person holds in trust for him the money or other consideration to which he is entitled as payment for or in exchange for his Trust Units, and
    - (C) the Trust will, subject to Subsections 7.28(h) to 7.28(q), send that money or other consideration to him forthwith after receiving his Trust Units.
- (h) If a dissenting offeree has elected to demand payment of the fair value of his Trust Units under Subparagraph 7.28(b)(iii)(B), the offeror may, within 20 days after it has paid the money or transferred the other consideration, under Subsection 7.28(e), apply to a court to fix the fair value of the Trust Units of that dissenting offeree.
- (i) If an offeror fails to apply to a court under Subsection 7.28(h), a dissenting offeree may apply to a court for the same purpose within a further period of 20 days.
- (j) Where no application is made to a court under Subsection 7.28(i) within the period set out in that subsection, a dissenting offeree is deemed to have elected to transfer his Trust Units to the offeror on the same terms that the offeror acquired the Trust Units from the offerees who accepted the take-over bid.
- (k) An application under Subsections 7.28(h) or 7.28(i) shall be made to a court having jurisdiction in the place where the Trust has its registered office.
- (l) A dissenting offeree is not required to give security for costs in an application made under Subsections 7.28(h) or 7.28(i).

- (m) On an application under Subsections 7.28(h) or 7.28(i):
  - (i) all dissenting offerees referred to in Subparagraph 7.28(b)(iii)(B) whose Trust Units have not been acquired by the offeror shall be joined as parties and shall be bound by the decision of the court; and
  - (ii) the offeror shall notify each affected dissenting offeree of the date, place and consequences of the application and of his right to appear and be heard in person or by counsel.
- (n) On an application to a court under Subsections 7.28(h) or 7.28(i) the court may determine whether any other person is a dissenting offeree who should be joined as a party, and the court shall then fix a fair value for the Trust Units of all dissenting offerees.
- (o) A court may in its discretion appoint one or more appraisers to assist the court to fix a fair value for the Trust Units of a dissenting offeree.
- (p) The final order of the court shall be made against the offeror in favour of each dissenting offeree and for the amount for his Trust Units as fixed by the court.
- (q) In connection with proceedings under this Section 7.28, a court may make any order it thinks fit and, without limiting the generality of the foregoing, it may:
  - (i) fix the amount of money or other consideration that is required to be held in trust under Subsection 7.28(f);
  - (ii) order that money or other consideration be held in trust by a person other than the Trust; and
  - (iii) allow a reasonable rate of interest on the amount payable to each dissenting offeree from the date he sends or delivers his Unit Certificates under Subsection 7.28(d) until the date of payment.

## **ARTICLE 8 MEETINGS OF UNITHOLDERS**

### **8.1 Annual Meeting**

There shall be an annual meeting of the Unitholders, commencing in 2007, at such time and place in Canada and for such purposes as the Trustees may prescribe for the purpose of electing Trustees, appointing or removing 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 18.9 and, in any event, within 180 days after the end of each Fiscal Year.

### **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 holding in the aggregate not less than 10% of the outstanding Units of the Trust may requisition the Trustees in writing to call a special meeting



of the Unitholders for the purposes stated in the requisition. If there are no Trustees, the officers of the Trust shall promptly call a special meeting of the Unitholders for the election of successor Trustees. The requisition shall state in reasonable detail the business proposed to be transacted at the meeting and shall be sent to each of the Trustees at the principal office of the Trust. Unitholders shall have the right to obtain a list of Unitholders to the same extent and upon the same conditions as those which apply to shareholders of a corporation governed by the *Business Corporations Act* (Ontario). Upon receiving the requisition, the Trustees shall call a meeting of Unitholders to transact the business referred to in the requisition, unless:

- (a) a record date for a meeting of the Unitholders has been fixed and notice thereof has been given to each stock exchange in Canada on which the Units are listed for trading;
- (b) the Trustees have called a meeting of the Unitholders and have given notice thereof pursuant to Section 8.3; or
- (c) in connection with the business as stated in the requisition:
  - (i) it clearly appears to the Trustees, acting reasonably, that the matter covered by the requisition is submitted by the Unitholder primarily for the purpose of enforcing a personal claim or redressing a personal grievance against the Trust, the Trustees, the officers of the Trust or its security holders, or primarily for the purpose of promoting general economic, political, racial, religious, social or similar causes;
  - (ii) 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;
  - (iii) substantially the same matter covered by the requisition was submitted to Unitholders in an information circular (including a dissident's 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
  - (iv) 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 who signed the requisition may call the meeting in accordance with the provisions of Section 8.3 and Section 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.

### **8.3 Notice of Meeting of Unitholders**

Notice of all meetings of the Unitholders shall be mailed or delivered by the Trustees to each Trustee and to the Auditors of the Trust not less than 21 nor more than 50 days or within such other number of days as required by law or relevant stock exchange before the meeting. Such notice shall

specify the time when, and the place where, such meeting is to be held and shall state briefly the general nature of the business to be transacted at such meeting, and shall otherwise include such information as would be provided to shareholders of a corporation governed by the *Business Corporations Act* (Ontario) in connection with a meeting of shareholders. Notice of any meeting of the Unitholders shall state the purposes of the meeting. Any adjourned meeting, other than a meeting adjourned for lack of a quorum under Section 8.5, may be held as adjourned without further notice. Notwithstanding the foregoing, a meeting of Unitholders may be held at any time without notice if all the Unitholders are present or represented thereat or those not so present or represented have waived notice. Any Unitholder (or a duly appointed proxy of a Unitholder) may waive any notice required to be given under the provisions of this Section 8.3, and such waiver, whether given before or after the meeting, shall cure any default in the giving of such notice. At any meeting at which a quorum is not present within one-half hour after the time fixed for the holding of such meeting, the meeting, if convened upon the request of the Unitholders, shall be dissolved, but in any other case, the meeting will stand adjourned to a day not less than seven days later and to a place and time as chosen by the chair of the meeting, and if at such adjourned meeting a quorum is not present, the Unitholders present either in person or by proxy shall be deemed to constitute a quorum. Attendance at a meeting of Unitholders shall constitute a waiver of notice unless the Unitholder or other person attends the meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not properly called.

#### **8.4 Chairperson**

The chairperson of any annual or special meeting shall be the Chair of the Trustees or any other Trustee specified by resolutions of the Trustees or, in the absence of any Trustee, any person appointed as chairperson of the meeting by the Unitholders present.

#### **8.5 Unitholder Proposals**

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

- (a) To be eligible to submit a Proposal, a person:
  - (i) must be, for at least the six-month period immediately before the day on which the person submits the Proposal, the registered holder or the beneficial owner of (i) at least 1% of the total number of outstanding voting Units, as of the day on which the person submits a Proposal, or (ii) voting Units whose fair market value, as determined at the close of business on the day before the person submits the Proposal, is at least \$2,000; or
  - (ii) must have the support of persons who, in the aggregate, and including or not including the person that submits the Proposal, have been, for at least the six-month period immediately before the day on which the person submits the Proposal, the registered holders or beneficial owners of (i) at least 1% of the total number of outstanding voting Units, as of the day on which the person submits the Proposal, or (ii) Units whose fair market value, as determined at the close of business on the day before the person submits the Proposal, is at least \$2,000.

- (b) A Proposal must be accompanied by the following information:
  - (i) the name and address of the person submitting the Proposal and the person's supporters, if applicable; and
  - (ii) the number of Units held or owned by the person submitting the Proposal and the person's supporters, if applicable, and the date the Equity Interests were acquired.
- (c) If requested by the Trust within 14 days of the receipt of the Proposal, a person who submits a Proposal must provide proof, within 21 days following the day on which the person receives the Trust's request, or if the request was mailed to the person, within 21 days after the postmark date stamped on the envelope containing the request, that the person meets the requirements set out in subsection (a).
- (d) The Trust shall set out the Proposal in its proxy circular delivered in connection with its annual meeting or attach the Proposal thereto.
- (e) If so requested by the person who submits the Proposal, the Trust shall include in, or attach to, its proxy circular delivered in connection with its annual meeting, a statement in support of the Proposal by the person and the name and address of the person making the Proposal. The statement and Proposal so included must not exceed 500 words excluding the information required by subsection (b).
- (f) A Proposal may include nominations for the election of Trustees if the Proposal is signed by one or more holders of Units representing in the aggregate not less than 10% of the outstanding Units, provided that this subsection (f) shall not limit the right of a Unitholder to make nominations at the meeting.
- (g) The Trust shall not be required to comply with subsections (d) and (e) if:
  - (i) the Proposal is submitted less than 90 days before the anniversary date of the notice of meeting that was sent to Unitholders in connection with the Trust's previous annual meeting of Unitholders;
  - (ii) it clearly appears that (A) the primary purpose of the Proposal is to enforce a
  - (iii) personal claim or redress a personal grievance against the Trust, the Trustees, its officers, the Unitholders or other security holders of the Trust, or (B) the Proposal does not relate in a significant way to the business or affairs of the Trust;
  - (iv) not more than two years preceding the receipt of such Proposal, the proposing person failed to present, in person or by proxy, at a meeting of Unitholders, a Proposal that, at the person's request, had been included in a proxy circular relating to a meeting of the Unitholders;
  - (v) substantially the same proposal was submitted to Unitholders in a proxy circular relating to a meeting of the Unitholders held within five years preceding the receipt of the Proposal and the matter covered by the Proposal did not receive

the required support at that meeting. For the purposes hereof, the required support for a Proposal is:

- (A) 3% of the total number of voting Units voted, if the Proposal has been introduced at only one annual meeting of Unitholders;
  - (B) 6% of the total number of 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
  - (C) 10% of the total number of 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
- (v) the rights conferred by this section are being abused to secure publicity.
- (h) If a person who submits a Proposal fails to continue to hold or own the number of Units referred to in subsection (a) up to and including the day of the meeting, the Trust is not required to set out in its proxy circular, or attach to it, any proposal submitted by that person for any meeting held within two years following the date of the meeting.
  - (i) Neither the Trust nor any person acting on its behalf will incur any liability to Unitholders or any other person by reason only of circulating a Proposal or statement in compliance with this section.
  - (j) If the Trust refuses to include a Proposal in its proxy circular, it shall, within 21 days of the later of receipt of the Proposal or proof of ownership under subsection (c), as the case may be, notify in writing the person submitting the Proposal of its intention to omit the Proposal from the Trust's proxy circular and of the reasons for the refusal.
  - (k) On the application of a person submitting a Proposal who claims to be aggrieved by the Trust's refusal under subsection (j), a court may restrain the holding of the meeting to which the Proposal is sought to be presented and make any further order it thinks fit.
  - (l) The Trust or any person claiming to be aggrieved by a Proposal may apply to a court for an order permitting the Trust to omit the Proposal from the proxy circular, and the court, if it is satisfied that subsection (g) applies, may make such order as it thinks fit.

## **8.6 Quorum**

A quorum for any meeting of the Unitholders shall be individuals present in person or represented by proxy, not being less than two in number, provided that if the Trust has only one Unitholder, the Unitholder present in person or by proxy constitutes a meeting and a quorum for such meeting. If a quorum is present at the opening of a meeting, the Unitholders may proceed with the business of the meeting, notwithstanding that a quorum is not present throughout the meeting. The Chair of any meeting at which a quorum of Unitholders is present may, with the consent of the majority of the Unitholders present in person or by proxy, adjourn at such meeting and no notice of any such adjournment need be given. In the event of such quorum not being present at the appointed place on the date for which the meeting is called within 30 minutes after the time fixed for the holding of such

meeting, the meeting, if called by request of Unitholders, shall be terminated and, if otherwise called, shall stand adjourned to such day being not less than 7 days later and to such place and time as may be appointed by the chairperson of the meeting. If at such adjourned meeting a quorum as above defined is not present, the Unitholders present either personally or by proxy shall form a quorum, and any business may be brought before or dealt with at such an adjourned meeting which might have been brought before or dealt with at the original meeting in accordance with the notice calling the same.

## **8.7 Voting**

Holders of Units may attend and vote at all meetings of the Unitholders either in person or by proxy. Each Trust Unit shall entitle the holder of record thereof to one vote at all meetings of the Unitholders. Each Special Voting Unit and Class C Special Voting Unit will entitle the holder thereof to that number of votes at any meeting of Unitholders that is equal to the number of Trust Units that may be obtained upon the exchange of the Exchangeable Unit to which such Special Voting Unit or and Class C Special Voting Unit is attached.

Any action to be taken by the Unitholders shall, except as otherwise required by this Declaration of Trust or by law, be authorized when approved by a majority of the votes cast at a meeting of the Unitholders. The Chair of any such meeting shall not have a second or casting vote. Every question submitted to a meeting, other than a Special Resolution, shall, unless a poll vote is demanded, be decided by a show of hands, on which every person present and entitled to vote shall be entitled to one vote.

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

At any meeting of Unitholders, on a show of hands every person who is present and entitled to vote, whether as a Unitholder or as a proxy, shall have one vote. At any meeting of Unitholders on a poll, each Unitholder present in person or represented by a duly appointed proxy shall have one vote for each Unit held on the applicable Record Date, except as otherwise set forth herein.

## **8.8 Matters on which Unitholders Shall Vote**

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

- (a) except as provided in Sections 3.7, 3.10, 3.6 or 3.12, the appointment, election or removal of Trustees;
- (b) except as provided in Section 18.7, the appointment or removal of Auditors;
- (c) any amendment to the Declaration of Trust (except as provided in Sections 6.3 or 14.1;
- (d) the sale or transfer of the assets of the Trust and its subsidiaries as an entirety or substantially as an entirety (other than as a part of an internal reorganization of the assets of the Trust and its subsidiaries as approved by the Trustees);

- (e) the termination of the Trust; or
- (f) take any action upon any matter, which under applicable law (including policies of Canadian securities commissions) or applicable stock exchange rules, would require approval by ordinary resolution had the Trust been a reporting issuer (or the equivalent) in the jurisdictions in which the Trust is a reporting issuer (or the equivalent) and had Units been listed for trading on the stock exchanges where the Trust Units are listed for trading, respectively.

Nothing in this Section 8.8, however, shall prevent the Trustees from submitting to a vote of Unitholders any matter which they deem appropriate. Except with respect to the matters specified in Sections 8.8, 14.2, 14.3 and 16.2 or matters submitted to a vote of the Unitholders by the Trustees, no vote of the Unitholders shall in any way bind the Trustees.

### **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 for the purpose of any other action, the Trustees may from time to time, without notice to the Unitholders, close the transfer books for such period, not exceeding 35 days, as the Trustees may determine; or without closing the transfer books the Trustees may fix a date not more than 60 days prior to the date of any meeting of the Unitholders or other action as a record date for the determination of Unitholders entitled to receive notice of and to vote at such meeting or any adjournment thereof or to be treated as Unitholders of record for purposes of such other action, and any Unitholder who was a Unitholder at the time so fixed shall be entitled to receive notice of and vote at such meeting or any adjournment thereof, even though he has since that date disposed of his 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 be treated as a Unitholder of record for purposes of such other action. If, in the case of any meeting of Unitholders, no record date with respect to voting has been fixed by the Trustees, the record date for voting shall be 5:00 p.m. on the last business day before the meeting.

### **8.10 Proxies**

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 by a proxy in such form as the Trustees may prescribe from time to time or, in the case of a Unitholder who is a body corporate or association, by an individual authorized by the board of directors or governing body of the body corporate or association to represent it at a meeting of the Unitholders. A proxy need not be a Unitholder. The Trustees may solicit such proxies from the Unitholders or any of them in any matter requiring or permitting the Unitholders' vote, approval or consent.

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

An instrument of proxy executed in compliance with the foregoing shall be valid unless challenged at the time of or prior to its exercise and the person challenging the instrument shall have the burden of proving, to the satisfaction of the chairperson of the meeting at which the instrument is proposed to be used, that the instrument of proxy is invalid. Any decision of the chairperson of the meeting in respect of the validity of an instrument of proxy shall be final and binding upon all persons.

An instrument of proxy shall be valid only at the meeting with respect to which it was solicited or any adjournment thereof.

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

#### **8.11 Court Requisitioned Meetings**

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

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

Without restricting the generality of this Section 8.11, the court may order that the quorum required by this Declaration of Trust be varied or dispensed with at a meeting called, held and conducted pursuant to this section.

A meeting called, held and conducted pursuant to this Section 8.11 is for all purposes a meeting of Unitholders duly called, held and conducted.

#### **8.12 Personal Representatives**

If a Unitholder is deceased, his personal representative, upon filing with the secretary of the meeting such proof of his 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 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 7.22 relating to joint holders shall apply. When any Unit is held jointly by several persons, any one of them may vote at any meeting in person or by proxy in respect of such Unit, but if more than one of them shall be present at such meeting in person or by proxy, and such joint owners or their proxies so present disagree as to any vote to be cast, such vote purporting to be executed by or on behalf of a Unitholder shall be deemed valid unless challenged at or prior to its exercise, and the burden of proving invalidity shall rest on the challenger.

#### **8.13 Attendance by Others**

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

#### **8.14 Conduct of Meetings**

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 chairperson of the meeting and such rules and procedures shall be binding upon all parties participating in the meeting.

#### **8.15 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 8.8, no action taken by Unitholders at any meeting of Unitholders shall in any way bind the Trust or the Trustees without approval of the Trustees.

#### **8.16 Resolution in Lieu of Meeting**

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

#### **8.17 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.

#### **8.18 Meaning of “Special Resolution”**

- (a) The expression “**Special Resolution**” when used in this Declaration of Trust means, subject to this Article 8, a resolution proposed to be passed as a special resolution at a meeting of Unitholders (including an adjourned meeting) duly convened for that purpose and held in accordance with the provisions of this Section 8.18 at which two or more individuals present in person or represented by proxy and passed by the affirmative votes of the holders of more than 66 2/3% of the Units represented at the meeting and voted on a poll upon such resolution.
- (b) Notwithstanding Subsection 8.18(a), if at any meeting of Unitholders at which a Special Resolution is proposed to be passed, two individuals are not present in person or by proxy within 30 minutes after the time appointed for the meeting, then the meeting, if convened by or on the requisition of Unitholders, shall be dissolved, but in any other case it shall stand adjourned to such date, being not less than 21 nor more than 60 days later and to such place and time as may be appointed by the chairperson of the meeting. Not less than 10 days’ prior notice shall be given of the time and place of such adjourned meeting in the manner provided in Section 8.3. Such notice shall state that at the adjourned meeting the Unitholders present in person or by proxy shall form a quorum but it shall not be necessary to set forth the purposes for which the meeting was originally called or any other particulars. At the adjourned meeting, the Unitholders present in person or by proxy



shall form a quorum and may transact the business for which the meeting was originally convened and a resolution proposed at such adjourned meeting and passed by the requisite vote as provided in Subsection 8.18(a) shall be a Special Resolution within the meaning of this Declaration of Trust.

- (c) Votes on a Special Resolution shall always be given on a poll and no demand for a poll on a Special Resolution shall be necessary.

#### **8.19 Meaning of “Outstanding”**

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

- (a) when a new certificate has been issued in substitution for a Unit Certificate which has been lost, stolen, mutilated or destroyed, only one of such Unit Certificates shall be counted for the purposes of determining the number of Units outstanding; and
- (b) for the purpose of any provision of this Declaration of Trust entitling holders of outstanding Units to vote, sign consents, requisitions or other instruments or take any action under this Declaration of Trust, Units owned directly or indirectly, legally or equitably, by the Trust or any affiliate thereof shall be disregarded, except that:
  - (i) for the purpose of determining whether the Trustees shall be protected in relying on any such vote, consent, requisition or other instrument or action only the Units which the Trustees know are so owned shall be so disregarded; and
  - (ii) Units so owned which have been pledged in good faith other than to the Trust or an affiliate thereof shall not be so disregarded if the pledgee shall establish to the satisfaction of the Trustees the pledgee’s right to vote such Units in his or her discretion free from the control of the Trust or any affiliate thereof.

### **ARTICLE 9 MEETINGS OF THE TRUSTEES**

#### **9.1 Trustees May Act Without Meeting**

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

#### **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 in accordance with the Trustees’ Regulations. Notice of the time and place of any other meetings shall be mailed or otherwise verbally, by telephone or by other means of communication given not less than 48 hours before the meeting but may be waived in writing by any Trustee either before or after such meeting. Notice of a meeting of Trustees need not specify the purpose of or the business to be transacted at the meeting. If a quorum of Trustees is present, the Trustees may without notice hold a meeting immediately following an annual meeting of Unitholders. The attendance of a Trustee at a meeting, in person or by

telephone 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 Place of Meeting**

Meetings of the Trustees may be held at any place in Canada. A Trustee who attends a meeting of Trustees, in person or by telephone, is deemed to have consented to the location of the meeting except when he or she attends the meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting has not lawfully called or convened.

### **9.4 Chair**

The chair of any meeting of the Trustees shall be the Trustee present at the meeting who holds the office of Chair of the Trustees or if such person is not present, the Lead Trustee, or if neither of such persons are present, the Trustees present shall choose one of their number to be chairperson. The Chair of the Trustees and the chairperson of any meeting of Trustees shall be a Resident. In addition, if applicable, in order to transact any matter set out in Section 42, a majority of the Independent Trustees or of the Independent Trustees on such committee, as the case may be, must be present at the meeting of the Trustees or of the committee.

### **9.5 Quorum**

A quorum for all meetings of the Trustees or any committee thereof shall be a majority of the Trustees then holding office or of the Trustees on such committee, provided that a majority of the Trustees comprising the quorum must be Residents. Notwithstanding any vacancy among the number of Trustees, a quorum of Trustees may exercise all of the powers of the Trustees.

### **9.6 Adjourned Meeting**

Any meeting of Trustees may be adjourned from time to time by the chairperson of the meeting with the consent of the meeting to a fixed time and place. Further notice of the adjourned meeting need not be given. The adjourned meeting shall be duly constituted if a quorum is present and if it is held in accordance with the terms of the adjournment. If there is not a quorum present at the adjourned meeting, the original meeting shall be deemed to have terminated upon its adjournment.

### **9.7 Voting at Meetings**

- (a) Questions arising at any meeting of the Trustees or of a committee of Trustees shall unless otherwise specified herein, be decided by a majority of the votes cast, provided however that the approval required with respect to any matter set out in Section 4.2 shall be only that of a majority of the Independent Trustees who have no interest in such matter.
- (b) In the case of an equality of votes at any meeting of Trustees or of a committee of Trustees, the chairperson of the meeting shall not have a second or casting vote in

addition to his original vote, if any. The powers of the Trustees may be exercised by resolution passed at a meeting at which a quorum is present or by resolution in writing signed by all Trustees. Resolutions in writing may be signed in counterparts each of which shall be deemed to be an original and all originals together shall be deemed to be one and the same instrument.

#### **9.8 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 communication facilities 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 COMMITTEES OF TRUSTEES**

#### **10.1 General**

Except as prohibited by law, the Trustees may appoint from among their number a committee of Trustees and may delegate to such committee any of the powers of the Trustees, provided that a majority of the Trustees appointed to any committee, shall be Residents. The Trustees shall have the power to appoint, employ or contract with any person for any matter relating to the Trust or its assets or affairs. For greater certainty, the Trustees may delegate to any person (including, without limitation any one or more officers of the Trust) the power to execute any document or enter into any agreement on behalf of the Trust or exercise any discretion or make any amendment in relation thereto. The Trustees may grant or delegate such authority to an advisor or a committee of Trustees as the Trustees may in their sole discretion deem necessary or desirable without regard to whether such authority is normally granted or delegated by trustees. The Trustees shall have the power to determine the term and compensation of an advisor 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.

Without in any way limiting the generality of the foregoing, the Trustees shall appoint:

- (a) an audit committee (the “**Audit Committee**”) to consist of at least three Trustees, all of whom shall be Independent Trustees, and who shall meet any requirements imposed by applicable law for the purpose of membership on such committee;
- (b) a governance and nominating committee (the “**Governance and Nominating Committee**”) to consist of at least three Trustees, all of whom shall be Independent Trustees;
- (c) a compensation committee (the “**Human Resources Committee**”) to consist of at least three Trustees, the majority of whom shall be Independent Trustees; and
- (d) an investment committee (the “**Investment Committee**”) to consist of at least five Trustees. No more than one member of the Investment Committee may be a member of management. At least two Trustees who shall have particular expertise in the area of real estate investment and management and at least two Trustees who shall have particular expertise in the area of corporate finance.

Each of the Audit Committee, the Governance and Nominating Committee, the Human Resources Committee and the Investment Committee shall have the respective powers, rights and responsibilities as the Trustees may approve, all as set out in any written charter for such purpose approved by the Trustees.

## **10.2 Additional Committees**

The Trustees may create such additional committees as they, in their discretion, determine to be necessary or desirable for the purposes of properly governing the affairs of the Trust; provided that the Trustees may not delegate to any committee any powers or authority in respect of which a board of directors of a corporation governed by the *Canada Business Corporations Act* may not so delegate.

## **10.3 Procedure**

Unless otherwise determined by the Trustees, a quorum for meetings of any committee shall be a majority of its members provided that a majority of the Trustees comprising such quorum must be Residents. Each committee shall have the power to appoint its chairperson who must be a Resident and the rules for calling, holding, conducting and adjourning meetings of the committee shall be the same as those governing meetings of the Trustees. Each member of a committee shall serve during the pleasure of the Trustees and, in any event, only so long as he or she shall be a Trustee. The Trustees may fill vacancies in a committee by appointment from among their members. Provided that a quorum is maintained, the committee may continue to exercise its powers notwithstanding any vacancy among its members.

# **ARTICLE 11 UNITHOLDER REMEDIES**

## **11.1 Dissent and Appraisal Rights**

- (a) Subject to Section 11.2(e), a Unitholder entitled to vote at a meeting of the Unitholders of the Trust who complies with this Section 11.1 may dissent if the Trust resolves to:
- (i) sell, lease or exchange all or substantially all the property and assets of the Trust;
  - (ii) carry out a going-private transaction; or
  - (iii) amend this Declaration of Trust to
    - (A) add, change or remove any provision restricting or constraining the issue, transfer or ownership of the Units;
    - (B) add, change or remove any restriction on the business that the Trust may carry on;
    - (C) add, change or remove the rights, privileges, restrictions or conditions attached to the Units of the class held by the dissenting Unitholder;
    - (D) increase the rights or privileges of any class of units having rights or

- privileges equal or superior to the class of Units held by the dissenting Unitholder;
- (E) create a new class of units equal to or superior to the class of Equity Interests held by the dissenting Unitholder;
  - (F) make any class of units having rights or privileges inferior to the class of Units held by the dissenting Unitholder superior to that class; or
  - (G) effect an exchange or create a right of exchange in all or part of a class of Units into the class of Units held by the dissenting Unitholder.
- (b) In addition to any other right the Unitholder may have, a Unitholder who complies with this section is entitled, when the action approved by the resolution from which the Unitholder dissents becomes effective, to be paid by the Trust the fair value of the Units held by the Unitholder in respect of which the Unitholder dissents, determined as of the close of business on the day before the resolution was adopted.
  - (c) A dissenting Unitholder may only claim under this section with respect to all the Units held by the dissenting Unitholder on behalf of any one beneficial owner and registered in the name of the dissenting Unitholder.
  - (d) A dissenting Unitholder shall send to the Trust, at or before any meeting of Unitholders at which a resolution referred to in subsection (a) is to be voted on, a written objection to the resolution, unless the Trust did not give notice to the Unitholder of the purpose of the meeting and of the Unitholder's right to dissent.
  - (e) The Trust shall, within 10 days after the Unitholders adopt the resolution, send to each Unitholder who has filed the objection referred to in subsection (d) notice that the resolution has been adopted, but such notice is not required to be sent to any Unitholder who voted for the resolution or who has withdrawn its objection.
  - (f) A dissenting Unitholder shall, within 20 days after receiving a notice under subsection (e) or, if the Unitholder does not receive such notice, within 20 days after learning that the resolution has been adopted, send to the Trust a written notice containing:
    - (i) the Unitholder's name and address;
    - (ii) the number of, and class/series of, Units in respect of which the Unitholder dissents; and
    - (iii) a demand for payment of the fair value of such Units.
  - (g) A dissenting Unitholder shall, within 30 days after the sending of a notice under subsection (f), send the certificates representing the Units in respect of which the Unitholder dissents to the Trust or its transfer agent.
  - (h) A dissenting Unitholder who fails to comply with subsection (g) has no right to make a claim under this section.

- (i) The Trust or its transfer agent shall endorse on any certificate received under subsection (g) a notice that the holder is a dissenting Unitholder under this Section 11.1 and shall return forthwith the certificates to the dissenting Unitholder.
- (j) On sending a notice under subsection (f), a dissenting Unitholder ceases to have any rights as a Unitholder other than the right to be paid the fair value of its Units as determined under this section except where:
  - (i) the Unitholder withdraws that notice before the Trust makes an offer under subsection (k);
  - (ii) the Trust fails to make an offer in accordance with subsection (k) and the dissenting Unitholder withdraws the notice; or
  - (iii) the Trustees revoke the resolution which gave rise to the dissent rights under this section, and to the extent applicable, terminate the related agreements or abandon a sale, lease or exchange to which the resolution relates,in which case, the Unitholder's rights are reinstated as of the date the notice under subsection (f) was sent.
- (k) The Trust shall, not later than 7 days after the later of the day on which the action approved by the resolution is effective or the day the Trust received the notice referred to in subsection (f), send to each dissenting Unitholder who has sent such notice a written offer to pay for the dissenting Unitholder's Units in an amount considered by the Trustees to be the fair value, accompanied by a statement showing how the fair value was determined.
- (l) Every offer made under subsection (k) for Units of the same class or series shall be on the same terms.
- (m) The Trust shall pay for the Units of a dissenting Unitholder within 10 days after an offer made under subsection (k) has been accepted, but any such offer lapses if the Trust does not receive an acceptance thereof within 30 days after the offer has been made.
- (n) Where the Trust fails to make an offer under subsection (k), or if a dissenting Unitholder fails to accept an offer, the Trust may, within 50 days after the action approved by the resolution is effective or within such further period as a court may allow, apply to a court to fix a fair value for the Units of any dissenting Unitholder.
- (o) If the Trust fails to apply to a court under subsection (n), a dissenting Unitholder may apply to a court for the same purpose within a further period of 20 days or within such further period as a court may allow.
- (p) The court where an application under subsection (n) or (o) may be made is a court having jurisdiction in the place where the Trust has its registered office.
- (q) A dissenting Unitholder is not required to give security for costs in an application made under subsection (n) or (o).

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

## 11.2 Oppression Remedy

- (a) Any registered holder or beneficial owner of Units or former registered holder or beneficial owner of Units or any securityholder, Trustee or officer or any other person who in the discretion of the court is a proper person to make an application (each, a "**Complainant**") may apply to a court under the provisions of this Section 11.2.
- (b) If, on application, the court is satisfied that, in respect of the Trust:
  - (i) any act or omission of the Trust effects a result;
  - (ii) the business or affairs of the Trust or any Subsidiary are or have been carried on or conducted in a manner; or
  - (iii) the powers of the Trustees are or have been exercised in a manner,that is oppressive or unfairly prejudicial to or that unfairly disregards the interests of any Unitholder, security holder, creditor, Trustee or officer, the court may make an order to rectify the matters complained of by the Complainant.
- (c) In connection with an application by a Complainant under Section 11.2(a) and without limiting subsection (b), a court may make any interim or final order it thinks fit including, without limiting the generality of the foregoing,
  - (i) an order restraining the conduct complained of;
  - (ii) an order appointing a receiver or receiver-manager;
  - (iii) an order to regulate the Trust's affairs or those of a Subsidiary by amending this Declaration of Trust or the articles or by-laws of a Subsidiary;
  - (iv) an order directing an issue or exchange of securities;
  - (v) an order appointing Trustees or directors of a Subsidiary in place of or in addition to all or any of the Trustees or directors then in office;
  - (vi) an order directing the Trust or any other person to purchase securities of a holder of securities;
  - (vii) an order directing the Trust or any other person to pay a security holder any part of the monies that the security holder paid for securities;
  - (ix) an order varying or setting aside a transaction or contract to which the Trust or a Subsidiary is a party and compensating the Trust or a Subsidiary or any other party to the transaction or contract; an order requiring the Trust or a Subsidiary, within a time specified by the court, to produce to the court or an interested person financial statements or an accounting in such form as the court may determine;



- (x) an order compensating an aggrieved person;
  - (xi) an order directing rectification of the registers or other records of the Trust or a Subsidiary;
  - (xii) an order directing an investigation to be made; and
  - (xiii) an order requiring the trial of any issue.
- (d) If an order made under this section directs an amendment of this Declaration of Trust or to the constating documents of a Subsidiary, then:
- (i) the Trustees shall request the Trust, such Subsidiary and all directors, Trustees, officers and other persons responsible for management to take all steps necessary to carry out that direction; and
  - (ii) no other amendment to this Declaration of Trust or such constating documents shall be made without the consent of the court, until a court otherwise orders.
- (e) A Unitholder is not entitled to dissent under this Declaration of Trust or other applicable law if an amendment to the Declaration of Trust or such constating documents is effected under this section.
- (f) A Complainant may apply in the alternative for an order to wind up the Trust or liquidate and dissolve a Subsidiary and a court may so order if the court is satisfied that it is just and equitable that such winding up, liquidation or dissolution occur.

## **ARTICLE 12 DISTRIBUTIONS**

### **12.1 Distributions**

The Trust may distribute to Trust Unitholders on each Distribution Date such amounts of income of the Trust for the calendar month immediately preceding the month in which the Distribution Date falls, or such amounts of Trust Capital, as the Trustees determine in their discretion. Special Voting Units have no economic entitlement in the Trust and have no entitlement to any distributions from the Trust.

On the last day of each Taxation Year, an amount equal to the net income of the Trust for such Taxation Year, determined in accordance with the provisions of the Tax Act other than Paragraph 82(1)(b) and Subsection 104(6) thereof, including net realized capital gains (other than income and taxable capital gains of the Trust arising on or in connection with an *in specie* redemption of Trust Units which are paid or payable by the Trust to redeeming Trust Unitholders and capital gains the tax on which may be offset by capital losses carried forward from prior years or is recoverable by the Trust) and the non-taxable portion of net realized capital gains of the Trust, shall, unless the Trustees pass a resolution to the contrary, be automatically payable to Trust Unitholders of record at the close of business on such day (whether or not such day is a Business Day).

The Trustees may designate and make payable any income or capital gains realized by the Trust as a result of the redemption of Units (including any income or capital gains realized by the Trust on the redemption of Units *in specie*) pursuant to Section 7.15 to the redeeming Trust Unitholders.

In addition, the Trustees may designate and make payable *in specie* any Subsidiary Securities as a distribution of income or Trust capital to Trust Unitholders.

Distributions payable to Trust Unitholders pursuant to this Article 12 shall be deemed to be distributions of income of the Trust (including dividends), net realized taxable capital gains of the Trust, Trust capital or other items in such amounts as the Trustees, in their absolute discretion determine and shall be allocated to the Trust Unitholder in the same proportions as distributions received by the Trust Unitholder, subject to the discretion of the Trustees to adopt an allocation method which the Trustees consider to be more reasonable in the circumstances, including in accordance with Subsection 7.15(e). For greater certainty it is hereby declared that any distribution of net realized capital gains of the Trust shall include the non-taxable portion of the capital gains of the Trust which are included in such distribution.

Any distribution shall be made on a Distribution Date proportionately to persons who are Trust Unitholders as of the close of business on the record date for such distribution which shall be the last Business Day of the calendar month immediately preceding the month in which the Distribution Date falls or such other date, if any, as is fixed by the Trustees in accordance with Section 8.9. Each year the Trust intends to deduct such amounts as are paid or payable to Trust Unitholders for the year as is necessary to ensure that the Trust is not liable for income tax under Part I of the Tax Act in the related taxation year.

Distributions may be adjusted for amounts paid in prior periods if the actual distribution for the prior periods is greater than or less than the estimates for the prior periods.

For greater certainty, it is hereby expressly declared that a Trust Unitholder shall have the legal right to enforce payment of any amount which is stated to be payable to a Trust Unitholder hereunder at the time such amount is made payable.

## **12.2 Allocation**

Unless the Trustees otherwise determine, the (i) net income of the Trust for a Taxation Year, determined in accordance with the provisions of the Tax Act other than Paragraph 82(1)(b) and Subsection 104(6); and (ii) net realized capital gains of the Trust payable to Trust Unitholders shall be allocated to the Trust Unitholders for the purposes of the Tax Act in the same proportion as the total distributions made to Trust Unitholders in the Taxation Year under Section 12.1. The Trustees shall in each year make such other designations for tax purposes in respect of distributions that the Trustees consider to be reasonable in all of the circumstances.

## **12.3 Payment of Distributions**

Distributions shall be made by cheque payable to or to the order of the Trust Unitholder or by electronic fund transfer or by such other manner of payment approved by the Trustees from time to time, including distribution of Subsidiary Securities. The payment, if made by cheque, shall be conclusively deemed to have been made upon hand-delivery of a cheque to the Trust Unitholder or to his agent duly authorized in writing or upon the mailing of a cheque by prep aid first-class mail addressed to the Trust Unitholder at his address as it appears in 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.

The payment of the Distributions to any Unitholder *in specie* as provided in Section 12.1 hereof may be satisfied by the delivery of Subsidiary Securities. The payment, if made by Subsidiary Securities, shall be conclusively deemed to have been made upon delivery of the Subsidiary Securities to the Trust Unitholder or to his agent duly authorized in writing, or, if the Subsidiary Securities are redeemable in accordance with their terms, to an agent appointed by the Trustees to hold such Subsidiary Securities pending such redemption.

The Trustees shall deduct or withhold from distributions payable to any Trust Unitholder all amounts required by law to be withheld from such distribution and the Trust shall remit such taxes to the appropriate governmental authority within the times prescribed by law. Trust Unitholders who are Non-Residents will be required to pay all withholding taxes payable in respect of any distributions of income by the Trust, whether such distributions are in the form of cash or additional Units or Subsidiary Securities.

If the Trustees determine that the Trust does not have cash in an amount sufficient to make payment of the full amount of any distribution, the payment may include the issuance of additional Units or notes having a value equal to the difference between the amount of such distribution and the amount of cash which has been determined by the Trustees to be available for the payment of such distribution. Immediately after a *pro rata* distribution of such Units or notes to all Trust Unitholders in satisfaction of any non-cash distribution, the number of outstanding Units will be consolidated so that each Trust Unitholder will hold after the Consolidation the same number of Units as the Trust Unitholder held before the non-cash distribution. Each Unit Certificate representing a number of Units prior to the non-cash distribution is deemed to represent the same number of Units after the non-cash distribution and the Consolidation.

Notwithstanding the foregoing, where tax is required to be withheld from a Trust Unitholder's share of the distribution and such amount is not paid by the Trust Unitholder to the Trust, the Consolidation will result in such Trust Unitholder holding that number of Units equal to (i) the number of Units held by such Trust Unitholder prior to the distribution plus the number of Units received by such Trust Unitholder in connection with the distribution (net of the number of whole and part Units withheld on account of withholding taxes) multiplied by; (ii) the fraction obtained by dividing the aggregate number of Units outstanding prior to the distribution by the aggregate number of Units that would be outstanding following the distribution and before the Consolidation if no withholding were required in respect of any part of the distribution payable to any Trust Unitholder. Such Trust Unitholder will be required to surrender the Unit Certificates, if any, representing such Trust Unitholder's original Units, in exchange for a Unit Certificate representing such Trust Unitholders' post-Consolidation Units.

#### **12.4 Income Tax Matters**

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

## **12.5 Designations**

The Trustees shall make such designations for income tax purposes in respect of amounts paid or payable to Trust 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.

## **12.6 Definitions**

Unless otherwise specified or the context otherwise requires, any term in this Article 12 which is defined in the Tax Act shall have for the purposes of this Article 12 the meaning that it has in the Tax Act.

# **ARTICLE 13 FEES AND EXPENSES**

## **13.1 Expenses**

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

- (a) interest and other costs of borrowed money;
- (b) fees and expenses of lawyers, accountants, auditors, appraisers and other agents or consultants employed by or on behalf of the Trust or the Trustees;
- (c) fees and expenses of the Trustees;
- (d) fees and expenses connected with the acquisition, disposition and ownership of real property interests or mortgage loans or other property;
- (e) insurance as considered necessary by the Trustees;
- (f) expenses in connection with payments of distributions of Units of the Trust;
- (g) expenses in connection with communications to Unitholders and the other bookkeeping and clerical work necessary in maintaining relations with Unitholders;
- (h) expenses of changing or terminating the Trust;
- (i) fees and charges of transfer agents, registrars, indenture trustees and other trustees and custodians;
- (j) all fees, expenses, taxes and other costs incurred in connection with the issuance, distribution, transfer and qualification for distribution to the public of Units and other required governmental filings; and

- (k) all costs and expenses in connection with the incorporation or establishment, organization and maintenance of corporations and other entities formed to hold real property or other property of the Trust.

### **13.2 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.

### **13.3 Asset Management, Leasing and Financing Fees**

The Trust may pay asset management fees, leasing fees and financing fees in respect of any real property owned by it.

## **ARTICLE 14 AMENDMENTS TO THE DECLARATION OF TRUST**

### **14.1 Amendments by the Trustees**

Upon the recommendation of the Independent Trustees of the Trust, the Trustees may, without the approval of the Unitholders, make certain amendments to the Declaration of Trust, including amendments:

- (a) aimed at ensuring continuing compliance with applicable laws, regulations, requirements or policies of any governmental authority having jurisdiction over: (i) the Trustees or the Trust; (ii) the status of the Trust as a “mutual fund trust”; or (iii) the distribution of Units;
- (b) which, in the opinion of the Trustees, provide additional protection for the Unitholders;
- (c) 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;
- (d) which, in the opinion of the Trustees, are necessary or desirable to remove conflicts or inconsistencies between the disclosure in this prospectus and the Declaration of Trust;
- (e) of a minor or clerical nature or to correct typographical mistakes, ambiguities or manifest omissions or errors, which amendments, in the opinion of the Trustees, are necessary or desirable and not prejudicial to the Unitholders;
- (f) which, in the opinion of the Trustees, are necessary or desirable: (i) as a result of changes in taxation or other laws, or to ensure continuing compliance with IFRS for January 1, 2010 and thereafter; or (ii) to ensure the Trust Units qualify as equity for purposes of IFRS for January 1, 2010 and thereafter;
- (g) which, in the opinion of the Trustees, are necessary or desirable to enable the Trust to implement a Trust Unit option or purchase plan or issue Units for which the purchase price is payable in instalments;

- (h) to create one or more additional classes of units solely to provide voting rights to holders of shares, units or other securities that are exchangeable for Trust Units entitling the holder thereof to a number of votes not exceeding the number of Trust Units into which the exchangeable shares, units or other securities are exchangeable or convertible but that do not otherwise entitle the holder thereof to any rights with respect to the Trust's property or income other than a return of capital; and
- (i) for any purpose (except one in respect of which a Unitholder vote is specifically otherwise required) which, in the opinion of the Trustees, is not prejudicial to Unitholders and is necessary or desirable,

but notwithstanding the foregoing, no such amendment, other than an amendment made pursuant to paragraph (f) of this Section 13.1, shall modify the right to vote attached to any Unit or reduce the equal undivided interest in the property of the Trust or the entitlement to distributions from the Trust provided hereunder (including those provided for in **Article 12** and Article 16) represented by any Unit without the consent of the Unitholders provided in accordance with Sections 14.2, 14.3 and 14.6, as applicable.

#### **14.2 Amendments by Unitholders**

Subject to Sections 14.3 and 14.6, 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.

#### **14.3 Approval by Special Resolution**

None of the following shall occur unless the same has been duly approved by Special Resolution:

- (a) any amendment to this Section 14.3;
- (b) an exchange, reclassification or cancellation of all or part of the Units;
- (c) the addition, change or removal of the rights, privileges, restrictions or conditions attached to the Units, including:
  - (i) the removal or change of rights to distributions, except where such removal or change is made by the Trustees pursuant to paragraph 14.1(f) of this Declaration of Trust;
  - (ii) the addition or removal of or change to conversion privileges, options, voting, transfer or pre-emptive rights; or
  - (iii) the reduction or removal of a distribution preference or liquidation preference;
- (d) any constraint of the issue, transfer or ownership of Units or the change or removal of such constraint;
- (e) any sale or transfer of the assets of the Trust or its subsidiaries as an entirety or substantially as an entirety (other than as part of an internal reorganization of the assets of the Trust or its subsidiaries as approved by the Trustees);

- (f) the termination of the Trust or its subsidiaries;
- (g) the combination, amalgamation or arrangement of any of the Trust or its subsidiaries with any other entity (other than as a part of an internal reorganization of the assets of the Trust and its subsidiaries as approved by the Trustees); or
- (h) any amendment referred to in the first sentence of Section 6.3.

#### **14.4 No Termination**

No amendment to or amendment and restatement of this Declaration of Trust, whether pursuant to this Article 14 or otherwise, shall be construed as a termination of the Trust and the settlement or establishment of a new trust.

#### **14.5 Trustees to Sign Amendment**

When a vote of the Unitholders approves an amendment to this Declaration of Trust or when the Trustees may amend this Declaration of Trust alone as provided herein, then the Trustees shall sign such documents as may be necessary to effect such amendment.

#### **14.6 Restriction on Amendments Affecting Certain Rights of ECL**

No amendment shall be made that limits or alters the rights of ECL contained in Subsection 3.8(b) without the express written consent of ECL provided that ECL and its affiliates hold, directly or indirectly, at least 10% of the outstanding Units on a fully diluted basis.

### **ARTICLE 15 SUPPLEMENTAL INDENTURES**

#### **15.1 Provision for Supplemental Indentures for Certain Purposes**

The Trustees may, without approval of the Unitholders and subject to the provisions hereof, and shall, when so directed in accordance with the provisions hereof, execute and deliver indentures or instruments supplemental hereto which thereafter shall form part hereof, for any one or more or all of the following purposes:

- (a) modifying or amending any provisions of this Declaration of Trust in the circumstances set forth in Section 14.1 where the Trustees may do so without the consent, approval or ratification of the Unitholders or any other person; and
- (b) modifying or amending any provisions of this Declaration of Trust where the modification or amendment has been approved by Ordinary Resolution, Special Resolution or, if required, with the consent of the holders of all of the Units.

**ARTICLE 16  
TERMINATION OF THE TRUST**

**16.1 Duration of the Trust**

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

**16.2 Termination**

The Trust shall terminate at the time specified in a decision to terminate the Trust by a Special Resolution passed at a meeting of Unitholders called for that purpose.

**16.3 Effect of Termination**

Upon the termination of the Trust, the liabilities of the Trust shall be discharged with due speed and the net assets of the Trust shall be liquidated and the proceeds distributed proportionately to the Trust Unitholders. Such distribution may be made in cash or in kind or partly in each, all as the Trustees in their sole discretion may determine. The holders of Special Voting Units and Class C Special Voting Units are not entitled to any distributions with respect to the termination of the Trust.

**16.4 Procedure Upon Termination**

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

**16.5 Powers of the Trustees Upon Termination**

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

**16.6 Further Notice to Unitholders**

In the event that less than all of the Unitholders have surrendered their Units for cancellation within six months after the time specified in the notice referred to in Section 16.4, the Trustees shall give further notice to the remaining Unitholders to surrender their Units for cancellation and if, within one year after the further notice, all the Units shall not have been surrendered for cancellation, such remaining Units shall be deemed to be cancelled without prejudice to the rights of the holders of such Units to receive their *pro rata* share of the remaining property of the Trust, and the Trustees may either take appropriate steps, or appoint an agent to take appropriate steps, to contact such Unitholders (deducting all expenses thereby incurred from the amounts to which such Unitholders are entitled as aforesaid) or, in the discretion of the Trustees, may pay such amounts into court.



**16.7 Responsibility of the Trustees after Sale and Conversion**

The Trustees shall be under no obligation to invest the proceeds of any sale of investments or other assets or cash forming part of the Trust's property after the date referred to in Section 16.4 and, after such sale, the sole obligation of the Trustees under this Declaration of Trust shall be to hold such proceeds or assets in trust for distribution under Section 16.3.

**ARTICLE 17  
LIABILITIES OF TRUSTEES AND OTHERS**

**17.1 Liability and Indemnification of the Trustees**

The Trustees shall at all times, including, for the purposes of this Article 17, the time after they have ceased to be a Trustee, be indemnified and saved harmless out of the property of the Trust from and against all liabilities, damages, losses, debts and claims whatsoever, including costs, charges and expenses in connection therewith, sustained, incurred, brought, commenced or prosecuted against them for or in respect of any act, deed, matter or thing whatsoever made, done, acquiesced in or omitted in or about or in relation to the execution of their duties as Trustees and also from and against all other liabilities, damages, losses, debts, claims, costs, charges, and expenses (including, without limitation, legal fees and disbursements on a solicitor and client basis) which they sustain or incur in or about or in relation to the affairs of the Trust (whether accrued, actual, contingent or otherwise), claims, costs, charges or expenses arising out of or in connection with the presence, release, discharge or disposal of any hazardous substance or any adverse environmental conditions at, on, under or near any real property or any investigation, remediation or clean up action required to be undertaken in connection with any real property. Further, the Trustees shall not be liable to the Trust or to any Unitholder or Annuitant for any loss or damages relating to any matter regarding the Trust, including, without limitation, any loss or diminution in the value of the Trust or its assets. The foregoing provisions of this Section 17.1 in favour of any Trustee do not apply unless:

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

**17.2 Indemnification of Trustees**

Each Trustee, each former Trustee, each officer of the Trust and each former officer of the Trust shall be entitled to be and shall be indemnified and reimbursed out of the Trust's property in respect of any and all taxes, penalties or interest in respect of unpaid taxes or other governmental charges imposed upon the Trustee or former Trustee or officer or former officer in consequence of its performance of its duties hereunder and in respect of any and all costs, charges and expenses, including amounts paid to settle an action or satisfy a judgment, reasonably incurred in respect of any civil, criminal or administrative action or proceeding to which the Trustee, former Trustee, officer or former officer is made a party by reason of being or having been a Trustee or officer of the Trust or, at the request of the Trust, a trustee or officer or any subsidiary or affiliate thereof, provided that a Trustee, former Trustee, officer or former officer shall not be indemnified out of the Trust's property in respect of unpaid taxes or other governmental charges or in respect of such costs, charges and expenses that arise out of or as a result or in the course of a breach of the standard of care, diligence and skill set out in Section 4.6. A

Trustee, former Trustee, officer or former officer shall not be entitled to satisfy any right of indemnity or reimbursement granted herein, or otherwise existing under law, except out of the Trust's property, and no Unitholder or other Trustee or officer shall be personally liable to any person with respect to any claim for such indemnity or reimbursement as aforesaid.

### **17.3 Contractual Obligations of the Trust**

The omission of the statement described in Subsection 6.2(b)(ii) from any document or instrument shall not render the Trustees or the Unitholders liable to any person, nor shall the Trustees or the Unitholders be liable for such omission. If, the Trustees or any Unitholder shall be held liable to any person by reason of the omission of such statement from any such agreement, undertaking or obligation such Trustee or Unitholder shall be entitled to indemnity and reimbursement out of the Trust's property to the full extent of such liability.

### **17.4 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 it as permitted hereunder, or for joining in any receipt or act of conformity or for any loss, damage or expense caused to the Trust through the insufficiency or deficiency of any security in or upon which any of the monies of or belonging to the Trust shall be paid out or invested, or for any loss or damage arising from the bankruptcy, insolvency or tortious act of any person, firm or corporation with whom or which any monies, securities or property of the Trust shall be lodged or deposited, or for any loss occasioned by error in judgment or oversight on the part of the Trustees, or for any other loss, damage or misfortune which may happen in the execution by the Trustees of their duties hereunder, except to the extent the Trustees have not acted in accordance with Subsections 17.1(a) and 17.1(b).

### **17.5 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.

### **17.6 Liability of Unitholders and Others**

No Unitholder or Annuitant or any officer, employee or agent of the Trust shall be held to have any personal liability as such, and no resort shall be had to his private property (including, without limitation, any property consisting of or arising from a distribution of any kind or nature by the Trust) 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 such satisfaction. Any written instrument creating an obligation which is or includes the granting by the Trust of a lease, sublease or mortgage or which is, in the judgment of the Trustees, a material obligation, shall contain a provision 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 (including, without limitation, any property consisting of or arising from a distribution of any kind or nature by the Trust) of any of the Unitholders or Annuitant or officers, employees and agents of the Trust, but the property of the Trust or a specific portion thereof only shall be bound. If the Trust acquires any real property investment subject to existing contractual obligations, the Trustees shall use their reasonable efforts to have any such

obligations under material agreements (including mortgages), other than leases, modified so as to achieve the aforesaid disavowal of contractual liability. Further, the Trustees shall cause the operations of the Trust to be conducted in such a way and in such jurisdictions as to avoid, as far as reasonably possible, any material risk of liability on the Unitholders or Annuitant for claims against the Trust, and shall, to the extent which they determine to be possible and reasonable, including in the cost or premiums, to cause the Trust to carry insurance for the benefit of such persons in such amounts as they consider adequate to cover any foreseeable non-contractual or non-excluded contractual liability. Any potential liability of the Trustees with respect to their foregoing obligations or their failure to perform the same shall be governed by the provisions of Section 17.1, Section 17.4 and Section 17.5. Nothing in this Declaration will preclude the Trustees from exercising any rights granted to them under the Tax Act or any other applicable taxation legislation to withhold from amounts payable to Unitholders or otherwise recover from Unitholders any taxes that the Trustees have paid on behalf of Unitholders.

## **ARTICLE 18 GENERAL**

### **18.1 Execution of Instruments**

The Trustees shall have power from time to time to appoint any Trustee or Trustees or officer or officers of the Trust 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.

### **18.2 Manner of Giving Notice**

- (a) Any notice or other document required or permitted by the provisions of this Declaration of Trust to be given to a Unitholder, a Trustee or the Auditors shall be deemed conclusively to have been given if given either by delivery or by prepaid first-class mail addressed to the Unitholder at the address shown in the Register, to a Trustee at the last address provided by such Trustee to the President of the Trust, or to the Auditors of the Trust at the last address provided by the Auditors to the Trustees, 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 similar section of any other newspaper having national circulation in Canada provided further that if there is no newspaper having national circulation, then by publishing twice in the business section of a newspaper in each city where the register or a branch register is maintained. Any notice so given shall be deemed to have been given on the day following that on which the letter or circular was posted 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 posted, it shall be sufficient to prove that such letter or circular was properly addressed, stamped and posted.
- (b) Any written notice or written communication given to the Trustees shall be addressed to the Trustees at the head office of the Trust, and shall be deemed to have been given on the date of delivery or date sent by facsimile or other means of prepaid, transmitted or recorded communications or, if mailed, five days from the date of mailing. If any such notice or communication shall have been mailed and if regular mail service shall be

interrupted by strikes or other irregularities, such notice or communication shall be deemed to have been received 48 hours after 12:01 a.m. on the day following the resumption of normal mail service, provided that during the period that regular mail service shall be interrupted any notice or other communication shall be given by personal delivery or by facsimile or other means of prepaid, transmitted or recorded communication.

**18.3 Failure to Give Notice**

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

**18.4 Joint Holders**

Service of a notice or document on any one of several joint holders of Units shall be deemed effective service on the other joint holders.

**18.5 Subsidiary Holding Trust Units**

Any subsidiary of the Trust shall have the right to renounce, release and surrender, for no consideration, all rights and benefits in and to the Trust Units it may hold, or be entitled to hold, by delivering written notice to the Trust exercising such right.

**18.6 Service of Notice**

Any notice or document sent by post to or left at the address of a Unitholder pursuant to this 0 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 served and such service shall be deemed sufficient service on all persons having an interest in the Units concerned.

**18.7 Trust Auditors**

The Auditors shall be appointed at each annual meeting save that, until the first such annual meeting, such Auditors shall be appointed by the Trustees. 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 at the next annual meeting of Unitholders. The Auditors shall report to the Trustees and the Unitholders on the annual financial statements of the Trust and shall fulfil such other responsibilities as they may properly be called upon by the Trustees to assume. The Auditors shall have access to all records relating to the affairs of the Trust.

**18.8 Fiscal Year**

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

### **18.9 Reports to Unitholders**

The Trust will furnish to Unitholders such financial statements (including quarterly and annual financial statements) and other reports as are from time to time required by this Declaration of Trust and by applicable law.

Prior to a meeting of Unitholders, the Trustees will provide the Unitholders (along with notice of such meeting) information similar to that required to be provided to shareholders of a public corporation governed by the *Business Corporations Act* (Ontario) and as required by applicable tax laws and Securities Laws.

### **18.10 Trust Property to be Kept Separate**

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

### **18.11 Electronic Documents**

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

### **18.12 Trustees May hold Units**

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

### **18.13 Trust Records**

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

### **18.14 Right to Inspect Documents**

A Unitholder and any agent, consultant or creditor of the Trust shall have the right to examine the Declaration of Trust, the Trustees' Regulations, the minutes of meetings and resolutions of Unitholders, and any other documents or records which the Trustees determine should be available for inspection by such Persons, during normal business hours at the principal office of the Trust. Unitholders and creditors of the Trust shall have the right to obtain or make or cause to be made a list of all or any of the registered holders of Units, to the same extent and upon the same conditions as those which apply to shareholders and creditors of a corporation governed by the *Canada Business Corporations Act*, as replaced or amended from time to time.

**18.15 Taxation Information**

On or before March 30 in each year, or such earlier day as is required by applicable legislation or regulation, the Trust will provide to Trust Unitholders who received distributions from the Trust in the prior calendar year, such information required by Canadian law to be submitted to Trust Unitholders for income tax purposes to enable Trust Unitholders to complete their tax returns in respect of such distributions. In particular, each Trust Unitholder shall be informed each year of the composition of the amounts payable by the Trust to such Trust Unitholder in terms of net income, taxable dividends, net taxable gains, foreign source income and return of capital, and will be informed of the portion of such net income that has been designated as taxable dividends on shares of taxable Canadian corporations and taxable capital gains and of the amount of any foreign taxes paid by the Trust in respect of which the Trust Unitholder may claim a credit for tax purposes to the extent permitted by the Tax Act, where those items are applicable.

**18.16 Consolidations**

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

**18.17 Counterparts**

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

**18.18 Severability**

The provisions of this Declaration of Trust are severable. 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.

**18.19 Headings for Reference Only**

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

**18.20 Governing Law**

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

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

*Signed "Donald E. Clow"*

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Donald E. Clow

*Signed "John Eby"*

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John Eby

*Signed "Brian Johnson"*

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Brian Johnson

*Signed "J. Michael Knowlton"*

---

J. Michael Knowlton

*Signed "Debra Hess"*

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Debra Hess

*Signed "Barbara Palk"*

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Barbara Palk

*Signed "Elisabeth Stroback"*

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Elisabeth Stroback

*Signed "Frank C. Sobey"*

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Frank C. Sobey

*Signed "Kent Sobey"*

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Kent Sobey

*Signed "Paul D. Sobey"*

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Paul D. Sobey

*Signed "Jason Shannon"*

---

Jason Shannon

*Signed "James Dickson"*

---

James Dickson



**SCHEDULE A**  
**CROMBIE REAL ESTATE INVESTMENT TRUST**  
**TRUSTEES' REGULATIONS**

**INTERPRETATION**

1. **Interpretation.** In these Trustees' Regulations, unless the context otherwise specifies or requires:
  - (a) all terms used in these Trustees' Regulations not otherwise defined herein shall have the meanings given to such terms in the Declaration of Trust;
  - (b) words importing the singular number only shall include the plural and vice versa and words importing a specific gender shall include the other gender; and
  - (c) the headings used in these Trustees' Regulations are inserted for reference purposes only and are not to be considered or taken into account in construing the terms or provisions thereof or to be deemed in any way to clarify, modify or explain the effect of any such terms or provisions.

**MEETINGS OF TRUSTEES**

2. **Place and Time of Meeting.** Unless consented to in writing by a majority of the Trustees, all meetings of the Trustees called by the giving of notice shall be held at a place in Canada on a business day which place and time shall be specified in the notice.
3. **Notice.** The notice of any meeting may but need not specify the purpose of or the business to be transacted at the meeting.
4. **Adjournment.** Any meeting of Trustees may be adjourned from time to time by the chairperson of the meeting, with the consent of the meeting, to another business day at a fixed time and place. Notice of any adjourned meeting of Trustees is not required to be given if the time and place of the adjourned meeting is announced at the original meeting, but notice of the adjourned meeting shall be given to the Trustees not present at such original meeting by delivering (not mailing) the same not less than one day (exclusive of the day on which the notice is delivered but inclusive of the day for which notice is given) before the adjourned meeting. Any adjourned meeting shall be duly constituted if held in accordance with the terms of the adjournment and a quorum is present thereat. The Trustees who formed a quorum at the original meeting are not required to form the quorum at the adjourned meeting. If there is no quorum present at the adjourned meeting, the original meeting shall be deemed to have terminated forthwith after its adjournment. Any business may be brought before or dealt with at any adjourned meeting which might have been brought before or dealt with at the original meeting in accordance with the notice calling the same.
5. **Minutes of Meetings.** The Chairperson shall appoint a secretary to act as secretary of each meeting of the Trustees and of the Unitholders. Written records and minutes of all meetings of Trustees, Governance and Nominating Committee, the Human Resources Committee and the Audit Committee shall be maintained by the secretary of each meeting and shall be placed in the minute book of the Trust. Any written records and minutes of meetings of any other committee of Trustees maintained by the secretary of such meeting may but need not be placed in the minute book of the Trust. There shall be inserted or entered into the records and minutes of the meetings

of Trustees or the Investment Committee, as the case may be, all written disclosures or requests made to have entered into the minutes of the meeting, of the nature and extent of a Person's interest in a material agreement or transaction or proposed material agreement or transaction with the Trust made pursuant to Section 4.11 of the Declaration of Trust.

## **FOR THE PROTECTION OF TRUSTEES AND OFFICERS**

6. **For the Protection of Trustees and Officers.** The provisions of the Declaration of Trust pertaining to the liability and indemnification of Trustees shall apply *mutatis mutandis* to the officers of the Trust or Persons who act or acted at the Trust's request as a director or officer of a body corporate of which the Trust is or was a shareholder or creditor, and his heirs and legal representatives.

The Trust shall also indemnify any such Person in such other circumstances as the Declaration of Trust or law permits, subject to the Declaration of Trust, or requires. Nothing in these Trustees' Regulations shall limit the right of any Person entitled to indemnity to claim indemnity apart from the provisions of these Trustees' Regulations to the extent permitted by the Declaration of Trust or law.

## **OFFICERS**

7. **Appointment and Removal.** The Trustees may annually or more often appoint the officers of the Trust who may or may not be Trustees. Notwithstanding the foregoing, each incumbent officer of the Trust shall continue in office until the earliest of (a) his resignation, which resignation shall be effective at the time a written resignation is received by the Trust or at the time specified in the resignation, whichever is later, (b) the appointment of his successor, (c) his removal and (d) his death. The Trustees may from time to time and subject to the provisions of the Declaration of Trust, prescribe, vary, add to or limit the duties and powers of any officer.

All officers, in the absence of agreement to the contrary, shall be subject to removal by resolution of the Trustees at any time, with or without cause.

8. **Chairperson.** The Chairperson of Trustees shall be appointed from among the Trustees. The Chairperson, in his absence, the Lead Trustee, shall preside as chair at all meetings of the Trustees and at all meetings of the Unitholders, unless a Trustee who is not the Chairperson is selected to do so by the Trustees in accordance with Section 8.4 of the Declaration of Trust.
9. **Powers and Duties.** Subject to the provisions of the Declaration of Trust, all officers of the Trust shall sign such contracts, documents or instruments in writing as require their respective signatures and shall respectively have and perform all powers and duties incident to their respective offices and such other powers and duties respectively as may from time to time be assigned to them by the Trustees.
10. **Duties May be Delegated.** Subject to the provisions of the Declaration of Trust, in case of the absence or inability to act of any officer of the Trust or for any other reason that the Trustees may deem sufficient, the Trustees may delegate all or any of the powers of such officer to any other officer or to any Trustee for the time being.
11. **Vacancies.** If the office of any officer of the Trust shall be or become vacant by reason of death, resignation, removal or otherwise, the Trustees may appoint a Person to fill such vacancy.

## UNITHOLDERS' MEETINGS

12. **Place and Time of Meetings.** Each meeting of the Unitholders shall be held at a place in Canada on a Business Day which place and time shall be specified in the notice calling the meeting.
13. **Notice.** A printed, written or typewritten notice stating the day, hour and place of any meeting of the Unitholders shall be given by serving such notice on each Unitholder entitled to vote at such meeting, on each Trustee and on the auditor of the Trust in the manner provided for in the Declaration of Trust and in these Trustees' Regulations. A meeting of the Unitholders may be held for any purpose on any day and at any time without notice if all of the Unitholders and all other Persons entitled to attend such meeting are present in Person or, where appropriate, represented by proxy at the meeting (except where a Unitholder or other Person attends the meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully called) or if all of the Unitholders and all other Persons entitled to attend such meeting who are not present in Person or, where appropriate, represented by proxy thereat waive notice before or after the date of such meeting.
14. **Waiver of Notice.** A Unitholder and any other Person entitled to attend a meeting of the Unitholders may in any manner waive notice of a meeting of the Unitholders and attendance of any such Person at a meeting of the Unitholders shall constitute a waiver of notice of the meeting except where such Person attends a meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully called.
15. **Votes.** Every question submitted to any meeting of the Unitholders shall be decided in the first instance by a show of hands unless a Person entitled to vote at the meeting has demanded a ballot.

A ballot may be demanded either before or after any vote by show of hands by any Person entitled to vote at the meeting. If at any meeting a ballot is demanded on the election of a chairperson or on the question of adjournment it shall be taken forthwith without adjournment. If at any meeting a ballot is demanded on any other question or as to the election of Trustees, the vote shall be taken by ballot in such manner and either at once, later in the meeting or after adjournment as the chairperson of the meeting directs. The result of a ballot shall be deemed to be the resolution of the meeting at which the ballot was demanded. A demand for a ballot may be withdrawn.

Where two or more Persons hold the same Unit or Units jointly, one of those holders present at a meeting of the Unitholders may, in the absence of the other or others, vote the Unit or Units but if two or more of those Persons who are present, in Person or by proxy vote, they shall vote as one on the Unit or Units jointly held by them.

At any meeting of the Unitholders unless a ballot is demanded, a declaration by the chairperson of the meeting that a resolution has been carried or carried unanimously or by a particular majority or lost or not carried by a particular majority shall be conclusive evidence of the fact.

16. **Proxies.** At every meeting at which he is entitled to vote, every Unitholder and/or Person appointed by proxy and/or individual so authorized to represent a Unitholder who is present in Person shall have one vote on a show of hands. Upon a ballot at which he is entitled to vote, every Unitholder present in Person or represented by proxy or by an individual so authorized shall (subject to the provisions, if any, of the Declaration of Trust) have one vote for every Unit held by him.

A proxy shall be executed by the Unitholder or his attorney authorized in writing or, if the Unitholder is a body corporate or association, by an officer or attorney thereof duly authorized. If the Units are publicly traded, a proxy appointing a proxyholder ceases to be valid one year from its date.

A proxy may be in the following form:

The undersigned Unitholder of Crombie Real Estate Investment Trust hereby appoints \_\_\_\_\_ of \_\_\_\_\_ or falling him, \_\_\_\_\_ as the nominee of the undersigned to attend and act for the undersigned and on behalf of the undersigned at the said meeting of the Unitholders of the said Trust to be held on the day of and at any adjournment thereof in the same manner, to the same extent and with the same power as if the undersigned were present at the said meeting or such adjournment thereof. This proxy is [not] solicited by or on behalf of management of the Trust.

DATED this day of

\_\_\_\_\_  
Signature of Unitholder

The Trustees may from time to time institute procedures regarding the lodging of proxies at some place or places other than the place at which a meeting or adjourned meeting of the Unitholders is to be held and for particulars of such proxies to be sent by telecopier or in writing before the meeting or adjourned meeting to the Trust or any agent of the Trust for the purpose of receiving such particulars and providing that proxies so lodged may be voted upon as though the proxies themselves were produced at the meeting or adjourned meeting and votes given in accordance with such procedures shall be valid and shall be counted. The chairperson of any meeting of the Unitholders may, in his discretion, accept telecopier or written communication as to the authority of any Person claiming to vote on behalf of and to represent a Unitholder notwithstanding that no proxy conferring such authority has been lodged with the Trust, and any votes given in accordance with such telecopier or written communication accepted by the chairperson of the meeting shall be valid and shall be counted.

17. **Adjournment.** The chairperson of any meeting of the Unitholders may with the consent of the meeting adjourn the same from time to time to another Business Day at a fixed time and place and no notice of such adjournment need be given to the Unitholders unless the meeting is adjourned by one or more adjournments for an aggregate of thirty days or more in which case notice of the adjourned meeting shall be given as for an original meeting. Any business may be brought before or dealt with at any adjourned meeting for which no notice is required which might have been brought before or dealt with at the original meeting in accordance with the notice calling the same.

Any adjourned meeting shall be duly constituted if held in accordance with the terms of the adjournment and a quorum is present thereat. The Persons who formed a quorum at the original meeting are not required to form the quorum at the adjourned meeting. If there is no quorum present at the adjourned meeting, the original meeting shall be deemed to have terminated forthwith after its adjournment.

18. **Quorum.** No business shall be transacted at any meeting of the Unitholders unless the requisite quorum be present at the time of the transaction of such business. If a quorum is not present at the time appointed for a meeting of the Unitholders or within such reasonable time thereafter as the

Unitholders present may determine, the Persons present and entitled to vote may adjourn the meeting to another business day at a fixed time and place but may not transact any other business and the provisions of paragraph 17 with regard to notice shall apply to such adjournment.

19. **Minutes of Meetings.** Written records and minutes of each meeting of the Unitholders shall be maintained by the secretary of each meeting and shall be placed in the minute book of the Trust.

## **CERTIFICATES**

20. **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 and by or on behalf of a registrar, transfer agent, branch transfer agent or issuing or other authenticating agent of the Trust and any additional signatures required on a certificate representing Units may be printed or otherwise mechanically reproduced thereon.

A certificate representing Units containing the signature of a Person which is printed, engraved, lithographed or otherwise mechanically reproduced thereon may be issued notwithstanding that the Person has ceased to be a Trustee or an officer, as the case may be, of the Trust and shall be as valid as if he were a Trustee or an officer, as the case may be, at the date of its issue.

## **TRANSFER OF UNITS**

21. **Register.** The Register shall be kept as provided for in the Declaration of Trust and a branch register or registers of transfers may be kept at such office or such other place or places, either within or outside Ontario, as may from time to time be designated by the Trustees.

## **VOTING SHARES AND SECURITIES IN BODIES CORPORATE**

22. **Voting Shares and Securities in Bodies Corporate.** All of the shares or other securities carrying voting rights of any body corporate held from time to time by the Trust may be voted at any and all meetings of shareholders or holders of other securities (as the case may be) of such body corporate and in such manner and by such Person or Persons as the Trustees shall from time to time determine. The duly authorized signing officers of the Trust may also from time to time execute and deliver for and on behalf of the Trust proxies and/or arrange for the issuance of voting certificates and/or other evidence of the right to vote in such names as they may determine without the necessity of a resolution or other action by the Trustees.

## **NOTICES**

23. **Service.** If a notice or document is sent to a Unitholder by prepaid first-class mail in accordance with the provisions of the Declaration of Trust and the notice or document is returned on three consecutive occasions because the Unitholder cannot be found, it shall not be necessary to send any further notices or documents to the Unitholder until he informs the Trust in writing of his new address.
24. **Units Registered in More Than One Name.** All notices or other documents with respect to any Units registered in more than one name shall be given to whichever of such Persons is named first in the records of the Trust and any notice or other document so given shall be sufficiently given to all of the holders of such Units.
25. **Deceased Unitholders.** Any notice or other document delivered or sent in a manner contemplated in the Declaration of Trust to the address of any Unitholder as the same appears in the records of

the Trust shall, notwithstanding that such Unitholder be then deceased, and whether or not the Trust has notice of his death, be deemed to have been duly served in respect of the Units held by such Unitholder (whether held solely or with any other Person or Persons) until some other Person be entered in his stead in the records of the Trust as the holder or one of the holders thereof and such service shall for all purposes be deemed a sufficient service of such notice or document on his heirs, executors or administrators and on all Persons, if any, interested through him or with him in such Units.

26. **Signature to Notices.** The signature of any Trustee or officer of the Trust to any notice or document to be given by the Trust may be written, stamped, typewritten or printed or partly written, stamped, typewritten or printed.
27. **Computation of Time.** Where a given number of days' notice or notice extending over a period is required to be given under any provisions of the Declaration of Trust or these Trustees' Regulations, the day of service or posting of the notice or document shall not, unless it is otherwise provided, be counted in such number of days or other period, but the day of receipt of the notice or document shall, unless it is otherwise provided, be counted in such number of days or other period.
28. **Proof of Service.** With respect to every notice or other document sent by post it shall be sufficient to prove that the envelope or wrapper containing the notice or other document was properly addressed as provided in the Declaration of Trust and in these Trustees' Regulations and put into a post office or into a letter box. A certificate of an officer of the Trust in office at the time of the making of the certificate or of a transfer officer of any transfer agent or branch transfer agent of Units of the Trust as to facts in relation to the sending or delivery of any notice or other document to any Unitholder, Trustee, officer or auditor of the Trust or publication of any notice or other document shall be conclusive evidence thereof and shall be binding on every Unitholder, Trustee, officer or auditor of the Trust, as the case may be.

#### **CHEQUES, DRAFTS AND NOTES**

29. **Cheques, Drafts and Notes.** All cheques, drafts or orders for the payment of money and all notes and acceptances and bills of exchange shall be signed by such officer or officers of the Trust or Person or Persons, whether or not officers of the Trust, and in such manner as the Trustees may from time to time designate.

#### **CUSTODY OF SECURITIES**

30. **Custody of Securities.** All shares and other securities owned by the Trust shall be lodged (in the name of the Trust) with a chartered bank or a trust company, in a safety deposit box or with a law firm acting on behalf of the Trust or, if so authorized by resolution of the Trustees, with such other depositories or in such other manner as may be determined from time to time by the Trustees.

All shares and other securities belonging to the Trust may be issued, or held in the name of a nominee or nominees of the Trust (and if issued or held in the names of more than one nominee shall be held in the names of the nominees jointly with right of survivorship) and any shares or other securities so issued or held shall be endorsed in blank with endorsement guaranteed in order to enable transfer to be completed and registration to be effected.

## **EXECUTION OF INSTRUMENTS**

31. **Execution of Instruments.** All contracts, documents or instruments in writing requiring the signature of the Trust may be signed by any officer or Trustee of the Trust and all contracts, documents and instruments in writing so signed shall be binding upon the Trust without any further authorization or formality. The Trustees shall have power from time to time to appoint any officer or officers, or any Person or Persons, on behalf of the Trust either to sign contracts, documents and instruments in writing generally or to sign specific contracts, documents or instruments in writing.

The term “contracts, documents or instruments in writing” as used in these Trustees’ Regulations shall include (without limitation) security certificates, deeds, mortgages, hypothecs, charges, conveyances, transfers and assignments of property real or personal, immovable or movable, agreements, releases, receipts and discharges for the payment of money or other obligations and conveyances, transfers and assignments of shares, share warrants, stocks, bonds, debentures or other securities and all paper writings.

Without limiting the foregoing, any officer or Trustee of the trust shall have authority to sell, assign, transfer, exchange, convert or convey any and all shares, stocks, bonds, debentures, rights, warrants or other securities owned by or registered in the name of the Trust and to sign and execute all assignments, transfers, conveyances, powers of attorney and other instruments that may be necessary for the purpose of selling, assigning, transferring, exchanging, converting or conveying any such shares, stocks, bonds, debentures, rights, warrants or other securities.

The signature or signatures of the officers and Trustees of the Trust and/or of any other Person or Persons appointed as aforesaid by the Trustees may, if specifically authorized by the Trustees, be printed, engraved, lithographed or otherwise mechanically reproduced upon any contracts, documents or instruments in writing or bonds, debentures or other securities of the Trust executed or issued by or on behalf of the Trust and all contracts, documents or instruments in writing or bonds, debentures or other securities of the Trust on which the signature or signatures of any one or more of the foregoing officers or Trustees or the officers or Persons authorized as aforesaid shall be so reproduced pursuant to such authorization by the Trustees shall be deemed to have been manually signed by each such officer, Trustee or Person whose signature is so reproduced and shall be as valid to all intents and purposes as if they had been signed manually and notwithstanding that any such officer, Trustee or Person whose signature is so reproduced may have ceased to hold office at the date of the delivery or issue of such contracts, documents or instruments in writing or bonds, debentures or other securities of the Trust.

## **INCONSISTENCIES WITH DECLARATION OF TRUST OF TRUST**

32. **Inconsistencies.** In the event of any conflict or inconsistency between these Trustees’ Regulations and the provisions of the Amended and Restated Declaration of Trust of the Trust, as amended, restated or amended and restated from time to time, the provisions hereof shall be ineffective and shall be superseded by the provisions of such Amended and Restated Declaration of Trust to the extent necessary to resolve such conflict or inconsistency.