

**AMENDMENT TO THE
MORGUARD REAL ESTATE INVESTMENT TRUST
AMENDED AND RESTATED DECLARATION OF TRUST**

THIS AMENDMENT dated as of May 5, 2021 (the “**Amendment**”) to the amended and restated declaration of trust of Morguard Real Estate Investment Trust (the “**Trust**”) dated as of February 17, 2021 (the “**Declaration of Trust**”) among the trustees of the Trust (the “**Trustees**”).

RECITALS:

- (a) The Trust was established for the principal purpose of providing Unitholders an opportunity to invest in an entity owning a diversified portfolio of primarily income-producing real property investments;
- (b) pursuant to Section 12.3 of the Declaration of Trust, the Unitholders, by special resolution passed at the annual general meeting of the Trust held on May 5, 2021, have approved certain amendments to the Declaration of Trust as set out herein (the “**Amendments**”); and
- (c) the Trustees wish to document and give effect to the Amendments.

In consideration of the foregoing, the Trustees, being all of the Trustees of the Trust, hereby confirm and declare that the Declaration of Trust be amended as set out herein:

ARTICLE 1 – DEFINITIONS AND INTERPRETATION

1.1 Definitions

All capitalized terms used herein (including in the recitals above) and not otherwise defined in this Amendment shall have the meanings given to them in the Declaration of Trust.

ARTICLE 2 – AMENDMENTS TO THE DECLARATION OF TRUST

2.1 Amendments to the Declaration of Trust

The Declaration of Trust is amended as follows:

- 1. Section 5.2(h) of the Declaration of Trust is hereby deleted and replaced with the following:
 - (h) the Trust shall not incur or assume any Indebtedness (excluding any Indebtedness secured against instalment receipts evidencing beneficial ownership of Units) if, after giving effect to incurring or assuming the Indebtedness, the amount of all Indebtedness of the Trust would be more than 65% of the Gross Book Value, unless a majority of the

Trustees, in their discretion, determine that the maximum amount of Indebtedness shall be based on the appraised value of the assets of the Trust;

ARTICLE 3 – MISCELLANEOUS

3.1 Continuance of Declaration of Trust

Except as amended hereby, the Declaration of Trust shall continue in full force and effect, unamended, in accordance with its terms and provisions as modified by the applicable terms and provisions of this Amendment.

3.2 References to Declaration of Trust

On and after the date of this Amendment, each reference in the Declaration of Trust to “this Declaration of Trust”, “hereunder”, “hereof”, or words of like import referring to the Declaration of Trust, and each reference in any related document to the “Declaration of Trust”, “thereunder”, “thereof”, or words of like import referring to the Declaration of Trust, shall mean and be a reference to the Declaration of Trust as amended hereby.

3.3 Counterparts

This Amendment 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. A signed counterpart delivered electronically or by way of portable document format (pdf) shall be binding as an originally signed counterpart.

3.4 Governing Law

This Amendment shall be interpreted and take effect in accordance with the laws of the Province of Ontario.

3.5 Severability

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

[Remainder of page intentionally blank.]

IN WITNESS WHEREOF the Trustees have caused this Amendment to be signed and sealed as of May 5, 2021.

(Signed) "Timothy J. Murphy"

Timothy J. Murphy

(Signed) "Bart S. Munn"

Bart S. Munn

(Signed) "Antony K. Stephens"

Antony K. Stephens

(Signed) "K. Rai Sahi"

K. Rai Sahi

(Signed) "Timothy J. Walker"

Timothy J. Walker

(Signed) "Donald W. Turple"

Donald W. Turple

MORGUARD REAL ESTATE INVESTMENT TRUST

**MORGUARD REIT
AMENDED AND RESTATED DECLARATION OF TRUST
AS OF FEBRUARY 17, 2021**

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**MORGUARD REAL ESTATE INVESTMENT TRUST
AMENDED AND RESTATED DECLARATION OF TRUST
AS OF FEBRUARY 17, 2021**

THIS DECLARATION OF TRUST made in Toronto, Ontario on June 18, 1997, as amended and restated as of October 14, 1997, as further amended and restated as of August 18, 1999, as further amended and restated as of May 18, 2010, as further amended and restated as of May 5, 2015, and as further amended and restated as of February 17, 2021.

RECITAL

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

DECLARATION

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

ARTICLE 1 - INTERPRETATION

Section 1.1 Definitions

In this Declaration of Trust the following terms have the following meanings:

- (a) “**Adjusted Unitholders’ Equity**” means, at any time, the aggregate amount of Unitholders’ equity and the amount of accumulated depreciation and amortization recorded in the books and records of the Trust in respect of its properties calculated in accordance with generally accepted accounting principles, plus any discount on Instalment Receipts receivable;
- (b) “**Affected Holder**” means a person holding or beneficially owning Units in contravention of the restrictions set out in Section 6.11;
- (c) “**Affected Units**” means Units held or beneficially owned by an Affected Holder;
- (d) “**Affiliate**” has the meaning ascribed thereto by the *Securities Act* (Ontario), as amended from time to time; and “**Affiliated**” has a similar meaning;
- (e) “**annuitant**” means the annuitant of a registered retirement savings plan or a registered income fund, all as defined in the Tax Act;
- (f) “**associate**” has the meaning ascribed thereto by the *Securities Act* (Ontario), as amended from time to time;
- (g) “**Audit Committee**” means the committee established pursuant to Section 9.4;

- (h) **“capital cost allowance”** includes any amounts deductible in respect of the cost of investments or other capital assets as is permitted by paragraph 20(1)(a) of the Tax Act;
- (i) **“capital cost allowance of the Trust”** for any year means the amount of capital cost allowance that is deductible under the Tax Act in computing the income of the Trust for purposes of the Tax Act for the year;
- (j) **“Capital Lease Obligation”** of any person means the obligation of the person, as lessee, to pay rent or other payment amounts under a lease of real or personal property which is required to be classified and accounted for as a capital lease or a liability on a consolidated balance sheet of the person in accordance with generally accepted accounting principles;
- (k) **“Chair of Trustees”** means the person holding that office from time to time in accordance with Section 4.2;
- (l) **“Compensation and Governance Committee”** means the committee established pursuant to Section 9.5;
- (m) **“cumulative eligible capital of the Trust”** for any year shall mean the amount of cumulative eligible capital that is deductible under the Tax Act in computing the income of the Trust for income tax purposes for that year;
- (n) **“Declaration of Trust”** means this amended and restated declaration of trust as further amended, supplemented or amended and restated from time to time;
- (o) **“dissenting offeree”** means, where a take-over bid is made for all the Units other than those held by the offeror, a holder of Units who does not accept the take-over bid and includes a subsequent holder of those Units who acquires them from the first holder;
- (p) **“Distributable Income”** has the meaning ascribed thereto in Section 10.1;
- (q) **“Distribution Date”** means on or about the 15th day of April, July and October and on December 31 in each calendar year or such other dates as the Trustees may determine;
- (r) **“generally accepted accounting principles”** means generally accepted accounting principles for publicly accountable enterprises as defined by the Accounting Standards Board of Canada of the Chartered Professional Accountants of Canada, as amended from time to time and subject to Section 1.1(u);
- (s) **“Gross Book Value”** means, at any time, the book value of the assets of the Trust, plus the amount of accumulated depreciation and amortization recorded in the books and records of the Trust calculated in accordance with generally accepted accounting principles;
- (t) **“herein”, “hereof”, “hereby”, “hereunder”** and similar expressions refer to this Declaration of Trust and include every instrument supplemental or ancillary to or in implementation of this Declaration of Trust and, except where the context otherwise requires, not to any particular article, section or other portion hereof;

(u) **“Indebtedness”** means (without duplication), on a consolidated basis, (i) any obligation of the Trust for borrowed money, (ii) any obligation of the Trust incurred in connection with the acquisition of property, assets or business, (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 or liable; provided that (A) for the purpose of clauses (i) through (iv), an obligation will constitute Indebtedness only to the extent that it would appear as a liability on the balance sheet of the Trust in accordance with generally accepted accounting principles and (B) obligations of the Trust under convertible debentures issued by the Trust prior to December 31, 2002 shall not constitute Indebtedness except to the extent that such obligations would appear as liabilities on the balance sheet of the Trust in accordance with generally accepted accounting principles in force on December 31, 2002;

(v) **“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 (including any successor rule or policy thereto);

(w) **“Investment Committee”** means the committee established pursuant to Section 9.3;

(x) **“Lead Trustee”** means the person holding that office from time to time in accordance with Section 4.3;

(y) **“Morguard”** means Morguard Investments Limited;

(z) **“mortgage”** means any mortgage, charge, hypothec, bond, debenture, note or other evidence of Indebtedness directly or indirectly secured by real property;

(aa) **“net realized capital gains of the Trust”** for any year means the amount, if any, by which the amount of the capital gains of the Trust for the year exceeds the aggregate of (i) the amount of any capital losses of the Trust for the year and (ii) four-thirds of the amount of any net capital losses which the Trust is permitted to deduct in computing its taxable income for the year;

(bb) **“net recapture income of the Trust”** for any year means the amount, if any, by which the amount required to be included in the income of the Trust for income tax purposes for such year by way of recapture of capital cost allowance exceeds the amount permitted to be deducted under subsection 20(16) of the Tax Act;

(cc) **“NI 61-101”** means National Instrument 61-101 – *Protection of Minority Security Holders in Special Transactions*, as replaced or amended from time to time (including any successor rule or policy thereto);

(dd) **“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;

(ee) “**President**” means the person holding that office from time to time in accordance with Section 4.3;

(ff) “**Property Management Agreement**” means the agreement between the Trust and Morguard Investments Limited made as of October 14, 1997 as amended and restated by agreement made as of May 5, 2015 by which Morguard’s appointment as the Property Manager of the Trust was continued and extended on and subject to the terms and conditions therein set out, and includes any renewal or extension of such agreement or any agreement in substitution therefor by which Morguard or another person is appointed as the Property Manager;

(gg) “**Property Manager**” means the person engaged from time to time by the Trust under the Property Management Agreement;

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

(ii) “**Register**” means the register which shall be established and maintained pursuant to Section 6.17;

(jj) “**Related Party**” means a person defined as such in Section 3.10;

(kk) “**Secretary**” means the person holding that office from time to time in accordance with Section 4.5;

(ll) “**Sell Notice**” means a notice delivered to an Affected Holder as contemplated in Section 6.11;

(mm) “**take-over bid**” has the meaning ascribed to such term by National Instrument 62-104 – *Take-Over Bids and Issuer Bids*, as replaced or amended from time to time (including any successor rule or policy thereto);

(nn) “**Tax Act**” means the *Income Tax Act* (Canada) and the regulations thereunder, as amended from time to time;

(oo) “**Treasurer**” means the person holding that office from time to time in accordance with Section 4.6;

(pp) “**Trust**” means Morguard Real Estate Investment Trust constituted hereunder;

(qq) “**Trustees**” means, as of any particular time, the trustees holding office under and in accordance with this Declaration of Trust at such time, whether they be the signatories hereto or additional or successor trustees;

- (rr) “**Trustees’ Regulations**” means the regulations adopted by the Trustees pursuant to Section 3.4;
- (ss) “**Unit**” means a unit of interest in the Trust in accordance with the provisions hereof and includes a fraction of a Unit;
- (tt) “**Unitholder**” means a person whose name appears on the Register as a holder of Units; and
- (uu) “**Unit Option Plan**” means the Unit option plan adopted by the Trust.

Section 1.2 Name and Use of Trade-Marks

The name of the trust created by this Declaration of Trust shall be “**Morguard Real Estate Investment Trust**” and the French form of the name shall be “**Fonds de placement immobilier Morguard**”. As far as practicable and except as otherwise provided in this Declaration of Trust, the Trustees shall conduct the Trust activities, hold property, execute all documents and take all legal proceedings under that name, in either its English or French form. The Trust may be legally designated by either the English or French form of its name or both forms and any mention of the name of the Trust herein shall refer to both the English and French forms of the name of the Trust.

It is acknowledged and agreed by the Trust that the name and trade-mark “**Morguard**” and related marks and designs (including stylized “**M**” logos) shall at all times remain and be at all times the property of Morguard. Morguard and the Trust have entered into a non-exclusive, royalty-free trade-mark license agreement pursuant to which Morguard has licensed the use of the “**Morguard**” name and related marks for use by the Trust in the operation of its business. In the event that Morguard is no longer the Property Manager for any reason, including default under the Property Management Agreement by Morguard, all use by the Trust of the Morguard name and related marks and designs shall be terminated by the Trust within thirty days after termination of Morguard as Advisor and neither the name nor any other mark nor any recognizable or identifiable variation of either shall thereafter be used by the Trust. It is understood and agreed by the Trust that Morguard shall be entitled to use and shall not be restricted by this Declaration of Trust or the license agreement in its use of the name “**Morguard**” and related marks and designs in its own operations and in the management and operation of other persons for whom it provides services both during and after the expiration or termination of this Declaration of Trust.

Section 1.3 Use of Name

Should the Trustees determine that the use of the name “**Morguard Real Estate Investment Trust**” or the French form thereof 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.

Section 1.4 Places of Business

The principal office and centre of administration of the Trust shall be at 55 City Centre Drive, Suite 1000, Mississauga, Ontario L5B 1M3, 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.

Section 1.5 Nature of the Trust

The Trust is an unincorporated investment trust. The Trust, its Units 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 investment trusts and for this Trust by:

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

The sole undertaking of the Trust is the investing of its funds and property (other than real property) and the acquiring, holding, maintaining, improving, leasing or managing of any real property or interest in real property that is capital property of the Trust or any combination of the foregoing activities.

The beneficial interests and rights of a holder of any Unit shall be limited to the right to participate pro rata in distributions when and as declared by the Trustees as contemplated by Article 10 and distributions upon the termination of the Trust as contemplated in Article 13. 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 officer or other employee of the Trust or any of them for any purpose be or be deemed to be treated in any way whatsoever to be, liable or responsible hereunder as partners or joint venturers. 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 in accordance with rights covered and the liabilities and obligations imposed upon them by this Declaration of Trust.

ARTICLE 2 - TRUSTEES

Section 2.1 Number

There shall be no fewer than seven nor more than ten Trustees. The number of Trustees is eight and may be changed from time to time as hereinafter provided. The number of Trustees may be increased or decreased within such limits from time to time by the Unitholders or by the Trustees, in each case subject to and in compliance with Section 2.3.

Section 2.2 Term of Office

Each Trustee who executes this Declaration of Trust or who is hereafter elected or appointed in accordance with this Declaration of Trust shall (except as provided in Section 2.7) hold office until the next annual meeting of Unitholders or until a successor has been duly elected or appointed, as the case may be, and has qualified to serve as Trustee and has accepted such election or appointment.

Section 2.3 Qualifications of Trustees

A Trustee shall be an individual at least 18 years of age, but not more than 69 years of age upon the date of election or appointment, as applicable, who is not of unsound mind and has not been found to be of unsound mind by a court in Canada or elsewhere, and who does not have the status of bankrupt. Trustees are not required to hold Units. A majority of the Trustees must be resident Canadians.

Section 2.4 Appointment and Election of Trustees

The election of Trustees, shall be by the vote of Unitholders. The election or appointment of any Trustee (other than an individual who is serving as a Trustee immediately prior to election) shall not become effective unless and until such person shall have in writing accepted his election or appointment, as the case may be, and agreed to be bound by the terms of this Declaration of Trust.

Between meetings of Unitholders, the Trustees may appoint an additional Trustee or Trustees if, after the appointment, the total number of Trustees would not be greater than the lesser of:

- (a) the maximum number of Trustees provided for in Section 2.1; and
- (b) the number of trustees which is one and one-third times the number of Trustees immediately following the last annual meeting of Unitholders.

Section 2.5 Independent Trustees

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

Section 2.6 Resignation, Removal and Death of Trustees

A Trustee may resign at any time by an instrument in writing signed by such Trustee and delivered or mailed to the Lead Trustee, or if there is no Lead Trustee, the Chair of Trustees, the President or the Secretary. Such resignation shall take effect on the date such notice is given or at any later time specified in the notice. A Trustee may be removed at any time with or without cause by a majority of the votes cast at a meeting of Unitholders called for that purpose or with cause by the votes cast by two-thirds of the remaining Trustees at a meeting called for that purpose. Upon the resignation or removal of any Trustee, or his otherwise ceasing to be a Trustee, he shall (i) cease to have the rights, privileges and powers of a Trustee hereunder; (ii) execute and deliver such documents as the remaining Trustees shall require for the conveyance of any Trust property held in his name; (iii) account to the remaining Trustees as they may require for all property which he holds as Trustee; and (iv) resign from all representative or other positions held by him on behalf of the Trust, including without limitation, as a director or officer of any corporation in which the Trust beneficially owns any securities; and only thereupon shall he 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 require as provided in this section. 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.

Section 2.7 Vacancies

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

Section 2.8 Successor and Additional Trustees

The right, title and interest of the Trustees in and to the property 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 2.5 or otherwise.

Section 2.9 Compensation and Other Remuneration

Trustees other than Trustees who are officers of the Trust employed by the Trust shall be entitled to receive for their services as Trustees such reasonable compensation as the Trustees may determine from time to time as well as amounts as reimbursement for their out-of-pocket expenses incurred in acting as Trustees or on any committee of Trustees, including out-of-pocket expenses incurred in attending meetings of the Trustees, the Investment Committee, the Compensation and Governance Committee or the Audit Committee. All Trustees are entitled to participate in the Unit Option Plan. 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, 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.

Section 2.10 Validity of Acts

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

ARTICLE 3 - TRUSTEES' POWERS AND DUTIES

Section 3.1 General Powers

The Trustees, subject only to the specific limitations contained in this Declaration of Trust, including without limitation Article 5 hereof, shall have, without further or other authorization and free from any power of control on the part of the Unitholders, full, absolute, and exclusive power, control and authority over the assets of the Trust and over the undertaking and affairs of the Trust to the same extent as if the Trustees were the sole owners thereof 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 purposes of the Trust or the conducting of the undertaking and affairs of the Trust. In construing the provisions of this Declaration of Trust, presumption shall be in favour of the granted powers and authority 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 in carrying out investment activities shall 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.

Section 3.2 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 or a written resolution signed by all 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 of a property or an investment in a property, whether by co-investment or otherwise, in which any Related Party of the Trust has any direct or indirect interest, whether as owner, operator or manager;
- (b) a material change to any agreement with a Related Party of the Trust or any renewal, extension or termination thereof or any increase in any fees (including any transaction fees) or distributions payable thereunder;
- (c) the entering into of, or the waiver, exercise or enforcement of any rights or remedies under, any agreement entered into by the Trust or any of its subsidiaries, or the making, directly or indirectly, of any co-investment, in each case with (i) any Trustee, (ii) any entity directly or indirectly controlled by any Trustee in which any Trustee holds a significant interest, or (iii) any entity for which any Trustee acts as a director or 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; or

- (e) decisions relating to any claims by or against one or more parties to any agreement with any Related Party of the Trust.

Section 3.3 Specific Powers and Authorities

Subject only to the express limitations contained in this Declaration of Trust, including without limitation Article 5 hereof, and in addition to any powers and authorities conferred by this Declaration of Trust or which the Trustees may have by virtue of any present or future statute or rule of law, the Trustees without any action or consent by the Unitholders shall have and may exercise at any time and from time to time the following powers and authorities which may or may not be exercised by them in their sole 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 (or other securities convertible to or exchangeable for 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 of the Trust and hold for investment the entire or any participating interest in notes, bonds or other obligations which are secured by mortgages; and 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 or Trustees by one or more of the Trustees or by a duly authorized officer, employee, agent or any nominee of the Trust;
- (d) to enter into leases, contracts, obligations and other agreements for a term extending beyond the term of office of the Trustees and beyond the possible termination of the Trust or for a lesser term;
- (e) to borrow money and to evidence the borrowing by executing and delivering negotiable or non-negotiable instruments or securities; to guarantee, indemnify or act as surety with respect to payment or performance of obligations of any person; 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) to lend money or other property of the Trust, whether on a secured or unsecured basis;
- (g) to incur and pay out of the property of the Trust any charges or expenses and disburse any funds of the Trust, which charges, expenses or disbursements are, in the opinion of the Trustees, necessary or incidental to or desirable for the carrying out of any of the purposes of the Trust or conducting the business of the Trust including, without limitation, taxes or other government 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;
- (h) to deposit funds of the Trust in banks, trust companies and other depositories, whether or not such deposits will draw interest, the same to be subject to withdrawal on such terms and in such manner and by such person or persons (including any one or more Trustees, officers, agents or representatives) as the Trustees may determine;
- (i) to possess and exercise all the rights, powers and privileges appertaining to the ownership of or interest in all or any mortgages, securities, real property or other property 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, by electronic means, as applicable, 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; the right 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; the right 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 by the Trust or to the sale, mortgage or lease of the property of any such person; and to do any act with reference thereto, including the delegation of discretionary powers, the exercise of options, the making of agreements or subscriptions and the payment of expenses, assessments or subscriptions, which it may consider necessary or advisable in connection therewith;
- (j) to elect, appoint, engage or employ officers for the Trust (including the Chair of Trustees, President, Executive Vice-President, Vice-Presidents, Secretary and such 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, to delegate any of the powers and duties of the Trustees (including the power of delegation) to any one or more Trustees, agents, representatives, officers, employees, independent contractors or other persons without regard to whether such power, authority or duty is normally granted or delegated by trustees;

- (k) to collect, sue for and receive all 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;
- (l) to renew, modify, release, compromise, extend, consolidate or cancel, in whole or in part, any obligation to or of the Trust;
- (m) to purchase and pay for out of the assets of the Trust insurance contracts and policies insuring the assets of the Trust against any and all risks and insuring the Trust and/ or any or all of the Trustees, the Unitholders or officers of the Trust against any and all claims and liabilities of any nature asserted by any person arising by reason of any action alleged to have been taken or omitted by the Trust or by the Trustees, Unitholders or officers of the Trust;
- (n) 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 except as prohibited by law, by and/ or in the name of the Trust or one or more of the Trustees or any other person, on such terms, in such manner, with such powers in such person as the Trustees may determine and with or without disclosure that the Trust or Trustees are interested therein; provided, however, that should legal title to any of the assets of the Trust be held by and/ or in the name of any person or persons other than the Trust or the Trustees, the Trustees shall require such person or persons to execute a declaration of trust acknowledging that legal title to such assets are held in trust for the benefit of the Trust;
- (o) to determine conclusively the allocation to capital, income or other appropriate accounts of all receipts, expenses, disbursements and property of the Trust;
- (p) to issue Units and other securities of the Trust (by way of instalment receipts or otherwise) from time to time and, if necessary or desirable to prepare, sign and file or cause to be prepared, signed and filed a prospectus, offering memorandum, or similar document and any amendment thereto, relating to or resulting from an offering of the Units or other securities issued or held by the Trust and to pay the cost thereof and related thereto out of the property of the Trust whether or not such offering is or was of direct benefit to the Trust or those persons (if any) who were Unitholders immediately prior to such offering;

- (q) to make or cause to be made application for the listing on any stock exchange of any Units or other securities of the Trust, and to do all things which in the opinion of the Trustees may be necessary or desirable to effect or maintain such listing or listings;
- (r) to enter into any agreement relating to the issuance of Units by way of instalment receipts and to take all actions necessary or desirable to obtain the benefits of and perform its obligations under such agreement;
- (s) 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;
- (t) to do all such acts and things and to exercise such powers which are delegated to the Trustees by any person who co-owns real property with the Trust; and
- (u) to do all other such acts and things as are incidental to the foregoing, and to exercise all powers which 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.

Section 3.4 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 (the “**Trustees’ Regulations**”) containing provisions relating to the business of the Trust, the conduct of its affairs, their rights or powers and the rights or powers of its Unitholders or officers not inconsistent with law or with this Declaration of Trust. The Trustees shall also be entitled to make any reasonable decisions, designations or determinations not contrary to this Declaration of Trust which they may determine are necessary or desirable in interpreting, applying or administering this Declaration of Trust or in administering, managing or operating the Trust. Any regulations, including, without limitation, Trustees’ Regulations, decisions, designations or determinations made pursuant to this section shall be conclusive and binding upon all persons affected thereby.

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.

Section 3.5 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.

Section 3.6 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 carry out their functions hereunder as Trustees honestly, in good faith and in the best interests of the Trust and the Unitholders and that in connection therewith they exercise that 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 a 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 business and affairs of the Trust.

Section 3.7 Reliance Upon Trustees

Any person dealing with the Trust in respect of any matters pertaining to the assets of the Trust and any right, title or interest therein or to the Trust or to securities of the Trust shall be entitled to rely on a certificate, statutory declaration or resolution executed or certified by the Trustees as to the capacity, power and authority of the Trustees or any other person to act for and on behalf and in the name of the Trust. No person dealing with the Trustees shall be bound to see to the application of any funds or property passing into the hands or control of the Trustees. The receipt of the Trustees for money or other consideration shall be binding upon the Trust.

Section 3.8 Determinations of Trustees Binding

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

Section 3.9 Conflict of Interest

- (a) If a Trustee or an officer of the Trust or Property Manager or any director or officer thereof or any Affiliate of any of them is a party to a material contract or transaction or proposed material contract or transaction with the Trust or is a director or officer or employee of, or has a material interest in, any person who is a party to a material

contract or transaction or proposed material contract or transaction with the Trust, the Trustee, director or officer or the Property Manager (on behalf of itself or its Affiliate), as the case may be, shall disclose in writing to the Trustees or request to have entered in the minutes of a meeting of Trustees the nature and extent of its interest.

- (b) The disclosure required in the case of a Trustee or any Affiliate shall be made,
 - (i) at the meeting of Trustees or the Investment Committee, as the case may be, at which a proposed contract or transaction is first considered;
 - (ii) if the Trustee or Affiliate was not then interested in a proposed contract or transaction, at the first meeting after he becomes so interested;
 - (iii) if the Trustee or Affiliate 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, or an Affiliate thereof, at the first meeting of Trustees after he assumes that capacity.
- (c) The disclosure required in the case of or the Property Manager or any director or officer thereof or an officer of the Trust who is not a Trustee, or an Affiliate of any of them, shall be made,
 - (i) promptly after it/he 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 Investment Committee or of the Trustees;
 - (ii) if it/he becomes interested after a contract is made or a transaction is entered into, promptly after it/he becomes so interested; or
 - (iii) if a person who is interested in a contract or transaction later becomes an officer of the Trust, or an officer or director of the Advisor or the Property Manager or any Affiliate, promptly after he assumes the capacity.
- (d) Notwithstanding paragraphs (b) and (c), 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 business of the Trust, would not require approval by the Trustees or Unitholders, he shall disclose in writing to the Trustees or request to have entered in the minutes of meetings of Trustees the nature and extent of his interest promptly after he becomes aware of the contract or transaction or proposed contract or transaction.
- (e) A Trustee referred to in this section shall not vote on any resolution to approve the contract or transaction unless the contract or transaction is, (i) one relating primarily to his remuneration as a Trustee, officer, employee or agent of the Trust; or (ii) one for indemnity under Section 14.1 hereof or for the purchase of liability insurance.

- (f) For the purposes hereof, a general notice to the Trustees by a Trustee or an officer of the Trust or any other person referred to in this Section 3.9 disclosing that he is a director, officer or employee 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.
- (g) Where a material contract is made or a material transaction is entered into between the Trust and any one or more of its Trustees or officers, or between the Trust and another person of which a Trustee or officer of the Trust is a director or officer or in which he has a material interest,
 - (i) the Trustee or officer, as applicable, 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 the Trustee is present at or is counted to determine the presence of a quorum at the meeting of Trustees or committee of Trustees that authorized the contract or transaction, if the Trustee disclosed his interest in accordance with this Section 3.10 and the contract or transaction was reasonable and fair to the Trust at the time it was so approved.
- (h) Notwithstanding anything in this section, but without limiting the effect of paragraph (g) hereof, a Trustee or 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 contract or transaction by reason only of his holding the office of Trustee or officer, 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 the Trustee's or officer's interest therein void or voidable.
- (i) Subject to paragraphs (g) and (h) hereof, where any Trustee or officer of the Trust fails to disclose his interest in a material contract or transaction in accordance with this Declaration of Trust or otherwise fails to comply with this section, the Trustees or any Unitholder, in addition to exercising any other rights or remedies in connection with such failure exercisable at law or in equity, may apply to a court for an order setting aside the contract or transaction and directing that the Trustee or officer account to the Trust for any profit or gain realized.

Section 3.10 Related Party Transactions

- (a) Notwithstanding anything contained elsewhere in this Declaration of Trust to the contrary, the provisions of this section shall apply at all times after the date hereof to any person who is a “**related party**” of the Trust within the meaning of MI-61-101 (as such may be amended or replaced from time to time), such person being referred to herein as a “**Related Party**”.

- (b) For any proposed purchase or sale of real property from or to a Related Party, the Trust shall comply with the provisions of NI 61-101 requiring the preparation of and provision of an independent valuation for and to Unitholders, regardless of whether an exemption to the requirements of NI 61-101 is available and regardless of the dollar value of the real property.
- (c) Without limitation, and in addition to the requirement, if any, under NI 61-101 or this Declaration of Trust to obtain the approval of Unitholders, or to obtain minority approval within the meaning of NI 61-101, for any related party transaction within the meaning of NI 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 related party transaction, unless the transaction is determined to be on commercially reasonable terms and is approved by a majority of the Trustees who are not parties to such transaction, or who are not directors, officers of employees of, or who do not have a material interest in, any person (other than the Trust) who is a party to such transaction.

ARTICLE 4 – CHAIR, LEAD TRUSTEE, OFFICERS OF THE TRUST

Section 4.1 General

The Trust shall have a Chair of Trustees and, where the Chair of Trustees is not an Independent Trustee, a Lead Trustee, and a Chief Executive Officer, a President, an Executive Vice-President, a Chief Financial Officer Vice-Presidents and a Secretary and such other officers as the Trustees may appoint from time to time. One person may hold two or more offices. All officers shall be appointed by the Trustees. Officers of the Trust shall be discharged, and their remuneration determined, by the Trustees.

Section 4.2 Chair of Trustees

The Chair of Trustees shall be appointed from among the Trustees. When present, the Chair of Trustees shall be chair 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.

Section 4.3 Lead Trustee

If the Chair of Trustees is not an Independent Trustee, a lead trustee (the “**Lead Trustee**”) shall be appointed from among the Independent Trustees. The Lead Trustee will act as an effective leader of the board of Trustees in respect of matters required to be considered by the Independent Trustees, and will ensure that the board of Trustees’ agenda will enable it to successfully carry out its duties.

Section 4.4 President

The President shall also serve as the Chief Executive Officer of the Trust. In the absence of the Chair of Trustees, the President shall be the chair of meetings of Trustees and Unitholders when present.

Section 4.5 Executive Vice-President

The Executive Vice-President shall also serve as the Chief Financial Officer of the Trust and shall keep proper accounting records, have supervision over the safekeeping of securities and the deposit and disbursement of funds of the Trust, report as required on the financial position of the Trust and have such other powers and duties as the Trustees may determine from time to time.

Section 4.6 Vice-Presidents

The Trust shall have such Vice-Presidents as the Trustees from time to time determine with such titles as they may approve. The Vice-Presidents shall have such duties and responsibilities as may be determined from time to time by the Chief Executive Officer and shall report to the Chief Executive Officer or, as he so directs, to the Chief Financial Officer.

Section 4.7 Secretary

The Secretary shall give required notice of meetings to Unitholders, Trustees, auditors and members of committees, act as secretary of meetings of Trustees and Unitholders when present, keep and enter minutes of meetings, maintain the corporate records of the Trust and shall have such other powers and duties as the Trustees may determine from time to time.

Section 4.8 Assistants

Any of the powers and duties of an officer to whom an assistant has been appointed may be exercised and performed by such assistant unless the Trustees otherwise direct.

Section 4.9 Term of Office

The Chair of Trustees, Lead Trustee and any officer shall hold office until his successor is elected or appointed, provided that the Trustees may at any time remove an officer from office at any time in their sole discretion.

ARTICLE 5 - INVESTMENTS AND OPERATIONS OF THE TRUST

Section 5.1 Investment Restrictions

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

- (a) the Trust shall focus its acquisition activities primarily on income-producing office, industrial, retail and mixed use properties, but may acquire other income producing real property, including, without limitation, residential apartment buildings;
- (b) the Trust shall not acquire, or otherwise invest in, an interest in, real property if, after giving effect to the proposed acquisition or investment, the cost to the Trust of the property or investment (net of the amount of acquisition debt) will exceed 15% of the Gross Book Value; provided that this restriction shall not apply to:
 - (i) the investment by the Trust in the development of the Gary Parkade site at 240 9th Avenue South West, Calgary, Alberta or the redevelopment of Burquitlam Plaza at 526-562 Clarke Road, Coquitlam, British Columbia; or

- (ii) the acquisition by the Trust of an interest or interests in a joint venture corporation or other entity in which, before and at the date of acquisition, the Trust holds an interest;
- (c) notwithstanding anything else contained in this Declaration of Trust, the Trust shall not make any investment, take any action or omit to take any action that would result in Units not being units of a “mutual fund trust” at all times within the meaning of the Tax Act; that would result in Units being disqualified for investment by registered retirement savings plans, registered retirement income funds or deferred profit sharing plans; that would result in the Trust being liable under the Tax Act to pay tax as a result of holdings by the Trust of foreign property as defined in the Tax Act; that would result in Units being foreign property for the purpose of the Tax Act; or that would result in the Trust paying tax under Part XI of the Tax Act for exceeding certain investment limits or for any other reason;
- (d) the Trust may invest in real property through joint venture arrangements;
- (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 receivables (including, without limitation, some or all of the receivables under any agreement relating to the issuance of Units by way of instalment receipts), debt securities issued or guaranteed by the Government of Canada or a province thereof or by the United States of America or a state thereof, or money market instruments of, or guaranteed by, a Canadian bank listed in Schedule I to the *Bank Act* (Canada) maturing within one year from the date of issue, the Trust may not hold securities other than securities of a joint venture corporate or other entity or a limited partnership as contemplated in this Section 5.1, or an entity owned, directly or indirectly, by the Trust formed and operated solely for the purpose of holding real property or an interest therein or a joint venture entity, or some or all of the receivables under any agreement relating to the issuance of Units by way of instalment receipts, provided that, notwithstanding anything in this Declaration of Trust to the contrary, the Trust may acquire securities of other Canadian real estate investment trusts and the Trust may acquire and hold:
 - (i) all of the issued and outstanding shares in the capital of Cambridge Ice Centre Inc. relating to the operation of an ice rink facility at the Cambridge Centre, Cambridge, Ontario; and
 - (ii) all of the issued and outstanding shares in the capital of Morpost Brandon Services Ltd., relating to the operation of a post office at Shoppers Mall, Brandon, Manitoba;
- (f) except as otherwise prohibited in this Declaration of Trust, the Trust may invest in interests (including fee ownership and leasehold interests) in income-producing real property in Canada and the United States;
- (g) the Trust shall not invest in rights to or interests in mineral or other natural resources, including oil or gas, except as incidental to an investment in real property;

- (h) the Trust shall not invest in operating businesses (other than an undertaking in which the Trust is permitted to engage under the *Income Tax Act* (Canada)) or acquire interests in general partnerships or limited partnerships, provided that the Trust may invest in a limited partnership if:
 - (i) the limited partnership is formed and operated solely for the purpose of holding real property; and
 - (ii) the Trust shall have received an opinion from legal counsel selected by the Trust to the effect that the investment (a) would not result in the Trust or any registered retirement savings plan, registered income fund or deferred profit sharing plan being liable under the Tax Act to pay tax imposed as a result of holdings by the Trust of foreign property as defined in the Tax Act, (b) would not disqualify the Trust as a “mutual fund trust” within the meaning of the Tax Act and (c) would not result in the Trust losing any status under the Tax Act that is otherwise beneficial to the Trust and its Unitholders;
- (i) the Trust shall not invest in raw land for development or development properties except for properties which are appropriately zoned and serviced or are capable of being so zoned and serviced and which are either (a) existing properties with additional development potential or properties adjacent to existing properties of the Trust for the purpose of the renovation or expansion of existing facilities, or (b) intended for the development of new facilities which will be capital property of the Trust, provided, however, the aggregate estimated committed cost to complete the developments referred to in (b) shall not exceed, in the aggregate, 10% of the Gross Book Value and, if the estimated committed cost to complete the development exceeds 5% of Gross Book Value, satisfactory leasing arrangements (as determined by the Trustees in their discretion) are in place for not less than 50% of the rentable area of such facility and provided further that the development and redevelopment costs of the Gary Parkade at 240 9th Avenue South West, Calgary, Alberta and Burquitlam Plaza at 526-562 Clarke Road, Coquitlam, British Columbia shall be excluded from this restriction;
- (j) the Trust may invest in mortgages and mortgage bonds (including participating or convertible mortgages) where:
 - (i) the real property which is security therefor is income-producing real property which otherwise meets the investment restrictions set out in this Declaration of Trust;
 - (ii) the mortgage is the first mortgage registered on title to the real property which is security therefor (other than construction financing which is subsequently put in place on the property);
 - (iii) at the date of making a mortgage, the amount of the mortgage is not in excess of 75% of the market value of the property securing the mortgage and the mortgage has at least 1.2 times debt service coverage based on then current industry rates and amortization periods; and

- (iv) the aggregate value of all investments of the Trust in these mortgages, after giving effect to the proposed investment, will not exceed 15% of the Gross Book Value; and
- (k) subject to paragraph (c) above, the Trust may invest an amount (which, in the case of an amount invested to acquire real property, is the purchase price less the amount of any Indebtedness assumed or incurred by the Trust and secured by a mortgage on such property) up to 15% of the Gross Book Value in investments or transactions which do not comply with paragraphs (e), (i) and (j) above.

Any reference in the foregoing to investment in real property includes an investment in a joint venture arrangement, provided that it does not constitute a partnership investment except as permitted in this Section 5.1. For the purposes of the foregoing restrictions, the assets, liabilities, and transactions of a corporation wholly-owned or partially owned by the Trust will be deemed to be those of the Trust on a proportionate and consolidated basis. Notwithstanding anything referred to above, the Trust shall not be prohibited from holding any receivables due pursuant to any agreement relating to the issuance of Units by way of instalment receipts.

Section 5.2 Operating Policies

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

- (a) the Trust shall not purchase, sell, market or trade in currency or interest rate futures contracts otherwise than for hedging purposes where, for the purposes hereof, the term “hedging” shall have the meaning ascribed thereto by National Policy Statement No. 39 adopted by the Canadian Securities Administrators, as amended from time to time;
- (b) any written instrument creating an obligation which is or includes a lease, sub-lease or mortgage of the Trust, and any other written instrument which is, in the judgment of the Trustees or the Investment Committee, a material obligation, shall contain a provision or be subject to an acknowledgment to the effect that the obligation being created is not personally binding upon, and that resort shall not be had to, nor shall recourse or satisfaction be sought from, the private property of any of the Trustees, Unitholders, annuitants under a plan of which a Unitholder acts as a trustee or carrier, or officers, employees or agents of the Trust, but that only property of the Trust shall be bound; the Trust, however, is not required but will use commercially reasonable efforts in the circumstances to comply with this requirement in respect of existing material obligations assumed by the Trust upon the acquisition of real property;
- (c) except for redevelopment, renovation or expansion of existing facilities and the development of new facilities as permitted under Section 5.1(i), the Trust shall not engage in construction or development of real property except as necessary to maintain its real properties in good repair or to enhance the income-producing ability of properties in which the Trust has an interest;

- (d) 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 or, as applicable, a limited partnership in which the Trust is permitted to invest under the terms of its investment restrictions or by any other person of the Trustee's choosing, if the Trustees determine that title so held and registered is advantageous to the Trust and if the person holding title executes a declaration of trust or a nominee agreement acknowledging that legal title to the real property is held in trust for the benefit of the Trust;
- (e) the Trust shall not, without the consent of the Investment Committee or a majority of the Independent Trustees, lease or sublease to any person, any real property, premises or space where that person and its Affiliates would, after the contemplated lease or sublease, be leasing or subleasing real property, premises or space having a fair market value, net of encumbrances, in excess of 10% of the Gross Book Value;
- (f) the Trust shall not enter into any transaction involving the purchase of lands or land and improvements thereon and the leasing thereof back to the vendor where the fair market value net of encumbrances of the property being leased to the vendor, together with all other property being leased by the Trust to the vendor and its Affiliates, is in excess of 10% of the Gross Book Value;
- (g) the limitations contained in Section 5.2(e) and (f) shall not apply where a person to whom the lease or sublease is made is, or where the lease or sublease is guaranteed by, (i) the Government of Canada, the Government of the United States, any province of Canada, any state of the United States, any municipality in Canada or the United States, or any agency thereof; (ii) any corporation, the bonds or debentures or other evidences of Indebtedness of, or guaranteed by, which are authorized as an investment for insurance companies pursuant to paragraph 86(1)(k) of the *Canadian and British Insurance Companies Act* in effect on December 31, 1991; or (iii) a Canadian chartered bank or a trust company registered under the laws of Canada or a province of Canada;
- (h) the Trust shall not incur or assume any Indebtedness (excluding any Indebtedness secured against instalment receipts evidencing beneficial ownership of Units) if, after giving effect to incurring or assuming the Indebtedness, the amount of all Indebtedness of the Trust would be more than 60% of the Gross Book Value, unless a majority of the Trustees, in their discretion, determine that the maximum amount of Indebtedness shall be based on the appraised value of the assets of the Trust;
- (i) the Trust shall not incur, assume or guarantee any Indebtedness under a mortgage by 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 unless the mortgage, if granted by the Trust directly, would not cause the Trust to otherwise contravene the restrictions set out under this Article 5;
- (j) the Trust shall obtain and maintain at all times insurance coverage for 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 or the Investment Committee consider appropriate, taking into account all relevant factors, including the practices of owners of comparable properties;

- (k) no acquisition shall be made nor any development undertaken unless and until the officers of the Trust prepared and presented to the Investment Committee or the Trustees a written report containing their recommendation that the Trust 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 financing arrangements, leasing and economic and market data) as is reasonably necessary to the investment decision. The Independent Trustees may decide that an acquisition may not proceed until the Trust has obtained an independent appraisal of the property;
- (l) the Trust shall conduct a Phase I environmental site assessment of each real property to be acquired by it and, if the Phase I environmental assessment report recommends that further environmental assessments or investigations be conducted and the officers of the Trust, the Investment Committee or the Trustees consider it to be commercially reasonable to do so, the Trust shall conduct such further environmental assessments or investigations, in each case by an independent and experienced environmental consultant; before any acquisition is made, the assessment shall be satisfactory to the Investment Committee or the Trustees and a program satisfactory to the Investment Committee or the Trustees for necessary remediation shall be in place; when completed, remedial action shall be subject to the review of independent and experienced environmental consultants and take into account accepted standards and practices of owners of comparable properties in the jurisdiction;
- (m) all new leases granted by the Trust shall contain appropriate covenants from the lessees respecting environmental matters as determined by the Trustees or the Investment Committee from time to time in accordance with the environmental policies of the Trust;
- (n) the Trust shall have an environmental management program (including policies and procedures) and diligently pursue its implementation including regular inspections (and, if necessary or desirable, environmental site assessments) of its properties (including tenant space) to ensure compliance with all applicable environmental laws and regulations and the environmental policies and procedures adopted by the Trust;
- (o) the Trust shall conduct its business in accordance with all applicable laws and regulations;
- (p) at no time shall Indebtedness aggregating more than 15% of the Gross Book Value (other than trade payables, accrued expenses and distributions payable) be at floating interest rates or have maturities of less than one year, not including Indebtedness with an original maturity of more than one year falling due within the next 12 months; and

- (q) the Trust shall not issue additional Units unless the Trustees consider that, based upon the market price of the Units prevailing at such time, the issuance of Units would be expected to result in a yield to Unitholders over the ensuing 24 month period which at least equals the current yield to Unitholders.

Any reference in the foregoing to investment in real property includes an investment in a joint venture arrangement, provided that it does not constitute a partnership interest except as may be permitted in accordance with Section 5.1. For the purposes of the foregoing restrictions, the assets, liabilities, and transactions of a corporation wholly-owned or partially owned by the Trust will be deemed to be those of the Trust on a proportionate and consolidated basis. Notwithstanding anything referred to above, the Trust shall not be prohibited from holding any receivables due pursuant any agreement relating to the issuance of Units by way of instalment receipts.

Section 5.3 Investment Guidelines

The Trustees have established guidelines pertaining to the investment of assets of the Trust (which guidelines comply with the restrictions contained in Section 5.1 and Section 5.2 hereof) and shall review such guidelines from time to time and, in any event, at least annually, and modify them, to the extent that they deem that to do so would be prudent and in the best interests of the Trust and the Unitholders. Without limiting the generality of the foregoing, the guidelines adopted from time to time may include particulars relating to the size and location of real properties to be acquired by the Trust, capitalization rates and internal rates of return relative to financing rates, exposure to lease roll-overs, interest rates and credit risks.

The assets of the Trust shall at all time be invested in accordance with the prevailing guidelines adopted by the Trustees provided that:

- (a) the Trustees may amend or modify the prevailing guidelines at any time; and
- (b) subject to Section 5.1 and Section 5.2 hereof, the Trust may invest in any asset which does not comply with, or otherwise satisfy, the prevailing guidelines, if, and to the extent that, the Trustees deem that to do so would be prudent and in the best interests of the Trust and the Unitholders.

Section 5.4 Annual Plan

The Trustees shall adopt an annual business plan (which plan shall comply with the restrictions contained in Section 5.1 and Section 5.2 hereof) and shall review such plan from time to time, and in any event, at least annually, and modify the same to the extent that the Trustees deem that to do so would be prudent and in the best interests of the Trust and the Unitholders.

The business and affairs of the Trust shall at all times be conducted in accordance with the prevailing annual business plan adopted by the Trustees; provided, however, that:

- (a) the Trustees may amend or modify the prevailing annual business plan at any time; and
- (b) the Trust may act, or omit to act, in a manner not consistent with the prevailing annual business plan if the approval of the Trustees is obtained.

Section 5.5 Registered Investment

The Trustees shall cause the Trust to do all such things and take all such action as may be necessary to obtain, as soon as practicable following the Closing Date, status for the Trust as a “registered investment” under the Tax Act and shall do all such things and take such action as may be necessary from time to time to ensure that the Trust shall retain such status.

Section 5.6 Application of Investment Restrictions and Operating Policies

With respect to the investment restrictions and operating policies contained in Section 5.1 and Section 5.2, where any maximum or minimum percentage limitation is specified in any of the restrictions therein contained, such restrictions shall be applied on the basis of the relevant amounts calculated immediately after the investment is made. Any subsequent change in any percentage limitation which results from a subsequent change in the Gross Book Value will not require divestiture of any investment.

Section 5.7 Regulatory Matters

If at any time a regulatory authority having jurisdiction over the Trust or any property of the Trust shall enact any law, regulation or requirement which is in conflict with any investment restriction of the Trust then in force, the restriction in conflict shall, if the Trustees on the advice of legal counsel to the Trust so resolve, be deemed to have been amended to the extent necessary to resolve the conflict, and, notwithstanding anything to the contrary, the resolution of the Trustees shall not require the prior approval of Unitholders.

ARTICLE 6 - TRUST UNITS

Section 6.1 Units

The beneficial interests in the Trust shall be divided into equal interests of one class referred to as Units (which may be represented by instalment receipts), which shall be entitled to the rights and subject to the restrictions, conditions and limitations set out herein. The number of Units which the Trust may issue is unlimited. The issued and outstanding Units may be subdivided or consolidated from time to time by the Trustees.

Section 6.2 Ranking of Units

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

Section 6.3 Units Non-Assessable

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 a money consideration, 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. Notwithstanding the foregoing, Units may be issued and sold on an instalment receipt basis, in which event beneficial ownership of such Units may be represented by instalment receipts, but shall otherwise be non-assessable.

Section 6.4 No Pre-Emptive Rights

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.

Section 6.5 Fractional Units

If any person becomes entitled to a fraction of a Unit, the person is not 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, 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.

Section 6.6 Legal Ownership of Assets of the Trust

The legal ownership of the assets of the Trust and the right to conduct the business of the Trust are vested exclusively in the Trustees and the Unitholders shall have no interest therein other than the beneficial interest in the Trust conferred by their Units issued hereunder, as described in Section 1.5, and they shall have no right to compel any partition, division, dividend or distribution of the Trust or any of the assets of the Trust. The Units shall be personal property and shall confer upon the holders thereof only the interest and rights, and impose upon the holders thereof only those liabilities and obligations, specifically set forth in this Declaration of Trust. No Unitholder has or is deemed to have any right of ownership in any of the assets of the Trust.

Section 6.7 Allotment and issue

The Trustees may allot and issue Units at such time or times and in such manner (including pursuant to any plan from time to time in effect relating to reinvestment by Unitholders of their distributions of the Trust in Units), and for such consideration and to such person, persons or class of persons as the Trustees in their sole discretion shall determine. If 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.

Section 6.8 Rights, Warrants, Options and Other Securities

The Trustees may create and issue rights, warrants or options to subscribe for fully paid Units which rights, warrants or options may be exercisable at such subscription price or prices and at such time or times as the Trustees may determine. The rights, warrants or options so created may be issued for such consideration or for no consideration, all as the Trustees may determine. A right, warrant or option shall not be a Unit and a holder thereof shall not be a Unitholder. Subject to the provisions of Article 5 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. 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.

Section 6.9 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 of their agreeing to procure subscriptions therefor, whether absolute or conditional.

Section 6.10 Transferability

Units are freely transferable and, except as stipulated in Section 6.11, the Trustees shall not impose any restriction on the transfer of Units. The Trustees shall seek to obtain and maintain a listing for the Units on The Toronto Stock Exchange.

Section 6.11 Non-Resident Ownership Constraint

- (a) Not more than 49% of the Units or any instalment receipts representing beneficial ownership of Units outstanding at any time shall be held or beneficially owned, directly or indirectly, by persons who are non-residents of Canada for purposes of the Tax Act (individually, a “**non-resident**”, and, collectively, “**non-residents**”). If it appears from the Register that, or if the Trustees otherwise determine that, there has been a contravention of the foregoing non-resident ownership constraint or that, after giving effect to any proposed subscription, issue or transfer of Units or any instalment receipts representing beneficial ownership of Units to a non-resident, there would be a contravention of the non-resident ownership constraint or that such a situation is imminent, the Trust shall cause a public announcement to be made to such effect and shall not accept any subscription for Units or any instalment receipts from any non-resident, issue any Units or any instalment receipts to any person or register or otherwise recognize the transfer of any Units or any instalment receipts to any non-resident. In addition, if it appears from the Register that, or if the Trustees otherwise determine that, there has been a contravention of the foregoing non-resident ownership constraint, the Trust shall send a written notice (a “**Sell Notice**”) to the registered holders of such of those Units or any instalment receipts as shall be chosen on the basis of inverse order to the order of acquisition or registration of all non-residents, by law or by such other method that is authorized by the Trustees’ determination (each such selected registered holder to be hereinafter known as an “**Affected Holder**”). The Sell Notice shall require that an Affected Holder sell to a person who is not a non-resident of Canada the total number of Units or any instalment receipts, as the case may be, specified in the Sell Notice (the “**Affected Units**”) within the period stipulated in the Sell Notice. The Sell Notice shall be given to an Affected Holder by registered prepaid mail or delivered directly to the Affected Holder and shall specify a date, which shall not be more than 60 days, within which the Affected Units must be sold on a basis that does not result in the contravention of this Section 6.11. The Sell Notice shall also require the Affected Holder to notify the Trust of the sale or disposition requested when completed.

- (b) If the Affected Units have not been sold by the Affected Holder on or before the date stipulated in the Sell Notice or the Affected Holder has not provided evidence satisfactory to the Trustees to the effect that it is not a non-resident before such date, the Trust may, without further notice, elect to sell the Affected Units on behalf of the Affected Holder on and subject to the terms herein contained and to suspend the rights of the Affected Holder to vote or to receive distributions in connection with the Affected Units. The Trust may sell Affected Units on any stock exchange or organized market on which the Units are then listed or traded as the Trustees shall determine or, if the Units are not then listed on any stock exchange or traded on any organized market, in such other manner as the Trustees shall determine. For all purposes of the sale, the Trustees and any registrar and transfer agent appointed by the Trust under Section 6.17 shall be deemed to be the agents and lawful attorneys of the Affected Holder and any beneficial owner of the Affected Units. The net proceeds of the sale of Affected Units shall be the net proceeds after deduction of any commission, tax or other cost of sale.
- (c) On any sale of Affected Units, the Affected Holder shall have the right only to receive the net proceeds of the sale, subject to its right to receive payment of any distribution declared by the Trustees which is unpaid and owing to the Affected Holder. The Trust shall deposit an amount equal to the net proceeds in a special account in any bank or trust company in Canada selected by it. The amount of the deposit, less the reasonable costs of the administration of the special account, shall be payable to the Affected Holder upon presentation of evidence acceptable to the bank or trust company of the Affected Holder's interest in the Affected Units, including the certificate or certificates therefor, if any. Any interest earned on any amount so deposited shall accrue to the benefit of the Affected Holder.
- (d) From and after the date of deposit, the Affected Holder shall not be entitled to any of the rights of a registered Unitholder in respect of the Affected Units, other than the right to receive the funds so deposited as set out above.
- (e) The Trust shall, as soon as reasonably practical, and, in any event, not later than 30 days after making a deposit pursuant to the terms of this Section 6.11, send a notice to the Affected Holder stating that the Affected Units have been sold, the amount of the net proceeds to which the Affected Holder is entitled, the name and address of the bank or trust company at which the Trust has made the deposit and all other relevant particulars of the sale.
- (f) For greater certainty, the Trust may sell Units or instalment receipts representing beneficial ownership of Units in accordance with the terms hereof despite the fact that the Trust does not possess the certificate or certificates, if any, representing the Affected Units at the time of the sale. Where, in accordance with this Section 6.11, Affected Units are sold by the Trust without possession of the certificate or certificates, if any, representing the same and, after the sale, a person establishes that it is a bona fide purchaser of the Affected Units from the Affected Holder, then, subject to applicable law:

- (i) the Trust shall be entitled to treat the Units or instalment receipts representing beneficial ownership of Units, as the case may be, so purchased by the bona fide purchaser as validly issued and outstanding Units or instalment receipts in addition to the Units or instalment receipts sold by the Trust; and
- (ii) notwithstanding anything hereinbefore contained, the Trust is entitled to the deposit made with respect to the sale and shall add the amount of the deposit to the capital account maintained by the Trust in respect of outstanding Units or instalment receipts, as the case may be.

Section 6.12 Trustees' Determination as to Non-Resident Status

The Trustees shall have the sole right and authority to make any determination required or contemplated under Section 6.11. The Trustees shall make on a timely basis all determinations necessary for the administration of the provisions of Section 6.11 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 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 the Chair of Trustees, the President or any other officer of the Trust.

Section 6.13 Certificates

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

Section 6.14 Execution of Certificates

Signatures of Trustees or officers of the Trust required on Unit certificates may be printed or otherwise mechanically reproduced thereon. If a Unit certificate contains a printed or mechanically reproduced signature of a person, the Trust may issue the certificate even though the person has ceased to be a Trustee or an officer of the Trust and such certificate is as valid as if the person were a Trustee or an officer at the date of its issue.

Section 6.15 Certificate Fee

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

Section 6.16 Form of Certificate

The form of certificate representing Units shall be in such form as is from time to time authorized by the Trustees.

Section 6.17 Unit Register and Transfer Ledgers to be Maintained

A register (the “**Register**”) shall be kept by, or on behalf and under the direction of the Trustees, which Register shall contain the names and addresses of Unitholders, the respective numbers of Units held by them, the certificate numbers of the certificates of the Units and a record of all transfers thereof. The Trustees may appoint one or more chartered banks or trust companies to act as transfer agents and to act as registrars for Units and may provide for the transfer of Units in one or more places within Canada. On appointment, the transfer agents and registrars shall keep all necessary registers and other books (which may be kept on a computer or similar device) for recording original issues and registering and transferring the Units of the Trust. If the Trustees have appointed a registrar and transfer agent, no certificate for Units shall be valid unless countersigned by or on behalf of a transfer agent and/ or registrar. Only Unitholders whose Units are recorded on the Register shall be entitled to vote or to receive distributions or otherwise exercise or enjoy the rights of Unitholders.

Section 6.18 Entry on Register

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

Section 6.19 Transfer of Units

Units shall be, for all purposes of the Trust and this Declaration of Trust, personal and moveable property, and shall be transferable at any time and from time to time by endorsement and delivery of the certificates representing the Units subject to such provisions and conditions as may be prescribed by the Trustees from time to time. No transfer shall be recorded on the Register unless the transferor has executed the instrument of transfer as reproduced in the Unit certificate and the transferee has delivered to the transfer agent and/ or registrar a Unit certificate representing the Units transferred. Subject to the foregoing and Section 6.11, transfers shall be recorded on the Register and a new certificate for the Units so transferred shall be issued to the transferee and in case of a transfer of only part of the Units represented by any certificate, a new certificate for the remaining Units shall be issued to the transferor.

Section 6.20 Successors in Interest to Unitholders

Any person becoming entitled to any Units as a consequence of the death, bankruptcy or incompetence of any Unitholder or otherwise by operation of law, shall be recorded as the holder of such Units and shall receive a new certificate therefor upon production of evidence thereof satisfactory to the Trustees and delivery of the existing certificate to the Trustees or a transfer agent to the Trust, but until the record is made, the Unitholder of record shall continue to be and be deemed to be the holder of such Units for all purposes whether or not the Trust, the Trustees or a transfer agent or registrar of the Trust shall have actual or other notice of the death, bankruptcy, incompetence or other event.

Section 6.21 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 their ownership is expressly otherwise recorded on the register of the Trust

but no entry shall be made in the register or on any certificate that any person is in any other manner entitled to any future, limited or contingent interest in any Unit; provided, however, that any person recorded as a holder of any Unit may, subject to the provisions herein contained, be described in the register or on any certificate as a fiduciary of any kind and any customary words may be added to the description of the holder to identify the nature of the fiduciary relationship.

Section 6.22 Performance of Trusts

The Trustees, the officers or the Trust, the Advisor, the Unitholders, any transfer agent or other agent of the Trust or the Trustees, shall not 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 any interest therein are or may be subject, or to ascertain or inquire whether any sale or transfer of any Units or interest therein by any Unitholder or his personal representatives is authorized by the trust, charge, pledge or equity, or to recognize any person as having any interest therein, except for the person recorded as Unitholder.

Section 6.23 Lost Certificates

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

Section 6.24 Death of Unitholders

The death of a Unitholder during the continuance of the Trust shall not terminate the Trust or give such Unitholders' legal representatives a right to an accounting or to take any action in the courts or otherwise against other Unitholders or the Trustees or the Advisor or the property of the Trust, but shall only entitle the legal representatives of the deceased Unitholder to demand and receive, pursuant to the provisions of Section 6.13 hereof, a new certificate for Units in place of the certificate held by the deceased Unitholder, and upon the acceptance thereof such legal representatives shall succeed to all rights of the deceased Unitholder under this Declaration of Trust.

Section 6.25 Unclaimed Distributions

If the Trustees hold distributions which are unclaimed or which 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 any time prior to such required time, pay all or part of the distributions so held to the Public Trustee (or other similar government official or agency) whose receipt shall be a good acknowledgement and discharge of the obligations of the Trustees.

Section 6.26 Repurchase of Unites

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 to be determined by the Trustees in compliance with all applicable securities laws, regulations or policies, the rules and policies of any applicable stock exchange, and any other applicable regulatory policies.

Section 6.27 Take-Over Bids

(1) If, within 120 days after the date of a take-over bid the bid is accepted by the holders of not less than 90% of the Units, other than Units held at the date of the take-over bid by or on behalf of the offeror or an Affiliate of the offeror, the offeror is entitled, on complying with this section, to acquire the Units held by the dissenting offerees.

(2) An offeror may acquire Units held by a dissenting offeree by sending by registered mail within 60 days after the date of termination of the take-over bid and in any event within 180 days after the date of the take-over bid, an offeror's notice to each dissenting offeree stating that

- (a) offerees holding more than 90% of the Units (other than Units held at the date of the take-over bid by or on behalf of the offeror or an Affiliate of the offeror) to which the bid relates accepted the take-over bid;
- (b) the offeror is bound to take up and pay for or has taken up and paid for the Units of the offerees who accepted the takeover bid;
- (c) a dissenting offeree is required to elect
 - (i) to transfer his Units to the offeror on the terms on which the offeror acquired the Units of the offerees who accepted the take-over bid, or
 - (ii) to demand payment of the fair value of his Units in accordance with subsections (8) to (17) by notifying the offeror within 20 days after he receives the offeror's notice;
- (d) a dissenting offeree who does not notify the offeror in accordance with subparagraph (c)(ii) is deemed to have elected to transfer his Units to the offeror on the same terms that the offeror acquired the Units from the offerees who accepted the take-over bid; and

- (e) a dissenting offeree must send his Units to which the take-over bid relates to the Trust within 20 days after he receives the offeror's notice.
- (3) Concurrently with sending the offeror's notice under subsection (2), the offeror shall send to the Trust a notice of adverse claim disclosing the name and address of the offeror and the name of the dissenting offeree with respect to each Unit held by a dissenting offeree.
- (4) A dissenting offeree to whom an offeror's notice is sent under subsection (2) shall, within 20 days after he receives that notice, send his Unit certificates to the Trust.
- (5) Within 20 days after the offeror sends an offeror's notice under subsection (2), the offeror shall pay or transfer to the Trust the amount of money or other consideration that the offeror would have had to pay or transfer to each dissenting offeree if the dissenting offeree had elected to accept the take-over bid under subparagraph (2)(c)(i). Upon payment of such amount, the Units of all dissenting offerees shall be deemed to have been acquired by the offeror.
- (6) The Trust is deemed to hold in trust for the dissenting offeree the money or other consideration it receives under subsection (5), and the Trust shall deposit the money in a separate account in a bank or other body corporate any of whose deposits are insured by the Canada Deposit Insurance Corporation and shall place the other consideration in the custody of a bank or such other body corporate.
- (7) Within 30 days after the offeror sends an offeror's notice under subsection (2), the Trust shall:
 - (a) issue to the offeror a Unit certificate in respect of the Units that were held by dissenting offerees;
 - (b) give to each dissenting offeree who elects to accept the take-over bid terms under subparagraph (2)(c)(i) and who sends his Unit certificates as required under subsection (4), the money or other consideration to which he is entitled, disregarding fractional Units, if any, which may be paid for in money; and
 - (c) send to each dissenting offeree who has not sent his Unit certificates as required under subsection (4) a notice stating that
 - (i) his Units have been cancelled,
 - (ii) 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 Units, and
 - (iii) the Trust will, subject to subsections (8) to (17), send that money or other consideration to him forthwith after receiving his Units.
- (8) If a dissenting offeree has elected to demand payment of the fair value of his Units under subparagraph (2)(c)(ii), the offeror may, within 20 days after it has paid the money or transferred the other consideration under subsection (5), apply to a court to fix the fair value of the Units of that dissenting offeree.

(9) If an offeror fails to apply to a court under subsection (8), a dissenting offeree may apply to a court for the same purpose within a further period of 20 days.

(10) Where no application is made to a court under subsections (8) or (9) within the period set out in those subsections, a dissenting offeree is deemed to have elected to transfer his Units to the offeror on the same terms that the offeror acquired the Units from the offerees who accepted the take-over bid and, provided that the dissenting offeree has complied with subsection (4), the Trust shall pay or transfer to the dissenting offeree the money or other consideration to which the dissenting offeree is entitled.

(11) An application under subsection (8) or (9) shall be made to a court having jurisdiction in the place where the Trust has its registered office or in the province where the dissenting offeree resides if the Trust carries on business in that province.

(12) A dissenting offeree is not required to give security for costs in an application made under subsection (8) or (9).

(13) On an application under subsection (8) or (9)

- (a) all dissenting offerees referred to in subparagraph (2)(c)(ii) whose Units have not been acquired by the offeror shall be joined as parties and shall be bound by the decision of the court; and
- (b) 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.

(14) On an application to a court under subsection (8) or (9), the court may determine whether any other person is a dissenting offeree who should be joined as a party, and the court shall then fix a fair value for the Units of all dissenting offerees.

(15) A court may in its discretion appoint one or more appraisers to assist the court to fix a fair value for the Units of a dissenting offeree.

(16) The final order of the court shall be made against the offeror in favour of each dissenting offeree and for the amount of his Units as fixed by the court.

(17) In proceedings under this section, a court may make any order it thinks fit and, without limiting the generality of the foregoing, it may

- (a) fix the amount of money or other consideration that is required to be held in trust under subsection (6);
- (b) order that money or other consideration be held in trust by a person other than the Trust; and
- (c) allow a reasonable rate of interest on the amount payable to each dissenting offeree from the date he sends or delivers his Unit certificates under subsection (4) until the date of payment.

ARTICLE 7 - MEETINGS OF UNITHOLDERS

Section 7.1 Annual Meeting

There shall be an annual meeting of the Unitholders at such time, place and/or by such form of telephonic, electronic, virtual or other communication method as the Trustees may prescribe for the purpose of electing those Trustees to be elected by Unitholders as contemplated in Article 2 hereof, appointing the auditors of the Trust and transacting such other business as the Trustees may determine or as may properly be brought before the meeting. The annual meeting of Unitholders shall be held after delivery to the Unitholders of the annual report referred to in Section 15.6 and within six months after the end of each fiscal year.

Section 7.2 Other Meetings

The Trustees or, if there are no Trustees, the officers of the Trust shall have the power at any time to call special meetings of the Unitholders at such time, place and/or by such form of telephonic, electronic, virtual or other communication method as the Trustees may determine. On and subject to the provisions of this Section 7.2, special meetings of the Unitholders shall be called upon the written request of Unitholders holding not less than 5% of the outstanding Units of the Trust. If there are no Trustees, any officer of the Trust shall be entitled to call a special meeting of the Unitholders for the election of successor Trustees. The phrase "meeting of Unitholders" wherever it appears in this Declaration of Trust shall mean and include both an annual meeting and any other meeting of Unitholders.

Upon receipt by the Trust of a written request for a meeting from Unitholders holding the requisite number of outstanding Units, the Trustees shall call a meeting of Unitholders to transact the business referred to in the requisition unless:

- (i) a record date for a meeting of the Unitholders has been fixed and notice thereof has been given to each stock exchange in Canada on which the Units are listed for trading;
- (ii) the Trustees have called a meeting of the Unitholders and have given notice thereof pursuant to Section 7.4; or
- (iii) in connection with the business as stated in the requisition:
 - (A) it clearly appears to the Trustees, acting reasonably, that the matter covered by the requisition is submitted by the Unitholders 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;
 - (B) the Trust, at the Unitholders' 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 Unitholders failed to present the matter, in person, by electronic means, as applicable, or by proxy, at the meeting;

- (C) 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 Unitholders' request and the matter covered by the requisition was defeated; or
- (D) the rights conferred by this Section 7.2 are being abused to secure publicity.

On and 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 Article 7 of this Declaration of Trust.

Section 7.3 Meeting Held by Electronic Means

(1) At such time as the Trustees call a meeting of Unitholders, or at such other time before a meeting of Unitholders as reasonably determined by the Trustees, the Trustees may determine that:

- (a) the meeting shall be held entirely by means of a telephonic, electronic, virtual or other communication facility;
- (b) the meeting shall be held in a physical location but that any Person entitled to attend and vote at the meeting may participate by means of a telephonic, electronic, virtual or other communication facility; and
- (c) in the case of (a) or (b), any vote shall be held entirely or partially, as applicable, by means of a telephonic, electronic, virtual or other communication facility that has been made available for that purpose.

(2) Any vote at a meeting of Unitholders may be carried out by means of a telephonic, electronic, virtual or other communication facility, if such facility enables the votes to be gathered in a manner that permits their subsequent verification.

(3) A Person participating in a meeting of Unitholders by way of telephonic, electronic, virtual or other communication facility made available for that purpose is deemed to be present at the meeting for all purposes, including quorum.

Section 7.4 Notice of Meeting of Unitholders

Notice of all meetings of the Unitholders shall be mailed or delivered by the Trustees to each Unitholder at his address appearing in the Register not less than 21 nor more than 50 days before the meeting. Notice of any meeting of Unitholders shall state the time and place, if applicable, where the meeting is to be held and shall state briefly the general nature of the business to be transacted thereat, but it shall not be necessary for the notice to set out the terms of any resolution. The notice shall be accompanied by information similar to that required to be provided to shareholders of a public corporation governed by the *Canada Business Corporations Act*. A

Unitholder or any other person entitled to notice of a meeting of Unitholders may in any manner waive notice of the meeting. 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.

Section 7.5 Quorum

A quorum for any meeting of the Unitholders shall be individuals present in person, by electronic means, as applicable, 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, by electronic means, as applicable, or by proxy constitutes a meeting and quorum for such meeting, representing in the aggregate not less than 10% of the total number of outstanding Units on the record date for the 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, by electronic means, as applicable, or by proxy, adjourn at such meeting and no notice of any such adjournment need to be given. In the event of such quorum not being present at the meeting on the date for which the meeting is called within one-half hour after the time fixed for the holding of such meeting, the meeting, if called by a request of Unitholders, shall be terminated and, if otherwise called, shall stand adjourned to such day being not less than seven days later and to such place (and/or subject to Section 7.3, such communication facility) and time as may be appointed by the Chair of the meeting. If at such adjourned meeting a quorum as above defined is not present, the Unitholders present either in person, by electronic means, as applicable, 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.

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, by electronic means, as applicable, or by proxy, adjourn any such meeting and no notice of any such adjournment need be given.

Section 7.6 Chair, Secretary, Scrutineers

In the absence of the Chair of Trustees, the President or the Lead Trustee, any officer of the Advisor or the Trust or any Trustee shall be the chair of any meeting of Unitholders. If there are neither any Trustees nor officers of the Trust, any of the Unitholders calling the meeting pursuant to Section 7.2 shall be the chair. The chair shall appoint the Secretary, or, in the absence of the Secretary, an individual, who need not be a Unitholder, to act as secretary of the meeting. If desired, one or more scrutineers, who need not be Unitholders, may be appointed by the chair.

Section 7.7 Voting

Unitholders may attend and vote at all meetings of the Unitholders either in person, by electronic means, as applicable, or by proxy. Any action to be taken by the Unitholders shall, except as otherwise required by this Declaration of Trust or by law, be authorized when approved by a majority of the votes cast at a meeting of Unitholders. Every question submitted to a meeting of Unitholders shall, unless a poll vote is demanded, be decided in the first place by a majority of the votes cast on a show of hands; provided that, in the case of a meeting held partially or entirely by electronic means, every question submitted to a meeting must be decided by poll vote. At any

such meeting, unless a poll is demanded or required, 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 the fact. If a poll is demanded or required concerning the election of a chair or an adjournment, it shall be taken immediately upon request and, in any other case, it shall be taken at such time as the chair of the meeting may direct. The poll shall be taken in such manner 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.

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. On a poll, each Unitholder present in person, by electronic means, as applicable, or represented by a duly appointed proxy shall have one vote for each Unit held on the applicable record date for voting. If Units are held jointly by two or more persons, any one of them present in person, by electronic means, as applicable, or by proxy at the meeting may vote in the absence of the other or others; but if more than one of them is present in person, by electronic means, as applicable, or by a proxy, they shall vote together with respect to the Units held jointly, provided that only one of them can vote on a show of hands, and, if they do not agree on how to exercise any vote to which they are jointly entitled (including a vote on a show of hands), they shall, for the purposes of the voting, be deemed not to be present. The chair of a meeting shall be entitled to vote in respect of Units held by the chair or represented by the chair by proxy. In the case of an equality of votes, the chair shall not have a casting vote and the resolution shall be deemed to be defeated.

Section 7.8 Matters on which Unitholders may 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) subject to Section 2.7, the election or removal of Trustees;
- (b) except as provided in Section 15.4, the appointment or removal of auditors of the Trust;
- (c) any amendment to this Declaration of Trust (except as provided in Section 5.7 or Section 12.1);
- (d) the sale or transfer of the assets of the Trust as an entirety or substantially as an entirety, other than as part of an internal reorganization of the assets of the Trust as approved by the Trustees; or
- (e) the termination of the Trust.

Except with respect to the foregoing matters specified in this Section 7.8, no vote of the Unitholders shall in any way bind the Trustees. In particular, under no circumstances may Unitholders authorize the forgiveness of the obligation of holders of the Instalment Receipts to pay amounts owing thereunder in respect of Units represented by such Instalment Receipts. Nothing in this section, however, shall prevent the Trustees from submitting to a vote of Unitholders any matter which they deem appropriate.

Section 7.9 Record Dates

For the purpose of determining the Unitholders who are entitled to receive notice of and vote at any meeting or any adjournment thereof, or who are entitled to receive any distribution, or for the purpose of any other action, the Trustees may from time to time, without notice to Unitholders, close the transfer books for such period, not exceeding 30 days, as the Trustees may determine; or without closing the transfer books the Trustees may fix a date not more than 60 days prior to the date of any meeting of Unitholders or distribution or other action as a record date for the determination of Unitholders entitled to receive notice of and to vote at the meeting or any adjournment thereof or to receive the distribution 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 the meeting or any adjournment thereof or to receive the distribution, even though he has since the date disposed of his Units, and no person who becomes a Unitholder after the date shall be entitled to receive notice of and vote at the meeting for any adjournment thereof or to receive such distribution or to be treated as a Unitholder of record for purposes of any 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.

Section 7.10 Proxies

Whenever the vote or consent of Unitholders is required or permitted under this Declaration of Trust, it may be given either directly by a Unitholder or by a proxy. The instrument appointing a proxy must be in writing and either substantially in a form which may be approved by the Trustees acting reasonably or as may be satisfactory to the chair of the meeting at which it is sought to be exercised. The instrument of proxy must be executed by the Unitholder giving the proxy or his agent duly authorized in writing and, if given on behalf of joint holders, must be executed by all of them and may be revoked by any of them, and, if given by a Unitholder which is a body corporate, must be executed on its behalf by a person duly authorized in writing. Any person may be appointed a proxy, whether or not that person is a Unitholder. The Trustees, on behalf of the Trust, may solicit instruments of proxy from the Unitholders or any of them in respect of any matter requiring or permitting the Unitholders' vote or consent. An instrument of proxy shall be deposited with the chair of the meeting before any vote is cast under its authority or at such earlier time or in such manner as the Trustees may prescribe from time to time.

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 chair of the meeting at which the instrument is proposed to be used, that the instrument of proxy is invalid. Any decision of the chair of the meeting in respect of the validity of an instrument of proxy shall be final and binding upon all persons. An instrument of proxy shall be valid only at the meeting with respect to which it was solicited or any adjournment thereof.

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

Section 7.11 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 7.7 relating to joint holders shall apply.

Section 7.12 Attendance by Others

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

Section 7.13 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 chair of the meeting and shall be binding upon all parties participating in the meeting.

Section 7.14 Binding Effect of Resolutions

Every resolution passed at a meeting in accordance with the provisions of this Article 7 shall be binding upon all Unitholders, whether present at or absent from the meeting. Subject to Section 7.8, no action taken by Unitholders at any meeting of Unitholders shall in any way bind the Trust or the Trustees without the approval of the Trustees.

ARTICLE 8- MEETINGS OF TRUSTEES

Section 8.1 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 the written consent of, in the case of a meeting of Trustees, all of the Trustees, and, in the case of a committee of Trustees, all of the Trustees who are members of the applicable committee.

Section 8.2 Notice of Meeting

Meetings of the Trustees may be held from time to time upon the call of the Chair of Trustees or any two Trustees. Regular meetings of the Trustees may be held without call or notice at a time and place fixed by the Trustees. Notice of the time and place of any other meetings shall be mailed or otherwise given not less than 48 hours before the meeting but may be waived in writing by any Trustee either before or after such meeting. The attendance of a Trustee at any meeting of Trustees or any committee of Trustees 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.

Section 8.3 Quorum

A quorum for any meeting of the Trustees or any committee thereof shall be at least 50% of the Trustees, or of the members of such committee, as the case may be, present in person, a majority of whom shall be Independent Trustees.

Section 8.4 Voting at Meetings

Questions arising at any meeting of the Trustees or any committee thereof shall be decided by a majority of the votes cast. In the case of an equality of votes, the chair of the meeting (who, in the case of a meeting of the Trustees shall be the Chair of Trustees if present, and otherwise any Trustee selected by the Trustees), shall not have a second or casting vote in addition to his original vote.

Section 8.5 Meetings by Telephone

Any Trustee may participate in a meeting of the Trustees or any committee thereof by means of a conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other and a Trustee so participating shall be considered for the purposes of this Declaration of Trust to be present in person at that meeting.

ARTICLE 9- DELEGATION OF POWERS

Section 9.1 General

Except as prohibited by law, the Trustees shall have the power to appoint, employ or contract with any person for the transaction of any business of the Trust.

Section 9.2 Delegation

Except as prohibited by law and otherwise expressly contemplated by this Declaration of Trust, the Trustees may grant or delegate such authority to officers of the Trust 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 the officers of the Trust, the Property Manager and any other person whom they may employ or with whom they may contract. The Trustees may exercise broad discretion in allowing the officers of the Trust to administer and regulate the operation of the Trust, to act as agent for the Trust, to execute documents on behalf of the Trust and the Trustees and to make executive decisions which conform to general policies and general principles, investment criteria and operating plans previously established by the Trustees. The Trustees shall also have the power to delegate to the officers of the Trust the responsibility for administering the Trust on a day to day basis and performing the record keeping and reporting functions of the Trust, subject to the overriding authority of the Trustees over the management of the Trust.

Section 9.3 The Investment Committee

The Trustees shall appoint from among their number an Investment Committee consisting of at least three Trustees. The duties of the Investment Committee shall be to review all proposals regarding investments, dispositions and borrowings of the Trust and to make recommendations in

connection therewith to the Trustees. To the extent authorized by the Trustees, the Investment Committee shall be entitled to authorize proposed transactions and approve acquisitions, dispositions or borrowings on behalf of the Trust where the acquisition, disposition or borrowing, as the case may be, would not be in or for an amount which exceeds 10% of the Gross Book Value. The Investment Committee shall also generally assume responsibility for monitoring and recommending amendments to the environmental management program of the Trust and for supervising the officers of the Trust in complying with, and implementing, the environmental management program.

Any member of the Investment Committee may call a meeting of the Investment Committee upon not less than 48 hours' notice. Where for any reason a member of the Investment Committee is disqualified from voting on or participating in a decision, any other Trustee not already a member of the Investment Committee may be designated by the Trustees to act as an alternate.

Section 9.4 The Audit Committee

The Trustees shall appoint an Audit Committee to consist of at least three Trustees, all of whom shall be (i) "independent" and "financially literate" within the meaning of National Instrument 52-110 – *Audit Committees*, as replaced or amended from time to time (including any successor rule or policy thereto) and (ii) shall meet any requirements imposed by applicable law for the purpose of membership on such committee. The Audit Committee shall review the financial policies and procedures of the Trust and the quarterly and annual financial statements of the Trust, and shall report to the Trustees regarding these and other financial matters. The auditors of the Trust are entitled to receive notice of every meeting of the Audit Committee and, at the expense of the Trust, to attend and be heard thereat and, if so requested by a member of the Audit Committee, shall attend any meeting of the Audit Committee held during the term of office of the auditors. The auditors of the Trust or a member of the Audit Committee may call a meeting of the Audit Committee on not less than 48 hours' notice.

Section 9.5 The Compensation and Governance Committee

The Trustees shall appoint a Compensation and Governance Committee, to consist of at least three Trustees. The Compensation and Governance Committee shall generally assume responsibility for monitoring and recommending amendments to the Trust's approach to matters of governance and for administering the Unit Option Plan and shall review and make recommendations to the Trustees relating to the composition of the body of Trustees and with respect to the performance and compensation of the Property Manager and the officers and employees of the Trust and shall report to the Trustees, at least annually, on these matters and other administrative matters for which the Committee is also responsible and prepare annual and other reports in accordance with the compensation disclosure rules prescribed by the *Securities Act* (Ontario) and other applicable legislation. Any member of the Compensation and Governance Committee may call a meeting of the Compensation and Governance Committee on not less than 48 hours' notice.

Section 9.6 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.

Section 9.7 The Property Manager

The Trustees have appointed Morguard as the Property Manager to perform such property management and other services as the Trustees as contemplated in the Property Management Agreement subject to the supervision of the Trustees and the officers of the Trust from time to time.

ARTICLE 10- DISTRIBUTIONS

Section 10.1 Computation of Distributable Income

The Distributable Income of the Trust for any period is the income of the Trust for the period computed in accordance with generally accepted accounting principles as adjusted in accordance with the following:

- (a) there shall be added depreciation that was deducted in computing the income of the Trust for the period under generally accepted accounting principles;
- (b) there shall be deducted any reserves, provisions and allowances established by the Trustees in their discretion in respect of the period to the extent that they have not been deducted in computing the income of the Trust for the period under generally accepted accounting principles; and
- (c) there shall be added any amount which the Trustees in their discretion determine to be appropriate (which may include, without limitation, net realized capital gains of the Trust and realized net recapture income of the Trust).

Distributable Income shall be calculated for each quarter or other more frequent calendar period selected by the Trustees

Section 10.2 Distribution of Distributable Income

- (a) An amount equal to 85% of Distributable Income for a period, or such other percentage of Distributable Income as the Trustees in their discretion consider appropriate in the circumstances, shall be payable on or as of the Distribution Date occurring at the end of or immediately following the period (as the case may be) proportionately to persons who are Unitholders on the record date for distribution selected by the Trustees in respect of such distribution.
- (b) Intentionally deleted.
- (c) All distributions payable to a Unitholder, less any amount required to be withheld therefrom under applicable law, shall be made by cheque payable to or to the order of the Unitholder, by electronic funds transfer or by such other manner of payment approved by the Trustees from time to time. The payment, if made by cheque, shall

be conclusively deemed to have been made upon delivery of a cheque to the Unitholder or to his agent duly authorized in writing or upon the mailing of a cheque by prepaid first-class mail addressed to the Unitholder at his address as it appears on the Register unless the cheque is not paid on presentation. The Trustees may issue a replacement cheque if they are satisfied that the original cheque has not been received or has been lost or destroyed upon being furnished with such evidence of loss, indemnity or other document in connection therewith that they may in their discretion consider necessary. Notwithstanding any other provision hereof, and subject to applicable law, any amount represented by any cheque which has not been presented for payment within six years after the date of distribution and any interest thereon shall be forfeited to and paid over to the Trust.

Section 10.3 Reinvestment

The Trustees may in their sole discretion establish a distribution reinvestment plan at any time providing for the voluntary reinvestment by Unitholders of Distributable Income, less any amount required by law to be withheld therefrom under applicable law.

Section 10.4 Income Tax Matters

In computing the income of the Trust for income tax purposes for any year, except as the Trustees otherwise determine, the Trust shall claim the maximum amount allowable to it in respect of the capital cost allowance of the Trust and the cumulative eligible capital of the Trust, except as otherwise determined by the Trustees, and to the extent permitted by the Tax Act shall apply losses for prior years and any losses realized in the year to reduce tax payable on income of the Trust, and shall, to the extent permitted by the Tax Act, deduct such portion of the income paid or payable to Unitholders in the year.

Section 10.5 Taxation of Unitholders

Income including net taxable capital gains for purposes of the Tax Act will be allocated to Unitholders in the same proportion as distributions received by Unitholders, subject to the discretion of the Trustees to adopt an allocation method with the Trustees consider to be more reasonable in the circumstances.

Section 10.6 Designation of Taxable Dividends-Taxable Capital Gains and Foreign Income

In accordance with and to the extent permitted by the Tax Act, the Trustees in each year shall make such designations in respect of Distributable Income that the Trustees consider to be reasonable in all of the circumstances, including designations relating to taxable dividends received by the Trust in the year of shares of taxable Canadian corporations, net capital gains realized by the Trust in the year and foreign source income of the Trust for the year.

Section 10.7 Definitions

Unless the context otherwise requires, any term in Article 1 or this Article 10 which is defined in the Tax Act shall have for the purposes of Article 1 and this Article 10 the meaning that it has in the Tax Act.

ARTICLE 11 - FEES AND EXPENSES

Section 11.1 Expenses

The Trust shall pay from the assets of the Trust expenses incurred in connection with the administration and management of the Trust and its investments, including without limitation, interest and other costs of borrowed money, fees of auditors, lawyers, appraisers, registrars and transfer agents and other agents, stock exchanges, consultants and professional advisors employed by or on behalf of the Trust, fees and expenses of the Trustees, fees and expenses connected with the acquisition, disposition and ownership of real property interests or mortgage loans or other property, insurance as considered necessary by the Trustees (including liability insurance for the Trustees and Unitholders), expenses in connection with payments of distributions on Units of the Trust, expenses in connection with communications to Unitholders and other bookkeeping and clerical work necessary in maintaining relations with Unitholders, the cost of any accounting, statistical or bookkeeping equipment necessary for the maintenance of the books and records of the Trust, expenses of changing or terminating the Trust, all fees, expenses, taxes and other costs incurred in connection with the issuance, distribution, transfer and qualification for distribution to the public of the Units and other required governmental filings, and all costs and expenses in connection with the incorporation, organization and maintenance of corporations formed to hold real property or other property of the Trust.

Section 11.2 Payment of Real Property and Brokerage Commissions

The Trust may pay real property and brokerage commissions at commercial rates in respect of the acquisition and disposition of any investment acquired or disposed of by it. Such commissions shall be charged to the capital account of the Trust and may be paid to the Property Manager or any Affiliate thereof.

Section 11.3 Property Management, Leasing and Financing Fees

The Trust may pay property management fees, leasing fees and financing fees at commercial rates in respect of any real property owned by it. Property management fees shall be paid out of the gross revenues derived from any property in respect of which property management services are provided, and may be paid to the Property Manager or its Affiliates.

Section 11.4 Charges for Services by Related Parties

Notwithstanding anything contained in this Declaration of Trust, if the Property Manager or any Related Party of the Property Manager renders services to the Trust other than those specifically required under the terms of the Property Management Agreement, it shall be entitled to receive remuneration for such services rendered in amounts not in excess of amounts which, in the sole discretion of the Trustees, would be generally charged by other persons for comparable services or activities.

ARTICLE 12 - AMENDMENTS TO THE DECLARATION OF TRUST

Section 12.1 Amendments by the Trustees

The Trustees may, without the approval of, or any notice to, Unitholders, make amendments to this Declaration of Trust:

- (a) for the purpose of ensuring continuing compliance with applicable laws, regulations, requirements or policies of any governmental authority having jurisdiction over the Trustees or over the Trust, its status as a “mutual fund trust” and a “registered investment” under the Tax Act or 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 this 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 as a result of changes in taxation laws or accounting standards from time to time, including, without limiting the generality of the foregoing, amendments which may permit the Trust to qualify for any status under the Tax Act which would benefit the Trust and its Unitholders; and
- (e) for any purpose (except one in respect of which a Unitholder vote is specifically otherwise required) if the Trustees are of the opinion that the amendment is not prejudicial to Unitholders and is necessary or desirable.

Section 12.2 Amendments by Unitholders

Subject to Section 3.4, Section 5.7, Section 12.1 and Section 12.3, this Declaration of Trust may only be amended by the vote of a majority of the votes cast at a meeting of Unitholders duly called for that purpose.

Section 12.3 Two-Thirds Unitholder Vote

No amendment may be made to this Declaration of Trust which would change any right with respect to any outstanding Units of the Trust by reducing the amount payable thereon upon termination of the Trust or by diminishing or eliminating any voting rights pertaining thereto, or which would relate to the duration or termination of the Trust, or which would authorize any modification to the provisions of Section 5.1 or Section 5.2 with the exception of paragraphs (a), (b), (d), (e), (g), (i), (k), (l) and (p) of Section 5.2 and the Trust shall not sell its assets as an entirety or substantially as an entirety (except to any person in respect of which all of the issued voting securities thereof are owned or, after such sale, would be owned, by the Unitholders at such time in the same respective proportions as Units are owned immediately prior to such sale), except in each case with the approval of Unitholders given by the affirmative vote of at least two-thirds of the votes cast at a meeting of Unitholders duly called for that purpose.

ARTICLE 13- TERMINATION OF THE TRUST

Section 13.1 Duration of the Trust

Unless the Trust is sooner terminated as otherwise provided herein, the Trust shall continue in such manner that the Trustees will have all the powers and discretions, expressed and implied, conferred upon them by law or by this Declaration of Trust.

Section 13.2 Termination by Unitholders

The Trust may be terminated by the vote of at least two-thirds of the votes cast at a meeting of Unitholders called for that purpose.

Section 13.3 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 Unitholders. The distribution may be made in cash or in securities or partly in both, all as the Trustees in their sole discretion may determine.

ARTICLE 14- LIABILITIES OF THE TRUSTEES AND OTHERS

Section 14.1 Liability and Indemnification of the Trustees and Officers

The Trustees and Officers shall at all times including, for the purposes of this Article 14, the time after they have ceased to be Trustees and/ or Officers, be indemnified and saved harmless out of the funds of the Trust from and against all claims whatsoever, including costs, charges and expenses in connection therewith, 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 hereunder and also from and against all other costs, charges, and expenses which they sustain or incur in or about or in relation to the affairs of the Trust. Further, the Trustees and Officers shall not be liable to the Trust or to any Unitholder or annuitant for any loss or damage relating to any matter regarding the Trust, including any loss or diminution in the value of the Trust or its assets. The foregoing sentences do not apply, however, unless:

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

Costs, charges and expenses actually and reasonably sustained or incurred by a Trustee or Officer in defending a civil or criminal action, suit or proceeding shall be paid by the Trust, as incurred, in advance of the final disposition of such action, suit or proceeding, provided that the Trust first receives from such Trustee or Officer an undertaking that such Trustee or Officer will repay such amount if it shall ultimately be determined that such Trustee or Officer is not entitled to be indemnified as provided for in this Section 14.1.

Section 14.2 Liability of the Trustees

The Trustees shall not be liable to the Trust or to any Unitholder or annuitant for the acts, omissions, receipts, neglects or defaults of any person employed or engaged by the Trust as permitted hereunder, or for joining in any receipt or act of conformity, or for any loss, damage or expense caused to the Trust through the insufficiency or deficiency of any security in or upon which any of the monies of or belonging to the Trust shall be laid out or invested, or for any loss or damage arising from the bankruptcy, insolvency or tortious act of any person 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 such persons of their duties hereunder, except to the extent that the Trustee cannot satisfy the conditions set out in clauses (a) and (b) contained in Section 14.1.

Section 14.3 Reliance upon Advice

The Trustees may rely and act upon any statement, report or opinion prepared by or any advice received from the auditors, solicitors 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.

Section 14.4 Liability of Unitholders and Others

No Unitholder or annuitant shall be held to have any personal liability as such, and no resort shall be had to his private property 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. The Trust shall use commercially reasonable efforts to include in certain written instruments signed by the Trust (including mortgages, leases and other written instruments creating a material obligation of the Trust), a provision to the effect that the obligations will not be personally binding upon, and that resort shall not be had to, nor shall recourse or satisfaction be sought from, the private property of any of the Unitholders or any annuitant under a plan of which a Unitholder acts as trustee or carrier, but that the property and assets of the Trust or a specific portion thereof only shall be bound and subject to levy or execution. If the Trust acquires any real property investment subject to existing contractual obligations, including obligations under mortgages and leases, the Trustees will, where it is feasible to do so, use reasonable efforts to have any such obligations modified so as to achieve the aforesaid disavowal of contractual liability. Further, the Trustees shall cause the operations of the Trust to be conducted, with the advice of counsel, in such a way and in such jurisdictions as to avoid, as far as practicable, any material risk of liability on the Unitholders for claims against the Trust, and shall, to the extent which they determine to be possible and reasonable, including in the cost of premiums, to cause the Trust to carry insurance for the benefit of the Unitholders and annuitants 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 14.1, Section 14.2 and Section 14.3.

ARTICLE 15- GENERAL

Section 15.1 Execution of Instruments

Any two Trustees or Officers shall have authority to sign in the name and on behalf of the Trust all instruments in writing and any instruments in writing so signed shall be binding on the Trust without any further authorization or formality. The Trustees and Officers shall have power from time to time to appoint any Trustee or Trustees or any Officer or Officers or any other person or persons on behalf of the Trust either to sign instruments in writing generally or to sign specific instruments in writing.

Section 15.2 Manner of Giving Notice

Any notice required or permitted by the provisions of this Declaration of Trust to be given to a Unitholder shall be deemed conclusively to have been given if given either by delivery or by prepaid ordinary mail addressed to the Unitholder at his address shown on the Register.

Section 15.3 Failure to Give Notice

The failure by the Trustees, by accident or omission or otherwise unintentionally, to give any Unitholder any notice provided for herein shall not effect 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.

Section 15.4 Trust Auditors

The auditors of the Trust shall be appointed at each annual meeting. If at any time a vacancy occurs in the position of auditors of the Trust, the Trustees may appoint a firm of chartered accountants qualified to practice in all provinces of Canada to act as the auditors of the Trust until the next annual meeting of Unitholders. The auditors of the Trust shall report to the Trustees and the Unitholders on the annual financial statements of the Trust and shall fulfil such other responsibilities as they may properly be called upon by the Trustees to assume. The auditors shall have access to all records relating to the affairs of the Trust.

Section 15.5 Fiscal Year

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

Section 15.6 Reports to Unitholders and Statements of Units Held

Within 140 days of the end of each fiscal year and at least 21 days prior to each annual meeting of Unitholders, the Trustees shall send to each Unitholder a report, including audited comparative financial statements for such year, prepared in compliance with applicable securities laws. Within 60 days after the end of each of the first three fiscal quarters of each year, the Trustees shall send unaudited comparative financial statements for the period then ended prepared in compliance with applicable securities laws to each Unitholder. The Trustees will supply Unitholders with any information that may be required by them in connection with their obligations under the Tax Act.

Section 15.7 Fund Assets to be Kept Separate

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

Section 15.8 Competition with Trust

The Property Manager and the Trustees and their respective Affiliates may, from time to time, be engaged, for their own account or on behalf of others (including as trustee, administrator or manager of other funds or portfolios), in real estate investment and other activities identical or similar to or competitive with the activities of the Trust or of the Property Manager and its Affiliates in connection with the Trust. Neither the Trustees nor the Property Manager nor any of their Affiliates shall incur or be under any liability to the Trust, any Unitholder or any annuitant for, by reason of, or as a result of any such engagement or competition or the manner in which it may resolve any conflict of interest or duty arising therefrom provided that it has acted in accordance with the provisions of this Declaration of Trust and any agreement made between the Property Manager and the Trust.

Section 15.9 Trustees and Property Manager May Hold Units

Subject to Section 6.7, the Trustees, the Property Manager and their respective Affiliates may be a Unitholder or may be an annuitant.

Section 15.10 Right to Inspect Documents

A Unitholder and any agent, consultant or creditor of the Trust shall have the right to examine this Declaration of Trust 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 amended from time to time.

Section 15.11 Consolidations

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

Section 15.12 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.

Section 15.13 Severability

The provisions of this Declaration of Trust are severable and if any provisions are in conflict with any applicable law, the conflicting provisions shall be deemed never to have

constituted a part of this Declaration of Trust and shall not affect or impair any of the remaining provisions thereof

Section 15.14 Execution and Effect of Restated Declaration of Trust

Subject to Article 12, a restated Declaration of Trust, setting forth the terms of this Declaration of Trust, as amended to the time of execution, may be executed at any time or from time to time by the Trustees and the restated Declaration of Trust as so executed shall thereafter be effective and may thereafter be referred to in lieu of the previously amended and restated Declaration of Trust as so amended; provided, however, that no execution of a restated Declaration of Trust shall be deemed to constitute a termination and/ or resettlement of the Trust or this Declaration of Trust.

Section 15.15 Quantity and Gender

In this Declaration of Trust, whenever the singular form is used, it shall include the plural as and when required by the context. Words denoting one gender include the other or the neuter, and words denoting the neuter denote either gender, unless a contrary intention is to be inferred from or required by the subject matter or context.

Section 15.16 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 or effect of this Declaration of Trust.

Section 15.17 Indoor Management Rule

The Trust may not assert against any person dealing with the Trust or the Trustees that the Declaration of Trust has not been complied with except where the person has knowledge to that effect. For greater certainty, any creditor of the Trust shall be entitled to enforce its rights under any agreement with the Trust and to recourse to the assets of the Trust to satisfy the obligations of the Trust to that creditor, notwithstanding any contravention of the investment restrictions in Section 5.1 or operating policies in Section 5.2. Such recourse to the assets of the Trust will exist in even if (a) the Trustee has no right to seek indemnification from assets of the Trust or to apply those assets in satisfaction of those obligations, or (b) those rights of the Trustee are impaired.

Section 15.18 Governing Law

This Declaration of Trust shall be interpreted and take effect in accordance with the laws of the Province of Ontario.

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IN WITNESS WHEREOF the Trustees have caused these presents to be signed and sealed as of February 17, 2021.

(Signed) "Michael A.J. Catford"

Michael A.J. Catford

(Signed) "Bart S. Munn"

Bart S. Munn

(Signed) "Timothy J. Murphy"

Timothy J. Murphy

(Signed) "K. Rai Sahi"

K. Rai Sahi

(Signed) "Antony K. Stephens"

Antony K. Stephens

(Signed) "Donald W. Turple"

Donald W. Turple

(Signed) "Timothy J. Walker"

Timothy J. Walker