

ARTIS REAL ESTATE INVESTMENT TRUST

FOURTH AMENDED AND RESTATED
DECLARATION OF TRUST

DATED: AUGUST 2, 2012

**FOURTH AMENDED AND RESTATED DECLARATION OF TRUST OF
ARTIS REAL ESTATE INVESTMENT TRUST**

THIS FOURTH AMENDED AND RESTATED DECLARATION OF TRUST is made in the City of Winnipeg, Manitoba, as of the 2nd day of August, 2012 and further amends and restates the third amended and restated declaration of trust of Artis Real Estate Investment Trust (the "Trust") dated May 19, 2011 (the "Third Amended and Restated Declaration of Trust").

RECITAL

WHEREAS the Trust is a trust established under the laws of the Province of Manitoba pursuant to a declaration of trust dated November 8, 2004 (the "Original Declaration of Trust") for the principal purpose of providing Unitholders with an opportunity to participate through their Unit holdings in income-producing real property investment(s).

AND WHEREAS on January 28, 2006, the Unitholders at such time resolved by special resolution to amend the Original Declaration of Trust, subject to the final approval of the Trustees, substantially as described in the Trust's management information circular dated December 28, 2005, together with any additional amendments to and/or restatements of the Original Declaration of Trust that the Trustees determined to be in the best interest of the Trust and not prejudicial to Unitholders.

AND WHEREAS on June 9, 2006, the Unitholders at such time resolved by special resolution to further amend the Original Declaration of Trust to include a provision that the Independent Trustees may increase the number of Trustees (up to the maximum) and appoint additional Independent Trustees to serve as Trustees until the next annual meeting of Unitholders.

AND WHEREAS on October 31, 2006 the Trustees executed an Amended and Restated Declaration of Trust which reflected the amendments to the Original Declaration of Trust authorized by the Unitholders.

AND WHEREAS on February 15, 2007 the name of the Trust was changed from "Westfield Real Estate Trust" to "Artis Real Estate Investment Trust".

AND WHEREAS at an annual and special meeting of Unitholders held on May 14, 2010, the Unitholders approved amendments to the First Amended and Restated Declaration of Trust to address certain financial statement presentation issues that may arise as a result of the required adoption by the Trust of International Financial Reporting Standards and to implement certain housekeeping changes.

AND WHEREAS on May 14, 2010 the Trustees executed a Second Amended and Restated Declaration of Trust to implement the changes authorized by the Unitholders on May 14, 2010.

AND WHEREAS at the annual and special meeting of Unitholders held on May 19, 2011, the Unitholders approved further amendments to the Second Amended and Restated Declaration of Trust to delete the definition of "Distributable Income" and to implement certain other consequential and ancillary changes.

AND WHEREAS on May 19, 2011 the Trustees executed a Third Amended and Restated Declaration of Trust to implement the changes authorized by the Unitholders on May 19, 2011.

AND WHEREAS on May 14, 2009, the Unitholders resolved by special resolution to further amend the Declaration of Trust, subject to the final approval of the Trustees, substantially as described in the Trust's management information circular dated March 30, 2009, and authorized the Trustees to make such additional and/or alternative amendments to the Declaration of Trust that the Trustees determined to be necessary or advisable from time to time to facilitate the authorization and issuance of Preferred Units (the "May 2009 Proposed Amendments").

AND WHEREAS the Trustees have now approved the May 2009 Proposed Amendments and wish to further amend and restate the Third Amended and Restated Declaration of Trust to implement the May 2009 Proposed Amendments.

DECLARATION

NOW THEREFORE, the undersigned, being all of the Trustees, hereby: (i) declare that the Third Amended and Restated Declaration of Trust is hereby further amended and restated in its entirety by this Fourth Amended and Restated Declaration of Trust hereinafter referred to as (the "Declaration of Trust") which, for greater certainty, shall replace the Third Amended and Restated Declaration of Trust, and (ii) agree to hold any and all property, real, personal or otherwise, tangible or intangible, which is currently owned by the Trust, or which is hereafter transferred, conveyed or paid to them in their capacity 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, to wit:

ARTICLE I DEFINITIONS

1.1. *Definitions and Interpretations*

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

- a) "Accumulated Distributions" has the meaning set forth in paragraph 9.1.1(c) hereof;
- b) "Administrator" means the person retained, appointed, employed or contracted with from time to time pursuant to section 8.3, if any;
- c) "affiliate" means an "insider" or "associate", including affiliated, controlled and subsidiary companies, as defined by *The Securities Act* (Manitoba), as amended from time to time;
- d) "annuitant" means the annuitant of a registered retirement savings plan or a registered retirement income fund, all as defined in the Tax Act;
- e) "Audit Committee" means the committee of the Trustees established pursuant to section 8.1;
- f) "Available Funds" has the meaning set forth in paragraph 9.1.1(c) hereof;
- g) "closed-end trust" means a trust that qualifies as a unit trust under paragraph 108(2)(b) of the Tax Act;
- h) "Declaration of Trust" means this fourth amended and restated declaration of trust, as may be further amended, supplemented and/or restated from time to time;
- i) "Distribution Date" means, in respect of a month other than the month of December, on or about the 15th day of the following month and means, in respect of the month of December, December 31st;
- j) "Distribution Record Date" means in respect of a month (or such other period as determined by the Trustees), the last business day of such month (or such other date as the Trustees may determine);
- k) "Exchangeable Securities" means any securities of any trust, limited partnership or corporation other than the Trust that are convertible or exchangeable directly for Units without the payment of additional consideration therefor;
- l) "GAAP" means Canadian generally accepted accounting principles, consistently applied;
- m) "Gross Book Value" means, at any time, the consolidated book value of the assets of the Trust, as shown on its then most recent consolidated balance sheet, plus the amount of accumulated depreciation and amortization for buildings, tenant improvements, equipment, in place lease values, below and above market leases, and tenant relationship values shown thereon or in the

notes thereto, plus the amount of future income tax liability arising out of any indirect acquisitions shown thereon or in the notes thereto or, if approved by the Trustees at any time, the appraised value of the Trust may be used instead of book value;

- n) "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 thereof;
- o) "Independent Trustee" means a Trustee who is independent of management of the Trust and who is free from any interest and any business or other relationship which could, or could reasonably be perceived to, materially interfere with the Trustee's ability to act with a view to the best interests of the Trust, other than interests and relationships arising from security holdings;
- p) "Liquidation Entitlement" has the meaning set forth in paragraph 12.3.1 hereof;
- q) "mortgages" means any mortgage, charge, hypothec, bond, debenture, note or other evidence of indebtedness directly or indirectly secured by Real Property;
- r) "Net Realized Capital Gains" for any period means the amount, if any, by which the amount of the capital gains of the Trust for the period exceeds the amount of any capital losses of the Trust for the period determined in accordance with the Tax Act;
- s) "Non-Resident" means any person that is neither a resident of Canada nor a Canadian partnership for the purposes of the Tax Act;
- t) "open-end trust" means a trust that qualifies as a unit trust under paragraph 108(2)(a) of the Tax Act;
- u) "person" includes an individual, partnership, unincorporated trust, unincorporated association or organization, trustee, executor or other legal representative or a corporation;
- v) "Preferred Distribution" means, in respect of each series of Preferred Units, the amount determined by multiplying the Preferred Unit Rate of Return for such series of Preferred Units by, if the Preferred Unit Rate of Return is a percentage, the aggregate Preferred Unit Subscription Prices of the then issued and outstanding Preferred Units of such series and, if the Preferred Unit Rate of Return is an amount, the number of then issued and outstanding Preferred Units of such series, and then multiplying the result by the Preferred Distribution Ratio;
- w) "Preferred Distribution Date" means, in respect of each Preferred Distribution Period other than a Preferred Distribution Period that includes the month of December, on or about the 15th day of the month following such Preferred Distribution Period, and means, in respect of the Preferred Distribution Period which includes the month of December, December 31st;
- x) "Preferred Distribution Period" means each calendar month (or such other calendar period as selected by the Trustees);
- y) "Preferred Distribution Ratio" means the number of months in a Preferred Distribution Period divided by 12;
- z) "Preferred Unit" means a unit of the Trust having the attributes set forth in section 5.3 hereof;
- aa) "Preferred Unit Conversion Ratio" has the meaning set forth in paragraph 5.3.3 hereof;
- bb) "Preferred Unitholder" means a person whose name appears on the Register as a holder of Preferred Units and, where the context requires, means a person whose name appears on the Register as a holder of Preferred Units of a particular series of Preferred Units;
- cc) "Preferred Unit Rate of Return" has the meaning set forth in paragraph 9.1.1(b) hereof;

- dd) "Preferred Unit Redemption Price" has the meaning set forth in subparagraph 5.1.1 hereof;
- ee) "Preferred Unit Subscription Price" means, in respect of any particular series of Preferred Units, the subscription price per Preferred Unit established by the Trustees in respect of such series;
- ff) "President", "Chief Executive Officer", "Secretary", "Chief Operating Officer", "Chief Financial Officer" and "Chairman" shall mean the person holding the respective office from time to time in accordance with section 2.9;
- gg) "Real Property" means property which in law is real property and includes, whether or not the same would in law be real property, leaseholds, mortgages, undivided joint interests in real property (whether by way of tenancy-in-common, joint tenancy, co-ownership, joint venture or otherwise), any interests in any of the forgoing and securities of corporations, trusts, limited partnerships or other legal entities whose sole or principal purpose and activity is to invest in, hold and deal in real property;
- hh) "Redemption Amount" has the meaning set forth in paragraph 5.3.5 hereof;
- ii) "Register" means the register of Unitholders which shall be established and maintained pursuant to this Declaration of Trust;
- jj) "Registered Plans" means, collectively, trusts governed by registered retirement savings plans, registered retirement income funds, deferred profit sharing plans, registered education savings plans, registered disability savings plans and tax-free savings accounts, each as defined in the Tax Act, and a "Registered Plan" means any one of them;
- kk) "Subsidiary" means any person, company, partnership, limited partnership, trust or other entity controlled, directly or indirectly, by the Trust;
- ll) "Tax Act" means the *Income Tax Act* (Canada) and the regulations thereunder, as same may be amended from time to time;
- mm) "Trust" means Artis Real Estate Investment Trust established pursuant to the Original Declaration of Trust and governed by this Declaration of Trust;
- nn) "Trustees" means, as of any particular time, the trustees holding office under this Declaration of Trust at such time, whether they be the signatories hereto or additional or successor trustees;
- oo) "Trust Unitholder" means a person whose name appears on the Register as a holder of Trust Units;
- pp) "Trust Units" means the Preferred Units and the Units and, for greater certainty, includes a fraction of a Preferred Unit or a Unit;
- qq) "Unit" means a unit of the Trust having the attributes set forth in section 5.2 hereof;
- rr) "Unitholder" means a person whose name appears on the Register as a holder of Units;

1.2. Name

The name of the Trust shall be "Artis Real Estate Investment Trust" or such other name as may be determined by a resolution of Trustees. As far as is 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.

1.3. Use of Name

Should the Trustees determine that the use of the name "Artis Real Estate Investment Trust" is not practicable, legal or convenient, the Trust may use such other designation or adopt such other name as the Trustees may, in their discretion, determine to be appropriate. Consequent upon such approval,

the Trustees shall use such other name and the Trust shall hold property and conduct its activities under such other designation or name.

1.4. *Places of Business*

The principal office and centre of administration of the Trust shall be at 300 – 360 Main Street, Winnipeg, Manitoba, unless changed by the Trustees to another location. The Trust may have such other offices or places for the conduct of its affairs as the Trustees may from time to time determine as necessary or desirable.

1.5. *Nature of the Trust*

The Trust is an unincorporated mutual fund trust established pursuant to the laws of Manitoba. The Trust is not, 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 Trust Unitholders or any of them for any purpose be, or be deemed to be or be treated in any way whatsoever to be, liable or responsible hereunder as partners or joint venturers. The Trustees, or any officer or employee of the Trust shall not be, and shall not be deemed to be, agents of the Trust Unitholders. The relationship of the Trust Unitholders to the Trustees shall be solely that of beneficiaries of the Trust and their rights shall be limited to those conferred upon them by this Declaration of Trust.

ARTICLE II TRUSTEES AND OFFICERS

2.1 *Number*

The current Trustees are the seven signatories hereto and the number of Trustees from time to time shall be a minimum of three and a maximum of ten. The number of Trustees may be (subject to the requirements of this section) (i) be increased or decreased from time to time by the Unitholders (in which circumstances, in the case of an increase, the holders of Trust Units entitled to vote thereon shall have the right to appoint additional Trustees (up to the maximum)), or (ii) be increased by the Independent Trustee up to a maximum of 10 (in which circumstances the Independent Trustees shall have the right to appoint additional Independent Trustees (up to the maximum)). Any Trustees so appointed shall serve as Trustees until the next annual meeting of the Unitholders. A majority of Trustees comprising the Audit Committee and the Governance and Compensation Committee shall be Independent Trustees.

2.2 *Term of Office*

Each Trustee named herein or hereafter elected or appointed shall (except as provided in section 2.5 or 2.6) hold office until the next annual meeting of Unitholders and until his successor has been elected and has qualified to serve as Trustee.

2.3 *Qualifications of Trustees*

A Trustee shall be an individual at least 21 years of age who is not 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 any securities of the Trust. A majority of the Trustees must be resident Canadians. A Trustee is deemed to resign immediately prior to becoming a Non-Resident. Not more than 49% of the total number of Trustees or of any committee of Trustees may be directors, employees or otherwise affiliated or associated with the Administrator or its affiliates; provided however, that if at any time the percentage of all Trustees who are so affiliated with the Administrator or its affiliates becomes more than 49% of the Trustees because of the death, resignation, bankruptcy, adjudicated incompetence, removal or change of affiliation of any Trustee who was not so affiliated, this requirement shall not be applicable for a period of 60 days, during which the Trustees shall appoint a sufficient number of Trustees to comply with the requirement and without requiring the prior approval of the holders of Trust Units entitled to vote thereon.

2.4 *Election of Trustees*

Election of Trustees at an annual or special meeting shall be by the vote of holders of a majority of the Trust Units entitled to vote thereon. The election of any Trustee (other than an individual who is serving as a Trustee immediately prior to such election) shall not become effective unless and until such person has in writing accepted his election and agreed to be bound by the terms of this Declaration of Trust.

2.5 *Resignation, Removal and Death of Trustees*

A Trustee may resign at any time by an instrument in writing signed by him and delivered or mailed to the Chief Executive Officer or other senior officer of the Trust. 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 vote or consent of holders of a majority of the outstanding Trust Units entitled to vote thereon or with cause by the resolution of two-thirds of the remaining Trustees. 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; and (iii) account to the remaining Trustees as they may require for all property which he holds as Trustee, and upon compliance with the foregoing he shall thereupon be discharged as Trustee. Upon the incapacity or death of any Trustee, his legal representative shall execute and deliver on his behalf such documents as the remaining Trustees may require as provided in this section.

2.6 *Vacancies*

The term of office of a Trustee shall terminate and a vacancy shall occur in the event of the death, removal, resignation, bankruptcy, adjudicated incompetence or other incapacity to exercise the duties of the office of a Trustee. No such vacancy shall operate to annul this Declaration of Trust or affect the continuity of the Trust. Until vacancies are filled, the remaining 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 Trustees shall hold office until the next annual meeting of Unitholders.

2.7 *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 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.

2.8 *Compensation and Other Remuneration*

Trustees shall be entitled to receive such reasonable compensation for their services as trustees as the Trustees may determine from time to time. Such Trustees, either directly or indirectly, shall also be entitled to receive remuneration for services rendered to the Trust in any other capacity. Such services may include, without limitation, services as an officer of the Trust, legal, accounting or other professional services, or services as a broker, agent or underwriter, whether performed by a Trustee or any person affiliated with such Trustee.

2.9 *Officers of the Trust*

The Trust shall have such officers as the Trustees may appoint from time to time which without limitation may include a Chief Executive Officer, President, Vice-President, Secretary, Chief Financial Officer, Chief Administrative Officer, Chief Operating Officer and a Chairman and such other officers as the Trustees may appoint from time to time. One person may hold two or more offices. An officer may, but need not be a Trustee or a person who is a director, employee or is otherwise affiliated with the Administrator or its affiliates or associates. Officers of the Trust shall be appointed and discharged by the Independent Trustees.

2.10 *Conflict of Interest Restrictions and Provisions*

Each Trustee must disclose to the Trust any interest in a material contract or transaction or proposed material contract or transaction with the Trust (including a contract or transaction involving the making or disposition of any investment in Real Property or a joint venture arrangement) or the fact that such person is a director or officer of or otherwise has a material interest in any person who is a party to a material contract or transaction or proposed material contract or transaction with the Trust. Such disclosure is required to be made at the first meeting at which a proposed material contract or transaction is considered. If a material contract or transaction or proposed material contract or transaction is one that in the ordinary course would not require approval by the Trustees, a Trustee is required to disclose in writing to the Trust or request to have entered into the minutes of meetings of Trustees the nature and extent of his interest forthwith after the Trustee becomes aware of the contract or transaction or proposed contract or transaction. In any case, a Trustee who has made disclosure to the foregoing effect is not entitled to vote on any resolution to approve the contract or transaction unless the contract or transaction is one for indemnity under the provisions of this Declaration of Trust or liability insurance.

In addition to the above general provisions, the following matters require the approval of a majority of the Independent Trustees to become effective:

- an acquisition of a property or investment in a property in which the Administrator, if any, an Administrator Appointee or any of their respective affiliates or associates has any direct or indirect interest,
- a material change to the agreement with the Administrator, if any, or its affiliates or any renewal, extension or termination thereof or any increase in the fees payable thereunder,
- the grant of options or other securities based compensation under any equity incentive plan of the Trust,
- the enforcement of any agreement entered into by the Trust with a non-Independent Trustee or an associate thereof or with the Administrator, if any, or an affiliate or associate thereof, and
- the making of any co-investment with the Administrator, if any, or its affiliates, directly or indirectly.

ARTICLE III TRUSTEES' POWER AND DUTIES

3.1 *General Powers*

The Trustees, subject only to the specific limitations contained in this Declaration of Trust, shall have without further or other authorization and free from any power or control on the part of the Trust Unitholders, full, absolute and exclusive power, control and authority over the assets of the Trust and over the business 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 of the purposes of the Trust or the conducting of the business of the Trust. In construing the provisions of this Declaration of Trust, there shall be a presumption in favour of the granted powers and authority of 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. 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 that may be made by trustees except as specifically required by such laws.

3.2 *Specific Powers and Authorities*

Subject only to the express limitations contained in this Declaration of Trust and in addition to any powers and authorities conferred by this Declaration of Trust or which the Trustees may have by virtue of any present or future statute or rule of law, the Trustees, without any action or consent by the holders of Trust Units entitled to vote thereon, shall have and may exercise at any time and from time to time the following powers and authorities, which may 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:

- 3.2.1 to retain, invest and re-invest the capital or other funds of the Trust in Real Property or personal property in accordance with the policies and restrictions set forth in section 4.1 herein 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 Trust Units for such consideration as they deem appropriate;
- 3.2.1a to determine the rights, designation, privileges, restrictions and conditions attaching to each series of Preferred Units authorized for issuance by the Trust in accordance with section 5.3;
- 3.2.2 for such consideration as they may deem proper, to issue notes, debentures, bonds or other obligations of the Trust;
- 3.2.3 to sell, rent, lease, hire, exchange, release, partition, assign, mortgage, pledge, hypothecate, grant security interests in, encumber, negotiate, convey, transfer or otherwise dispose of any or all of the property of the Trust by deeds, trust deeds, assignments, bills of sale, transfers, leases, mortgages, financing statements, security agreements and other instruments for any of such purposes executed and delivered for and on behalf of the Trust or Trustees by one or more of the Trustees or by a duly authorized officer, employee, agent or any nominee of the Trust;
- 3.2.4 to enter into leases, contracts, obligations and other agreements for a term extending beyond the term of office of the Trustees and beyond the possible termination of the Trust or for a lesser term;
- 3.2.5 to borrow money and give negotiable or non-negotiable instruments therefor; to guarantee, indemnify or act as surety with respect to payment or performance of obligations of third parties; to enter into other obligations on behalf of the Trust; and to assign, convey, transfer, mortgage, subordinate, pledge, grant security interests in, encumber or hypothecate the property of the Trust to secure any of the foregoing;
- 3.2.6 to lend money, whether secured or unsecured;
- 3.2.7 to incur and pay out of the property of the Trust any charges or expenses, and disburse any funds of the Trust, which charges, expenses or disbursements are, in the opinion of the Trustees, necessary or incidental to or desirable for the carrying out of the purposes of the Trust or conducting the business of the Trust, including without limitation, taxes or other governmental levies, charges and assessments, of whatever kind or nature, imposed upon or against the Trustees in connection with the Trust or the property of the Trust or upon or against the property of the Trust or any part thereof and for any of the purposes herein;
- 3.2.8 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;
- 3.2.9 to possess and exercise all the rights, powers and privileges appertaining to the ownership of all or any mortgages, securities or interests forming part of the assets of the Trust, to the same extent that an individual might, and, without limiting the generality of the foregoing, to vote or give any consent, request or notice, or waive any notice, either in person or by proxy or power of attorney, with or without power of substitution, to one or more persons, which proxies and powers of attorney may be for meetings or actions generally or for any particular meeting or action, and may include the exercise of discretionary power;

- 3.2.10 subject to section 2.9, to elect, appoint, engage or employ officers for the Trust, who may be removed or discharged at the discretion of the Trustees, such officers to have such powers and duties, and to serve such terms, as may be prescribed by the Trustees; to engage or employ any persons as agents, representatives, employees or independent contractors (including without limitation, real estate advisors, investment advisors, registrars and transfer agents, underwriters, accountants, lawyers, real estate agents, property managers, appraisers, brokers, architects, engineers, construction managers, general contractors or otherwise) in one or more capacities, and to pay compensation from the Trust for services in as many capacities as such persons may be so engaged or employed; and, except as prohibited by law, to delegate any of the powers and duties of the Trustees to any one or more Trustees, agents, representatives, officers, employees, independent contractors or other persons;
- 3.2.11 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, 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;
- 3.2.12 to renew, modify, release, compromise, extend, consolidate or cancel, in whole or in part, any obligation to or of the Trust;
- 3.2.13 to purchase and pay for out of the assets of the Trust insurance contracts and policies insuring the assets of the Trust against any and all risks and insuring the Trust and/or any or all of the Trustees, the Trust Unitholders or officers against any and all claims and liabilities of any nature alleged to have been taken or omitted by the Trust or by the Trustees, Trust Unitholders or officers;
- 3.2.14 to cause legal title to any of the assets of the Trust to be held by or in the name of the Trustees or, except as prohibited by law, by or in the name of the Trust or one or more of the Trustees or any other person, including a bare trustee, 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; and
- 3.2.15 to do all such other acts and things incidental to the foregoing and to exercise all powers 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.

3.3 *Operational Policies*

The Trustees shall operate the business and affairs of the Trust and shall cause the Administrator, if any, to operate the business and affairs of the Trust, in accordance with, and not contrary to, the following operating policies (unless otherwise agreed to by the Independent Trustees):

- 3.3.1 any written instrument creating an obligation which is or includes the granting by the Trust of a mortgage, or to the extent the Trustees determine to be practicable and consistent with their fiduciary duty to act in the best interests of the Trust Unitholders, any written instrument which in the judgment of the Trustees is a material obligation, shall to the extent commercially reasonable, in each case, contain a provision or be subject to an acknowledgement to the effect that the obligation being created is not personally binding upon and that resort will not be had to, nor will recourse or satisfaction be sought from, the private property of any of the Trustees, Trust Unitholders, annuitants under a plan of which a Trust Unitholder acts as a trustee or carrier, or officers, employees or agents of the Trust, but that only property of the Trust or a specific portion thereof will be bound; the Trust however, is not required, subject to having in the opinion of the Trustees, used all reasonable efforts to comply with this requirement, to comply in respect of obligations assumed by the Trust upon the acquisition of Real Property;

- 3.3.2 in addition to the provisions of paragraph 4.1.10 below, the Trust may engage in construction or development of Real Property in order to maintain its real properties in good repair or to enhance the income-producing potential of properties in which the Trust has an interest;
- 3.3.3 title to each Real Property must be held by and registered in the name of the Trust, the Trustees, a trustee for the Trust or in the name of a corporation or other entity wholly-owned, directly or indirectly, by the Trust or, directly or indirectly, by the Trust together with joint venturers;
- 3.3.4 the Trust will not directly or indirectly guarantee any indebtedness or liabilities of any person unless such guarantee (i) is given in connection with or incidental to an investment that is otherwise permitted pursuant to this Declaration of Trust, and (ii) has been approved by a majority of the Independent Trustees. In addition, the Trust will not directly or indirectly guarantee any indebtedness or liabilities of any person if doing so would (A) disqualify the Trust as a "mutual fund trust" within the meaning of the Tax Act, or (B) result in the Trust losing any status under the Tax Act that is otherwise beneficial to the Trust and its Trust Unitholders;
- 3.3.5 the Trust will obtain an independent appraisal, or otherwise satisfy itself of the value of, each property that it intends to acquire;
- 3.3.6 the Trust will obtain and maintain at all times insurance coverage in respect of potential liabilities of the Trust and the accidental loss of value of the assets of the Trust from risks, in amounts, with such insurers, and on such terms as the Trustees consider appropriate, taking into account all relevant factors including the practices of owners of comparable properties;
- 3.3.7 the Trust will obtain or review such environmental audits of each Real Property to be acquired by it as is considered prudent by the Trustees. All new leases granted by the Trust must contain appropriate covenants from the lessee respecting environmental matters as determined by the Trustees from time to time; and
- 3.3.8 the Trust will not incur or assume any indebtedness if, after the incurring or assuming of the indebtedness, the total indebtedness of the Trust would be more than 70% of the Gross Book Value. For the purposes of this subsection, the term "indebtedness" means any obligation of the Trust for borrowed money, provided that (a) an obligation will only constitute indebtedness to the extent that it would appear as a liability on the consolidated balance sheet of the Trust in accordance with GAAP, (b) indebtedness excludes trade accounts payable, distributions payable to Trust Unitholders, accrued liabilities arising in the ordinary course of business; (c) convertible debentures shall be deemed not to constitute indebtedness; and (d) indebtedness excludes the Redemption Amount of Preferred Units that have been called for redemption if the Preferred Units were accounted for as equity instruments in accordance with GAAP prior to being called for redemption.

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

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 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 Trust 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 to be necessary or desirable in interpreting, applying or administering this Declaration of Trust or in administering, managing or operating the Trust. Any regulations, decisions, designations or determinations made pursuant to this section shall be conclusive and binding upon all persons affected thereby.

Standard of Care

The Trustees shall exercise their powers hereunder and carry out their functions as Trustees honestly, in good faith and in the best interests of the Trust and the Trust Unitholders and in connection therewith shall exercise that degree of care, diligence and skill that a reasonably prudent person of their experience would exercise in comparable circumstances. Unless otherwise required by law, no Trustee shall be required to give any bond, surety or security in any jurisdiction for the performance of any duties or obligations hereunder. The Trustees in their capacities as Trustees shall not be required to devote their entire time to the business and affairs of the Trust.

3.5 *Decisions of Trustees Final, Binding and Conclusive*

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 Trust Unitholders (and, where the Trust Unitholder is a Registered Plan, or such other fund or plan registered under the Tax Act, upon plan beneficiaries and plan holders past, present and future) and Trust Units of the Trust shall be issued and sold on the condition and understanding that any and all such determinations shall be binding as aforesaid.

ARTICLE IV ASSETS OF THE TRUST

4.1 *Permitted Investments*

Notwithstanding anything herein contained to the contrary, the assets of the Trust may be invested only in accordance with the following guidelines (unless approved by a majority of the Trustees (including a majority of the Independent Trustees), provided that the Trustees shall not in any circumstances be permitted to approve or make any investment that would result in any of the prohibited events set forth in paragraph 4.1.3 from occurring):

- 4.1.2 the Trust may invest in interests (including fee ownership and leasehold interests) in income-producing Real Property in Canada and the United States;
- 4.1.3 the Trust will not make any investment, take any action or omit to take any action that would disqualify the Trust as a "mutual fund trust" within the meaning of the Tax Act, that would result in Units being disqualified for investment by Registered Plans, or that would result in the Trust losing any status under the Tax Act that is otherwise beneficial to the Trust and its Trust Unitholders;
- 4.1.4 the Trust may invest in a joint venture arrangement only if:
 - 4.1.4.1 the arrangement is one pursuant to which the Trust holds an interest in Real Property jointly or in common with others ("joint venturers") either directly or through the ownership of securities of a corporation or other entity (a "joint venture entity") as co-owners and not as partners;
 - 4.1.4.2 the Trust's interest in the joint venture arrangement is not subject to any restriction on transfer other than a right of first offer or right of first refusal, if any, in favour of the joint venturers;
 - 4.1.4.3 the Trust has a right of first offer or right of first refusal to buy the interests of the other joint venturers; and
 - 4.1.4.4 the joint venture arrangement provides an appropriate buy-sell mechanism to enable a joint venturer to purchase the other joint venturers' interests or to sell its interest;

provided that, notwithstanding the foregoing, the Trust may from time to time enter into any joint venture arrangement which does not comply with any of subparagraphs 4.1.4.2 through 4.1.4.4 above if the Trustees determine that the investment is desirable for the Trust and is otherwise in

compliance with the investment restrictions, the investment guidelines and the operating policies established in accordance with the Declaration of Trust and in effect at such time;

- 4.1.5 the Trust will 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" will have the meaning ascribed thereto by National Instrument 81-102 adopted by the Canadian Securities Administrators, as amended from time to time;
- 4.1.6 except for temporary investments held in cash, deposits with a Canadian chartered bank or trust company registered under the laws of a province or of Canada, short-term government debt securities, or in money market instruments of, or guaranteed by, a Schedule 1 Canadian chartered bank maturing within one year from the date of issue, the Trust may not hold securities other than securities of a trust, limited partnership or corporation formed for the purpose of holding Real Property, securities of a joint venture entity or an entity or corporation wholly-owned by the Trust formed and operated for the purpose of holding a particular Real Property or real properties or for any other purpose relating to the activities of the Trust, and provided further that, notwithstanding anything contained in this Declaration of Trust to the contrary, the Trust may acquire securities of other real estate investment trusts;
- 4.1.7 the Trust will 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;
- 4.1.8 the Trust will not invest in operating businesses unless such investment is incidental to a transaction (i) where revenue will be derived, directly or indirectly, principally from Real Property, or (ii) which principally involves the ownership, maintenance, improvement, leasing or management, directly or indirectly, of Real Property (in each case as determined by the Trustees);
- 4.1.9 the Trust shall not acquire interests in general partnerships or limited partnerships provided that the Trust may invest in a general partnership or limited partnership if:
 - 4.1.9.1 the general partnership or limited partnership is formed and operated solely for the purpose of acquiring, owning, maintaining, improving, developing, leasing or managing a particular Real Property or Real Properties or an interest therein.
 - 4.1.9.2 the Trust's interest in the limited partnership is not subject to any restriction on transfer other than a right of first offer or right of first refusal, if any, in favour of any other partner or any affiliate thereof;
 - 4.1.9.3 the Trust has a right of first offer or right of first refusal to buy the interests of the other partners; and
 - 4.1.9.4 the Trust has received a legal opinion to the effect that the investment (a) would not disqualify the Trust as a "mutual fund trust" within the meaning of the Tax Act, and (b) would not result in the Trust losing any status under the Tax Act that is otherwise beneficial to the Trust and its Trust Unitholders,

provided that, notwithstanding the foregoing, the Trust may from time to time enter into any limited partnership arrangement which does not comply with any of the subparagraphs 4.1.9.2 or 4.1.9.3 above if the Trustees determine that the investment is desirable for the Trust and otherwise complies with sections 4.1 and 4.2;

- 4.1.10 the Trust may invest in raw land for development or other development projects for the purpose of (i) renovating or expanding existing facilities; or (ii) developing new facilities which will, upon completion, be income-producing. In furtherance of subparagraph (ii), without limiting the generality of subsection 4.1.6 and notwithstanding the provisions of subsections 4.1.11 and 4.1.12 below, the Trust may invest in mortgages (including participating or convertible mortgages): (A) granted by an entity directly or indirectly wholly owned by the Trust or by the Trust with a joint venturer; (B) granted by a joint venturer; or (C) provided that the Trust has an option or a right to acquire an interest in the project or an entity which owns any such

development project, in each case secured against the Real Property underlying any such development project and may continue to hold such mortgages following completion of the project;

- 4.1.11 notwithstanding the provisions of subsection 4.1.10 above and 4.1.12 below, the Trust may invest in mortgages and mortgage bonds (including, with the consent of a majority of the Trustees, a participating or convertible mortgage) where: (i) the security therefor is income-producing Real Property which otherwise meets the general investment guidelines of the Trust adopted by the Trustees from time to time in accordance with the Declaration of Trust and the restrictions set out herein; and (ii) the mortgage is registered on title to the Real Property which is security therefor;
- 4.1.12 notwithstanding subsections 4.1.10 and 4.1.11 above, the Trust may invest in mortgages if the Trust intends to use the acquisition of the mortgages as a method of acquiring control of an income-producing Real Property which would otherwise meet the investment guidelines of the Trust;

For the purpose of the foregoing guidelines (other than subsection 4.1.3), the assets, liabilities and transactions of a corporation or other entity wholly or partially owned by the Trust will be deemed to be those of the Trust on a proportionate consolidation basis. In addition, any references in the foregoing to investments in Real Property will be deemed to include an investment in a joint venture arrangement.

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, such restriction in conflict shall, if the Trustees on the advice of legal counsel to the Trust so resolve, be deemed to have been amended to the extent necessary to resolve any such conflict, and, notwithstanding anything to the contrary contained herein, any such resolution of the Trustees shall not require the prior approval of Trust Unitholders.

ARTICLE V TRUST UNITS

5.1 *Units*

The beneficial interests in the Trust shall be divided into and represented by units of two classes, described and designated as "Units" and "Preferred Units", which shall be entitled to the rights and subject to the limitations, restrictions and conditions set out herein, and the interest of each Unitholder and Preferred Unitholder shall be determined by the number of Units and/or Preferred Units registered in the name of the Unitholder or Preferred Unitholder respectively.

5.2 *Rights Attaching to Units*

The Trust may issue an unlimited number of Units. Each Unit represents an equal undivided interest in the Trust and shall carry the same rights and restrictions, as follows:

5.2.1 Voting. The right to one vote;

5.2.2 Distributions. The right to participate in distributions in accordance with the provisions of Article IX hereof; and

5.2.3 Winding-up. The right to participate in distributions of the net assets of the Trust upon the termination or winding-up thereof in accordance with the provision of Article XII hereof.

All Units shall rank among themselves equally and rateably without discrimination, preference or priority.

5.3 *Rights Attaching to Preferred Units*

The Trust may issue an unlimited number of Preferred Units. The Preferred Units may be issued in one or more series and the terms of a particular series of Preferred Units shall be set out in a "Certificate of Preferred Unit Terms" which certificate shall be approved by the Trustees prior to the issue

of such Preferred Units and, upon such approval, the certificate shall become a part of this Declaration of Trust. Without limiting the generality thereof, the Certificate of Preferred Unit Terms shall set out in respect of the particular series of Preferred Units:

- the Preferred Unit Subscription Price,
- the Preferred Unit Rate of Return,
- whether the distributions are cumulative or non-cumulative,
- whether or not the Preferred Units will become entitled to vote in the event that Preferred Distributions are not paid for a specified number of Preferred Distribution Periods and, if so, the specified number of Preferred Distribution Periods and under what circumstances such voting rights shall cease,
- whether the series of Preferred Unit ranks in priority or junior to any one or more other series of Preferred Units and, if so, the manner in which distributions to be made among the series of Preferred Units if the available funds are insufficient to pay all Preferred Distributions or all Liquidation Entitlements,
- whether the Preferred Units will be convertible or reclassifiable and, if so, the Preferred Unit Conversion Ratio in respect of each series of Preferred Units issued, whether the Preferred Units will be redeemable and, if so, the timing of such redemptions and the Redemption Amount, and
- any other provisions not inconsistent with the terms of this Declaration of Trust or the terms of any then existing Certificates of Preferred Unit Terms.

In all other respects, each Preferred Unit represents an equal undivided interest in the Trust and shall carry the same rights and restrictions, as follows:

- 5.3.1 Voting. The right to vote only in the manner and the circumstances set forth in Article VI hereof, unless the Certificate of Preferred Unit Terms specifies that the Preferred Units will become entitled to vote in the event that Preferred Distributions are not paid for a specified number of Preferred Distribution Periods, and all Preferred Distributions have not been paid for such number of Preferred Distribution Periods (in which case the voting rights of the holders of Preferred Units shall be as set out in the Certificate of Preferred Unit Terms);
- 5.3.2 Distributions. The right to receive distributions in accordance with the provisions of Article IX hereof;
- 5.3.3 Conversion. If determined by the Trustees in the Certificate of Preferred Unit Terms for the reservation and issuance of the Preferred Units of a particular series that such Preferred Units shall be convertible or reclassifiable, the right to convert or reclassify each such Preferred Unit into that number of Units as the Trustees may determine in such Certificate of Preferred Unit Terms (such number in respect of each series of Preferred Units, the "Preferred Unit Conversion Ratio") in accordance with and subject to the terms and conditions in the Certificate of Preferred Unit Terms;
- 5.3.4 Winding-up. The right to participate in distributions of the net assets of the Trust upon the termination or winding-up thereof in accordance with the provisions of Article XII hereof;
- 5.3.5 Redemption. If determined by the Trustees in the Certificate of Preferred Unit Terms for the reservation and issuance of the Preferred Units of a particular series that such Preferred Units shall be redeemable, the Trust may redeem and cancel all or any part of the Preferred Units of any Preferred Unitholder at the times and for such amount per Preferred Unit (the "Redemption Amount") as are set out in the Certificate of Preferred Unit Terms.

5.4 *References to Series*

Where the Preferred Units have been issued in two or more series, any reference to the Preferred Units in this Declaration of Trust shall be read as a reference to a series of Preferred Units.

5.5 *Interests in the Income of the Trust*

Notwithstanding anything else herein contained, except as otherwise provided in the terms of a particular series of Preferred Units as fixed by the Trustees in accordance with subsection 5.3 above, neither the Units nor any series of Preferred Units shall have or be deemed to have any term, condition, right or other attribute which would provide any holder of Units or Preferred Units of any series with an interest in the income of the Trust as a percentage of any distribution received by that Trust Unitholder that is greater or lesser than an interest in the income of the Trust as a percentage of any distribution received by the holder of any other Units or Preferred Units of any series.

5.6 *Units and Preferred Units Non-Assessable*

No Trust Units shall be issued other than as fully paid and non-assessable.

5.7 *No Pre-emptive Rights*

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

5.8 *Fractional Units and Preferred Units*

Certificates for fractional Units or Preferred Units will not be issued and fractional Units and Preferred Units do not entitle the holder thereof to receive notice of, to attend at or to vote at, a meeting of Trust Unitholders or a meeting of Preferred Unitholders in the event that the Trust is required to hold a meeting of Preferred Unitholders. Subject to the foregoing, such fractional Units and Preferred Units shall have attached thereto the rights, restrictions, conditions and limitations attaching to whole Units or Preferred Units, as the case may be, in the proportion that they bear to a whole Unit of Preferred Unit, as the case may be.

5.9 *Legal Ownership of Assets of the Trust*

The legal ownership of the assets of the Trust and the right to conduct the affairs of the Trust are vested exclusively in the Trustees, subject to the provisions of this Declaration of Trust, and none of the Unitholders nor Preferred Unitholders shall have any interest therein other than the interest in the Trust conferred by their Units or Preferred Units issued hereunder as described herein. No Trust Unitholder has or is deemed to have any right of ownership in any of the assets of the Trust.

5.10 *Eligibility to be a Trust Unitholder*

At no time may Non-Residents be the beneficial owners of more than 49% of the Units or Preferred Units, on a basic or fully-diluted basis (and for greater certainty, including Units into which Exchangeable Securities may be converted or exchanged), and the Trust shall inform its transfer agent of this restriction. The Trustees may require a registered holder of Units or Preferred Units, as the case may be, to provide the Trustees with a declaration as to the jurisdictions in which beneficial owners of the Units or Preferred Units registered in such registered holder's name are resident and as to whether such beneficial owners are Non-Residents (or in the case of a partnership, whether the partnership is a Non-Resident). If the Trustees become aware, as a result of acquiring such declarations as to beneficial ownership or as a result of any other investigations, that the beneficial owners of more than 40% of the Units or Preferred Units, as the case may be, (on a basic or fully-diluted basis, including Units into which Exchangeable Securities may be converted or exchanged) are, or may be, Non-Residents or that such a situation is imminent, the Trustees may make a public announcement thereof and shall not accept a subscription for Units or Preferred Units, as the case may be, from or issue or register a transfer of Units or Preferred Units to a person unless the person provides a declaration in form and content satisfactory to the Trustees that the person is not a Non-Resident and does not hold such Units or Preferred Units, as the case may be, for the benefit of Non-Residents. If, notwithstanding the foregoing, the Trustees determine that more than 49% of the Units or Preferred Units, as the case may be, (on a basic or fully-

diluted basis, including Units into which Exchangeable Securities may be converted or exchanged) are held by Non-Residents, the Trustees may send a notice to such Non-Resident holders of the Units, Preferred Units or Exchangeable Securities, as the case may be, chosen in inverse order to the order of acquisition or registration or in such other manner as the Trustees may consider equitable and practicable, requiring them to sell their Units, Preferred Units or Exchangeable Securities, as the case may be, or a portion thereof within a specified period of not more than 30 days. If the Unitholders or Preferred Unitholders receiving such notice have not sold the specified number of Units, Preferred Units or Exchangeable Securities, as the case may be, or provided the Trustees with satisfactory evidence that they are not Non-Residents within such period, the Trustees may on behalf of such Unitholders or Preferred Unitholders sell such Units, Preferred Units or Exchangeable Securities and, in the interim, shall suspend the voting and distribution rights attached to such Units, Preferred Units or Exchangeable Securities (other than the right to receive the net proceeds from the sale). Upon such sale or conversion, the affected holders shall cease to be holders of the relevant Units, Preferred Units or Exchangeable Securities, as the case may be, and their rights shall be limited to receiving the net proceeds of sale upon surrender of the certificates, if any, representing such securities. The Trust may direct its transfer agent to do any of the foregoing.

No liability shall accrue to the Trust or the Trustees if the Units or Preferred Units of a Non-Resident Unitholder or Preferred Unitholder are sold at a loss to such Unitholder or Preferred Unitholder, as the case may be. Unless and until the Trustees shall have been required to do so under the terms hereof, the Trustees shall not be bound to do or take any proceedings or action with respect to this Section 5.10 by virtue of the powers conferred on them hereby. The Trustees shall use reasonable commercial efforts to actively monitor the ownership of Units or Preferred Units by Non-Residents. It is acknowledged that the Trustees cannot definitely monitor the ownership of Units or Preferred Units by Non-Residents if the Units or Preferred Units are registered in the name of an intermediary. The Trustees shall not be liable for any violation of the Non-Resident ownership restriction which may occur during the term of the Trust.

5.11 *Issuance of Trust Units*

The Trustees may allot and issue Trust Units at such time or times and in such manner (including pursuant to any plan from time to time in effect relating to reinvestment by 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. In the event that Trust Units are issued in whole or in part for a consideration other than money, the resolution of the Trustees allotting and issuing such Trust Units shall express the fair equivalent in money of the other consideration received.

5.12 *Rights, Warrants, Options, Convertible Debt and Other Securities*

The Trustees may create and issue convertible securities and rights, warrants or options to subscribe for fully paid Units (including Exchangeable Securities) or Preferred Units which securities, or rights, warrants or options may be convertible or exercisable, as the case may be, into Units or Preferred Units, as the case may be, at such 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 convertible security, or a right, warrant or option shall not be a Unit or Preferred Unit and a holder thereof shall not be a Unitholder or Preferred Unitholder. Upon the approval by the Trustees of any Unit option plan for trustees, officers and/or employees of the Trust or management company employees, the Trustees may grant options upon the terms and subject to the conditions set forth in such plan.

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

5.13 *Acceptance of Subscription and Allotment and Issuance of Trust Units*

The Trustees reserve the right to accept or reject subscriptions for Trust Units in whole or in part at their sole option and reserve the right to restrict the number of Trust Units that may be purchased by any subscriber. The decision to accept or reject a subscription shall be exercised promptly. Upon acceptance of a subscription, the Trustees shall allot and upon timely receipt of the purchase price thereof, issue to the subscriber the Trust Units subscribed for and shall pay the full purchase price received for such Trust Units into the Trust. Upon rejection of a subscription, the Trustees shall make a prompt refund to the subscriber of the purchase price submitted.

5.14 *Certificates*

Each Trust Unitholder or his duly authorized agent is entitled to a certificate bearing an identifying serial number in respect of the Trust 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 Trust Unit or Trust 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 Trust Units.

5.15 *Unit Register to be Maintained*

The Trustees shall cause the establishment and maintenance of a register (the "Register") of the names, addresses and numbers of Units held by registered Unitholders and Preferred Units held by Preferred Unitholders. The Trustees shall for all purposes be entitled to treat the Unitholder or Preferred Unitholder in whose name any Units or Preferred Units are registered as the absolute owner thereof, any notice to the contrary notwithstanding. The Trustees shall not be charged with notice of or be bound to see to the execution of any trust in respect of any Unit or Preferred Unit whether express, implied or constructive and may deal with any Unit or Preferred Unit on the direction of the registered Unitholder or the registered Preferred Unitholder thereof, whether named as trustee or otherwise. Only Trust Unitholders whose Trust Units are recorded on the Register shall be entitled to vote (to the extent permitted pursuant to this Declaration of Trust) or to receive distributions or otherwise exercise or enjoy the rights of Trust Unitholders. The Trustees may delegate this obligation to an entity the business of which is the provision of registrar and transfer agency services.

5.16 *Purchase of Units and Preferred Units*

In addition to redemptions of Preferred Units pursuant to paragraph 5.3.5 hereof, and subject to any restrictions provided in any Certificate of Preferred Unit Terms, the Trust may from time to time purchase Units and/or Preferred Units in accordance with applicable securities legislation and the rules prescribed under applicable stock exchange or regulatory policies.

5.17 *Take-Over Bids*

If a take-over bid is made for Units or Preferred Units of any series within the meaning of *The Securities Act (Manitoba)* and not less than 90% of the Units or the Preferred Units of such series (other than Units or Preferred Units of the series held at the date of the take-over bid by or on behalf of the offeror or associates or affiliates of the offeror) are taken up and paid for by the offeror, the offeror will be entitled to acquire the Units or the Preferred Units of the series held by Unitholders or Preferred Unitholders of such series who did not accept the offer either, at the election of each such Unitholder or Preferred Unitholder, (a) on the terms offered by the offeror or (b) at the fair value of such Trust Unitholders' Units or Preferred Units of such series of Preferred Units.

5.18 *Transfer of Units*

Trust Units shall be, for all purposes of the Trust and this Declaration of Trust, personal and moveable property, and shall be transferable at any time and from time to time by the Trust Unitholder by endorsement and delivery of the certificates representing the Trust 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 Trust Unit certificate and the transferee has delivered to the transfer agent and/or register a Trust Unit certificate representing the Trust Units transferred. Subject to the foregoing, transfers shall be recorded on the

Register and a new certificate for the Trust Units so transferred shall be issued to the transferee and in case of a transfer of only part of the Trust Units represented by any certificate, a new certificate for the remaining Trust Units shall be issued to the transferor.

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

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

5.19 *Lost or Stolen Trust Units, Death of Trust Unitholder*

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

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

ARTICLE VI
MEETINGS OF UNITHOLDERS

6.1 *Annual Meeting*

There shall be an annual meeting of the holders of Trust Units entitled to vote at such time and place as the Trustees shall determine for the purpose of electing Trustees, appointing the auditor of the Trust, approving amendments to this Declaration of Trust, the sale or transfer of all or substantially all of the assets of the Trust, the termination of the Trust and for the transaction of such other business as may properly be brought before the meeting. The annual meeting shall be held within six months after the end of each fiscal year of the Trust.

6.2 *Other Meetings*

The Trustees shall have the power at any time to call special meetings of holders of Trust Units entitled to vote on matters to be brought before the meeting at such time and place as the Trustees may determine. Special meetings of the holders of Trust Units entitled to vote thereon shall be called for the purposes set forth in the Declaration of Trust upon the written request of holders holding in the aggregate not less than 5% of the outstanding Trust Units entitled to vote on the matters to be brought before the special meeting. Any notice in respect of a meeting shall state in reasonable detail the business proposed to be carried out at the meeting. Trust Unitholders have the right to obtain a list of Trust Unitholders to the same extent and upon the same conditions as those which apply to shareholders of a corporation under the *Canada Business Corporations Act*.

In the event that it is proposed to amend this Declaration of Trust in a manner that would require the approval of the Preferred Unitholders holding Preferred Units of a particular series, then the Trustees shall call a meeting of such Preferred Unitholders.

6.3 *Notice of Meeting of Trust Unitholders*

Notice of all meetings of Trust Unitholders and a management information circular prepared in accordance with applicable law shall be mailed or delivered by the Trustees to each Trust Unitholder entitled to vote thereat at his address appearing in the Register in compliance with applicable securities laws. Notice of any meeting of Trust Unitholders shall state the purpose of the meeting in sufficient detail so as to properly inform Trust Unitholders entitled to receive such notice of matters to be addressed at the meeting. Notice of all meetings of Trust Unitholders shall be mailed or delivered by the Trustees to each applicable Trust Unitholder entitled to vote at a meeting of applicable Trust Unitholders at the address of the Trust Unitholder appearing in the register of the Trust not less than 21 days nor more than 50 days before the meeting. For the purposes of determining the Trust Unitholders who are entitled to receive notice or and vote at any meeting or any adjournment thereof, the Trustees may from time to time fix a date not more than 60 days prior to the date of any meeting of Trust Unitholders as a record date for the determination of Trust Unitholders entitled to receive notice of and to vote at such meeting or any adjournment thereof and, except as otherwise determined from time to time by the Trustees, any Trust Unitholder who was a Trust Unitholder at the time so fixed shall be entitled to receive notice of and vote at such meeting and any adjournment thereof, even though he, she or its has since that date disposed of the applicable Trust Units and, except as otherwise determined by the Trustees, no Trust Unitholder becoming such after that record date shall be entitled to receive notice of and to vote at such meeting or any adjournment thereof.

6.4 *Quorum*

Two persons who are holders of Trust Units represented in person or by proxy and representing greater than 5% of the votes attaching to the issued and outstanding Trust Units entitled to vote thereon shall constitute a quorum for any meeting of Trust Unitholders.

6.5 *Voting*

Holders of whole Trust Units entitled to vote on any matter to be properly brought before a meeting of Trust Unitholders at all meetings of the Trust Unitholders may attend and vote at such

meeting, either in person or by proxy. Each whole Trust Unit entitled to vote on the matters to be properly brought before the meeting shall be entitled to one vote at such meeting. Whenever any action is to be taken by the Trust Unitholders (or the holders of any class or series of Trust Units), they shall, except as otherwise required by this Declaration of Trust or by law, be authorized by the votes of holders holding a majority of the Trust Units entitled to vote thereon cast at a meeting of Trust Unitholders.

6.6 *Matters on Which Trust Unitholders May Vote*

The Unitholders and the holders of those Preferred Units which then carry a right to vote shall be entitled to vote upon the following matters, upon such other matters as are set forth in this Declaration of Trust and upon such matters for which approval of holders of Trust Units entitled to vote is required pursuant to the requirements of any stock exchange upon which the Trust Units (or any class or series thereof) may trade from time to time:

- (a) the election or removal of Trustees;
- (b) the appointment or approval or removal of auditors of the Trust;
- (c) the approval of amendments to the Declaration of Trust (except as provided in section 11.1);
- (d) the reclassification of the Units;
- (e) the sale of the assets of the Trust as an entirety or substantially as an entirety (provided that, for greater certainty, the Trust shall be entitled to transfer all or a portion of its assets to an entity controlled by the Trust pursuant to an internal reorganization of the Trust and such transfer shall not require the approval of holders of Trust Units entitled to vote; and
- (f) the termination of the Trust.

Except with respect to the foregoing matters specified in this section, no vote of the Trust Unitholders shall bind the Trustees. However, nothing in this section shall prevent the Trustees from submitting to a vote of holders of Trust Units entitled to vote (or any class or series of Trust Units) any matter that they deem appropriate.

6.7 *Matters on which Preferred Unitholders may Vote*

In addition to the voting rights that may be specified in the Certificate of Preferred Units Terms to arise in the event of the failure of the Trust to pay Preferred Distributions for a specified number of Preferred Distribution Periods, the Preferred Unitholders shall, if they are not then otherwise carrying a voting right, be entitled to vote upon the matters set forth in section 11.4, and upon such matters for which Preferred Unitholder approval is required pursuant to the terms of any stock exchange upon which the Preferred Units may be listed from time to time.

6.8 *Proxies*

Whenever the vote or consent of Trust Unitholders (or any class or particular group of Trust Unitholders) is required or permitted under this Declaration of Trust, such vote or consent may be given either directly by such Trust Unitholders or to a proxy in such form as the Trustees may prescribe from time to time. The Trustees may solicit such proxies from the Trust Unitholders or any of them in any matter requiring or permitting the vote or consent of such Trust Unitholders. The Trustees may specify, if they so determine, in the notice of meeting of Trust Unitholders (or any class or particular group of Trust Unitholders), that all proxies must be received by the Trust or an officer or agent of the Trust no later than 48 hours prior to the meeting or an adjournment thereof, excluding days other than business days, and that proxies not so received will not be valid.

ARTICLE VII
MEETING OF TRUSTEES

7.1 *Trustees May Act Without Meeting*

The Trustees may act with or without a meeting. Any action of the Trustees may be taken at a meeting by vote or without a meeting by written consent of all of the Trustees.

7.2 *Notice of Meeting*

Meetings of the Trustees may be held from time to time upon the call of any Trustee. Regular meetings of the Trustees may be held without call or notice at a time and place fixed by the Trustees provided same has been agreed to by all Trustees. Notice of the time and place of any other meetings shall be given not less than 48 hours before the meeting but may be waived in writing by any Trustee either before or after such meeting. The attendance of a Trustee at a meeting shall constitute a waiver of notice of such meeting except where a Trustee attends a meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting has not been lawfully called or convened.

7.3 *Quorum*

A quorum for all meetings of the Trustees shall be a majority of the Trustees present in person.

7.4 *Voting at Meeting*

Questions arising at any meeting of the Trustees shall be decided by a majority of the votes. In the case of an equality of votes, the chairman of the meeting, in addition to his original vote, shall have a second or casting vote.

7.5 *Meetings by Telephone*

Any Trustee may participate in a meeting of the Trustees 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.

7.6 *Annual Review of Certain Matters*

At least once per year the Trustees shall review the investment policies of the Trust as set out herein and shall determine whether such investment policies are in the best interests of the Trust Unitholders. At least once per year the Trustees shall review the performance of duties by its senior officers or the Administrator, if any.

ARTICLE VIII
DELEGATION OF POWERS

8.1 *The Audit Committee*

The Trust shall have an audit committee (the "Audit Committee") composed of not less than three Trustees, which Audit Committee shall be in compliance with all applicable securities laws, regulations, rules and policies. The duties and responsibilities of the Audit Committee shall be set forth in a written charter governing the Audit Committee. The Auditor of the Trust is 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 Auditor. The Auditor of the Trust or a member of the Audit Committee may call a meeting of the Audit Committee.

8.2 *The Governance and Compensation Committee*

The Trust shall have a governance and compensation committee (the "Governance and Compensation Committee") composed of at least two Trustees. The Governance and Compensation

Committee shall be charged with responsibility for negotiating and finalizing and otherwise dealing with all employment, consulting or other compensation agreements between the Trust and any Trustee or senior officer of the Trust or between any Affiliate of the Trust and any Trustee or senior officer of the Trust, and with administering the Trust's securities based compensation plan(s). Any member of the Governance and Compensation Committee may call a meeting of the Governance and Compensation Committee. Any member of the Governance and Compensation Committee who is party to a matter brought before the committee shall not participate in any discussions or vote in respect thereto.

8.3 *The Administrator*

The Trustees shall have the power to retain, appoint, employ or contract with any person to serve as Administrator of the Trust which person shall be responsible, subject to the overriding authority of the Trustees over the management of the Trust, for administering the affairs of the Trust on a day-to-day basis and performing the record-keeping and reporting functions of the Trustees. The duties of the Administrator shall be set out in a written agreement, which shall also provide for the fees payable to the Administrator in connection with its administration of the affairs of the Trust and the management of the properties of the Trust. Without limiting the generality of the foregoing, the Trustees hereby authorize the management individuals provided by the Administrator, if any, to execute and deliver on behalf of and in the name of the Trust, documents, agreements and any other instruments.

ARTICLE IX DISTRIBUTIONS

9.1 *Distributions*

9.1.1 Preferred Unitholders.

- (a) For so long as the Preferred Units of any series are outstanding there shall, subject to the provisions of paragraph 9.1.1(c), be paid on such series of Preferred Units distributions (which shall be cumulative distributions if the Certificate of Preferred Unit Terms for such particular series of Preferred Units so provides) in respect of each Preferred Distribution Period equal to the Preferred Distribution in priority to: (i) any amounts being paid to the Unitholders; and (ii) if there is more than one series of Preferred Units issued and if the Certificate of Preferred Unit Terms in respect of any such series specifies that it ranks in priority to any one or more other series of Preferred Units, in priority to the holders of all series of Preferred Units ranking junior to such series of Preferred Units. The Preferred Distribution in respect of any particular series of Preferred Units for any Preferred Distribution Period will be payable on or about the Preferred Distribution Date, to the Preferred Unitholders of such series at the close of business on the last day of such Preferred Distribution Period, provided that if there are insufficient Available Funds to pay such Preferred Distribution the provisions of paragraph 9.1.1(c) shall apply.
- (b) The Preferred Unit Rate of Return in respect of any series of Preferred Units shall be the rate or amount per annum (such rate the "Preferred Unit Rate of Return") which may be fixed or floating and which may change on such dates, or at such times, or upon the occurrence of such events or satisfaction of such conditions, all as the Trustees may determine and set out in the Certificate of Preferred Unit Terms for the reservation and issuances of such series of Preferred Units. For greater certainty, the terms of a series of Preferred Units may provide that the Preferred Unit Rate of Return for such series may change or vary on future date(s) in the event that any Preferred Units of such series remain outstanding on such future date(s).
- (c) If at any time the amounts determined by the Trustees to be available for distribution to the Preferred Unitholders at such time (such amounts, at any particular time, the "Available Funds") are insufficient to pay all Preferred Distributions in respect of any particular Preferred Distribution Period, the amount to be paid on any particular series of Preferred Units shall, unless the Certificate of Preferred Unit Terms for any such series of Preferred Units specifies that the series is to rank in priority or junior to any one or more other series of Preferred Units, in which case the Available Funds shall be distributed in the manner set out in such Certificate of Preferred Units Terms, be equal to the Available

Funds multiplied by a fraction, the numerator of which shall be the Preferred Distribution to which such series of Preferred Units are entitled in respect of such Preferred Distribution Period and the denominator of which shall be aggregate of the Preferred Distributions to which all Preferred Units are entitled in respect of such Preferred Distribution Period. If the Trustees shall not have paid a Preferred Distribution on any series of Preferred Units in full for any Preferred Distribution Period, then if and only if the Certificate of Preferred Unit Terms specifies that the particular series of Preferred Units are entitled to cumulative distributions, the unpaid portion of such Preferred Distribution for such Preferred Distribution Period (such amount, in respect of any particular series of Preferred Units, the "Accumulated Distribution") shall be cumulative and shall be payable on such future Preferred Distribution Date or Dates as the Trustees may determine that all or any portion of such Accumulated Distributions shall be paid, to the Preferred Unitholders at the close of business on the last day of the Preferred Distribution Period to which such Preferred Distribution Date relates, in priority to any future Preferred Distributions on Preferred Units or the payment of distributions on the Units other than distributions on the Units payable by way of the issuance of additional Units. If there is an Accumulated Distribution in respect of any series of Preferred Units at the time amounts are otherwise payable to Trust Unitholders pursuant to this Article IX, such Accumulated Distribution(s) shall be payable in priority to such distributions, other than distributions on the Units payable by way of the issuance of additional Units, and if the Available Funds at such time are not sufficient to pay the aggregate of all such Accumulated Distributions the amount to be paid on each series of Preferred Units shall, unless the Certificate of Preferred Unit Terms for any such series of Preferred Units specifies that the series is to rank in priority or junior to any one or more other series of Preferred Units, in which case the Available Funds shall be distributed in the manner set out in such Certificate of Preferred Units Terms, be equal to the Available Funds multiplied by a fraction, the numerator of which shall be the Accumulated Distribution to which such series of Preferred Units are entitled at such time and the denominator of which shall be aggregate of the Accumulated Distributions to which all Preferred Units are entitled at such time.

- (d) In all cases the Accumulated Distribution and/or Preferred Distribution payable on a series of Preferred Units shall be divided rateably amongst the holders of the Preferred Units of such series that are issued and outstanding at the close of business on the last day of the Preferred Distribution Period in respect of which such Accumulated or Preferred Distribution is being made, and a holder of fractional Preferred Units is entitled to receive an Accumulated Distribution and/or Preferred Distribution in respect of the fractional Preferred Units in accordance with the rights attaching to the series of Preferred Units. The holders of the Preferred Units of any series shall not be entitled to any distributions other than, or in excess of, the distributions provided for in this paragraph 9.1.1.

9.1.2 Unitholders.

- (a) Provided that all Accumulated Distributions and Preferred Distributions shall first have been paid to the Preferred Unitholders, the Trustees may distribute to Unitholders at such time or times in the year as they shall determine, such amounts of the income (including Net Realized Capital Gains) as the Trustees determine in their discretion.
- (b) In addition to other distributions which the Trust may make to Unitholders pursuant to this Article IX, but subject to the rights of the Preferred Unitholders to receive priority distributions, the Trustees may declare to be payable and make distributions out of the income, the Net Realized Capital Gains and/or the capital of the Trust or otherwise in such amount or amounts and on such dates as the Trustees may determine to persons who are Unitholders at the record date set for such distribution.
- (c) Unitholders at the close of business on the last day of a month (or other period selected by the Trustees) shall be entitled to receive their proportionate share any distributions of income and/or Net Realized Capital Gains declared by the Trustees for such month (or other period). The distribution for any month (or other period) will be paid on or about the

Distribution Date.

- (d) Notwithstanding any other provision of this Declaration of Trust, the Trustees shall not be prohibited from making distributions to Unitholders pursuant to the provisions of paragraph 9.1.2 if the distributions are paid by way of the issuance of additional Units.

9.2 *Payment of Distributions*

- (a) Subject to the provisions of paragraph 9.2(b), distributions shall be made by cheque payable to or to the order of the Trust Unitholder or by electronic fund transfer or by such other manner of payment approved by the Trustees from time to time. The payment, if made by cheque, shall be conclusively deemed to have been made upon hand-delivery of a cheque to the Trust Unitholder or to his agent duly authorized in writing or upon the mailing of the cheque by prepaid first class mail addressed to the Trust 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 evidence of such loss, indemnity or other document in connection therewith that they may in their discretion consider necessary. A Trust Unitholder shall be entitled to enforce payment of any amount declared payable to the Trust Unitholder at the time such amount is declared payable.
- (b) If the Trustees determine that the amount of cash available for the payment of distributions to Unitholders is not sufficient to make payment of the full amount of any distribution, the payment may include the issuance of additional Units having a value equal to the difference between the amount of such distribution and the amount of cash which has been determined by the Trustees to be available for the payment of such distribution. Immediately after a pro rata distribution of such Units to all Unitholders in satisfaction of any non-cash distribution, the number of outstanding Units will be consolidated so that, subject to the application of the terms of the paragraph below, each Unitholder will hold after the consolidation the same number of Units as the Unitholder held before the non-cash distribution. Each certificate representing a number of Units prior to the non-cash distribution is deemed to represent the same number of Units after the non-cash distributions and the consolidation.
- (c) Notwithstanding the foregoing, where tax is required to be withheld from a Unitholder's share of the distribution and such amount is not paid by the Unitholder to the Trust, the consolidation will result in such Unitholder holding that number of Units equal to (i) the number of Units held by such Unitholder prior to the distribution plus the number of Units received by such Unitholder in connection with the distribution (net of the number of whole and part Units withheld on account of withholding taxes) multiplied by; (ii) the fraction obtained by dividing the aggregate number of Units outstanding prior to the distribution by the aggregate number of Units that would be outstanding following the distribution and before the consolidation if no withholding were required in respect of any part of the distribution payable to any Unitholder. Such Unitholder will be required to surrender the certificates, if any, representing such Unitholder's original Units, in exchange for a certificate representing such Unitholders' post-consolidation Units

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

9.3 *Distribution Reinvestment Plan and Securities Based Compensation Plan*

The Trustees may, subject to receipt of all regulatory approvals, in their sole discretion establish a distribution reinvestment plan and/or a securities based compensation plan on such terms and with such features as the Trustees may determine.

9.4 *Income Tax Matters*

Each year the Trust shall deduct in the calculation of its income such amounts as are paid or payable to Trust Unitholders for the year, as permitted by the Tax Act, to minimize its liability for income tax under Part I of the Tax Act for such year.

In computing the net income of the Trust for income tax purposes for any year, except as the Trustees otherwise determine, the Trust shall claim the maximum amount of capital cost allowance and other discretionary deductions available to the Trust under the Tax Act.

9.5 *Allocations of Net Income for Tax Purposes*

Except as otherwise provided in the terms of a particular series of Preferred Units as fixed by the Trustees in accordance with subsection 5.3 above, (i) the net income of the Trust for a taxation year of the Trust, determined in accordance with the provisions of the Tax Act other than paragraph 82(1)(b) and subsection 104(6), and (ii) the Net Realized Capital Gains payable to Trust Unitholders, shall be allocated to the Trust Unitholders for the purposes of the Tax Act in the same proportion as the total distributions made or declared payable to Trust Unitholders in such taxation year in accordance with this Article IX. The Trustees shall in each year make such other designations for tax purposes in respect of income and other distributions that the Trustees consider to be reasonable in all of the circumstances.

ARTICLE X
FEES AND EXPENSES

10.1 *Expenses*

The Trust may pay reasonable expenses incurred in connection with the administration and management of the Trust, including, without limitation, fees of the Administrator, if any, auditors, lawyers, appraisers and other professional advisors and the cost of reporting or giving notices to Trust Unitholders. Such expenses shall be charged to the appropriate account of the Trust.

10.2 *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. Notwithstanding the above, the Trust will not pay Real Property or brokerage commissions to the Administrator, if any, or its affiliates or associates.

10.3 *Property Management and Other Fees*

The Trust may pay property management fees and other fees at commercially reasonable rates (as determined by the Trustees) in respect of any Real Property owned or leasehold interest held by it. Such fees shall be derived from any property in respect of which property management services are provided, and may be paid to the Administrator, if any, or its affiliates.

ARTICLE XI
AMENDMENT TO THE DECLARATION OF TRUST

11.1 *Amendments by the Trustees*

The Trustees may, without the approval of the Trust Unitholders, make certain amendments to the Declaration of Trust, as follows:

- (a) amendments aimed at ensuring continued compliance with applicable laws, regulations, requirements or policies of any governmental authority having jurisdiction over (i) the Trustees or over the Trust, (ii) the status of the Trust as a "mutual fund trust" and, if the Trustees shall determine in their sole discretion, a "registered investment" under the Tax Act or (iii) the distribution of Trust Units;
- (b) amendments which, in the opinion of the Trustees, provide additional protection for the Trust

Unitholders (or any class or series of Trust Units);

- (c) amendments to remove any conflicts or inconsistencies between the disclosure herein and the Declaration of Trust or to make minor corrections which are, in the opinion of the Trustees, necessary or desirable and not prejudicial to the Trust Unitholders;
- (d) amendments which, in the opinion of the Trustees, are necessary or desirable as a result of changes in taxation laws;
- (e) amendments which, in the opinion of the Trustees, are necessary or desirable to permit distributions to Unitholders to be paid in Units in lieu of than cash; and
- (f) amendments for any purpose (except ones in respect of which approval by holders of Trust Units (or any class or series of Trust Units is specifically otherwise required) if the Trustees are of the opinion that the amendment is not prejudicial to Trust Unitholders and is necessary or desirable.

11.2 *Amendments by Trust Unitholders*

Subject to section 11.3, 11.4 and 11.5, this Declaration of Trust may be amended by the vote of holders of a majority of the then issued and outstanding Trust Units entitled to vote thereon at a meeting called for that purpose (or by written resolution in lieu thereof).

11.3 *Two-Thirds Vote of Unitholders*

The following amendments to this Declaration of Trust require the approval of the holders of two-thirds of the then issued and outstanding Units (or by written resolution in lieu thereof):

- (a) an exchange, reclassification or cancellation of all or part of the Units;
- (b) the addition, change or removal of the rights, privileges, restrictions or conditions attached to the Units and, including, without limiting the generality of the foregoing,
 - (i) the removal or change of rights to distributions (but not a change to the specific amount of a distribution);
 - (ii) the addition or removal of or change to conversion privileges, options, voting, transfer or pre-emptive rights; or
 - (iii) the reduction or removal of a distribution preference or liquidation preference;
- (c) the creation of new rights or privileges attaching to certain of the Units; and
- (d) the constraint of the issue, transfer or ownership of the Units or the change or removal of such constraint.

For greater certainty only the Unitholders shall be entitled to vote on such matters.

11.4 *Two-Thirds Vote of Preferred Unitholders*

The following amendments to this Declaration of Trust require the approval of the holders of two-thirds of the then issued and outstanding Preferred Units or the Preferred Units of a particular series of Preferred Units, as the case may be, at a meeting (or by written resolution in lieu thereof):

- (a) an exchange, reclassification or cancellation of all or part of the Preferred Units or the Preferred Units of the particular series of Preferred Units, as the case may be;
- (b) the addition, change or removal of the rights, privileges, restrictions or conditions attached to the Preferred Units or to the particular series of Preferred Units, as the case may be, and, including, without limiting the generality of the foregoing,

- (i) the addition or removal of or change to voting, transfer or pre-emptive rights; or
 - (ii) the reduction or removal of a distribution preference or liquidation preference;
- (c) the constraint of the issue, transfer or ownership of the Preferred Units or the Preferred Units of the particular series of Preferred Units.

For greater certainty only the Preferred Unitholders shall be entitled to vote on such matters.

11.5 *Two-Thirds Vote of Trust Unitholders*

The amendment of the investment guidelines set out under “Assets of the Trust – Permitted Investments” and the operational policies contained in paragraphs 3.3.2, 3.3.4, 3.3.5, 3.3.6, 3.3.7 and 3.3.8 to this Declaration of Trust require the approval of the holders of two-thirds of the then issued and outstanding Trust Units entitled to vote thereon at a meeting (or by written resolution in lieu thereof).

ARTICLE XII TERMINATION OF THE TRUST AND SALE OF ASSETS

12.1 *Duration of the Trust*

Unless sooner terminated as provided herein, the Trust shall continue for an indefinite term.

12.2 *Termination by Trust Unitholders*

The Trust may be terminated by the affirmative vote of the holders of at least two-thirds of the Trust Units entitled to vote at a meeting of Trust Unitholders called for that purpose.

12.3 *Effect of Termination*

Upon the liquidation, dissolution, termination or winding-up of the Trust, whether voluntary or involuntary, or in the event of any other distribution of assets of the Trust among Trust Unitholders for the purpose of winding up its affairs, the liabilities of the Trust shall be discharged with due speed and the net assets of the Trust shall be distributed in the following order of priority:

- 12.3.1 Preferred Unitholder Distribution. There shall firstly be distributed, to the Preferred Unitholders of each series of Preferred Units an amount equal to the aggregate of: (i) the aggregate Preferred Unit Subscription Prices of the then issued and outstanding Preferred Units of such series; (ii) all Accumulated Distributions remaining unpaid on such Preferred Units; and (iii) the Preferred Distribution for the Preferred Distribution Period in which such liquidation, dissolution, termination, winding-up or other distribution occurs pro-rated for the number of days in the Preferred Distribution Period prior to the date of such liquidation, dissolution, termination, winding-up or other distribution (such aggregate amount, in respect of each series of Preferred Units, the “Liquidation Entitlement”) before any amount shall be paid or any assets or property of the Trust shall be distributed to the Unitholders, provided however that, if the net assets of the Trust are insufficient to pay all such Liquidation Entitlements, then the amount to be paid on each series of Preferred Units shall, unless the Certificate of Preferred Unit Terms for any such series of Preferred Units specifies that the series is to rank in priority or junior to any one or more other series of Preferred Units, in which case the funds available for distribution shall be distributed in the manner set out in such Certificate of Preferred Units Terms, be equal to the amount available for distribution multiplied by a fraction, the numerator of which shall be the Liquidation Entitlement of such series of Preferred Units and the denominator of which shall be aggregate of the Liquidation Entitlements of all Preferred Units. The Liquidation Entitlement payable on a series of Preferred Units shall be divided rateably amongst the holders of the Preferred Units of such series that are issued and outstanding on the record date for such distribution(s), and a holder of fractional Preferred Units is entitled to receive a Liquidation Entitlement in respect of the fractional Preferred Units in accordance with the rights attaching to the Preferred Unit Class. After payment to the Preferred Unitholders of the amounts so payable to them as above provided, such Preferred Unitholders shall not be entitled to share in any further distribution of the assets or property of the Trust.

12.3.2 Unitholder Distribution. Thereafter, the net assets of the Trust remaining after payment of the amounts set forth in paragraph 12.3.1 shall be distributed proportionately to the Unitholders.

Such distributions to Trust Unitholders may be made in cash or in kind or partly in both, all as the Trustees in their sole discretion may determine.

12.4 *Sale of All or Substantially All of the Assets of the Trust*

The sale or transfer of all or substantially all of the assets of the Trust (other than as part of an internal reorganization of assets approved by the Trustees which does not have a material adverse effect on Trust Unitholders) requires the affirmative vote of the holders of at least two-thirds of Trust Units entitled to vote at a meeting of holders of Trust Units called for that purpose.

ARTICLE XIII
LIABILITIES OF THE TRUSTEES AND OTHERS

13.1 *Liability and Indemnification of the Trustees*

The Trustees shall at all times 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 as Trustees 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 shall not be liable to the Trust or to any Trust 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 provisions of this section 13.1 do not apply to the extent that in any circumstance there has been wilful negligence, wilful default or dishonesty on the part of the Trustees or to extent that the Trustees have failed to fulfil their obligations as provided by section 3.3.

13.2 *Liability of the Trustees*

The Trustees shall not be liable to the Trust or to any Trust Unitholder or annuitant for the acts, omissions, receipts, neglects or defaults of any person, firm or corporation employed or engaged by it as permitted hereunder, or for joining in any receipt or act of conformity, or for any loss, damage or expense caused to the Trust through the insufficiency or deficiency of any security in or upon which any of the moneys 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, firm or corporation with whom or which any moneys, securities or property of the Trust shall be lodged or deposited, or for any loss occasioned by error in judgement or oversight on the part of the Trustees, or for any other loss, damage or misfortune which may happen in the execution by the Trustees of their duties hereunder, except to the extent set out in the last sentence of section 13.1.

13.3 *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.

13.4 *Liability of Unitholders, Preferred Unitholders and Others*

No Trust 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 obligations which a Trust Unitholder or annuitant would otherwise have to indemnify a Trustee for any personal liability incurred by the Trustee as such; rather, the assets of the Trust only are intended to be liable and subject to levy or execution for such satisfaction. The Trustees shall use reasonable efforts to have included, wherever practicable, in any written agreement, undertaking or other instrument creating an obligation of the Trust, a provision to the effect that such obligation shall not be binding upon Trust Unitholders or annuitants personally.

Further, the Trustees shall cause the Trust to carry insurance for the benefit of the Trust Unitholders and annuitants in such amounts as they consider adequate to cover any foreseeable non-contractual or non-excluded contractual liability to the extent such insurance is available at reasonable premiums to the Trust. Any potential liability of the Trustees with respect to their foregoing obligations or their failure perform the same shall be governed by the provisions of section 13.1, 13.2 and 13.3.

ARTICLE XIV GENERAL

14.1 *Manner of Giving Notice*

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

14.2 *Failure to Give Notice*

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

14.3 *Trust Auditors*

The Trustees shall from time to time appoint a firm of chartered accountants qualified to practise in all provinces of Canada in which Trust Units of the Trust are distributed to act as the auditors of the Trust, to make a report to the Trustees and the Trust Unitholders on the annual financial statements of the Trust and to fulfil such other responsibilities that they may properly be called upon by the Trustees to assume. The auditors shall have access to all records relating to affairs of the Trust.

14.4 *Fiscal Year*

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

14.5 *Report to Trust Unitholders and Statement of Units Held*

Within such number of days specified by applicable securities laws, prior to each annual meeting of Trust Unitholders, the Trustees shall send to each holder of Trust Units then entitled to vote a report, including audited comparative financial statements for such year. Within such number of days from the end of a fiscal quarter specified by applicable securities laws, the Trustees shall send unaudited comparative financial statements for such quarter to each Trust Unitholder. The Trustees will annually provide the Trust Unitholders with such information and documentation as is required pursuant to applicable securities laws and the policies of any stock exchange upon which the Trust Units are listed. The Trustees may send such other more frequent reports regarding the Trust as they consider desirable.

14.6 *Trust Assets to be Kept Separate*

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

14.7 *Administrator May Compete With Trust*

Subject to any written agreement between the Trust and the Administrator, if any, the Administrator, if any, (and its affiliates and associates) and the directors, officers and employees thereof may, from time to time, be engaged, for their own account or on behalf of others (including without limitation as trustee, administrator or manager of other trusts or portfolios) in real estate investment and other activities identical or similar to or competitive with the activities of the Trust or of the Administrator, if any, (and its affiliates and associates) in connection with the Trust. Neither the Administrator, if any, nor any of its affiliates or associates, nor their respective directors officers or employees shall incur or be

under any liability to the Trust, any Trust Unitholder or any annuitant for, by reason of, or as a result of any such engagement or competition or the manner in which they may resolve any conflict of interest or duty arising therefrom.

14.8 *Trustee or Administrator May Hold Units*

Subject to section 5.7, any Trustee or the Administrator, if any, (or its affiliates and associates) and their respective directors, officers or employees may be a Trust Unitholder or hold a direct or indirect interest in a Trust Unit.

14.9 *Right to Inspect and Obtain Copies of Documents*

A Trust Unitholder shall have the right to examine the Declaration of Trust, the Register, any agreement with the Administrator, if any, (or its affiliates and associates) and any other documents that, in the opinion of the Trustees, are material to a purchase of Units or Preferred Units, during normal business hours at the principal offices of the Trust and the Administrator, if any, without charge. Within seven days of receiving a written request therefor, the Trustee shall mail by first-class mail to any Trust Unitholder who shall have so requested in writing a copy of the information contained in the Register, subject to the Unitholder or Preferred Unitholder, as the case may be, having furnished to the Trustee together with his written request a written statement to the effect that the information contained in the Register will not be used by the Trust Unitholder requesting it except in connection with an effort to influence the voting of Trust Unitholders or any other matter relating to the affairs of the Trust and an undertaking to pay to the Trust a fee not exceeding the reasonable costs to the Trust providing the information.

14.10 *Counterparts*

This Declaration of Trust may be simultaneously executed in several counterparts, including by way of facsimile, 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.

14.11 *Severability*

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

14.12 *Headings for Reference Only*

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

14.13 *Governing Law*

This Declaration of Trust shall be interpreted and take effect in accordance with the laws of the Province of Manitoba and the laws of Canada applicable therein.

IN WITNESS WHEREOF the Trustees have caused this Fourth Amended and Restated Declaration of Trust to be signed and sealed effective the date first above written.

Witness

Armin Martens

Witness

Cornelius Martens

Witness

Delmore Crewson

Witness

Allan McLeod

Witness

Victor Thielmann

Witness

Kenneth Wayne Townsend

Witness

Edward Warkentin