

**PRO REAL ESTATE INVESTMENT TRUST**

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**AMENDED AND RESTATED DECLARATION OF TRUST**

**Amended and Restated as of December 21, 2018**

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**OSLER, HOSKIN & HARCOURT LLP**

## TABLE OF CONTENTS

	Page
ARTICLE 1 DEFINITIONS AND INTERPRETATION .....	2
1.1 Definitions.....	2
1.2 Construction.....	9
ARTICLE 2 THE TRUST .....	10
2.1 Name.....	10
2.2 Use of Name .....	10
2.3 Office .....	11
2.4 Establishment of Trust .....	11
2.5 Nature of the Trust .....	11
2.6 Purpose of the Trust .....	12
2.7 Accounting Principles.....	12
ARTICLE 3 TRUSTEES AND OFFICERS .....	12
3.1 Number .....	12
3.2 Trustees as of the Effective Date .....	13
3.3 Term of Office .....	13
3.4 Qualifications of Trustees.....	13
3.5 Election of Trustees .....	13
3.6 Independent Trustees .....	14
3.7 Resignations, Removal and Death of Trustees .....	14
3.8 Vacancies .....	14
3.9 Nomination of Trustees.....	14
3.10 Successor and Additional Trustees .....	16
3.11 Compensation and Other Remuneration.....	17
3.12 Officers of the Trust.....	17
3.13 Validity of Acts.....	17
ARTICLE 4 TRUSTEES' POWERS AND DUTIES .....	17
4.1 General Powers .....	17
4.2 Specific Powers and Authorities.....	18
4.3 Further Powers of the Trustees .....	22
4.4 Banking .....	22
4.5 Standard of Care .....	22
4.6 Reliance Upon Trustees .....	23
4.7 Determinations of Trustees Binding.....	23
4.8 Conflict of Interest .....	23
4.9 Independent Trustee Matters.....	26
4.10 Limitations on Powers .....	26
4.11 Transactions with Related Parties.....	27
4.12 Ratification of Prior Actions.....	27

## TABLE OF CONTENTS

(continued)

	<b>Page</b>
ARTICLE 5 INVESTMENT GUIDELINES AND OPERATING POLICIES .....	27
5.1 Investment Guidelines of the Trust.....	27
5.2 Operating Policies of the Trust .....	29
5.3 Amendments to Investment Guidelines and Operating Policies.....	30
5.4 Regulatory Matters.....	30
5.5 Operating Plan .....	31
ARTICLE 6 UNITS .....	31
6.1 Units.....	31
6.2 REIT Units .....	31
6.3 Special Voting Units .....	31
6.4 Consideration for Units.....	32
6.5 Consolidation of Units and Fractional Units .....	32
6.6 Title to Properties and Assets of the Trust.....	33
6.7 Allotment and Issue .....	33
6.8 Rights, Warrants, Options and Other Securities .....	33
6.9 Commissions and Discounts .....	34
6.10 Transferability .....	34
6.11 Limitation on Non-Resident Ownership.....	34
6.12 Certificates .....	35
6.13 Book-Based System for REIT Units; No Certificates for Special Voting Units .....	35
6.14 Certificate Fee .....	35
6.15 Form of Certificate.....	35
6.16 Register .....	35
6.17 Entry on Register .....	36
6.18 Successors in Interest to the Unitholders .....	36
6.19 Units Held Jointly or in Fiduciary Capacity .....	36
6.20 Performance of Trusts.....	36
6.21 Lost Certificates .....	37
6.22 Death of a Unitholder.....	37
6.23 Unclaimed Payments .....	37
6.24 Redemption of REIT Units .....	38
6.25 Purchase of REIT Units .....	41
6.26 Right to Acquire.....	41
6.27 Redemption of Initial REIT Unit .....	45
ARTICLE 7 MEETINGS OF THE UNITHOLDERS.....	45
7.1 Annual Meeting .....	45
7.2 Special Meetings .....	45
7.3 Notice of Meeting of the Unitholders .....	46
7.4 Quorum .....	46
7.5 Voting .....	47
7.6 Record Dates .....	47

## TABLE OF CONTENTS

(continued)

	<b>Page</b>
7.7 Proxies.....	47
7.8 Personal Representatives .....	48
7.9 Attendance by Others.....	48
7.10 Conduct of Meetings.....	48
7.11 Binding Effect of Resolutions.....	48
7.12 Resolution in Lieu of Meeting .....	48
7.13 Actions by the Unitholders .....	49
7.14 Meaning of “Special Resolution” .....	49
7.15 Meaning of “Outstanding” .....	49
<b>ARTICLE 8 MEETINGS OF THE TRUSTEES .....</b>	<b>50</b>
8.1 Trustees May Act Without Meeting .....	50
8.2 Notice of Meeting .....	50
8.3 Quorum .....	50
8.4 Voting at Meetings.....	50
8.5 Meeting by Telephone .....	51
<b>ARTICLE 9 DELEGATION OF POWERS.....</b>	<b>51</b>
9.1 General.....	51
9.2 Additional Committees .....	52
9.3 Procedure .....	52
9.4 Management of the Trust .....	52
<b>ARTICLE 10 DISTRIBUTIONS .....</b>	<b>52</b>
10.1 Distributions.....	52
10.2 Allocation.....	54
10.3 Payment and Method of Distributions .....	54
10.4 Income Tax Matters .....	55
10.5 Designations.....	55
10.6 Withholding Taxes.....	55
10.7 Definitions.....	55
<b>ARTICLE 11 FEES AND EXPENSES .....</b>	<b>56</b>
11.1 Expenses .....	56
<b>ARTICLE 12 AMENDMENTS TO THE DECLARATION OF TRUST .....</b>	<b>56</b>
12.1 Amendments by the Trustees.....	56
12.2 Amendments by the Unitholders .....	57
12.3 No Termination.....	58
<b>ARTICLE 13 TERMINATION OF TRUST .....</b>	<b>58</b>
13.1 Duration of the Trust.....	58
13.2 Termination by the Unitholders .....	59

## TABLE OF CONTENTS

(continued)

	<b>Page</b>
13.3 Effect of Termination.....	59
ARTICLE 14 LIABILITIES OF THE TRUSTEES AND OTHERS.....	59
14.1 Liability and Indemnification of the Trustees.....	59
14.2 Liability of the Trustees.....	59
14.3 Reliance Upon Advice.....	60
14.4 Liability of the Unitholders and Others.....	60
ARTICLE 15 GENERAL.....	60
15.1 Execution of Instruments.....	60
15.2 Manner of Giving Notice.....	60
15.3 Failure to Give Notice.....	61
15.4 Trust Auditors.....	61
15.5 Change of Auditors.....	61
15.6 Fiscal Year.....	61
15.7 Reports to the Unitholders.....	61
15.8 Trust Property to be Kept Separate.....	61
15.9 Trustees May Hold Units.....	61
15.10 Trust Records.....	62
15.11 Right to Inspect Documents.....	62
15.12 Taxation Information.....	62
15.13 Income Tax Election.....	62
15.14 Consolidations.....	62
15.15 Counterparts.....	62
15.16 Severability.....	63
15.17 Governing Law.....	63

**AMENDED AND RESTATED DECLARATION OF TRUST**

**OF**

**PRO REAL ESTATE INVESTMENT TRUST**

**THIS AMENDED AND RESTATED DECLARATION OF TRUST** was made as of February 7, 2013, amended and restated as of March 11, 2013 and is amended and restated as of December 21, 2018.

**WHEREAS** the Trust was established pursuant to a declaration of trust made as of February 7, 2013 (the “**Initial Declaration of Trust**”) under the name “**PRO Real Estate Investment Trust**” in English and “**Fonds de placement immobilier PRO**” in French;

**AND WHEREAS** the Trust was on that date settled with \$100.00 in lawful money of Canada by the Initial Unitholder (the “**Initial Contribution**”), which the Trustee thereupon invested, and the Trust issued the Initial REIT Unit to the Initial Unitholder;

**AND WHEREAS** the Trust was established by the Initial Unitholder as an irrevocable trust for the principal purpose of providing persons who may become Unitholders with an opportunity to participate in a portfolio of income producing real and immovable property investments;

**AND WHEREAS** the Initial Declaration of Trust was amended and restated as of March 11, 2013;

**AND WHEREAS** the Trustees desire that the Trust shall qualify as a “mutual fund trust” pursuant to subsections 132(6) and (7) of the Tax Act (as defined below) and a “registered investment” and a “real estate investment trust” within the meanings of the Tax Act;

**AND WHEREAS** at an annual and special meeting of Unitholders held on June 9, 2015, the Unitholders approved special resolutions authorizing and approving certain amendments to the provisions of this Declaration of Trust to (i) implement a policy requiring advance notice to the Trust of Unitholder proposals relating to the nomination of Trustees, and (ii) clarify the interpretation of certain of the Trust’s operating policies;

**AND WHEREAS** the Trustees wish to further amend and restate the Declaration of Trust to confirm the foregoing amendments as of the time on June 9, 2015 when the foregoing special resolutions were approved by the Unitholders and at the same time wish to take this opportunity to remove any conflicts or inconsistencies in this Declaration of Trust and to make minor changes which were necessary or desirable and not prejudicial to the Unitholders;

**AND WHEREAS**, for greater certainty, the amendment and restatement of the Declaration of Trust by the presents shall be deemed not to constitute a termination of the Trust or a resettlement of the Initial Declaration of Trust or the Trust created thereby;

**NOW THEREFORE**, the undersigned Trustees hereby confirm and declare that the Trustees hold in trust as trustees any and all property, real, personal, immovable, moveable or otherwise, tangible or intangible, which has been on the date hereof or is hereafter transferred, conveyed or paid to or otherwise received by them as such Trustees or to which the Trust is otherwise entitled and all

rents, income, profits and gains therefrom for the benefit of the Unitholders hereunder in accordance with and subject to the express provisions of this Declaration of Trust, to wit:

## **ARTICLE 1 DEFINITIONS AND INTERPRETATION**

### **1.1 Definitions**

For the purposes of this Declaration of Trust, unless the context otherwise requires, the following terms shall have the respective meanings set out below:

**“Affiliate”** has the meaning given to that term under the *Securities Act* (Québec), provided that the term “companies” in the definition is deemed to be replaced by the term “Persons” as defined in this Declaration of Trust;

**“AFFO”** means FFO subject to certain adjustments, including (i) amortization of fair value mark-to-market adjustments on mortgages acquired, amortization of deferred financing costs, amortization of tenant incentives and compensation expense related to unit-based incentive plans, and (ii) deducing a reserve for normalized maintenance capital expenditures, as determined by the Trust. Other adjustments may be made to AFFO as determined by the Trustees in their discretion;

**“Annuitant”** means the annuitant or beneficiary of a Deferred Income Plan, or of any plan of which a Unitholder acts as a trustee or a carrier;

**“Arrangement”** means the arrangement under section 182 of the *Business Corporations Act* (Ontario), the whole as more particularly set forth in the Arrangement Agreement, as the same may be amended or varied in accordance with its terms;

**“Arrangement Agreement”** means the agreement made effective February 7, 2013 between the Corporation, the Trust and PRO REIT LP pursuant to which the parties agreed to implement the Arrangement;

**“Associate”** means, where used to indicate a relationship between a person and a corporation, a person who beneficially owns, directly or indirectly, voting securities carrying more than 10% of the voting rights attached to all voting securities of the corporation, a spouse of such Person that is an individual or an immediate family member of such Person and, where used to indicate a relationship between a Person and a partnership, a partner of that partnership and, if such partner is an individual, a spouse of such Person that is an individual or an immediate family member of such Person, and where used to indicate a relationship between a Person and a trust, a beneficiary or trustee of that trust and, if such Person is a beneficiary or a trustee of such trust, a spouse of such Person that is an individual or any immediate family member of such Person;

**“Auditors”** means the firm of chartered accountants appointed as the auditors of the Trust from time to time in accordance with Section 15.4 and initially means MNP S.E.N.C.R.L., s.r.l.;

**“Book-Entry Only System”** means the debt clearing, record entry, transfer and pledge systems and services established and operated by or on behalf of CDS for the Units (including, where applicable, pursuant to one or more agreements between CDS and its participants establishing the rules and procedures for such systems and services) or any successor systems or services thereof;

**“Business Day”** means any day, other than a Saturday, Sunday, on which Schedule I Canadian chartered banks are open for business in Montréal, Québec, and Toronto, Ontario, for the transaction of banking business;

**“CBCA”** means the *Canada Business Corporations Act*, as amended from time to time;

**“CDS”** means CDS Clearing and Depository Services Inc., together with its successors from time to time;

**“Chair”, “Vice-Chair”, “President”, “Chief Executive Officer”, “Chief Financial Officer”, “Executive Vice President”, “Senior Vice President”, “Vice President”** and **“Secretary”** mean the Persons(s) holding the respective office(s) from time to time if so appointed by the Trustees;

**“Class A LP Unit”** means a unit of interest in PRO REIT LP designated as a Class A LP Unit and having the rights and attributes described in the PRO REIT LP Agreement;

**“Class B LP Unit”** means a unit of interest in PRO REIT LP designated as a Class B LP Unit and having the rights and attributes described in the PRO REIT LP Agreement;

**“Closing Date”** means the date shown on the certificate of arrangement giving effect to the Arrangement, being March 11, 2013;

**“control”** and any derivation thereof means the possession, directly or indirectly, of the power to direct or significantly influence the management and policies, business or affairs of a Person, whether through the ownership of voting securities, contract or otherwise;

**“Corporation”** means Taggart Capital Corp.

**“Declaration of Trust”** means this declaration of trust, including all schedules, if any, as amended, supplemented or restated from time to time;

**“Deferred Income Plan”** means any trust governed by a registered retirement savings plan, a registered retirement income fund, a registered education savings plan, tax free savings accounts or a deferred profit sharing plan, each as defined in the Tax Act;

**“Dissenting Offeree”** means, where a take-over bid is made for all of the REIT Units other than those held by the Offeror (and its Affiliates and Associates), a holder of REIT Units who does not accept the take-over bid and includes a subsequent holder of those REIT Units who acquires them from the first mentioned holder;

**“Distribution Date”** means, with respect to a distribution by the Trust in respect of a given calendar month, a Business Day determined by the Trustees to be on or about the 15<sup>th</sup> day of the following month;



**“Distribution Reinvestment Plan”** means the distribution reinvestment and unit purchase plan adopted by the Trust for holders of REIT Units and Class B LP Units;

**“Exchange Agreement”** means the exchange agreement entered into on the Closing Date between the Trust, PRO REIT LP and PRO REIT GP and each additional person who becomes, from time to time, a holder of Class B LP Units and agrees to be a party to and bound by such agreement, as may be amended, supplemented or amended and restated from time to time;

**“FFO”** means net income in accordance with IFRS, excluding: (i) fair value adjustments on investment properties, (ii) gains (or losses) from sales of investment properties, (iii) fair value adjustments and other effects of redeemable units classified as liabilities, (iv) acquisition costs expensed as a result of the purchase of a property being accounted for as a business combination, and (v) deferred income tax expense and certain other non-cash adjustments, after adjustments for equity accounted entities, joint ventures and non-controlling interests calculated to reflect FFO on the same basis as consolidated properties;

**“generally accepted accounting principles”** or **“GAAP”** means Canadian generally accepted accounting principles determined with reference to the CPA Canada Handbook – Accounting, as amended from time to time;

**“Governance and Compensation Committee”** means the committee of the Trustees established pursuant to Section 9.1(b);

**“Governmental Authority”** means any multinational, national, federal, state, provincial, county, municipal, district or local government or government body, or any public administrative or regulatory agency, political subdivision, central bank, commission, bureau, court, department, arbitral body, board or representative of any of the foregoing, foreign or domestic, of, or established by any such government or government body which has authority in respect of a particular matter or any quasi-governmental body having the right to exercise any regulatory authority thereunder, including, for greater certainty, securities regulatory authorities, the TSX Venture Exchange or any stock exchange on which the REIT Units are listed, and the Investment Industry Regulatory Organization of Canada;

**“Gross Book Value”** means, at any time, the book value of the assets of the Trust and its consolidated Subsidiaries, as shown on its then most recent consolidated balance sheet, plus accumulated depreciation and amortization in respect of the Trust’s properties (and related intangible assets) shown thereon or in the notes thereto, less (a) the amount of any receivable reflecting interest rate subsidies on any debt assumed by the Trust and (b) the amount of future income tax liability arising out of the fair value adjustment in respect of the indirect acquisitions of certain properties; provided however that, if approved by a majority of the Trustees, the appraised value of the assets of the Trust and its consolidated Subsidiaries may be used instead of book value;

**“IFRS”** means the International Financial Reporting Standards established by the International Accounting Standards Board and as adopted by the Chartered Professional Accountants of Canada;

**“Income of the Trust”** for any taxation year of the Trust means the net income for the year determined for purposes of the Tax Act but without reference to paragraph 82(1)(b) (dividend gross up) and subsection 104(6) (deduction for payments out of the Trust) of the Tax Act (including any income realized by the Trust on the redemption of REIT Units *in specie*) and taking into account such other adjustments as may be determined in the discretion of the Trustees, provided, however, that capital gains and capital losses shall be excluded therefrom;

**“Indebtedness”** means (without duplication) on a consolidated basis:

- (i) any obligation of the Trust for borrowed money (other than the impact of any net discount or premium on Indebtedness at the time assumed from vendors of properties at rates of interest less or greater than, respectively, fair value and any undrawn amounts under any acquisition or operating facility);
- (ii) any obligation of the Trust (other than the impact of any net discount or premium on Indebtedness at the time assumed from vendors of properties at rates of interest less or greater than, respectively, fair value and any undrawn amounts under any acquisition or operating facility) incurred in connection with the acquisition of property, assets or businesses other than the amount of future income tax liability arising out of indirect acquisitions;
- (iii) any obligation of the Trust issued or assumed as the deferred purchase price of property;
- (iv) any capital lease obligation of the Trust; and
- (v) any obligation of the type referred to in subsections (i) through (iv) of another person, the payment of which the Trust has guaranteed or for which the Trust is responsible or liable, other than such an obligation in connection with a property that has been disposed of by the Trust for which the purchaser has assumed such obligation and provided the Trust with an indemnity or similar arrangement therefor;

provided that (A) for the purposes of subsections (i) through (iv), an obligation (other than convertible debentures) will constitute Indebtedness only to the extent that it would appear as a liability on the consolidated balance sheet of the Trust in accordance with IFRS, (B) obligations referred to in subsections (i) through (iii) exclude trade accounts payables, security deposits, distributions payable to Unitholders and accrued liabilities arising in the ordinary course of business, (C) convertible debentures will constitute Indebtedness to the extent of the principal amount thereof outstanding; and (D) Units and exchangeable securities, including Class B LP Units, will not constitute Indebtedness;

**“Independent Trustee”** means any Trustee who is independent within the meaning of National Instrument 58-101 – *Disclosure of Corporate Governance Practices*, as amended from time to time (including any successor rule, instrument or policy thereto);

**“Initial Contribution”** has the meaning given to such term in the recitals;

**“Initial Property”** means a 10,574 square-foot two-storey commercial real estate property located at 135 Main Street in Moncton, New Brunswick;

**“Initial REIT Unit”** means a unit of interest in the Trust designated as the Initial REIT Unit;

**“Initial Unitholder”** means Raphaël Amram and Jeremy Brisset, both of the Province of Québec;

**“Investment Committee”** means the committee of the Trustees established pursuant to Section 9.1(c);

**“Investment Guidelines”** means the investment guidelines of the Trust set out in Section 5.1, as amended or supplemented from time to time;

**“LP Units”** means the Class A LP Units and the Class B LP Units;

**“Management Agreement”** means the property and asset management agreement to be entered into on the Closing Date, between the Corporation and the Manager pursuant to which the Manager will provide property and asset management, administrative and other services to the Trust and its Subsidiaries, including the services of certain management individuals;

**“Manager”** means Labec Realty Advisors Inc. in its capacity as the asset and property manager of the Trust and its Subsidiaries pursuant to the Management Agreement, as well as its successors and permitted assigns;

**“Material Agreements”** means, collectively, this Declaration of Trust, the Pro REIT LP Agreement and the Exchange Agreement;

**“mortgage”** means any mortgage, charge, hypothec, bond, debenture, note or other evidence of indebtedness, in each case which is directly or indirectly secured by real property;

**“net realized capital gains of the Trust”** for any year means the amount, if any, by which the aggregate amount of the realized capital gains of the Trust for the year, calculated in accordance with the provisions of the Tax Act, exceeds the aggregate of: (i) the aggregate amount of any realized capital losses of the Trust for the year, calculated in accordance with the provisions of the Tax Act; (ii) any capital gains which are realized by the Trust in the year (including any capital gains realized by the Trust on the disposition of the PRO REIT LP Units and Notes of PRO REIT LP any other Trust Property) designated as having been paid to the redeeming Unitholders pursuant to Section 6.24, (iii) the amount determined by the Trustees in respect of any net capital losses of the Trust (as defined in the Tax Act) carried forward from prior taxation years to the extent not previously deducted from realized capital gains of the Trust; and (iv) any amount in respect of which the Trust is entitled to a capital gains refund under the Tax Act, as determined by the Trustees; provided that at the discretion of the Trustees, the net realized capital gains of the Trust for a year may be calculated without subtracting the full amount of the net capital losses of the

Trust for the year and/or without subtracting the full amount of the net capital losses of the Trust carried forward from prior years;

**“Net Recapture Income of the Trust”** for any year means the amount allocated by PRO REIT LP to the Trust that may reasonably be considered to be an allocation of net recaptured capital cost allowance calculated in accordance with the provisions of the Tax Act;

**“Nominating Unitholder”** has the meaning ascribed thereto in Section 3.8.1;

**“Non-Resident Beneficiaries”** has the meaning set out in Section 6.11;

**“Notes”** means promissory notes, bonds, debentures, debt securities or similar evidences of indebtedness issued by a Person including, without limitation, PRO REIT LP;

**“Notice Date”** has the meaning ascribed thereto in Section 3.8.1;

**“Offeree”** means a Person to whom a take-over bid is made;

**“Offeror”** means a Person, or two or more persons acting jointly or in concert, that makes a take-over bid;

**“Operating Policies”** means the operating policies set out in Section 5.2, as amended or supplemented from time to time;

**“Outstanding”** has the meaning set out in Section 7.15;

**“Person”** means any individual, sole proprietorship, partnership, firm, entity, unincorporated association, unincorporated syndicate, unincorporated organization, trust, body corporate, Governmental Authority, and where the context requires any of the foregoing when they are acting as trustee, executor, administrator or other legal representative;

**“PRO REIT GP”** means PRO REIT GP Inc., a corporation incorporated under the laws of Canada, in its capacity as general partner of PRO REIT LP, and its successors and assigns;

**“PRO REIT LP”** means PRO REIT Limited Partnership, a limited partnership created under the laws of the Province of Québec and its successors and assigns;

**“PRO REIT LP Agreement”** means the limited partnership agreement dated November 14, 2012 creating PRO REIT LP, as it may be amended, supplemented or restated from time to time;

**“real property”** means under the laws of the Province of Québec, immovable property (including rights of co-ownership, superficies, servitudes, easements, emphyteusis, usufruct and any other rights of ownership therein) and under other applicable laws, real property (including, whether or not the same would in law be real property), leaseholds, undivided joint interests in real property (whether by way of tenancy-in-common, joint

tenancy, co-ownership, partnership, joint venture or otherwise), and any interests in any of the foregoing;

**“Redemption Date”** has the meaning set out in Section 6.24(c);

**“Redemption Price”** has the meaning set out in Subsection 6.24(c);

**“Register”** has the meaning set out in Section 6.16;

**“REIT Unit”** means a unit representing an interest in the Trust (other than a Special Voting Unit) authorized and issued hereunder and having the characteristics and properties set out in Section 6.2;

**“Related Party”** means, with respect to any Person, a Person who is a “related party” as that term is defined in Multilateral Instrument 61-101 – *Protection of Minority Security Holders in Special Transactions*, as amended from time to time (including any successor rule, instrument or policy thereto);

**“Resident Canadian”** means a Person who is a resident of Canada for purposes of the Tax Act;

**“Special Resolution”** has the meaning set out in Section 7.14;

**“Special Voting Unit”** means a unit representing an interest in the Trust authorized and issued hereunder to a holder of Class B LP Units and having the rights and attributes set out in Section 6.3;

**“Special Voting Unit Pro Rata Share”** means the fraction the numerator of which is equal to the Special Voting Unit Redemption Amount and the denominator of which is equal to the sum of (i) the total number of all the REIT Units outstanding multiplied by the Redemption Price, and (ii) the total number of all the Special Voting Units outstanding multiplied by the Special Voting Unit Redemption Amount;

**“Special Voting Unit Redemption Amount”** has the meaning set out in Section 6.3(d);

**“Subdivision”** means a subdivision, split or redivision of outstanding REIT Units into a greater number of REIT Units;

**“Subsidiary”** has the meaning given to that term under the *Securities Act* (Québec), provided that the term “companies” in that definition is deemed to be replaced by the term “Person”;

**“Subsidiary Securities”** means the securities of PRO REIT LP or such other securities of a Subsidiary of PRO REIT LP as the Trustees may designate as such from time to time;

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

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

“**Taxation Year**” means the taxation year of the Trust for the purposes of the Tax Act;

“**Transfer Agent**” means any such company as may from time to time be appointed by the Trust to act as registrar and transfer agent of the Units, together with any co-transfer agent duly appointed by the Transfer Agent;

“**Trust**” means the trust created under the Initial Declaration of Trust and, for greater certainty, unless otherwise expressly provided, does not include any Subsidiaries or Affiliates thereof;

“**Trust Property**” means, at any particular time, any and all property and assets forming part of the patrimony of the Trust, including, without limitation, all proceeds of disposition relating to any such property and assets;

“**Trustee**” and “**Trustees**” have the meaning given to them on the first page of this Declaration of Trust;

“**Trustees’ Regulations**” means the regulations adopted by the Trustees pursuant to the first paragraph of Section 4.3 or the second paragraph of Section 7.7 from time to time;

“**Units**” means, collectively, the REIT Units and the Special Voting Units; and

“**Unitholder**” or “**Holder**” means a Person whose name appears on the Register as a holder of one or more Units.

## 1.2 Construction

In this Declaration of Trust, unless otherwise expressly stated or the context otherwise requires:

- (a) “**Declaration of Trust**”, “**this Declaration of Trust**”, “**the Declaration of Trust**”, “**hereto**”, “**hereof**”, “**herein**”, “**hereby**”, “**hereunder**” and similar expressions mean or refer to this Declaration of Trust, as amended, restated, modified, replaced or supplemented from time to time, including any schedules attached hereto or to any amendment to this Declaration of Trust, and any agreement or instrument supplemental hereto and the expressions “**Article**”, “**Section**”, “**Subsection**”, “**Schedule**” “**paragraph**” and “**clause**” followed by a number or a letter mean and refer to the specified Article, Section, Subsection, Schedule, paragraph or clause of this Declaration of Trust;
- (b) the division of this Declaration of Trust into Articles, Sections, Subsections, paragraphs and clauses and the insertion of headings and a table of contents are provided for convenience of reference only and shall not affect the construction or interpretation thereof and all references to designated Articles, Sections or other subdivisions or to Schedules, are references to Articles, Sections or other subdivisions or to Schedules of this Declaration of Trust;

- (c) words importing the singular shall include the plural and vice versa, and words importing gender shall include the masculine, feminine and neuter genders;
- (d) the words “includes” and “including”, when following any general term or statement, are not to be construed as limiting the general term or statement to the specific items or matters set forth or to similar items or matters, but rather as referring to all other items or matters that could reasonably fall within the broadest possible scope of the general term or statement;
- (e) reference to any statute shall be deemed to be a reference to such statute as amended, re-enacted or replaced from time to time, including every regulation made pursuant thereto, all amendments to the statute or to any such regulation in force from time to time, and any statute or regulation which supplements or supersedes such statute or any such regulation;
- (f) **“Dollar”** or **“\$”**, in respect of all amounts referred to in this Declaration of Trust and all references to currency in this Declaration of Trust, unless otherwise expressly stated, shall mean Canadian dollars; and
- (g) for greater certainty, unless otherwise expressly provided herein, where any reference is made in this Declaration of Trust or in any resolution of the Unitholders or Trustees to an act to be performed by or a covenant given by the Trust or to the rights of the Trust, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by the Trustees, in their capacity as trustees of the Trust or by some other Person duly authorized to do so by the Trustees or pursuant to the provisions hereof or to rights of the Trustees, in their capacity as trustees of the Trust, as the case may be.

## **ARTICLE 2 THE TRUST**

### **2.1 Name**

The name of the Trust is **“PRO Real Estate Investment Trust”** in its English form and **“Fonds de placement immobilier PRO”** in its French form. As far as practicable and except as otherwise provided in this Declaration of Trust, the Trustees shall conduct the affairs of the Trust, hold property, execute all documents and take all legal proceedings under that name, in either its English or French form.

### **2.2 Use of Name**

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

### **2.3 Office**

The principal and head office, domicile and centre of administration of the Trust shall be located at 2000 Mansfield Street, Suite 920, Montreal, Québec, H3A 2Z6, or at such other address in Canada as may be determined by the Trustees in their discretion. The Trust may have such other offices or places for the conduct of its affairs as the Trustees or management of the Trust may from time to time determine to be necessary or desirable.

### **2.4 Establishment of Trust**

The Trustees hereby reconfirm the acceptance of the Trust constituted by the Initial Declaration of Trust and their agreement to hold and administer the Trust Property transferred to them from time to time for the use and benefit of the Unitholders, their successors, permitted assigns and personal representatives, and subject to the terms and conditions hereinafter set forth, such trust to constitute the Trust hereunder. The Trustees acknowledge that the Trust results from the Initial Declaration of Trust, the transfer by the Initial Unitholder pursuant thereto of the Initial Contribution from its patrimony to the patrimony of the Trust thereby constituted by the Initial Unitholder which the Initial Unitholder has appropriated to the particular purposes set forth therein and herein, including, without limitation, those set forth in Section 2.6, and each of the Trustees hereby reconfirms his undertaking and acceptance to hold and administer such trust patrimony in accordance with the provisions hereof. Each of the Trustees confirms that the patrimony of the Trust has been transferred in trust and constitutes a patrimony by appropriation, autonomous and distinct from that of the Initial Unitholder, the Trustees or any Unitholder. Subject to the provisions hereof, each of the Trustees elected or appointed pursuant to this Declaration of Trust shall have all of the powers set forth herein. To the extent required by applicable law, the Initial Unitholder has appointed the Unitholders as the sole beneficiaries of the Trust. The Units shall be issued upon the terms and subject to the conditions of the Declaration of Trust, and this Declaration of Trust shall be binding upon all Unitholders and by acceptance of any such Unit, the Unitholder thereof shall be deemed to agree to be bound by this Declaration of Trust.

### **2.5 Nature of the Trust**

The Trust is a limited purpose unincorporated open-ended investment trust. The Trust, the Units, the Trustees and the Trust Property shall be governed by the general laws of trusts for the Trust, except as such general law of trusts have been or are from time to time modified, altered or abridged for the Trust by:

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

The interest and rights generally of a Unitholder in the Trust shall be limited to the right to participate *pro rata* in distributions when and as declared by the Trustees as contemplated by Article 10 and distributions upon the termination of the Trust as contemplated in Article 13. The Trust is not and is not intended to be, shall not be deemed to be and shall not be treated as a general partnership, limited partnership, syndicate, association, joint venture, company, corporation or joint stock company nor shall the Trustees or the Unitholders or any of them for any purpose be, or be deemed to be treated in any way whatsoever to be, liable or responsible hereunder as partners



or joint venturers. The Trustees shall not be, or be deemed to be, agents of the Unitholders. The relationship of the Unitholders to the Trustees, to the Trust and to the Trust Property shall be solely that of beneficiaries in accordance with this Declaration of Trust.

## **2.6 Purpose of the Trust**

The purpose of the Trust is to establish and carry on activities in order to produce income for the exclusive benefit of the Unitholders and to distribute the Trust Property upon termination of those activities by the Trust in accordance with Article 13. The undertakings and activities of the Trust will be (i) the transfer, acquisition or acceptance of the Trust Property determined by the Trustees from time to time and the administration of such Trust Property; (ii) arranging for the funding of such acquisitions to the extent necessary; (iii) the granting of security in the Trust Property for the obligations of the Trust; all in such manner and on such terms as the Trustees, acting reasonably, deem appropriate; and (iv) all such other activities as may be reasonably incidental to the foregoing or necessary in connection with the performance by the Trustees of their obligations under any agreement to which they are or may become parties for such purposes or in connection with such activities. Notwithstanding the foregoing or any other provision of this Declaration of Trust at no time will the Trust's activities include an activity, nor will the Trust take any action (including acquiring any property), that would (i) prevent the Trust from qualifying as a "mutual fund trust" or as a "real estate investment trust" (each as defined in the Tax Act) or cause it to disqualify as such, or (ii) cause the Trust to be subject to tax under paragraph 122(1)(b) of the Tax Act. The Trust shall not engage directly or indirectly in any activity other than the activities permitted by this Section 2.6.

## **2.7 Accounting Principles**

Where the character or amount of any asset or liability or item of revenue or expense is required to be determined, or any consolidation or other accounting computation is required to be made for the purpose of this Declaration of Trust, such determination or calculation shall, to the extent applicable and except as otherwise specified herein or as otherwise agreed in writing by the parties, be made in accordance with GAAP, and all financial data prepared pursuant to this Declaration of Trust shall be prepared in accordance with such principles, consistently applied. In the event of a change in GAAP, the Trustees shall revise (if appropriate) the financial data prepared pursuant to this Declaration of Trust to reflect GAAP as then in effect, in which case all financial data shall be made on a basis consistent with GAAP in existence as at the date of such revisions.

# **ARTICLE 3 TRUSTEES AND OFFICERS**

## **3.1 Number**

From and after the Closing Date, there shall be at all times no fewer than three (3) and no more than twelve (12) Trustees. There shall be five (5) Trustees as of the Closing Date. The number of Trustees may only be changed within such limits by the Unitholders or, if authorized by the Unitholders, by the Trustees, provided that the Trustees may, between meetings of the Unitholders, appoint one or more additional Trustees if, after such appointment, the total number of Trustees does not exceed one and one-third times the number of Trustees in office immediately following the last annual meeting of the Unitholders. A vacancy occurring among the Trustees may be filled

by resolution of the remaining Trustees so long as they constitute a quorum or by the Unitholders at a meeting of the Unitholders.

### **3.2 Trustees as of the Effective Date**

As of the date hereof, the Trustees are Peter Aghar, James W. Beckerleg, Vincent Chiara, Martin Coté, Shenoor Jadavji, Gérard A. Limoges, John Levitt and Ronald E. Smith.

### **3.3 Term of Office**

The Trustees on the date hereof shall hold office for a term expiring at the close of the first annual meeting of the Unitholders following the date hereof or until their respective successors are elected or appointed and shall be eligible for re-election. Thereafter, the Trustees shall be elected at each annual meeting of the Unitholders by a resolution of the Unitholders passed by a majority of the votes cast at such meeting for a term expiring at the conclusion of the next annual meeting or until their successors are elected or appointed and shall be eligible for re-election. Trustees appointed by the Trustees between meetings of the Unitholders or to fill a vacancy, in each case in accordance with Section 3.1, shall be appointed for a term expiring at the conclusion of the next annual meeting or until their successors are elected or appointed and shall be eligible for election or re-election.

### **3.4 Qualifications of Trustees**

A Trustee shall be a natural person. The following persons are disqualified from being a Trustee of the Trust:

- (a) a natural person who is less than eighteen years of age;
- (b) any person who does not have the full exercise of his civil rights;
- (c) any person who is of unsound mind and has been so found by a court in Canada or elsewhere;
- (d) any person who has been placed under protective supervision; and
- (e) any person who has the status of bankrupt.

A majority of Trustees shall be at all times Resident Canadians. If at any time a majority of Trustees are not Resident Canadians because of the death, resignation, bankruptcy, adjudicated incompetence, removal or change in circumstance of any Trustee who was a Resident Canadian Trustee, notwithstanding any other provision of this Declaration of Trust, the remaining Trustees, whether or not they constitute a quorum, shall appoint a sufficient number of Resident Canadian Trustees to comply with this requirement. Trustees are not required to hold Units.

### **3.5 Election of Trustees**

The election of the Trustees shall be by a majority of the votes cast at a meeting of the Unitholders. The appointment or election of any Trustee (other than an individual who is serving as a Trustee immediately prior to such appointment or election) shall not become effective unless and until such individual shall have in writing accepted his/her appointment or election and agreed to be bound by the terms of this Declaration of Trust.

### **3.6 Independent Trustees**

Subject to Section 3.1, a majority of the Trustees must be Independent Trustees provided, however, that if at any time a majority of the Trustees are not independent because of the death, resignation, bankruptcy, adjudicated incompetence, removal or change in circumstance of any Trustee who was an Independent Trustee, this requirement shall not be applicable for a period of 60 days thereafter, during which time the remaining Trustees shall appoint a sufficient number of Trustees who qualify as “independent” to comply with this requirement.

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

A Trustee may resign at any time by an instrument in writing signed by him/her and delivered or mailed to the Chair or, if there is no Chair, the President. Such resignation shall take effect on the date such notice is given or at any later time specified in the notice. A Trustee may be removed at any time with or without cause by a majority of the votes cast at a meeting of the Unitholders called for that purpose or by the written consent of the Unitholders holding in the aggregate not less than a majority of the outstanding Units entitled to vote thereon or with cause by a resolution passed by an affirmative vote of not less than two-thirds of the other Trustees. Any removal of a Trustee shall take effect immediately following the aforesaid vote or resolution, and any Trustee so removed shall be so notified by the Chair or another officer of the Trust forthwith following such removal. Upon the resignation or removal of any Trustee, or his/her otherwise ceasing to be a Trustee, s/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 reasonably require for the conveyance of any Trust property held in his/her name; (iii) account to the remaining Trustees as they may require for all property which s/he holds as Trustee; and (iv) resign from all representative or other positions held by him/her on behalf of the Trust, including as a director or officer of any corporation in which the Trust owns any securities (directly or indirectly); upon which s/he shall be discharged from his/her obligations as Trustee. Upon the incapacity or death of any Trustee, his/her legal representative shall execute and deliver on his/her behalf such documents as the remaining Trustees may require as provided in this section. In the event that a Trustee or his/her legal representative, as applicable, is unable or unwilling to execute and deliver such required documents, each of the remaining Trustees is hereby appointed as the attorney of such Trustee for the purpose of executing and delivering such required documents. Upon a Trustee ceasing to hold office as such hereunder, such Trustee shall continue to be entitled to be paid any amounts owing by the Trust to the Trustee.

### **3.8 Vacancies**

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

### **3.9 Nomination of Trustees**

- (a) Only persons who are nominated in accordance with the following procedures shall be eligible for election as Trustees. Nominations of persons for election as Trustees may be made at any annual meeting of Unitholders, or at any special meeting of

Unitholders, if one of the purposes for which the special meeting was called was the election of Trustees:

- (i) by or at the direction of the Trustees; or
  - (ii) by or at the direction or request of one or more Unitholders pursuant to a requisition of the Unitholders made in accordance with Article 7; or
  - (iii) by any person (a “**Nominating Unitholder**”): (A) who, at the close of business on the date of the giving of the notice provided for below in this Section 3.9 and on the record date for notice of such meeting, is entered in the Register as a holder of one or more Units carrying the right to vote at such meeting or who beneficially owns Units that are entitled to be voted at such meeting; and (B) who complies with the notice procedures set forth below in this Section 3.9.
- (b) In addition to any other applicable requirements, for a nomination to be made by a Nominating Unitholder, the Nominating Unitholder must have given timely notice thereof to the Trustees in the manner prescribed by this Declaration of Trust. Furthermore, if such notice is made on a day which is not a Business Day or later than 5:00 p.m. (Toronto time) on a day which is a Business Day, then such notice shall be deemed to have been made on the subsequent day that is a Business Day.
- (c) To be timely, a Nominating Unitholder’s notice to the Trustees must be made:
- (i) in the case of an annual meeting of Unitholders, not less than 30 days prior to the date of the annual meeting of Unitholders; provided, however, that in the event that the annual meeting of Unitholders is to be held on a date that is less than 50 days after the date (the “**Notice Date**”) on which the first public announcement of the date of the annual meeting was made, notice by the Nominating Unitholder may be made not later than the close of business on the tenth (10th) day following the Notice Date; and
  - (ii) in the case of a special meeting (which is not also an annual meeting) of Unitholders called for the purpose of electing Trustees (whether or not called for other purposes), not later than the close of business on the fifteenth (15th) day following the day on which the first public announcement of the date of the special meeting of Unitholders was made.
- (d) To be in proper written form, a Nominating Unitholder’s notice to the Trustees must set forth:
- (i) as to each person whom the Nominating Unitholder proposes to nominate for election as a Trustee: (A) the name, age, business address and residential address of the person; (B) the principal occupation or employment of the person; (C) the class or series and number of Units in the capital of the Trust which are controlled or which are owned beneficially or of record by the person as of the record date for the meeting of Unitholders (if such date shall then have been made publicly available and shall have occurred) and

as of the date of such notice; and (D) any other information relating to the person that would be required to be disclosed in a dissident's proxy circular in connection with solicitations of proxies for election of Trustees pursuant to the Securities Act; and

- (ii) as to the Nominating Unitholder giving the notice, any proxy, contract, arrangement, understanding or relationship pursuant to which such Nominating Unitholder has a right to vote any Units of the Trust and any other information relating to such Nominating Unitholder that would be required to be made in a dissident's proxy circular in connection with solicitations of proxies for election of Trustees pursuant to the Securities Act.
- (e) The Trust may require any proposed nominee to furnish such other information as may reasonably be required by the Trust to determine the eligibility of such proposed nominee to serve as an Independent Trustee of the Trust or that could be material to a reasonable Unitholder's understanding of the independence, or lack thereof, of such proposed nominee.
- (f) No person shall be eligible for election as a Trustee unless nominated in accordance with the provisions of this Section 3.9; provided, however, that nothing in this Section 3.9 shall be deemed to preclude discussion by a Unitholder (as distinct from the nomination of Trustees) at a meeting of Unitholders of any matter in respect of which it would have been entitled to submit to a vote pursuant to the terms and conditions contained in this Declaration of Trust. The chairperson of the applicable meeting shall have the power and duty to determine whether a nomination was made in accordance with the procedures set forth in the foregoing provisions and, if any proposed nomination is not in compliance with such foregoing provisions, to declare that such defective nomination shall be disregarded.
- (g) For purposes of this Section 3.9, "public announcement" shall mean disclosure in a press release reported by a national news service in Canada, or in a document publicly filed by the Trust under its profile on the System of Electronic Document Analysis and Retrieval at [www.sedar.com](http://www.sedar.com).
- (h) Notwithstanding the foregoing, the Trustees may, in their sole discretion, waive any requirement in this Section 3.9.

### **3.10 Successor and Additional Trustees**

The rights of the Trustees to control and exclusively administer the Trust and to have the titles to the Trust Property drawn up in their names and all other rights of the Trustees at law or under this Declaration of 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 the Trustees under this Declaration of Trust. Such rights shall vest in the Trustees whether or not conveyancing or transfer documents have been executed and delivered pursuant to Section 3.7 or otherwise.

### **3.11 Compensation and Other Remuneration**

The Trustees shall be paid such reasonable compensation for their services as the Trustees may from time to time determine. In consideration for serving on the Board of Trustees, each Trustee may receive a fee for each meeting of the Trustees attended in person or by conference call. Trustees who are also employees of the Manager will not be eligible for cash remuneration in their role as a Trustee for purposes of attending meetings of the Board of Trustees. Certain eligible Trustees may also be granted deferred trust units and restricted trust units from time to time, pursuant to the long term incentive plan established for the Trust.

The Trustees will also be reimbursed for their out-of-pocket expenses incurred in acting as Trustees. In addition, Trustees will be entitled to receive remuneration for services rendered to us in any other capacity, except in respect of their service as directors of any of the Trust's Subsidiaries.

The remuneration of the Trustees will be subject to periodic review by the Board of Trustees, in consultation with the Governance and Compensation Committee.

### **3.12 Officers of the Trust**

The Trust may have an Executive Chairman, a Non-Executive Chairman, an Honorary Chairman, a President, one or more Executive Vice-Presidents, one or more Senior Vice-Presidents, one or more Vice-Presidents, a Chief Executive Officer, a Chief Financial Officer, a Treasurer and a Secretary and such other officers as the Trustees may appoint from time to time. One person may hold two or more offices. Any officer of the Trust may, but need not, be a Trustee. Each of the Executive Chairman and the Honorary Chairman shall be entitled to receive notice of and attend all meetings of the Trustees but, unless he or she is a Trustee, neither the Executive Chairman nor the Honorary Chairman shall be entitled to vote at any such meeting. Officers of the Trust shall be appointed and discharged and their remuneration determined by the Trustees.

### **3.13 Validity of Acts**

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

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

### **4.1 General Powers**

The Trustees, subject only to the specific limitations contained in this Declaration of Trust, including Sections 2.6, 5.1, 5.2 and 12.2, shall have, without further or other authorization and free from any control or direction on the part of the Unitholders, full, absolute and exclusive power, control and authority over the properties and assets and the affairs of the Trust to the same extent as if the Trustees were the sole owners of such properties and assets in their own right, to do all such acts and things as in their sole judgment and discretion are necessary or incidental to, or desirable for, the carrying out of any of the purposes of the Trust or the conducting of the affairs of the Trust. In construing the provisions of this Declaration of Trust, there shall be a presumption in favour of the power and authority having been granted to the Trustees. The enumeration of any

specific power or authority herein shall not be construed as limiting the general powers or authority or any other specified power or authority conferred herein on the Trustees. Except as specifically required by laws which are of public order, the Trustees shall in carrying out investment activities not be in any way restricted by the provisions of the laws of any jurisdiction limiting or purporting to limit investments which may be made by trustees. Without limiting the generality of the foregoing, subject to Sections 2.6, 5.1, 5.2 and 12.2, the Trustees may make any investments without being required to adhere to all of, or any particular portion of the investment criteria or diversification requirements set forth in the Trustee Act (Ontario), as amended, or any other applicable provincial or federal trust laws, from time to time, including investments in mutual funds, common trust funds, unit trusts and similar types of investment vehicles, to alter or vary such investments from time to time in a like manner, to retain such investments for such length of time as the Trustees, in their discretion determine and to delegate management and authority to discretionary managers of investment funds as the Trustees in their discretion determine appropriate.

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

Subject only to the express limitations contained in this Declaration of Trust, including Sections 2.6, 5.1, 5.2 and 12.2, and in addition to any powers and authorities conferred by this Declaration of Trust or which the Trustees may have by virtue of any present or future statute or rule of law, the Trustees without any action or consent by the Unitholders shall have and may exercise, on behalf of the Trust, at any time and from time to time the following powers and authorities which may or may not be exercised by them in their sole judgment and discretion and in such manner and upon such terms and conditions as they may from time to time deem proper:

- (a) subject to Sections 6.3(d) and 6.5, to increase the capital of the Trust at any time by the issuance of additional Units for such consideration as they deem appropriate;
- (b) for such consideration as they deem proper, to invest in, purchase or otherwise acquire for cash or other property or through the issuance of Units or through the issuance of Notes, or other obligations or securities of the Trust and hold for investment Notes and units, or other obligations or securities of any other Person;
- (c) to sell, rent, lease, hire, exchange, release, partition, assign, mortgage, pledge, hypothecate, grant security interests in, encumber, negotiate, convey, transfer or otherwise dispose of any or all of the Trust Property by deeds, trust deeds, assignments, bills of sale, transfers, leases, mortgages, financing statements, security agreements and other instruments for any of such purposes executed and delivered for and on behalf of the Trust by one or more of the Trustees or by a duly authorized officer, employee, agent or any nominee of the Trust;
- (d) to enter into leases, contracts, obligations and other agreements for a term extending beyond the term of office of the Trustees and beyond the possible termination of the Trust or for a lesser term;
- (e) to borrow money from or incur indebtedness to any Person; to guarantee, indemnify or act as surety with respect to payment or performance of obligations of its Subsidiaries; 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 or assets of the Trust to secure any of the foregoing;

- (f) to lend money or other Trust Property, whether secured or unsecured;
- (g) to enter into and perform obligations under the Material Agreements and the Management Agreement;
- (h) to maintain records and provide reports to Unitholders;
- (i) to establish systems to monitor the qualification of the Trust as a “mutual fund trust” and a “registered investment” and a “real estate investment trust” within the meaning of the Tax Act;
- (j) to pay all taxes or assessments, of whatever kind or nature, whether within or outside Canada, imposed upon or against the Trustees in connection with the properties, assets and undertaking of the Trust, or any part thereof and to settle or compromise any disputed tax liabilities and for the foregoing purposes to make such returns, take such deductions, and make such designations, elections and determinations in respect of the Income of the Trust or net realized capital gains of the Trust distributed to Unitholders and any other matter as shall be permitted under the Tax Act (provided that to the extent necessary the Trustees will seek the advice of the Trust’s counsel or its auditors), and do all such other acts and things as may be deemed by the Trustees in their sole discretion to be necessary, desirable or convenient in connection with such matters;
- (k) to incur and pay out of the property or assets of the Trust any charges or expenses and disburse any funds of the Trust, which charges, expenses or disbursements are, in the opinion of the Trustees, necessary or incidental to or desirable for the carrying out of any of the purposes of the Trust or conducting the affairs of the Trust including taxes or other governmental levies, charges and assessments of whatever kind or nature, imposed upon or against the Trustees in connection with the property, assets or undertaking of the Trust or any part thereof and for any of the purposes herein;
- (l) to deposit funds of the Trust in banks, trust companies and other depositories, whether or not such deposits will earn interest, the same to be subject to withdrawal on such terms and in such manner and by such person or persons (including any one or more Trustees, officers, agents or representatives) as the Trustees may determine;
- (m) to possess and exercise all the rights, powers and privileges appertaining to the ownership of or interest in all or any mortgages or securities, issued or created by any Person, forming part of the Trust Property, to the same extent that an individual might and, without limiting the generality of the foregoing, to vote or give any consent, request or notice, or waive any notice, either in person or by proxy or power of attorney, with or without power of substitution, to one or more Persons, which proxies and powers of attorney may be for meetings or action generally or



for any particular meeting or action and may include the exercise of discretionary power;

- (n) to exercise any conversion privilege, subscription right, warrant or other right or option available in connection with any Trust Property at any time held by it and to make payments incidental thereto; to consent, or otherwise participate in or dissent from, the reorganization, consolidation, amalgamation, merger or readjustment of the finances of any Person (other than the Trust), any of the securities of which may at any time be held by the Trust or to the sale, mortgage or lease of the property of any such Person; and to do any act with reference thereto, including the delegation of discretionary powers, the exercise of options, the making of agreements or subscriptions and the payment of expenses, assessments or subscriptions which it may consider necessary or advisable in connection therewith;
- (o) 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 or by the Trustees' Regulations; to engage, appoint, employ or contract with any Persons as agents, representatives, employees or independent contractors or otherwise (including real estate advisors, investment advisors, registrars, underwriters, accountants, lawyers, real estate agents, property managers, asset managers, appraisers, brokers, architects, engineers, construction managers, general contractors or otherwise) in one or more capacities, and to pay compensation from the Trust for services in as many capacities as such Persons may be so engaged or employed; and, except as prohibited by law, to delegate any of the powers and duties of the Trustees (including the power of delegation) to any one or more Trustees, agents, representatives, officers, employees, independent contractors or other Persons without regard to whether such power, authority or duty is normally granted or delegated by Trustees;
- (p) to collect, sue for and receive sums of money coming due to the Trust, and to engage in, intervene in, prosecute, join, defend, compromise, abandon or adjust, by arbitration or otherwise, any actions, suits, proceedings, disputes, claims, demands or other litigation relating to the Trust, the assets of the Trust or the Trust's affairs, to enter into agreements therefor whether or not any suit is commenced or claim accrued or asserted and, in advance of any controversy, to enter into agreements regarding the arbitration, adjudication or settlement thereof;
- (q) to renew, modify, release, compromise, extend, consolidate or cancel, in whole or in part, any obligation to or of the Trust;
- (r) to purchase and pay for, out of the assets of the Trust, insurance contracts and policies insuring the assets of the Trust against any and all risks and insuring the Trust and/or any or all of the Trustees, the Unitholders, Annuitants or officers of the Trust against any and all claims and liabilities of any nature asserted by any Person arising by reason of any action alleged to have been taken or omitted by the Trust or by the Trustees, the Unitholders, Annuitants or the officers of the Trust;

- (s) to cause title to any of the properties of the Trust to be held by and/or in the name of the Trustees, or, except as prohibited by law, by and/or in the name of the Trust or one or more of the Trustees or any other Persons, on such terms, in such manner with such powers in such Person as the Trustees may determine and with or without disclosure that the Trust or Trustees are interested therein, provided, however, that should title to any of the properties or assets of the Trust be held by and/or in the name of any Person or Persons other than the Trust, the Trustees shall require such Person or Persons to execute, with respect to any property situated outside of the Province of Québec, a declaration of trust or nominee agreement acknowledging that legal title to such property is held in trust for the benefit of the Trust, and in respect of any property situated in the Province of Québec, a nominee agreement acknowledging that title to such property is held as mandatary, prête-nom (nominee) and agent for the benefit of the Trust;
- (t) to determine conclusively the allocation to capital, income or other appropriate accounts for all receipts, expenses, disbursements and Trust Property;
- (u) to authorize and, subject to regulatory approvals, issue different classes of Units as the Trustees, in their sole discretion, may determine appropriate for the Trust;
- (v) to prepare, sign and file or cause to be prepared, signed and filed any prospectus, offering memorandum or similar document, and any amendment thereto and all agreements contemplated therein or ancillary thereto relating to or resulting from any offering of the Units or other securities issued or held by the Trust and to pay the cost thereof and related thereto out of the Trust Property of the Trust whether or not such offering is or was of direct benefit to the Trust or those Persons (if any) who were Unitholders immediately prior to such offering;
- (w) to make or cause to be made application for the listing on any stock exchange of any Units or other securities of the Trust, and to do all things which in the opinion of the Trustees may be necessary or desirable to effect or maintain such listing or listings;
- (x) to determine conclusively the value of any or all of the Trust Property from time to time and, in determining such value, to consider such information and advice as the Trustees, in their sole judgment, may deem material and reliable;
- (y) to grant acquittances, mainlevées, radiations, discharges, releases, total or partial, under terms and for consideration, as the Trustees may deem appropriate;
- (z) subject to obtaining all required regulatory approvals, to establish one or more distribution reinvestment plans, unit purchase plans, unit option plans or any other unit compensation, incentive plan or similar plan with respect to the REIT Units; and
- (aa) to do all such other acts and things as are incidental to the foregoing, and to exercise all powers that are necessary or useful to carry on the activities of the Trust, to promote any of the purposes for which the Trust is formed and to carry out the provisions of this Declaration of Trust.

### **4.3 Further Powers of the Trustees**

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

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

### **4.4 Banking**

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

### **4.5 Standard of Care**

The exclusive standard of care required of the Trustees in exercising their powers and carrying out their functions hereunder shall be that they exercise their powers and discharge their duties hereunder as Trustees honestly and in good faith with a view to the best interests of the Trust and the Unitholders and in connection therewith, that they exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. A Trustee shall not be

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

#### **4.6 Reliance Upon Trustees**

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

#### **4.7 Determinations of Trustees Binding**

All determinations of the Trustees that are made in good faith with respect to any matters relating to the Trust, including whether any particular investment or disposition meets the requirements of this Declaration of Trust, shall be final and conclusive and shall be binding upon the Trust and all Unitholders (and, where the Unitholder is a Deferred Income Plan or registered pension fund or plan as defined in the Tax Act, or other similar fund or plan registered under the Tax Act, upon plan beneficiaries and plan holders past, present and future) and Units of the Trust shall be issued and sold on the condition and understanding that any and all such determinations shall be binding as aforesaid.

#### **4.8 Conflict of Interest**

Except for agreements entered into on or before the Closing Date and/or the ownership of Units or LP Units, if a Trustee or officer of the Trust: (i) is a party to a material contract or transaction or proposed material contract or transaction with the Trust or any of its Subsidiaries; or (ii) is a director or officer of, or otherwise has a material interest in, any Person who is a party to a material contract or transaction or proposed material contract or transaction with the Trust or any of its Subsidiaries, such Trustee or officer shall disclose in writing to the Trustees or request to have entered into the minutes of meetings of the Trustees or the Investment Committee or such other applicable committee, as the case may be, the nature and extent of such interest as follows:

- (a) the disclosure required in the case of a Trustee shall be made:
  - (i) at the meeting of the Trustees, the Investment Committee or applicable committee, as the case may be, at which a proposed contract or transaction is first considered;

- (ii) if the Trustee was not then interested in a proposed contract or transaction, at the first such meeting after s/he becomes so interested;
  - (iii) if the Trustee becomes interested after a contract is made or a transaction is entered into, at the first meeting after s/he becomes so interested; or
  - (iv) if an individual who is interested in a contract or transaction later becomes a Trustee, at the first such meeting after s/he becomes a Trustee;
- (b) the disclosure required in the case of an officer of the Trust, who is not a Trustee, shall be made:
  - (i) forthwith after such officer becomes aware that the contract or transaction or proposed contract or transaction is to be considered or has been considered at a meeting of the Trustees, of the Investment Committee or other applicable committee, as the case may be;
  - (ii) if such officer becomes interested after a contract is made or transaction is entered into, forthwith after such individual becomes aware that s/he has become so interested; or
  - (iii) if an individual who is interested in a contract or a transaction later becomes an officer of the Trust, forthwith after s/he becomes an officer of the Trust;
- (c) notwithstanding Subsections 4.8(a) and (b), where this Section applies to a Trustee or officer of the Trust in respect of a material contract or transaction or proposed material contract or transaction that, in the ordinary course of the affairs of the Trust, would not require approval by the Trustees or the Unitholders, such Trustee or officer of the Trust shall disclose in writing to the Trustees or request to have entered into the minutes of meetings of the Trustees, or the Investment Committee or other applicable committee, as the case may be, the nature and extent of the interest of such Trustee or officer of the Trust forthwith after s/he becomes aware of the contract or transaction or proposed contract or transaction;
- (d) a Trustee referred to in this Section 4.8 shall not vote on any resolution to approve the said contract or transaction unless the contract or transaction is:
  - (i) one relating primarily to his/her remuneration as a Trustee, officer, employee or agent of the Trust; or
  - (ii) one for indemnity under Section 14.1 or the purchase of liability insurance;provided, however, that the presence of such Trustee at the relevant meeting or the written recognition by such Trustee of any resolution in writing shall be counted toward any quorum requirement;
- (e) for the purposes hereof, a general notice to the Trustees by a Trustee or an officer of the Trust disclosing that s/he is a director or officer of or has a material interest in a Person and is to be regarded as interested in any contract made or any transaction entered into with that Person, is a sufficient disclosure of interest in

relation to any contract so made or transaction so entered into. In the event that a meeting of the Unitholders is called to confirm or approve a contract or transaction which is the subject of a general notice to the Trustees, the nature and extent of the interest in the contract or transaction of the Persons giving such general notice shall be disclosed in reasonable detail in the notice calling the said meeting of the Unitholders or in any information circular to be provided by this Declaration of Trust or by law;

- (f) where a material contract is made or a material transaction is entered into between the Trust and a Trustee or an officer of the Trust, or between the Trust and another Person in which a Trustee or an officer of the Trust has a material interest:
  - (i) such Trustee or officer of the Trust is not accountable to the Trust or to the Unitholders for any profit or gain realized from the contract or transaction; and
  - (ii) the contract or transaction is neither void nor voidable,  
by reason only of that relationship or by reason only that such Trustee or officer is present at or is counted to determine the presence of a quorum at the meeting of the Trustees, of the Investment Committee or other applicable committee, as the case may be, that authorized the contract or transaction, if such Trustee or officer of the Trust disclosed his/her interest in accordance with this Section 4.8, and the contract or transaction was reasonable and fair to the Trust at the time it was approved;
- (g) notwithstanding anything in this Section, but without limiting the effect of Subsection 4.8(f), a Trustee or an officer of the Trust, acting honestly and in good faith, is not accountable to the Trust or to the Unitholders for any profit or gain realized from any such contract or transaction by reason only of his/her holding such office or position, and the contract or transaction, if it was reasonable and fair to the Trust at the time it was approved, is not by reason only of such Trustee's or officer's interest therein void or voidable, where:
  - (i) the contract or transaction is confirmed or approved at a meeting of the Unitholders duly called for that purpose; and
  - (ii) the nature and extent of such Person's interest in the contract or transaction are disclosed in reasonable detail in the notice calling the meeting or in any information circular to be provided by this Declaration of Trust or by law; and
- (h) subject to Subsections 4.8(f) and 4.8(g), where a Trustee or an officer of the Trust fails to disclose his/her interest in a material contract or transaction in accordance with this Declaration of Trust or otherwise fails to comply with this Section 4.8, the Trustees or any Unitholder, in addition to exercising any other rights or remedies in connection with such failure exercisable at law or in equity, may apply to a court for an order setting aside the contract or transaction and directing that such Trustee or officer account to the Trust for any profit or gain realized.

#### **4.9 Independent Trustee Matters**

Notwithstanding anything herein to the contrary, in addition to requiring the approval of a majority of the Trustees, the approval of not less than a majority of the Independent Trustees holding office at such time who have no interest in the matter (given by vote at a meeting of Independent Trustees or by written consent) shall be required with respect to any decision taken after the Closing Date:

- (a) relating to an acquisition or disposition of a property or an investment in a property, whether by co-investment or otherwise, in which any Related Party has any direct or indirect interest;
- (b) relating to a material change to any Material Agreement or any renewal, extension or termination thereof or any increase in any fees payable thereunder (including transaction fees) or permitting PRO REIT LP to do any of the foregoing;
- (c) to enter into, or to waive, exercise or enforce any rights or remedies under, any agreement entered into by the Trust or any of its Subsidiaries, or to make, directly or indirectly, any co-investment, in each case with (i) any Trustee, (ii) any entity directly or indirectly controlled by any Trustee or in which any Trustee holds a significant interest, or (iii) any entity for which any Trustee acts as a director or in another similar capacity or permitting PRO REIT LP to do any of the foregoing;
- (d) relating to any claims by or against one or more parties to any of the Material Agreements, or any Related Party;
- (e) relating to the refinancing, increase or renewal of any indebtedness owed by or to (i) any Trustee, (ii) any entity directly or indirectly controlled by any Trustee or in which any Trustee holds a significant interest, or (iii) any entity for which any Trustee acts as a director or in another similar capacity or permitting PRO REIT LP to do any of the foregoing;
- (f) to grant REIT Units under any unit incentive or unit compensation plan approved by the Trustees and, if required, by the Unitholders or awarding any right to acquire or other right or interest in the REIT Units or securities convertible into or exchangeable for REIT Units under any plan approved by the Trustees and, if required, by the Unitholders;
- (g) recommending to the holders of the Units to increase the number of Trustees serving on the board of Trustees or authorizing the Trustees to change the number of Trustees from time to time; and
- (h) relating to a change to the compensation of any officer of the Trust.

#### **4.10 Limitations on Powers**

The Trustees hereby acknowledge that PRO REIT LP is bound by certain investment guidelines and operating policies and the Trustees agree that at no time shall they act or cause the Trust to act in such a manner, including without limitation, through voting its LP Units in PRO REIT LP or shares of PRO REIT GP, as applicable, to effect any changes or amendments to PRO REIT LP's

investment guidelines or operating policies without the approval of at least 66 $\frac{2}{3}$ % of the Unitholders pursuant to Section 5.3.

#### **4.11 Transactions with Related Parties**

Following the Closing Date, the Trustees shall obtain a valuation in respect of any real property that PRO REIT LP or its Subsidiaries intend to purchase from or sell to a Related Party prepared by a valuator engaged by, and prepared under the supervision of, a committee of two or more Independent Trustees who have no interest in such transaction. In addition, the Trust shall not permit PRO REIT LP to effect a transaction with a Related Party unless the transaction is determined to be on commercially reasonable terms by, and is approved by, a majority of the Independent Trustees who have no interest in such transaction in accordance with Section 4.9.

#### **4.12 Ratification of Prior Actions**

All prior agreements, appointments, acknowledgements and other actions entered into, made or undertaken by the Trust prior to the date hereof are hereby ratified and confirmed by the Trustees by the execution of this Declaration of Trust by each of the Trustees.

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

#### **5.1 Investment Guidelines of the Trust**

Following the Closing Date, notwithstanding any other provision of this Declaration of Trust, the Trust Property of the Trust may be invested only with the approval of the Trustees and only in accordance with the following investment guidelines:

- (a) the Trust may only invest, directly or indirectly, in interests in income-producing real estate located primarily in Canada and assets ancillary thereto necessary for the ownership or utilization of such real estate and such other activities as are consistent with the other Investment Guidelines;
- (b) notwithstanding anything else contained in this Declaration of Trust or these Investment Guidelines or the Operating Policies, the Trust will not make investments, including direct or indirect investments in operating businesses, or take or omit to take any action that could result in: (i) the Units being disqualified for investment by registered retirement savings plans, registered retirement income funds, registered education savings plans, registered disability savings plans, deferred profit-sharing plans or tax-free savings accounts; (ii) the Trust or any Subsidiary being liable under the Tax Act to pay a tax imposed under paragraph 122(1)(b) or the Trust being liable to pay tax under Part XII.2 of the Tax Act; or (iii) Trust ceasing to qualify as a “mutual fund trust”, “real estate investment trust” or a “registered investment” for purposes of the Tax Act or a Subsidiary ceasing to meet the conditions in paragraphs (a) to (d) of the definition of “real estate investment trust”;
- (c) the Trust may invest in LP Units, shares of PRO REIT GP, amounts receivable in respect of such LP Units, shares, cash and similar deposits in a Canadian chartered



bank or trust company and, subject to Subsection 5.1(b), such other investments as the Trustees deem advisable from time to time;

- (d) the Trust may, directly or indirectly, invest in a joint venture arrangement for purposes of owning interests or investments otherwise permitted to be held by the Trust; provided that the terms and conditions of any such joint venture arrangement are commercially reasonable. For purposes hereof, a joint venture arrangement is an arrangement between the Trust and one or more other Persons pursuant to which the Trust, directly or indirectly, conducts an undertaking for one or more of the purposes set out in the Investment Guidelines and in respect of which the Trust may hold its interest jointly or in common or in another manner with others either directly or through the ownership of securities of a corporation or other entity;
- (e) except for temporary investments held in cash, deposits with a Canadian chartered bank or trust company registered under the laws of a province of Canada, short-term government debt securities or money market instruments maturing prior to one year from the date of issue and except as permitted pursuant to the Investment Guidelines and Operating Policies, the Trust may not hold securities of a Person other than to the extent such securities would constitute an investment or an interest in real or immovable property and provided that, notwithstanding this Declaration of Trust, the Trust may acquire securities of other real estate investment trusts or real estate operating companies;
- (f) the Trust shall not invest in rights to or interests in mineral or other natural resources, including oil or gas, except as incidental to an investment in real property;
- (g) the Trust shall not invest, directly or indirectly, in operating businesses unless such investment is an indirect investment and 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, development, improvement, leasing or management, directly or indirectly, of real or immovable property (in each case as determined by the Trustees);
- (h) the Trust shall not invest in raw land for development, except (i) for existing properties with additional development or properties adjacent to properties of the Trust for the purpose of renovation or expansion of properties, or (ii) in connection with the development of new properties which will be capital property of the Trust, provided the aggregate value of investments in raw land, excluding raw land under development and after giving effect to the proposed investment, will not exceed 5% of Gross Book Value;
- (i) the Trust may invest in mortgages and mortgage bonds and similar instruments where: (i) the real property which is security therefor is income producing and meets the Investment Guidelines; and (ii) the aggregate book value of the investments in mortgages, after giving effect to the proposed investment, will not exceed 15% of Gross Book Value; and

- (j) the Trust may invest an amount (which, in the case of an amount invested to acquire real property is the purchase price less the amount of any debt incurred or assumed in connection with such investment) up to 15% of Gross Book Value in investments which do not comply with one or more of paragraphs (a), (d), (e), (g) and (h).

For the purpose of the foregoing Investment Guidelines, the assets and liabilities 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 Investment Guidelines to investment in real property will be deemed to include an investment in a joint venture arrangement that invests in real property.

## **5.2 Operating Policies of the Trust**

Following the Closing Date, the operations and affairs of the Trust shall be conducted in accordance with the following operating policies and the Trust shall not permit any Subsidiary to conduct its operations and affairs other than in accordance with the following policies:

- (a) the Trust shall not purchase, sell, market or trade in currency or interest rate futures contracts otherwise than for hedging purposes;
- (b) (i) any written instrument creating an obligation which is or includes the granting by the Trust of a mortgage; and (ii) to the extent the Trustees determine it to be practicable and consistent with their fiduciary duties to act in the best interest of the Unitholders, any written instrument which is a material obligation, shall contain a provision that the obligation created is not personally binding upon the Trustees, the Unitholders or officers, employees or agents of the Trust, but that only Trust Property or a specific portion thereof is bound;
- (c) the Trust may engage in construction or development of real property: (i) to maintain its real properties in good repair or to improve the income producing potential of properties in which the Trust has an interest and (ii) to develop new properties that will be capital properties of the Trust on completion, provided that the aggregate value of investments in properties under development, after giving effect to the proposed investment in the construction or development, will not exceed 15% of Gross Book Value;
- (d) title to each real property shall be held by and registered in name of the Trust, the Trustees or a corporation or other entity wholly-owned, directly or indirectly, by the Trust or PRO REIT LP, or jointly-owned, directly or indirectly, by the Trust or PRO REIT LP, with joint venturers;
- (e) the Trust shall not incur or assume any Indebtedness if, after giving effect to the incurrence or assumption of such Indebtedness, the total Indebtedness of the Trust would be more than 70% of Gross Book Value following the investment;
- (f) except for indebtedness existing on the date hereof in respect of the Initial Property, the Trust shall not incur or assume any indebtedness (other than by the assumption of existing indebtedness and the renewal, extension or modification thereof from time to time) or renew or refinance any indebtedness under a mortgage on any of

the real property (other than on raw land and/or land under development and/or assumed debt) of the Trust where (i) in the case of an individual property, the total amount of indebtedness, excluding operating lines, secured by mortgages on such property exceeds 75% of the market value of such individual property; or (ii) in the case of more than one property or a pool or portfolio of properties, the total amount of indebtedness, excluding operating lines, secured by mortgages on such properties exceeds 75% of the market value of such properties on an aggregate basis;

- (g) the Trust shall not directly or indirectly guarantee any indebtedness or liabilities of any kind of a third party, except indebtedness or liabilities assumed or incurred by an entity in which the Trust holds an interest or by an entity jointly owned by the Trust with joint venturers where such indebtedness, if granted by the Trust directly, would not, in the sole discretion of the Trustees, cause the Trust to contravene its Investment Guidelines or Operating Policies;
- (h) the Trust shall directly or indirectly obtain and maintain at all times property insurance coverage in respect of potential liabilities of the Trust and accidental loss of value of assets from risks; and
- (i) the Trust shall obtain or review a Phase I environmental site assessment of each real property to be acquired, and, if a Phase I environmental site assessment report recommends further environmental site assessment, the Trust shall have conducted such further assessment by an independent and experienced environmental consultant as a condition to any acquisition, and such assessments shall be satisfactory to the Trustees.

For the purpose of the foregoing Operating Policies, the assets and liabilities 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 Operating Policies to investment in real property will be deemed to include an investment in a joint venture arrangement that invests in real property.

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

Subject to Sections 5.4 and 12.1 any of the Investment Guidelines may be amended only by a Special Resolution of the Unitholders adopted at a meeting called for that purpose. Subject to Section 12.1, the Operating Policies may be amended by a Special Resolution of the votes cast at a meeting of the Unitholders called for that purpose.

### **5.4 Regulatory Matters**

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

## **5.5 Operating Plan**

The Trustees shall, at least on an annual basis, approve an investment and operating plan for the ensuing period.

## **ARTICLE 6 UNITS**

### **6.1 Units**

The interests of the beneficiaries in the Trust shall be divided into two classes described as “REIT Units” and “Special Voting Units”, respectively, which shall be entitled to the rights and subject to the limitations, restrictions and conditions set out in this Declaration of Trust. The number of Units which the Trust may issue is unlimited. Units shall be issued only as fully paid and non-assessable. Each Unit when issued shall vest indefeasibly in the holder thereof. The issued and outstanding Units may be subdivided or consolidated from time to time by the Trustees without notice to or approval of the Unitholders, or as otherwise provided in Section 6.5.

### **6.2 REIT Units**

Each REIT Unit shall represent an equal interest in the Trust with all other outstanding REIT Units and shall confer the right to one vote at any meeting of Unitholders and to participate *pro rata* in any distributions by the Trust and, in the event of termination of the Trust, in the net assets of the Trust remaining after satisfaction of all liabilities. No REIT Unit shall have any preference or priority over any other. REIT Units shall rank among themselves equally and rateably without discrimination, preference or priority.

### **6.3 Special Voting Units**

- (a) Special Voting Units shall be issued only in connection with or in relation to Class B LP Units. A Special Voting Unit shall be issued in tandem with each Class B LP Unit issued. Each Special Voting Unit shall entitle the holder of record thereof to a number of votes at all meetings of the Unitholders or in respect of any written resolution of the Unitholders equal to the number of REIT Units which may be obtained upon the surrender of the Class B LP Unit.
- (b) On the Closing Date, concurrently with the issue of Special Voting Units, the Trust has entered into the Exchange Agreement.
- (c) A Special Voting Unit shall not be transferable separately from the Class B LP Unit issued in tandem with it, and, upon any transfer of such Class B LP Unit, such Special Voting Unit shall automatically be transferred to the transferee of such Class B LP Unit. For greater certainty, a Special Voting Unit shall only be transferred to a permitted transferee of Class B LP Units under the terms and conditions of the PRO REIT LP Agreement.
- (d) As Class B LP Units are surrendered for REIT Units or redeemed or purchased for cancellation by PRO REIT LP, the corresponding Special Voting Units shall automatically be redeemed by the Trust for an amount equal to \$0.001 per each

Special Voting Unit (the “**Special Voting Unit Redemption Amount**”) and cancelled. Following such redemption and cancellation such Special Voting Units shall no longer be outstanding and may not be reissued. The Special Voting Units shall have no other economic entitlement in the Trust.

#### **6.4 Consideration for Units**

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

#### **6.5 Consolidation of Units and Fractional Units**

- (a) Unless the Trustees determine otherwise, immediately after any *pro rata* distribution of additional REIT Units to all holders of REIT Units pursuant to Section 10.3(b), the number of the outstanding REIT Units will automatically be consolidated such that each such holder will hold after the consolidation the same number of REIT Units as such holder held before the distribution of additional REIT Units. In this case, each REIT Unit certificate representing the number of REIT Units prior to the distribution of additional REIT Units is deemed to represent the same number of REIT Units after the non-cash distribution of additional REIT Units and the consolidation.
- (b) Notwithstanding the foregoing, where tax is required to be withheld from a Unitholder’s share of the distribution, the consolidation will result in such Unitholder holding that number of REIT Units equal to (i) the number of REIT Units held by such Unitholder prior to the distribution plus the number of REIT Units received by such Unitholder in connection with the distribution (net of the number of whole and part REIT Units withheld on account of withholding taxes) multiplied by (ii) the fraction obtained by dividing the aggregate number of REIT Units outstanding prior to the distribution by the aggregate number of REIT 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 REIT Unit certificates, if any, representing such Unitholder’s original REIT Units, in exchange for a REIT Unit certificate representing such Unitholder’s post-consolidation REIT Units.
- (c) If as a result of any act of the Trustees hereunder, any Person becomes entitled to a fraction of a Unit, such Person shall not be entitled to receive a certificate therefor. Fractional Units shall not, except to the extent that they may represent in the aggregate one or more whole Units, entitle the holders thereof to notice of or to attend or to vote at meetings of the Unitholders. Subject to the foregoing, such

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

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

The holding of the Trust Property and the right to administer the affairs of the Trust are vested exclusively in the Trustees, and the Unitholders shall have no interest therein other than the interest in the Trust conferred by the Units issued hereunder. The Unitholders shall have no right to compel any partition, division or distribution of the Trust or any of the Trust Property. The Units shall constitute movable property and shall confer upon the holders thereof only the interest and rights, and impose upon the holders thereof only those liabilities and obligations, specifically set forth in this Declaration of Trust. No Unitholder has or shall be deemed to have any right of ownership in any of the Trust Property.

## **6.7 Allotment and Issue**

- (a) Subject to the Exchange Agreement, the Trustees may allot and issue Units at such time or times and in such manner (including pursuant to any plan from time to time in effect relating to reinvestment by the Unitholders of distributions of the Trust in Units) and to such Person, Persons or class of Persons as the Trustees in their sole discretion shall determine except that Special Voting Units may only be issued in connection with the issuance of Class B LP Units. The price or the value of the consideration for which Units may be issued and the terms and conditions of issuance of the Units shall be determined by the Trustees in their sole discretion, generally (but not necessarily) in consultation with investment dealers or brokers who may act as underwriters in connection with offerings of Units. Subject to Section 6.13, Units shall not be issued in registered form. In the event that Units are issued in whole or in part for a consideration other than money, the resolution of the Trustees allotting and issuing such Units shall express the fair equivalent in money of the other consideration received.
- (b) On the Closing Date, the Trust has entered into the Exchange Agreement pursuant to which it shall provide certain support in respect of the surrender feature of the Class B LP Units and in respect of distributions.
- (c) It is hereby confirmed that the Class B LP Units are intended to be economically equivalent to the REIT Units that the holder may acquire on the surrender of the Class B LP Units particularly in respect of distribution entitlements and voting rights (through the Special Voting Units).

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

Subject to the Exchange Agreement, the Trust may create and issue rights, warrants or options to subscribe for fully paid REIT Units which rights, warrants or options may be exercisable at such subscription price or prices and at such time or times as the Trustees may determine. The rights, warrants or options so created may be issued for such consideration or for no consideration, all as the Trustees may determine. A right, warrant or option shall not be a REIT Unit and a holder thereof shall not be a Unitholder. Upon the approval of any unit option plan for the Trustees, officers and/or employees of the Trust or any Subsidiary of the Trust and/or their personal holding

companies or family trusts and/or Persons who provide services to the Trust and its committees may, upon receiving authority from the Trustees, recommend to the Trustees the granting of options upon the terms and subject to the conditions set forth in such plan.

Subject to Sections 5.1 and 5.2, the Trustees may create and issue indebtedness of the Trust in respect of which interest, premium or principal payable thereon may be paid, at the option of the Trust or the holder, in fully paid REIT Units, or which indebtedness, by its terms, may be convertible into REIT Units at such time and for such prices as the Trustees may determine. Any indebtedness so created shall not be a REIT Unit and the creditor thereof shall not be a Unitholder, unless and until fully paid REIT Units are issued in accordance with the terms of such indebtedness.

### **6.9 Commissions and Discounts**

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

### **6.10 Transferability**

Subject to Section 6.11, the REIT Units are freely transferable, and the Trustees shall not impose any restriction on the transfer of REIT Units. The Trustees shall use all reasonable efforts to obtain and maintain a listing for the REIT Units on one or more stock exchanges in Canada. The Special Voting Units shall be transferable only together with the related Class B LP Units. Notwithstanding the foregoing, no transfer of Units shall be effective as against the Trustees or shall be in any way binding upon the Trustees until the transfer has been recorded on the Register and no transfer of a Unit shall be recognized unless such transfer is of a whole Unit.

### **6.11 Limitation on Non-Resident Ownership**

Notwithstanding any provision of this Declaration of Trust to the contrary, at no time may more than 49% of the REIT Units or the Special Voting Units then outstanding be held by or for the benefit of Persons who are not Resident Canadians (“**Non-Resident Beneficiaries**”). The Trustees may require declarations as to the jurisdictions in which owners of Units are resident or declarations from holders of Units as to whether such Units are held for the benefit of Non-Resident Beneficiaries. If the Trustees become aware that more than 49% of the REIT Units or the Special Voting Units then outstanding are, or may be, held by or for the benefit of Non-Resident Beneficiaries or that such a situation is imminent, the Trustees may make a public announcement thereof and shall not accept a subscription for such Units from or issue or register a transfer of such Units to a Person unless the Person provides a declaration that the Person is not a non-resident for the purposes of the Tax Act (or, in the discretion of the Trustees, that the Person is not a Non-Resident Beneficiary) and does not hold his/her or its Units for a Non-Resident Beneficiary. If, notwithstanding the foregoing, the Trustees determine that more than 49% of the REIT Units or the Special Voting Units then outstanding are held by or for the benefit of Non-Resident Beneficiaries, the Trustees may send a notice to non-resident holders of the Units and holders of Units for Non-Resident Beneficiaries chosen in inverse order to the order of acquisition or registration or in such manner as the Trustees may consider equitable and practicable, requiring them to sell their Units or a portion thereof within a specified period of not less than 60 days. If

the Unitholders receiving such notice have not sold or redeemed the specified number of Units or provided the Trustees with satisfactory evidence that they are not non-residents for the purpose of the Tax Act and do not hold their Units for the benefit of Non-Resident Beneficiaries within such period, the Trustees may sell or redeem such Units on behalf of such Unitholders (and the Trustees shall have the power of attorney of such Unitholders to do so) and, in the interim, the voting and distribution rights attached to such Units shall be suspended. Upon such sale the affected holders shall cease to be holders of Units and their rights shall be limited to receiving the net proceeds of sale upon surrender of the certificates representing such Units. In any situation where it is unclear whether Units are held for the benefit of Non-Resident Beneficiaries, the Trustees may exercise their discretion in determining whether such Units are or are not so held, and any such exercise by them of their discretion shall be binding for the purposes of this Section 6.11.

## **6.12 Certificates**

Subject to Section 6.13, each Unitholder or his/her duly authorized agent is entitled to a certificate bearing an identifying serial number in respect of the Units held by him/her, signed in the manner hereinafter prescribed, but the Trust is not bound to issue more than one certificate in respect of a Unit or Units or held jointly or in common by two or more persons and delivery of a certificate to any one of them shall be sufficient delivery to all.

## **6.13 Book-Based System for REIT Units; No Certificates for Special Voting Units**

The REIT Units may be issued in “book-entry only” form and may be represented by one or more global certificates or be represented by uncertificated securities, issued in the name of CDS or its nominee, and registration of ownership and transfers of the REIT Units may be effected through the book-based system administered by CDS.

No holder of a Special Voting Unit shall be entitled to a certificate or other instrument from the Trust evidencing the holder’s ownership of such Special Voting Unit. Such holder shall only be entitled to be entered on the Register in accordance with Sections 6.16 and 6.17.

## **6.14 Certificate Fee**

The Trustees may establish a reasonable fee to be charged for every certificate issued evidencing the ownership of REIT Units.

## **6.15 Form of Certificate**

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

## **6.16 Register**

A register (the “**Register**”) shall be kept by, or on behalf and under the direction of the Trustees, which Register shall contain the names and addresses of the Unitholders, the respective numbers



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

### **6.17 Entry on Register**

Subject to Sections 6.11 and 6.13, upon any issue of Units, the name of the subscriber shall be promptly entered on the Register as the owner of the number of Units issued to such subscriber, or if the subscriber is already a Unitholder, the Register shall be amended to include his/her additional Units.

### **6.18 Successors in Interest to the Unitholders**

Subject to Section 6.11, any Person becoming entitled to any Units as a consequence of the death, bankruptcy or incompetence of any Unitholder or otherwise by operation of law shall be recorded in the Register as the holder of such Units, but until such record is made, the Unitholder of record shall continue to be and shall be deemed to be the holder of such Units for all purposes whether or not the Trust, the Trustees or the transfer agent or registrar of the Trust shall have actual or other notice of such death, bankruptcy, incompetence or other event and the Persons becoming entitled to such Units shall be bound by every notice or other document in respect of the Units which shall have been duly given to the Persons from whom s/he derives his/her title to such Units. If such transfer will contravene the limitation set forth in Section 6.11, such Person will be deemed never to have been a Unitholder and such Units shall be deemed to have been tendered for redemption to the Trust on the day immediately preceding the day on which such entitlement arose and the rights of such Person will be limited to the rights of a redeeming Unitholder.

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

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

### **6.20 Performance of Trusts**

None of the Trustees, the officers of the Trust, the Unitholders or any transfer agent or other agent of the Trust or the Trustees shall have a duty to inquire into any claim that a transfer of a Unit or other security of the Trust was or would be wrongful or that a particular adverse Person is the

owner of or has an interest in the Unit or other security or any other adverse claim, or be bound to see to the performance of any trust, express, implied or constructive, or of any charge, pledge or equity to which any of the Units or other securities or any interest therein are or may be subject, or to ascertain or inquire whether any sale or transfer of any such Units or other securities or interest therein by any such Unitholder or holder of such security or his/her personal representatives is authorized by such trust, charge, pledge or equity, or to recognize any Person as having any interest therein, except for the Persons recorded as the Unitholder or holder of such security.

### **6.21 Lost Certificates**

In the event that any certificate for REIT Units is lost, stolen, destroyed or mutilated, the Trustees or any officer of the Trust may authorize the issuance of a new certificate for the same number of REIT Units in lieu thereof. The Trustees or any officers of the Trust 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 or any officers of the Trust 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 or any officers of the Trust direct indemnifying the Trustees or any officers of the Trust, the transfer agents and registrars for so doing. The Trustees or any officers of the Trust shall have the power to acquire from an insurer or insurers a blanket lost security bond or bonds in respect of the replacement of lost, stolen, destroyed or mutilated certificates. The Trust shall pay all premiums and other sums of money payable for such purpose out of the Trust Property with such contribution, if any, by those insured as may be determined by the Trustees or any officers of the Trust. If such blanket lost security bond is acquired, the Trustees or any officers of the Trust may authorize and direct (upon such terms and conditions as they may 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 or any officers of the Trust.

### **6.22 Death of a Unitholder**

The death of a Unitholder during the continuance of the Trust shall not terminate the Trust or give the personal representatives or the heirs of the estate of the deceased Unitholder a right to an accounting or to take any action in the courts or otherwise against other Unitholders or the Trustees, officers of the Trust or the Trust Property, but shall only entitle the personal representatives or the heirs of the estate of the deceased Unitholder, subject to Section 6.18, to succeed to all rights of the deceased Unitholder under this Declaration of Trust.

### **6.23 Unclaimed Payments**

In the event that the Trustees hold any amounts to be paid to the Unitholders under Article 6, Article 10 or Article 13 or otherwise because such amounts are unclaimed or cannot be paid for any reason, neither the Trustees nor any distribution disbursing agent shall be under any obligation to invest or reinvest the same and shall only be obligated to hold the same in a current or other non-interest bearing account with a chartered bank or trust company pending payment to the Persons or Persons entitled thereto. The Trustees shall, as and when required by law, and may at any time prior to such required time, pay all or part of such amounts so held to a court in the

province where the Trust has its principal office or to the *Curateur public* (Public Curator) of the Province of Québec (or other similar government official or agency in the province where the Trust has its principal office) whose receipt shall be a fulfilment and discharge of the obligations of the Trustees.

## 6.24 Redemption of REIT Units

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

- (a) To exercise a Unitholder's right to require redemption under this Section 6.24, a duly completed and properly executed notice requiring the Trust to redeem REIT Units, in a form approved by the Trustees, specifying the number of REIT Units to be so redeemed, shall be sent to the Trust at the head office of the Trust. No form or manner of completion or execution shall be sufficient unless the same is in all respects satisfactory to the Trustees and is accompanied by any further evidence that the Trustees may reasonably require with respect to the identity, capacity or authority of the Person giving such notice. A Unitholder not otherwise holding a registered REIT Unit certificate that wishes to exercise the redemption right will be required to obtain a redemption notice from the Unitholder's investment dealer who will be required to deliver the completed redemption notice form to the Trust and to CDS.
- (b) Upon receipt by the Trust and the Transfer Agent of the notice to redeem REIT Units, the Unitholder shall thereafter cease to have any rights with respect to the REIT Units tendered for redemption (other than to receive the redemption payment therefor) including ceasing to have the right to receive any distributions thereon which are declared payable to the Unitholders of record on a date which is subsequent to the day of receipt by the Trust of such notice. REIT Units shall be considered to be tendered for redemption on the date that the Trust has, to the satisfaction of the Trustees, received the notice and other required documents or evidence as aforesaid.
- (c) Upon receipt by the Trust and the Transfer Agent of the notice to redeem REIT Units, in accordance with this Section 6.24, the holder of the REIT Units tendered for redemption shall be entitled to receive a price per REIT Unit (the "**Redemption Price**") equal to the lesser of:
  - (i) 90% of the "**market price**" of the REIT Units on the principal market on which the REIT Units are quoted for trading on the trading day prior to the date on which the REIT Units were surrendered to the Trust for redemption (the "**Redemption Date**"); and
  - (ii) 100% of the "**closing market price**" of the REIT Units on the principal market on which the REIT Units are quoted for trading on the Redemption Date.

For purposes of this Section 6.24, the “**market price**” in respect of the REIT Units as at a specified date will be an amount equal to the weighted average trading price of the REIT Units on the principal exchange or market on which the REIT Units are listed or quoted for trading during the period of ten consecutive trading days ending on such date; provided that if the applicable exchange or market does not provide information necessary to compute a weighted average trading price, the “**market price**” as at a specified date will be an amount equal to the weighted average of the closing market prices of the REIT Units on the principal exchange or market on which the REIT Units are listed or quoted for trading during the period of ten consecutive trading days ending on such date; and provided further that if there was trading on the applicable exchange or market for fewer than five of the ten trading days, the “**market price**” as at a specified date will be an amount equal to the simple average of the following prices established for each of the ten consecutive trading days ending on such date: (1) the simple average of the last bid and last asking price of the REIT Units for each day on which there was no trading; (2) the closing price of the REIT Units for each day that there was trading if the exchange or market provides a closing price; and (3) the simple average of the highest and lowest prices of the REIT Units for each day that there was trading, if the market provides only the highest and lowest prices of REIT Units traded on a particular day.

For purposes of this Section 6.24, the “**closing market price**” in respect of the REIT Units as at a specified date will be an amount equal to the weighted average trading price of the REIT Units on the principal exchange or market on which the REIT Units are listed or quoted for trading on the specified date; provided that if the applicable exchange or market does not provide information necessary to compute a weighted average trading price of the REIT Units on the specified date, the “**closing market price**” as at a specified date will be an amount equal to the closing price of the REIT Units on the principal market or exchange if there was a trade on the specified date and the principal exchange or market provides only a closing price of the REIT Units on the specified date; and provided further that if there was trading on the specified date and the principal exchange or market provides only the highest and lowest trading prices of the REIT Units on the specified date, the “**closing market price**” as at a specified date will be an amount equal to the simple average of the highest and lowest prices of the REIT Units on the principal market or exchange or the simple average of the last bid and last asking prices of the REIT Units on the principal market or exchange, if there was not trading on the specified date.

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

If a Unitholder is not entitled to receive cash upon the redemption of REIT Units in circumstances in which Subsections 6.24(e)(ii) or 6.24(e)(iii) apply, then the Redemption Price shall be equal to the fair market value of the REIT Units as determined by the Trustees.

- (d) Subject to Subsections 6.24(e) and 6.24(f), the Redemption Price payable in respect of the REIT Units tendered for redemption during any month shall be paid by cheque, drawn on a Canadian chartered bank or a trust company in lawful money of Canada, payable at par to or to the order of the Unitholder who exercised the right of redemption on or before the last day of the calendar month following the month in which the REIT Units were tendered for redemption. Payments made by the Trust of the Redemption Price are conclusively deemed to have been made upon the mailing of a cheque in a postage prepaid envelope addressed to the former Unitholder unless such cheque is dishonoured upon presentment. Upon such payment, the Trust shall be discharged from all liability to the former Unitholder in respect of the REIT Units so redeemed.
- (e) Subsection 6.24(d) shall not be applicable to REIT Units tendered for redemption by a Unitholder, if:
  - (i) the total amount payable by the Trust pursuant to Subsection 6.24(c) in respect of all of the REIT Units tendered for redemption prior thereto in the same calendar month exceeds \$50,000; provided that the Trustees may, in their sole discretion, waive such limitation in respect of all REIT Units tendered for redemption in any calendar month;
  - (ii) at the time the REIT Units are tendered for redemption, the outstanding REIT Units are not listed for trading on the TSX Venture Exchange or traded or quoted on any stock exchange or market which the Trustees consider, in their sole discretion, provides representative fair market value prices for the REIT Units;
  - (iii) the normal trading of the outstanding REIT Units is suspended or halted on any stock exchange on which the REIT Units are listed for trading or, if not so listed, on any market on which the REIT Units are quoted for trading, on the Redemption Date for such REIT Units or for more than five trading days during the 10 trading day period commencing immediately after the Redemption Date for such REIT Units; or
  - (iv) the redemption of all of the REIT Units shall result in the delisting of the REIT Units from the principal stock exchange on which the REIT Units are listed.
- (f) If, pursuant to paragraphs 6.24(e)(i), (e)(ii) or (e)(iii), Subsection 6.24(d) is not applicable to REIT Units tendered for redemption by a Unitholder, the Redemption Price per REIT Unit specified in Subsection 6.24(c) to which the Unitholder would otherwise be entitled shall, subject to receipt of all necessary regulatory approvals, be paid and satisfied by way of a distribution *in specie* to such Unitholder of shares of a Canadian corporation owning Subsidiary Securities having a fair market value equal to the product of: (i) the Redemption Price per REIT Unit of the REIT Units tendered for redemption; and (ii) the number of REIT Units tendered by such Unitholder for redemption. No shares of a Canadian corporation owning Subsidiary Securities with a fair market value of less than \$100 will be transferred and where the number of such shares to be received by the former Unitholder upon

redemption, *in specie*, would otherwise include shares of a Canadian corporation owning Subsidiary Securities with a fair market value of less than a multiple of \$100, such number shall be rounded to the next lowest multiple of \$100 and the excess shall be paid in cash. The Redemption Price payable pursuant to this Subsection 6.24(f) in respect of REIT Units tendered for redemption during any month shall, subject to receipt of all necessary regulatory approvals, be paid by the transfer, to or to the order of the Unitholder who exercised the right of redemption, on the last day of the calendar month following the month in which the REIT Units were tendered for redemption, of the fair market value of such shares determined as aforesaid and the cash payment, if any, in accordance with the provisions of Subsection 6.24(d) applied *mutatis mutandis*. On such distribution of the shares, the Trust shall be discharged from all liability to the former Unitholder in respect of the REIT Units so redeemed.

- (g) All REIT Units which are redeemed under this Section 6.24 shall be cancelled and such REIT Units shall no longer be outstanding and shall not be reissued.
- (h) Some or all of the Income of the Trust, the net realized capital gains of the Trust and the Net Recapture Income of the Trust for a year may, for purposes of computing the net income of the Trust and the net realized capital gains of the Trust under the Tax Act or other tax legislation, be treated as having been paid in the year by the Trust to the Unitholders redeeming REIT Units in such year and, to the extent of the amount thereof so treated has been designated as taxable capital gains or income to such Unitholders, the holder's redemption proceeds shall be reduced accordingly. Any such amounts shall be determined at the discretion of a majority of the Trustees; however in all cases, a redeeming Unitholder will only be treated as having been paid an amount to which the Unitholders of the REIT Units redeemed would be entitled to receive.

## **6.25 Purchase of REIT Units**

The Trust shall be entitled to purchase for cancellation (including pursuant to any private agreement) at any time the whole or from time to time any part of the outstanding REIT Units, at a price per REIT Unit and on a basis determined by the Trustees in compliance with all applicable securities laws, regulations, rules, blanket orders, notices or policies or the rules or applicable policies of any stock exchange.

## **6.26 Right to Acquire**

- (a) If within 120 days after the date of a take-over bid, not less than 90% of the REIT Units (including REIT Units issuable upon surrender or exchange of any securities including Class B LP Units), other than REIT Units 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 is entitled, on complying with this Section 6.26, to acquire the REIT Units held by Unitholders who do not accept the offer (each a "**Dissenting Offeree**"), provided that such REIT Units have been or are legally required to be taken up and paid for by the Offeror.

- (b) An Offeror may acquire REIT Units held by a Dissenting Offeree by sending by registered mail within 60 days after the date of termination of the take-over bid and in any event within 180 days after the date of the take-over bid, an Offeror's notice to each Dissenting Offeree stating that:
  - (i) the Offerees holding more than 90% of the REIT Units to which the bid relates accepted the take-over bid;
  - (ii) the Offeror is bound to take up and pay for or has taken up and paid for the REIT Units of the Offerees who accepted the take-over bid;
  - (iii) a Dissenting Offeree is required to elect:
    - (A) to transfer their REIT Units to the Offeror on the terms on which the Offeror acquired the REIT Units of the Offerees who accepted the take-over bid, or
    - (B) to demand payment of the fair value of the REIT Units in accordance with Subsections 6.26(i) to (r) by notifying the Offeror within 20 days after receiving the Offeror's notice;
  - (iv) a Dissenting Offeree who does not notify the Offeror in accordance with Subsection 6.26(d) is deemed to have elected to transfer the REIT Units to the Offeror on the same terms that the Offeror acquired the REIT Units from the Offerees who accepted the take-over bid; and
  - (v) a Dissenting Offeree must send notice to the Trust within 20 days after s/he receives the Offeror's notice.
- (c) Concurrently with sending the Offeror's notice under Subsection 6.26(b), the Offeror shall send to the Trust a notice of adverse claim disclosing the name and address of the Offeror and the name of the Dissenting Offeree with respect to each Unit held by a Dissenting Offeree.
- (d) A Dissenting Offeree to whom an Offeror's notice is sent under Subsection 6.26(b) shall, within 20 days after receiving that notice:
  - (i) send the certificate(s) representing the REIT Units to the Trust; and
  - (ii) elect:
    - (A) to transfer the REIT Units to the Offeror on the terms on which the Offeror acquired the REIT Units of the Offerees who accepted the take-over bid; or
    - (B) to demand payment of the fair value of the REIT Units in accordance with Subsections 6.26(i) to (r).
- (e) A Dissenting Offeree who does not notify the Offeror in accordance with paragraph 6.26(d)(ii)(B) is deemed to have elected to transfer the REIT Units to the Offeror

on the same terms on which the Offeror acquired the REIT Units from the Offerees who accepted the take-over bid.

- (f) Within 20 days after the Offeror sends an Offeror's notice under Subsection 6.26(b), the Offeror shall pay or transfer to the Trust the amount of money or other consideration that the Offeror would have had to pay or transfer to a Dissenting Offeree if the Dissenting Offeree had elected to accept the take-over bid under paragraph 6.26(d)(ii)(A).
- (g) The Trust is deemed to hold in trust for the Dissenting Offeree the money or other consideration it receives under Subsection 6.26(f), and the Trust shall deposit the money in a separate account in a Canadian chartered bank and shall place the other consideration in the custody of a Canadian chartered bank or similar institution whose deposits are insured by the Canada Deposit Insurance Corporation.
- (h) Within 30 days after the Offeror sends an Offeror's notice under Subsection 6.26(b), the Trust shall:
  - (i) if the payment or transfer required by Subsection 6.26(f) is made, transfer to the Offeror the REIT Units that were held by Dissenting Offerees;
  - (ii) give to each Dissenting Offeree who elects to accept the take-over bid terms under paragraph 6.26(d)(ii)(A) and who transferred its REIT Units as required under Subsection 6.26(d)(i), the money or other consideration to which the Offeree is entitled, disregarding fractional REIT Units, if any, which may be paid for in money; and
  - (iii) if the payment or transfer required by Subsection 6.26(f) is made and the money or other consideration is deposited as required by this Section 6.24, send to each Dissenting Offeree who has not sent its REIT Unit certificate as required under Subsection 6.26(d)(i) a notice stating that:
    - (A) the Dissenting Offeree's REIT Units have been cancelled,
    - (B) the Trust or some designated Person holds in trust for the Dissenting Offeree the money or other consideration to which the Dissenting Offeree is entitled as payment for or in exchange for the REIT Units, and
    - (C) the Trust will, subject to Subsections 6.26(i) to 6.26(r), send that money or other consideration to that Offeree without delay after receiving the REIT Units.
- (i) If a Dissenting Offeree has elected to demand payment of the fair value of its REIT Units under paragraph 6.26(d)(ii)(B), the Offeror may, within 20 days after it has paid the money or transferred the other consideration under Subsection 6.26(f), apply to a court to fix the fair value of the REIT Units of that Dissenting Offeree.



- (j) If an Offeror fails to apply to a court under Subsection 6.26(i), a Dissenting Offeree may apply to a court for the same purpose within a further period of 20 days.
- (k) Where no application is made to a court under Subsection 6.26(j) within the period set out in that subsection, a Dissenting Offeree is deemed to have elected to transfer their REIT Units to the Offeror on the same terms that the Offeror acquired the REIT Units from the Offerees who accepted the take-over bid.
- (l) An application under Subsection 6.26(i) or 6.26(j) shall be made to a court having jurisdiction in the place where the Trust has its registered office.
- (m) A Dissenting Offeree is not required to give security for costs in an application made under Subsection 6.26(i) or 6.26(j).
- (n) On an application under Subsection 6.26(i) or 6.26(j):
  - (i) all Dissenting Offerees referred to in paragraph 6.26(d)(ii)(B) whose REIT Units have not been acquired by the Offeror shall be joined as parties and are bound by the decision of the court; and
  - (ii) the Offeror shall notify each affected Dissenting Offeree of the date, place and consequences of the application and of their right to appear and be heard in person or by counsel.
- (o) On an application to a court under Subsection 6.26(i) or 6.26(j) the court may determine whether any other Person is a Dissenting Offeree who should be joined as a party, and the court shall then fix a fair value for the REIT Units of all Dissenting Offerees.
- (p) A court may in its discretion appoint one or more appraisers to assist the court to fix a fair value for the REIT Units of a Dissenting Offeree.
- (q) The final order of the court shall be made against the Offeror in favour of each Dissenting Offeree and for the amount for the REIT Units as fixed by the court.
- (r) In connection with proceedings under this Section 6.26, a court may make any order it thinks fit and, without limiting the generality of the foregoing, it may:
  - (i) fix the amount of money or other consideration that is required to be held in trust under Subsection 6.26(g);
  - (ii) order that money or other consideration be held in trust by a Person other than the Trust; and
  - (iii) allow a reasonable rate of interest on the amount payable to each Dissenting Offeree from the date they send or deliver notice under Subsection 6.26(d) until the date of payment.
- (s) Where an Offeror is entitled to acquire REIT Units held by a Dissenting Offeree pursuant to Subsection 6.26(b) and the Offeror wishes to exercise such right, the

Offeror shall also deliver an offer (the “**Exchange Offer**”) to the Trustees, at the same time that an Offeror’s notice is delivered pursuant to Subsection 6.26(b), addressed to each holder of Class B LP Units to acquire all REIT Units issued to such holder by the Trust following the exchange of the holder’s Class B LP Units for REIT Units pursuant to the Exchange Agreement, which acquisition shall occur within 30 days of delivery of the Exchange Offer to the Trustees. The Exchange Offer shall be made on the same terms as the Offeror acquired the REIT Units of the Unitholders who accepted the take-over bid. The Trustees shall deliver the Exchange Offer to each holder of Class B LP Units forthwith upon receipt, if any such holders exist.

### **6.27 Redemption of Initial REIT Unit**

On the Closing Date, the Trust redeemed the Initial REIT Unit held by the Initial Unitholder for a redemption price of \$100 and upon the completion of such redemption, the Initial REIT Unit was cancelled and shall no longer be outstanding for any purpose pursuant to this Declaration of Trust.

## **ARTICLE 7 MEETINGS OF THE UNITHOLDERS**

### **7.1 Annual Meeting**

There shall be an annual meeting of the Unitholders, at such time and place in Canada as the Trustees shall prescribe, for the purpose of electing Trustees, appointing or changing the Auditors of the Trust and transacting such other business as the Trustees may determine or as may properly be brought before the meeting. The annual meeting of the Unitholders shall be held after delivery to the Unitholders of the information referred to in Section 15.7 and, in any event, within 180 days after the end of each fiscal year of the Trust.

### **7.2 Special Meetings**

The Trustees shall have power at any time to call special meetings of the Unitholders at such time and place in Canada as the Trustees may determine. The Unitholders holding in the aggregate not less than 10% of the votes attaching to all outstanding Units (on a fully diluted basis) may requisition the Trustees in writing to call a special meeting of the Unitholders for the purposes stated in the requisition. The requisition must state in reasonable detail the business proposed to be transacted at the meeting and shall be sent to each of the Trustees and to the principal office of the Trust. The Unitholders have the right to obtain a list of the Unitholders to the same extent and upon the same conditions as those which apply to shareholders of a corporation governed by the CBCA. Upon receiving the requisition, the Trustees shall call a meeting of the Unitholders to transact the business referred to in the requisition, unless:

- (a) a record date for a meeting of the Unitholders has been fixed and notice thereof has been given to each stock exchange in Canada on which the REIT Units are listed for trading;
- (b) the Trustees have called a meeting of the Unitholders and have given notice thereof pursuant to Section 7.3; or

- (c) in connection with the business as stated in the requisition:
- (i) it clearly appears to the Trustees that the primary purpose of the matter covered by the requisition is submitted by the Unitholder is to enforce a personal claim or to redress a personal grievance against the Trust, the Trustees, the officers of the Trust or its security holders;
  - (ii) it clearly appears to the Trustees that the matter covered by the requisition does not relate in a significant way to the business or affairs of the Trust;
  - (iii) the Trust, at the Unitholder's request, included a matter covered by a requisition in an information circular relating to a meeting of the Unitholders held within two years preceding the receipt of such request, and the Unitholder failed to present the matter, in person or by proxy, at the meeting;
  - (iv) substantially the same matter covered by the requisition was submitted to the Unitholders in an information circular (including a dissidents information circular) relating to a meeting of the Unitholders held within two years preceding the receipt of the Unitholder's request and the matter covered by the requisition did not receive the prescribed minimum amount of support at the meeting; or
  - (v) the rights conferred by this Section 7.2 are being abused to secure publicity.

Subject to the foregoing, if the Trustees do not within 21 days after receiving the requisition call a meeting, any Unitholder who signed the requisition may call the meeting in accordance with the provisions of Section 7.3 and the Trustees' Regulations, *mutatis mutandis*. If there shall be no Trustees, the officers of the Trust shall promptly call a special meeting of the Unitholders for the election of successor Trustees. The phrase "meeting of the Unitholders" wherever it appears in this Declaration of Trust shall mean and include both an annual meeting and any other meeting of the Unitholders.

### **7.3 Notice of Meeting of the Unitholders**

Notice of all meetings of the Unitholders shall be mailed or delivered by the Trustees to each Unitholder at his/her address appearing in the Register, to each Trustee and to the Auditors of the Trust not less than 21 nor more than 60 days, or within such other number of days as required by law or the relevant stock exchange, before the meeting. Notice of any meeting of the Unitholders shall state the purposes of the meeting.

### **7.4 Quorum**

A quorum for any meeting of the Unitholders shall be individuals present not being less than two in number and being the Unitholders or representing by proxy the Unitholders who hold in the aggregate not less than 10% of the votes attached to all outstanding Units (on a fully diluted basis), provided that if the Trust has only one Unitholder, the Unitholder present in person or by proxy constitutes a meeting and a quorum for such meeting. In the event of such quorum not being present at the appointed place on the date for which the meeting is called within 30 minutes after the time

fixed for the holding of such meeting, the meeting, if convened on the requisition of the Unitholders, shall be dissolved, but in any other case shall stand adjourned to such day being not less than 10 days later and to such place in Canada and time as may be appointed by the Chair of the meeting. If at such adjourned meeting a quorum as above defined is not present, the Unitholders present either personally or by proxy shall form a quorum, and any business may be brought before or dealt with at such an adjourned meeting which might have been brought before or dealt with at the original meeting in accordance with the notice calling the same. The Chair or, if the Chair is not present, the Vice-Chair, or any other Trustee determined by the Trustees, shall be the Chair of any meeting of the Unitholders.

## **7.5 Voting**

Holders of Units may attend and vote at all meetings of the Unitholders either in person or by proxy. Each Unit shall entitle the holder thereof to one vote at all meetings of the Unitholders. Each Special Voting Unit will entitle the holder thereof to that number of votes at any meeting of Unitholders that is equal to the number of REIT Units that may be obtained upon the exchange of the Class B LP Unit to which such Special Voting Unit is attached. Any action to be taken by the Unitholders shall, except as otherwise required by this Declaration of Trust, or by law, be authorized when approved by a majority of the votes cast at a meeting of the Unitholders. The chair of any such meeting shall not have a second or casting vote.

## **7.6 Record Dates**

For the purpose of determining the Unitholders who are entitled to receive notice of and vote at any meeting or any adjournment(s) or postponement(s) thereof or for the purpose of any other action, the Trustees may from time to time, without notice to the Unitholders, close the transfer books for such period, not exceeding 35 days, as the Trustees may determine; or without closing the transfer books the Trustees may fix a date not less than 30 days and not more than 60 days prior to the date of any meeting of the Unitholders or other action as a record date for the determination of the Unitholders entitled to receive notice of and to vote at such meeting or any adjournment(s) or postponement(s) thereof or to be treated as the Unitholders of record for purposes of such other action, and any Unitholder who was a Unitholder at the time so fixed shall be entitled to receive notice of and vote at such meeting or any adjournment(s) or postponement(s) thereof, even though it has since that date disposed of its Units, and no Unitholder becoming such after that date shall be entitled to receive notice of and vote at such meeting or any adjournment(s) or postponement(s) thereof or to be treated as a Unitholder of record for purposes of such other action. If, in the case of any meeting of the Unitholders, no record date with respect to voting has been fixed by the Trustees, the record date for voting shall be 5:00 p.m. (Toronto time) on the last Business Day before the meeting.

## **7.7 Proxies**

Whenever the vote or consent of the Unitholders is required or permitted under this Declaration of Trust, such vote or consent may be given either directly by the Unitholder or by a proxy in such form as the Trustees may prescribe from time to time or, in the case of a Unitholder that is a body corporate or association, by an individual authorized by the board of directors or governing body of the body corporate or association to represent it at a meeting of the Unitholders. A proxy holder need not be a Unitholder. The Trustees may solicit such proxies from the Unitholders or any of them in any matter requiring or permitting the Unitholders' vote, approval or consent.

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

An instrument of proxy executed in compliance with the foregoing shall be valid unless challenged at the time of or prior to its exercise, and the Persons challenging the instrument shall have the burden of proving, to the satisfaction of the Chair of the meeting at which the instrument is proposed to be used, that the instrument of proxy is invalid. Any decision of the Chair of the meeting in respect of the validity of an instrument of proxy shall be final and binding upon all Persons. An instrument of proxy shall be valid only at the meeting with respect to which it was solicited or any adjournment(s) or postponement(s) thereof.

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

### **7.8 Personal Representatives**

Subject to Section 6.11, if a Unitholder is deceased, his/her personal representative, upon filing with the secretary of the meeting such proof of his/her appointment as the secretary considers sufficient, shall be entitled to exercise the same voting rights at any meeting of the Unitholders as the Unitholder would have been entitled to exercise if s/he were living and for the purpose of the meeting shall be considered to be a Unitholder. Subject to the provisions of the will of a deceased Unitholder, if there is more than one personal representative, the provisions of Section 6.12 relating to joint holders shall apply.

### **7.9 Attendance by Others**

Any Trustee, officer of the Trust, representative of the Auditors of the Trust, representative of the legal counsel of the Trust or other individual approved by the Trustees may attend and speak at any meeting of the Unitholders.

### **7.10 Conduct of Meetings**

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

### **7.11 Binding Effect of Resolutions**

Every resolution passed at a meeting in accordance with the provisions of this Article 7 shall be binding upon all Unitholders, whether present at or absent from the meeting.

### **7.12 Resolution in Lieu of Meeting**

Notwithstanding any other provision of this Declaration of Trust, a resolution signed in writing by all of the Unitholders entitled to vote on that resolution at a meeting of the Unitholders is as valid as if it had been passed at a meeting of the Unitholders.

### **7.13 Actions by the Unitholders**

Any action, change, approval, decision or determination required or permitted to be taken or made by the Unitholders hereunder shall be effected by a resolution passed by the Unitholders at a duly constituted meeting (or a special resolution in lieu thereof) in accordance with this Article 7.

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

- (a) The expression “**Special Resolution**” when used in this Declaration of Trust means, subject to this Article 7, a resolution proposed to be passed as a special resolution at a meeting of Unitholders (including an adjourned meeting) duly convened for that purpose and held in accordance with the provisions of this Section 7.14 at which two or more individuals present in person or represented by proxy and passed by the affirmative votes of the holders of more than 66 $\frac{2}{3}$ % of the Units represented at the meeting and voted on a poll upon such resolution.
- (b) Notwithstanding Subsection 7.14(a), if at any meeting of Unitholders at which a Special Resolution is proposed to be passed, two individuals are not present in person or by proxy within 30 minutes after the time appointed for the meeting, then the meeting, if convened by or on the requisition of Unitholders, shall be dissolved, but in any other case it shall stand adjourned to such date, being not less than 21 nor more than 60 days later and to such place and time as may be appointed by the chairperson of the meeting. Not less than 10 days’ prior notice shall be given of the time and place of such adjourned meeting in the manner provided in Section 7.3. Such notice shall state that at the adjourned meeting the Unitholders present in person or by proxy shall form a quorum but it shall not be necessary to set forth the purposes for which the meeting was originally called or any other particulars. At the adjourned meeting, the Unitholders present in person or by proxy shall form a quorum and may transact the business for which the meeting was originally convened and a resolution proposed at such adjourned meeting and passed by the requisite vote as provided in Subsection 7.14(a) shall be a Special Resolution within the meaning of this Declaration of Trust.
- (c) Votes on a Special Resolution shall always be given on a poll and no demand for a poll on a Special Resolution shall be necessary.

### **7.15 Meaning of “Outstanding”**

Every Unit issued hereunder shall be deemed to be outstanding until it shall be cancelled by the Trustees or Transfer Agent provided that for the purpose of any provision of this Declaration of Trust entitling holders of outstanding Units to vote, sign consents, requisitions or other instruments or take any action under this Declaration of Trust, Units owned directly or indirectly, legally or equitably, by the Trust or any Affiliate thereof shall be disregarded, except that:

- (a) for the purpose of determining whether the Trustees shall be protected in relying on any such vote, consent, requisition or other instrument or action only the Units which the Trustees know are so owned shall be so disregarded; and

- (b) Units so owned which have been pledged in good faith other than to the Trust or an Affiliate thereof shall not be so disregarded if the pledgee shall establish to the satisfaction of the Trustees the pledgee's right to vote such Units in his/her discretion free from the control of the Trust or any Affiliate thereof.

## **ARTICLE 8 MEETINGS OF THE TRUSTEES**

### **8.1 Trustees May Act Without Meeting**

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

### **8.2 Notice of Meeting**

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

### **8.3 Quorum**

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

### **8.4 Voting at Meetings**

Questions arising at any meeting of the Trustees or of a committee of Trustees shall be decided by a majority of the votes cast. In the case of an equality of votes at any meeting of Trustees or of a committee of Trustees, the Chair of the meeting shall not have a second or casting vote in addition to his/her original vote, if any. Every meeting of the Trustees or any committee thereof shall take place in Canada.

## 8.5 Meeting by Telephone

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

## ARTICLE 9 DELEGATION OF POWERS

### 9.1 General

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

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

- (a) an audit committee to consist of at least three Trustees, a majority of whom shall be Independent Trustees and who shall meet any requirements imposed by applicable law for the purpose of membership on such committee;
- (b) a governance and compensation committee (the “**Governance and Compensation Committee**”) to consist of at least three Trustees, a majority of whom shall be Independent Trustees;
- (c) an investment committee (the “**Investment Committee**”) to consist of at least three Trustees, each of whom must have substantial experience in the real estate industry, as determined by the Board of Trustees. The Investment Committee will (i) approve or reject proposed acquisitions and dispositions of investments by the Trust; (ii) authorize proposed transactions; and (iii) approve all financing arrangements and the assumption or granting of any mortgage other than the renewal of any existing mortgage by any of our subsidiaries; and
- (d) a nominating committee to consist of at least three Trustees.

Each of the foregoing committees shall have such powers, rights and responsibilities, together with such others as the Trustees may approve, as set out in the written charters for such purpose approved by the Trustees.



## **9.2 Additional Committees**

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

## **9.3 Procedure**

Unless otherwise determined by the Trustees, a quorum for meetings of any committee shall be a majority of its members provided that a majority of the Trustees comprising such quorum must be Resident Canadians. Each committee shall have the power to appoint its chairperson who must be a Resident Canadian and the rules for calling, holding, conducting and adjourning meetings of the committee shall be the same as those governing meetings of the Trustees. Notwithstanding the foregoing, unless required by applicable law, the chairperson of the Investment Committee shall not be required to be a Resident Canadian. Each member of a committee shall serve during the pleasure of the Trustees and, in any event, only so long as he or she shall be a Trustee. The Trustees may fill vacancies in a committee by appointment from among their members. Provided that a quorum is maintained, the committee may continue to exercise its powers notwithstanding any vacancy among its members.

If at any time a Trustee does not qualify to sit on a committee because of the death, resignation, bankruptcy, adjudicated incompetence, removal or change in circumstance of any Trustee who was on a committee, the requirements for such committee shall not be applicable for a period of 60 days thereafter, during which time the remaining Trustees shall appoint a sufficient number of Trustees who qualify to sit on such committee to comply with the requirements for such committee.

## **9.4 Management of the Trust**

- (a) The Trustees may exercise broad discretion in hiring officers, employees, agents and consultants to administer the Trust's day-to-day operations, all subject to the overriding authority of the Trustees over the management and affairs generally of the Trust.
- (b) As of the date hereof, the officers of the Trust shall be the following individuals:
  - (i) James W. Beckerleg – President and Chief Executive Officer;
  - (ii) Gordon G. Lawlor – Chief Financial Officer and Corporate Secretary.

## **ARTICLE 10 DISTRIBUTIONS**

### **10.1 Distributions**

#### **(a) Monthly Distributions of AFFO**

The Trust shall distribute to the Holders of REIT Units on each Distribution Date such percentage of the AFFO of the Trust for the calendar month immediately preceding the month in which the Distribution Date falls, as the Trustees determine in their discretion.

Any distribution shall be made on a Distribution Date proportionately to persons who are Holders of REIT Units as of the close of business on the record date of such distribution which shall be the last Business Day of the calendar month immediately preceding the month in which the Distribution Date falls or such other date, if any, as is fixed by the Trustees in accordance with Section 7.6. Such distributions may be adjusted for amounts paid in prior periods if the actual AFFO for the prior periods is greater than or less than the estimates for the prior periods. The Holders of Special Voting Units shall have no entitlement to any distributions whatsoever from the Trust.

In addition, the Trustees may declare to be payable and make distributions to the Holders of REIT Units, from time to time, out of Income of the Trust, net realized capital gains of the Trust, Net Recapture Income of the Trust, capital of the Trust or otherwise, in any Taxation Year, in such amount or amounts, and on such dates on or before December 30 of that Taxation Year, as the Trustees may determine.

(b) **Other Distributions**

The Trust shall furthermore endeavour to allocate, distribute and make payable to the Holders of REIT Units all or part of the Income of the Trust, net realized capital gains of the Trust and any other applicable amounts so that the Trust will have no liability for tax under Part I of the Tax Act in any Taxation Year, after taking into account any entitlement to a capital gains refund. Consequently, on the last day of a Taxation Year, an amount (the “**Year-End Amount**”) shall, unless the Trustees pass a resolution to the contrary, become automatically due and payable to the Holders of REIT Units of record at the close of business on such day (whether such day is or is not a Business Day). For these purposes the Year-End Amount shall equal the following amount, namely the aggregate of A+B, where:

A = is the amount, if any, by which the Income of the Trust for such Taxation Year exceeds the aggregate of (i) the portions of each distribution made by the Trust pursuant to paragraph (a) of this Section 10.1 which have been determined by the Trustees, pursuant to Section 10.4, to have been payable by the Trust out of the Income of the Trust for such Taxation Year and (ii) the amount of income treated as having been paid as distributions in the Taxation Year pursuant to Subsection 6.24(h); and

B = is the amount, if any, by which the net realized capital gains of the Trust for the Taxation Year exceeds the aggregate of (i) the portions, if any, of each distribution made by the Trust pursuant to paragraph (a) of this Section 10.1 which have been determined by the Trustees pursuant to Section 10.4 to have been payable by the Trust out of the net capital gains for the Taxation Year and (ii) the amount of taxable capital gain treated as having been paid as distributions in the Taxation Year pursuant to Subsection 6.24(h).

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

## **10.2 Allocation**

Distributions payable to Unitholders pursuant to this Article 10 shall be deemed to be distributions of Income of the Trust (including dividends), net realized taxable capital gains of the Trust, Trust capital or other items in such amounts as the Trustees, in their absolute discretion, determine, and shall be allocated to the Unitholders in the same proportions as distributions received by the Unitholders, subject to the discretion of the Trustees to adopt an allocation method which the Trustees consider to be more reasonable in the circumstances including in accordance with Subsection 6.24(h). For greater certainty it is hereby declared that any distribution of net realized capital gains of the Trust shall include the non-taxable portion of the capital gains of the Trust which are included in such distribution.

## **10.3 Payment and Method of Distributions**

- (a) Distributions shall be made by cheque payable to or to the order of the Unitholder or by such other manner of payment approved by the Trustees from time to time. The payment, if made by cheque, shall be conclusively deemed to have been made upon hand delivery of a cheque to the Unitholder or to his/her agent duly authorized in writing or upon the mailing of a cheque by prepaid first-class mail addressed to the Unitholder at his/her address as it appears on the Register unless the cheque is not paid on presentation, or in any other manner determined by the Trustees, in their discretion. In the case of joint registered Unitholders, any cash payment required hereunder to be made to a Unitholder shall be deemed to be required to be made to such Unitholders jointly and shall be paid by cheque or bank draft but may also be paid in such other manner as the joint registered Unitholders or any one of the joint registered Unitholders has designated to the Trustees and the Trustees have accepted. For greater certainty, a Unitholder or any one of the joint Unitholders may designate and the Trustees may accept that any payment required to be made hereunder shall be made by deposit to an account of such Unitholder or to a joint account of such Unitholder and any other person or in the case of joint registered Unitholders to an account of joint registered Unitholders or to an account of any one of the joint registered Unitholders. A cheque or bank draft shall, unless the joint registered Unitholders otherwise direct, be made payable to the order of all of the said joint registered Unitholders, and if more than one address appears on the books of the Trust in respect of such joint unitholding, the cheque or bank draft or payment in other acceptable manner as aforesaid shall satisfy and discharge all liability of the Trustees or the Trust for the amount so required to be paid unless the cheque or bank draft is not paid at par on presentation at any other place where it is by its terms payable. The receipt by the registered Unitholder in another acceptable manner of any payment not mailed or paid in accordance with this Subsection 10.3(a) shall be a valid and binding discharge to the Trust and to the Trustees for any payment made in respect of the registered Units and if several Persons are registered as joint registered Unitholders or, in consequence of the death, bankruptcy or incapacity of a Unitholder, one or several Persons are entitled so to be registered, subject to Section 6.18, in accordance with this Declaration of Trust, respectively, receipt of payment by any one of them shall be a valid and binding discharge to the Trust and to the Trustees for any such payment. The Trustees may issue a replacement cheque if they are satisfied that the original cheque has not been

received or has been lost or destroyed upon being furnished with such evidence of loss, indemnity or other document in connection therewith that they may in their discretion consider necessary. No Holder of a Unit will be entitled to recover by action or other legal process against the Trust any distribution that is represented by a cheque that has not been duly presented to the Trust's banker for payment or that otherwise remains unclaimed for a period of six years from the date on which such distribution was payable.

- (b) Where the Trustees determine that the Trust does not have available cash in an amount sufficient to make payment of the full amount of any distribution which has been declared to be payable pursuant to this Article 10 on the due date for such payment, the payment may, at the option of the Trustees, include the issuance of additional REIT Units or fractions of such REIT Units or Notes, if necessary, having a fair market value as determined by the Trustees 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 in the case of REIT Units.

#### **10.4 Income Tax Matters**

In reporting income for income tax purposes the Trust shall claim the maximum amount available to it as deductions under the relevant law, unless the Trustees determine otherwise.

#### **10.5 Designations**

In accordance with and to the extent permitted by the Tax Act, the Trustees shall, in each year, make such designations for income tax purposes in respect of amounts paid or payable or deemed to be paid to the Unitholders for such amounts that the Trustees consider to be reasonable in all the circumstances, including designations relating to taxable dividends received or deemed to be received by the Trust in the year on shares of taxable Canadian corporations, net taxable capital gains of the Trust in the year, and foreign source income of the Trust and foreign taxes in respect of such foreign source income for the year, if any. Where permitted by the Tax Act, the Trustees shall make designations under the Tax Act so that the amount distributed to a Unitholder but not deducted by the Trust would not be included in the Unitholder's income for the purposes of the Tax Act. For greater certainty, it is hereby declared that any distributions of net realized capital gains of the Trust shall include the non-taxable portion of the capital gains of the Trust which are included in such distribution.

#### **10.6 Withholding Taxes**

Unless otherwise determined by the Trustees, the Trust shall deduct or withhold from distributions payable to any Unitholder amounts required by law to be deducted or withheld from such Unitholder's distributions.

#### **10.7 Definitions**

Unless the context otherwise requires, any term in Section 1.1 and this Article 10 not otherwise defined herein shall have for the purposes of Section 1.1 and this Article 10 the meaning that it has in the Tax Act.

## **ARTICLE 11 FEES AND EXPENSES**

### **11.1 Expenses**

The Trust shall pay out of the Trust Property all expenses incurred in connection with the administration and management of the Trust and its investments, including:

- (a) interest and other costs of borrowed money;
- (b) fees and expenses of lawyers, accountants, Auditors and other agents or consultants employed by or on behalf of the Trust;
- (c) compensation, remuneration and expenses of the Trustees;
- (d) fees and expenses connected with the acquisition, disposition and ownership of Trust Property permitted in this Declaration of Trust;
- (e) insurance, including directors and officers liability insurance, as considered necessary by the Trustees;
- (f) expenses in connection with payments of distributions of Units of the Trust;
- (g) expenses in connection with communications to the Unitholders and the other bookkeeping and clerical work necessary in maintaining relations with the Unitholders;
- (h) expenses of changing or terminating the Trust;
- (i) fees and charges of transfer agents, registrars, indenture trustees and other trustees and custodians; and
- (j) after the Closing Date, all fees, expenses, taxes and other costs incurred in connection with the issuance, distribution, transfer and qualification for distribution to the public of Units and other required governmental filings;

provided that the Trust will not incur any expense that would cause the Trust to fail or cease to qualify as a “mutual fund trust” or “real estate investment trust” as defined in the Tax Act.

## **ARTICLE 12 AMENDMENTS TO THE DECLARATION OF TRUST**

### **12.1 Amendments by the Trustees**

- (a) A majority of all Trustees including a majority of the Independent Trustees may, without the approval of the Unitholders or any other person, make certain amendments to this Declaration of Trust, including amendments:
  - (i) for the purpose of ensuring continuing compliance with applicable laws, (including the Tax Act) regulations, requirements or policies of any

governmental authority having jurisdiction over: (1) the Trustees or over the Trust; (2) the status of the Trust as a “mutual fund trust”, “unit trust”, “real estate investment trust” and a “registered investment” under the Tax Act; or (3) the distribution of Units;

- (ii) which, in the opinion of the Trustees, acting reasonably, are necessary to maintain the rights of the Unitholders set out in this Declaration of Trust;
  - (iii) to remove any conflicts or inconsistencies in this Declaration of Trust or to make minor corrections which are, in the opinion of the Trustees, necessary or desirable and not prejudicial to the Unitholders;
  - (iv) which, in the opinion of the Trustees, are necessary or desirable as a result of changes in taxation or other laws or the administration or enforcement thereof, or in accounting standards;
  - (v) for any purpose (except one in respect of which a Unitholder vote is specifically otherwise required) which, in the opinion of the Trustees, are not prejudicial to the Unitholders and are necessary or desirable;
  - (vi) deemed necessary or advisable to ensure that the Trust has not been established nor maintained primarily for the benefit of persons who are not Resident Canadians; and
  - (vii) to implement the Distribution Reinvestment Plan or any amendments thereto.
- (b) In no event may the Trustees amend this Declaration of Trust if such amendment would (i) amend this Article 12; (ii) amend the Unitholders’ voting rights; or (iii) cause the Trust to fail or cease to qualify as a “mutual fund trust”, “real estate investment trust”, “unit trust” or “registered investment” under the Tax Act or to be subject to tax under paragraph 122(1)(b) of the Tax Act.

## **12.2 Amendments by the Unitholders**

Subject to Sections 5.3 and 12.1, this Declaration of Trust may be amended only by way of a Special Resolution adopted at a meeting of the Unitholders called for that purpose. Without limiting the generality of the foregoing, the following amendments to the Declaration of Trust will require the approval of the Unitholders by way of a Special Resolution:

- (a) any amendment to the Declaration of Trust (except as provided in Sections 5.3 or 12.1);
- (b) the sale of the assets of the Trust as an entirety or substantially as an entirety or the sale of all or substantially all of the assets of PRO REIT LP (other than as part of an internal reorganization of the assets of the Trust or PRO REIT LP as approved by the Trustees);
- (c) the termination of the Trust pursuant to Section 13.2;

- (d) an exchange, reclassification or cancellation of all or part of the Units (other than as provided herein);
- (e) the addition, change or removal of the rights, privileges, restrictions or conditions attached to the Units, including, without limiting the generality of the foregoing,
  - (i) the removal or change of rights to distributions; or
  - (ii) the addition or removal of or change to conversion privileges, redemption privileges, voting, transfer or pre-emptive rights;
- (f) the creation of new rights or privileges attaching to certain of the Units;
- (g) any change to the existing constraints on the issue, transfer or ownership of the Units; and
- (h) any amendment required in connection with the combination, amalgamation or arrangement of any of the Trust or its Subsidiaries with any other entity.

Nothing in this Section 12.2, however, shall prevent the Trustees from submitting to a vote of the Unitholders any matter which they deem appropriate. Except with respect to the matters specified in this Section 12.2 or 13.2 or matters submitted to a vote of the Unitholders by the Trustees, no vote of the Unitholders shall in any way bind the Trust or Trustees.

In addition, the Trust will not agree to or approve any material change to the Material Agreements without approval of at least a two-thirds majority of the votes cast at a meeting of the Unitholders called for that purpose, provided however, that no Unitholder approval will be required to approve any change to the PRO REIT LP Agreement for the purposes of providing a distribution entitlement to the holders of Class B LP Units that is substantially equivalent to the entitlement provided by the Distribution Reinvestment Plan to holders of REIT Units.

### **12.3 No Termination**

No amendment to or amendment and restatement of this Declaration of Trust, whether pursuant to this Article 12 or otherwise, shall be construed as a termination of the Trust and the settlement or establishment of a new trust.

## **ARTICLE 13 TERMINATION OF TRUST**

### **13.1 Duration of the Trust**

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

### **13.2 Termination by the Unitholders**

The Trust may be terminated by the vote of at least two-thirds (2/3) of the votes cast at a meeting of the Unitholders called for that purpose.

### **13.3 Effect of Termination**

Upon the termination of the Trust, the liabilities of the Trust shall be discharged with due speed, the net assets of the Trust shall be liquidated and the proceeds distributed to the Unitholders in accordance with their entitlements as provided herein and in Article 6. Such distribution may be made in cash or in kind or partly in each, all as the Trustees in their sole discretion may determine.

## **ARTICLE 14 LIABILITIES OF THE TRUSTEES AND OTHERS**

### **14.1 Liability and Indemnification of the Trustees**

The Trustees shall at all times be indemnified and saved harmless out of the Trust Property of the Trust from and against all liabilities, damages, losses, debts and claims whatsoever, including costs, charges and expenses in connection therewith, sustained, incurred, brought, commenced or prosecuted against them for or in respect of any act, deed, matter or thing whatsoever made, done, acquiesced in or omitted in or about or in relation to the execution of their duties as Trustees and also from and against all other liabilities, damages, losses, debts, claims, costs, charges, and expenses (including legal fees and disbursements on a solicitor-and-his/her-own-client basis) which they sustain or incur in or about or in relation to the affairs of the Trust. Further, the Trustees shall not be liable to the Trust or to any Unitholder or Annuitant for any loss or damages relating to any matter regarding the Trust, including any loss or diminution in the value of the Trust or its assets. The foregoing provisions of this Section 14.1 in favour of any Trustee do not apply unless:

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

### **14.2 Liability of the Trustees**

The Trustees shall not be liable to the Trust or to any Unitholder, Annuitant or any other Person for the acts, omissions, receipts, neglects or defaults of any Person, firm or corporation employed or engaged by them as permitted hereunder, or for joining in any receipt or act of conformity or for any loss, damage or expense caused to the Trust through the insufficiency or deficiency of any security in or upon which any of the monies of or belonging to the Trust shall be paid out or invested, or for any loss or damage arising from the bankruptcy, insolvency, fault or tortious act of any Person, firm or corporation with whom or which any monies, securities or other Trust Property shall be lodged or deposited, or for any loss occasioned by error in judgment or oversight on the part of the Trustees, or for any other loss, damage or misfortune which may happen in the execution by the Trustees of their duties hereunder, except to the extent the Trustees have not acted in accordance with Subsections 14.1(a) and 14.1(b).



### **14.3 Reliance Upon Advice**

The Trustees may rely and act upon any statement, report or opinion prepared by or any advice received from the Auditors, lawyers or other professional advisors of the Trust and shall not be responsible or held liable for any loss or damage resulting from so relying or acting.

### **14.4 Liability of the Unitholders and Others**

- (a) Notwithstanding any other provision of this Declaration of Trust, no Unitholder or Annuitant shall be held to have any personal liability as such, and no resort shall be had to, nor shall recourse or satisfaction be sought from, the private property of any Unitholder or Annuitant for any liability whatsoever, whether constituting extracontractual or contractual liability or arising in tort, contract or otherwise, to any Person in connection with the Trust property or the affairs of the Trust, including for satisfaction of any obligation or claim arising out of or in connection with any contract or obligation of the Trust or of the Trustees or any obligation which a Unitholder or Annuitant would otherwise have to indemnify a Trustee for any personal liability incurred by the Trustee as such (“**Trust Liability**”), but rather the assets of the Trust only are intended to be liable and subject to levy or execution for satisfaction of such Trust Liability. Each Unitholder and Annuitant shall be entitled to be reimbursed out of the assets of the Trust in respect of any payment of such Trust Liability made by such Unitholder or Annuitant.
- (b) In addition to the policies set out in Article 4, the Trustees shall cause the operations of the Trust to be conducted, with the advice of counsel, in such a way and in such jurisdictions as to avoid, to the extent which they determine to be practicable and consistent with their fiduciary duty to act in the best interests of the Unitholders, any material risk of liability on the Unitholders for claims against the Trust, and shall, to the extent available on terms which they determine to be practicable, including the cost of premiums, cause the insurance carried by the Trust, to the extent applicable, to cover the Unitholders and Annuitants as additional insured. Any potential liability of the Trustees with respect to the foregoing obligations or their failure to perform the same shall be governed by the provisions of Sections 14.1, 14.2 and 14.3.

## **ARTICLE 15 GENERAL**

### **15.1 Execution of Instruments**

The Trustees shall have power from time to time to appoint any Trustee or Trustees or any Person or Persons on behalf of the Trust either to sign instruments in writing generally or to sign specific instruments in writing. Provisions respecting the foregoing may be contained in the Trustees’ Regulations.

### **15.2 Manner of Giving Notice**

Any notice required or permitted by the provisions of this Declaration of Trust to be given to a Unitholder, a Trustee or the Auditors of the Trust shall be deemed conclusively to have been given

if given either by delivery or by prepaid first-class mail addressed to the Unitholder at his/her address shown on the Register, to the Trustee at the last address provided by such Trustee to the President of the Trust, or to the Auditors of the Trust at the last address provided by such Auditors to the President of the Trust, as the case may be.

### **15.3 Failure to Give Notice**

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

### **15.4 Trust Auditors**

The initial Auditors of the Trust and its Subsidiaries shall be MNP S.E.N.C.R.L., s.r.l. unless otherwise determined by the Trustees. The Auditors of the Trust and its Subsidiaries shall be appointed and removed at each annual meeting by a majority of the votes cast by the Unitholders. If at any time a vacancy occurs in the position of Auditors of the Trust or its Subsidiaries, the Trustees may appoint a firm of chartered accountants qualified to practise in all provinces of Canada to act as the Auditors of the Trust or its Subsidiaries, as applicable, until the next annual meeting of the Unitholders. The Auditors of the Trust and its Subsidiaries shall report to the Trustees and the Unitholders on the annual financial statements of the Trust and shall fulfil such other responsibilities as they may properly be called upon by the Trustees to assume. The Auditors shall have access to all records relating to the affairs of the Trust and its Subsidiaries. The Auditors shall receive such remuneration as may be approved by the Trustees.

### **15.5 Change of Auditors**

Subject to applicable laws, the Auditors of the Trust may at any time be removed and new Auditors appointed by a majority of the Trustees.

### **15.6 Fiscal Year**

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

### **15.7 Reports to the Unitholders**

Prior to each annual and special meeting of the Unitholders, the Trustees shall provide the Unitholders (along with notice of such meeting) information similar to that required to be provided to shareholders of a public corporation governed by the CBCA and as required by applicable tax and securities laws.

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

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

### **15.9 Trustees May Hold Units**

Any Trustee or Associate of a Trustee may be a Unitholder or may be an Annuitant.

### **15.10 Trust Records**

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

### **15.11 Right to Inspect Documents**

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

### **15.12 Taxation Information**

On or before March 15 of each year, the Trust will provide to Unitholders who received distributions from the Trust in either the prior calendar year or on or before January 15 of such year, such information regarding the Trust required by Canadian law to be submitted to Unitholders for income tax purposes to enable Unitholders to complete their tax returns in respect of the prior calendar year.

### **15.13 Income Tax Election**

In respect of the first taxation year of the Trust, the Trust shall elect pursuant to Subsection 132(6.1) of the Tax Act that the Trust be deemed to be a "mutual fund trust" for the purposes of the Tax Act for the entire year.

### **15.14 Consolidations**

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

### **15.15 Counterparts**

This Declaration of Trust may be executed by the parties hereto in counterparts and may be executed and delivered by facsimile and all the counterparts and facsimiles together constitute one and the same agreement.

**15.16 Severability**

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

**15.17 Governing Law**

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

***[Remainder of page intentionally left blank]***

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

*(s) Peter Aghar*

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**Peter Aghar, Trustee**

*(s) James W. Beckerleg*

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**James W. Beckerleg, Trustee**

*(s) Vincent Chiara*

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**Vincent Chiara, Trustee**

*(s) Martin Coté*

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**Martin Coté, Trustee**

*(s) Shenoor Jadavji*

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**Shenoor Jadavji, Trustee**

*(s) Gérard A. Limoges*

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**Gérard A. Limoges, Trustee**

*(s) John Levitt*

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**John Levitt, Trustee**

*(s) Ronald E. Smith*

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**Ronald E. Smith, Trustee**