
TRUE NORTH COMMERCIAL REAL ESTATE INVESTMENT TRUST

**SECOND AMENDED AND RESTATED
DECLARATION OF TRUST**

(AS OF MAY 22, 2014)

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TRUE NORTH COMMERCIAL REAL ESTATE INVESTMENT TRUST

SECOND AMENDED AND RESTATED DECLARATION OF TRUST

THIS DECLARATION OF TRUST made in Toronto, Ontario as of the 16th day of November, 2012, as amended and restated as of December 14, 2012, as further amended and restated as of the 22nd day of May, 2014.

RECITALS:

WHEREAS the Trust was established pursuant to a declaration of trust made as of November 16, 2012 (the “**Original Declaration of Trust**”) for the principal purpose of providing persons who may become the holders of Trust Units with an opportunity to participate in the Focus Activities;

AND WHEREAS the Initial Unitholder, as the sole Unitholder of the Trust, amended and restated the Original Declaration of Trust, and provided notice of same to the Trustees with effect as of December 14, 2012 (the “**Amended and Restated Declaration of Trust**”);

AND WHEREAS at an annual and special meeting of Unitholders held on the 22nd day of May, 2014, the Unitholders voted in favour of certain amendments to the Amended and Restated Declaration of Trust and, following such meeting, the trustees approved the amendment and restatement of the Amended and Restated Declaration of Trust (the “**Second Amended and Restated Declaration of Trust**”);

AND WHEREAS the Second Amended and Restated Declaration of Trust replaced and superseded the Original Declaration of Trust and this Second Amended and Restated Declaration of Trust replaces the Amended and Restated Declaration of Trust;

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

ARTICLE 1 THE TRUST AND DEFINITIONS

1.1 Definitions and Interpretation

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

- (a) **“Acquired Issuer”** has the meaning given thereto in Subsection 6.1(f);
- (b) **“Affiliate”** of a person means any person that would be deemed to be an affiliated entity of such person within the meaning of National Instrument 45-106 - *Circular and Registration Exemptions*, as replaced or amended from time to time (including any successor rule or policy thereto) if the term “person” therein was as defined in this Declaration of Trust;
- (c) **“Amended and Restated Declaration of Trust”** has the meaning given thereto in the recitals hereto;
- (d) **“Annuitant”** means the annuitant or beneficiary of a Plan or any other plan of which a Unitholder acts as trustee or carrier;
- (e) **“Asset Management Agreement”** means the asset management agreement dated as of December 14, 2012 among Starlight and the REIT, pursuant to which Starlight provides asset management, advisory and administrative services to the REIT and its Subsidiaries, as such agreement may be amended, supplemented or amended and restated from time to time;
- (f) **“Associate”** when used to indicate a relationship with a person has the meaning ascribed thereto in the *Securities Act* (Ontario), as replaced or amended from time to time;
- (g) **“Audit Committee”** has the meaning given thereto in Subsection 10.1(a);
- (h) **“Auditors”** means the firm of chartered accountants appointed as the auditors of the Trust from time to time in accordance with the provisions hereof and, means BDO Canada LLP, Chartered Accountants;
- (i) **“Business Day”** means any day other than a Saturday, Sunday or statutory holiday in the Province of Ontario;
- (j) **“CDS”** means CDS Clearing and Depository Services Inc. and its successors;
- (k) **“Chair”, “President”, “Lead Trustee”, “Vice-Chair”, “Chief Executive Officer”, “Chief Financial Officer”, “Chief Operating Officer”, “Treasurer”** and **“Secretary”** mean the person(s) holding the respective office, or acting in the respective capacity, from time to time if so elected, appointed, employed or engaged, directly or indirectly, by the Trustees;
- (l) **“CPOA”** has the meaning given thereto in Subsection 3.11(b);
- (m) **“Declaration of Trust”** means this declaration of trust as further amended, supplemented or amended and restated from time to time;

- (n) **“Dissenting Offeree”** means, where a Take-over Bid is made for all of the Trust Units other than those held by the Offeror (and its Affiliates and Associates), a Trust Unitholder who does not accept the Take-over Bid and includes a subsequent holder of those Trust Units who acquires them from the first mentioned holder;
- (o) **“Distribution Date”** means, in respect of any Distribution Period, on or about the 15th day of the immediately following month or on such other dates as the Trustees so determine in their discretion;
- (p) **“Distribution Period”** means each calendar month in each calendar year from and including the first day thereof and to and including the last day thereof whether or not such days are Business Days;
- (q) **“Exchange Agreement”** means the exchange agreement dated December 14, 2012, among Starlight (which for the purposes of such agreement includes Affiliates of Starlight), the Trust and True North GP, amongst others, as such agreement may be amended, supplemented or amended and restated from time to time;
- (r) **“Exchangeable Units”** means, collectively, the class B limited partnership units of the Partnerships;
- (s) **“Fiscal Year”** means each fiscal year of the Trust;
- (t) **“Focus Activities”** has the meaning given thereto in Subsection 6.1(a);
- (u) **“Governance, Compensation and Nominating Committee”** has the meaning given thereto in Subsection 10.1(b);
- (v) **“Gross Book Value”** means the acquisition cost of the assets of the Trust plus (i) the cumulative impact of fair value adjustments, (ii) acquisition related costs in respect of completed investment property acquisitions that were expensed in the period incurred, (iii) accumulated amortization on property, plant and equipment, and other assets, and (iv) deferred loan costs;
- (w) **“herein”, “hereof”, “hereby”, “hereunder”, “this Declaration of Trust”** and similar expressions refer to this Declaration of Trust and include every instrument supplemental or ancillary to or in implementation of this Declaration of Trust and, except where the context otherwise requires, does not refer to any particular article, section or other portion hereof or thereof;
- (x) **“IFRS”** means International Financial Reporting Standards established by the International Accounting Standards Board;
- (y) **“including”** means “including, without limitation”;

- (z) **“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 for 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 Trust 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) Trust Units and exchangeable securities, including Exchangeable Units, will not constitute Indebtedness;

- (aa) **“Independent Trustee”** means a Trustee who, in relation to the Trust, is “independent” within the meaning of National Instrument 58-101 – *Disclosure of Corporate Governance Practices*, as replaced or amended from time to time (including any successor rule or policy thereto);
- (bb) **“Initial Contribution”** means the amount of \$10 paid by the Initial Unitholder to the Trustees for the purpose of establishing the Trust;

- (cc) **“Initial Trust Unit”** means the initial Trust Unit issued by the Trust to the Initial Unitholder;
- (dd) **“Initial Unitholder”** means the holder of the Initial Trust Unit;
- (ee) **“Investment Committee”** has the meaning given thereto in Subsection 10.1(c);
- (ff) **“Lead Trustee”** has the meaning given thereto in Section 5.3;
- (gg) **“Limited Partnership Agreements”** means, collectively, the limited partnership agreements of the Partnerships, as such agreements may be amended, supplemented or amended and restated from time to time, and **“Limited Partnership Agreement”** means any one of the foregoing;
- (hh) **“LP Units”** means, collectively, the class A limited partnership units of the Partnerships and the Exchangeable Units;
- (ii) **“Monthly Limit”** has the meaning given thereto in Paragraph 7.14(d)(i);
- (jj) **“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;
- (kk) **“Multilateral Instrument 61-101”** means Multilateral Instrument 61-101 - *Take-over Bids and Special Transactions*, as replaced or amended from time to time (including any successor rule or policy thereto);
- (ll) **“Net Realized Capital Gains of the Trust”** for any period means the amount, if any, by which the aggregate amount of the realized capital gains of the Trust for the period exceeds the aggregate of (i) the amount of any realized capital losses of the Trust for the period determined in accordance with the Tax Act, and (ii) the amount of any net capital losses of the Trust carried forward from a previous period to the extent not previously deducted from realized capital gains of the Trust determined in accordance with the Tax Act;
- (mm) **“Non-Resident”** means a person who is not a Resident and, for the purposes of Section 7.12, includes a partnership that is not a Canadian partnership within the meaning of the Tax Act;
- (nn) **“Offeree”** means a person to whom a Take-over Bid is made;
- (oo) **“Offeror”** means a person, other than an agent, who makes a Take-over Bid for the Trust Units, and includes two or more persons who, directly or indirectly:
 - (i) make a Take-over Bid for the Trust Units jointly or in concert; or

- (ii) intend to exercise jointly or in concert voting rights attached to the Trust Units for which a Take-over Bid is made by one or more such persons;
- (pp) “**Officer**” has the meaning ascribed thereto in the *Securities Act* (Ontario), as replaced or amended from time to time;
- (qq) “**Original Declaration of Trust**” has the meaning given thereto in the recitals hereto;
- (rr) “**Partnerships**” means, collectively, True North Commercial Limited Partnership, as well as such other limited partnerships that may be controlled by the Trust from time to time, and “Partnership” means any one of the foregoing;
- (ss) “**person**” means and includes any individual, general partnership, limited partnership, joint venture, syndicate, sole proprietorship, company or corporation with or without share capital, joint stock company, association, trust, trust company, bank, pension fund, trustee, executor, administrator or other legal personal representative, regulatory body or agency, government or governmental agency, authority or other organization or entity, whether or not a legal entity, however designated or constituted;
- (tt) “**Plans**” means, collectively, trusts governed by registered retirement savings plans, registered retirement income funds, a registered education savings plans, deferred profit sharing plans or tax-free savings accounts, each as described in the Tax Act;
- (uu) “**real property**” means property which in law is real property and includes, whether or not the same would in law be real property, leaseholds, Mortgages, undivided joint interests in real property (whether by way of tenancy-in-common, joint tenancy, co-ownership, joint venture or otherwise), any interests in any of the foregoing and securities of trusts, corporations or partnerships the sole or principal purpose and activity of which is to invest in, hold and deal in real property;
- (vv) “**Redemption Date**” has the meaning given thereto in Paragraph 7.14(c)(i);
- (ww) “**Redemption Price**” has the meaning given thereto in Paragraph 7.14(c)(i);
- (xx) “**Register**” has the meaning given thereto in Section 7.19;
- (yy) “**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;

- (zz) “**Residents**” means persons who are resident in Canada for purposes of the Tax Act;
- (aaa) “**Retiring Trustee**” has the meaning given thereto in Subsection 3.7(c);
- (bbb) “**Securities Laws**” means, collectively, the applicable securities laws of each of the provinces and territories of Canada and the respective regulations and rules made under those securities laws together with all published policy statements, instruments, blanket orders and rulings of Canadian securities commissions and all discretionary orders or rulings, if any, of Canadian securities commissions made in connection with the transactions contemplated by this Declaration of Trust;
- (ccc) “**Special Resolution**” has the meaning given thereto in Subsection 8.16(a);
- (ddd) “**Special Voting Units**” means the special voting units of the Trust designated as such in Subsection 7.1(a) authorized and issued hereunder;
- (eee) “**Starlight**” means Starlight Investments Ltd., a company existing under the laws of the Province of Ontario;
- (fff) “**Starlight Affiliates**” means, collectively, Starlight, Daniel Drimmer, and their respective Affiliates;
- (ggg) “**Starlight Appointed Trustees**” has the meaning given thereto in Subsection 3.8(b);
- (hhh) “**Subsidiary**” and “**Subsidiaries**” has the meaning given thereto in National Instrument 45-106 – *Prospectus and Registration Exemptions*, as replaced or amended from time to time (including any successor rule or policy thereto);
- (iii) “**Subsidiary Entity**” means a Partnership, a trust all of the units of which, or a corporation all of the shares of which, are owned directly or indirectly by the Trust or another entity that would be consolidated with the Trust under IFRS;
- (jjj) “**Subsidiary Notes**” means promissory notes of a Subsidiary Entity having a maturity date, determined at the time of issuance, of not more than five years, bearing interest at a market rate determined by the Trustees at the time of issuance;
- (kkk) “**Take-over Bid**” has the meaning given thereto in the *Securities Act* (Ontario) as replaced or amended from time to time;

- (lll) “**Tax Act**” means the *Income Tax Act* (Canada) and the regulations thereunder, as replaced or amended from time to time (including any successor rule or policy thereto) as further described in Section 1.2;
- (mmm) “**Taxation Year**” means the taxation year of the Trust for the purposes of the Tax Act;
- (nnn) “**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 and/or Special Voting Units, together with any sub-transfer agent duly appointed by the Transfer Agent;
- (ooo) “**True North GP**” means True North Commercial General Partner Corp.;
- (ppp) “**Trust**” means True North Commercial Real Estate Investment Trust, a trust created pursuant to the Original Declaration of Trust and governed by this Declaration of Trust pursuant to the laws of the Province of Ontario;
- (qqq) “**Trust Property**” means, at any particular time, any and all property and assets of the Trust, including all proceeds therefrom;
- (rrr) “**Trust Unit**” means a unit of interest in the Trust but excludes a Special Voting Unit;
- (sss) “**Trust Unitholder**” means a person whose name appears on the Register as a holder of one or more Trust Units;
- (ttt) “**Trustees**” means the trustee or trustees of the Trust holding office under and in accordance with this Declaration of Trust from time to time and “Trustee” means any one of them;
- (uuu) “**Trustees’ Regulations**” means the regulations adopted by the Trustees pursuant to Section 4.4;
- (vvv) “**Trust Unit Certificate**” means a certificate, in the form stipulated by Article 7, evidencing one or more Units, issued and certified in accordance with the provisions hereof;
- (www) “**Units**” means, collectively, the Trust Units and the Special Voting Units; and
- (xxx) “**Unitholder**” means a person whose name appears on the Register as a holder of one or more Trust Units or Special Voting Units.

1.2 Tax Act

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

1.3 Day Not a Business Day

Except in respect of amounts to be determined or any actions required to be taken on the last day of a Taxation Year and except as expressly specified in this Declaration of Trust, in the event that any day on which any amount is to be determined or any action is required to be taken hereunder is not a Business Day, then such amount shall be determined or such action shall be required to be taken at or before the requisite time on the next succeeding day that is a Business Day.

1.4 Time of Essence

Time shall be of essence in this Declaration of Trust.

ARTICLE 2 DECLARATION OF TRUST

2.1 Establishment of the Trust

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

2.2 Name

The name of the Trust is "True North Commercial Real Estate Investment Trust" or, where appropriate, "Fiducie de placement immobilier commercial True North". As far as practicable and except as otherwise provided in this Declaration of Trust, the Trustees shall conduct the affairs of the Trust, hold property, execute all documents and take all legal proceedings under that name. For greater certainty, where any reference is made in this Declaration of Trust, or any other instrument to which the Trust or the Trustees, as trustees of the Trust, are a party, to an act to be performed by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against, or a covenant, representation or warranty by or with respect to: (i) the Trust; or (ii) the Trustees, such reference shall be construed and applied for all purposes as if it referred to an act to be

performed by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding taken by or against, or a covenant, representation or warranty by or with respect to the Trustees as trustees of the Trust.

2.3 Use of Name

Should the Trustees determine that the use of the name True North Commercial Real Estate Investment Trust or Fiducie de placement immobilier commercial True North 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.

2.4 Office

The principal, registered and head office and centre of administration of the Trust shall be as of July 1, 2014 located at 3300 Bloor Street West, Suite 1801, West Tower, Toronto, Ontario M8X 2X2, unless changed by the Trustees to another location in Canada. The Trust may have such other offices or places for the conduct of its affairs as the Trustees may from time to time determine as necessary or desirable.

2.5 Nature of the Trust

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

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

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

2.6 Rights of Unitholders

The rights of each Unitholder to call for a distribution or division of assets, monies, funds, income and capital gains held, received or realized by the Trustees are limited to those contained herein and, except as provided herein, no Unitholder shall be entitled to call for any partition or division of the Trust's property or for a distribution of any particular asset forming part of the Trust's property or of any particular monies or funds received by the Trustees. The legal ownership of the Trust Property and the right to conduct the activities of the Trust are vested exclusively in the Trustees, and no Unitholder has or is deemed to have any right of ownership in any of the Trust Property, except as specifically provided herein. Except as specifically provided herein, no Unitholder shall be entitled to interfere with or give any direction to the Trustees with respect to the affairs of the Trust or in connection with the exercise of any powers or authorities conferred upon the Trustees under this Declaration of Trust. The Units shall be personal property and shall confer upon the holders thereof only the interest and rights specifically set forth in this Declaration of Trust.

2.7 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 16. 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, that would: (i) prevent the Trust from qualifying as a "mutual fund trust" or cause it to disqualify as such; (ii) cause the Trust or a Subsidiary of the Trust to be considered a "SIFT trust" or "SIFT partnership", each as defined in the Tax Act, such that the Trust or a Subsidiary of the Trust becomes subject to tax under paragraph 122(1)(b) or subsection 197(2) of the Tax Act; (iii) or cause the Trust or a Subsidiary of the Trust to be subject to tax under Part XII.2 of the Tax Act. The Trust shall not engage directly or indirectly in any activity other than the activities permitted by this Section 2.7 and in accordance with the Declaration of Trust.

2.8 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 Agreement, 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 IFRS, 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 IFRS, the Trustees shall revise (if appropriate) the financial data prepared pursuant to this Declaration of Trust to reflect IFRS as then in effect, in which case all financial data shall be made on a basis consistent with IFRS in existence as at the date of such revisions.

ARTICLE 3 TRUSTEES AND OFFICERS

3.1 Number

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

3.2 Term

Other than the Starlight Appointed Trustees, Trustees elected at an annual meeting will be elected for a term expiring at the close of the next annual meeting or until his successor is appointed and will be eligible for re-election. Trustees appointed by the Trustees between meetings of Unitholders in accordance with Subsection 3.8(a) shall be appointed for a term expiring at the conclusion of the next annual meeting or until his or her successor is appointed and will be eligible for election or re-election, as the case may be.

3.3 Qualifications of Trustees

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

3.4 Residency of Trustees

A majority of the Trustees and a majority of the Independent Trustees must be Residents. If at any time a majority of the Trustees or a majority of the Trustees of any committee of the Trustees are not Residents because of the death, resignation, bankruptcy, adjudicated incompetence or incapacity, removal or change in circumstance of any Trustee who was a Resident Trustee, or there are no Trustees who are Residents, the Trustee or Trustees who are Non-Residents and are not Starlight Appointed Trustees, shall, immediately before that time, be deemed to have resigned and shall cease to be Trustees with effect from the time of such deemed resignation and the remaining Trustees shall appoint a sufficient number of Resident Trustees to comply with this requirement. If at any time the number of Trustees is less than the number required under this Declaration of Trust and the remaining Trustee or Trustees fail or are unable to act in accordance with Section 3.7 and/or Section 3.12 to appoint one or more additional Trustees or if, upon the resignation or deemed resignation of one

or more Trustees there would be no Trustees, then the board of Trustees of the Trust shall appoint one or more Trustees so that following such appointment a majority of the Trustees are Residents and, failing such appointment, any remaining Trustee or Unitholder or Officer of the Trust or the Auditors, as the case may be, may apply to the Superior Court of Justice of Ontario for an order appointing one or more Trustees so that following such appointment a majority of the Trustees are Residents, to act until the next annual meeting of Unitholders or on such other terms as the Court may order. Any Trustee who is a Resident who proposes to become a Non-Resident shall notify the other Trustees thereof as soon as reasonably practicable and, in the event that the residency requirements hereunder would no longer be fulfilled if such Trustee became a Non-Resident, shall resign as a Trustee effective upon the day of such Trustee becomes a Non-Resident and shall be replaced with a Trustee who is a Resident.

3.5 Election of Trustees

Subject to Sections 3.4, 3.7, 3.8 and 3.12, the election of the Trustees shall be by the vote of Unitholders. The appointment or election of any Trustee (other than an individual who is serving as a Trustee immediately prior to such appointment or election) shall not become effective unless and until such person shall have in writing accepted such appointment or election and agreed to be bound by the terms of this Declaration of Trust.

3.6 Independent Trustees

A majority of the Trustees must be Independent Trustees provided, however, that if at any time a majority of the Trustees are not Independent Trustees because of the death, resignation, bankruptcy, adjudicated incompetence, removal or change in circumstance of any Trustee who was an Independent Trustee, this requirement shall not be applicable for a period of 60 days thereafter, during which time, subject to Section 3.8(b), the remaining Trustees shall appoint a sufficient number of Independent Trustees to comply with the requirement.

3.7 Resignations, Removal, Incapacity and Death of Trustees

- (a) A Trustee may resign at any time by an instrument in writing signed by the Trustee and delivered or mailed to the Lead Trustee, or, if there is no Lead Trustee, the Chair of Trustees, or, if there is no Chair of Trustees, the Chief Executive Officer, or, if there is no Chief Executive Officer, the Unitholders. A resignation of a Trustee becomes effective 30 days immediately following the date a written resignation is received by the Trust, or at the time specified in the resignation, whichever is later, provided that if, upon the resignation becoming effective, the number of remaining Trustees would be less than the number necessary to constitute a quorum for a meeting of Trustees, the resignation is not effective until the resigning Trustee's successor is duly appointed as a Trustee, except in the case of a deemed resignation under Section 3.4 which shall be effective at the time therein prescribed.

- (b) Subject to Section 3.8(b), a Trustee may be removed at any time with or without cause by a majority of the votes cast at a meeting of Unitholders called for that purpose or with cause by the resolution passed by an affirmative vote of not less than two-thirds of the remaining Trustees. Any removal of a Trustee shall take effect immediately following the aforesaid vote or resolution or at any later time specified in the notice without need for prior accounting, and any Trustee so removed shall be so notified by the Chief Executive Officer or another Officer of the Trust or if there is no Officer of the Trust, by any remaining Trustee or if there is no Trustee then remaining, by the Unitholders, following such removal.
- (c) Upon the resignation or removal of any Trustee, or such Trustee otherwise ceasing to be a Trustee (in each case, a **“Retiring Trustee”**), such Retiring Trustee shall cease to have the rights, privileges and powers of a Trustee hereunder, shall cease to be a party to this Declaration of Trust, shall account to the remaining Trustees as they may require for all property which he holds as Trustee and do all such other things as may be required pursuant to Subsection 3.11(b) hereof; provided however that notwithstanding any other provision of this Declaration of Trust, each such Retiring Trustee shall continue to have the protections afforded to Trustees in Article 17.
- (d) Upon the incapacity or death of any Trustee, such Retiring Trustee’s legal representative shall execute and deliver on such Trustee’s behalf such documents as the remaining Trustees may require as provided in this Section 3.7. In the event that a Trustee or his legal representatives, as applicable, are unable or unwilling to execute and deliver such required documents, each of the remaining Trustees is hereby appointed as the attorney of such Trustee for the purpose of executing and delivering such required documents.

3.8 Appointment of Trustees

- (a) The term of office for the undersigned Trustees shall expire at the close of the first annual meeting of Unitholders. Except as otherwise provided herein, Trustees shall be elected (including the re-election of incumbent Trustees), at each annual meeting of Unitholders, and may be elected at a special meeting of Unitholders. Any such election shall be made either by a resolution approved by a majority of the votes cast at a meeting of Unitholders or shall be made by resolution in writing in the manner set out in Section 8.14. Notwithstanding the foregoing:
 - (i) if no Trustees are elected at the annual meeting of Unitholders held immediately before the term of office of the then existing Trustees expires, such existing Trustees shall continue to hold the office of Trustees under this Declaration of Trust until successors have been appointed or they cease to hold office; and

- (ii) the Trustees may, between annual meetings of the Unitholders, appoint one or more additional Trustees to serve until the next annual meeting of Unitholders; provided that the number of additional Trustees so appointed will not at any time exceed one-third of the number of Trustees who held such office at the conclusion of the immediately preceding annual meeting of Unitholders (rounding to the nearest whole number).
- (b) Notwithstanding Subsection 3.8(a) and anything else in this Article 3, Starlight shall have the exclusive right to appoint certain Trustees (the "**Starlight Appointed Trustees**") based on the size of the board of Trustees at such time, all in accordance with the following table, by written notice delivered or mailed to the Lead Trustee, or, if there is no Lead Trustee, the Chair of Trustees, the President, the Chief Executive Officer or the Secretary, to hold office for a term expiring at the close of the next annual meeting, subject to the appointment of any successors by Starlight, and each such Trustee shall be eligible for re-appointment. Notwithstanding anything in this Article 3, Starlight shall have the exclusive right to remove Starlight Appointed Trustees and, subject to this Subsection 3.8(b), to fill vacancies caused by a Starlight Appointed Trustee ceasing to hold office.

Proportion of Units Owned by Starlight and the Starlight Affiliates (on a fully diluted basis)	Total Number of Trustees of the Trust	Number of Starlight Appointed Trustees
10% or greater	Greater than 9	3
	6 to 9	2
	Less than 6	1
less than 10%, but not less than 5%	Any	1
less than 5%	Any	0

3.9 Consent to Act

A person who is appointed a Trustee hereunder shall provide and deliver to the Trust a consent, substantially in the form as determined from time to time by the Trustees.

3.10 Failure to Elect Minimum Number of Trustees

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

3.11 Ceasing to Hold Office

- (a) A Trustee ceases to hold office when:
- (i) the Trustee ceases to be duly qualified to act as a Trustee as provided under Section 3.3;
 - (ii) the Trustee ceases to be a Trustee in accordance with Section 3.4;
 - (iii) the Trustee dies or resigns; or
 - (iv) the Trustee is removed in accordance with Section 3.7 or 3.8(b).
- (b) Upon a Trustee ceasing to hold office as such hereunder, such Trustee shall cease to be a party (as a Trustee) to this Declaration of Trust; provided, however, that such Trustee shall continue to be entitled to be paid any amounts owing by the Trust to the Trustee and to the benefits of the indemnity provided in Section 17.2. Such Trustee shall execute and deliver such documents as the remaining Trustees shall reasonably require for the conveyance of any Trust Property held in that Trustee's name, shall account to the remaining Trustees as they may reasonably require for all property which that Trustee holds as Trustee, shall resign from all directorship or similar positions held by such Trustee in any entity in which the Trust has an interest and shall thereupon be discharged as Trustee. Upon the incapacity or death of any Trustee, his or her legal representative shall execute and deliver on his behalf such documents as the remaining Trustees may reasonably require as provided in this Subsection 3.11(b). In the event that a Trustee or his legal representatives, as applicable, are unable or unwilling to execute and deliver such required documents, each of the remaining Trustees is hereby appointed as the attorney of such Trustee for the purposes of executing and delivering such required documents. This power of attorney granted to each of the remaining Trustees is not intended to be a continuing power of attorney within the meaning of the *Substitute Decisions Act, 1992* (Ontario), exercisable during a Trustee's incapacity to manage property, or any similar power of attorney under equivalent legislation in any of the provinces or territories of Canada (a "CPOA"). The execution of this power of attorney will not terminate any CPOA granted by the Trustee previously and will not be terminated by the execution by the Trustee in the future of a CPOA, and the Trustee hereby agrees not to take any action in future which results in the termination of this power of attorney.

3.12 Vacancies by Trustees

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

3.13 Successor and Additional Trustees

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

3.14 Compensation and Other Remuneration

Only Trustees who are not Officers of, or otherwise employed by, the Trust, Subsidiaries of the Trust or Starlight Affiliates shall receive such fees and other reasonable compensation (including fees for serving as Chair of the Trust, for serving as chair of any committee of Trustees and for attendance at each meeting of Trustees and of each committee of Trustees) as the Trustees may determine from time to time. All Trustees shall be entitled to reimbursement from the Trust of their reasonable travel and out-of-pocket expenses properly incurred in acting as a Trustee.

Each of the Trustees, either directly or indirectly, shall also be entitled to receive remuneration for services rendered to the Trust in any other capacity. Such services may include services as an Officer of the Trust, legal, accounting or other professional services or services as a broker, transfer agent or underwriter, whether performed by a Trustee or any person Affiliated with a Trustee.

3.15 Validity of Acts

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

ARTICLE 4 TRUSTEES' POWERS AND DUTIES

4.1 General Powers

The Trustees, subject only to the terms and conditions contained in this Declaration of Trust, including Sections 4.2, 6.1, 6.2 and 8.7, shall have, without further or other authorization, action or consent and free from any control or direction on the part of the Unitholders, full, absolute and exclusive power, control and authority over the assets of the Trust and over the affairs and operations of the Trust to the same extent as if the Trustees were the sole and absolute legal and beneficial owners of such assets in their own right, to do all such acts and things as in their sole judgment and discretion are necessary or incidental to, or desirable for, the carrying out of any of the purposes of the Trust or the conducting of the affairs of the Trust. In construing the provisions of this Declaration of Trust, there shall be a presumption in favour of the power and authority having been granted to the Trustees. The enumeration of any specific power or authority herein shall not be construed as limiting the general powers or authority or any other specified power or authority conferred herein on the Trustees. Except as specifically required by such laws, the Trustees shall in carrying out investment activities not be in any way restricted by the provisions of the laws of any jurisdiction limiting or purporting to limit investments which may be made by Trustees. Without limiting the generality of the foregoing, the Trustees may, subject to the terms and conditions contained in this Declaration of Trust, make any investments without being required to adhere to all of, or any particular portion of the investment criteria or diversification requirements set forth in the *Trustee Act* (Ontario), as replaced or amended from time to time, including, investments in mutual funds, common trust funds, unit trusts and similar types of investment vehicles, to alter or vary such investments from time to time in a like manner, to retain such investments for such length of time as the Trustees, in their discretion determine and to delegate management and authority to discretionary managers of investment funds as the Trustees in their discretion determine appropriate.

4.2 Independent Trustee Matters

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

- (a) an acquisition of a property or an investment in a property, whether by co-investment or otherwise, in which Starlight Affiliates or any Related Party

of the Trust has any direct or indirect interest, whether as owner, operator or manager;

- (b) a material change to any agreement with Starlight Affiliates or a Related Party of the Trust or any renewal, extension or termination thereof or any increase in any fees (including any transaction fees) or distributions payable thereunder;
- (c) the entering into of, or the waiver, exercise or enforcement of any rights or remedies under, any agreement entered into by the Trust or any of its Subsidiaries, or the making, directly or indirectly, of any co-investment, in each case with (i) any Trustee, (ii) any entity directly or indirectly controlled by any Trustee or in which any Trustee holds a significant interest, or (iii) any entity for which any Trustee acts as a director or other similar capacity;
- (d) the refinancing, increase or renewal of any indebtedness owed by or to (i) any Trustee, (ii) any entity directly or indirectly controlled by any Trustee or in which any Trustee holds a significant interest, or (iii) any entity for which any Trustee acts as a director or other similar capacity; or
- (e) decisions relating to any claims by or against one or more parties to any agreement with Starlight Affiliates or any Related Party of the Trust.

4.3 Specific Powers and Authorities

Subject only to the terms and conditions contained in this Declaration of Trust including, without limitation in Sections 4.2, 6.1, 6.2 and 8.7, 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 authorization, action or consent by the Unitholders, shall have and may exercise, on behalf of the Trust or otherwise, at any time and from time to time the following powers and authorities which may or may not be exercised by them in their sole judgment and discretion and in such manner and upon such terms and conditions as they may from time to time deem proper:

- (a) to retain, invest and re-invest the capital or other funds of the Trust in real or personal property of any kind, all without regard to whether any such properties are authorized by law for the investment of trust funds, and to possess and exercise all the rights, powers and privileges appertaining to the ownership of the Trust Property and to increase the capital of the Trust at any time by the issuance of additional Trust Units for such consideration as they deem appropriate;
- (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 Trust Units or through the issuance of notes, debentures, bonds or other obligations or securities of the Trust and hold for investment the entire or

any participating interest in any Mortgages. In connection with any such investment, purchase or acquisition, the Trustees shall have the power to acquire a share of rents, lease payments or other gross income from or a share of the profits from or a share in the equity or ownership of real property;

- (c) to sell, rent, lease, hire, exchange, release, partition, assign, Mortgage, pledge, hypothecate, grant security interests in, encumber, negotiate, convey, transfer or otherwise dispose of any or all of the 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, and perform the obligations of the Trust thereunder;
- (e) to borrow money from or incur indebtedness to any person, to guarantee, indemnify or act as surety with respect to payment or performance of obligations of third parties; to enter into other obligations on behalf of the Trust; and to assign, convey, transfer, Mortgage, subordinate, pledge, grant security interests in, encumber or hypothecate the Trust Property to secure any of the foregoing;
- (f) without limit as to amount, to issue any type of debt securities or convertible debt securities and to borrow money or incur any other form of indebtedness for the purpose of carrying out the purposes of the Trust or for other expenses incurred in connection with the Trust and for such purposes may draw, make, execute and issue promissory notes and other negotiable and non-negotiable instruments or securities and evidences of indebtedness, secure the payment of sums so borrowed or indebtedness incurred and Mortgage, pledge, assign or grant a security interest in any money owing to the Trust or its property or engage in any other means of financing the Trust;
- (g) to lend money or other Trust Property, whether secured or unsecured;
- (h) to incur and pay out of the Trust Property 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 Trust or the Trust

Property or upon or against the Trust Property or any part thereof and for any of the purposes herein;

- (i) to deposit funds of the Trust in banks, trust companies and other depositories, whether or not such deposits will earn interest, the same to be subject to withdrawal on such terms and in such manner and by such person or persons (including any one or more Trustees, Officers, agents or representatives) as the Trustees may determine;
- (j) to possess and exercise all the rights, powers and privileges appertaining to the ownership of or interest in all or any Mortgages or securities, issued or created by, or interest in, any person, forming part of the assets of the Trust, to the same extent that an individual might and, without limiting the generality of the foregoing, to vote or give any consent, request or notice, or waive any notice, either in person or by proxy or power of attorney, with or without power of substitution, to one or more persons, which proxies and powers of attorney may be for meetings or action generally or for any particular meeting or action and may include the exercise of discretionary power;
- (k) to exercise any conversion privilege, subscription right, warrant or other right or option available in connection with any 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, directly or indirectly, by the Trust, including LP Units, or to the sale, Mortgage or lease of the property of any such person; and to do any act with reference thereto, including the delegation of discretionary powers, the exercise of options, the making of agreements or subscriptions and the payment of expenses, assessments or subscriptions which it may consider necessary or advisable in connection therewith;
- (l) to elect, appoint, engage or employ Officers for the Trust (including the Chair of Trustees, Lead Trustee, Vice-Chair, President, Chief Executive Officer, Chief Operating Officer, Chief Financial Officer, Secretary, Treasurer and such vice-presidents and other Officers as the Trustees may determine), who may be removed or discharged at the discretion of the Trustees, such Officers to have such powers and duties, and to serve such terms as may be prescribed by the Trustees or by the Trustees' Regulations; to engage, appoint, employ or contract with any persons as agents, representatives, employees or independent contractors or otherwise (including real estate advisors, investment advisors, registrars, underwriters, accountants, lawyers, real estate agents, property managers, appraisers, brokers, architects, engineers, construction managers, general contractors or otherwise) in one or more capacities, and to pay compensation from the Trust for services in as many capacities

as such persons may be so engaged or employed; and, except as prohibited by law or this Declaration of Trust, to delegate any of the powers and duties of the Trustees (including the power of delegation) to any one or more Trustees, agents, representatives, Officers, employees, independent contractors or other persons without regard to whether such power, authority or duty is normally granted or delegated by Trustees;

- (m) to collect, sue for and receive sums of money coming due to the Trust, and to engage in, intervene in, prosecute, join, defend, compromise, abandon or adjust, by arbitration or otherwise, any actions, suits, proceedings, disputes, claims, demands or other litigation relating to the Trust, the assets of the Trust or the Trust's affairs, to enter into agreements therefor whether or not any suit is commenced or claim accrued or asserted and, in advance of any controversy, to enter into agreements regarding the arbitration, adjudication or settlement thereof;
- (n) to renew, modify, release, compromise, extend, consolidate or cancel, in whole or in part, any obligation to or of the Trust;
- (o) to purchase and pay for, out of the assets of the Trust, insurance contracts and policies insuring the assets of the Trust against any and all risks and insuring the Trust and/or any or all of the Trustees, the Unitholders or Officers of the Trust against any and all claims and liabilities of any nature asserted by any person arising by reason of any action alleged to have been taken or omitted by the Trust or by the Trustees, the Unitholders or the Officers of the Trust;
- (p) to cause legal title to any of the assets of the Trust to be held by and/or in the name of the Trustees, or by and/or in the name of the Trust or one or more of the Trustees or any other person, on such terms, in such manner with such powers in such person as the Trustees may determine and with or without disclosure that the Trust or Trustees are interested therein provided, however, that should legal title to any of the assets of the Trust be held by and/or in the name of any person or persons other than the Trust, the Trustees shall require such person or persons to execute a declaration of trust acknowledging that legal title to such assets is held in trust for the benefit of the Trust;
- (q) to determine conclusively the allocation to capital, income or other appropriate accounts for all receipts, expenses, disbursements and, Trust Property;
- (r) to issue Units for such consideration as the Trustees may deem appropriate in their sole discretion, such issuance to be subject to the terms and conditions of this Declaration of Trust;

- (s) to make or cause to be made application for the listing on any stock exchange of any Units or other securities of the Trust, and to do all things which in the opinion of the Trustees may be necessary or desirable to effect or maintain such listing or listings;
- (t) to prepare, sign and file or cause to be prepared, signed and filed any circular, offering memorandum, prospectus or similar document, and any amendment thereto and all agreements contemplated therein or ancillary thereto or relating to or resulting from any offerings of the Trust Units or other securities issued or held by the Trust and to pay the cost thereof and related thereto out of the Trust Property whether or not such offering is or was of direct benefit to the Trust or those persons (if any) who were Trust Unitholders immediately prior to such offering;
- (u) in addition to the mandatory indemnification provided for in Section 17.2, to the extent permitted by law, to indemnify, or enter into agreements with respect to the indemnification of any person with whom the Trust has dealings including the Trustees, the depositary, the Transfer Agent or any escrow agent, to such extent as the Trustees shall determine;
- (v) to determine conclusively the value of any or all of the 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;
- (w) prepare, execute and file the Trust's income tax returns, make all designations, elections, determinations, allocations and applications under the Tax Act as the Trustees consider to be reasonable in the circumstances and satisfy, perform and discharge all obligations and responsibilities of the Trustees under the Tax Act (including any obligations of the Trust under Part XIII of the Tax Act);
- (x) to do all such acts and things and to exercise such powers as may be delegated to the Trustees by any person who co-owns real property with the Trust; and
- (y) to do all such other acts and things as are incidental to the foregoing, and to exercise all powers that are necessary or useful to carry on the business of the Trust, to promote any of the purposes for which the Trust is formed and to carry out the provisions of this Declaration of Trust.

4.4 Further Powers of the Trustees

The Trustees shall have the power to prescribe any form provided for or contemplated by this Declaration of Trust. The Trustees may make, adopt, amend, or repeal regulations containing provisions relating to the Trust, the conduct of its affairs, the rights or powers of the Trustees and the rights or powers of the Unitholders or Officers, provided that such regulations shall not be inconsistent with law or with this Declaration

of Trust and not, in the opinion of the Trustees, prejudicial to Unitholders. The Trustees shall also be entitled to make any decisions, designations or determinations not inconsistent with law or with this Declaration of Trust which they may determine are necessary or desirable in interpreting, applying or administering this Declaration of Trust or in administering, managing or operating the Trust. To the extent of any inconsistency between this Declaration of Trust and any regulation, decision, designation or determination made by the Trustees, this Declaration of Trust shall prevail and such regulation, decision, designation or determination shall be deemed to be modified to eliminate such inconsistency. Any regulations, decisions, designations or determinations made in accordance with this Section 4.4 shall be conclusive and binding upon all persons affected thereby.

Subject to any agreement between the Trust and any Trustee and subject as otherwise herein provided, the Trustees may from time to time in their discretion: appoint, employ, invest in, contract or deal with any person including any Affiliate of any of them and any person in which any one or more of them may be directly or indirectly interested and, without limiting the generality of the foregoing, any Trustee may purchase, hold, sell, invest in or otherwise deal with real property or other property of the same class and nature as may be held by the Trustees as 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 duties and responsibilities hereunder.

4.5 Banking

The banking activities of the Trust, or any part thereof, including 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.

4.6 Standard of Care

The exclusive standard of care required of the Trustees in exercising their powers and carrying out their functions hereunder shall be that they exercise their powers and discharge their duties hereunder as Trustees honestly, in good faith and in the best interests of the Trust and the Unitholders and in connection therewith, that they exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. Unless otherwise required by law, no Trustee shall be required to give bond, surety or security in any jurisdiction for the performance of any

duties or obligations hereunder. The Trustees in their capacity as Trustees shall not be required to devote their entire time to the investments, business or affairs of the Trust.

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

4.7 Fees and Expenses

As part of the expenses of the Trust, the Trustees may pay or cause to be paid out of the Trust's property, fees, costs and expenses incurred in connection with the administration and management of the Trust, including fees under the Asset Management Agreement, real property and brokerage commissions in respect of investments and dispositions of real property made by the Trust, fees of auditors, accountants, lawyers, engineers, appraisers and other agents, consultants and professional advisors employed by or on behalf of the Trust, fees of stock exchanges and the cost of reporting or giving notices to Unitholders. All costs, charges and expenses properly incurred by the Trustees on behalf of the Trust shall be payable out of the Trust's property.

4.8 Reliance Upon Trustees

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

4.9 Determinations of Trustees Binding

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

the condition and understanding that any and all such determinations shall be binding as aforesaid.

4.10 Limitations on Liability of Trustees

- (a) Subject to the standard of care set forth in Section 4.6, none of the Trustees nor any Officers, employees or agents of the Trust shall be liable to any Unitholder or any other person in tort, contract or otherwise for any action taken or not taken in good faith in reliance on any documents that are, prima facie, properly executed; for any depreciation of, or loss to, the Trust incurred by reason of the sale of any security; for the loss or disposition of monies or securities; for any action or failure to act by any person to whom the Trustees are permitted to delegate and have delegated any of their duties hereunder; or for any other action or failure to act including the failure to compel in any way any former Trustee to redress any breach of trust or any failure by any person to perform obligations or pay monies owed to the Trust, unless such liabilities arise out of a breach of the standard of care, diligence and skill as set out in Section 4.6. If the Trustees have retained an appropriate expert, advisor or legal counsel with respect to any matter connected with their duties under this Declaration of Trust, the Trustees may act or refuse to act based on the advice of such expert, advisor or legal counsel and, notwithstanding any provision of this Declaration of Trust, including the standard of care, diligence and skill set out in Section 4.6 hereof, the Trustees shall not be liable for and shall be fully protected from any action or refusal to act based on the advice of any such expert, advisor or legal counsel which it is reasonable to conclude is within the expertise of such expert, advisor or counsel to give.

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

or performance thereof unless such Trustee shall have failed to meet the standard of care set out in Section 4.6.

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

4.11 Conflict of Interest

If a Trustee or Officer of the Trust:

- (a) is a party to a material contract or transaction or proposed material contract or transaction with the Trust (or an Affiliate thereof), including a material contract or transaction involving the making or disposition of any investment in real property or a joint venture agreement; or
- (b) is a director or Officer of, or otherwise has a material interest in, any person who is a party to a material contract or transaction or proposed material contract or transaction with the Trust (or an Affiliate thereof),

such Trustee or Officer of the Trust shall disclose in writing to the Trustees or request to have entered into the minutes of meetings of the Trustees or committee of Trustees, as the case may be, the nature and extent of such interest as set out in 4.11(c) and (d):

- (c) The disclosure required in the case of a Trustee shall be made:
 - (i) at the meeting of Trustees or committee of Trustees, as the case may be, at which a proposed contract or transaction is first considered;
 - (ii) if the Trustee was not then interested in a proposed contract or transaction, at the first such meeting after he becomes so interested;
 - (iii) if the Trustee becomes interested after a contract is made or a transaction is entered into, at the first meeting after he becomes so interested; or
 - (iv) if a person who is interested in a contract or transaction later becomes a Trustee, at the first such meeting after he becomes a Trustee.
- (d) The disclosure required in the case of an Officer of the Trust who is not a Trustee shall be made:
 - (i) forthwith after such person becomes aware that the contract or transaction or proposed contract or transaction is to be considered or has been considered at a meeting of the Trustees or committee of Trustees;

- (ii) if such person becomes interested after a contract is made or transaction is entered into, forthwith after such person becomes aware that he has become so interested; or
 - (iii) if a person who is interested in a contract or a transaction later becomes an Officer of the Trust, forthwith after he becomes an Officer of the Trust.
- (e) Notwithstanding Subsections 4.11(a) and 4.11(b), where this section applies to any person in respect of a material contract or transaction or proposed material contract or transaction that, in the ordinary course of the affairs of the Trust, would not require approval by the Trustees, such person shall disclose in writing to the Trustees or request to have entered into the minutes of meetings of the Trustees, or a committee thereof, the nature and extent of such person's interest forthwith after such person becomes aware of the contract or transaction or proposed contract or transaction.
- (f) A Trustee referred to in this Section 4.11 shall not vote on any resolution to approve the said contract or transaction unless the contract or transaction is:
 - (i) one relating primarily to such Trustee's direct remuneration as a Trustee, Officer, employee or agent of the Trust; or
 - (ii) one for indemnity of such Trustee under Section 17.1 hereof or the purchase or maintenance of liability insurance,provided, however, that the presence of such Trustee at the relevant meeting or the written recognition by such Trustee of any resolution in writing shall be counted toward any quorum requirement or requirement that at least a minimum number of Trustees or Independent Trustees act.
- (g) For the purposes hereof, a general notice to the Trustees by a Trustee or an Officer of the Trust disclosing that such person is a director or Officer of or has a material interest in a person and is to be regarded as interested in any contract made or any transaction entered into with that person, is a sufficient disclosure of interest in relation to any contract so made or transaction so entered into. In the event that a meeting of Unitholders is called to confirm or approve a contract or transaction which is the subject of a general notice to the Trustees, the notice and extent of the interest in the contract or transaction of the person giving such general notice shall be disclosed in reasonable detail in the notice calling the said meeting of Unitholders or in any information circular to be provided by this Declaration of Trust or by law.

- (h) Where a material contract is made or a material transaction is entered into between the Trust and a Trustee or an Officer of the Trust, or between the Trust and another person in which a Trustee or an Officer of the Trust is a director or Officer or in which he or she has a material interest:
 - (i) such person is not accountable to the Trust or to the Unitholders for any profit or gain realized from the contract or transaction; and
 - (ii) the contract or transaction is neither void nor voidable,
by reason only of that relationship or by reason only that such person is present at or is counted to determine the presence of a quorum at the meeting of the Trustees or committee of Trustees that authorized the contract or transaction, if such person disclosed such person's interest in accordance with this Section 4.11, and the contract or transaction was reasonable and fair to the Trust at the time it was so approved.

- (i) Notwithstanding anything in this Section 4.11, but without limiting the effect of Subsection 4.11(f) hereof, a Trustee or an Officer of the Trust, acting honestly and in good faith, is not accountable to the Trust or to the Unitholders for any profit or gain realized from any such contract or transaction by reason only of such person holding such office or position, and the contract or transaction, if it was reasonable and fair to the Trust at the time it was approved, is not by reason only of such person's interest therein void or voidable, where:
 - (i) the contract or transaction is confirmed or approved at a meeting of Unitholders duly called for that purpose; and
 - (ii) the nature and extent of such person's interest in the contract or transaction are disclosed in reasonable detail in the notice calling the meeting or in any information circular to be provided by this Declaration of Trust or by law.

- (j) Subject to Subsections 4.11(f), 4.11(h) and 4.11(i) hereof, where a Trustee or an Officer of the Trust fails to disclose such person's interest in a material contract or transaction in accordance with this Declaration of Trust or otherwise fails to comply with this Section 4.11, the Trustees or any Unitholder, in addition to exercising any other rights, or remedies in connection with such failure exercisable at law or in equity, may apply to a court for an order setting aside the contract or transaction and directing that such person account to the Trust for any profit or gain realized.

4.12 Related Party Transactions

- (a) In the event of any proposed purchase or sale of real property from or to a Related Party of the Trust, if applicable, the Trust shall comply with the provisions of Multilateral Instrument 61-101 requiring the preparation of and provision of an independent valuation.
- (b) Without limitation, and in addition to the requirement, if any, under Multilateral Instrument 61-101 or this Declaration of Trust to obtain the approval of Unitholders, or to obtain minority approval within the meaning of Multilateral Instrument 61-101, for any related party transaction within the meaning of Multilateral Instrument 61-101, the Trust shall not carry out a proposed purchase or sale of real property from or to a Related Party, or otherwise effect a related party transaction unless such transaction is determined to be on commercially reasonable terms and is approved by a majority of the Trustees who are not parties to such transaction, or who are not directors, Officers or employees of, or who do not have a material interest in, any person (other than the Trust) who is a party to such transaction.

4.13 Conditions Precedent

The obligation of the Trustees to commence or continue any act, action, suit or proceeding or to represent the Trust in any action, suit or proceeding shall be conditional upon sufficient funds being available to the Trustees from the Trust's property to commence or continue such act, action, suit or proceeding or to represent the Trust in any action, suit or proceeding and an indemnity reasonably satisfactory to the Trustees to protect and hold harmless the Trustees against the costs, charges and expenses and liabilities to be incurred therein and any loss and damage it may suffer by reason thereof. None of the provisions contained in this Declaration of Trust shall require the Trustees to expend or risk their own funds or otherwise incur financial liability in the performance of their duties or in the exercise of any of their rights or powers unless they are given an indemnity and funding satisfactory to the Trustees, acting reasonably.

4.14 External Advisors

In connection with any transaction involving the Trust, including any transaction which requires the approval of a majority of the Independent Trustees pursuant to Section 4.2 or otherwise, the board of Trustees and the Officers of the Trust shall have the authority to retain external legal counsel, consultants or other advisors to assist it in negotiating and completing such transaction without, in the case of the board of Trustees, consulting or obtaining the approval of any Officer of the Trust.

**ARTICLE 5
CHAIR, LEAD TRUSTEE, OFFICERS OF THE TRUST**

5.1 General

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

5.2 Chair of Trustees

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

5.3 Lead Trustee

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

5.4 Term of Office

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

5.5 Independent Contractors

Any office of the Trust appointed by the Trustees may be held by an individual who is not an employee of the Trust but has been retained by the Trust to hold such office pursuant to an independent service agreement entered into between the Trust and that individual or that individual’s employer. For greater certainty, an individual whose services are provided to the Trust pursuant to the Asset Management Agreement may serve any office of the Trust appointed by the Trustees.

ARTICLE 6
INVESTMENT GUIDELINES AND OPERATING POLICIES

6.1 Investment Guidelines

Notwithstanding any other provision hereof, the assets of the Trust may be invested only in accordance with the following guidelines:

- (a) the Trust will focus its activities primarily on the acquisition, holding, developing, maintaining, improving, leasing, managing or otherwise dealing with income producing real property in Canada, the United States and such other jurisdictions as the Trustees may determine from time to time, having regard to the provisions and restrictions set out in this Declaration of Trust, which in each case, is being utilized or intended to be utilized for one or more of the following purposes: (i) commercial properties including retail, office and industrial properties; and (ii) other commercial purposes determined to be appropriate by the Trustees (collectively, the “**Focus Activities**”);

- (b) notwithstanding anything else contained in this Declaration of Trust, the Trust shall not make or hold any investment, take any action or omit to take any action or permit a Subsidiary to make or hold any investment or take any action or omit to take any action that would result in:
 - (i) the Trust not qualifying as a “mutual fund trust” or “unit trust” both within the meaning of the Tax Act;
 - (ii) Units not qualifying as qualified investments for investment by trusts governed by registered retirement savings plans, registered retirement income funds, registered education savings plans, deferred profit sharing plans, registered disability savings plans or tax-free savings accounts;
 - (iii) if the Trust is a registered investment within the meaning of the Tax Act, the Trust paying a tax under the registered investment provisions of the Tax Act imposed for exceeding certain investment limits;
 - (iv) the Trust not qualifying as a “real estate investment trust”, as defined in subsection 122.1(1) of the Tax Act if, as a consequence of the Trust not so qualifying, the Trust would be subject to tax on its “taxable trust distributions” pursuant to section 122 of the Tax Act; or
 - (v) the Trust being liable to pay a tax imposed under Part XII.2 of the Tax Act;

- (c) the Trust may, directly or indirectly, make such investments, do all such things and carry out all such activities as are necessary or desirable in connection with the conduct of its activities provided they are not otherwise specifically prohibited by this Declaration of Trust;
- (d) unless otherwise specifically prohibited by this Declaration of Trust, the Trust may invest in freehold, leasehold, or other interests in property (real, personal, moveable or immovable);
- (e) the Trust may make its investments and conduct its activities, directly or indirectly, through an investment in one or more persons on such terms as the Trustees may from time to time determine, including by way of joint ventures, partnerships (general or limited) and limited liability companies;
- (f) except for temporary investments held in cash, deposits with a Canadian chartered bank or trust company registered under the laws of a province or of Canada, short-term government debt securities or money market instruments of, or guaranteed by, a Schedule I Canadian chartered bank maturing prior to one year from the date of issue, or except as otherwise permitted by this Declaration of Trust, the Trust may not hold securities other than securities of a person: (i) acquired in connection with the carrying on, directly or indirectly, of the Trust's activities or the holding of its assets; or (ii) which focuses its activities primarily on Focus Activities, provided in the case of any proposed investment or acquisition which would result in the beneficial ownership of more than 20% of the outstanding units of the securities issuer (the "**Acquired Issuer**"), the investment is made for the purpose of subsequently effecting the merger or combination of the business and assets of the Trust and the Acquired Issuer or for otherwise ensuring that the Trust will control the business and operations of the Acquired Issuer;
- (g) the Trust shall not invest in rights to or interests in mineral or other natural resources, including oil or gas, except as ancillary to an investment in real property;
- (h) the Trust may only invest in operating businesses indirectly through one or more trusts, partnerships, corporations or other legal entities;
- (i) the Trust may invest in Mortgages and Mortgage bonds (including a participating or convertible Mortgage) only where (i) the Mortgage or Mortgage bond is secured, (ii) the real property which is security therefor is real property that constitutes a Focus Activity, and (iii) the primary intention is to use such investment as a method of acquiring control of a real property that would otherwise constitute a Focus Activity;
- (j) the Trust shall not invest in raw land for development, except for (i) existing Trust Properties with additional development, (ii) the purpose of

renovating or expanding existing Trust Properties, or (iii) the development of new properties that will constitute a Focus Activity provided that the aggregate cost of the investments of the Trust in raw land, after giving effect to the proposed investment, will not exceed 5% of Gross Book Value; and

- (k) notwithstanding any other provision of this Declaration of Trust but subject to subsection (b) above, the Trust may make investments that do not otherwise comply with one or more of subsections (a), (g) or (j) of the investment guidelines provided the aggregate amount of such investments will not exceed 20% of Gross Book Value.

For the purpose of the foregoing guidelines and restrictions (other than subsection (b)), the assets, liabilities and transactions of a corporation or other entity wholly or partially owned by the Trust will be deemed to be those of the Trust on a proportionate consolidated basis. In addition, any references in the foregoing to investment in real property will be deemed to include an investment in a joint venture arrangement. Nothing in the guidelines and restrictions (other than subsection (b)) prohibits the Trust from holding some or all of the receivables due pursuant to instalment receipt agreements.

6.2 Operating Policies

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

- (a) the Trust shall not purchase, sell, market or trade in currency or interest rate futures contracts otherwise than for hedging purposes to the extent that such hedging activity complies with National Instrument 81-102 - Mutual Funds, as amended from time to time, or any successor instrument or rule and provided that Subsection 6.1(b) is complied with;
- (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 to be practicable and consistent with their fiduciary duty to act in the best interests of Unitholders, any written instrument which is, in the judgment of the Trustees, a material obligation, shall contain a provision or be subject to an acknowledgement to the effect that the obligation being created is not personally binding upon, and that resort shall not be had to, nor shall recourse or satisfaction be sought from, the private property of any of the Trustees, Unitholders, annuitants under a plan of which a Unitholder acts as a trustee or carrier, or Officers, employees or agents of the Trust, but that only Trust Property or a specific portion shall be bound; the Trust, however, is not required, but shall use all reasonable efforts, to comply with this

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

- (c) the Trust shall not incur or assume any Indebtedness if, after giving effect to the incurring or assumption of the Indebtedness, the total Indebtedness of the Trust would be more than 75% of Gross Book Value, unless the Independent Trustees, in their discretion, determine that the maximum amount of Indebtedness shall be based on the appraised value of the real properties of the Trust instead of Gross Book Value;
- (d) at no time shall the Trust incur Indebtedness aggregating more than 20% of Gross Book Value (excluding debt with an original maturity of one year or more falling due in the next 12 months or variable rate debt for which the Trust has entered into interest rate swap agreements to fix the interest rate for a one year period or more) at floating interest rates or having maturities of less than one year;
- (e) the Trust shall not directly or indirectly guarantee any Indebtedness or liabilities of any person unless such guarantee: (i) is given in connection with or incidental to an investment that is otherwise permitted under the Trust's investment guidelines; (ii) has been approved by the Trustees; and (iii) (A) would not disqualify the Trust as a "mutual fund trust" within the meaning of the Tax Act, and (B) would not result in the Trust losing any other status under the Tax Act that is otherwise beneficial to the Trust and its Unitholders;
- (f) title to each real property shall be held by and registered in the name of the Trust, the Trustees or a corporation or other entity wholly-owned, directly or indirectly, by the Trust or jointly owned, directly or indirectly, by the Trust; provided, that where land tenure will not provide fee simple title, the Trust, the Trustees or a corporation or other entity wholly-owned, directly or indirectly, by the Trust or jointly owned, directly or indirectly, by the Trust shall hold a land lease as appropriate under the land tenure system in the relevant jurisdiction;
- (g) the Trust shall have obtained an appraisal of each real property that it intends to acquire and an engineering survey with respect to the physical condition thereof, in each case, by an independent and experienced consultant;
- (h) the Trust shall obtain and maintain at all times insurance coverage in respect of potential liabilities of the Trust and the accidental loss of value of the assets of the Trust from risks, in amounts and with such insurers, in each case as the Trustees consider appropriate, taking into account all relevant factors including the practices of owners of comparable properties; and

- (i) unless the Trustees determine that it is not necessary, the Trust shall have conducted, or be entitled to rely on, a Phase I environmental audit of each real property to be acquired by it and, if the Phase I environmental audit report recommends that further environmental audits be conducted, the Trust shall have conducted such further environmental audits, in each case by an independent and experienced environmental consultant, such audit as a condition to any acquisition shall be satisfactory to the Trustees.

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

6.3 Amendments to Investment Guidelines and Operating Policies

Subject to Section 6.5, all of the investment guidelines set out in Section 6.1 and the operating policies set out in Subsections (a), (c), (d), (e), (g), (h) and (i) of Section 6.2 may be amended only with the approval of not less than two thirds of the votes cast at a meeting of Unitholders called for such purpose. The remaining operating policies may be amended with the approval of a majority of the votes cast at a meeting of Unitholders called for such purpose.

6.4 Application of Investment Guidelines and Operating Policies

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

6.5 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 investment guideline or operating policy of the Trust then in force (other than Subsection 6.1(b)), such investment guideline or operating policy in conflict shall, if the Trustees on the advice of legal counsel to the Trust so resolve, be deemed to have been amended to the extent necessary to resolve any such conflict and, notwithstanding anything to the contrary herein contained, any such resolution of the Trustees shall not require the prior approval of Unitholders.

ARTICLE 7 UNITS

7.1 Units

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

7.2 Special Voting Units

- (a) Each Special Voting Unit shall have no economic entitlement in the Trust or in the distributions or assets of the Trust, but shall entitle the holder of record thereof to a number of votes at any meeting of the Unitholders equal to the number of Trust Units that may be obtained upon the exchange of the exchangeable security, including an Exchangeable Unit, to which such Special Voting Unit is attached. Special Voting Units may only be issued in connection with or in relation to securities exchangeable into Trust Units, including Exchangeable Units, for the purpose of providing voting rights with respect to the Trust to the holders of such securities.
- (b) Special Voting Units shall not be transferable separately from the exchangeable securities to which they are attached and will automatically be transferred upon the transfer of any such exchangeable securities.
- (c) Upon the exchange or surrender of an exchangeable security for a Trust Unit, the Special Voting Unit attached to such exchangeable security will automatically be redeemed and cancelled for no consideration without any further action of the Trustees, and the former holder of such Special Voting Unit will cease to have any rights with respect thereto.
- (d) Concurrently with the issuance of exchangeable securities issued from time to time to which Special Voting Units would be attached, the Trust shall enter into such agreements (including the Exchange Agreement and the Limited Partnership Agreements) as may be necessary or desirable to

properly provide for the terms of the exchangeable securities, including to provide for the voting of such Special Voting Units.

7.3 Trust Units

Each Trust Unit shall represent a proportionate, undivided beneficial ownership interest in the Trust and shall confer the right to one vote at any meeting of Unitholders and to participate *pro rata* in any distributions by the Trust, whether of net income, Net Realized Capital Gains of the Trust or other amounts, and, in the event of termination or winding-up of the Trust, in the net assets of the Trust remaining after satisfaction of all liabilities. No Trust Unit shall have any preference or priority over any other. Trust Units shall rank among themselves equally and rateably without discrimination, preference or priority.

7.4 Consideration for Trust Units

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

7.5 Pre-Emptive Rights

Subject to any binding agreement entered into by the Trust (including the Exchange Agreement), no person shall be entitled, as a matter of right, to subscribe for or purchase any Units of the Trust, whether by pre-emptive right or otherwise.

7.6 Fractional Units

If as a result of any act of the Trustees hereunder any person becomes entitled to a fraction of a Unit, such fractional Unit will not be issued but rather rounded down to the nearest whole Unit.

7.7 Allotment and Issue

Subject to approval rights of Starlight Affiliates contained in the Exchange Agreement, the Trustees may allot and issue Trust Units at such time or times and in such manner (including as consideration for the acquisition of new properties or assets, pursuant to any incentive or option plan established by the Trust from time to time or any plan from time to time in effect relating to reinvestment by Trust Unitholders of distributions of the Trust in Trust Units or pursuant to a unitholder rights plan of the Trust) and for such consideration and to such person, persons or class of persons as the Trustees in their

sole discretion shall determine. Special Voting Units may only be issued in connection with or in relation to exchangeable securities, including Exchangeable Units, for the purpose of providing voting rights to the holders of such securities with respect to the Trust. In the event that Trust Units are issued in whole or in part for consideration other than money, the resolution of the Trustees allotting and issuing such Trust Units shall express the fair equivalent in money of the other consideration received. The price or value of the consideration for which Trust Units may be issued will be determined by the Trustees in their sole discretion, generally in consultation with investment dealers or brokers who may act as underwriters in connection with offerings of Trust Units.

7.8 Rights, Warrants and Options

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

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

7.9 Commissions and Discounts

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

7.10 Transferability

The Trust Units are freely transferable and, except as stipulated in Section 7.111, the Trustees shall not impose any restriction on the transfer of Trust Units by any Trust Unitholder except with the consent of such Trust Unitholder.

7.11 Transfer of Trust Units

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

- (b) Subject to the provisions of this Article 7, Trust Units shall be transferable on the Register only by the holders of record thereof or their executors, administrators or other legal representatives or by their agents or attorneys duly authorized in writing, and only upon delivery to the Trust or to the Transfer Agent of the certificate therefor, properly endorsed or accompanied by a duly executed instrument of transfer or power of attorney and accompanied by all necessary transfer or other taxes imposed by law, together with such evidence of the genuineness of such endorsement, execution and authorization and other matters that may reasonably be required by the Trustees or the Transfer Agent. Upon such delivery the transfer shall be recorded on the Register or branch transfer registers and a new Trust Unit Certificate for the Trust Units shall be issued to the transferee and a new Trust Unit Certificate for the balance of Trust Units not transferred shall be issued to the transferor.

Trust Unit Certificates representing any number of Trust Units may be exchanged without charge for Trust Unit Certificates representing an equivalent number of Trust Units in the aggregate. Any exchange of Trust Unit Certificates may be made at the offices of the Trust or the Transfer Agent where registers are maintained for Trust Unit Certificates pursuant to the provisions of this Article 7. Any Trust Unit Certificates tendered for exchange shall be surrendered to the Trustees or appropriate Transfer Agent and then shall be cancelled.

7.12 Non-Resident Ownership Constraint

At no time may Non-Residents be the beneficial owners of more than 49% of the Trust Units then outstanding and the Trustees will inform the Transfer Agent of this restriction. The Trustees may require a registered holder of Trust Units to provide the Trustees with a declaration as to the jurisdictions in which beneficial owners of Trust Units are resident and as to whether such beneficial owners are Non-Residents. If the Trustees become aware, as a result of acquiring such declarations as to beneficial ownership or as a result of any other investigations, that the beneficial owners of 49% of the Trust Units then outstanding are, or may be, Non-Residents or that such a situation is imminent, the Trustees may make a public announcement thereof and the Transfer Agent shall not accept a subscription for Trust Units from or issue or register a transfer of Trust Units to a person unless the person provides a declaration in form and content

satisfactory to the Trustees that the person is not a Non-Resident and does not hold such Trust Units for the benefit of Non-Residents.

If, notwithstanding the foregoing, the Trustees determine that more than 49% of the Trust Units then outstanding are held by Non-Residents, the Trustees may send a notice to such Non-Resident holders of Trust Units chosen in inverse order to the order of acquisition or registration or in such other manner as the Trustees may consider equitable and practicable, requiring them to sell their Trust Units or a portion thereof within a specified period of not more than 30 days. If the securityholders receiving such notice have not sold the specified number of Trust Units or provided the Trustees with satisfactory evidence that they are not Non-Residents within such period, the Trustees may, on behalf of such securityholders sell such Trust Units without further notice and, in the interim, shall suspend the voting and distribution rights attached to such Trust Units (other than the right to receive the net proceeds from the sale). Upon such sale or conversion, the affected holders shall cease to be holders of the relevant Trust Units and their rights shall be limited to receiving the net proceeds of sale, upon surrender of the certificates, if any, representing such Trust Units. The Trustees shall have no liability for the amount received provided that they act in good faith. The Trust may direct its Transfer Agent to do any of the foregoing.

Special Voting Units (together with the exchangeable securities, including Exchangeable Units, to which they are attached) may not be transferred to Non-Residents if such exchangeable securities are issued by a Partnership.

For greater certainty, the Trust may sell Trust Units in accordance with the terms hereof despite the fact that the Trust does not possess the Trust Unit Certificate or Trust Unit Certificates, if any, representing the Trust Units at the time of the sale. Where, in accordance with this Section 7.12, Trust Units are sold by the Trust without possession of the Trust Unit Certificate or Trust Unit Certificates, if any, representing the same and, after the sale, a person establishes that it is a *bona fide* purchaser without notice of the Trust Units from the Trust Unitholder, then, subject to applicable law:

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

The Trustees shall have the sole right and authority to make any determination required or contemplated under this Section 7.12. The Trustees shall make all determinations necessary for the administration of the provisions of this Section 7.12 and, without limiting the generality of the foregoing, if the Trustees consider that there are reasonable grounds for believing that a contravention of the non-resident ownership restriction has occurred or will occur, the Trustees shall make a determination with respect to the matter. Any such determination shall be conclusive, final and binding

except to the extent modified by any subsequent determination by the Trustees. Notwithstanding the foregoing, the Trustees may delegate, in whole or in part, their power to make a determination to any Officer of the Trust.

Notwithstanding the foregoing, the Trustees may determine not to take any of the actions described above if the Trustees have been advised by legal counsel that the failure to take any of such actions would not adversely impact the status of the Trust as a “mutual fund trust” for purposes of the Tax Act or, alternatively, may take such other action or actions as may be necessary to maintain the status of the Trust as a “mutual fund trust” for purposes of the Tax Act.

7.13 Book Based System

Units may be represented in the form of one or more fully registered unit certificates held by, or on behalf of, CDS, as custodian of such certificates for the participants of CDS, registered in the name of CDS, or its nominee, and registration of ownership and transfers of Units may be effected to the book-based system administered by CDS.

7.14 Redemption of Trust Units

- (a) Each Trust Unitholder shall be entitled to demand, at any time, the Trust to redeem from time to time all or any part of the Trust Units registered in the name of the Trust Unitholder at the prices determined and payable in accordance with the conditions hereinafter provided.
- (b)
 - (i) To exercise a Trust Unitholder’s right to require redemption under this Section 7.14, a duly completed and properly executed notice requiring the Trust to redeem Trust Units, in a form approved by the Trustees, together with written instructions as to the number of Trust Units to be 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.
 - (ii) Upon receipt by the Trust of the notice to redeem Trust Units, the Trust Unitholder shall thereafter cease to have any rights with respect to the Trust Units tendered for redemption (other than to receive the redemption payment therefor) including the right to receive any distributions thereon which are declared payable to the Trust Unitholders of record on a date which is subsequent to the day of receipt by the Trust of such notice. Trust Units shall be considered to be tendered for redemption on the date that the Trust has, to the satisfaction of the Trustees, received the notice and other required documents or evidence as aforesaid.

- (c) (i) Upon receipt by the Trust of the notice to redeem Trust Units, and other required documentation, if any, in accordance with this Section 7.14, the holder of the Trust Units tendered for redemption shall be entitled to receive a price per Trust Unit (the “**Redemption Price**”) equal to the lesser of:
- (A) 90% of the “market price” calculated as of the date (the “**Redemption Date**”) on which the Trust Units were surrendered for redemption; and
 - (B) 100% of the “closing market price” on the Redemption Date;

For the purposes of this calculation, “**market price**” of a Trust Unit as at a specified date will be:

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

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

- (w) an amount equal to the weighted average trading price of a Trust Unit on the principal exchange or market on which the Trust Units are listed or quoted for trading on the specified date if the principal exchange or market provides information

necessary to compute a weighted average trading price of the Trust Units on the specified date;

- (x) an amount equal to the closing price of a Trust Unit on the principal market or exchange if there was a trade on the specified date and the principal exchange or market provides only a closing price of the Trust Units on the specified date;
- (y) an amount equal to the simple average of the highest and lowest prices of the Trust Units on the principal market or exchange, if there was trading on the specified date and the principal exchange or market provides only the highest and lowest trading prices of the Trust Units on the specified date;
or
- (z) the simple average of the last bid and last asking prices of the Trust Units on the principal market or exchange, if there was no trading on the specified date.

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

- (ii) Subject to Subsections 7.14(d) and (e), the Redemption Price payable in respect of the Trust Units tendered for redemption during any calendar month shall be paid by cheque, drawn on a Canadian chartered bank or a trust company in lawful money of Canada, payable at par to, or to the order of, the Trust Unitholder who exercised the right of redemption on or before the last day of the calendar month immediately following the month in which the Trust Units were tendered for redemption. Payments made by the Trust of the Redemption Price are conclusively deemed to have been made upon the mailing of a cheque in a postage prepaid envelope addressed to the former Trust Unitholder unless such cheque is dishonoured upon presentment. Upon such payment, the Trust shall be discharged from all liability to the former Trust Unitholder in respect of the Trust Units so redeemed.
- (d) Paragraph 7.14(c)(ii) shall not be applicable to Trust Units tendered for redemption by a Trust Unitholder, if
- (i) the total amount payable by the Trust pursuant to Subsection 7.14(c) in respect of such Trust Units and all other Trust Units tendered for redemption in the same calendar month exceeds \$50,000 (the “**Monthly Limit**”); provided that the Trustees may, in their sole discretion, waive such limitation in respect of all Trust Units tendered for redemption in any calendar month and, in the

absence of such a waiver, Trust Units tendered for redemption in any calendar month in which the total amount payable by the Trust pursuant to Paragraph 7.14(c)(ii) exceeds the Monthly Limit will be redeemed for cash pursuant to Paragraph 7.14(c)(ii) and, subject to any applicable regulatory approvals, by a distribution in specie of assets held by the Trust on a *pro rata* basis;

- (ii) at the time the Trust Units are tendered for redemption, the outstanding Trust Units are not listed for trading on any stock exchange or market which the Trustees consider, in their sole discretion, provides representative fair market value prices for the Trust Units; or
 - (iii) the normal trading of the outstanding Trust Units is suspended or halted on any stock exchange on which the Trust Units are listed for trading or, if not so listed, on any market on which the Trust Units are quoted for trading, on the **Redemption Date** for such Trust Units or for more than five trading days during the 10 trading day period commencing immediately after the **Redemption Date** for such Trust Units.
- (e) (i) If Paragraph 7.14(c)(ii) is not applicable to Trust Units tendered for redemption by a Trust Unitholder pursuant to Paragraph 7.14(d)(i), the Redemption Price per Trust Unit specified in Subsection 7.14(c) shall be paid and satisfied as follows: (A) a portion of the Redemption Price per Trust Unit equal to the Monthly Limit divided by the number of Trust Units tendered for redemption in the month shall be paid and satisfied in accordance with Paragraph 7.14(c)(ii) applied *mutatis mutandis* and (B) subject to receipt of all necessary regulatory approvals (which the Trust shall use reasonable commercial efforts to obtain forthwith), the remainder of the Redemption Price per Trust Unit shall be paid and satisfied by way of a distribution in specie to such Trust Unitholder of Subsidiary Notes having a fair market value determined by the Trustees equal to the product of (y) the remainder of the Redemption Price per Trust Unit of the Trust Units tendered for redemption and (z) the number of Trust Units tendered by such Trust Unitholder for redemption.
- (ii) If Paragraph 7.14(c)(ii) is not applicable to all of the Trust Units tendered for redemption by a Trust Unitholder pursuant to Paragraphs 7.14(d)(ii) and (iii), the Redemption Price per Trust Unit specified in Subsection 7.14(c) shall, subject to receipt of all necessary regulatory approvals (which the Trust shall use reasonable commercial efforts to obtain forthwith), be paid and satisfied by way of a distribution in specie to such Trust Unitholder of Subsidiary Notes having a fair market value equal to the product

of (A) the Redemption Price per Trust Unit of the Trust Units tendered for redemption and (B) the number of Trust Units tendered by such Trust Unitholder for redemption.

- (iii) For purposes of this Subsection 7.14(e), no Subsidiary Notes in integral multiples of less than \$100 will be distributed and, where Subsidiary Notes to be received by a Trust Unitholder includes a multiple less than that number, the number of Subsidiary Notes shall be rounded to the next lowest integral multiple of \$100 and the balance shall be paid in cash.
 - (iv) The Redemption Price payable pursuant to this Subsection 7.14(e) in respect of Trust 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 Trust Unitholder who exercised the right of redemption, of the Subsidiary Notes, if any, and the cash payment, if any, determined in accordance with the provisions of this Subsection 7.14(e), on or before the last day of the calendar month immediately following the month in which the Trust Units were tendered for redemption.
 - (v) Payments by the Trust pursuant to this Subsection 7.14(e) are conclusively deemed to have been made upon the mailing of certificates representing the Subsidiary Notes, if any, and a cheque, if any, by registered mail in a postage prepaid envelope addressed to the former Trust Unitholder and/or any party having a security interest and, upon such payment, the Trust shall be discharged from all liability to such former Trust Unitholder and any party having a security interest in respect of the Trust Units so redeemed.
 - (vi) The Trust shall be entitled to all accrued interest, paid or unpaid, on the Subsidiary Notes, if any, on or before the date of distribution *in specie* pursuant to this Subsection 7.14(e).
 - (vii) Where the Trust makes a distribution *in specie* on a redemption of Trust Units pursuant to this Subsection 7.14(e), the Trustees may, in their sole discretion, designate and treat as having been paid to the redeeming Trust Unitholders any amount of the capital gains or income realized by the Trust on or in connection with the distribution of such securities to the Trust Unitholder.
- (f) All Trust Units which are redeemed under this Section 7.14 shall be cancelled and such Trust Units shall no longer be outstanding and shall not be reissued.

7.15 Certificate Fee

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

7.16 Form of Trust Unit Certificate

- (a) The form of certificate representing Trust Units and the instrument of transfer, if any, on the reverse side thereof shall, subject to the provisions hereof, be in such form as is from time to time authorized by the Trustees.
- (b) Unless otherwise determined by the Trustees, 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, and such holder shall only be entitled to be entered on the Register in accordance with Section 7.19.

7.17 Trust Unit Certificates

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

7.18 Contents of Trust Unit Certificates

- (a) Until otherwise determined by the Trustees, each Trust Unit Certificate shall legibly set forth on the face thereof, inter alia, the following:
- (i) the name of the Trust and the words “A trust governed under the laws of the Province of Ontario governed by an Amended and Restated Declaration of Trust made on the the 22nd day of May, 2014, as amended from time to time” or words of like effect;
 - (ii) the name of the person to whom the Trust Unit Certificate is issued as Trust Unitholder;
 - (iii) the number of Trust Units represented thereby and whether or not the Trust Units represented thereby are fully paid;
 - (iv) that the Trust Units represented thereby are transferable;
 - (v) “The Units represented by this certificate are issued upon the terms and subject to the conditions of the Declaration of Trust, which Declaration of Trust is binding upon all holders of Units and, by acceptance of this certificate, the holder assents to the terms and conditions of the Declaration of Trust. A copy of the Declaration of Trust, pursuant to which this certificate and the Units represented thereby are issued, may be obtained by a Unitholder on demand and without fee from the head office of the Trust” or words of like effect; and
 - (vi) “For information as to personal liability of a Unitholder, see the reverse side of this certificate” or words of like effect.”
- (b) Until otherwise determined by the Trustees, each such certificate shall legibly set forth on the reverse side thereof, inter alia, the following:
- (i) “The Declaration of Trust provides that no Unitholder shall be subject to any personal liability whatsoever, in tort, contract or otherwise, to any person in connection with the assets of the Trust or the obligations or the affairs of the Trust and all such persons shall look solely to the assets of the Trust for satisfaction of claims of any nature arising out of or in connection therewith and the assets of the Trust only shall be subject to levy or execution”, or words of like effect; and
 - (ii) appropriate forms of notice of exercise of the right of redemption, if applicable, and of powers of attorney for transferring Trust Units.

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

7.19 Register of Unitholders

A register shall be kept at the principal office in Toronto, Ontario of the Transfer Agent, which Register shall contain the names and addresses of the Trust Unitholders, the respective numbers of Trust Units held by them, the certificate numbers of certificates representing such Trust Units and a record of all transfers and redemptions thereof and a register shall be kept at the principal office in Toronto, Ontario of the Trust, which Register shall contain the names and addresses of the holders of Special Voting Units, the respective numbers of Special Voting Units held by them, and a record of all transfers and redemptions thereof (collectively, the “**Register**”). Only Trust Unitholders whose Trust Units are so recorded shall be entitled to receive distributions or to exercise or enjoy the rights of Trust Unitholders hereunder. The Trustees shall have the right to treat the person registered as a Unitholder on the Register as the owner of such Units for all purposes, including payment of any distribution to Trust Unitholders, giving notice to Unitholders and determining the right to attend and vote at meetings of Unitholders.

7.20 Successors in Interest to Unitholders

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

7.21 Units Held Jointly or in Fiduciary Capacity

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

7.22 Performance of Trusts

None of the Trustees, the Officers of the Trust, the Unitholders or the Transfer Agent or other agent of the Trust or the Trustees shall have a duty to inquire into any claim that a transfer of a Unit or other security of the Trust was or would be wrongful or that a

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

7.23 Lost Trust Unit Certificates

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

7.24 Death of Unitholders

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

7.25 Unclaimed Payments

In the event that the Trustees hold any amounts to be paid to Trust Unitholders under Article 11 or otherwise because such amounts are unclaimed or cannot be paid for any reason, neither the Trustees nor any distribution disbursing agent shall be under any obligation to invest or reinvest the same and shall only be obligated to hold the same in a current or other non-interest bearing account with a chartered bank or trust company, pending payment to the person or persons entitled thereto. The Trustees shall, as and when required by law, and may at any time prior to such required time, pay all or part of such amounts so held to a court in the province where the Trust has its principal office or to the Public Guardian and Trustee (or other similar government official or agency) in the province where the Trust has its principal office whose receipt shall be a good and sufficient discharge of the obligations of the Trustees.

7.26 Repurchase of Trust Units

The Trust shall be entitled to purchase for cancellation at any time the whole or from time to time any part of the outstanding Trust Units, at a price per Trust Unit and on a basis determined by the Trustees in compliance with all applicable Securities Laws or the rules or policies of any applicable stock exchange.

7.27 Take-Over Bids

- (a) If within 120 days after the date of a Take-over Bid the bid is accepted by the holders of not less than 90% of the Trust Units, other than Trust Units held at the date of the Take-over Bid by or on behalf of the Offeror or an Affiliate or Associate of the Offeror, the Offeror is entitled, on complying with this Section 7.27, to acquire the Trust Units held by the Dissenting Offerees.
- (b) An Offeror may acquire Trust Units held by a Dissenting Offeree by sending by registered mail within 60 days after the date of termination of the Take-over Bid and in any event within 180 days after the date of the Take-over Bid, an Offeror's notice to each Dissenting Offeree stating that:
 - (i) the Offerees holding more than 90% of the Trust Units to which the bid relates accepted the Take-over Bid;
 - (ii) the Offeror is bound to take up and pay for or has taken up and paid for the Trust Units of the Offerees who accepted the Take-over Bid;
 - (iii) a Dissenting Offeree is required to elect:
 - (A) to transfer his or her Trust Units to the Offeror on the terms on which the Offeror acquired the Trust Units of the Offerees who accepted the Take-over Bid, or

- (B) to demand payment of the fair value of her Trust Units in accordance with Subsections 7.27(h) to 7.27(q) by notifying the Offeror within 20 days after she receives the Offeror's notice;
 - (iv) a Dissenting Offeree who does not notify the Offeror in accordance with Subparagraph 7.27(b)(iii)(B) is deemed to have elected to transfer his or her Trust Units to the Offeror on the same terms that the Offeror acquired the Trust Units from the Offerees who accepted the Take-over Bid; and
 - (v) a Dissenting Offeree must send her Trust Unit Certificates representing the Trust Units to which the Take-over Bid relates to the Trust within 20 days after she receives the Offeror's notice.
- (c) Concurrently with sending the Offeror's notice under Subsection 7.27(b), the Offeror shall send to the Trust a notice of adverse claim disclosing the name and address of the Offeror and the name of the Dissenting Offeree with respect to each Trust Unit held by a Dissenting Offeree.
- (d) A Dissenting Offeree to whom an Offeror's notice is sent under Subsection 7.27(b) shall, within 20 days after she receives that notice, send her Trust Unit Certificates to the Trust.
- (e) Within 20 days after the Offeror sends an Offeror's notice under Subsection 7.27(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 Subsection 7.27(b)(iii)(A).
- (f) The Trust is deemed to hold in trust for the Dissenting Offeree the money or other consideration it receives under Subsection 7.27(e), and the Trust shall deposit the money in a separate account in a bank or other body corporate any deposits of which are insured by the Canada Deposit Insurance Corporation or guaranteed by the Québec Deposit Insurance Board, and shall place the other consideration in the custody of a bank or such other body corporate.
- (g) Within 30 days after the Offeror sends an Offeror's notice under Subsection 7.27(b), the Trust shall:
- (i) issue to the Offeror a Trust Unit Certificate in respect of the Trust Units that were held by Dissenting Offerees;
 - (ii) give to each Dissenting Offeree who elects to accept the Take-over Bid terms under Subparagraph 7.27(b)(iii)(A) and who sends her Trust Unit Certificates as required under Subsection 7.27(d), the

money or other consideration to which she is entitled, disregarding fractional Trust Units, if any, which may be paid for in money; and

- (iii) send to each Dissenting Offeree who has not sent her Trust Unit Certificates as required under Subsection 7.27(d) a notice stating that:
 - (A) his Trust Units have been cancelled,
 - (B) the Trust or some designated person holds in trust for her the money or other consideration to which she is entitled as payment for or in exchange for her Trust Units, and
 - (C) the Trust will, subject to Subsections 7.27(h) to 7.27(q), send that money or other consideration to her forthwith after receiving her Trust Units.
- (h) If a Dissenting Offeree has elected to demand payment of the fair value of her Trust Units under Subparagraph 7.27(b)(iii)(B), the Offeror may, within 20 days after it has paid the money or transferred the other consideration, under Subsection 7.27(e), apply to a court to fix the fair value of the Trust Units of that Dissenting Offeree.
- (i) If an Offeror fails to apply to a court under Subsection 7.27(h), a Dissenting Offeree may apply to a court for the same purpose within a further period of 20 days.
- (j) Where no application is made to a court under Subsection 7.27(i) within the period set out in that subsection, a Dissenting Offeree is deemed to have elected to transfer her Trust Units to the Offeror on the same terms that the Offeror acquired the Trust Units from the Offerees who accepted the Take-over Bid.
- (k) An application under Subsections 7.27(h) or 7.27(i) shall be made to a court having jurisdiction in the place where the Trust has its registered office.
- (l) A Dissenting Offeree is not required to give security for costs in an application made under Subsections 7.27(h) or 7.27(i).
- (m) On an application under Subsections 7.27(h) or 7.27(i):
 - (i) all Dissenting Offerees referred to in Subparagraph 7.27(b)(iii)(B) whose Trust Units have not been acquired by the Offeror shall be joined as parties and shall be bound by the decision of the court; and

- (ii) the Offeror shall notify each affected Dissenting Offeree of the date, place and consequences of the application and of her right to appear and be heard in person or by counsel.
- (n) On an application to a court under Subsections 7.27(h) or 7.27(i) the court may determine whether any other person is a Dissenting Offeree who should be joined as a party, and the court shall then fix a fair value for the Trust Units of all Dissenting Offerees.
- (o) A court may in its discretion appoint one or more appraisers to assist the court to fix a fair value for the Trust Units of a Dissenting Offeree.
- (p) The final order of the court shall be made against the Offeror in favour of each Dissenting Offeree and for the amount for her Trust Units as fixed by the court.
- (q) In connection with proceedings under this Section 7.27, a court may make any order it thinks fit and, without limiting the generality of the foregoing, it may:
 - (i) fix the amount of money or other consideration that is required to be held in trust under Subsection 7.27(f);
 - (ii) order that money or other consideration be held in trust by a person other than the Trust; and
 - (iii) allow a reasonable rate of interest on the amount payable to each Dissenting Offeree from the date she sends or delivers her Trust Unit Certificates under Subsection 7.27(d) until the date of payment.

ARTICLE 8 MEETINGS OF UNITHOLDERS

8.1 Annual Meeting

There shall be an annual meeting of the Unitholders, commencing in 2013, at such time and place in Canada and for such purposes as the Trustees may prescribe for the purpose of presentation of the audited financial statements of the Trust for the immediately preceding year, electing Trustees (other than Starlight Appointed Trustees), appointing or removing the Auditors of the Trust and transacting such other business as the Trustees may determine or as may properly be brought before the meeting. The annual meeting of Unitholders shall be held after delivery to the Unitholders of the information referred to in Section 18.8 and within 180 days after the end of each Fiscal Year, or as otherwise required by the rules of any public market on which Trust Units are listed or quoted for trading.

8.2 Other Meetings

The Trustees shall have power at any time to call special meetings of the Unitholders at such time and place as the Trustees may determine. Unitholders holding in the aggregate not less than 10% of the outstanding Units of the Trust may requisition the Trustees in writing to call a special meeting of the Unitholders for the purposes stated in the requisition. If there are no Trustees, the Officers of the Trust shall promptly call a special meeting of the Unitholders for the election of successor Trustees (other than Starlight Appointed Trustees). The requisition shall state in reasonable detail the business proposed to be transacted at the meeting and shall be sent to each of the Trustees at the principal office of the Trust. Unitholders shall have the right to obtain a list of Unitholders to the same extent and upon the same conditions as those which apply to shareholders of a corporation governed by the *Canada Business Corporations Act*. Upon receiving the requisition, the Trustees shall call a meeting of Unitholders to transact the business referred to in the requisition, unless:

- (a) a record date for a meeting of the Unitholders has been fixed and notice thereof has been given to each stock exchange in Canada on which the Trust Units are listed for trading;
- (b) the Trustees have called a meeting of the Unitholders and have given notice thereof pursuant to Section 8.3;
- (c) in connection with the business as stated in the requisition:
 - (i) it clearly appears to the Trustees, acting reasonably, that the matter covered by the requisition is submitted by the Unitholder primarily for the purpose of enforcing a personal claim or redressing a personal grievance against the Trust, the Trustees, the Officers of the Trust or its security holders;
 - (ii) it clearly appears to the Trustees, acting reasonably, 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 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 Unitholders in an information circular (including a dissident's information circular) relating to a meeting of Unitholders held within two years preceding the receipt of the Unitholder's request and the matter covered by the requisition was defeated; or

- (v) the rights conferred by this Section 8.2 are being abused to secure publicity; or
- (d) the Unitholder(s) submitting the requisition previously submitted a requisition to call a special meeting of Unitholders (the “past meeting”) within two years preceding the receipt of the present requisition and failed to continue to hold or own 10% of the outstanding Units of the Trust up to and including the day of such past meeting.

Subject to the foregoing, if the Trustees do not within 21 days after receiving the requisition call a meeting, any Unitholder who signed the requisition may call the meeting in accordance with the provisions of Section 8.3 and Section 8.8 and the Trustees’ Regulations, mutatis mutandis. The phrase “meeting of the Unitholders” wherever it appears in this Declaration of Trust shall mean and include both an annual meeting and any other meeting of Unitholders.

8.3 Notice of Meeting of Unitholders

Notice of all meetings of the Unitholders shall be provided by the Trustees to each Unitholder entitled to vote at a meeting of the Unitholders at their 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 relevant stock exchange before the meeting. Such notice shall specify the time when, and the place where, such meeting is to be held and shall briefly state the general nature of the business to be transacted at such meeting, and shall otherwise include such information as would be provided to shareholders of a corporation governed by the *Canada Business Corporations Act* in connection with a meeting of shareholders. Any adjourned meeting, other than a meeting adjourned for lack of a quorum under Section 8.5, may be held as adjourned without further notice. Notwithstanding the foregoing, a meeting of Unitholders may be held at any time without notice if all the Unitholders are present or represented thereat or those not so present or represented have waived notice. Any Unitholder (or a duly appointed proxy of a Unitholder) may waive any notice required to be given under the provisions of this Section 8.3, and such waiver, whether given before or after the meeting, shall cure any default in the giving of such notice. Attendance at a meeting of Unitholders shall constitute a waiver of notice unless the Unitholder or other person attends the meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not properly called.

8.4 Chairperson

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

8.5 Quorum

A quorum for any meeting of the Unitholders shall be individuals present in person or represented by proxy, not being less than two in number, provided that if the Trust has only one Unitholder, the Unitholder present in person or by proxy constitutes a meeting and a quorum for such meeting, representing in the aggregate not less than 10% of the total number of outstanding Units on the record date for the meeting. If a quorum is present at the opening of a meeting, the Unitholders may proceed with the business of the meeting, notwithstanding that a quorum is not present throughout the meeting. The Chair of any meeting at which a quorum of Unitholders is present may, with the consent of the majority of the Unitholders present in person or by proxy, adjourn at such meeting and no notice of any such adjournment need be given. In the event of such quorum not being present at the appointed place on the date for which the meeting is called within one-half hour after the time fixed for the holding of such meeting, the meeting, if called by request of Unitholders, shall be terminated and, if otherwise called, shall stand adjourned to such day being not less than seven days later and to such place 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.

8.6 Voting

Holders of Units may attend and vote at all meetings of the Unitholders either in person or by proxy. Each Trust Unit shall entitle the holder of record thereof to one vote at all meetings of the Unitholders. Each Special Voting Unit will entitle the holder of record thereof to a number of votes at all meetings of the Unitholders equal to the number of Trust Units that may be obtained upon the exchange of the exchangeable security, including an Exchangeable 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. Every question submitted to a meeting, other than a Special Resolution, shall, unless a poll vote is demanded, be decided by a show of hands, on which every person present and entitled to vote shall be entitled to one vote.

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

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

8.7 Matters on which Unitholders Shall Vote

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

- (a) except as otherwise provided in this Declaration of Trust, the appointment, election or removal of Trustees;
- (b) except as provided in Section 18.6, the appointment or removal of Auditors;
- (c) any amendment to the Declaration of Trust (except as provided in Sections 6.5 or 13.1);
- (d) the sale or transfer of the assets of the Trust and its Subsidiaries as an entirety or substantially as an entirety (other than as a part of an internal reorganization of the assets of the Trust and its Subsidiaries as approved by the Trustees);
- (e) the termination of the Trust or its Subsidiaries (other than as part of an internal reorganization as approved by the Trustees); or
- (f) the taking of any action upon any matter, which under applicable law (including policies of Canadian securities commissions) or applicable stock exchange rules, would require approval by ordinary resolution had the Trust been a reporting issuer (or the equivalent) in the jurisdictions in which the Trust is a reporting issuer (or the equivalent) and had Units been listed for trading on the stock exchanges where the Trust Units are listed for trading, respectively.

Nothing in this Section 8.7, however, shall prevent the Trustees from submitting to a vote of Unitholders any matter which they deem appropriate. Except with respect to the matters specified in Sections 8.7, 13.2, 13.3, 13.4 and 16.2 or matters submitted to a vote of the Unitholders by the Trustees, no vote of the Unitholders shall in any way bind the Trustees.

8.8 Record Dates

For the purpose of determining the Unitholders who are entitled to receive notice of and vote at any meeting or any adjournment thereof or for the purpose of any other action, the Trustees may from time to time, without notice to the Unitholders, close the transfer books for such period, not exceeding 35 days, as the Trustees may determine; or without closing the transfer books the Trustees may fix a date not more than 60 days

prior to the date of any meeting of the Unitholders or other action as a record date for the determination of Unitholders entitled to receive notice of and to vote at such meeting or any adjournment thereof or to be treated as Unitholders of record for purposes of such other action, and any Unitholder who was a Unitholder at the time so fixed shall be entitled to receive notice of and vote at such meeting or any adjournment thereof, even though she has since that date disposed of her Units, and no Unitholder becoming such after that date shall be entitled to receive notice of and vote at such meeting or any adjournment thereof or to be treated as a Unitholder of record for purposes of such other action. If, in the case of any meeting of Unitholders, no record date with respect to voting has been fixed by the Trustees, the record date for voting shall be 5:00 p.m. on the last business day before the meeting.

Unitholders may examine the list of Unitholders of record: (i) during usual business hours at the registered office of the Trust or Transfer Agent; and (ii) at the meeting of Unitholders for which the list was prepared.

8.9 Proxies

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

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

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

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

8.10 Personal Representatives

If a Unitholder is deceased, her personal representative, upon filing with the secretary of the meeting such proof of her appointment as the secretary considers sufficient, shall be entitled to exercise the same voting rights at any meeting of Unitholders as the Unitholder would have been entitled to exercise if she were living and for the purpose of the meeting shall be considered to be a Unitholder. Subject to the provisions of the will of a deceased Unitholder, if there is more than one personal representative, the provisions of Section 7.21 relating to joint holders shall apply. When any Unit is held jointly by several persons, any one of them may vote at any meeting in person or by proxy in respect of such Unit, but if more than one of them shall be present at such meeting in person or by proxy, and such joint owners or their proxies so present disagree as to any vote to be cast, such vote purporting to be executed by or on behalf of a Unitholder shall be deemed valid unless challenged at or prior to its exercise, and the burden of proving invalidity shall rest on the challenger.

8.11 Attendance by Others

Any Trustee, Officer or employee of the Trust, Officer, director or employee of the Subsidiaries, representative of the Auditors or other individuals approved by the Trustees may attend and speak at any meeting of Unitholders.

8.12 Conduct of Meetings

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

8.13 Binding Effect of Resolutions

Every resolution passed at a meeting in accordance with the provisions of this Article 8 shall be binding upon all Unitholders, whether present at or absent from the meeting. Subject to Section 8.7, no action taken by Unitholders at any meeting of Unitholders shall in any way bind the Trust or the Trustees without approval of the Trustees.

8.14 Resolution in Lieu of Meeting

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

8.15 Actions by Unitholders

Any action, change, approval, decision or determination required or permitted to be taken or made by the Unitholders hereunder shall be effected by a resolution passed by the Unitholders at a duly constituted meeting (or a Special Resolution in lieu thereof) or by written resolution in lieu thereof, all in accordance with this Article 8.

8.16 Meaning of “Special Resolution”

- (a) The expression “**Special Resolution**” when used in this Declaration of Trust means, subject to this Article 8, a resolution proposed to be passed as a special resolution at a meeting of Unitholders (including an adjourned meeting) duly convened for that purpose and held in accordance with the provisions of this Article 8 at which there are individuals present in person or represented by proxy, not being less than two in number, provided that if the Trust has only one Unitholder, the Unitholder present in person or by proxy constitutes a meeting and a quorum for such meeting, representing in the aggregate not less than 10% of the total number of outstanding Units on the record date for the meeting and passed by the affirmative votes of the holders of not less than 66 2/3% of the Units represented at the meeting and voted on a poll upon such resolution.
- (b) Notwithstanding Subsection 8.16(a), if at any meeting of Unitholders at which a Special Resolution is proposed to be passed, two individuals representing not less than 10% of the outstanding Units on the record date for the meeting are not present in person or by proxy within one-half hour after the time appointed for the meeting, then the meeting, if convened by or on the requisition of Unitholders, shall be dissolved, but in any other case it shall stand adjourned to such date, being not less than 21 nor more than 60 days later and to such place and time as may be appointed by the chairperson of the meeting. Not less than 10 days’ prior notice shall be given of the time and place of such adjourned meeting in the manner provided in Section 8.3. Such notice shall state that at the adjourned meeting the Unitholders present in person or by proxy shall form a quorum but it shall not be necessary to set forth the purposes for which the meeting was originally called or any other particulars. At the adjourned meeting, the Unitholders present in person or by proxy shall form a quorum and may transact the business for which the meeting was originally convened and a resolution proposed at such adjourned meeting and passed by the requisite vote as provided in Subsection 8.16(a) shall be a Special Resolution within the meaning of this Declaration of Trust.
- (c) Votes on a Special Resolution shall always be given on a poll and no demand for a poll on a Special Resolution shall be necessary.

8.17 Meaning of “Outstanding”

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

- (a) when a new certificate has been issued in substitution for a Trust Unit Certificate which has been lost, stolen, mutilated or destroyed, only one of such Trust Unit Certificates shall be counted for the purposes of determining the number of Units outstanding; and
- (b) for the purpose of any provision of this Declaration of Trust entitling holders of outstanding Units to vote, sign consents, requisitions or other instruments or, take any action under this Declaration of Trust, Units owned directly or indirectly, legally or equitably, by the Trust or any Subsidiary thereof shall be disregarded, except that:
 - (i) for the purpose of determining whether the Trustees shall be protected in relying on any such vote, consent, requisition or other instrument or action, only the Units which the Trustees know are so owned shall be so disregarded; and
 - (ii) Units so owned which have been pledged in good faith other than to the Trust or a Subsidiary 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 her discretion free from the control of the Trust or any Subsidiary thereof.

ARTICLE 9 MEETINGS OF THE TRUSTEES

9.1 Trustees May Act Without Meeting

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

9.2 Notice of Meeting

Meetings of the Trustees may be held from time to time upon the giving of notice by any Trustee or the Chief Executive Officer or Chief Financial Officer of the Trust. Regular meetings of the Trustees may be held without call or notice at a time and place fixed in accordance with the Trustees’ Regulations. Notice of the time and place of any other meetings shall be mailed or otherwise verbally given, by telephone or by other means of communication, not less than 48 hours before the meeting but may be waived in writing by any Trustee either before, at or after such meeting. Notice of a meeting of Trustees need not specify the purpose of or the business to be transacted at the meeting. If a

quorum of Trustees is present, the Trustees may without notice hold a meeting immediately following an annual meeting of Unitholders. The attendance of a Trustee at a meeting, in person or by telephone shall constitute a waiver of notice of such meeting except where a Trustee attends a meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting has not been lawfully called or convened.

9.3 Place of Meeting

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

9.4 Chair

The chair of any meeting of the Trustees shall be the Trustee present at the meeting who holds the office of Chair of the Trustees or if such person is not present, the Lead Trustee, or if neither of such persons are present, the Trustees present shall choose one of their number to be chairperson. In addition, if applicable, in order to transact any matter set out in Section 4.2, a majority of the Independent Trustees or of the Independent Trustees on such committee, as the case may be, must be present at the meeting of the Trustees or of the committee.

9.5 Quorum

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

ARTICLE 10 COMMITTEES OF TRUSTEES

10.1 General

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

to whether such authority is normally granted or delegated by trustees. The Trustees shall have the power to determine the term and compensation of an advisor or any other person whom they may employ or with whom they may contract. The Trustees shall have the power to grant powers of attorney as required in connection with any financing or security relating thereto. Without in any way limiting the generality of the foregoing, the Trustees shall appoint:

- (a) an audit committee (the “**Audit Committee**”) to consist of at least three Trustees, all of whom (i) shall be “independent” and “financially literate” within the meaning of National Instrument 52-110 - *Audit Committees*, as replaced or amended from time to time (including any successor rule or policy thereto), (ii) shall meet any requirements imposed by applicable law for the purpose of membership on such committee, and (iii) shall not be Starlight Appointed Trustees.
- (b) a governance, compensation and nominating committee (the “**Governance, Compensation and Nominating 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, a majority of whom shall (i) have at least five years of substantial experience in the real estate industry, and (ii) be Independent Trustees.

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

10.2 Additional Committees

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

10.3 Procedure

Unless otherwise determined by the Trustees, a quorum for meetings of any committee shall be a majority of its members provided that a majority of the Trustees comprising such quorum must be Residents. Each committee shall have the power to appoint its chairperson who must be a Resident and may adopt its own rules for calling, holding, conducting and adjourning meetings of the committee. Each member of a committee shall serve during the pleasure of the Trustees and, in any event, only so long as he 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.

10.4 Operator

The Trustees may exercise broad discretion in allowing any person to operate the real properties of the Trust, including operating, maintaining, leasing and marketing the said properties, to act as agent for the Trust in respect thereof and to execute documents on behalf of the Trustees in respect thereof, all subject to the overriding authority of the Trustees over the management and affairs generally of the Trust.

ARTICLE 11 DISTRIBUTIONS

11.1 Distributions

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

On the last day of each Taxation Year, an amount equal to the net income of the Trust for such Taxation Year, determined in accordance with the provisions of the Tax Act other than Paragraph 82(1)(b) and Subsection 104(6) thereof, including Net Realized Capital Gains of the Trust (other than capital gains the tax on which may be recoverable by the Trust) shall, without any further action of the Trustees, be payable to Trust Unitholders of record at the close of business on such day (whether or not such day is a Business Day), subject to any adjustments the Trustees consider reasonable, at their sole discretion.

The Trustees may designate and make payable any income or capital gains realized by the Trust as a result of the redemption of Trust Units (including any income or capital gains realized by the Trust on the redemption of Trust Units in specie) pursuant to Section 7.14 to the redeeming Trust Unitholders in accordance with Paragraph 7.14(e)(vii).

Distributions payable to Trust Unitholders pursuant to this Article 11 shall be deemed to be distributions of income of the Trust (including dividends), net realized taxable capital gains of the Trust, Trust capital or other items in such amounts as the Trustees, in their absolute discretion determine and shall be allocated to the Trust Unitholder in the same proportions as distributions received by the Trust Unitholder, subject to the discretion of the Trustees to adopt an allocation method which the Trustees consider to be more reasonable in the circumstances, including in accordance with Paragraph 7.14(e)(vii). For greater certainty it is hereby declared that any distribution of Net Realized Capital Gains of the Trust shall include the non-taxable portion of the capital gains of the Trust which are included in such distribution.

Any distribution shall be made on a Distribution Date proportionately to persons who are Trust Unitholders as of the close of business on the record date for such distribution which shall be the last Business Day of the calendar month immediately preceding the month in which the Distribution Date falls or such other date, if any, as is fixed by the Trustees in accordance with Section 8.8. Each year the Trust intends to deduct such amounts as are paid or payable to Trust Unitholders for the year as is necessary to ensure that the Trust is not liable for non-refundable income tax under Part I of the Tax Act in the related Taxation Year.

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

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

11.2 Allocation

Unless the Trustees otherwise determine, the (i) net income of the Trust for a Taxation Year, determined in accordance with the provisions of the Tax Act other than Paragraph 82(1)(b) and Subsection 104(6); and (ii) Net Realized Capital Gains of the Trust payable to Trust Unitholders shall be allocated to the Trust Unitholders for the purposes of the Tax Act in the same proportion as the total distributions made to Trust Unitholders in the Taxation Year under Section 11.1. The Trustees shall in each year make such other designations for tax purposes in respect of distributions that the Trustees consider to be reasonable in all of the circumstances.

11.3 Payment of Distributions

Distributions shall be made by cheque payable to or to the order of the Trust Unitholder or by electronic funds transfer or by such other manner of payment approved by the Trustees from time to time. The payment, if made by cheque, shall be conclusively deemed to have been made upon hand-delivery of a cheque to the Trust Unitholder or to her agent duly authorized in writing or upon the mailing of a cheque by prepaid first-class mail addressed to the Trust Unitholder at her address as it appears in the Register unless the cheque is not paid on presentation. The Trustees may issue a replacement cheque if they are satisfied that the original cheque has not been received or has been lost or destroyed upon being furnished with such evidence of loss, indemnity or other document in connection therewith that they may in their discretion consider necessary.

The Trustees shall deduct or withhold from distributions payable to any Trust Unitholder all amounts required by law to be withheld from such distribution and the Trust shall remit such taxes to the appropriate governmental authority within the times prescribed by law. Trust Unitholders who are Non-Residents will be required to pay all withholding taxes payable in respect of any distributions of income by the Trust, whether such distributions are in the form of cash or additional Trust Units, and the Trust may dispose of any Trust Units or other property that is otherwise to be so distributed to such Trust Unitholders in order to pay such withholding taxes and to pay all the Trust's reasonable

expenses with regard thereto and the Trust shall have the power of attorney of such Trust Unitholders to do so.

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

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

11.4 Income Tax Matters

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

11.5 Designations

The Trustees shall make such designations for income tax purposes in respect of amounts paid or payable to Trust Unitholders as distributions or redemption proceeds for such amounts that the Trustees consider to be reasonable, including designations relating to taxable dividends received by the Trust in the year on shares of taxable Canadian corporations, net taxable capital gains of the Trust in the year and foreign source income of the Trust for the year.

11.6 Definitions

Unless otherwise specified or the context otherwise requires, any term in this Article 11 which is defined in the Tax Act shall have for the purposes of this Article 11 the meaning that it has in the Tax Act.

ARTICLE 12 FEES AND EXPENSES

12.1 Expenses

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

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

12.2 Payment of Real Property and Brokerage Commissions

The Trust may pay real property and brokerage commissions at commercial rates in respect of the acquisition and disposition of any investment acquired or disposed of by it.

12.3 Asset Management, Leasing and Financing Fees

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

ARTICLE 13 AMENDMENTS TO THE DECLARATION OF TRUST

13.1 Amendments by the Trustees

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

- (a) aimed at ensuring continuing compliance with applicable laws, regulations, requirements or policies of any governmental authority having jurisdiction over: (i) the Trustees; (ii) the Trust; or (iii) the distribution of Units;
- (b) which, in the opinion of the Trustees, provide additional protection for the Unitholders;
- (c) to remove any conflicts or inconsistencies in this Declaration of Trust or to make corrections which are, in the opinion of the Trustees, necessary or desirable and not prejudicial to the Unitholders;
- (d) which, in the opinion of the Trustees, are necessary or desirable to remove conflicts or inconsistencies in this Declaration of Trust;
- (e) of a minor or clerical nature or to correct typographical mistakes, ambiguities or manifest omissions or errors, which amendments, in the opinion of the Trustees, are necessary or desirable and not prejudicial to the Unitholders;
- (f) which, in the opinion of the Trustees, are necessary or desirable: (i) as a result of changes in accounting standards from time to time that may affect the Trust or its beneficiaries; or (ii) to ensure the Trust Units qualify as equity for purposes of IFRS;
- (g) which, in the opinion of the Trustees, are necessary or desirable to enable the Trust to implement a Trust Unit option or purchase plan or issue Units for which the purchase price is payable in instalments;

- (h) which, in the opinion of the Trustees, are necessary or desirable and not prejudicial to the Unitholders, (i) to create and issue one or more new classes of preferred equity securities of the Trust (each of which may be comprised of unlimited series) that rank in priority to the Units (in payment of distributions and in connection with any termination or winding up of the Trust); and/or (ii) to remove the redemption right attaching to the Units and convert the Trust into a closed-end limited purpose trust;
- (i) which, in the opinion of the Trustees, are necessary or desirable for the Trust to qualify for a particular status under, or as a result of changes in, taxation or other laws, or the interpretation of such laws, including to qualify as a “mutual fund trust”, “unit trust” or “real estate investment trust” as those terms are defined in the Tax Act or to otherwise prevent the Trust or any of its Subsidiary Entities from becoming subject to tax under the rules applicable to specified investment flow-through trusts and specified investment flow-through partnerships in the Tax Act;
- (j) to create one or more additional classes of units solely to provide voting rights to holders of shares, units or other securities that are exchangeable for Trust Units entitling the holder thereof to a number of votes not exceeding the number of Trust Units into which the exchangeable shares, units or other securities are exchangeable or convertible but that do not otherwise entitle the holder thereof to any rights with respect to the Trust’s property or income other than a return of capital; and
- (k) for any purpose (except one in respect of which a Unitholder vote is specifically otherwise required) which, in the opinion of the Trustees, is not prejudicial to Unitholders and is necessary or desirable,

but notwithstanding the foregoing, no such amendment, other than an amendment made pursuant to Subsection 13.1(f), shall modify the right to vote attached to any Unit or reduce the equal undivided interest in the Trust Property or the entitlement to distributions from the Trust provided hereunder (including those provided for in Article 11 and ARTICLE 16) represented by any Unit without the consent of the Unitholders provided in accordance with Sections 13.2, 13.3, 13.4 and 13.7, as applicable.

13.2 Amendments by Unitholders

Subject to Sections 13.3, 13.4 and 13.7, this Declaration of Trust may be amended by the vote of a majority of the votes cast at a meeting of Unitholders called for that purpose.

13.3 Approval by Special Resolution

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

- (a) any amendment to this Section 13.3;
- (b) an exchange, reclassification or cancellation of all or part of the Units;
- (c) the addition, change or removal of the rights, privileges, restrictions or conditions attached to the Units except where such addition, change or removal is made by the Trustees pursuant to Subsections 13.1(h), 13.1(i), 13.1(j) of this Declaration of Trust;
- (d) any constraint of the issue, transfer or ownership of Units or the change or removal of such constraint;
- (e) any sale or transfer of the assets of the Trust or its Subsidiaries as an entirety or substantially as an entirety (other than as part of an internal reorganization of the assets of the Trust or its Subsidiaries as approved by the Trustees);
- (f) the termination of the Trust or its Subsidiaries (other than as part of an internal reorganization as approved by the Trustees);
- (g) the combination, amalgamation or arrangement of any of the Trust or its Subsidiaries with any other entity that is not the Trust or a Subsidiary of the Trust (other than as part of an internal reorganization as approved by the Trustees); or
- (h) as contemplated by the first sentence of Section 6.3;

but notwithstanding the foregoing and subject to Section 13.1, any amendment that directly or indirectly adds, removes or changes any of the rights, privileges, restrictions or conditions in respect of the Special Voting Units shall not occur without the approval of holders of more than a majority of the Special Voting Units represented at any such meeting and voted on a poll upon such resolution (or by written resolution in lieu thereof).

13.4 Amendment by the Sole Unitholder

Notwithstanding Sections 13.1, 13.2, 13.3 and 13.7, so long as the Initial Unitholder is the sole Unitholder of the Trust, the Initial Unitholder may make any amendment to this Declaration of Trust including this Section 13.4, and will provide prompt notice of any such amendment to the Trustees.

13.5 No Termination

No amendment to or amendment and restatement of this Declaration of Trust, whether pursuant to this Article 13 or otherwise, shall be construed as a termination of the Trust and the settlement or establishment of a new trust.

13.6 Trustees to Sign Amendment

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

13.7 Restriction on Amendments Affecting Certain Rights of Starlight Affiliates

No amendment shall be made:

- (a) to Section 3.1;
- (b) to this Section 13.7; or
- (c) that limits or alters the rights of Starlight contained in Subsection 3.8(b);

without the written consent of Starlight, acting reasonably.

**ARTICLE 14
FURTHER SPECIAL RESOLUTION MATTERS**

14.1 Further Unitholder Special Resolution Matters

No material amendment shall be made to any Limited Partnership Agreement, if the Partnership governed by such Limited Partnership Agreement beneficially owns real properties having an aggregate cost to the Trust (net of the amount of debt incurred or assumed at the time of their acquisition) exceeding 20% of Gross Book Value, unless the same has been duly approved by Special Resolution, excluding votes represented by Units held directly or indirectly by Starlight Affiliates.

**ARTICLE 15
SUPPLEMENTAL INDENTURES**

15.1 Provision for Supplemental Indentures for Certain Purposes

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

- (a) modifying or amending any provisions of this Declaration of Trust in the circumstances set forth in Section 13.1 where the Trustees may do so

without the consent, approval or ratification of the Unitholders or any other person; and

- (b) modifying or amending any provisions of this Declaration of Trust where the modification or amendment has been approved by an ordinary resolution, Special Resolution or, if required, with the consent of the holders of the applicable class of Units.

ARTICLE 16 TERMINATION OF THE TRUST

16.1 Duration of the Trust

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

16.2 Termination

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

16.3 Effect of Termination

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

16.4 Procedure Upon Termination

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

16.5 Powers of the Trustees Upon Termination

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

16.6 Further Notice to Unitholders

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

16.7 Responsibility of the Trustees after Sale and Conversion

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

ARTICLE 17 LIABILITIES OF TRUSTEES AND OTHERS

17.1 Liability and Indemnification of the Trustees

The Trustees shall at all times, including, for the purposes of this Article 17, the time after they have ceased to be a Trustee, be indemnified and saved harmless out of the Trust Property 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 client basis) which they sustain or incur in or about or in relation to the affairs of the Trust (whether accrued, actual, contingent or otherwise), claims, costs, charges or expenses arising out of or in connection with the presence, release, discharge or disposal of any hazardous substance or any adverse environmental conditions at, on, under or near any real property or any investigation, remediation or clean up action required to be undertaken in connection with any real property. Further, the Trustees shall not be liable to the Trust or to any Unitholder or Annuitant for any loss or damages relating to any matter regarding the Trust, including any loss or diminution in the value of the Trust or its assets. The foregoing provisions of this Section 17.1 in favour of any Trustee do not apply unless:

- (a) the Trustee acted honestly and in good faith with a view to the best interests of the Trust and the Unitholders; and

- (b) in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, the Trustee had reasonable grounds for believing his conduct was lawful.

The Trustees shall not at any time be indemnified or saved harmless by any Unitholder.

17.2 Indemnification of Trustees

Each Trustee, each former Trustee, each Officer of the Trust and each former Officer of the Trust shall be entitled to be and shall be indemnified and reimbursed out of the Trust's property in respect of any and all taxes, penalties or interest in respect of unpaid taxes or other governmental charges imposed upon the Trustee or former Trustee or Officer or former Officer in consequence of its performance of its duties hereunder and in respect of any and all costs, charges and expenses, including amounts paid to settle an action or satisfy a judgment, reasonably incurred in respect of any civil, criminal or administrative action or proceeding, to which the Trustee, former Trustee, Officer or former Officer is made a party by reason of being or having been a Trustee or Officer of the Trust or, at the request of the Trust, a trustee or Officer or any Subsidiary or Affiliate thereof, provided that a Trustee, former Trustee, Officer or former Officer shall not be indemnified out of the Trust's property in respect of unpaid taxes or other governmental charges or in respect of such costs, charges and expenses that arise out of or as a result or in the course of a breach of the standard of care, diligence and skill set out in Section 4.6. A Trustee, former Trustee, Officer or former Officer shall not be entitled to satisfy any right of indemnity or reimbursement granted herein, or otherwise existing under law, except out of the Trust's property, and no Unitholder or other Trustee or Officer shall be personally liable to any person with respect to any claim for such indemnity or reimbursement as aforesaid.

17.3 Contractual Obligations of the Trust

The omission of the statement described in Subsection 6.2(b)(ii) or 17.5 from any document or instrument shall not render the Trustees or the Unitholders liable to any person, nor shall the Trustees or the Unitholders be liable for such omission. If the Trustees or any Unitholder shall be held liable to any person by reason of the omission of such statement from any such agreement, undertaking or obligation such Trustee or Unitholder shall be entitled to indemnity and reimbursement out of the Trust's property to the full extent of such liability.

17.4 Liability of the Trustees

The Trustees shall not be liable to the Trust or to any Unitholder, Annuitant or any other person for the acts, omissions, receipts, neglects or defaults of any person, firm or corporation employed or engaged by it as permitted hereunder, or for joining in any receipt or act of conformity or for any loss, damage or expense caused to the Trust through the insufficiency or deficiency of any security in or upon which any of the monies of or belonging to the Trust shall be paid out or invested, or for any loss or damage arising from the bankruptcy, insolvency or tortious act of any person, firm or corporation with whom or which any monies, securities or 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 17.1(a) and 17.1(b).

17.5 Liability of Unitholders and Others

No Unitholder or Annuitant or any Officer, employee or agent of the Trust shall be held to have any personal liability as such, and no resort shall be had to her private property (including any property consisting of or arising from a distribution of any kind or nature by the Trust) for satisfaction of any obligation or claim arising out of or in connection with any contract or obligation of the Trust or of the Trustees or any obligation which a Unitholder or Annuitant would otherwise have to indemnify a Trustee for any personal liability incurred by the Trustee as such, but rather the assets of the Trust only are intended to be liable and subject to levy or execution for such satisfaction. Any written instrument creating an obligation which is or includes the granting by the Trust of a Mortgage or which is, in the judgment of the Trustees, a material obligation, shall contain a provision to the effect that the obligation being created is not personally binding upon, and that resort shall not be had to, nor shall recourse or satisfaction be sought from, the private property (including any property consisting of or arising from a distribution of any kind or nature by the Trust) of any of the Unitholders or Annuitants or Officers, employees and agents of the Trust, but the Trust Property or a specific portion thereof only shall be bound. If the Trust acquires any real property investment subject to existing contractual obligations, the Trustees shall use reasonable efforts to have any such obligations under material agreements (including Mortgages) modified so as to achieve the aforesaid disavowal of contractual liability. Further, the Trustees shall cause the operations of the Trust to be conducted in such a way and in such jurisdictions as to avoid, as far as reasonably possible, any material risk of liability on the Unitholders or Annuitants for claims against the Trust, and shall, to the extent which they determine to be possible and reasonable, including in the cost or premiums, to cause the Trust to carry insurance for the benefit of such persons in such amounts as they consider adequate to cover any foreseeable non-contractual or non-excluded contractual liability. Any potential liability of the Trustees with respect to their foregoing obligations or their failure to perform the same shall be governed by the provisions of Section 17.1 and Section 17.4. Nothing in this Declaration of Trust will preclude the Trustees from exercising any rights granted to them under the Tax Act or any other applicable taxation legislation to withhold from amounts payable to Unitholders or otherwise recover from Unitholders any taxes that the Trustees have paid on behalf of Unitholders.

ARTICLE 18 GENERAL

18.1 Execution of Instruments

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

18.2 Manner of Providing Notice

- (a) Any notice or other document required or permitted by the provisions of this Declaration of Trust to be provided to a Unitholder, a Trustee or the Auditors shall be deemed conclusively to have been provided if either by delivery or by prepaid first-class mail addressed to the Unitholder at the address shown in the Register, to a Trustee at the last address provided by such Trustee to the Secretary of the Trust, or to the Auditors at the last address provided by the Auditors to the Secretary of the Trust, as the case may be provided that if there is a general discontinuance of postal service due to strike, lockout or otherwise, such notice may be given by publication twice in the Report on Business section of the National Edition of The Globe and Mail or similar section of any other newspaper having national circulation in Canada provided further that if there is no newspaper having national circulation, then by publishing twice in the business section of a newspaper in each city where the register or a branch register is maintained, or as otherwise permitted under this Declaration of Trust. Any notice so given shall be deemed to have been given on the day following that on which the letter or circular was posted or, in the case of notice being given by publication, after publishing such notice twice in the designated newspaper or newspapers. In proving notice was posted, it shall be sufficient to prove that such letter or circular was properly addressed, stamped and posted.
- (b) Any written notice or written communication given to the Trustees shall be addressed to the Trustees at the head office of the Trust, and shall be deemed to have been given on the date of delivery or date sent by facsimile or other means of prepaid, transmitted or recorded communications or, if mailed, five days from the date of mailing. If any such notice or communication shall have been mailed and if regular mail service shall be interrupted by strikes or other irregularities, such notice or communication shall be deemed to have been received 48 hours after 12:01 a.m. on the day following the resumption of normal mail service, provided that during the period that regular mail service shall be interrupted any notice or other communication shall be given by personal delivery or by facsimile or other means of prepaid, transmitted or recorded communication.

18.3 Failure to Give Notice

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

18.4 Joint Holders

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

18.5 Service of Notice

Any notice or document sent by post to or left at the address of a Unitholder pursuant to this Article 18 shall, notwithstanding the death or bankruptcy of such Unitholder, and whether or not the Trustees have notice of such death or bankruptcy, be deemed to have been fully served and such service shall be deemed sufficient service on all persons having an interest in the Units concerned.

18.6 Trust Auditors

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

18.7 Fiscal Year

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

18.8 Reports to Unitholders

The Trust will furnish to Unitholders such financial statements (including quarterly and annual financial statements) and other reports as are from time to time required by applicable law, including Securities Laws and the *Canada Business Corporations Act*.

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

18.9 Trust Property to be Kept Separate

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

18.10 Electronic Documents

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

18.11 Trustees May Hold Units

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

18.12 Trust Records

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

18.13 Right to Inspect Documents

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

18.14 Taxation Information

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

Unitholder may claim a credit for tax purposes to the extent permitted by the Tax Act, where those items are applicable.

18.15 Consolidations

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

18.16 Counterparts

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

18.17 Severability

The provisions of this Declaration of Trust are severable. If any provision of this Declaration of Trust shall be held invalid or unenforceable in any jurisdiction, such invalidity or enforceability shall attach only to such provision in such jurisdiction and shall not in any manner affect or render invalid or unenforceable such provision in any other jurisdiction or any other provision of this Declaration of Trust in any jurisdiction.

18.18 Headings for Reference Only

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

18.19 Governing Law

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

IN WITNESS WHEREOF the Trustees have caused these presents to be signed as of the date first above written.

(signed) "Daniel Drimmer"

Daniel Drimmer

(signed) "Jeff Baryshnik"

Jeff Baryshnik

(signed) "William Biggar"

William Biggar

(signed) "Roland Cardy"

Roland Cardy

(signed) "Sandy Poklar"

Sandy Poklar

(signed) "Alon Ossip"

Alon Ossip