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## **DECLARATION OF TRUST**

creating

**TREZ CAPITAL YIELD TRUST US (Canadian \$)**

made as of December •, 2016,

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SCHEDULE "A" - NOTICE

SCHEDULE "B" - CERTIFICATE OF COMPLIANCE

## DECLARATION OF TRUST

**DECLARATION OF TRUST** made as of December 9, 2016, by Trez Capital Fund Management Limited Partnership, in its capacity as Manager (as defined herein) at its principal registered office in Vancouver, British Columbia, and Computershare Trust Company of Canada, a trust corporation incorporated under the laws of Canada and having an office at 3<sup>rd</sup> Floor, 510 Burrard Street, Vancouver, British Columbia V6C 2K3.

**WHEREAS** Trez Capital Fund Management Limited Partnership has determined to establish a trust to be known as "**TREZ CAPITAL YIELD TRUST US (CANADIAN \$)**" for the purposes of investing the funds of Trez Capital Yield Trust US (Canadian \$) for the benefit of the Unitholders (as defined herein), and wishes to cause Computershare Trust Company of Canada to act as trustee hereunder, and wishes to act as Manager (as defined herein).

**AND WHEREAS**, Computershare Trust Company of Canada hereby accepts the trusts created hereunder and agrees to act as trustee in accordance with the terms hereof, and acknowledges and declares that it has received and holds in trust as trustee the sum of ten dollars (\$10.00) now contributed by Alexander (Sandy) Manson, to whom a Unit (as defined herein) is issued, and all property of any nature and kind which it may acquire in its capacity as trustee of Trez Capital Yield Trust US (Canadian \$), and all income and capital gains therefrom, to hold, manage and dispose of same for the benefit of the Unitholders in accordance with and subject to the provisions of this Declaration and Trez Capital Fund Management Limited Partnership hereby agrees to act as Manager in accordance with and subject to the provisions of this Declaration.

**NOW THEREFORE** the parties hereto agree as follows:

### SECTION 1 - INTERPRETATION

#### 1.1 Definitions

In this Declaration the following terms have the following meanings:

- (a) "**Additional Units**" has the meaning ascribed thereto in Section 9.8(5);
- (b) "**Administration Fees**" means, collectively, the Series A and Series F Administration Fee described in Section 9.2(1)(c), the Series I Administration Fee described in Section 9.2(1)(d) and the administration fee for any Series which may be created subsequent to the date hereof;
- (c) "**Affiliate**" means a Person who is an "associate" or an "insider" of another Person, or an "affiliated company", "controlled company" or "subsidiary company", all within the meaning of the Securities Act;
- (d) "**Applicable Law**" means in respect of any Person, property, transaction or event, all present and future laws, statutes, regulations, treaties, judgments and decrees applicable to that Person, property, transaction or event and, whether or not having the force of law, all applicable requirements, requests, official directives, rules, consents, approvals, authorizations, guidelines, orders and policies of any Governmental Authority having or purporting to have authority over that Person, property, transaction or event;
- (e) "**Applicable Tax Legislation**" means the Tax Act as well as any applicable federal, state, provincial or local taxation, excise or revenue legislation of Canada, the United States or any other jurisdiction applicable to or imposing obligations on the Trust, the Unitholders or the Trustee, including specifically the United States *Foreign Account Tax Compliance Act*;
- (f) "**Audit Committee**" means the audit committee of the Board of Governors;
- (g) "**Auditor**" means the firm of chartered accountants holding office at any time pursuant to Section 3.3(2)(f) or Section 10.20;

- (h) "**Authorized Interim Investments**" means cash and guaranteed investment certificates;
- (i) "**Average Annual Gross Total Assets**" means, for a particular period, the sum of the Total Assets of the Trust determined as of the end of each month in such period, divided by the number of months in such period;
- (j) "**Board of Governors**" means the board of governors of the Trust;
- (k) "**book value of the Units**" means an amount equal to the Net Asset Value;
- (l) "**book value per Unit**" has the meaning ascribed thereto in Section 8.8;
- (m) "**Business Day**" means a day other than a Saturday, Sunday or any day on which the principal office of the Trust's bankers located in Vancouver, British Columbia, is not open for business during normal banking hours;
- (n) "**Calculation Date**" means the last day of March, June, September and December or, if the Manager decides to cause the Trust to make monthly distributions in accordance with Section 9.2(1)(b), the last day of each calendar month;
- (o) "**CBCA**" means the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44;
- (p) "**CBCA Corporation**" means a corporation incorporated under the CBCA, any of the securities of which (i) are or were part of a distribution to the public, (ii) remain outstanding, and (iii) are held by more than one Person;
- (q) "**Conflict of Interest Matter**" means a situation where a reasonable person would consider the Manager, or an entity related to the Manager, to have an interest that may conflict with the Manager's ability to act in good faith and in the best interests of the Trust;
- (r) "**Counsel**" means any Person qualified and engaged in the practice of law in British Columbia;
- (s) "**Court**" means any court of competent jurisdiction in the Province of British Columbia;
- (t) "**Credit Committee**" means the credit committee of the Board of Governors;
- (u) "**Declaration**" means this declaration of trust including any recitals and schedules to this declaration of trust, as amended, supplemented or restated from time to time;
- (v) "**Deferred Plan**" means a "registered retirement savings plan", a "registered retirement income fund", a "registered education savings plan", a "registered disability savings plan", a "tax-free savings account" or a "deferred profit sharing plan" as such terms are defined under the Tax Act;
- (w) "**Distribution Payment Date**" means the date on which a distribution payment is required to be made in accordance with Section 9.2(1)(a) or (b), as applicable;
- (x) "**Disclosure Documents**" means any Offering Memorandum, preliminary prospectus, final prospectus, preliminary simplified prospectus, pro forma simplified prospectus, simplified prospectus and the annual and interim financial statements included or deemed to be included therein, and any other documents which may from time to time be filed as part of the permanent information record of the Trust as required in connection with the distribution of Units of the Trust by Securities Authorities in each of the jurisdictions in which Units of the Trust are distributed;

- (y) **"Entity Related to the Manager"** means:
- (i) a person or company that can direct or materially affect the direction of the management and policies of the Manager or the Trust, other than as a member of the Independent Review Committee; or
  - (ii) an associate, Affiliate, partner, director, officer or subsidiary of the Manager or of a Person or company referred to in paragraph (i);
- (z) **"Equity Investment"** means, in respect of Real Property, an agreement with a third party to invest in Real Property through an indirect unsecured ownership interest in Real Property. For greater certainty, **"Equity Investment"** does not include an investment by the Trust in a wholly-owned subsidiary of the Trust;
- (aa) **"Final Year-End Distribution"** has the meaning ascribed thereto in Section 9.2(1)(a);
- (bb) **"Fiscal Year"** means each such consecutive period of twelve months commencing on January 1, and ending on December 31, except that the first Fiscal Year of the Trust will be the period commencing on December 1, 2016 and ending on December 31, 2016;
- (cc) **"Governmental Authority"** means any domestic or foreign government, including, without limitation, any federal, provincial, state, territorial or municipal government, and any government agency, tribunal, commission or other authority exercising or purporting to exercise executive, legislative, judicial, regulatory or administrative functions of, or pertaining to, government;
- (dd) **"IFRS"** means International Financial Reporting Standards as established from time to time by the International Accounting Standards Board of the IFRS Foundation;
- (ee) **"Incentive Fee"** means the fee described in Section 9.2(1)(c);
- (ff) **"Incentive Fee Revenue"**, in respect of a period, means the net income and capital gains for a Series of the Trust for that period prior to the deduction of the Incentive Fee for that period and after the deduction of the Administration Fees payable in respect of that Series;
- (gg) **"Independent"** means the member has no relationship with the Manager, the Trust, or an Entity Related to the Manager which could reasonably be perceived to interfere with the member's judgment regarding a Conflict of Interest Matter;
- (hh) **"Independent Review Committee"** means the independent review committee of the Board of Governors;
- (ii) **"Investment Objective"** has the meaning ascribed thereto in Section 7.1;
- (jj) **"Investment Policy"** means the Investment Objective and Investment Restrictions;
- (kk) **"Investment Portfolio"** means the portfolio of Trust Investments, the investments of which are to be acquired by the Trust in accordance with the Investment Policy;
- (ll) **"Investment Restrictions"** has the meaning ascribed thereto in Section 7.2;
- (mm) **"Investments"** means, collectively, Mortgage Investments, Mortgage Participations and Equity Investments;
- (nn) **"Manager"** means Trez Capital Fund Management Limited Partnership, appointed under Section 5.1 to assume some or all of the management powers, duties and responsibilities of the

Trustee under the terms of this Declaration, or such other entity appointed to serve as Manager hereunder from time to time;

- (oo) "**Manager's Fee**" means, collectively, the Administration Fees and the Incentive Fee;
- (pp) "**Material Contracts**" means the agreements listed under "Material Contracts" in the Offering Memorandum;
- (qq) "**Mezzanine Loan**" means a loan to a developer of Real Property whereby security is taken in the developer's interest in the developing entity, rather than the Real Property being developed;
- (rr) "**Mortgage**" or "**Deed of Trust**" means a mortgage, a deed of trust, a mortgage of a mortgage or a mortgage of a leasehold interest (or other like instrument, including an assignment of or an acknowledgement of an interest in a mortgage), hypothecation, deed of trust, charge or other security interest of or in Real Property used to secure obligations to repay money by a charge upon the underlying Real Property;
- (ss) "**Mortgage Broker**" means the entity appointed as such by the Manager pursuant to Section 5.7(a);
- (tt) "**Mortgage Investment**" means an investment by the Trust in a Mortgage;
- (uu) "**Mortgage Participation**" means investment in a Mortgage which includes a bonus from any profits from the disposition of Real Property;
- (vv) "**Net Asset Value**" or "**NAV**" means the net asset value of the Trust, calculated in accordance with Section 8.7;
- (ww) "**Net Income**" of the Trust for a calendar year is equal to the Trust's income for the year that would be determined under the Tax Act if:
  - (i) no amount were included or deducted in respect of capital gains and capital losses;
  - (ii) there were no gross-up in respect of taxable dividends from corporations resident in Canada; and
  - (iii) no amounts were deducted in respect of amounts that became payable to Unitholders;
- (xx) "**Net Realized Capital Gains**" of the Trust for a calendar year is equal to twice the amount, if any, by which the Trust's taxable capital gains (which taxable capital gains shall, for the avoidance of doubt, include the taxable portion of any amounts deemed to be capital gains or any gains from the disposition or deemed disposition of capital property, whether or not such amounts would constitute capital gains for trust law purposes) for the year exceed the sum of:
  - (i) the Trust's allowable capital losses (other than allowable business investment losses) for the year;
  - (ii) the Trust's net capital losses for prior years which the Trust is permitted to deduct in computing its Taxable Income for the year; and
  - (iii) expenses of the Trust that would otherwise be deductible in arriving at the Trust's Taxable Income for the year, to the extent determined by the Manager,

provided that if there is a change to the inclusion rate in respect of capital gains for purposes of the Tax Act (which inclusion rate is expressed as a percentage of capital gains realized, the two times

factor will thereafter equal the reciprocal of the new percentage and other amounts referred to in this definition will be adjusted, to the extent necessary;

- (yy) "**New Series**" has the meaning ascribed thereto in Section 8.2;
- (zz) "**NI 31-103**" means National Instrument 31-103 - "Registration Requirements" of the Canadian Securities Administrators, as it may be amended from time to time;
- (aaa) "**NI 45-106**" means National Instrument 45-106 - "Prospectus and Registration Exemptions" of the Canadian Securities Administrators, as it may be amended from time to time;
- (bbb) "**non-residents**" has the meaning ascribed thereto in Section 8.16(1);
- (ccc) "**Offering**" means an offering of Units by the Trust pursuant to an Offering Memorandum;
- (ddd) "**Offering Memorandum**" means an offering memorandum of the Trust, as amended or renewed from time to time, qualifying the distribution of Units to the public, as permitted pursuant to NI 45-106, including any amendments to such offering memorandum;
- (eee) "**Ordinary Resolution**" means a resolution consented to, in writing, by holders of more than 50% of all outstanding Units of the Trust or where Series are differently affected by the resolution, then 50% of each Series, or approved by at least 50% of the votes cast by Unitholders (or Unitholders of that Series) present in person or by proxy at a meeting of Unitholders which has been duly called and at which a quorum is present, as provided herein and excluding the votes of Units owned by the Manager or any Affiliate thereof in respect of any matter in which they have a financial interest (other than as Unitholders);
- (fff) "**Permitted Merger**" has the meaning ascribed thereto in Section 12.3;
- (ggg) "**Person**" means any natural person, sole proprietorship, partnership, limited partnership, corporation, trust, joint venture, any Governmental Authority or any incorporated or unincorporated entity or association of any nature;
- (hhh) "**Proportionate Share**" when used to describe a Unitholder's, or a Series', interest in any amount, means the portion of that amount obtained by multiplying that amount by a fraction, the numerator of which is the number of Units of the Trust registered in the name of that Unitholder, or that Series, as the case may be, and the denominator of which is the total number of Units of the Trust then outstanding;
- (iii) "**Real Property**" means land, lots, rights or interest in land or lots (including without limitation leaseholds, air rights and rights in condominiums, but excluding Mortgages) and any buildings, structures, improvements and fixtures located thereon;
- (jjj) "**Redemption**" has the meaning ascribed thereto in Section 8.15(1);
- (kkk) "**Redemption Notice**" has the meaning ascribed thereto in Section 8.15(1);
- (lll) "**Redemption Payment Date**" has the meaning ascribed thereto in Section 8.15(1);
- (mmm) "**Redemption Price**" has the meaning ascribed thereto in Section 8.15(2);
- (nnn) "**Register**" means the register or registers established and maintained pursuant to Section 8.11;
- (ooo) "**Registrar**" means a Person appointed as registrar for the Units in accordance with Section 8.12;

- (ppp) "**Related Party**" means any Person or company who directly or indirectly controls or is controlled by or is under common control with another Person;
- (qqq) "**Reorganization Units**" means Units issued by the Trust to the US Trust pursuant to the reorganization of the US Trust approved by special resolution of the unitholders of the US Trust on December 9, 2016;
- (rrr) "**Securities Act**" means the *Securities Act* (British Columbia), and shall include the rules promulgated by the British Columbia Securities Commission;
- (sss) "**Securities Authorities**" means the British Columbia Securities Commission and equivalent regulatory authorities in each province and territory of Canada in which the Units are qualified for distribution or distributed to the public;
- (ttt) "**Securities Legislation**" means the laws, regulations, requirements, rules and policies, including those of the Securities Authorities, which are applicable to the Trust;
- (uuu) "**Series**" means, as the context requires, any one of Series A Units, Series F Units, Series I Units or any new Series;
- (vvv) "**Series A and Series F Administration Fee**" means the fee described in Section 9.2(1)(c);
- (www) "**Series A Units**" means a Series of Units, designated as Series A;
- (xxx) "**Series F Units**" means a Series of Units, designated as Series F;
- (yyy) "**Series I Units**" means a Series of Units, designated as Series I;
- (zzz) "**Series I Administration Fee**" means the fee described in Section 9.2(1)(d);
- (aaaa) "**Short Term**", when used in respect of Investments, means Investments which have an intended maturity date of no more than three years;
- (bbbb) "**Special Resolution**" means a resolution consented to, in writing, by holders of more than 66 2/3% of all outstanding Units of the Trust or where Series are differently affected by the resolution, then 66 2/3% of each Series or approved by at least 66 2/3% of the votes cast by Unitholders present in person or by proxy at a meeting of Unitholders (or Unitholders of that Series) which has been duly called for that purpose and at which a quorum is present, as provided herein and excluding the votes of Units owned by the Manager or any Affiliate thereof in respect of any matter in which they have a financial interest (other than as Unitholders);
- (cccc) "**Subscription Price**" means an amount equal to the book value per Unit determined as of the immediately preceding Valuation Date;
- (dddd) "**Tax Act**" means the *Income Tax Act* (Canada), R.S.C. 1985, (5<sup>th</sup> Supp.) c. 1, as amended, and the regulations thereunder;
- (eeee) "**Taxable Income**" of the Trust for a year means the "taxable income" of the Trust (as that term is defined in the Tax Act) determined without any gross-up in respect of taxable dividends from corporations resident in Canada and without deduction for distributions by the Trust to Unitholders during the year;
- (ffff) "**taxation year**" of the Trust means a "taxation year" of the Trust (as that term is defined in the Tax Act);

- (gggg) "**Termination Date**" has the meaning ascribed thereto in Section 12.4, and includes the date on which the Trust is terminated following a Termination Event;
- (hhhh) "**Total Assets**" means the aggregate fair value of the assets of the Trust determined in accordance with the terms of this Declaration;
- (iiii) "**Trailer Fee**" has the meaning ascribed thereto in Section 6.5;
- (jjjj) "**Trust**" means Trez Capital Yield Trust US (Canadian \$), the trust established by this Declaration;
- (kkkk) "**Trustee**" means Computershare Trust Company of Canada in its capacity as trustee of the Trust, or such other Person as may be appointed as replacement Trustee in accordance with the provisions hereof;
- (llll) "**Trust Property**" means:
- (i) all moneys, securities, property, assets and investments paid or transferred to and accepted by or in any manner acquired by the Trustee and held by the Trustee on the Trust herein declared, including units of the Trust;
  - (ii) all income which may hereafter be accumulated under the powers herein contained; and
  - (iii) all moneys, securities, property, assets or investments substituted for or representing all or any part of the foregoing;
- less any money, securities, property, assets or investments distributed, expended, sold, transferred or otherwise disposed of in accordance with the provisions hereof;
- (mmmm) "**Unanimous Resolution**" means a resolution consented to, in writing, by all Unitholders (or Series Unitholders as the case may be), or approved by 100% of the votes cast by Unitholders present in person or by proxy at a meeting of Unitholders (or Unitholders of a Series) which has been duly called for that purpose and at which a quorum is present, as provided herein and excluding the votes of Units owned by the Manager or any Affiliate thereof in respect of any matter in which they have a financial interest (other than as Unitholders);
- (nnnn) "**Unit**" means a redeemable, transferable unit of the Trust, which evidences the proportionate ownership interest of a Unitholder in the capital of the Trust;
- (oooo) "**Unitholder**" means a Person whose name appears on the Register of the Trust as a holder of Unit;
- (pppp) "**Unitholders of Record**" for a distribution pursuant to Section 9.2 means the Unitholders determined pursuant to Section 9.3 for the purposes of the distribution;
- (qqqq) "**US Trust**" means Trez Capital Yield Trust US, a trust established pursuant to the laws of the Province of British Columbia on January 10, 2013; and
- (rrrr) "**Valuation Date**" means the last day of each month, and any other day as of which the Trustee or the Manager elects, in its discretion, to calculate the book value of the Units and book value per Unit.

## 1.2 References to Trustee or Trust

Computershare Trust Company of Canada has entered into this Declaration and any document delivered in connection herewith exclusively in its capacity as Trustee. Whenever any reference is made in this Declaration or in any document delivered in connection herewith, to an act to be performed by the Trustee or the Trust, or an appointment to be made

by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, or a suit or proceeding to be taken by or against the Trust or the Trustee, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by the Trustee for and on behalf of the Trust. Any and all of the representations, undertakings, covenants, indemnities, agreements and other obligations made on the part of the Trustee herein are made and intended not as personal obligations of or by Computershare Trust Company of Canada or for the purpose or with the intention of binding Computershare Trust Company of Canada in its personal capacity, but are made and intended for the purpose of binding Computershare Trust Company of Canada as Trustee hereunder. No property or assets of Computershare Trust Company of Canada, whether owned beneficially by it in its personal capacity or otherwise, will be subject to levy, execution or other enforcement procedures with regard to any of the Trustee's obligations hereunder or thereunder. No recourse may be had or taken, directly or indirectly, against Computershare Trust Company of Canada in its personal capacity, or any incorporator, shareholder, officer, director, employee or agent of Computershare Trust Company of Canada or of any predecessor or successor of Computershare Trust Company of Canada, with regard to the Trustee's obligations hereunder.

### **1.3 Business Day**

Unless otherwise specified, if under this Declaration any payment or calculation is to be made, or any other action is to be taken, on or as of a day which is not a Business Day, that payment or calculation is to be made, and that other action is to be taken, as applicable, on or as of the next day that is a Business Day.

### **1.4 Headings and Table of Contents**

The division of this Declaration into Sections, the insertion of headings and the provision of a table of contents are for convenience of reference only and are not to affect the construction or interpretation of this Declaration.

### **1.5 Extended Meanings**

Unless otherwise specified, words importing the singular include the plural and vice versa and words importing gender include all genders. "Including" means "including without limitation", and "include" has a corresponding meaning.

### **1.6 References**

Unless otherwise specified, references in this Declaration to Sections are to Sections of this Declaration. References in this Declaration to "hereof", "herein", and "hereunder" shall be deemed to refer to this Declaration and shall not be limited to the particular text or Section in which such words appear.

### **1.7 Statutory References**

Unless otherwise specified, each reference to an enactment is deemed to be a reference to that enactment, and to the regulations and rules made under that enactment, as amended, re-enacted or replaced from time to time.

### **1.8 Time of Day**

Unless otherwise specified, references to time of day or date mean the local time or date in the City of Vancouver, Province of British Columbia.

### **1.9 Currency**

Unless otherwise specified, all references herein to currency shall be references to currency of Canada.

## **SECTION 2 - THE TRUST**

### **2.1 Name**

The Trust shall be known by the name "Trez Capital Yield Trust US (Canadian \$)" and, insofar as may be practicable and legal, the affairs of the Trust shall be conducted and transacted under such name, it being the intention that such name shall refer to the Trust and shall not refer to the Trustee, the Manager, the Unitholders, the Board of Governors or their respective officers, directors or employees. Should the Manager determine that the use of the name "Trez Capital Yield Trust US (Canadian \$)" is not practicable or legal, then the Manager shall adopt such other name for the Trust as may be determined by the Manager and the Manager shall cause the Trustee and the Unitholders to be advised of such change of name.

### **2.2 Situs and Head Office**

The situs of the Trust shall be the Province of British Columbia, Canada and the head office and residence of the Trust shall be in the City of Vancouver in the Province of British Columbia, Canada as designated by the Manager from time to time.

### **2.3 Nature of the Trust**

(1) The Trust is not intended to be, shall not be deemed to be, and shall not be treated as, a general partnership, limited partnership, joint venture, agency, or joint stock company. The Trust is a trust whose Unitholders are the holders of Units. The relationship of the Unitholders to the Trustee shall be solely in the capacity of beneficiaries, and the rights, liabilities and obligations of the Unitholders shall be only those conferred or imposed upon Unitholders hereunder. There is no relationship of one Unitholder to another hereunder save that of each being a beneficiary under the same trust.

(2) The general law of trusts of the Province of British Columbia shall govern the Trust, the Units and the Trust Property, except as such general law of trusts has been or is from time to time modified, altered or abridged for investment trusts and for the Trust by:

- (a) Applicable Law; and
- (b) the terms, conditions and trusts set forth in this Declaration.

### **2.4 Undertaking of the Trust**

(1) The Trust created hereby is an investment trust. The undertaking of the Trust is restricted to:

- (a) investing its funds in property pursuant to the Investment Policy;
- (b) acquiring, holding, maintaining, improving, leasing or managing of any Real Property (or interest in Real Property) that is the capital property of the Trust; and
- (c) any combination of the activities in (a) or (b).

(2) For greater certainty, and subject to this Section 2.4, the Trust will not engage in any undertaking other than the investment of the Trust Property in accordance with the Investment Policy. In addition, the Trust has the general and specific powers specified in Sections 3.1 and 3.3, respectively, to be exercised in connection with the conduct and carrying out of the Trust's undertaking.

- (3) No investment shall be made in any Real Property unless either:
- (a) the Manager has obtained a satisfactory report on the environmental status of such Real Property in the form of a "Phase I" assessment (or equivalent) and such report shall be maintained with the books and records of the Trust by the Manager; or
  - (b) the Board of Governors has determined that based on the advice of the Manager (having made due inquiry and undertaken due diligence), the nature of the Real Property and having regard to industry practices, there is no reasonable need to obtain a "Phase I" assessment (or equivalent) regarding such Real Property.
- (4) All investments in Real Property shall be made through one or more corporations, limited partnerships or other entities, which shall be owned by the Trust and the majority of the directors of which shall be nominated by the general partner of the Manager, and which corporations, limited partnerships or entities shall hold interests in the entity that holds legal title to such Real Property. No director or officer of the Trustee or its Affiliates shall serve as a director or officer of any such corporation, limited partnership or entity. No later than seven Business Days after the completion of investment in any Real Property, the Manager shall provide the Trustee with written confirmation regarding the name of such corporation(s), limited partnership(s) or other entity through which such Real Property is held along with the municipal address and legal description of such Real Property and confirmation as to the report referred to in Section 2.4(3) above (or that no such report was obtained) in the form set out as Schedule "A" hereto. The Manager shall also provide the Trustee with notice of disposition of any interest in Real Property and upon request by the Trustee a schedule listing all Real Property held by the Trust.

## **2.5 Fiscal Year End**

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

## **2.6 Duration**

The Trust created hereby was established on December ●, 2016 and, subject to the provisions of Sections 4.6, 10.3 and 12.4, shall be terminated on the Termination Date.

## **2.7 Mutual Fund Trust Election**

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

## **SECTION 3 - POWERS AND DUTIES OF THE TRUSTEE**

### **3.1 General Powers**

(1) The Trustee, subject only to the specific limitations contained in this Declaration, shall have full, absolute, and exclusive power, control and authority over the Trust Property and over the business and affairs of the Trust to the same extent as if the Trustee were the sole owner thereof in its own right, to do all such acts and things as in its sole judgement and discretion are necessary or incidental to, or desirable for, the carrying out of any of the purposes of the Trust or the conducting of the business of the Trust. In construing the provisions of this Declaration, presumption shall be in favour of the grant of powers and authority to the Trustee.

(2) Except as specifically required by any such law (to the extent that, pursuant to the provisions of such law, such requirement may not be waived) or by the express provisions hereof, the Trustee shall not be in any way restricted by the provisions of any law of any jurisdiction limiting or purporting to limit investments which may be made by trustees.

### 3.2 Standard of Care and Duties of Trustee

The Trustee shall exercise the powers and discharge the duties of its office honestly, in good faith, and in the best interests of Unitholders and in connection therewith shall exercise the degree of care, diligence and skill that a reasonably prudent trustee would exercise in comparable circumstances. Subject to the foregoing, the Trustee in its capacity as trustee shall not be required to devote its full time and attention to the affairs of the Trust but need only devote such time as it may deem appropriate or necessary to discharge its duties hereunder in a responsible manner.

### 3.3 Specific Powers of the Trustee

(1) The enumeration of specific powers and authorities herein are in addition to the general powers granted in Section 3.1 and elsewhere in this Declaration or by statute and shall not be construed as limiting the general powers or authority or any other specific power or authority conferred herein on the Trustee.

(2) Subject to Sections 2.4 and 7, the Trustee, acting solely on the advice and direction of the Manager and without any action or consent by the Unitholders, shall have and may exercise, at any time and from time to time, the following powers and authorities, with full power of substitution to delegate any such powers and duties to any one or more agents, representatives, officers, employees, independent contractors or other Persons, including the Manager or an Mortgage Broker, where, in the discretion of the Trustee, it would be in the best interests of the Trust to do so, without liability to the Trustee:

- (a) to hold the Trust Property in the name of the Trust;
- (b) to purchase, or otherwise acquire, any securities, currencies or other property of any kind and to purchase, hold and retain the same in trust in the name of the Trust hereunder;
- (c) to sell, convey, exchange for other securities or other property, convert, transfer, assign, pledge, encumber or otherwise create any interest in favour of third parties in or dispose of any securities forming part of the Trust Property or any other Trust Property at any time, by any means considered reasonable by the Manager, and to receive the consideration and grant discharges therefor;
- (d) to exercise any conversion privileges, subscription rights, warrants and/or other rights or options available in connection with any securities or other Trust Property at any time held by the Trustee, and to make any payments incidental thereto;
- (e) to vote personally, or by general or by limited proxy, any securities or other Trust Property which may be held by, or on behalf of, the Trust at any time, and similarly to exercise personally or by general or by limited power of attorney any right appurtenant to any securities or other Trust Property held by, or on behalf of, it at any time;
- (f) to employ such counsel, auditors, advisors, agents or other Persons as the Trustee may deem necessary from time to time for the purpose of discharging its duties hereunder and to pay out of the Trust Property their reasonable expenses and compensation;
- (g) to delegate any of the powers and duties of the Trustee to any one or more agents, representatives, officers, employees, independent contractors or other persons without liability to the Trustee except as provided in this Declaration; and
- (h) to do all such acts, take all such proceedings, execute all such documents and exercise all such rights and privileges, although not specifically mentioned herein, as the Trustee may deem necessary to administer the Trust, and, to carry out the purposes of the Trust.

(3) The exercise of any one or more of the foregoing powers or any combination thereof from time to time shall not be deemed to exhaust the rights of the Trustee to exercise such power or powers or combination of them thereafter from time to time.

### **3.4 Manager's Obligations re: Qualified Investments**

Notwithstanding Sections 3.1, 3.2 and 3.3 or any other provisions of this Declaration, the Manager shall have the sole obligation to ensure the assets and property held by the Trust shall consist only of "qualified investments" (as that term is defined in the Tax Act) for Deferred Plans at any time that the Trust does not qualify as a mutual fund trust under the Tax Act.

### **3.5 Dealing with Others and Self**

Subject to the other provisions of this Declaration and, in particular, the prior approval of the Independent Review Committee, the Trustee may, and is hereby expressly authorized from time to time in its discretion to, appoint, employ, invest in, contract or deal with any Person including, without limitation, itself or any Person with which it may be directly or indirectly affiliated or in which it may be directly or indirectly interested, whether on its own account or for the account of another (in a fiduciary capacity or otherwise) and, without limiting the generality of the foregoing, the Trustee may (with full power of substitution to delegate such of the following matters to the Manager as the Trustee determines is necessary or advisable):

- (a) purchase, hold, sell, invest in or otherwise deal with Mortgages or other property of the same class and nature as may be held by the Trust, whether on the Trustee's own account or for the account of another (in a fiduciary capacity or otherwise);
- (b) use in other capacities knowledge gained in its capacity as the Trustee hereunder, provided that such use does not adversely affect the interests of the Trust and provided further that the Trustee may not make use of any specific confidential information for its own benefit or advantage or for the benefit or advantage of any other Person that, if generally known, might be expected to affect materially the value of the securities or other property of the Trust;
- (c) where a replacement Trustee is a trust corporation incorporated under the laws of Canada or a province thereof, retain cash balances from time to time on hand in the Trust with the Trustee or any of its Affiliates in such interest bearing account as the Trustee in its sole discretion determines or invest such cash balances in the guaranteed investment certificates of the Trustee or any of its Affiliates; and
- (d) where a replacement Trustee is a trust corporation incorporated under the laws of Canada or a province thereof, invest in the securities or other property of any Person with which the Trustee may be directly or indirectly associated, affiliated or interested,

without being liable to account therefor and without being in breach of the trust established hereunder; provided, however, that notwithstanding the foregoing, the Trustee shall not utilize for its own benefit or for the benefit of its Affiliates or any Person other than the Trust, any information obtained in connection with the execution of its duties hereunder with respect to the Manager's or the Mortgage Broker's executed or proposed transactions or strategies for the Trust.

### **3.6 Trust Accounts**

The Manager shall keep or cause to be kept such books, records and accounts as are necessary and appropriate to document the Trust Property and transactions of the Trust. Upon the appointment of the Auditor, pursuant to Section 5.6(c), the Auditor shall audit the accounts of the Trust for a particular period and provided that:

- (a) the Auditor is a recognized firm of chartered accountants; and
- (b) the Auditor's report to the Unitholders is to the effect that the Auditor's examination included a general review of the accounting procedures and such tests of accounting records and other supporting evidence as the Auditor considered necessary in the circumstances and states without qualification that in the opinion of the Auditor the financial statements present fairly the financial

position of the Trust as at the end of the period for which the audit was made and the revenues and expenses of the Trust for the period under review are in accordance with IFRS, consistently applied (after the first fiscal period);

then such audited financial statements shall be a complete accounting of the Manager's administration for the period included therein and the Manager shall not be required to give a further or better accounting to any Unitholder or to any other Person.

### **3.7 Disposition of Trust Property**

The Manager may dispose of any Trust Property on such terms as the Manager may determine in its sole discretion for the purpose of paying any obligations imposed on the Trust.

### **3.8 Restrictions on Trustee and Manager**

The Trustee and the Manager shall not:

- (a) commingle funds of the Trust with their own funds; or
- (b) dissolve the Trust or wind-up the Trust's affairs except as otherwise provided for herein.

### **3.9 Reliance**

The Trustee shall be entitled to rely, without further investigation, on statements, reports, advice or opinions (including financial statements) of the Manager and the Mortgage Broker. The Trustee shall be entitled to rely, without further investigation, on statements, reports, advice or opinions (including Auditor's reports) of consultants, the Auditor, Counsel and consultants or agents whose profession gives authority to a statement made by them on the subject in question and who are considered by the Trustee to be competent. The Trustee may rely and act upon any instrument or other document believed by it to be genuine and in force and shall have no liability to any Person as a result of such reliance.

### **3.10 Trustee's Acknowledgements**

In entering into this Declaration, the Trustee acknowledges that:

- (a) it is a corporation validly existing pursuant to its governing legislation;
- (b) it has the power and capacity to enter into this Declaration and to perform its duties hereunder;
- (c) this Declaration has been duly authorized, executed and delivered by it and is a valid and binding obligation of it, enforceable against it in accordance with its terms; and
- (d) for the purposes of the Tax Act, it is resident in Canada and is not resident in any other jurisdiction other than a political subdivision of Canada (and in the case of a Trustee which is a partnership, it is a Canadian partnership for purposes of the Tax Act), and will exercise the main powers and discretions of the Trustee in respect of the Trust in Canada.

### **3.11 Trustee's Liability**

The Trustee and its directors, officers, employees and agents shall not be liable to the Trust or to any Unitholder for any loss or damage relating to any matter regarding the Trust, including any loss or diminution in the value of the Trust or its assets or the Units. Notwithstanding any other provision herein, in no event shall the Trustee be liable for any consequential or special damages, indirect, incidental, exemplary, aggravated or punitive loss or damages including but not limited to loss of reputation, goodwill or business. The Trustee, in any of its capacities hereunder, shall not be liable to the Trust or to any Unitholder for:

- (a) the proper application by any Unitholder of any part of its interests in the Trust if payments are made in accordance with written directions of such Unitholder as herein provided;
- (b) the adequacy of the Trust to meet and discharge any and all payments and liabilities in respect of a Unitholder;
- (c) the compliance by any Unitholder with the rules under the Tax Act, Applicable Tax Legislation or any applicable laws including limits on investments in non-Canadian securities;
- (d) acting or failing to act pursuant to or in reliance on instructions of the Manager, the Mortgage Broker, any custodian (if not the Trustee), record keeper (if not the Trustee), registrar or transfer agent of the Trust (unless the same be the Trustee), or any person or organization to whom its responsibilities are delegated as permitted hereunder;
- (e) the authenticity of any physically held commodities including, but not limited to, precious metals or the validity of title to any Trust Property which the Trustee did not arrange itself to have appropriately registered;
- (f) any act or omission required or demanded by any governmental, taxing, regulatory or other competent authority in any country in which all or part of the Trust Property is held or which has jurisdiction over the Trustee or the Manager;
- (g) loss or damage of any nature whatsoever resulting from official action, war or threat of war, insurrection or civil disturbances, interruptions in postal, telephone, internet or other electromechanical communication systems or power supply, the failure of any third party to fulfil its obligations under any agreement with the Trust or the Manager, or any other factor beyond the Trustee's control which obstructs, affects, prohibits or delays the Trustee, its directors, officers, employees or agents in carrying out the responsibilities provided for herein, in whole or in part;
- (h) any Trust Property which it does not hold or which is not directly controlled by it, its affiliates or its appointed agents (including subcustodians), or which is held or controlled, directly or indirectly, by the Manager or any affiliate or appointed agent of the Manager;
- (i) the acts, omissions, receipts, neglects or defaults of any person, firm or corporation employed or engaged by it as permitted hereunder or 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;
- (j) any loss or damage arising from the bankruptcy, insolvency or tortious act of any person, firm or corporation with whom or which any monies, Trust Property shall be lodged or deposited;
- (k) any loss occasioned by error in judgment or oversight on the part of the Trustee or any other loss, damage or misfortune which may happen in the execution by the Trustee of its duties hereunder;
- (l) any loss or damage caused to the Trust or any Unitholder by reason of any act, omission, receipt, neglect or default of the Manager, or an interim or replacement manager, or for any act, omission, receipt, neglect or default by any other person employed or engaged by the Trustee or the Manager as permitted in this Declaration; or
- (m) any loss, cost or fees associated with any failure by a Unitholder, the Trust or the Manager to comply with Applicable Legislation in connection with any transfer of Units.

## **SECTION 4 - REMOVAL AND REPLACEMENT OF THE TRUSTEE**

### **4.1 Removal of Trustee**

Subject to Section 4.6, the Trustee may be removed by the Manager upon 60 days' written notice in the event the Trustee is in material breach or default of the provisions of this Declaration, and, if capable of being cured, such breach or default has not been cured within 20 Business Days' written notice to the Trustee of such breach or default, if such removal has been approved by Special Resolution.

### **4.2 Resignation of Trustee**

Subject to Section 4.6, the Trustee may resign upon 60 days' written notice to the Unitholders and the Manager.

### **4.3 Deemed Resignation of Trustee**

The Trustee shall be deemed to have resigned without notice if an order is made or a resolution is passed or other proceeding is taken for the dissolution of the Trustee; if the Trustee consents to or makes a general assignment for the benefit of creditors, or makes a proposal to creditors under any insolvency laws, or is declared bankrupt, or if a liquidator or trustee in bankruptcy, custodian or receiver or receiver and administrator or interim receiver or other officer with similar powers is appointed in respect of the Trustee; if the Trustee, or the general partner of the Trustee if the Trustee is a limited partnership, ceases to be resident in Canada for the purposes of the Tax Act; or if, in accordance with the provisions of Applicable Law, the Trustee ceases to be qualified to act as trustee hereunder.

### **4.4 Appointment of Replacement Trustee**

If the Trustee is removed in accordance with Section 4.1, a replacement Trustee shall be elected to assume the responsibilities of the Trustee hereunder by a majority of the votes cast by Unitholders at the meeting at which the Trustee's removal was approved. If the Trustee resigns or is deemed to resign in accordance with Section 4.2 or 4.3, a replacement trustee to assume the responsibilities of the Trustee hereunder shall be appointed by the Manager.

### **4.5 Amalgamation of Trustee**

Any company resulting from any amalgamation or merger to which the Trustee may be party or succeeding to the trust business of the Trustee or to which substantially all of the trust assets of the Trustee may be transferred while the Trustee continues to act as trustee of the Trust, shall be the successor to the Trustee hereunder without any further act or formality with like effect as if such replacement Trustee had originally been named trustee herein, provided that the Trustee shall not amalgamate, transfer the trust assets or change residence unless, in the opinion of Counsel to the Trust, to do so would not adversely affect the Trust.

### **4.6 Effect of Resignation or Removal of Trustee**

(1) The removal or resignation of the Trustee pursuant to Section 4.1 or 4.2 shall become effective only on the acceptance of appointment by a replacement Trustee in accordance with Section 4.4. If, after the resignation or removal of the Trustee, no successor has been appointed within 90 days, the Trustee, the Manager or any Unitholder may apply to the Court for the appointment of a replacement Trustee.

(2) The liabilities, duties and obligations of the Trustee shall automatically terminate when it ceases to be the Trustee as herein provided, subject to such Trustee being liable for the exercise of its powers and the discharge of its duties as herein provided while in office.

(3) The appointment of any Person as the Trustee shall not be effective unless and until such Person shall have accepted such appointment by instrument in writing containing an undertaking to be bound by the terms of this Declaration. An acceptance shall be deemed to have been validly given by the Trustee although given in advance of such Person's appointment provided that such acceptance contains a provision that it shall take effect immediately

upon such appointment and provided that it contains an undertaking to be bound by this Declaration upon such appointment.

(4) Subject to Section 4.3, failure of a Person to accept appointment as the Trustee shall result in the Trustee remaining in office until such time as some other Person has accepted appointment as the Trustee. If the Trustee is deemed to have resigned pursuant to Section 4.3 and a replacement Trustee is not appointed pursuant to Section 4.4, the Manager or any Unitholder may apply to the Court for the appointment of a replacement Trustee. If a successor Trustee is not appointed, the Trust shall be terminated.

#### **4.7 Automatic Vesting of Trust Property and Obligations, Debts and Liabilities of the Trust**

(1) Upon a Person being appointed as the Trustee, the Trust Property shall automatically vest in such Person subject to any then existing security interests in such Trust Property granted by any predecessor Trustee in its capacity as trustee of the Trust.

(2) If a Person ceases to be the Trustee, the Trust Property shall automatically vest in the replacement Trustee (subject to any then existing security interests in such Trust Property granted by any predecessor Trustee in its capacity as trustee of the Trust) without the necessity of any act of transfer or transmission by the former Trustee. Notwithstanding the foregoing, the Trustee will execute such deeds and other documents as Counsel for the Trust may reasonably request to evidence such automatic vesting.

(3) Upon a Person being appointed as the Trustee, such Person, in such Person's capacity as trustee of the Trust, will automatically assume and be bound by, and will thereafter perform, observe and comply with, each and every covenant, agreement, term, condition, debt, liability, obligation, security interest, undertaking and appointment of the predecessor Trustee, in such predecessor's capacity as trustee of the Trust, contained in, existing under or created by each document or instrument executed and delivered or furnished by any predecessor Trustee, in such predecessor's capacity as trustee of the Trust. Notwithstanding the foregoing, the Trustee will execute such deeds and other documents as Counsel for the Trust or any counterparty to any such document or instrument may reasonably request to evidence the foregoing.

(4) If the Trustee ceases to hold office, the same shall not operate to annul or to terminate the Trust or to revoke or invalidate any agreement made by or on behalf of the Trust hereunder.

(5) Any replacement Trustee appointed pursuant to this Section 4 shall;

- (a) be qualified to act as such under any Applicable Law;
- (b) be resident in Canada for the purposes of the Tax Act and agree to exercise the main powers and discretions of the Trustee in respect of the Trust in Canada; and
- (c) hold such licenses and registrations under the NI 31-103 or otherwise as are necessary to perform the investment advisory and portfolio management duties in Section 3.3.

### **SECTION 5 - THE MANAGER**

#### **5.1 Management of the Trust**

The Trustee hereby appoints the Manager as manager and portfolio advisor of the Trust and may delegate to the Manager those duties of the Trustee hereunder that the Trustee deems appropriate. Without limiting the generality of the foregoing, the Trustee may grant such further discretion to the Manager to administer and manage the day-to-day operations of the Trust, act as agent for the Trust, execute documents on behalf of the Trust and to make decisions which conform to general policies and general principles set forth herein or established by the Trustee upon the direction of the Unitholders. The Manager shall have the powers and duties expressly provided for herein, and the Manager may be given the power to further delegate administration of the Trust where in the discretion of the Manager it is in the best interests of Unitholders to do so, provided that the Manager shall not be relieved of its obligations in

respect of the matters so delegated. Under the terms hereof, the Manager hereby agrees that: (i) the Manager waives to the maximum extent possible any right to indemnification that it may have against the Trustee or any Unitholder under any Applicable Law or otherwise; (ii) the Manager shall be liable to the Trust for any loss occasioned by the Manager's wilful misconduct, bad faith, negligence, any failure to satisfy the standard of duty and care prescribed by Section 5.2, or by any material breach or default by it of its obligations under this Declaration; and (iii) to the extent that there is any conflict or inconsistency between the provisions of this Declaration.

## **5.2 Standard of Care of Manager**

The Manager shall exercise its powers and discharge its duties honestly, in good faith and in the best interests of the Trust and shall exercise the degree of care, diligence and skill of a reasonably prudent person in the circumstances. Subject to the foregoing, the Manager shall not be required to devote its full time and attention to the affairs of the Trust but need only devote such time as it may deem appropriate or necessary to discharge its duties under this Declaration in a responsible manner.

## **5.3 Representations and Warranties of the Manager**

Trez Capital Fund Management (2011) Corporation hereby represents and warrants to the Trustee on its own behalf and, in its capacity as general partner of the Manager, on behalf of the Manager:

- (a) that it is validly existing as a corporation, and the Manager is validly existing as a limited partnership, pursuant to their respective governing legislation and do not require under Applicable Law any governmental or regulatory license, registration or approval which is not of general application to a company carrying on business in Canada or which each has not already obtained in order to perform the Manager's obligations under this Declaration;
- (b) each has the power and capacity to enter into this Declaration and to perform the Manager's duties hereunder;
- (c) that this Declaration has been duly authorized, executed and delivered by the Manager and is a valid and binding obligation of the Manager, enforceable against the Manager in accordance with its terms;
- (d) that the appropriate personnel of the Manager have read and are aware of the Investment Policy and the statutory and other restrictions applicable to the Trust, as set out in the Offering Memorandum and all relevant legislation; and
- (e) that, for the purposes of the Tax Act, the Manager is resident in Canada and is not resident in any other jurisdiction other than a political subdivision of Canada and the Manager will exercise its powers and discretions in respect of the Trust in Canada.

## **5.4 Restrictions on Manager**

The Manager may not:

- (a) commingle funds of the Trust with the Manager's funds; or
- (b) dissolve the Trust or wind up the Trust's affairs except as otherwise provided for in this Declaration.

## **5.5 Reliance**

The Manager shall be entitled to rely in good faith on statements, reports, advice or opinions (including financial statements and Auditor's reports), of the Auditor, Counsel and consultants or agents whose profession gives authority to a statement made by them on the subject in question and who are considered by the Manager to be competent. The

Manager may rely and act upon any instrument or other document believed by it to be genuine and in force and shall have no liability to any Person as a result of such reliance, except in the case of negligence or wilful misconduct.

## **5.6 Duties of Manager**

Under the terms hereof the Manager shall be responsible for providing, or causing to be provided, management and administrative services and facilities to the Trust, including, without limitation:

- (a) ensure that the Investment Policy complies with Applicable Law;
- (b) subject to Sections 2.4, 7.1, 7.2 and 7.3, be responsible for the determination of the Investment Policy;
- (c) subject to the power of the Board of Governors, appoint the Auditor;
- (d) appoint the Trust's bankers and establish banking procedures to be implemented by the Trust;
- (e) appoint a registrar and transfer agent;
- (f) provide services in respect of the Trust's daily operations, including the processing of and the determination of the procedures applicable in respect of subscriptions for securities of the Trust (including the acceptance and rejection of subscriptions) and any other services not otherwise specifically contemplated by this Declaration;
- (g) provide to the Trust all requisite office accommodation, office facilities and personnel, telephone and telecommunication services, stationery, office supplies, statistical and research services, record keeping services, bookkeeping and internal accounting and audit and legal services in respect of the operations of the Trust and other usual and ordinary office services adequate for carrying on the undertaking and business of the Trust;
- (h) provide to the Trust all other administrative and other services and facilities required by the Trust in relation to the Unitholders and be responsible for all aspects of the Trust's relationship with Unitholders, including, without limiting the generality of the foregoing, the preparation for and holding of meetings of Unitholders, communications with Unitholders, registry and transfer agency services, dividend and distribution crediting services and other services for the provision of information to Unitholders;
- (i) determine from time to time the form of certificate that will represent the Units, if any;
- (j) maintain the accounting records for the Trust;
- (k) be responsible for the determination and computation for distribution purposes of income and gains of the Trust and, subject to Section 9, be responsible for determining when, to what extent, and in what manner distributions shall be made payable to Unitholders;
- (l) make distributions of income and capital gains and other distributions in accordance with Section 9 and to pay redemption proceeds in accordance with Section 8.15 on behalf of the Trust, or appoint a distribution agent to do the same;
- (m) review and, if satisfactory, approve the valuation of the Trust's assets and, from time to time, consider the appropriateness of the valuation policies adopted by the Trust;
- (n) be responsible for ensuring that the Trust complies with regulatory requirements, including all applicable securities laws, regulations and policies relating to the investment of the Trust Property and the distribution of securities of the Trust and applicable stock exchange listing requirements;

- (o) be responsible for establishing written policies and procedures for each Conflict of Interest Matter that it identifies and referring such policies and procedures to the Independent Review Committee for its review and input;
- (p) have the power and authority to enter into arrangements regarding the distribution, sale and marketing of securities of the Trust, including arrangements relating to the right to charge fees of any nature or kind (including, without limitation, sales commissions, distribution fees and transfer fees) in connection with the distribution or sale of securities of the Trust;
- (q) offer Units of the Trust for subscription by prospective subscribers including the power and authority to enter into arrangements regarding the distribution of and subscription for Units, including the right to charge acquisition charges and redemption fees, and any such fees may be deducted from the amount of subscription or redemption proceeds if not paid separately;
- (r) receive all subscription funds and subscription documentation for Units in the Trust, approve or reject subscriptions and submit directions for issuance of Units to the transfer agent, registrar or other person responsible for the maintenance of the Register pursuant to Section 8.11;
- (s) have the power and authority to make distributions in Units and/or reinvest distributions made pursuant to Section 9.8 in additional Units, to authorize the issuance of such additional Units and to authorize the consolidation of the Units outstanding after such a distribution;
- (t) be responsible for administering the redemption of Units in accordance with Sections 8.15, 8.16 and 8.17 and market purchases of Units pursuant to Section 8.18;
- (u) prepare, execute and file the Trust's income tax returns, the Trust's interim financial statements and annual audited financial statements and related information and the Trust's reports to Unitholders and the Securities Authorities as required by Applicable Law, and Applicable Tax Legislation or the applicable Securities Authorities, prepare any other financial or accounting information as required by the Trust, make all designations, elections, determinations, allocations and applications under the Tax Act and Applicable Tax Legislation as the Trustee considers to be reasonable in the circumstances, and satisfy, perform and discharge all obligations and responsibilities of the Trustee under the Tax Act (including any obligations of the Trust under Part XIII of the Tax Act) and Applicable Tax Legislation;
- (v) prepare, execute and file with the appropriate Securities Authorities any Offering Memorandum, annual information form, registration statement or such other document and any amendments thereto, relating to or resulting from an offering of Units or other securities issued or held by the Trust and to pay or authorize the payment of all costs thereof and related thereto out of the Trust Property;
- (w) ensure that Unitholders are provided with financial statements and other reports as are required from time to time by Applicable Law;
- (x) establish the Trust's operating expense budgets and authorize the payment of actual operating expenses incurred;
- (y) enter into, on behalf of the Trust, a mortgage broker agreement with the Mortgage Broker;
- (z) enter into, on behalf of the Trust, such other agreements as it may deem appropriate;
- (aa) authorize and pay expenses incurred on behalf of the Trust;
- (bb) appoint the registrar and transfer agent (if applicable), auditors, legal counsel and other organizations or professionals serving the Trust;

- (cc) monitor the ability of the Trust to pay distributions;
- (dd) communicate with Unitholders;
- (ee) call meetings of Unitholders as required;
- (ff) manage or provide for the management of the Investment Portfolio, including without limitation the decisions as to investments in Real Property, directly or indirectly, by joint ventures, equity profit participations or otherwise, Mortgages and Mortgage administration, borrowing of funds, collection of all payments on account of principal and interest due under the Mortgages, ensuring payment of applicable taxes on mortgaged premises, ensuring placement of and payment for appropriate insurance against damage to or loss of mortgaged premises, performance of insurance adjustment services, handling of expropriation of mortgage premises, record keeping, realization on Mortgages, purchase and sale of securities, and decisions as to the execution of all portfolio transactions, including selection of market, dealer or broker and the negotiation, where applicable, of commissions or services charges;
- (gg) enforce each Mortgage, provided that prior to taking any steps to enforce any remedy under any mortgage, appoint a receiver or receiver/manager or otherwise become a mortgagee in possession, the Manager shall advise the Trustee and, may at the Manager's sole option, cause such Mortgage to be transferred to a subsidiary of the Manager incorporated for such purpose, in return for unsecured debts of such subsidiary equal to lesser of the loan balance and the net amount recovered, and in such instance, the Trust shall advance to the subsidiary funds as are necessary to cover the costs of such collection;
- (hh) to consent to, or otherwise participate in or dissent from, the reorganization, consolidation, amalgamation or merger of any corporation, company, trust or association, or to the sale, mortgage, pledge or lease of the property of any corporation, company, trust or association, any of the securities of which may at any time be held by, or on behalf of, the Trust, 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 deem necessary or advisable in connection therewith and to hold any securities or other property which it may so acquire and generally to exercise any of the powers of an owner with respect to securities;
- (ii) to renew or extend or participate in the renewal or extension of any securities or other Trust Property, upon such terms as the Manager may deem advisable, and to agree to a reduction in the rate of interest on any security or other Trust Property or of any guarantee pertaining thereto, in any manner and to any extent that the Manager may deem advisable;
- (jj) to waive any default whether in the performance of any covenant or condition of any security or other Trust Property, or in the performance of any guarantee, or to enforce rights in respect of any such default in such manner and to such extent as the Manager may deem advisable and to exercise and enforce any and all rights of foreclosure, to bid on property on sale or foreclosure with or without paying consideration therefor and in connection therewith to release the obligation on the covenant secured by such security and to exercise and enforce in any action, suit or proceeding at law or in equity any rights or remedies in respect of any such security or guarantee pertaining thereto;
- (kk) to lend Trust Property except that no such loans will be made to the Manager or any Affiliate thereof;
- (ll) to invest in Real Property, directly or indirectly, by joint ventures, equity profit participations or otherwise, except that no investments will be made in Real Property owned by the Manager or an Affiliate thereof;

- (mm) to borrow (including the right to borrow from the Trustee or any of its Affiliates) money (or incur obligations and liabilities in the nature of derivative contracts, arrangements or transactions) against the assets of the Trust or encumber the portfolio assets or other Trust Property of the Trust, to facilitate loan sharing arrangements and for other purposes to carry out the business and affairs of the Trust, on such terms and conditions as the Manager may determine, provided that the principal of and interest charged on such borrowing (or obligations and liabilities in the nature of derivative contracts, arrangements or transactions, as the case may be) shall be paid out of the Trust Property and, to the extent applicable, shall constitute a charge against the Trust Property and, for greater certainty, borrowings hereunder may be made by way of bankers' acceptances;
- (nn) to hold such portion of the Trust in Authorized Interim Investments and to retain the cash balances on deposit with a chartered bank or other depository, in such account as the Manager in its sole discretion determines, whether or not such deposits will draw interest, or to invest such cash balances in units of such short term investment funds as may be established by the Trustee or its affiliates by declaration of trust or otherwise provided a copy of the applicable declaration of trust or other documentation is provided to the Manager;
- (oo) to enter into and settle foreign exchange transactions on behalf of the Trust for purposes of (i) facilitating settlement of trades of securities or other Trust Property and (ii) currency hedging or other purposes, and any such transaction may be entered into with such counterparties as the Manager may choose in its sole discretion including the Trustee's Affiliates, if applicable;
- (pp) to commence, defend, adjust or settle suits or legal proceedings in connection with the Trust or Trust Property and to represent the Trust in any such suits or legal proceedings; provided, however, that the Manager shall not be obliged or required to do so unless it has been indemnified by the Trust to its satisfaction against all expenses and liabilities sustained or anticipated by the Manager by reason thereof;
- (qq) to maintain the Register and such books, records and accounts of the Trust as are necessary and appropriate to document the Trust Property and transactions of the Trust;
- (rr) 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 Manager, necessary or incidental to or desirable for the carrying out of any of the purposes of the Trust or conducting the business of the Trust including, without limitation, taxes or other governmental levies, brokerage commissions, charges and assessments of whatever kind or nature, imposed upon or against the Manager 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;
- (ss) 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 the Trustee, the Manager, members of the Board of Governors, any consultant or agent of the Trust (including the directors, officers and employees of the Trust and/or Trustee, the Manager, members of the Board of Governors, and any consultant or agent of the Trust) or the Unitholders in accordance with Section 13.5;
- (tt) to register the securities or other Trust Property in the name of the Trust or in the names of nominees or in bearer form if the investment is not registrable or it would not be in the best interest of the Trust to do otherwise; and the Trustee is hereby expressly empowered to keep the same, or through the facilities of CDS or The Depository Trust Company or any other domestic or foreign depository or clearing agency which is duly authorized to operate a book-based or uncertificated system (including a transnational book-based system) that is authorized to act as a custodian of securities by the laws of any country, province, state or any other political subdivision of any country in which such financial institution is located, all as the Manager may determine so long as the securities and other Trust Property at all times are kept distinct from the assets of the Manager and those of its nominees, other depositories and any other Person in the registers and other books of account kept

by the Manager; should a custodian other than the Trustee or its affiliates be appointed, the Trustee shall be under no obligation to supervise and shall have no responsibility or liability for acts of omission or commission of any such custodian under such arrangements, provided that in the event of a material breach of the terms of this Declaration by the Manager, in the event of the resignation, insolvency or bankruptcy of the Manager or in the event the Trustee is so directed by the Unitholders pursuant to a resolution of the Unitholders approved pursuant hereunder, the Trustee shall have the right to assume the responsibilities of the Manager with respect to the engagement and direction of any custodian appointed hereunder and the Manager shall provide to any custodian from time to time an irrevocable direction to this effect in form satisfactory to the Trustee, acting reasonably. All assets of the Trust shall be held by the custodian for the benefit of the Trust regardless of the name in which such assets are registered;

- (uu) to make, execute, acknowledge and deliver in the name of the Trust any and all deeds, leases, mortgages, conveyances, contracts, waivers, releases or other documents of transfer and any and all other instruments in writing that may be necessary or proper for the accomplishment of any of the powers herein granted, whether for a term extending beyond the possible termination of the Trust or for a lesser term;
- (vv) to renew or extend or participate in the renewal or extension of any Trust Investments or other property, upon such terms as the Manager may deem advisable, and to agree to a reduction in the rate of interest on any Mortgage or other property or of any guarantee pertaining thereto, in any manner and to any extent that it may deem advisable; to waive any default whether in the performance of any covenant or condition of any Trust Investment or other property, or in the performance of any guarantee, or to enforce rights in respect of any such default in such manner and to such extent as it may deem advisable; to exercise and enforce any and all rights of foreclosure, to bid on property on sale or foreclosure with or without paying a consideration therefor and in connection therewith to release the obligation on the covenant secured by such Mortgage or security and to exercise and enforce in any action, suit or proceeding at law or in equity any rights or remedies in respect of any such Mortgage or security or guarantee pertaining thereto;
- (ww) to register any Trust Investments or other property of the Trust in the name of the Trust or in the name of the Manager as a nominee or in the name of another nominee, all as the Manager may determine so long as the Mortgages and other Trust Property at all times are kept distinct from the Manager's own assets and those of its nominees and any other person in the registers and other books of account kept by the Manager;
- (xx) to make, execute, acknowledge and deliver in the name of the Trust any and all deeds, leases, Mortgages, conveyances, contracts, waivers, releases or other documents of transfer and any and all other instruments in writing that may be necessary or proper for the accomplishment of any of the powers herein granted, whether for a term extending beyond the office of the Trustee or beyond the possible termination of the Trust or for a lesser term;
- (yy) deliver a quarterly report (the "**Unitholders' Quarterly Portfolio Report Summary**") to the Trust, the Trustee and the Unitholders which will include the following information:
  - (i) the book value of the Units and book value per Unit;
  - (ii) confirmation that all Mortgages are within the Trust's investment policies; and
  - (iii) confirmation that no events of default have occurred under any of the Mortgages, or if an event of default has occurred, particulars of such default and the actions proposed to be taken by the Manager with respect to same;
- (zz) providing such other managerial and administrative services as may be reasonably required for the ongoing business and administration of the Trust; and

- (aaa) have the power and authority to rectify, repair or correct any matter, action, transaction or document, including this Declaration, that it reasonably determines is oppressive or unfairly prejudicial to, or that unfairly disregards, the interest of any Unitholder or series of Unitholders, provided that the Manager shall have delivered to the Trustee such written certification and opinion of Counsel as the Trustee may require confirming the basis upon which the Manager has determined that such rectification, repair or correction is necessary and appropriate under the circumstances, and that the Trustee shall be entitled to rely upon such certification and opinion without further inquiry in connection with any approval or confirmation or execution of any document by the Trustee.

### **5.7 Duties of Portfolio Advisor - Investment Portfolio**

The Manager, as portfolio advisor, shall have the following rights and shall perform the following duties with respect to the Investment Portfolio:

- (a) act as the investment advisor to the Trust with responsibility for the investment advisory and portfolio management services for the Trust, including, having regard to the provisions of the Offering Memorandum, the power to appoint a Mortgage Broker pursuant to a mortgage broker agreement, and delegate any of the rights and duties set forth in this Section 5.7 hereof to such Mortgage Broker, provided that the Manager will pay any fees and expenses of the Mortgage Broker;
- (b) identify, examine and screen investment opportunities and make day-to-day investment decisions relating to the acquisition and disposition of investments for the Trust in accordance with the Offering Memorandum and the Investment Policy;
- (c) execute all Investment Portfolio transactions, including the selection of dealers or brokers, and the negotiation, where applicable, of commissions or service charges so as to enable them to carry out their respective duties, and generally seek to obtain overall services and prompt execution of orders on favourable terms;
- (d) monitor the performance of the investments;
- (e) determine the timing, terms and method of disposing of investments;
- (f) consider, from time to time, the appropriateness of the valuation policies adopted by the Trust;
- (g) in connection with its obligations hereunder, open, maintain, conduct and close such accounts with any broker, dealer or investment concern as may be necessary or appropriate for the performance of the management services described herein; and perform such other services, enter into agreements and execute any document as may be necessary or desirable from time to time for the day-to-day management of the Investment Portfolio.

### **5.8 Appointment of Manager**

Trez Capital Fund Management Limited Partnership shall act as the initial Manager in accordance with the terms of this Declaration subject to the conditions set forth herein. In the event that the Manager resigns or is terminated as Manager for whatever reason, any new manager appointed by the Trustee shall agree to be subject to the terms and conditions similar to the provisions of this Section 5.

### **5.9 Resignation or Termination of Manager**

- (1) The Manager may resign as manager of the Trust by giving notice in writing to the Trustee and the Unitholders not less than 60 days prior to the date on which such resignation is to take effect. In the event of the resignation of the Manager, the Manager will appoint a successor manager of the Trust, and, unless the successor manager is an affiliate of the Manager, such appointment must be approved by an Ordinary Resolution. If, prior to

the effective date of the Manager's resignation, a successor manager is not appointed or the Unitholders of the Trust do not approve of the appointment of the successor manager as required thereunder, this Declaration of Trust will be terminated upon the effective date of resignation of the Manager and the Trust Property will be distributed. The Trustee will continue to act as trustee of the Trust until all of the Trust Property has been so distributed.

(2) The Manager is deemed to have resigned if the Manager becomes bankrupt, insolvent or makes a general assignment for the benefit of its creditors or in the event the Manager (or, if the Manager is a limited partnership, the general partner of the Manager) ceases to be a resident of Canada for purposes of the Tax Act.

(3) The Manager may resign if the Trust is in breach or default of the provisions of this Declaration and, if capable of being cured, such breach or default has not been cured within 30 days' notice of such breach or default to the Trust.

#### **5.10 Assignment of Management Duties**

The Manager may assign its duties under this Declaration to any party with the approval of the Unitholders by an Special Resolution approved at a meeting duly called for such purpose in accordance with the provisions set forth in Section 10, provided that any assignment of its duties under this Declaration by the Manager to an Affiliate shall not require Unitholder approval provided the Trustee is provided with advance written notice of any such assignment.

#### **5.11 Offerings**

The Manager shall be solely responsible for any and all matters relating to the distribution and issuance of Units whether or not pursuant to an Offering including:

- (a) ensuring compliance with all Applicable Laws;
- (b) all matters relating to the content of any offering documents, the accuracy of the disclosure contained therein, and the certification thereof;
- (c) all matters concerning the terms of any Material Contracts pertaining to such Offering;
- (d) all matters concerning any underwriting agreement, agency agreement or subscription agreement providing for the sale of Units or rights to acquire Units; and
- (e) all matters concerning the price at which the Units shall be offered.

#### **5.12 Execution of Agreements by the Manager**

The Manager shall execute any agreements on behalf of the Trust as the Manager shall have authorized within the scope of its authority (whether direct or delegated) hereunder.

#### **5.13 Power of Attorney**

Without limiting any of the other provisions of this Section 5, and subject to the restrictions set out in Section 14.1, including the requirement for prior written consent of the Trustee, the Trustee hereby irrevocably delegates to the Manager from time to time the full power and authority, and irrevocably constitutes the Manager its true and lawful attorney-in-fact, to sign on behalf of the Trust all offering memoranda, Offering Memorandums, annual information forms, management proxy circulars, financial statements, other offering documents and any other documents or agreements ancillary or similar thereto or to complete the transactions contemplated thereby that are required to be signed by the Trust from time to time.

#### **5.14 Referral of Conflict of Interest Matters**

Subject to any standing instruction from the Independent Review Committee, when a Conflict of Interest Matter arises, and before taking action in the matter, the Manager shall:

- (a) determine what action it proposes to take in respect of the matter, having regard to:
  - (i) its duties under Applicable Law; and
  - (ii) its written policies and procedures on the matter; and
- (b) refer the matter, along with its proposed action, to the Independent Review Committee for its review and decision.

#### **5.15 Liability of Trustee**

The Trustee shall have no liability or responsibility for any matters that are the responsibility (whether direct or delegated) of the Manager hereunder, and the Trustee, in relying on the Manager, shall be deemed to have complied with its obligations under Section 3.2 and shall be entitled to the benefit of the indemnity provided in Section 13.5. The Trustee shall not and shall not be deemed hereunder to have possession, care, control, direction over or occupancy of any Real Property whether or not such Real Property underlies or is the subject of a Mortgage and any possession, care, control, direction over or occupancy of any Real Property, however arising hereunder or otherwise, shall be the sole duty and responsibility of the Manager and not the Trustee. Despite the provisions of this Section, in the event the Trustee is required to acquire title to any Real Property or other asset for any reason, or take any action of any kind in relation thereto in order to carry out any fiduciary or trust obligation for the benefit of another which in the Trustee's sole discretion may cause the Trustee to be considered an "owner", "occupier", "operator" or similar under any environmental laws of any federal, provincial, state, municipal or local authority ("**Environmental Laws**"), or to otherwise be deemed to have possession, care, control, direction over or occupancy of any Real Property, or which could cause the Trustee to incur or be exposed to any liabilities under Environmental Laws, the Trustee reserves the right instead of taking such action to either resign as Trustee or arrange for the transfer of title or control of the Real Property or other asset to a court appointed receiver. The Trustee will not be liable to any Person for any liability under Environmental Laws or any claims under Environmental Laws or contribution actions under any federal, provincial, state, municipal or local law, rule or regulation by reason of the Trustee's actions and conduct as authorized, empowered and directed hereunder or relating to the presence of or any kind of release or threatened release of any contaminant or hazardous materials to the environment.

#### **5.16 Performance of Obligations**

In the event that the Manager is unable or unwilling to perform its obligations hereunder, or there is no Manager, the Trustee shall either perform all obligations of the Manager thereunder or such matters contemplated by this Declaration to be done or performed by the Manager or shall be entitled to engage another Person that is duly qualified to perform such obligations or do or perform such matters.

#### **5.17 Third Party Dealings**

The Manager hereby represents to the Trustee that any account to be opened by, or interest to held by, the Trustee in connection with this Declaration, for or to the credit of such party, either (i) is not intended to be used by or on behalf of any third party; or (ii) is intended to be used by or on behalf of a third party, in which case the Manager hereto agrees to complete and execute forthwith a declaration in the Trustee's prescribed form as to the particulars of such third party.

#### **5.18 Annual and Periodic Compliance Certificates; Duty to Report**

The Manager shall as soon as reasonably practicable following the end of each calendar year, and at any time upon the demand of the Trustee, provide the Trustee with a certificate of compliance substantially in the form attached as

Schedule "B" hereto and a certified copy of the register of Unitholders. In addition to any other obligation of the Manager under Applicable Law to report any breach or default of the provisions of this Declaration, the Manager shall report to the Trustee forthwith any breach or default (or any circumstances which may reasonably be considered likely to constitute a breach or default) on the Manager's part of the provisions of this Declaration.

## **SECTION 6 - FEES, COMPENSATION AND EXPENSES**

### **6.1 Trustee's Fee**

For all of its services under this Declaration, the Trustee shall receive fees and compensation for disbursements and expenses, all of which shall be paid from the Trust Property. The amount of such fees shall be agreed to in writing by the Manager and the Trustee from time to time. Other than such fees, disbursements and expenses, the Trustee shall receive no other compensation for its services as trustee, custodian or otherwise under this Declaration, but nothing herein shall prevent the Trustee from receiving additional compensation in connection with additional services not provided for herein that may be performed by the Trustee, including services performed for and dealings with the Trust by the Trustee other than in the capacity of trustee of the Trust.

### **6.2 Manager's Fees**

In consideration for the ongoing services provided by the Manager pursuant to the terms of this Declaration, the Manager shall be entitled to receive the Manager's Fee out of the Trust Property, which fee shall not be reduced without the consent of the Manager but which may be increased with the consent of the Unitholders by Special Resolution.

The Manager's Fee is to be determined as at each Calculation Date and, if any Manager's Fee is payable, in respect of any quarterly or monthly period ending on such Calculation Date, it is to be paid in arrears at the same time as distributions are made to the Unitholders at the applicable Distribution Payment Date. The Manager's Fee is also to be determined, pursuant to Section 12.6, as at the Termination Date and, if any Manager's Fee is payable, it is to be paid at the same time as distributions are to be made to Unitholders at the Termination Date. The Manager shall be entitled to assign all or any part of the Managers' Fee and the Trust agrees to make payment of the Manager's Fee or portions thereof to such person or persons as the Manager may in writing direct and payment of the Manager's Fee as so directed shall fully discharge the Trust's obligation to the Manager in respect of the payment of the Manager's Fee.

### **6.3 Payment of Fees**

The fees and expenses payable to the Trustee or the Manager pursuant to this Section 6 shall be paid in all events and circumstances out of the Trust Property without regard to whether or not the Trustee or the Manager is in breach or default of this Declaration or any other duties or obligations of the Trustee or the Manager to the Trust or whether the Trustee or the Manager has become bankrupt or insolvent and the Trust shall not assert any, right of set-off or claim in respect of such fees except as may be required by Applicable Law or an order by any regulatory authority having jurisdiction. For greater certainty, in making such payments of fees and expenses to the Trustee or the Manager, as applicable, the Trustee or the Manager, as applicable, shall be subject to the standard of care prescribed for the Trustee in Section 3.2 or the Manager in Section 5.2.

### **6.4 Expenses/Outlays**

All expenses or outlays relating to the Trust from inception to the Termination Date, including, but not limited to brokerage, legal and other fees and disbursements directly relating to the marketing and procurement of subscriptions for Units and the implementation of transactions for Trust investments, if any, shall be paid by the Trust, including:

- (a) any taxes payable by the Trust or to which the Trust may be subject; and
- (b) expenses of conducting Unitholder meetings convened at the request of Unitholders, pursuant to Section 10.1(1).

Any expenses of the Trust in respect of a specific Series shall be allocated to that Series in the Manager's discretion, acting reasonably.

## **6.5 Trailer Fee**

The Trust will pay to registered dealers an annual servicing fee (the "**Trailer Fee**") out of the Trust Property equal to 1.00% of the book value per Unit for each Series A Unit held by clients of the registered dealers, plus applicable taxes. Subject to the immediately following sentence, the Trailer Fee shall be calculated in 4 quarterly instalments based on the book value per Unit determined as of, and the number of Series A Units held by clients of the registered dealers at, each quarter end Valuation Date, and each such instalment shall be payable on the immediately following Distribution Payment Date. If the Manager determines to make monthly distributions to Unitholders in accordance with Section 9.2(1)(b), the Trailer Fee shall be calculated in 12 quarterly instalments based on the book value per Unit determined as of, and the number of Series A Units held by clients of the registered dealers at, each month end Valuation Date, and each such instalment shall be payable on the immediately following Distribution Payment Date.

## **SECTION 7 - INVESTMENTS**

### **7.1 Investment Objective**

The investment objective of the Trust is to provide a stream of income to investors. The Trust will seek to accomplish its investment objective through prudent investments in the United States in Mortgages focused on Short Term financing to real estate investments and developers and by entering into Equity Investments and making investments in Mezzanine Loans and Mortgage Participations (the "**Investment Objective**"). Assets of the Trust may be held in Authorized Interim Investments so long as such investments do not cause the Trust to cease to qualify as a qualified investment (as that term is defined in the Tax Act) for a Deferred Plan, pending investment or reinvestment in loans secured by Real Property situated in the United States. The Manager shall ensure that investments of the assets of the Trust are made in such a way as to comply with the Investment Objective. The Manager shall from time to time sell any or all of such investments and reinvest the proceeds thereof or exchange any or all of such investment for other investments. The Trust may co-invest with a third party or third parties in a Mortgage or Real Property. The Trust and the Manager shall not, in carrying out investment activities, 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 but shall be limited by the Investment Restrictions contained herein and the appropriate regulatory authorities to which the Trust is subject.

### **7.2 Investment Restrictions**

The following are the investment restrictions ("**Investment Restrictions**") to be applied by Trust in selecting Trust Investments:

- (a) The Trust will not invest in any Mortgage (often referred to as a Deed of Trust in the United States) or interest in Real Property where the Manager or an Affiliate of the Manager holds a prior charge or other security interest on the underlying Real Property which forms the security of such Mortgage.
- (b) The Trust will not invest in Real Property, except pursuant to an Equity Investment or a Mortgage Participation. However, the Trust may, in accordance with Section 2.4(3), hold Real Property acquired as a result of foreclosure where such foreclosure was necessary to protect an Investment as a result of a default by the Mortgagor. The Trust will use its reasonable best efforts to dispose of such Real Property acquired on foreclosure.
- (c) The Trust will not invest in a loan to the directors or officers of the Manager, but the Trust may invest in a Mortgage or Mortgage Participation when the borrower is an entity owned in whole or in part, or controlled, by the Manager or its Affiliates and the Trust may make an Equity Investment in Real Property owned, directly or indirectly, in whole or in part, by the Manager or its Affiliates, in each case on the following conditions:

- (i) the investment must be on the same terms as, and must not be for an amount greater than, the amount either borrowed from or invested by, parties who are not Affiliates of the Manager, or in which the Manager or its Affiliates have no financial interest, who rank *pari passu* in the investment with the Trust;
  - (ii) the profit from any joint venture must not be included in calculating the Incentive Fee paid to the Manager in respect of the investment;
  - (iii) the aggregate amount of all such investments must not exceed 20% of the net assets of the Trust at the time each investment is considered for approval; and
  - (iv) all such investments will be reviewed by the Credit Committee of the Board of Governors after the investments are made as part of its normal review of the Trust's compliance with its investment restrictions to ensure that the foregoing investment restrictions set out herein have been met.
- (d) Except as provided in paragraph (c) above, the Trust will not make loans to, nor invest in Real Property owned by the Manager or its Affiliates nor make loans to the directors or officers of the Manager.
  - (e) The Trust will not invest in or hold any asset which in any way does not qualify as a "qualified investment" for a trust governed by a Deferred Plan, unless the Trust qualifies as a "mutual fund trust" under the Tax Act.
  - (f) The Trust will not invest in any asset, or conduct its affairs in a way, that would disqualify the Units as a "qualified investment" for a trust governed by a Deferred Plan.
  - (g) The Trust will not make any Equity Investments until the Trust has not less than \$50,000,000 in net assets.
  - (h) The Trust will not invest more than 20% of its net assets in Equity Investments.
  - (i) The Trust will not invest more than 10% of its net assets in Mezzanine Loans.

The Manager may, in its discretion, from time to time, impose additional Investment Restrictions upon the Trust.

### **7.3 Approval for Changes**

Unitholder approval by Special Resolution, voting as a single class, is required to change the Investment Objective or remove Investment Restrictions.

### **7.4 Trust Legislation and Investments**

(1) The Trust, the Manager and the Mortgage Broker shall not, in carrying out investment activities, 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 but shall be limited by any investment restrictions contained herein and the appropriate regulatory authorities to which the Trust is subject. It shall be the sole responsibility of the Manager (and not the responsibility of the Trustee) to ensure that all investments of the assets of the Trust are made in such a way as to comply with the Investment Objective and Investment Restrictions and statements made in any current Offering Memorandum or other disclosure document of the Trust as to the Investment Objective and Investment Restrictions and any other investment policies, practices and objective and investment restrictions applicable to or adopted by the Trust from time to time and so as to comply with this Declaration and with applicable law, regulations and policies. Under no circumstances shall the Trustee have any liability or responsibility to the Trust or any Unitholder in respect of the loss or diminution of value of any of Trust Property or have any obligation to restore any loss or diminution of value of any of Trust Property.

(2) Any monies held by the Trustee which may or ought to be invested or which may be in the hands of the Trustee may be invested and reinvested in the name or under the control of the Trustee in securities issued or guaranteed by the Government of Canada, or securities issued or guaranteed by any province of Canada with a credit rating of not less than AA (low), or securities issued or guaranteed by a Schedule I chartered bank with a credit rating of not less than AA (low) (in both cases, as rated by DBRS or if DBRS is not then in existence, a comparable Canadian rating organization). Pending such investment, such moneys may be deposited by the Trustee in an interest-bearing trust account in the name of the Trustee at one or more Schedule I chartered banks with a credit rating of not less than AA (low) (in each case, as rated by DBRS or if DBRS is not then in existence, a comparable Canadian rating organization) (each, an "**Approved Bank**"). The Trustee shall pay interest at its current rate for trust accounts on money maintained in such trust account. Such payment obligation shall be calculated daily and paid to the account(s) within three Business Days of each month-end. The Trustee shall be entitled to retain for its own benefit, as partial compensation for its services hereunder, any amount of the interest earned on such monies. The Trustee shall have no responsibility or liability for any diminution of moneys held by the Trustee pursuant to this Agreement which may result from any deposit made with an Approved Bank, including any losses resulting from a default by the Approved Bank or any other credit losses (whether or not resulting from such a default) and any credit or other losses on any deposit liquidated or sold prior to maturity. The parties hereto acknowledge and agree that the Trustee will have acted prudently in depositing moneys at any Approved Bank, and that the Trustee is not required to make any further inquiries in respect of any such bank. At any time from time to time, the Manager shall be entitled to direct the Trustee by written notice (a) not to deposit any new amounts in any Approved Bank specified in the notice and/or (b) to withdraw all or any of the moneys that may then be deposited with any Approved Bank specified in the notice and re-deposit such amount with one or more of such other Approved Banks as specified in the notice. With respect to any withdrawal notice, the Trustee will endeavour to withdraw such amount specified in the notice as soon as reasonably practicable and the Manager acknowledges and agrees that such specified amount remains at the sole risk of the Trust prior to and after such withdrawal. Subject to provisions set forth above, the Trustee shall disburse to the Trust all interest received or other gains realized by the Trustee in respect of any investments or deposits made pursuant to the provisions hereof.

## **SECTION 8 - THE TRUST UNITS AND OTHER SECURITIES**

### **8.1 Number and Nature of Units**

The Trust is authorized to issue an unlimited number of transferable, redeemable Units of a single class, issuable in multiple Series, each of which represents an undivided beneficial interest in the net assets of the Trust. Subject to Sections 8.2 and 8.4, no Unit shall have any privileges, preferences or priorities over any other Unit. Units will be issued as fully paid and non-assessable.

### **8.2 Series**

(1) At any time hereafter, the Manager may create one or more new Series of the same class ("**New Series**") without Unitholder approval (provided same are within the Investment Objective and Investment Restrictions set out in Section 7), and from time to time issue Units thereunder subject to the provisions of this Section 8 and to the requirements and restrictions provided in this Declaration.

(2) Before the issue of a New Series, the Manager shall execute a declaration supplemental hereto creating the New Series pursuant to Section 8.2 and establishing the terms and Investment Objective relating thereto, to be set out in a schedule attached hereto, and shall deliver the supplemental declaration of trust, together with a certified resolution authorizing the same, to the Trustee and the Trustee shall execute and deliver the supplemental declaration of trust.

(3) Any New Series created by the Manager shall:

- (a) be designated by letter or letters or letters and numbers; and
- (b) have Series' rights (including rights of retraction or redemption) established by the Manager.

(4) No Series may have priority over any other Series, except as provided in this Section 8.2.

(5) At the option of the Manager, the maximum number of Units of a New Series may be limited, such limitation to be expressed in the supplemental declaration of trust providing for the creation of the New Series.

(6) Subject to any limitation as to the maximum number of Units of any particular Series, additional Units may be issued as part of any Series previously issued, in which case they shall bear the same designation and designating letters as have been applied to the similar previous issue and shall be numbered consecutively upwards following the numbers of the Units of the previous issue.

(7) The first series of Units shall be designated "Series A Units", "Series F Units" and "Series I Units", with the following Series' rights:

(a) Series A Units shall:

- (i) pay the Trailer Fee as set out in Section 9.2(1)(a) or (b) as applicable;
- (ii) pay the Series A and Series F Administration Fee as set out in Section 9.2(1)(a) or (b) as applicable; and
- (iii) be redeemable as set out in Section 8;

(b) Series F Units shall:

- (i) pay the Series A and Series F Administration Fee as set out in Section 9.2(1)(a) or (b) as applicable; and
- (ii) be redeemable as set out in Section 8;

(c) Series I Units shall:

- (i) pay the Series I Administration Fee as set out in Section 9.2(1)(a) or (b) as applicable; and
- (ii) be redeemable as set in Section 8 and, in particular, Section 8.2(8).

(8) To be eligible to purchase Series I Units, investors must enter into an agreement with the Manager. This agreement shall set out, among other things, the amount to be invested and the service fee payable to the dealer, if any. If the Unitholder did not qualify to hold Series I Units, when the Unitholder originally purchased them, or is no longer eligible to hold Series I Units, the agreement shall provide that the dealer must tell the Manager to switch the Unitholder's Units into Series A Units or Series F Units or to redeem them. The Manager also retains the right, at its sole discretion, to redeem or switch Series I Units into Series A Units or Series F Units, if the Manager determines that the Unitholder is not eligible to hold Series I Units.

### **8.3 Unit Attributes**

(1) The Units shall have the following rights, privileges and restrictions:

- (a) subject to Sections 8.2 and 8.4, each Unit shall entitle the holder thereof to one vote at all meetings of Unitholders;
- (b) subject to the other provisions of this Declaration, each Unit shall entitle the holder thereof to participate pro rata in accordance with the provisions hereof, with respect to all distributions, including distributions of Net Income and Net Realized Capital Gains pursuant to Section 9; and, upon liquidation of the Trust to participate pro rata with Unitholders in the assets of the Trust remaining after the satisfaction of outstanding debts, liabilities, and liquidation or termination expenses of the Trust;

- (c) the number of Units of the Trust which may be issued is unlimited; and
  - (d) each Unit shall entitle the holder thereof to require the Trust to redeem the Unit as provided in Section 8.15.
- (2) In addition:
- (a) there shall be no pre-emptive rights attaching to Units;
  - (b) there shall be no liability for future calls or assessments attaching to Units;
  - (c) the Trustee shall not issue fractional Units (except in connection with a distribution and consolidation of Units permitted under Section 9.8); and
  - (d) the Trustee may in its discretion subdivide the Units outstanding at any time so that the number of outstanding Units may be increased, or consolidate the Units outstanding at any time so that the number of outstanding Units may be decreased.

#### **8.4 Voting Rights of Trustee and Others**

To the extent that any of them holds Units from time to time, none of the Trustee or the Manager, any insider of the Trust (as defined in the Securities Act), any Affiliate of the Trustee or the Manager shall be entitled to vote the Units held by them on a Special Resolution to be adopted by Unitholders.

#### **8.5 Rights, Warrants and Options**

The Trust may create and issue other securities including rights, warrants, options or convertible debentures, at such time or times and on such terms and conditions as the Manager may determine, subject to compliance with the requirements of applicable securities regulatory authorities provided that, if the issue of such securities could result, by their terms, in the issuance of Units, the net proceeds per Unit issued taking into account both the price paid for such securities and the amount to be paid pursuant to the exercise, conversion or exchange of such securities, may not be less than the most recently calculated book value per Unit prior to the pricing of such securities.

#### **8.6 Allotment and Issue**

(1) Within the limitations of Sections 8.2, 8.3, 8.5 and this Section 8.6, the Trust may allot and issue Units at such time or times at such price and in such manner and to such Person, Persons or class of Persons as the Manager in its sole discretion shall determine, having regard to such matters as would be considered by the board of directors of a CBCA corporation when issuing shares in comparable circumstances. Notwithstanding the foregoing, the Trust shall not allot and issue Units, other than any Units issued in accordance with Section 9.8, at a subscription price per Unit that results in net proceeds to the Trust that are less than the book value per Unit, calculated as of the close of business on the Business Day immediately prior to the pricing of such offering, unless the prior approval of the Unitholders is given by Ordinary Resolution in accordance with Section 10.3(a).

(2) Subscriptions for Units issued pursuant to an Offering will be subject to rejection or allotment by the Manager in whole or in part. If the Manager has not approved a subscription, the Manager shall so advise the applicant and forthwith return to the applicant the amount tendered by the applicant with his or her subscription without interest.

(3) The Manager reserves the right to accept or reject subscriptions for Units in whole or in part in its discretion. Following receipt of a subscription for Units by the Manager, the Manager shall, upon acceptance of such subscription and receipt of the subscription price payable for such Units, immediately issue to the subscriber the Units for which the subscription has been accepted and payment of the subscription price received. Upon rejection of a subscription, the Manager shall promptly refund to the subscriber all moneys received in connection with the subscription.

## 8.7 Method of Determining Book Value of the Units

The Manager will calculate the book value of the Units and book value per Unit in Canadian dollars on each Valuation Date. In determining the Net Asset Value for such purpose, net assets will be calculated in Canadian dollars as follows:

- (a) The recorded value of any cash on hand, on deposit or on call, and prepaid expenses will be the cost amount thereof unless the Manager, or its delegate, deems otherwise.
- (b) Mortgages will be stated at amortized cost, determined by using the effective interest rate method based on a discounted cash flow analysis of the future expected cash flows from the period end to the maturity of the Mortgage, less any impairment losses. The effective interest rate is the rate that exactly discounts estimated future cash payments or receipts through the expected life of the financial instrument or, when appropriate, a shorter period to the net carrying amount of the mortgage. Interest income is recorded on the effective interest rate basis. An impaired Mortgage loan is any loan where, in the Manager's opinion, there has been a deterioration of credit quality to the extent that the Trust no longer has a reasonable assurance as to the timely collection of the full amount of principal and interest.
- (c) The value of short-term investments (treasury bills, money market instruments, or similar) will be the cost of such instrument plus accrued interest up to and including the date of calculation.
- (d) The value of foreign currency derivatives will be recorded at fair value as determined by the Manager.
- (e) The value of Equity Investments and any other property will be the value determined by the Manager, or its delegate, which most accurately reflects the principles of International Financial Reporting Standards.
- (f) All assets and liabilities denominated in currencies other than Canadian dollars will be translated to Canadian dollars using the exchange rate at the balance sheet date. Revenue and expenses are translated using the average rate for the period. All resulting unrealized gains and losses will be included in the calculation of net asset value.
- (g) All expenses or liabilities will be recorded on an accrual basis.
- (h) The amount of any Canadian income taxes payable by the Trust will be determined based on the assumption that the Trust will distribute and allocate to its Unitholders in each year all of its Taxable Income for such year;

For the avoidance of doubt, all references in this Declaration to Net Asset Value or NAV are intended to refer to the net asset value of the Trust determined in accordance with the foregoing solely for the purpose of determining the book value of the Units and book value per Unit, and not for financial reporting purposes. For the purpose of the financial statements for the Trust, net assets will be calculated in accordance with IFRS, without regard to this Section 8.7.

## 8.8 Book Value Per Unit

The "**book value per Unit**" on a particular date shall be the quotient obtained by dividing the book value of the Units on such date by the total number of Units outstanding at the end of such date (for greater certainty, after giving effect to all issuances, purchases, redemptions and consolidations of Units occurring, or deemed to occur, on such date).

## 8.9 No Transferability and Information

- (1) Units are not transferable, except by operation of law (such as the death or bankruptcy of a Unitholder) or in circumstances where the Manager deems it appropriate to do so in its absolute discretion.

(2) The Unitholders shall, upon demand from time to time, disclose to the Manager in writing such information with respect to direct and indirect ownership of Units as the Manager may deem necessary to determine whether or not a majority of Units are owned by Persons who are not resident in Canada for purposes of the Tax Act or to comply with any of the foregoing.

#### **8.10 No Unit Certificates**

If an adequate book-based or uncertificated security register is established, no certificates evidencing ownership of Units will be issued to a Unitholder.

#### **8.11 Register of Unitholders**

One or more Registers (each, a "**Register**") shall be kept by or on behalf of the Trust which shall contain the names and addresses of Unitholders, the respective numbers of Units held by them, and a record of all transfers thereof. Only Unitholders whose Units are so recorded shall be entitled to receive distributions and to exercise or enjoy the rights of Unitholders hereunder. The Person registered as a Unitholder on the Register shall be treated as the owner of such Unit for all purposes, including without limitation payment of any distribution, giving notice to Unitholders and determining the right to attend and vote at meetings. of Unitholders. Accordingly, neither the Trustee nor the Manager shall be bound to recognize any transfer or attempted transfer, pledge or other disposition of a Unit, or any equitable or other claim with respect thereto, whether or not the Trust, the Trustee or the Manager shall have actual or other notice thereof, until such Unit shall have been transferred on the Register as herein provided.

#### **8.12 Registrars and Transfer Agents**

(1) The Trustee or the Manager, shall appoint one or more chartered banks or banking institutions, trust companies, or other Persons, to act as transfer agents and registrars for the Units (which entity may be an Affiliate or subsidiary of the Trustee) and may provide for the transfer of Units in one or more places within or outside Canada (provided that if such appointments are made there shall be a transfer agent and registrar within the Province of British Columbia). Such transfer agents and registrars shall perform those functions and duties usually performed by transfer agents and registrars of shares of corporations having share capital, including maintaining the Register and all other necessary or appropriate books (which may be kept on a computer or similar device) for recording original issues and registering and transferring the Units. In the case of an original issue of Units, the transfer agent or registrar may rely and act upon the written instruction of the Trustee or the Manager, without inquiry into the receipt by the Trust of, or the sufficiency of, the consideration for such original issue.

(2) The Trustee as trustee of the Trust will enter into agreements with such registrars and transfer agents which agreements shall provide that the compensation of the registrars and transfer agents will be paid out of the Trust Property.

#### **8.13 Successors in Interest of Unitholders**

Any Person becoming entitled to any Units as a consequence of the death, bankruptcy or incompetence of any Unitholder, or otherwise by operation of law, shall be recorded as the holder of such Units, subject to Sections 8.6(3) and 10.5, upon production of evidence thereof, satisfactory to the transfer agent and registrar, but until such record is made, the Unitholder of record shall continue to be and be deemed to be the legal and beneficial holder of such Units for all purposes whether or not the Trust, the Trustee, the Manager or a transfer agent or registrar of the Trust shall have actual or other notice of such death, bankruptcy, incompetence or other event.

#### **8.14 Units held Jointly or in Fiduciary Capacity**

The Trustee and the Manager may treat two or more Persons holding any Unit as joint tenants of the entire interest therein unless their ownership is expressly otherwise recorded on the Register, 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 as a holder of any Unit may, subject to the provisions herein contained,

be described in the Register or on any certificate as a fiduciary of any kind and any customary words may be added to the description of the holder to identify the nature of such fiduciary relationship.

### 8.15 Unitholder Redemptions

(1) A Unitholder shall be entitled, subject as hereinafter provided, to have all or any of the Unitholder's Units redeemed (a "**Redemption**") and to be paid an amount as determined under Section 8.15(2) for each Unit redeemed, in increments of not less than \$5,000 (unless the total number of Units held by the Unitholder would, pursuant to Section 8.15(2), yield Redemption proceeds of less than \$5,000, in which case such entire amount shall be redeemable), by giving not less than 30 days' written notice (the "**Redemption Notice**") to the Manager, which notice shall be irrevocable and shall contain a clear request that a specified number of Units be redeemed or the dollar amount which the Unitholder requires to be paid. If a Unitholder, after Redemption, will hold Units with a value of less than \$5,000, the Unitholder must redeem all of his or her investment. The Manager may in its absolute discretion, redeem the Units of a Unitholder if such Units have a value of less than \$5,000. The requirement for a written request for Redemption may, at the discretion of the Manager, be waived by the Manager, in writing, in which event a verbal request for Redemption to the Manager shall be sufficient for the purposes of this Article.

The Manager shall arrange for the payment to be made on the date given in the Redemption Notice (the "**Redemption Payment Date**") in such manner as may be determined by the Manager, of the Redemption proceeds for the Units being redeemed, by the mailing or delivery of a cheque or by electronic funds transfer in the relevant amount determined in accordance with Section 8.15(2) (less any amount required to be withheld) to the Unitholder at his last address as shown in the record of Unitholders or to such other payee or address as the Unitholder may in writing direct. Any cheque so delivered or mailed shall, unless not honoured on presentation, discharge the Trust, the Trustee and the Manager from all liability to the Unitholder in respect of the amount thereof plus any amount withheld in respect of the Units redeemed.

- (2) All Units are redeemable at the demand of Unitholders at a price per Unit (the "**Redemption Price**") equal to:
- (a) at any time up to the first anniversary of their issuance, 99% of the book value per Unit, determined as of the immediately preceding Valuation Date; and
  - (b) thereafter, at the book value per Unit, determined as of the immediately preceding Valuation Date,

The discount described in subparagraph (a) above may be waived by the Manager in its sole and absolute discretion. For purposes of this Section 8.15(2), any Reorganization Units received by a Unitholder in exchange for trust units of the US Trust shall be deemed to have been issued on the date the trust units of the US Trust for which such Reorganization Units were exchanged were issued.

(3) The Manager shall, within 20 days of each Valuation Date, determine the book value per Unit as of such Valuation Date.

(4) The Manager may from time to time prescribe redemption procedures which are in addition hereto. Notice of such redemption procedures shall be given to Unitholders either as provided in Section 13.5 or by stating the same in the relevant Disclosure Documents. Such procedures may include, but are not limited to, the establishment of:

- (a) any required method of transmission of a redemption request including any required forms for redemption requests;
- (b) any required documentation or evidence relating to the authority of any Person to submit a redemption request;
- (c) any requirements for the surrender of certificates, if any, representing the Units to be redeemed; and
- (d) a systematic redemption program.

(5) The Manager shall not be obligated to accept, but may in its discretion accept, Redemption Notices for amounts exceeding, in aggregate, 5% of the book value of the Units at such time, in any one calendar month. Redemption Notices shall be honoured based on the time of receipt, and if received on the same day, shall be prorated. If Redemption Notices exceeding such amount are received by the Manager, the Unitholder may withdraw the Redemption Notice. If the Redemption Notice is not withdrawn, the Units shall be redeemed during the next and succeeding calendar month or months. If Redemption Notices apply for amounts exceeding, in aggregate, 5% of the book value of the Units at such time, in such next calendar month, Redemption Notices shall be honoured based on the time of receipt and if received on the same day shall be prorated.

(6) Notwithstanding any other provision in this Declaration, the Manager may suspend the calculation of the book value per Unit and the Redemption of Units, or postpone the day of payment or right of Redemption, for a period of not more than 180 days for or during any period during which the Manager determines that conditions exist which render impractical the sale of the assets of the Trust or impair the ability of the Manager to determine the Net Asset Value. Any such suspension shall take effect at such time as the Manager specifies and thereafter there shall be no Redemption of Units during the 180 day period until the Manager declares the suspension at an end.

The suspension may apply to all requests for Redemption received prior to the suspension but as to which payment has not been made, as well as to all requests received while the suspension is in effect. All Unitholders making such requests shall be advised by the Manager of the suspension and that the Redemption will be effected at a price determined on the first Business Day following the termination of the suspension. All such Unitholders shall have, and shall be advised that they have, the right to withdraw their requests for Redemption. The suspension shall terminate in any event on the first day on which the condition giving rise to the suspension has ceased to exist, provided that no other condition under which a suspension is authorized then exists. To the extent not inconsistent with official rules and regulations promulgated by any government body having jurisdiction over the Trust, any declaration of suspension made by the Trustee or Manager shall be conclusive.

(7) Any unpaid distribution declared payable to Unitholders of record on or before the Redemption date in respect of Units redeemed on such date will be paid to the Unitholder redeeming such Units on the applicable date on which such distribution is to be paid to Unitholders.

(8) Subject to Sections 8.15(5), 8.15(6) and 8.15(7), from and after the date a Unitholder gives a written notice of the Unitholder's intention to redeem Units, such Units shall cease to be entitled to a share in the income or any participation in the Trust Property (other than the receipt of the Redemption Price, as applicable) and the Unitholder thereof shall not be entitled to any of the rights of Unitholders in respect thereof.

(9) Any and all Units that have been surrendered for Redemption shall be deemed to be outstanding until, but not after, the close of business on the date such Units are redeemed, unless the Redemption Price for such Units is not paid on or before the Redemption Payment Date, in which case such Units shall remain outstanding until such time as the Redemption Price for such Units is paid. Subject to Section 8.15(7), the Unitholder who surrendered such Units for Redemption shall cease to have any rights as a Unitholder in respect of such Units to receive the amount of all distributions in respect of such Units which were paid or payable prior to such Redemption.

(10) The Redemption Price payable in respect of the Units surrendered for Redemption shall be paid by cheque, payable on the Redemption Payment Date, to or to the order of the Unitholder who exercised the right of Redemption in Canadian dollars.

(11) Any Redemption Notice that the registrar and transfer agent determines to be incomplete, not in proper form or not duly executed shall for all purposes be void and of no effect, and the Redemption privilege to which it relates shall be considered for all purposes not to have been exercised thereby.

(12) The election by any Unitholder to surrender any Units for Redemption shall be irrevocable upon receipt by the Trust's registrar and transfer agent at its principal transfer offices in the City of Vancouver and at its branch offices in such other locations as the Trust may in writing direct of the request for redemption; provided that the Trustee may, in its unfettered discretion, permit withdrawal of any such election at any time prior to payment of the Redemption Price for the Units to be redeemed.

### **8.16 Redemption by Manager**

(1) At no time may non-residents of Canada and/or partnerships that are not Canadian partnerships within the meaning of the Tax Act (or any combination thereof) (collectively, "**non-residents**") be the beneficial owners of a majority of the Units (on a number of Units or on a book value basis), and the Manager shall inform the registrar and transfer agent of the Trust of this restriction. The Manager may require declarations as to the jurisdictions in which a beneficial owner of Units is resident and, if a partnership, its status as a Canadian partnership. If the Manager becomes aware, as a result of requiring such declarations as to beneficial ownership or otherwise, that the beneficial owners of 40% of the Units then outstanding (on a number of Units or on a book value basis) are, or may be, non-residents, or that such a situation is imminent, the Manager may make a public announcement thereof. If the Manager determines that more than 40% of the Units (on a number of Units or on a book value basis) are beneficially held by non-residents, or that such a situation is imminent, the Manager may send a notice to such non-resident Unitholders, chosen in inverse order to the order of acquisition or in such manner as the Manager may consider equitable and practicable, requiring them to dispose of their Units or a portion thereof within a specified period of not less than 30 days. If the Unitholders receiving such notice have not disposed of the specified number of Units or provided the Manager with satisfactory evidence that they are not non-residents within such period, the Manager may, on behalf of such Unitholders, redeem such Units at the Subscription Price and, in the interim, shall suspend the voting and distribution rights attached to such Units. Upon such Redemption, the affected holders shall cease to be beneficial holders of Units and their rights shall be limited to receiving the net proceeds of Redemption of such Units.

(2) Notwithstanding Section 8.16(1), the Manager may determine not to take any of the actions described in Section 8.16(1) if the Manager has been advised by Counsel to the Trust that the failure to take any such actions would not adversely affect 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.

(3) If at any Distribution Payment Date there are insufficient funds to pay the Trailer Fee from the distribution otherwise payable to Series A Unitholders, the Manager shall redeem a sufficient number of Units from each Series A Unitholder to pay the Trailer Fee payable by such Series A Unitholder.

(4) Series I Units held by a Unitholder may be redeemed by the Manager at the Subscription Price pursuant to Section 8.2(8) upon notice to the Unitholder. Upon such Redemption, the affected Unitholder shall cease to be the beneficial holder of the redeemed Units and their rights shall be limited to receiving the net proceeds of Redemption of such Units. In the interim, the Manager shall suspend the voting and distribution rights attached to such Units.

### **8.17 Redemption to Comply with Legislation or to Pay Costs**

The Trust may redeem Units of a Unitholder without the Unitholder's consent if the Manager considers such redemption necessary to fund the payment of any fee or charge to which the Unitholder is subject, including withholding taxes. Unitholders whose Units are redeemed under this Section 8.17 will be entitled to receive the Subscription Price per Unit determined as of the date of Redemption by the Manager, less any amount required to be withheld therefrom under Applicable Law or permitted to be withheld therefrom in payment of a fee or charge to which the Unitholder is subject.

### **8.18 Market Purchases**

(1) The Manager may purchase Units on behalf of the Trust if it determines that such purchases are in the best interest of Unitholders. Purchases of Units by the Trust will be subject to compliance with any applicable regulatory requirements and limitations.

(2) Units that have been purchased by the Trust will be cancelled.

### 8.19 Performance of Trusts

The Trustee, the Manager, the Unitholders, any transfer agent or other agent of the Trustee or the Manager shall not be bound to recognize or see to the performance of any trust, express, implied or constructive, or of any charge, pledge or equity to which any of the Units or any interests therein are or may be subject, or to ascertain or inquire whether any sale or transfer of any such Units or interests therein by any such Unitholder or his or her personal representatives is authorized by such trust, charge, pledge or equity, or to recognize any Person as having any interest therein, except for the Person recorded as a Unitholder.

### 8.20 Death of Unitholders

The death of a Unitholder during the continuance of the Trust shall not terminate the Trust or any of the mutual or respective rights and obligations created by or arising hereunder nor give such Unitholder's legal representatives a right to an accounting or to take any action in the Courts or otherwise against other Unitholders, the Trustee or the Trust Property, but shall merely entitle the personal representative of the deceased Unitholder to be registered as the holder of such Units pursuant to the provisions of Section 8.13 in place of the deceased Unitholder and upon acceptance thereof such personal representative shall succeed to all rights of the deceased Unitholder hereunder.

### 8.21 Declaration as to Beneficial Owner

The Unitholders shall, upon demand from time to time, disclose to the Trustee in writing such Unitholder's name and the jurisdiction in which the Unitholder is resident and such other information with respect to direct and indirect ownership of Units as the Trustee may deem necessary.

## SECTION 9 - DISTRIBUTIONS TO UNITHOLDERS

### 9.1 Computation of Income and Gains

The Net Income of the Trust for any period for distribution purposes shall be determined in accordance with the provisions of the Tax Act (other than paragraph 82(1)(b) and subsection 104(6) thereof) regarding the calculation of income for tax purposes and on the basis that all amounts available for deduction in the period will be deducted, provided, however, that capital gains and capital losses (other than business investment losses) shall be excluded. The Net Realized Capital Gains of the Trust for any fiscal year shall be computed in accordance with the definition of "Net Realized Capital Gains" in Section 1.1.

### 9.2 Distributions

- (1) The Trust shall declare the following distributions, which will be calculated as of each Calculation Date:
  - (a) Subject to Section 9.2(1)(b), the Trust will make a distribution to each Unitholder on a quarterly basis. For each quarter ending March 31, June 30 and September 30, the Manager will distribute an amount it deems appropriate. Such quarterly distributions (for March 31, June 30 and September 30) will be irrevocably payable as of the applicable Calculation Date on the Units outstanding on such Calculation Date, and will be paid in arrears on or before the 15th day following the end of the quarter to which the distribution relates. The distribution to be made in respect of the December 31 year end (the "**Final Year-End Distribution**") will equal 100% of the Trust's Net Income and Net Realized Capital Gains for the year, less the aggregate distributions made in respect of any previous Calculation Date in that year and any reserves that the Manager deems appropriate. The Final Year-End Distribution will be irrevocably payable as of December 31 of the applicable year on the Units outstanding on such date and, subject to Section 9.8(5), will be paid in two payments as follows. The first payment for the Final Year-End Distribution will be made on or before January 15 following the year end in an amount determined in the same manner as the March, June and September distributions. The balance of the Final Year-End Distribution will be paid in arrears not later than March 15 following the year end. On each quarterly distribution, 0.25% of the book value per Unit, determined as of the applicable Calculation Date, may be deducted from the distribution

otherwise payable to Series A Unitholders for each Series A Unit held by them on such Calculation Date, in order to provide funds available to pay the Trailer Fee. On each quarterly distribution, the Series A and Series F Administration Fee may be deducted from the monies otherwise payable to the Series A Unitholders and the Series F Unitholders, respectively, and the Series I Administration Fee may be deducted from the monies otherwise payable to the Series I Unitholders. For greater certainty: (i) with respect to a Final Year-End Distribution, any portion of the Trailer Fee, Series A and Series F Administration Fee and Series I Administration Fee in respect of the Final Year-End Distribution may be deducted from the January 15<sup>th</sup> payment; and (ii) if any distribution payment is required to be made on a day which is not a Business Day, such payment is to be made on the next day that is a Business Day.

- (b) Notwithstanding Section 9.2(1)(a), the Manager may from time to time determine that the Trust will make a distribution to each Unitholder on a monthly basis. If such a determination is made, the Manager will distribute an amount it deems appropriate to each Unitholder each month. Such monthly distributions, except in the case of the Final Year-End Distribution, will be paid in arrears on or before the 15th day following the month to which the distribution relates. The Final Year-End Distribution will equal 100% of the Trust's Net Income and Net Realized Capital Gains for the year, less the aggregate distributions made in respect of any previous Calculation Date in the year and any reserves that the Manager deems appropriate. The Final Year-End Distribution will be irrevocably payable as of December 31 of the applicable year on the Units outstanding on such date and, subject to Section 9.8(5), will be paid in two payments as follows. The first payment for the Final Year-End Distribution will be made on or before January 15 following the year end in an amount determined in the same manner as the monthly distributions. The balance of the Final Year-End Distribution will be paid in arrears not later than March 15 following the year end. On each monthly distribution, 1/12<sup>th</sup> of 1.00% of the book value per Unit, determined as of the applicable Calculation Date, may be deducted from the distribution otherwise payable to Series A Unitholders for each Series A Unit held by them on such Calculation Date, in order to provide funds available to pay the Trailer Fee. On each monthly distribution, the Series A and Series F Administration Fee may be deducted from the monies otherwise payable to the Series A Unitholders and the Series F Unitholders, respectively, and the Series I Administration Fee may be deducted from the monies otherwise payable to the Series I Unitholders. For greater certainty: (i) with respect to a Final Year-End Distribution, any portion of the Trailer Fee, Series A and Series F Administration Fee and Series I Administration Fee in respect of the Final Year-End Distribution may be deducted from the January 15<sup>th</sup> payment; and (ii) if any distribution payment is required to be made on a day which is not a Business Day, such payment is to be made on the next day that is a Business Day.
- (c) To the Manager, a cumulative annual amount equal to 1.5% of the Proportionate Share of the Series A Units and the Series F Units of the Average Annual Gross Total Assets of the Trust, such amount to be paid in 4 quarterly or 12 monthly instalments, as applicable, in arrears at the same time as distributions are made to the Unitholders, based on the Total Assets of the Trust at each quarter or month end, as applicable (the "**Series A and Series F Administration Fee**").
- (d) To the Manager, a cumulative annual amount equal to 1.15% of the Proportionate Share of the Series I Units of the Average Annual Gross Total Assets of the Trust, such amount to be paid in 4 quarterly or 12 monthly instalments, as applicable, in arrears at the same time as distributions are made to the Unitholders, based on the Total Assets of the Trust at each quarter or month end, as applicable (the "**Series I Administration Fee**"); and
- (e) To the Manager, an amount equal to 10% of the Incentive Fee Revenue for the Fiscal Year and paid at the same time as the Final Year-End Distribution is paid to the Unitholders (the "**Incentive Fee**").

To the extent any distribution period is not completed for any reason, including the dissolution of the Trust, any distribution otherwise payable in respect of such period shall be payable at the end of such shortened period, and in the case of any fees referred to in paragraphs (c), (d) or (e) above shall be prorated to the end of the shortened period. The costs and expenses associated with forming the Trust and offering the Units for sale shall be borne by the Trust and shall be amortized in accordance with generally accepted accounting principles. Notwithstanding any of the

above, the Trustee shall distribute all of the Trust's Net Income and Net Realized Capital Gains each year to Unitholders in a manner so that the Trust will not be liable to pay tax under Part 1 of the Tax Act. The Trustee will not make distributions to the extent such distributions would impair the ability of the Trust to meet its liabilities as they become due in the ordinary course.

(2) For the purposes of calculation of the Manager's Fee, each Series is deemed to be entitled to its Proportionate Share of the Total Assets. The Proportionate Share of the Series A Units, the Series F Units and the Series I Units of the Total Assets of the Trust, in respect of each quarterly or monthly distribution, as applicable, shall be determined based on the Proportionate Share of Units of each Series existing at the end of such quarterly or monthly period, as applicable.

### **9.3 Unitholder Distribution Determination**

The Manager may before the applicable Calculation Date fix a date and method for determining the Unitholders to whom the distribution will be made and the number of Units of each Series of the Trust held by each Unitholder. If the Manager does not fix a date and method, the distribution shall be made to those who are Unitholders of the Trust at the end of the applicable Calculation Date (except in the case of the Final Year-End Distribution, which distribution shall be made to those who are Unitholders of the Trust immediately prior to the time that is immediately prior to the end of the applicable December 31 Calculation Date), and shall be based on the number of Units of each Series held by each Unitholder at that time and based on the number of days in a Fiscal Year the Units were owned.

### **9.4 Source of Distributions**

Distributions to Unitholders for a year shall be deemed to have been paid:

- (a) firstly, to the extent the Trust has Net Realized Capital Gains for the year, from such Net Realized Capital Gains;
- (b) secondly, to the extent the total of such distributions exceeds the amount designated under paragraph (a) above, from the Trust's Taxable Income in excess of the Trust's Net Realized Capital Gains for the year; and
- (c) thirdly, to the extent the total of such distributions exceeds the total of the amounts designated under paragraphs (a) and (b) above, from amounts other than Net Income.

### **9.5 Amounts Payable**

Where an amount becomes payable to a Unitholder pursuant to Section 9.2, the amount is a liability of the Trust until it is paid and the Unitholder becomes entitled to enforce payment of the amount.

### **9.6 Manner of Payment**

The Manager shall deliver the funds required for each distribution pursuant to Section 9.2 to the Registrar (unless a Unitholder shall otherwise direct in writing) and shall direct the Registrar to pay such monies to the Unitholders in accordance with Section 9.8.

All payments shall be made at the principal place of business in Vancouver, British Columbia of the Registrar.

### **9.7 Income Tax Statements**

On or before March 31 in each year, the Manager shall provide the Unitholders with all information regarding the Trust for the prior year which they require for income tax purposes including a statement prepared by the Manager advising the Unitholders of the source of the funds so distributed so that distributions of ordinary income, dividends, return of capital and net realized capital gains will be clearly distinguished.

## 9.8 Methods of Payment of Distributions

(1) Subject to Sections 9.8(2), 9.8(4) and 9.8(5), distributions to Unitholders pursuant to Section 9.2 shall be paid in cash by electronic funds transfer (in such case, upon the transfer directions provided by the Unitholder, with any fee for such funds transfer to be borne by the Trust) or by cheque drawn on the Trust's bankers or one of them to the order of the Unitholder and mailed by ordinary mail, postage prepaid, to such Unitholder at his or her last address appearing on the Register on or before the applicable Distribution Payment Date. In the case of joint holders, the cheque shall, unless such joint holders otherwise direct, be made payable to the order of all such joint holders and shall be mailed, if more than one address appears on the Register in respect of such joint holding, to the first address appearing on the Register in respect of such joint holding, and the cheque as aforesaid shall satisfy and discharge all liability for the distribution to the extent of the sum represented thereby, unless such cheque shall not be paid at par on presentation to the Trust's bankers at Vancouver, British Columbia, or at any other place it is payable in the event of the non-receipt of any cheque for any distribution by the Person to whom it is sent, the Trustee on proof of such non-receipt and upon satisfactory indemnity being given to it and to the fund, shall issue or cause to be issued a replacement cheque for a like amount to such Person.

(2) A Unitholder may elect, by providing written notice to the Manager not less than 15 days before a Distribution Payment Date, to receive a distribution (or future distributions), partially in cash and partially in additional Units, or wholly in additional Units. The value of each additional Unit to be issued shall be the book value per Unit determined as of the Valuation Date immediately preceding the applicable Distribution Payment Date. The distribution of additional Units shall be subject to the requirements of applicable securities legislation and the applicable securities authorities.

(3) All distributions with respect to the Units shall be calculated in Canadian dollars and, except to the extent that any portion of such distribution is paid by the issuance of additional Units in accordance with this Section 9.8, shall be paid in Canadian dollars.

(4) If, on a Distribution Payment Date, the Trust does not have cash in an amount sufficient to pay the cash distribution to be made on such Distribution Payment Date, the Manager may, in its discretion, borrow sufficient funds from third parties, including either the Manager or the Mortgage Broker, on such terms as it deems appropriate to permit such distribution to be made in cash. If the Manager is unable, or determines that it is not in the best interests of the Trust and the Unitholders, to borrow funds in order to make the cash distribution, the distribution payable to the Unitholders on such Distribution Payment Date may, at the option of the Manager and subject to the approval of the Trustee, include a distribution of additional Units having a value equal to the cash shortfall, in which case the amount of cash to be distributed on the Distribution Payment Date shall be reduced by the amount of the cash shortfall. The value of each additional Unit to be issued shall be the book value per Unit determined as of the Valuation Date immediately preceding the applicable Distribution Payment Date. The distribution of Units shall be subject to the requirements of applicable securities legislation and the applicable securities authorities, and if not permitted, distributions shall be reduced or made from borrowed funds as provided above.

(5) If, in any taxation year of the Trust, the Trust's Taxable Income is in excess of its cash distributions to Unitholders for that year, the Final Year-End Distribution payable to the Unitholders may, at the option of the Manager, include a distribution of additional Units ("**Additional Units**") (including fractions thereof) of such Series of Units having a value reflecting the amount, in whole or in part, of such excess. Any Additional Units (and fractions thereof) distributed to Unitholders pursuant to this Section 9.8(5) shall be deemed to be issued to such Unitholders effective immediately prior to the time that is immediately prior to the end of the taxation year of the Trust to which the Final Year-End Distribution relates. The value of each Additional Unit to be issued shall be the book value per Unit determined as of the applicable December 31 year end Valuation Date.

(6) The distributions paid to Unitholders of one or more Series of Units may be different as between such Series of Units and between Unitholders of the same Series of Units. Distributions may not be made to all Series of Units nor to all Unitholders of the Series. The distribution of Units shall be subject to the requirements of applicable securities legislation and the applicable securities authorities.

(7) The number of the outstanding Units of any Series may be consolidated at the direction of the Manager. For greater certainty, the consolidation of Units of one or more Series may be at different ratios and the consolidation

ratios of Units of the same Series may be different to account for any Unitholder which has not held its Units for the entirety of the time period in respect of which a distribution is being made, and from time to time, and not all Series may be consolidated. In this case, each certificate representing a number of Units prior to the distribution of Additional Units (including fractions thereof) which are consolidated to the same number of Units after the consolidation is deemed to represent the same number of Units after the distribution of Additional Units and the consolidation.

### **9.9 Unclaimed Interest, Dividends or Distributions**

In the event that the Trustee holds interest, dividends or other distributions which are unclaimed or which cannot be paid for any reason, neither the Trustee nor its disbursing agent shall be under any obligation to invest or reinvest the same but 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 Trustee shall, as and when required by law, and may at any time prior to such required time, pay all or part of the interest or other distributions so held to the Supreme Court of British Columbia (or other competent government official or agency) whose receipt shall be a good acquittance and discharge of the obligations of the Trustee.

### **9.10 Tax Definitions**

Unless the context otherwise requires, any term in this Section 9 which is defined for the purposes of the Tax Act shall have for the purposes of this Section 9 the meaning that it has for the purposes of the Tax Act, as amended from time to time.

### **9.11 Tax Statements**

The Trust shall provide Unitholders with such annual information respecting the Trust's income, net taxable capital gains and returns of capital and distributions to Unitholders as is required, and within the time prescribed, under the Tax Act. For greater certainty, the Trust will not be responsible for tracking or recording a Unitholder's adjusted cost base, tax basis or other similar tax cost calculation.

### **9.12 Special Distributions of Units and Consolidation**

Where Additional Units are issued to a Unitholder pursuant to Section 9.8(5) and tax is required to be withheld in respect of the Unitholder's share of the distribution, the automatic consolidation pursuant to Section 9.8(7) will result in such Unitholder holding that number of post-consolidation Units equal to the product of (i) the sum of the number of Units held by such Unitholder immediately prior to the distribution and the number of Additional Units (including fractions thereof) received by such Unitholder in connection with the distribution (net of Units withheld by the Trust to satisfy the Trust's withholding obligations), and (ii) a quotient, the numerator of which is the aggregate number of Units outstanding immediately prior to the distribution, and the denominator of which is the aggregate number of Units that would be outstanding immediately following the distribution and before the consolidation if no withholding were required in respect of any part of the distribution payable to any Unitholders. Such Unitholder will be required to surrender the certificates, if any, representing such Unitholder's pre-distribution Units in exchange for a certificate representing such Unitholder's post-consolidation Units.

### **9.13 Withholding Taxes**

The Manager shall be entitled to deduct or withhold from distributions payable to any Unitholder all amounts required by Applicable Law (including Applicable Tax Legislation) to be withheld from such distributions, whether such distributions are in the form of cash, additional Units or otherwise. In the event of a distribution in the form of additional Units, the Manager may sell or redeem Units of such Unitholder to pay such withholding taxes and to pay all of the Manager's reasonable expenses with regard thereto and the Manager shall have the power of attorney of such Unitholder to do so. Upon such sale or redemption, the affected Unitholder shall cease to be the holder of such Units. In the event that the net proceeds of any such sale or redemption of a Unitholder's Units exceed the statutory withholding required and the Manager's reasonable expenses, the Manager shall remit such excess to the Unitholder.

## 9.14 Designations

The Manager may, on such date or dates it deems appropriate, make such designations, determinations and allocations for tax purposes of amounts or portions of amounts which the Trust has received, paid, declared payable or allocated to Unitholders as distributions or redemption proceeds. Such designations are intended to provide for an equitable distribution of the Trust's net income and net taxable capital gains among Unitholders.

## SECTION 10 - MEETINGS OF UNITHOLDERS

### 10.1 Meetings of Unitholders

(1) A meeting of the Unitholders as a whole may be called at any time by the Manager and shall be called by the Trustee upon written request of the Unitholders holding in the aggregate not less than 50% of the Units then outstanding (or in the case of a Series meeting, of that Series), which request must specify the purpose or purposes for which such meeting is to be called.

(2) Meetings of Unitholders shall be held at the head office of the Trust, or such other place within the Province of British Columbia as the Trustee, or the Manager, shall determine and designate. Subject to the foregoing, the Trust need not hold annual meetings of Unitholders.

### 10.2 Notice of Meetings and Quorum

(1) Notice of all meetings of Unitholders shall be given by mail to each Unitholder at his or her address of record, not less than 21 days nor more than 50 days before the meeting. Such notice shall set the time when and the place where the meeting is to be held and shall specify, in general terms, the nature of the business to be transacted thereat, but it shall not be necessary to specify in the notice the text of any resolution to be approved, confirmed or passed. The accidental omission to give notice to or the non-receipt of notice by a Unitholder shall not invalidate any meeting of Unitholders or any action taken by Unitholders at such meeting.

Notwithstanding the foregoing, a meeting of Unitholders may be held at any time without notice if all 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 10.2, and such waiver, whether given before, at or after the meeting, shall cure any default in the giving of such notice.

(2) The quorum at any meeting of Unitholders is two Unitholders present in Person or represented by proxy holding 5% of the outstanding Units (or of that Series). If a quorum of the Unitholders is not present within 30 minutes after the time fixed for the holding of any meeting, the meeting if called at the request of the Unitholders will be dissolved, but if called by the Trustee or the Manager, will be adjourned to such time as is fixed by the Manager and not less than 10 days' notice of the date to which such meeting is adjourned will be given in the manner prescribed for notices of meetings of Unitholders and, if at such adjourned meeting a quorum is not present, the Unitholders present or represented by proxy will constitute a quorum for the transaction of business.

### 10.3 Voting Rights of Unitholders

- (a) The following matters require approval by Ordinary Resolution and shall be deemed approved, consented to or confirmed, as the case may be, upon the adoption of such Ordinary Resolution:
  - (i) matters relating to the administration of the Trust for which the approval of the Unitholders is required by policies of the securities regulatory authorities in effect from time to time;
  - (ii) subject to paragraphs (b) and (c) below, any matter or thing stated herein to be required to be consented to or approved by the Unitholders; and
  - (iii) any matter which the Manager or Trustee considers appropriate to present to the Unitholders for their confirmation or approval by Ordinary Resolution.

- (b) Each of the following actions requires approval by Special Resolution, the terms of which shall specify the date upon which the proposed action shall be undertaken and the party who shall undertake the action:
- (i) the amendment of this Declaration pursuant to Section 12.1(1) or the amendment of the Investment Objective or removal of the Investment Restrictions of the Trust set out in Sections 7.1 and 7.2 (for greater certainty the establishment of a New Series shall not require Unitholder approval) pursuant to Section 7.3;
  - (ii) an increase in the Manager's Fee;
  - (iii) the removal of the Trustee;
  - (iv) the appointment of a new trustee;
  - (v) the termination of the Manager pursuant to Section 5.8(2);
  - (vi) subject to the right of the Manager to do so on 60 days' notice, the termination of the Trust pursuant to Section 12.4; and
  - (vii) a reorganization, restructuring, merger (other than a Permitted Merger), de-merger, spin-off with, or transfers of all or substantially all of its assets to, another entity or other similar transactions including, without limitation, by way of cancelling, exchanging, distributing or otherwise directly or indirectly transferring Units or a Series of Units for securities of another entity or for cash consideration.
- (c) Notwithstanding Sections 10.3(a) and 10.3(b), any amendment to the Declaration which would have any of the following effects requires approval by Unanimous Resolution, the terms of which shall specify the date upon which the proposed amendment shall be undertaken and the party who shall undertake the amendment:
- (i) a reduction in the interest in the Trust of any Unitholder (other than a reduction arising through an issuance of additional Units);
  - (ii) a reduction in the amount payable on any outstanding Units of the Trust upon liquidation of the Trust;
  - (iii) an increase in the liability of any Unitholder; or
  - (iv) the alteration or elimination of any voting rights pertaining to any outstanding Units of the Trust.
- (d) Notwithstanding the above or any other provision herein, no confirmation, consent or approval shall be sought or have any effect and no Unitholder shall be permitted to effect, confirm, consent to or approve, in any manner whatsoever, where the same increases the obligations of or reduces the compensation payable to or protection provided to either the Manager, Board of Governors or the Trustee or which terminates the Manager, except with the prior respective written consent of the Manager, Board of Governors or the Trustee, as the case may be.

#### **10.4 Chair**

Any officer or director of the Manager shall be the chair of a meeting of Unitholders unless the Unitholders present in person or by proxy at the meeting choose, by resolution, some other individual present at such meeting to be the chair. If no officer or director of the Manager is present at a meeting of Unitholders, the Unitholders present in person or by proxy at the meeting shall by resolution appoint a chair of such meeting.

## **10.5 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 Manager may from time to time, without notice to Unitholders, close the transfer books for such period, not exceeding 30 days, as the Manager may determine; or subject to the provisions of this Declaration without closing the transfer books the Manager may fix a date not more than 60 days nor fewer than 35 days prior to the date of any meeting of Unitholders or other action as a record date for the determination of Unitholders entitled to receive notice of and vote at such meeting or any adjournment thereof or to receive such dividend or other distribution or to be treated as Unitholders of record for purposes of such other action, and any Unitholder who was a Unitholder at the time so fixed shall be entitled to receive notice of and vote at such meeting or any adjournment thereof or to be treated as a Unitholder of record for purposes of such other action, even though he or she has since that date disposed of his or 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.

## **10.6 Proxies**

At any meeting of Unitholders, any Unitholder entitled to vote thereat may vote by proxy (being a Person appointed by a document in writing as proxy pursuant to an omnibus, global or block proxy, direction or voting certificate satisfactory to the Manager) and a proxy need not be a Unitholder, provided that no proxy shall be voted at any meeting unless it shall have been placed on file with the Manager, or with such other agent of the Trust as the Manager may direct, prior to the commencement of such meeting. If approved by the Manager, proxies may be solicited by the Manager naming the Manager or one or more directors or officers of the Manager as proxy and the cost of such solicitation shall be paid out of the Trust Property. 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 shall not be received in respect of such Unit. The instrument appointing any proxy shall be in such form and executed in such manner as the Manager may from time to time determine.

## **10.7 Validity of Proxies**

An instrument appointing a proxy purporting to be executed by or on behalf of a Unitholder shall be valid unless challenged at the time of or prior to its exercise and the Person challenging such instrument shall have the burden of proving to the satisfaction of the chair of the meeting of Unitholders at which such instrument is proposed to be used that such instrument is invalid and any decision of the chair of the meeting in respect of the validity of such instrument shall be final. Proxies shall be valid only at the meeting with respect to which they were solicited, or any adjournment thereof, but in any event shall cease to be valid one (1) year from their date.

## **10.8 Revocation of Proxy**

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

## **10.9 Solicitation of Proxies**

No Person shall solicit proxies in respect of a meeting of Unitholders unless the Person making the solicitation, concurrently with or prior thereto, delivers or sends an information circular to each Unitholder whose proxy is solicited. "Solicit" or "solicitation" includes any request for a proxy whether or not accompanied by or included in a form of proxy, any request to execute or not to execute a form of proxy or to revoke a proxy, and the sending or delivery of a form of proxy or other communication to a Unitholder under circumstances reasonably intended or calculated to result in the procurement, withholding or revocation of a proxy but does not include the sending or delivery of a form of proxy to a Unitholder in response to an unsolicited request made by him or her on his or her behalf or the performance by any Person of ministerial acts or professional services on behalf of a Person or company

soliciting a proxy. Subject to the provisions of this Declaration and to Applicable Law, the information circular required hereunder shall conform, insofar as is applicable, to the form and content prescribed for information circulars by or pursuant to applicable securities laws and regulations; for such purposes; "management" shall mean the Trustee and the Manager, if applicable; "company" or "corporation" shall mean the Trust; "director" or "senior officer" shall mean a director or senior officer of the Trustee or, as applicable, a director or senior officer of the Manager; "equity share", "voting security" or "share" shall mean a Unit; and "shareholder" shall mean a Unitholder.

#### **10.10 Form of Proxy Solicitation**

Where there is a solicitation of proxies (other than with respect to the exception set forth in Section 10.9 above):

- (a) the form of proxy sent to a Unitholder by a Person soliciting proxies shall indicate in bold-faced type by whom the proxy is being solicited and the form of proxy or the information circular shall state the name, address and principal occupation or employment within the preceding five years of each Person soliciting proxies and shall disclose the beneficial ownership of Units of each such Person;
- (b) the form of proxy shall provide means whereby the Unitholder whose proxy is solicited is afforded an opportunity to specify that his or her votes shall be cast by the nominees in favour of or against, in accordance with such Unitholder's choice, each matter or group of related matters identified therein or in the information circular as intended to be acted upon;
- (c) the information circular or form of proxy shall state that the votes represented by the proxy shall be cast and that, where the Unitholder whose proxy is solicited specifies a choice with respect to any matter to be acted upon pursuant to subsection (b) above, the votes shall be cast in accordance with the specifications so made;
- (d) no proxy shall confer authority to vote at any meeting other than the meeting specified in the notice of meeting or any adjournment thereof; and
- (e) the information circular or form of proxy shall indicate in bold-faced type that the Unitholder has the right to appoint a Person, who need not be a Unitholder, to attend and act for him or her and on his or her behalf at the meeting other than the Person, if any, designated in the form of proxy, and shall contain instructions as to the manner in which the Unitholder may exercise such right.

#### **10.11 Corporations**

If a Unitholder is a corporation or body corporate, it may appoint an officer, director or other authorized person as its representative to attend, vote and act on its behalf at a meeting of Unitholders.

#### **10.12 Persons Entitled to be Present**

The only Persons entitled to be present at a meeting of Unitholders shall be those Unitholders entitled to vote thereat (or their proxies), and representatives of the Auditor, the Trustee (and any of its directors, officers or employees, and any advisor to the Trustee, including Counsel to the Trustee), the Manager and the Mortgage Broker. Any other individuals may be present at a meeting of Unitholders with the consent of the chair.

#### **10.13 Manner of Voting**

- (1) Any action to be taken by the Unitholders shall, except as otherwise required by this Declaration or Applicable Law, be authorized when approved by a majority of the votes cast by those entitled to vote at the meeting.
- (2) Every question submitted to a meeting shall be decided in the first instance by a show of hands unless a poll is demanded, in which case a poll shall be taken. If a poll is demanded, it shall be taken immediately upon request in the case of a poll requested concerning the election of a chair or an adjournment and, in any other case, it shall be

taken in such manner as the chair of the meeting may direct and the result of a poll shall be deemed to be the resolution of the meeting at which the poll was demanded. The demand for a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question on which the poll has been demanded. On a show of hands, every Unitholder who is entitled to vote and is present in person or represented by proxy shall have one vote. On a poll, every Unitholder who is entitled to vote and present in person or represented by proxy shall have one vote for each Unit which he holds. If Units are held jointly by two or more Persons, any one of them present or represented by proxy at a meeting of the Unitholders, as applicable, may, in the absence of the other or others, vote thereon, but if more than one of them are present or represented by proxy, they shall vote together on the Units held jointly and, if they do not agree which of them is to exercise any vote to which they are jointly entitled, they shall for the purposes of the voting be deemed not to be present. The chair of a meeting shall be entitled to vote in respect of Units held by the chair or presented by the chair by proxy, but in the case of an equality of votes, the chair shall not have a casting vote and the resolution shall be deemed to be defeated.

#### **10.14 Conduct of Meetings**

The rules and procedures for the conduct of a meeting of Unitholders not prescribed herein shall be such reasonable rules and procedures as are determined by the chair of the meeting, provided that the Unitholders represented at the meeting may, by resolution, resolve that such other rules specified in the said resolution apply.

#### **10.15 Resolutions Binding**

Any resolution passed in accordance with the provisions hereof shall be binding on all Unitholders and their respective heirs, executors, administrators, other legal representatives, successors and assigns, whether or not such Unitholder was present or represented by proxy at the meeting at which such resolution was passed and whether or not such Unitholder voted against such resolution.

#### **10.16 Minutes of Meetings**

Minutes of the meeting shall be made by the corporate secretary (or such other officer as may be designated) of the Trustee or the Manager (who shall act as secretary of the meeting) and duly entered in minute books to be kept by the Trustee or the Manager, and all copies of such minutes shall be provided to the Trustee regardless of whether the minute books of the Trust are maintained by the Trustee or the Manager or any agent thereof. Any such minutes signed by the chair of the meeting shall be conclusive evidence of the matters therein stated, and until the contrary is proved, every such meeting in respect of the proceedings of which minutes have been made shall be deemed to have been duly held and convened and all resolutions passed thereat to have been duly passed.

#### **10.17 Resolutions in Writing**

A resolution in writing forwarded to all Unitholders entitled to vote on such resolution at a meeting of Unitholders and signed by the requisite number of Unitholders to obtain approval of the matter addressed in such resolution is as valid as if it had been passed at a meeting of Unitholders. Copies of all such resolutions shall be provided to the Trustee regardless of whether the minute books of the Trust are maintained by the Trustee or the Manager or any agent thereof.

#### **10.18 Annual Financial Statements**

Annual financial statements of the Trust, consisting of a statement of net assets, statement of operations, statement of changes in net assets and a schedule of investments, and such other statements as the Trustee or the Trustee acting on the advice and direction of the Manager may consider appropriate or the Securities Authorities may require shall be prepared as at the end of each fiscal year of the Trust in accordance with IFRS. A copy of the audited annual financial statements of the Trust signed by the Manager to signify the approval thereof by the Trust, together with a copy of the report of the Auditor thereon, shall, upon the request of a Unitholder, be delivered to such Unitholder at his or her address of record within the period of time as required by Applicable Law.

### **10.19 Other Unitholder Information**

(1) The Manager will cause to be maintained with respect to the Trust the same records as are required to be maintained by a CBCA Corporation. Unitholders will be entitled to have access to such records and to take extracts therefrom, including obtaining a list of Unitholders, to the same extent and subject to the same conditions as would be applicable to shareholders of a CBCA Corporation.

(2) In addition to the annual financial statements referred to in Section 10.18, the Manager will furnish or cause to be furnished to Unitholders such financial statements and other reports as are from time to time required by Applicable Law to be so furnished, including prescribed forms needed for completion of the Unitholders' tax returns under the Tax Act and equivalent provincial legislation.

### **10.20 Appointment of Auditor**

The Unitholders may at a meeting of the Unitholders duly called and held for that purpose, remove the Auditor before the expiration of the Auditor's term of office and appoint another Auditor.

### **10.21 Series Meetings**

Any matter affecting a particular Series alone or affecting such Series differently than other Series shall require a separate vote of the Unitholders of such Series. Any resolution which increases the compensation payable to the Manager, Board of Governors or the Trustee shall require a separate vote of the Unitholders of each Series. The Manager may not, without the approval by Special Resolution of the Unitholders of the affected Series:

- (a) create a Series which will be entitled to a preference over any other Series; or
- (b) abrogate, affect or alter any rights, privileges, restrictions or conditions attaching to any Series.

## **SECTION 11 - BOARD OF GOVERNORS**

### **11.1 Appointment**

The Manager shall appoint a Board of Governors which shall consist of at least four individuals, none of whom shall be an associate, director, officer or employee of the Trustee, the Manager or a Related Party of any of them. Each member of the Board of Governors shall sign a written acknowledgement of his/her preparedness to act as a member of the Board of Governors in accordance with the terms hereof.

### **11.2 Board of Governors Duties**

The Board of Governors shall act at all times, and shall ensure the actions of the Manager and the Trustee are at all times, in accordance with the terms of this Declaration and in the best interests of the Trust and the Unitholders and shall from time to time:

- (a) identify and establish procedures for resolving situations where there exists a conflict or potential conflict between the interests of the Manager on the one hand and the interests of the Unitholders on the other hand and review any conflicts of interest referred to it by the Manager for review and for both of these purposes appoint from amongst the members of the Board of Governors an Independent Review Committee;
- (b) approve every material contract of the Trust, referred to it by the Manager for review which may raise a conflict of interest, including any agreement between the Trust and the Trustee or the Manager;

- (c) review and approve financial statements provided to Unitholders for the purpose of advising the Trustee and the Manager on any matters pertaining to the Trust as a result of such review and for this purpose appoint an Audit Committee;
- (d) review compliance by the Trust with its investment restrictions;
- (e) appoint Auditors and fix their remuneration, and meet with them at least annually;
- (f) approve the giving of indemnities to the Trustee or the Manager or any of their Affiliates, or their respective directors, officers or employees;
- (g) receive the resignation of the Trustee and select and appoint a successor trustee; and
- (h) provide such other assistance to the Trustee as the Trustee or Unitholders may reasonably request from time to time.

### **11.3 Independent Review Committee Duties**

The Independent Review Committee will, in connection with all conflict situations do the following and maintain a record of doing the following:

- (a) adopt a written charter that Includes its mandate, responsibilities and functions, and the policies and procedures it will follow when performing its functions;
- (b) appoint its Chair, who shall be responsible for managing the mandate, and responsibilities and functions, of the Independent Review Committee;
- (c) review and, if warranted, provide the required consent to any change the Manager proposes with respect to its written policies and procedures related to Conflict of Interest Matters pertaining to the Trust;
- (d) review and, if warranted, decide upon every Conflict of Interest Matter, provided that the investment restrictions set out in Sections 7.2(c)(i)-(iv), shall not be considered a Conflict of Interest Matter; and
- (e) perform any other function required by Applicable Law.

### **11.4 Committees**

The Board of Governors, from its members, shall appoint a Credit Committee and an Audit Committee, each of which is to consist of four and three members, respectively, and an Independent Review Committee, which shall consist of four members. The mandate of the Credit Committee is to meet with the Manager from time to time, on a not less than quarterly basis, to review the investments made by the Manager on behalf of the Trust in order to confirm that such investments comply with the Investment restrictions of the Trust. The mandate of the Audit Committee is to meet with the auditors of the Trust and review and recommend approval to the Manager and the Board of Governors of financial statements sent to Unitholders.

### **11.5 Term of Office of Each Member of Board of Governors**

Each member of the Board of Governors appointed shall hold office until a successor has been appointed and such successor has qualified to serve or until such member's appointment shall terminate as hereinafter provided. The term of office of a member of the Board of Governors shall terminate in the event of the death, removal, resignation, bankruptcy, adjudicated incompetence or other incapacity to exercise the duties of the office of a member of the Board of Governors. The Board of Governors shall fill a vacancy on the Board of Governors as soon as practicable. The term of office of each member of the Board of Governors, which may be staggered, will be set by the Manager at the

time of appointment of the member and shall be not less than one year and not more than three years, A member of the Board of Governors whose term has expired, or will soon expire, may be reappointed by the members of the Board of Governors. A member of the Independent Review Committee may not be reappointed for a term or terms of office that, if served, would result in the member serving on the Independent Review Committee for longer than six years, unless the Manager agrees to the reappointment.

#### **11.6 Qualifications of Members of Board of Governors**

A member of the Board of Governors shall:

- (a) be an individual at least 18 years of age;
- (b) not be of unsound mind and not being found to be of unsound mind by a court in Canada or elsewhere;
- (c) not have the status of bankrupt;
- (d) if a member of the Credit Committee, have a minimum of five years substantial experience in real estate and mortgage investment consistent with the investment objective and investment restrictions of the Trust;
- (e) be either a United States or Canadian citizen and resident in either Canada or the United States; and
- (f) be Independent of the Trustee, the Manager and a Related Party of any of them.

#### **11.7 Ceasing to be a Member**

- (a) An individual ceases to be a member of the Board of Governors when:
  - (i) the Trust terminates;
  - (ii) the Manager changes, unless the new manager is an Affiliate of the former manager; or
  - (iii) there is a change of control of the Manager.
- (b) An individual ceases to be a member of the Board of Governors if:
  - (i) the individual resigns;
  - (ii) the individual's term of office expires and the member is not reappointed;
  - (iii) a majority of the other members of the Board of Governors vote to remove the individual; or iv) a majority of the Unitholders vote to remove the individual at a special meeting called for that purpose by the Manager.
- (c) An individual ceases to be a member of the Board of Governors if the individual is:
  - (i) no longer Independent and the cause of the member's non-independence is not temporary for which the member can recuse himself or herself;
  - (ii) of unsound mind and has been so found by a court in Canada or elsewhere;
  - (iii) bankrupt;
  - (iv) prohibited from acting as a director or officer of any issuer in Canada;

- (v) subject to any penalties or sanctions made by a court relating to provincial and territorial securities legislation; or
- (vi) a party to a settlement agreement with a provincial or territorial securities regulatory authority.

### **11.8 Compensation and other Remuneration**

The Members of the Board of Governors shall receive for their services in acting as a Member of the Board of Governors compensation from the Manager in such amounts as the Manager shall reasonably determine initially, and subsequently, as the Board of Governors shall reasonably determine (including proper expenses) and which shall be disclosed to the Trustee. When setting its compensation and expenses, the Board of Governors, shall consider the Board of Governors' most recent assessment of its compensation and the Manager's recommendations, if any.

### **11.9 Conflict of Interest**

Any member of the Board of Governors who is a party to, or is a director or officer of, or has any material interest in, any person who is a party to, a material contract or transaction or proposed material contract or transaction with the Trust shall disclose in writing to the Manager and the Independent Review Committee the nature and extent of such member's interest. The disclosure shall be made, according to the circumstances, after such member becomes aware of the material contract or transaction or proposed material contract or transaction. Any member of the Board of Governors referred to herein shall not vote upon or sign any resolution dealing with such material contract or transaction or proposed material contract or transaction.

### **11.10 Decisions**

All decisions of the Board of Governors shall require the approval of a majority of its members and a quorum for the transaction of business shall be at least three (3) members of the Board of Governors and at least two (2) members of the Independent Review Committee. Any decision by two members of the Independent Review Committee must be unanimous.

### **11.11 Standard of Care**

Every member of the Board of Governors in exercising such member's powers and discharging such member's duties related to the Trust, and, for greater certainty, not to any other person, as a member of the Board of Governors, must:

- (a) act honestly and in good faith, with a view to the best interests of the Trust; and
- (b) exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

### **11.12 Authority**

The Board of Governors shall have authority to:

- (a) request information it determines useful or necessary from the Manager and its officers to carry out its duties;
- (b) engage independent counsel and other advisors it determines useful or necessary to carry out its duties;
- (c) set reasonable compensation and proper expenses for any independent counsel and other advisors engaged by the Board of Governors; and

- (d) delegate to a subcommittee of at least three members of the Board of Governors (in addition to the Credit Committee, the Audit Committee and the Independent Review Committee) any of its functions, except the removal of a member under Section 11.7.

## **SECTION 12 - AMENDMENT AND TERMINATION OF DECLARATION OF TRUST**

### **12.1 Amendments Generally**

(1) Subject to the following, this Declaration may be amended by the Trustee with the consent of the Unitholders given by Special Resolution.

(2) Notwithstanding Sections 10.3 and 12.1(1), this Declaration may be amended by the Trustee without the consent of or notice to Unitholders for the following purposes, to:

- (a) remove any conflicts or other inconsistencies which may exist between any terms of this Declaration and any provisions of any law or regulation applicable to or affecting the Trust;
- (b) make any change or correction in this Declaration which is of a typographical nature or is required to cure or correct any ambiguity or defective or inconsistent provision, clerical omission, mistake or manifest error contained herein;
- (c) bring this Declaration into conformity with Applicable Laws, including the rules and policies of Securities Authorities or with current practice within the securities or investment fund industries provided that any such amendment does not adversely affect the rights, privileges or interests of Unitholders;
- (d) maintain, or permit the Manager to take such steps as may be desirable or necessary to maintain, the status of the Trust as a "mutual fund trust" and a "unit trust" for the purposes of the Tax Act or to respond to amendments to the Tax Act or to the interpretation thereof;
- (e) permit the Manager to rectify, repair or correct any matter, action, transaction or document that it reasonably determines is oppressive or unfairly prejudicial to, or that unfairly disregards, the interest of any Unitholder or series of Unitholders, provided that the Manager shall have delivered to the Trustee such written certification and opinion of Counsel as the Trustee may require confirming the basis upon which the Manager has determined that such rectification, repair or correction is necessary and appropriate under the circumstances, and that the Trustee shall be entitled to rely upon such certification and opinion without further inquiry in connection with any approval or confirmation or execution of any document by the Trustee;
- (f) effect a Permitted Merger; or
- (g) amend this Declaration where, in the reasonable opinion of the Trustee, based on an opinion of Counsel or a financial advisor if considered necessary by the Trustee, the amendment is not a material change which adversely affects the pecuniary value of the interest of any Unitholder.

(3) Notwithstanding Sections 10.3 and 12.1(1), this Declaration may also be amended by the Trustee without the consent of the Unitholders for the purpose of changing the Trust's taxation year-end as permitted under the Tax Act or providing the Trust with the right to acquire Units from any Unitholder for the purpose of maintaining the status of the Trust as a "mutual fund trust" for purposes of the Tax Act.

(4) Notwithstanding Sections 10.3 and 12.1(1), this Declaration may also be amended by the Trustee prior to the issuance of any Reorganization Units without the consent of the Unitholders for the purpose of changing the Redemption Price of the Units to a fixed amount (rather than an amount based on the book value per Unit) and making any consequential changes to this Declaration that in the Trustee's view are required or desirable in order to give effect to the foregoing.

(5) Any amendments made by the Trustee without the consent of the Unitholders must be disclosed to registered holders of Units in the next regularly scheduled report to Unitholders.

## 12.2 Amendments Affecting the Manager

No amendment may be made to this Declaration which would have the effect of reducing the fees payable to the Manager unless the Manager, in its sole discretion, consents.

## 12.3 Permitted Merger

The Manager may, without obtaining Unitholder approval, merge the Trust (a "**Permitted Merger**") with another fund or funds, provided that:

- (a) the fund(s) with which the Trust is merged must be managed by the Manager or an Affiliate of the Manager (the "Affiliated Trust(s)");
- (b) Unitholders are permitted to redeem their Units at a redemption price equal to the Subscription Price, less any costs of funding the redemption, including commissions, prior to the effective date of the merger;
- (c) the funds being merged have similar investment objectives as set forth in their respective declarations of trust, as determined in good faith by the Manager and by the manager of the Affiliated Trust(s) in their sole discretion;
- (d) the Manager must have determined in good faith that there will be no increase in the management expense ratio borne by the Unitholders as a result of the merger;
- (e) the merger of the funds is completed on the basis of an exchange ratio determined with reference to the Redemption value per unit of each fund; and
- (f) the merger of the funds must be accomplished on a tax-deferred rollover basis for unitholders of each of the funds.

## 12.4 Termination of the Trust

The Trust does not have a fixed termination date. However, the Trust may be terminated at any time (the "**Termination Date**") upon not less than 90 days' written notice by the Trustee provided that the prior approval of Unitholders has been obtained by Special Resolution at a meeting of Unitholders called for that purpose; provided, however, that the Manager may, in its discretion, on 60 days' notice to Unitholders, terminate the Trust without the approval of Unitholders if, in the opinion of the Manager:

- (a) it would be in the best interests of the Trust and the Unitholders to terminate the Trust;
- (b) the Manager determines to terminate the Trust in connection with a Permitted Merger; or
- (c) it is no longer economically feasible to continue the Trust.

Upon termination of the Trust pursuant to this Section 12.4, the net assets of the Trust will be distributed to Unitholders on a pro rata basis in proportion to the number of Units held by each Unitholder. Immediately prior to the termination of the Trust, including on the Termination Date, the Trustee will, to the extent possible, convert the assets of the Trust to cash and after paying or making adequate provision for all of the Trust's liabilities, distribute the net assets of the Trust to the Unitholders as soon as practicable after the date of termination and any unliquidated assets may be distributed in specie rather than in cash, subject to compliance with any securities or other laws applicable to such distributions. The Manager may, in its discretion, defer the Termination Date for up to 90 days if the Manager provides written notice of such deferral to the Unitholders at least 30 days prior to the Termination Date and advises the Trust

that the Manager deems it important or is unable to convert all of the Trust's assets to cash and that it would be in the best interests of the Unitholders to do so.

### **12.5 Termination Events**

The Declaration of Trust will be terminated immediately following the occurrence of a Termination Event. On such termination, the Trust Property will be distributed. Each of the following events is a "**Termination Event**":

- (a) the Manager is, in the opinion of the Board of Governors, in material default of its obligations under the Declaration of Trust and such default continues for 30 days from the date that the Manager receives written notice of such material default from the Board of Governors, unless the Manager is taking steps to remedy such default and such default is remedied within 120 days from the date of such notice and there is no reasonable basis for believing that such default cannot be remedied within such 120 day period;
- (b) the Manager has been declared bankrupt or insolvent or has entered into liquidation or winding up, whether compulsory or voluntary (and not merely a voluntary liquidation for the purposes of amalgamation or reconstruction);
- (c) the Manager makes a general assignment for the benefit of creditors or otherwise acknowledges its insolvency; or
- (d) the assets of the Manager have become subject to seizure or confiscation by any public or governmental authority.

### **12.6 Distribution on Termination**

(1) Upon the occurrence of a Termination Event, the right of Unitholders to require payment for all or any of their Units shall be suspended and the Manager shall make appropriate arrangements for converting the investment of the Trust into cash. After payment of the liabilities of the Trust (including the unpaid fees and expenses of the Manager, but excluding any payments therefrom to be made pursuant to this Section), each Unitholder registered as such at the close of business on the date fixed as the Termination Date shall be entitled to receive from the Trustee such Unitholder's Proportionate Share of the value of the Trust Property in accordance with the number of Units which such Unitholder then holds.

(2) If, after a period of six months from the date of termination of the Trust, any Unitholder as shown on the Register cannot be located, such Unitholder's share of the Trust Property shall be deposited in an account in a chartered bank or similar institution in Canada in the name of such Unitholder and the Trust, the Trustee, and any representative thereof (including any custodian or subcustodian of assets of the Trust) shall thereupon be released from any and all further liability with respect to such property and thereafter the Unitholder shall have no rights as against the Trust, the Trustee, or any representative thereof (including any custodian or sub-custodian of the assets of the Trust) in respect of such property or an accounting therefor.

### **12.7 Manager's Duties on Termination**

Upon termination of this Declaration, the Manager shall forthwith deliver to the Trust:

- (a) all records, documents and books of account of the Trust; and
- (b) all materials and supplies for which the Manager has been paid by the Trust,

which are in the possession or control of the Manager and relate directly or indirectly to the performance by the Manager of its obligations under this Declaration provided, however, that the Manager may retain notarial or other copies of such records, documents and books of account and the Trust shall provide at its head office the originals of

such records, documents and books of account whenever reasonably required to do so by the Manager for the purpose of legal proceedings or dealings with any Governmental Authority.

### **SECTION 13 - LIABILITY OF TRUSTEE, MANAGER AND UNITHOLDERS**

#### **13.1 Liability of Trustee**

The Trustee, as trustee, shall be not liable to the Trust for any loss unless such loss is determined by a final order of a court of competent jurisdiction and not subject to further appeal, to have been occasioned solely by the Trustee's wilful misconduct, bad faith or gross negligence. Honesty and good faith shall be presumed in favour of the Trustee unless disproved.

#### **13.2 General Limitation of Liability and Indemnification**

(1) The Trustee, the Manager, members of the Board of Governors and consultants and agents of the Trust, in incurring any debts, liabilities or obligations, or in taking or omitting to take any other actions for or in connection with the affairs of the Trust in accordance with this Declaration or any applicable contract between the Trustee as trustee of the Trust or Manager and any agent or consultant of the Trust are, and shall be deemed to be, acting for and on behalf of the Trust, and not in their own personal capacities.

(2) No Unitholder shall be subject to any personal liability whatsoever, in tort, contract or otherwise, to any Person in connection with Trust Property or the obligations or the affairs of the Trust and all such Persons shall look solely to the Trust Property for satisfaction of claims of any nature arising out of or in connection therewith and the Trust Property only shall be subject to levy or execution. The Trustee hereby waives to the maximum extent possible any right to indemnification which it may have against any Unitholder under any Applicable Law.

(3) Subject to the provisions of Section 13.1, neither the Trustee nor the Manager (nor any of their directors, officers or employees) shall be held to any personal liability, nor shall resort be had to its property or assets for satisfaction of any obligation or claim arising out of or in connection with any contract or other obligation of the Trust but the Trust Property only shall be liable and subject to levy or execution.

(4) Each member of the Board of Governors shall exercise its powers and duties honestly, in good faith and in the best interests of the Trust and the Unitholders and shall exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. Subject to the foregoing, no member of the Board of Governors shall be held to any personal liability, nor shall resort be had to the property or assets of any of them for satisfaction of any obligation or claim arising out of or in connection with any contract or other obligation of the Trust but the Trust Property only shall be liable and subject to levy or execution.

(5) Subject to its own wilful misconduct, bad faith, negligence or disregard of its obligations and duties in respect of the affairs of the Trust, as modified by any contract between the Trustee as trustee of the Trust or Manager and any agent or consultant of the Trust, no consultant or agent of the Trust shall be held to any personal liability, nor shall resort be had to the property or assets of any of them for satisfaction of any obligation or claim arising out of or in connection with any contract or other obligation of the Trust but the Trust Property only shall be liable and subject to levy or execution.

(6) If, notwithstanding the provisions of this Declaration, the Trustee, the Manager, any Mortgage Broker (or any of their directors, officers or employees), any Unitholder, any members of the Board of Governors, or any consultant or agent of the Trust shall be held personally liable as such to any other Person in respect of any debt, liability or obligation incurred by or on behalf of the Trust, or, subject to the provisions of Section 13.1 or any applicable contract between the Trustee as trustee of the Trust or Manager, if any, and any agent or consultant of the Trust, for any action taken or omitted to be taken or in connection with the affairs of the Trust, such Trustee, Manager, Mortgage Broker, Unitholder, member of the Board of Governors, consultant or agent shall be entitled to indemnity and reimbursement out of the Trust Property to the full extent of such liability and the costs of any litigation or other proceedings in which such liability shall have been determined, including without limitation, the fees and disbursements of Counsel all in accordance with Section 13.5.

### **13.3 Manager to Indemnify**

The Manager will indemnify the Trustee as trustee of the Trust and save it harmless in respect of all reasonable losses, damages, expenses and costs (including legal costs on a solicitor-and-client basis) which the Trustee as trustee of the Trust may incur as a result of the breach by the Manager of its standard of care and duty prescribed hereunder in respect of the performance by the Manager of any of its duties or responsibilities or any actions of the Manager otherwise associated with the Trust, whether such duties, responsibilities or actions are specified as those of the Manager or are delegated to the Manager by the Trustee hereunder.

### **13.4 Exculpatory Clauses in Instruments**

The Manager shall, where feasible, and in relation to Unitholders until such time as legislation is passed providing for the limited liability of Unitholders, use reasonable means to inform all Persons having dealings with the Trust of the limitation of liability set forth in Section 13.2 and shall, where feasible, and in relation to Unitholders, cause to be inserted in any written agreement, undertaking or obligation made or issued by the Manager on behalf of the Trust an appropriate statement of the disavowal and limitation of liability set forth in Section 13.2, but the omission of such statement from any such instrument shall not render the Trustee, the Manager, any Unitholder, any member of the Board of Governors, or any consultant or agent of the Trust liable to any Person, nor shall the Trustee, the Manager, if any, any Unitholder, any member of the Board of Governors, or any consultant or agent of the Trust be liable to any Person for such omission. If, notwithstanding this provision, the Trustee, the Manager, or any Unitholder, any member of the Board of Governors, or any consultant or agent of the Trust shall be held liable to any other Person by reason of the omission of such statement from any such agreement, undertaking or obligation, such Trustee, Manager, Unitholder, member of the Board of Governors, consultant or agent shall be entitled to indemnity and reimbursement out of the Trust Property to the full extent of such liability and the costs of any litigation or other proceedings in which such liability shall have been determined, including without limitation, the fees and disbursements of Counsel.

### **13.5 Indemnification and Reimbursement**

(1) Subject to Applicable Law, each Person who is, or shall have been the Trustee, the Manager, a Unitholder, a member of the Board of Governors, or a consultant or agent of the Trust shall be indemnified by the Trust out of the Trust Property against all liabilities and expenses (including judgments, fines, penalties, amounts paid in settlement and Counsel fees) reasonably incurred in connection with any action, suit or proceeding to which any such Person may be made a party by reason of being or having been such Trustee, Manager, Unitholder, member of the Board of Governors, consultant or agent. Notwithstanding the foregoing, the Trustee or Board of Governors, shall not be indemnified pursuant to this Section 13.5 if such Person is finally adjudged in said action, suit or proceeding in respect of which indemnity is claimed to be liable for or guilty of wilful misconduct, bad faith or negligence. No Manager, Unitholder, consultant or agent shall be indemnified pursuant to this Section 13.5 if such Person is finally adjudged in said action, suit or proceeding liable for or guilty of wilful misconduct, bad faith, negligence or the disregard of its obligations or duties or breach or default of such Person's duty of its office or for or in respect of the affairs of the Trust as Manager, Unitholder, consultant or agent, as the case may be. For greater certainty, the Trustee shall not be liable to the Trust for any default, failure or defect in any of the securities comprising the Trust's Investment Portfolio, and shall be indemnified by the Trust for any liabilities associated therewith. For the purposes of this Section 13.5, references to the Trustee, the Manager, members of the Board of Governors and any consultant or agent of the Trust shall be deemed to include the directors, officers and employees of such Persons. The Trustee shall have no liability for any act, omission or failure to act of or by the Manager in respect of the performance by the Manager of any of its duties or responsibilities or any actions of the Manager otherwise associated with the Trust, whether such duties, responsibilities or actions are specified as those of the Manager or are delegated to the Manager by the Trustee hereunder.

(2) For purposes of Section 13.5(1): (i) "action, suit or proceeding" shall include every action, suit or proceeding civil, criminal or other, (ii) the right of indemnification conferred thereby shall extend to any threatened action, suit or proceeding and the failure to institute it shall be deemed its final determination, and (iii) advances may be made by the Trustee against costs, expenses and fees incurred in respect of the matter or matters as to which indemnification is claimed, provided that any advance shall be made only if the Trustee receives an opinion of Counsel to the effect that, on the basis of the facts known to such Counsel, the Person seeking such advance will achieve substantial success and on the condition that the Trustee, Manager, Unitholder, member of the Board of Governors, consultant or agent

receiving such advance agrees to repay to the Trustee any amounts so advanced if the Trust does not receive, substantially concurrently with the termination of the matter or matters as to which such advances were made, an opinion of Counsel to the effect that such Trustee, Manager, Unitholder, member of the Board of Governors, consultant or agent is entitled to indemnification under this Section 13.5. The foregoing right of indemnification shall not be exclusive of any other rights to which the Trustee, Manager, any Unitholder, member of the Board of Governors or any consultant or agent of the Trust may be entitled as a matter of law or which may be lawfully granted to such Person and the provisions of this Section 13.5 are severable, and if any provisions hereof shall for any reason be determined invalid or ineffective, the remaining provisions of this Declaration relating to indemnification and reimbursement shall not be affected thereby. This indemnity shall survive the resignation or replacement of the Trustee and the termination of this Declaration or the Trust.

### **13.6 Further Limitation on Indemnification**

Notwithstanding any other provisions of this Declaration, the Trust shall have no liability to reimburse any Person for transfer or other taxes or fees payable on the transfer of Units or any Income or other taxes assessed against any Person under Applicable Tax Legislation by reason of ownership or disposition of Units, or for any losses suffered by reason of changes in the market value or Net Asset Value.

### **13.7 No Waiver**

Notwithstanding anything in this Section 13 nothing herein will act as a waiver of any rights which the Trust may have against the Manager by virtue of any federal, state or provincial securities laws nor shall it act as a waiver of any rights which the Trust may have against the Trustee by virtue of such laws.

### **13.8 No Liability for Tax Obligations**

None of the Trust, the Manager, if any, or the Trustee shall be accountable or liable to any Unitholder by reason of any act or acts of any such Person consistent with the carrying out of any obligations or responsibilities imposed upon any such Person under the Tax Act or Applicable Tax Legislation.

### **13.9 Trustee to Declare Interest**

(1) The Trustee or any director, officer or employee of the Trustee who is a party to, or is a director or officer of or has a material interest in any Person who is a party to, a material contract or proposed material contract with the Trust of which the Trustee is aware shall disclose in writing to the Trust or the Manager, if any, the nature and extent of its interest, and shall not vote on any resolution to approve the contract, unless the contract is one relating primarily to remuneration as a Trustee or officer, director or employee, one for indemnity or insurance, and, for greater certainty, any officer, director or employee of the Trustee complying with this Section 13.9 shall not be subject to any liability to the Trust or the Unitholders with respect to such contract or proposed material contract as aforesaid.

(2) Subject to subsection 13.9(1), the Trustee, in its corporate capacity may buy, lend upon and deal in securities of the Trust and generally may contract and enter into any financial transactions with the Trust without being liable to account for any profit made thereby.

### **13.10 Trustee's Other Interests**

The Trustee's services to the Manager and the Trust are not exclusive and, subject to the limitations otherwise provided in this Declaration on the power and authorities of the Trustee, the Trustee may for any purpose, and is hereby expressly authorized from time to time in its discretion to, appoint, employ, invest in, contract or deal with any individual, firm, partnership, association, trust or body corporate, including without limitation, itself and any partnership, trust or body corporate with which it may directly or indirectly be affiliated or in which it may be directly or indirectly interested, whether on its 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 this Declaration. Without limiting the generality of the foregoing, the Manager hereby authorizes the Trustee to act hereunder notwithstanding that the Trustee or any of its divisions, branches or Affiliates may:

- (a) have a material interest in the transaction or that circumstances are such that the Trustee may have a potential conflict of duty or interest including the fact that the Trustee or any of its Affiliates may:
  - (i) purchase, hold, sell, invest in or otherwise deal with securities or other property of the same class and nature as may be held in the Trust, whether on its own account or for the account of another (in a fiduciary capacity or otherwise);
  - (ii) act as a market maker in the securities that form part of the assets of the Trust;
  - (iii) provide brokerage services to other clients;
  - (iv) act as financial adviser to the issuer of such securities;
  - (v) act in the same transaction as agent for more than one client;
  - (vi) have a material interest in the issue of securities that form part of the assets of the Trust; and
  - (vii) use in other capacities knowledge gained in its capacity as trustee hereunder provided that such use is not detrimental to the best interests of the Trust; and b) earn profits from any of the activities listed herein,
- (b) without being liable to account therefore and without being in breach of this Declaration.

### **13.11 Interests of Consultants and Agents**

Any consultant or agent of the Trust may, while so engaged and so long as it complies with this Declaration and any other applicable agreements:

- (a) acquire, hold and dispose of any property, real or personal, for its account even if such property is of a character which could be held by the Trust, and may exercise all rights of an owner of such property as if it were not a consultant or agent, as the case may be;
- (b) have business interests of any nature and may continue such business interests for its own account including the rendering of professional or other services and advice to other Persons for gain; and
- (c) acquire, hold and sell Units in its own capacity or as an Affiliate of or fiduciary for any other Person, or as an Affiliate of any Person who acquires, holds or sells Units, and, subject to Section 8.4, may exercise all rights of a holder thereof as if it were not a consultant or agent of the Trust, provided that it may not make use of any specific confidential information for its own benefit or advantage that, if generally known, might reasonably be expected to materially affect the value of any of the Units;

and such activities shall be deemed not to conflict with its duties as a consultant or agent of or to the Trust. Except as otherwise specifically agreed with the Trust, no consultant or agent of the Trust shall have any duty to present to the Trust any investment opportunity which it may receive in any capacity other than as consultant or agent of the Trust, and its failure to present to the Trust any such investment opportunity shall not make such consultant or agent liable in law or in equity, to pay, or account to the Trust, or to any Unitholder whether acting individually or on behalf of himself and other Unitholders as a class, for any benefit, profit or advantage derived therefrom.

### **13.12 Manager's Services Not Exclusive**

The Trustee acknowledges that the services of the Manager, if any, and its officers and directors may not be exclusive to the Trust, and nothing in this Declaration shall prevent the Manager or any Affiliate of the Manager from providing similar services to other investment funds and other clients (whether or not their investment objectives, policies and

restrictions are similar to those of the Trust) or from engaging in other activities. Any Manager will agree that it will and will cause any Mortgage Broker with which it contracts to allocate opportunities to make and dispose of investments fairly among clients who have similar objectives in accordance with the policies of any Mortgage Broker which are in place from time to time. The Trustee and any Manager may make or dispose of the same investment for the Trust and one or more of its clients, but the timing of the transactions for other clients may not coincide with those carried out for the Trust because of different investment restrictions.

### **13.13 Execution of Instruments and Apparent Authority**

Any instrument executed in the name of the Trust or by the Trustee as trustee of the Trust or the Manager shall constitute and shall be deemed to constitute a valid obligation of the Trust enforceable in accordance with its terms as if executed by the Trustee. Any Person dealing with the Trust in respect of any matters pertaining to the Trust Property and any right, title or interest therein, or to the Trust or to the Units shall be entitled to rely on a certificate, statutory declaration or resolution executed or certified by the Trustee as to the capacity, power and authority of the Trustee, the Manager, consultant or agent or any other Person to act for and on behalf and in the name of the Trust. No Person dealing with the Trustee, the Manager or any consultant or agent of the Trust, shall be bound to see to the application of any funds or property passing into the hands or control of such Trustee, the Manager, consultant or agent of the Trust. The receipt of the Trustee, the Manager or of authorized consultants or agents of the Trust, for moneys or other consideration, shall be binding upon the Trust.

### **13.14 Availability of Trusts**

The obligation of the Trustee 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 Trustee from the Trust 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 Trustee to protect and hold harmless the Trustee 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 shall require the Trustee to expend or risk its own funds or otherwise incur financial liability in the performance of its duties or in the exercise of any of its rights or powers unless it is given an indemnity and funding satisfactory to the Trustee, acting reasonably.

### **13.15 Further Matters Regarding the Trustee**

- (a) The Trustee shall be protected in acting upon any written notice, request, waiver, consent, certificate, receipt, statutory declaration or other paper or document furnished to it by the Manager or any other person, not only as to its due execution and the validity and the effectiveness of its provisions but also as to the truth and acceptability of any information therein contained which it in good faith believes to be genuine and what it purports to be, without the need for independent investigation. acquire, hold and dispose of any property, real or personal, for its account even if such property is of a character which could be held by the Trust, and may exercise all rights of an owner of such property as if it were not a consultant or agent, as the case may be.
- (b) The Trustee is not a party to, nor is bound by, any provisions which may be evidenced by, or arise out of, any agreement other than as therein set forth under the express provisions of this Declaration.
- (c) The Trustee may from time to time seek the advice of experts and advisers (including legal counsel) in the event of any question or dispute as to the construction of any of the provisions hereof or its duties hereunder, and it shall incur no liability and shall be fully protected in acting in accordance with the opinion and instructions of such experts and advisers. The cost of such services shall be added to and be part of the Trustee's expenses hereunder.
- (d) The Trustee shall not be answerable for the default or misconduct of the Manager and the Trustee shall not be answerable for the default or misconduct of any adviser, agent or legal counsel employed or appointed, at its discretion, by it if such adviser, agent or legal counsel shall have been selected with reasonable care.

- (e) The Manager, on behalf of the Trust, shall pay to the Trustee from time to time remuneration for the Trustee's services hereunder and will pay or reimburse the Trustee, upon its request, for all reasonable expenses and disbursements incurred or made by the Trustee in the administration of its services and duties created hereby (including the reasonable fees and disbursements of its counsel and all other advisers and assistants not regularly in its employ). Any amount due hereunder and unpaid 30 days after request for such payment, will bear interest from the expiration of such 30 days at a rate per annum equal to the then current rate charged by the Trustee from time to time, payable on demand. All amounts so payable and the interest thereon will be payable out of any assets in the possession of the Trustee in priority to amounts owing to any and all other parties.
- (f) The Trustee shall not be responsible for ensuring that the any proceeds from the issue of Units are used in the manner contemplated by the Offering Memorandum or any other disclosure document prepared by or on behalf of the Trust.
- (g) The Trustee will disburse monies according to this Agreement only to the extent that monies have been deposited with it.
- (h) The Trustee shall have no duties except those which are expressly set forth herein, and the Trustee shall not be liable except for the performance of such duties and obligations as shall specifically be set forth in this Declaration and no implied covenants or obligations shall be read into this Declaration against the Trustee.
- (i) The Trustee shall not be required to take notice of any default hereunder or to take any action with respect to such default involving any expense or liability, unless notice in writing of such default is formally given to the Manager, Corporate Trust, of the Trustee and unless it is indemnified and funded, in a manner satisfactory to it, against such expense or liability.
- (j) The Trustee shall not be responsible for assessing the validity or advisability of any directions or instructions received by it, including, but not limited to, those received from the Manager, and the Trustee shall under no circumstances be deemed to provide legal, investment, tax or trading advice or counselling.

### **13.16 Environmental Matters**

Without restricting the indemnity set out in Section 13.5 hereof, the Trust hereby indemnifies and holds harmless the Trustee, its directors, officers, employees, and agents, and all of their respective representatives, heirs, successors and assigns (collectively the "Indemnified Parties") against any loss, expenses, claim, proceedings, judgement, liability or asserted liability (including strict liability and including costs and expenses of abatement and remediation of spills or releases of contaminants and including liabilities of the Indemnified Parties to third parties, including governmental agencies in respect of bodily injuries, property damage, damage to or impairment of the environment or any other injury or damage and including liabilities of the Indemnified Parties to third parties for the third parties' foreseeable and unforeseeable consequential damages) incurred as a result of:

- (a) the administration of the trusts created hereby; or
- (b) the exercise by the Trustee of any rights hereunder or with respect to any rights arising under or with respect to the Investment Portfolio which result from or relate, directly or indirectly, to (i) the presence or release of any contaminants, by any means or for any reason, on any property comprised in or underlying the Investment Portfolio, whether or not release or presence of the contaminants was under the control, care or management of the Trust, the Manager, and agent thereof, or any previous owner or tenant; (ii) any contaminant present on or released from any contiguous property to any property comprised in or underlying the Investment Portfolio; or (iii) the breach or alleged breach of any environmental laws by the Trust, the Manager or any agent thereof.

For purposes of this Section 13.16, "liability" shall include (i) liability of an Indemnified Party for costs and expenses of abatement and remediation of spills and releases of contaminants, (ii) liability of an Indemnified Party to a third party to reimburse the third party for bodily injuries, property damages and other injuries or damages which the third party suffers, including (to the extent, if any, that the Indemnified Party is liable therefor) foreseeable and unforeseeable consequential damages suffered by the third party and (iii) liability of the Indemnified Party for damage suffered by the third party, (iv) liability of an Indemnified Party for damage to or impairment of the environment and (v) liability of an Indemnified Party for court costs, expenses of alternative dispute resolution proceedings, and fees and disbursements of expert consultants and legal counsel on a solicitor and client basis.

## **SECTION 14 - MISCELLANEOUS**

### **14.1 Offering Memorandum and Continuous Disclosure Materials**

The Manager shall provide to the Trustee draft copies of all agreements, literature, certificates, any Disclosure Document or Offering Memorandum, information memorandum, offering circular or similar document, advertisements, printed matter and other material which contain any reference to the Trustee or which relate to the functions being performed hereunder or which may affect the Trustee, except material which is circulated among or sent to employees, Unitholders and correspondence in the ordinary course of business and which merely reflects in accurate terms information contained in any then current Disclosure Document (or like document) of the Trust. No reference to the Trustee or the Trustee's corporate names and trade names, if any, in any Offering Memorandum, offering circular or similar document prepared in connection with the distribution of Units, in any other Disclosure Document and in promotional and marketing materials for the Trust shall be made without the Trustee's prior written consent and any such documents shall be subject to the prior review and comment by the Trustee, provided such consent shall not be unreasonably withheld or delayed. Regardless of the provision of any such consent, under no circumstance shall the Trustee be obliged to sign or execute any certificate page or similar instrument of any Disclosure Document, Offering Memorandum, offering circular or similar document, nor any promotional materials prepared by or on behalf of the Trust or the Manager, and the provision of any such consent shall not be deemed to constitute the approval or ratification by the Trustee of any disclosure set out in any such document other than any disclosure regarding the Trustee and provided by the Trustee. The Trustee shall have no obligation to review, prepare or participate in the preparation of, execute or deliver any such Offering Memorandum, Disclosure Document or other materials prepared by the Manager or for or on behalf of the Trust and shall have no liability to the Manager or Unitholders in respect of any such document or materials.

### **14.2 Amendments**

No amendment, supplement, restatement or termination of any provision of this Declaration is binding unless it is in writing and signed by the Trustee.

### **14.3 Governing Law**

This Declaration is executed by the Trustee and delivered in the Province of British Columbia and the rights of all parties and the validity, construction and effect of every provision hereof shall be subject to and is to be construed and interpreted in accordance with the laws of the Province of British Columbia and the laws of Canada applicable in the Province of British Columbia.

### **14.4 Inspection of Documents**

This Declaration shall be open to inspection by Unitholders, the Manager, if any, and any agent, consultant or creditor of the Trust and, upon written request from any Unitholder, the Trustee shall as quickly as reasonably possible furnish such Unitholder with a copy hereof. A Unitholder or such Unitholder's duly authorized representative will have the right to examine the books and records of the Trust during normal business hours at the offices of the Trustee provided that a Unitholder shall not have access to any information which, in the opinion of the Trustee should be kept confidential in the interests of the Trust. Unitholders and creditors shall have the right to make or cause to be made a list of all or any of the holders of the Units, to the same extent and upon the same conditions as apply to shareholders and creditors of a CBCA Corporation.

## 14.5 Notices

(1) **Notice in Writing.** Unless otherwise provided, any notice required or permitted to be given hereunder shall be in writing and delivered personally or by courier, sent by prepaid registered mail or transmitted by fax to the address or fax number specified below:

(a) to the Trustee at:

Computershare Trust Company of Canada  
3th Floor, 510 Burrard Street  
Vancouver, B.C. V6C 3B9

Attention: Manager, Corporate Trust

Fax: 604-661-9403

(b) to the Manager and the Trust at:

Trez Capital Fund Management Limited Partnership  
1550 - 1185 West Georgia Street  
Vancouver, B.C. V6E 4E6

Attention: The President

Fax: 604-689-0821

(c) to the Unitholder at the address appearing on the Register, and if, in the case of joint Unitholders, more than one address appears in the Register in respect of such joint holding, notice shall be addressed to the first address so appearing; or in the event of an interruption in postal service, such notice may be given by publication twice in the Report on Business Section of the National Edition of The Globe & Mail or similar Section of any newspaper having national circulation in Canada.

(2) **Change of Address.** The Trustee, the Manager, the Trust or any Unitholder may, from time to time, give notice of a change in their address or fax number or the Person referred to in Section 14.5(1).

(3) **Delivery.** Any notice:

(d) delivered personally or by courier on a Business Day will be deemed to have been given on that Business Day;

(e) delivered personally or by courier on a day that is not a Business Day will be deemed to have been given on the next Business Day;

(f) sent by prepaid registered mail will be deemed to have been given on the fifth Business Day after the date of mailing, subject to Section 14.5(4);

(g) transmitted by fax on a Business Day and (i) for which the sending party has received confirmation of transmission before 5:00 p.m. on that Business Day, will be deemed to have been given on that Business Day, or (ii) for which the sending party has received confirmation of transmission after 5:00 p.m. on that Business Day, will be deemed to have been given on the next Business Day;

(h) transmitted by fax on a day that is not a Business Day, will be deemed to have been given on the next Business Day; and

- (i) given on publication, will be deemed to have been given on the next following Business Day, after publishing such notice twice in the designated newspaper or newspapers.

(4) ***Disruption of Postal Service.*** If a notice has been sent by prepaid registered mail and before the fifth Business Day after the mailing there is a discontinuance or interruption of regular postal service so that the notice cannot reasonably be expected to be delivered within five (5) Business Days after the mailing, the notice will be deemed to have been given when it is actually received.

#### **14.6 Personal Information and Privacy**

The Trustee may, in the course of providing services hereunder, collect or receive financial and other personal information about the Manager, Unitholders or other parties and/or their representatives, as individuals, or about other individuals related to the subject matter hereof, and use such information for the following purposes:

- (a) to provide the services required under this Declaration and other services that may be requested of the Trustee from time to time;
- (b) to help the Trustee manage its servicing relationships with such individuals;
- (c) to meet the Trustee's legal and regulatory requirements; and
- (d) if Social Insurance Numbers are collected by the Trustee, to perform tax reporting and to assist in verification of an individual's identity for security purposes.

The Trustee may receive, collect, use and disclose personal information provided to it or acquired by it in the course of its services under this Declaration for the purposes described above and, generally, in the manner and on the terms described in its Privacy Code, which the Trustee shall make available on its website, [www.computershare.com](http://www.computershare.com), or upon request, including revisions thereto. The Trustee may transfer personal information to other companies in or outside of Canada that provide data processing and storage or other support in order to facilitate the services it provides. Further, the Manager agrees that it shall not provide or cause to be provided to the Trustee any personal information relating to an individual who is not a party to this Declaration, or any Unitholder, unless the Manager has assured itself that such individual understands and has consented to the aforementioned uses and disclosures by the Trustee.

#### **14.7 Information to be Furnished to the Trustee**

The Manager will cause to be furnished to the Trustee from time to time, in addition to any other documents required to be furnished hereunder:

- (a) as soon as possible after the same becomes available, a copy of each audited financial statement of the Trust, together with the report of the Auditors thereon, and each unaudited interim financial statement of the Trust;
- (b) copies of the forms of subscription agreements, the Offering Memorandum, the Disclosure Documents and any offering memoranda or similar document regarding the distribution of or investment in Units;
- (c) upon filing, the tax returns of the Trust as filed with Canada Revenue Agency or otherwise Applicable Tax Legislation;
- (d) a certificate specifying those persons authorized to give approvals, consents or directions on behalf of the Manager including specimen signatures of such persons; and
- (e) confirmation regarding reporting and remittance under Applicable Tax Legislation regarding the Trust and/or Unitholders by the Trust,

provided however that the Trustee shall bear no responsibility to review or comment upon such documents or materials and shall have no responsibility for the accuracy of such documents or materials or the compliance of such documents or materials with Applicable Laws, including Applicable Tax Legislation.

#### **14.8 Money Laundering Legislation**

The Trustee shall retain the right not to act and shall not be liable for refusing to act if, due to a lack of information or for any other reason whatsoever, the Trustee in its sole judgment determines that such act might cause it to be in non-compliance with any applicable anti-money laundering or anti-terrorist or economic sanction legislation, regulation or guideline. Further, should the Trustee in its sole judgment determine at any time that its acting under this Declaration has resulted in its being in non-compliance with any applicable anti-money laundering or anti-terrorist or economic sanction legislation, regulation or guideline, then it shall have the right to resign on 10 days written notice to the Manager, provided that (i) the Trustee's written notice shall describe the circumstances of such non-compliance; and (ii) if such circumstances are rectified to the Trustee's satisfaction within such 10 day period, then such resignation shall not be effective.

#### **14.9 Force Majeure**

No party shall be liable to the other or held in breach of this Declaration if prevented, hindered, or delayed in the performance or observance of any provision contained herein by reason of act of God, riots, terrorism, acts of war, epidemics, governmental action or judicial order, earthquakes, or any other similar causes (including, but not limited to, mechanical, electronic or communication interruptions, disruptions or failures). Performance times under this Trust Agreement shall be extended for a period of time equivalent to the time lost because of any delay that is excusable under this Section 14.9.

#### **14.10 Severability**

If any provision of this Declaration is or becomes illegal, invalid or unenforceable in any jurisdiction, the illegality, invalidity or unenforceability of that provision will not affect (i) the legality, validity or enforceability of the remaining provisions of this Declaration or (ii) the legality, validity or enforceability of that provision in any other jurisdiction.

**IN WITNESS WHEREOF** the undersigned have executed this Declaration as of the • day of December, 2016.

**TREZ CAPITAL FUND MANAGEMENT  
LIMITED PARTNERSHIP, by its general partner,  
Trez Capital Fund Management (2011)  
Corporation**

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

**COMPUTERSHARE TRUST COMPANY OF  
CANADA**

By: \_\_\_\_\_  
Name:  
Title:

By:: \_\_\_\_\_  
Name:  
Title:

**SCHEDULE "A"**

**NOTICE**

To:       Computershare Trust Company of Canada,  
          Trustee of Trez Capital Yield Trust US (Canadian \$)

In accordance with the terms of the Declaration of Trust (the "**Declaration**") made as of December •, 2016 relating to Trez Capital Yield Trust US (Canadian \$(the "**Trust**"), Trez Capital Fund Management Limited Partnership is the Manager of the Trust. Capitalized terms not defined in this Certificate of Compliance have the meanings ascribed to them in the Declaration.

Trez Capital Fund Management Limited Partnership hereby certifies and confirms that:

- (a)       An investment in Real Property was completed on [*date*].
- (b)       The municipal address and legal description of such Real Property is [*insert municipal address and legal description*].
- (c)       The name of the corporation the shares of which are held by the Trust and which holds a [*limited partnership or other interest*] in the entity that holds legal title to the Real Property is [*insert name of corporation*].
- (d)       The name of the entity that holds legal title to the Real Property is [*insert name of entity*].
- (e)       A report on the environment status of such Real Property in the form of a "Phase I" assessment (or equivalent):
  - (i)       that is satisfactory, has been obtained by the Manager and is maintained with the books and records of the Trust by the Manager. [or]
  - (ii)      has not been obtained based on the determination of the Board of Governors that the provisions of Section 2.4(3)(b) are satisfied.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ .

**TREZ CAPITAL FUND MANAGEMENT  
LIMITED PARTNERSHIP, by its general partner  
Trez Capital Fund Management (2011)  
Corporation**

By: \_\_\_\_\_  
Name:  
Title:

**SCHEDULE "B"**

**CERTIFICATE OF COMPLIANCE**

To:       Computershare Trust Company of Canada,  
          Trustee of Trez Capital Yield Trust US (Canadian \$)

In accordance with the terms of the Declaration of Trust (the "**Declaration**") made as of December 9, 2016 relating to Trez Capital Yield Trust US (Canadian \$)(the "**Trust**"), Trez Capital Fund Management Limited Partnership is the Manager of the Trust. Capitalized terms not defined in this Certificate of Compliance have the meanings ascribed to them in the Declaration.

Trez Capital Fund Management Limited Partnership hereby certifies and confirms that with respect to the 12-month period ending December 31, 20\_\_, to the best of its knowledge and belief:

- (a) All investments of the Trust are in compliance with the Investment Objective and Investment Policies and other investments information as disclosed in the current Disclosure Document of the Trust and any other regulatory restriction or policy applicable to investments by the Trust.
- (b) All confirmations, tax receipts and financial statements have been delivered to unitholders as required.
- (c) All regulatory filings required to be made by the Trust, if any, have been completed.
- (d) All regulatory filings required to be made by the Manager, annual renewals of registration filings, have been completed. The Manager is not under investigation by any regulatory authority.
- (e) The Manager has complied with all of its obligations under all laws, regulations, rules and policies applicable to it and its duties and responsibilities under the Declaration.
- (f) There is no litigation pending against the Manager or the Trust which has not already been disclosed to the Trustee.
- (g) The distribution of Units by the Manager or its agent is in compliance with all regulatory requirements.
- (h) The financial statements for the Trust have been prepared in accordance with IFRS applicable to the Trust and are complete, accurate and approved as required.
- (i) All documentation required to be forwarded to the Trustee by the Manager under the terms of the Declaration has been so forwarded including all written confirmations as to investments in Real Property or contemplated by and in accordance with Section 2.4(4).
- (j) Current certified copies of the Manager's signing authorities have been provided to the Trustee and may be relied upon by the Trustee.
- (k) The Manager shall promptly inform the Trustee should the Trust fail to comply with any restrictions and conditions hereto.
- (l) The book value of the Units and book value per Unit have been calculated in accordance with the Declaration and reported as required.

- (m) The computation of distribution of income and capital gains has been completed in accordance with the Tax Act and the regulations thereunder.
- (n) The books and records of the Trust maintained by or on behalf of the Manager, including the Unitholder records, are complete and accurate.
- (o) All required filings, disbursements, and reports to unitholders, tax and regulatory authorities have been completed when required including under Applicable Tax Legislation.
- (p) A current copy of the register of Unitholders is attached hereto.
- (q) A current list of all bank and investment accounts maintained by the Trust is attached hereto.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ .

**TREZ CAPITAL FUND MANAGEMENT  
LIMITED PARTNERSHIP, by its general partner  
Trez Capital Fund Management (2011)  
Corporation**

By: \_\_\_\_\_  
Name:  
Title:

By:: \_\_\_\_\_  
Name:  
Title: