

AMENDED AND RESTATED DECLARATION OF TRUST

governing

DUNDEE REAL ESTATE INVESTMENT TRUST

AMENDED AND RESTATED DECLARATION OF TRUST

Amended and Restated as of December 31, 2009

OSLER, HOSKIN & HARCOURT LLP

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AMENDED AND RESTATED DECLARATION OF TRUST

THIS AMENDED AND RESTATED DECLARATION OF TRUST was made as of the 9th day of May, 2003, amended and restated at 12:00:01 a.m. on the 30th day of June, 2003, amended and restated as of the 5th day of November, 2003, amended and restated as of the 14th day of June, 2005; amended and restated as of the 16th day of May, 2006; amended and restated as of August 24, 2007; amended and restated as of December 31, 2007; amended and restated as of September 1, 2009 and is amended and restated as of December 31, 2009.

WHEREAS the Trust was established pursuant to a Declaration of Trust dated May 9, 2003 (the “**Original Declaration of Trust**”) under the name “**Dundee Real Estate Investment Trust**”;

AND WHEREAS the Trust was on that date settled with \$10.00 in lawful money of Canada which the Trustee thereupon invested;

AND WHEREAS the Original Declaration of Trust was amended and restated as of June 30, 2003;

AND WHEREAS this Declaration of Trust was further amended and restated as of November 5, 2003;

AND WHEREAS this Declaration of Trust was further amended and restated as of June 14, 2005;

AND WHEREAS this Declaration of Trust was further amended and restated as of May 16, 2006;

AND WHEREAS this Declaration of Trust was further amended and restated as of August 24, 2007;

AND WHEREAS this Declaration of Trust was further amended and restated as of December 31, 2007;

AND WHEREAS this Declaration of Trust was further amended and restated as of September 1, 2009;

AND WHEREAS the beneficiaries of the Trust are the holders of Units;

AND WHEREAS pursuant to a reorganization of the REIT and its affiliates, Dundee Properties Operating Trust A and Dundee Properties Operating Trust B were dissolved and Dundee Properties OTA Limited Partnership (“**Partnership A**”) and Dundee Properties OTB Limited Partnership (“**Partnership B**”) were created;

AND WHEREAS at an annual and special meeting of Unitholders held on May 7, 2009, the Unitholders approved a special resolution authorizing and approving certain amendments to the distribution payment provisions of this Declaration of Trust;

AND WHEREAS the Trustees confirmed the foregoing amendments to the Declaration of Trust with effect as of the time on May 7, 2009 when the foregoing special resolution was approved by the Unitholders;

AND WHEREAS the Trustees confirmed certain amendments to the Declaration of Trust with effect as of December 31, 2009, to comply with the adoption of the new International Financial Reporting Standards established by the International Accounting Standards Board;

AND WHEREAS, for greater certainty, the restatement of this Declaration of Trust shall not be deemed to constitute a termination of the Trust or a resettlement of this Declaration of Trust or the Trust created hereby;

AND WHEREAS the undersigned Trustees wish to further amend and restate this Declaration of Trust by executing this Amended and Restated Declaration of Trust;

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

ARTICLE 1 THE TRUST AND DEFINITIONS

1.1 Definitions

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

“Administrative Services Agreement” means, the amended and restated administrative services agreement dated as of December 31, 2007 between the Trust, LP, the Partnerships and the Manager;

“affiliate” means a person or company considered to be an affiliated entity of another person or company within the meaning of Ontario Securities Commission Rule 45-501 – Exempt Distributions;

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

“Arrangement” means an arrangement under the provisions of Section 182 of the OBCA, on terms and conditions set forth in the Plan of Arrangement;

“Asset Management Agreement” means, the amended and restated asset management agreement dated as of December 31, 2007 among DRC, the Trust, LP, and the Partnerships;

“associate” has the meaning given thereto in the *Securities Act* (Ontario), as amended from time to time;

“Audit Committee” means the committee of the Trustees established pursuant to Section 8.3;

“Auditors” means the firm of chartered accountants appointed as the auditors of the Trust from time to time in accordance with Section 14.4 and, initially means PricewaterhouseCoopers LLP;

“Beneficial Transition Fund Unitholder” means the beneficial owner of a Transition Fund Unit where the Book-Entry Only System is being used for the Transition Fund Units;

“Book-Entry Only System” means the record-entry securities transfer and pledge system known as of the Effective Date by such name, and which is administered by CDS in accordance with the operating rules and procedures of the Securities Settlement Service of CDS in force from time to time, or any successor system which CDS may offer from time to time;

“Business Day” means any day other than a Saturday or a Sunday on which Schedule I Canadian chartered banks are open for business in Toronto, Ontario;

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

“CDS” means the Canadian Depository for Securities Limited and any successor;

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

“Compensation Committee” means the committee of the Trustees established pursuant to Section 8.4;

“Consolidation” means a consolidation, combination or reduction (other than by way of redemption or purchase) in outstanding REIT Units into a lesser number of REIT Units;

“control” means the possession, directly or indirectly, of the power to direct the management and policies of a Person, whether through the ownership of voting securities, contract or otherwise;

“Converted Distributable Series B Income” means, for any period, the amount calculated in accordance with the formula $A/B \times C$ where:

A is the cumulative number (as adjusted for any Subdivision or Consolidation) of REIT Units, Series B converted into REIT Units, Series A in accordance with Article 6 of Schedule A-2 to this Agreement at any time prior to the end of such period;

B is the cumulative number (as adjusted for any Subdivision or Consolidation) of REIT Units, Series B issued by the Trust upon the surrender or exchange of LP Class B Units, Series 1 in accordance with their terms or the terms of the

Exchange and Support Agreement, as the case may be, at any time prior to the end of such period, less the number of REIT Units, Series B redeemed or purchased for cancellation by the Trust prior to the end of such period; and

C is the amount of Distributable Series B Income for such period.

“Converted Percentage” means, as at any date, the percentage calculated in accordance with the formula $A/B \times 100$ where:

A is the number of REIT Units, Series A in excess of the number of LP Class A Units; and

B is the total number of outstanding REIT Units, Series A;

“Convertible Units” has the meaning set out in Section 5.4;

“DC” means Dundee Corporation and its successors and assigns;

“DC Appointees” has the meaning set out in Subsection 2.2(b);

“DC Ownership Threshold” has the meaning set out in Subsection 2.2(a);

“Declaration of Trust” means this declaration of trust as amended, supplemented or restated from time to time;

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

“Deferred Unit Incentive Plan” means the Trust’s Deferred Unit Incentive Plan for Trustees, Senior Management and Consultants;

“dissenting offeree” means, where a take-over bid is made for all of the Units other than those held by the offeror, a holder of Units who does not accept the take-over bid and includes a subsequent holder of those Units who acquires them from the first mentioned holder;

“Distributable Series A Income” means, for any period, the net income of the Trust and its applicable consolidated Subsidiaries for such period set out in its consolidated financial statements prepared as if the Trust’s only assets are the units and Notes of Partnership A, all amounts on deposit in the REIT Unit, Series A Bank Account and any other assets held in connection with Partnership A, as determined in accordance with GAAP, adjusted as follows:

- (i) depreciation and amortization (except for amortization of deferred financing costs and non-recoverable deferred maintenance, all as incurred after the formation of the Trust on June 30, 2003) and amortization of fair value debt adjustments shall be excluded;

- (ii) costs incurred with respect to distribution reinvestment plans, unit purchase plans, unit option plans, deferred unit plans or any other unit compensation incentive plan or similar plan shall be added back;
- (iii) any gains or losses on the disposition of any real property, any future income tax expenses or benefits and non-cash rental revenues recognized on a straight line basis or recognized as a result of the amortization of above or below market in-place leases recorded on an acquisition of a rental property shall be excluded, and
- (iv) to reflect any other adjustments determined to be appropriate by a majority of the Trustees in their discretion;

“Distributable Series B Income” means, for any period, the net income of the Trust and its applicable consolidated Subsidiaries for such period set out in its consolidated financial statements prepared as if the Trust’s only assets are the units and Notes of Partnership B, all amounts on deposit in the REIT Unit, Series B Bank Account and any other assets held in connection with Partnership B, as determined in accordance with GAAP, adjusted as follows:

- (i) depreciation and amortization (except for amortization of deferred financing costs and non-recoverable deferred maintenance, all as incurred after the formation of the Trust on June 30, 2003) and amortization of fair value debt adjustments shall be excluded;
- (ii) costs incurred with respect to distribution reinvestment plans, unit purchase plans, unit option plans, deferred unit plans or any other unit compensation incentive plan or similar plan shall be added back;
- (iii) any gains or losses on the disposition of any real property, any future income tax expenses or benefits and non-cash rental revenues recognized on a straight line basis or recognized as a result of the amortization of above or below market in-place leases recorded on an acquisition of a rental property shall be excluded, and
- (iv) to reflect any other adjustments determined to be appropriate by a majority of the Trustees in their discretion;

“Distribution Date” means, with respect to a distribution by the Trust, a Business Day determined by the Trustees for any calendar month to be on or about the 15th day of the following month;

“Distribution Reinvestment Plan” means the distribution reinvestment and unit purchase plan adopted by the Trust for holders of REIT Units, Series A and REIT Units, Series B, having an effective date of August 29, 2003, and the substantially equivalent distribution reinvestment arrangements for holders of LP Class B Units, Series 1 in the LP Agreement;

“DMLP” means Dundee Management Limited Partnership;

“DMLP Agreement” means the amended and restated limited partnership agreement dated June 30, 2003 creating Dundee Management Limited Partnership, as it may be amended, supplemented or restated from time to time;

“DRC” means Dundee Realty Corporation and its successors and assigns;

“Dundee Properties Operating Trust A” means the trust created by the amended and restated declaration of trust dated August 24, 2007 as it may be amended, supplemented or restated from time to time;

“Dundee Properties Operating Trust B” means the trust created by the amended and restated declaration of trust dated August 24, 2007, as it may be amended, supplemented or restated from time to time;

“Effective Date” means the date shown on the certificate of arrangement giving effect to the Arrangement, issued pursuant to Subsection 183(1) of the OBCA;

“Exchange and Support Agreement” means the amended and restated exchange and support agreement dated as of December 31, 2007 between the Trust, the LP, DRC, the Partnerships, 0764704 B.C. Ltd., 0764707 B.C. Ltd., Dundee Realty Holdings Limited Partnership and each additional person who becomes, from time to time, a holder of exchangeable units and agrees to be a party to and bound by such agreement, as may be amended, supplemented or restated from time to time;

“GE” means General Electric Capital Canada and its successors and assigns;

“GE Transaction” means the transactions described in a purchase agreement made as of June 3, 2007 among GE, the Trust, Dundee Operating Trust A, Dundee Operating Trust B and the LP;

“General Partner” means Dundee Properties (GP) Inc., a corporation incorporated under the laws of the Province of Ontario to be the general partner of the LP;

“generally accepted accounting principles” or **“GAAP”** means, as at any date of determination, generally accepted accounting principles in Canada including, among other things, Recommended Accounting Practices for Real Estate Investment and Development Companies issued by the Canadian Institute of Public Real Estate Companies;

“Governance Agreement” means the amended and restated governance agreement dated December 31, 2007 between the Trust, the General Partner and DC, as it may be amended, supplemented or restated from time to time;

“Governance and Environmental Committee” means the committee of the Trustees established pursuant to Section 8.5;

“Gross Book Value” means, at any time, the book value of the assets of the Trust and its Subsidiaries, as shown on its then most recent publicly issued consolidated balance sheet, plus the amount of accumulated depreciation and amortization shown thereon;

“IFRS” means International Financial Reporting Standards established by the International Accounting Standards Board;

“income of the Trust” for any taxation year of the Trust means the net income for the year determined pursuant to the provisions of the Tax Act having regard to the provisions thereof which relate to the calculation of taxable income of a trust, without reference to paragraph 82(1)(b) (dividend gross up) and subsection 104(6) (deduction for payments out of the Trust) of the Tax Act (including any income realized by the Trust on the redemption of REIT Units *in specie*) and taking into account such other adjustments as may be determined in the discretion of the Trustees, provided, however, that capital gains and capital losses shall be excluded from the computation of net income;

“Independent Trustee” means any Trustee who is not or has not been an employee of DC or any affiliate of DC at any time or who is not directly employed by the Trust or any of its affiliates;

“Initial Contribution” means the amount of \$10.00 paid by DRC on May 9, 2003 for the purpose of settling the Trust;

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

“Initial Unitholder” means DRC;

“Investment Committee” means the committee of the Trustees established pursuant to Section 8.2;

“LP” means Dundee Properties Limited Partnership;

“LP Agreement” means the amended and restated limited partnership agreement dated December 31, 2007 governing Dundee Properties Limited Partnership, as it may be amended, supplemented or restated from time to time;

“LP Class A Unit” means a unit of interest in the LP designated as a LP Class A Unit and having the rights and attributes described in the LP Agreement with respect thereto;

“LP Class B Units” means, collectively, LP Class B Units, Series 1 and LP Class B Units, Series 2 and “LP Class B Unit” means any one of them;

“LP Class B Unit, Series 1” means a unit of interest in the LP designated as a LP Class B Unit, Series 1 and having the rights and attributes described in the LP Agreement with respect thereto, including the right of the holder to surrender such unit for a REIT Unit, Series B;

“LP Class B Unit, Series 2” means a unit of interest in the LP designated as a LP Class B Unit, Series 2 and having the rights and attributes described in the LP Agreement with respect thereto;

“Liquidated Net Assets of the Trust” has the meaning given thereto in Section 12.3;

“Manager” means DMLP and its successors and permitted assigns under the Master Property Management Agreement;

“Master Property Management Agreement” means the master property management agreement dated June 30, 2003 among LP, DMLP, DRC and the Trust;

“Monthly Limit” has the meaning given thereto in Subsection 5.24(e);

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

“net realized capital gains of the Trust” for any year means the amount, if any, by which the aggregate amount of the realized capital gains of the Trust for the year, calculated in accordance with the provisions of the Tax Act, exceeds the aggregate of: (i) the aggregate amount of any realized capital losses of the Trust for the year, calculated in accordance with the provisions of the Tax Act; (ii) any capital gains which are realized by the Trust in the year (including any capital gains realized by the Trust on the disposition of the units and Notes of the Partnerships and any other property of the Trust) designated as having been paid to the redeeming Unitholders pursuant to Section 5.24, (iii) the amount determined by the Trustees in respect of any net capital losses of the Trust (as defined in the Tax Act) carried forward from prior taxation years to the extent not previously deducted from realized capital gains of the Trust; and (iv) any amount in respect of which the Trust is entitled to a capital gains refund under the Tax Act, as determined by the Trustees; provided that at the discretion of the Trustees, the net realized capital gains of the Trust for a year may be calculated without subtracting the full amount of the net capital losses of the Trust for the year and/or without subtracting the full amount of the net capital losses of the Trust carried forward from prior years;

“net recapture income of the Trust” for any year means the amount allocated by either of the Partnerships to the Trust that may reasonably be considered to be an allocation of net recapture income of such Partnership;

“Non-Competition Agreement” has the meaning set out in Section 2.5;

“Notes” means the promissory notes, bonds, debentures, debt securities or similar evidence of indebtedness issued by a Person;

“Note Indentures” means, collectively, the trust indentures to be dated the Effective Date providing for the issuance of, respectively, (i) the Series 2 Notes by Partnership A, in the case of REIT Units, Series A, or (ii) the Series 2 Notes by Partnership B, in the case of REIT Units, Series B;

“OBCA” means the *Business Corporations Act* (Ontario), as amended;

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

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

“Operating Trusts” means, collectively, Dundee Properties Operating Trust A and Dundee Properties Operating Trust B;

“Partnership A” has the meaning ascribed to it in the Recitals hereto;

“Partnership B” has the meaning ascribed to it in the Recitals hereto;

“Partnerships” means, collectively, Partnership A and Partnership B;

“Person” includes an individual, body corporate, partnership, limited partnership, joint venture, trust or unincorporated organization, the Crown or any agency or instrumentality thereof, or any other entity recognized by law;

“Plan of Arrangement” means a plan of arrangement attached as Appendix I to an acquisition agreement dated May 20, 2003 among Dundee Bancorp Inc. (the predecessor to DC), DRC, the Trust, the Operating Trusts, the LP and the Manager;

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

“Redemption Date” has the meaning set out in Section 5.24(c);

“Redemption Distribution Amount” means the portion of the Redemption Price paid to a Unitholder under Section 5.24 that pursuant to Subsection 5.24(i) is treated as net realized capital gains of the Trust or net recapture income of the Trust paid in the year by the Trust to such Unitholder;

“Redemption Price” has the meaning set out in Subsection 5.24(c);

“Register” has the meaning set out in Section 5.16;

“REIT Unit” means a unit of beneficial interest in the Trust (other than Special Trust Units and Transition Fund Units) authorized and issued hereunder as such and for the time being outstanding and includes a fraction of a Unit and for greater certainty includes all REIT Units, Series A and REIT Units, Series B and any other classes of units authorized by the Trustees as such;

“REIT Unit, Series A” means a unit of interest in the Trust designated as a REIT Unit, Series A and includes a fraction of a REIT Unit, Series A;

“REIT Unit, Series B” means a unit of interest in the Trust designated as a REIT Unit, Series B and includes a fraction of a REIT Unit, Series B;

“REIT Unit, Series A Bank Account” means the bank account of the REIT that is maintained and used by the REIT at all times for the sole benefit of the holders of REIT Units, Series A, as described in Section 3.11;

“REIT Unit, Series B Bank Account” means the bank account of the REIT that is maintained and used by the REIT at all times for the benefit of the holders of REIT Units, Series B and REIT Units, Series A, as described in Section 3.11;

“Related Party” means, with respect to any Person, a Person who is a “related party” as that term is defined in Ontario Securities Commission Rule 61-501, as amended from time to time (including any successor rule or policy thereto);

“resident Canadian” means an individual or corporation who is a resident of Canada for purposes of the Tax Act;

“Series 1 Notes” means the Series 1 Notes issued by each of the Partnerships to the Trust;

“Series 2 Notes” means the Series 2 Notes issued by each of the Partnerships to be issued exclusively as full or partial payment of the Series 1 Notes and units of the Partnerships;

“Special Trust Unit” means a unit of interest in the Trust that is authorized and issued pursuant to Section 5.1 to a holder of LP Class B Units, Series 1;

“Special Trust Unit Liquidation Amount” has the meaning given thereto in Section 5.2(b);

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

“Special Trust Unit Redemption Amount” has the meaning set out in Section 5.2(e);

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

“Subsidiary” means, with respect to any Person (other than an individual), a Person (other than an individual) the financial results of which are consolidated with those of the Trust’s in the preparation of the Trust’s consolidated financial statements, prepared in accordance with GAAP;

“Subsidiary Securities” means the Series 2 Notes or other securities of Partnership A or Partnership B or such other notes or securities of a Subsidiary of Partnership A or Partnership B as the Trustees may determine from time to time;

“take-over bid” has the meaning given to such term in the *Securities Act* (Ontario), as amended from time to time;

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

“Telus Tower Transactions” means the implementation of a series of steps to change the way the Trust holds its indirect 50% interest in the property known as the "Telus Tower" in Calgary, Alberta as more particularly set out in the management information circular of the Trust dated April 2, 2009;

“Transition Fund Unit Redemption Date” has the meaning ascribed to such term in Section 5.31;

“Transition Fund Unit Redemption Price” means the fair market value of any consideration for which Transition Fund Units were issued plus any declared but unpaid distributions on such Transition Fund Units as at the date of redemption or retraction

“Transition Fund Unitholders” means, at any time, the holders at that time of one or more Transition Fund Units, as shown on the Register;

“Transition Fund Units” means a unit of interest in the Trust designated as a Transition Fund Unit and includes a fraction of a Transition Fund Unit;

“Trust” means the trust constituted hereunder but, for greater certainty, unless otherwise expressly provided, does not include any Subsidiaries or affiliates thereof;

“Trust Property” means, at any particular time, any and all assets of the Trust, including, without limitation, all proceeds therefrom;

“Trustees” means, as of any particular time, all of the trustees holding office under and in accordance with this Declaration of Trust, in their capacity as trustees hereunder and **“Trustee”** means any of them;

“Trustees’ Regulations” means the regulations adopted by the Trustees pursuant to Section 3.3 or Section 6.9 from time to time;

“Units” means, collectively, the REIT Units, the Special Trust Units and the Transition Fund Units;

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

“Unconverted Distributable Series B Income” means, for any period, the amount of Distributable Series B Income, less the amount of Converted Distributable Series B Income.

1.2 Construction

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

- (a) references to “herein”, “hereby”, “hereunder”, “hereof” and similar expressions are references to this Declaration of Trust and not to any particular Article or Section of this Declaration of Trust;

- (b) references to an “Article” or “Section” are references to an Article or Section of this Declaration of Trust;
- (c) words importing the singular shall include the plural and vice versa, and words importing gender shall include the masculine, feminine and neuter genders;
- (d) the use of headings is for convenience of reference only and shall not affect the construction or interpretation hereof;
- (e) the words “includes” and “including”, when following any general term or statement, are not to be construed as limiting the general term or statement to the specific items or matters set forth or to similar items or matters, but rather as referring to all other items or matters that could reasonably fall within the broadest possible scope of the general term or statement; and
- (f) for greater certainty, unless otherwise expressly provided herein, where any reference is made in this Declaration of Trust or in any resolution of the Unitholders or Trustees to the Trust as a party to any agreement or as an owner of property, or to an act to be performed by or a covenant given by the Trust, such reference shall be construed and applied for all purposes as if it referred to the Trustees, in their capacity as trustees of the Trust under this Declaration of Trust.

1.3 Name

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

1.4 Use of Name

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

1.5 Office

The principal office and centre of administration of the Trust shall be at State Street Financial Centre, Suite 1600, 30 Adelaide Street East, Toronto, Ontario, M5C 3H1 or at such other address in Canada as may be determined by the Trustees in their discretion. The Trust may have such other offices or places for the conduct of its affairs as the Trustees or management of the Trust or any of its Subsidiaries may from time to time determine to be necessary or desirable.

1.6 Establishment of Trust

The Trustees hereby declare and agree to hold Trust Property in trust for the use and benefit of the Unitholders, their successors, permitted assigns and personal representatives, and subject to

the terms and conditions hereinafter declared and set forth, such trust to constitute the Trust hereunder.

1.7 Nature of the Trust

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

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

The beneficial interest and rights generally of a Unitholder in the Trust shall be limited to the right to participate *pro rata* in distributions when and as declared by the Trustees as contemplated by Article 9 and distributions upon the termination of the Trust as contemplated in Article 12. The Trust is not and is not intended to be, shall not be deemed to be and shall not be treated as a general partnership, limited partnership, syndicate, association, joint venture, company, corporation or joint stock company nor shall the Trustees or the Unitholders or any of them for any purpose be, or be deemed to be treated in any way whatsoever to be, liable or responsible hereunder as partners or joint venturers. The Trustees shall not be, or be deemed to be, agents of the Unitholders. The relationship of the Unitholders to the Trustees, to the Trust and to the property of the Trust shall be solely that of beneficiaries in accordance with this Declaration of Trust.

1.8 Purpose of the Trust

The purpose of the Trust is to establish and carry on activities in order to produce income for the exclusive benefit of the Unitholders and to distribute the Trust Property upon termination of those activities by the Trust in accordance with Article 12. The activities of the Trust will be (i) the transfer, acquisition or acceptance of the Trust Property determined by the Trustees from time to time and the administration of such Trust Property; (ii) arranging for the funding of such acquisitions to the extent necessary; (iii) the granting of security in the Trust Property for the obligations of the Trust; all in such manner and on such terms as the Trustees, acting reasonably, deem appropriate; and (iv) all such other activities as may be reasonably incidental to the foregoing or necessary in connection with the performance by the Trustees of their obligations under any agreement to which they are or may become parties for such purposes or in connection with such activities. Notwithstanding the foregoing or any other provision of this Declaration of Trust at no time will the Trust's activities include an activity, nor will the Trust take any action, that would (i) prevent the Trust from qualifying as a "mutual fund trust" or cause it to disqualify as such or cause it to disqualify as a "registered investment" or, on or after January 1, 2008, a "real estate investment trust", each as defined in the Tax Act, (ii) cause the Trust to be subject to tax under paragraph 122(1)(b) of the Tax Act, or (iii) at any time prior to January 1, 2008, cause the Trust to exceed "normal growth" as determined by the "normal growth guidelines" issued by the Department of Finance of Canada on December 15, 2006, as amended from time to time. The Trust shall not engage directly or indirectly in any activity other than the activities permitted by this Section 1.8.

1.9 Accounting Principles

Where the character or amount of any asset or liability or item of revenue or expense is required to be determined, or any consolidation or other accounting computation is required to be made for the purpose of this Agreement, such determination or calculation shall, to the extent applicable and except as otherwise specified herein or as otherwise agreed in writing by the parties, be made in accordance with (a) prior to January 1, 2011, the Canadian Institute of Chartered Accountants or any successor thereto; and (b) on and after January 1, 2011, IFRS, and all financial data prepared pursuant to this Declaration of Trust shall be prepared in accordance with such principles, consistently applied. In the event of a change in GAAP or following the adoption of IFRS, the Trustees shall revise (if appropriate) the financial data prepared pursuant to this Declaration of Trust to reflect GAAP as then in effect, in which case all financial data shall be made on a basis consistent with GAAP in existence as at the date of such revisions.

ARTICLE 2 TRUSTEES AND OFFICERS

2.1 Number

From and after the Effective Date, there shall be at all times no fewer than five and no more than twelve Trustees. There shall be nine Trustees on the Effective Date. The number of Trustees may only be changed within such limits by the Unitholders or, if authorized by the Unitholders, by the Trustees, provided that the Trustees may not, between meetings of the Unitholders, unless otherwise approved by a majority of the Independent Trustees, appoint an additional Trustee if, after such appointment, the total number of Trustees would be greater than one and one-third times the number of Trustees in office immediately following the last annual meeting of the Unitholders. A vacancy occurring among the Trustees (other than a vacancy resulting from the resignation or removal of a DC Appointee) may be first filled by DC, if DC at that time, has not appointed up to its maximum entitlement as set out in Section 2.2. If DC has appointed up to its maximum entitlement or does not elect to exercise its right fill the vacancy, such vacancy may be filled by resolution of the remaining Trustees so long as they constitute a quorum or by the Unitholders at a meeting of the Unitholders. A vacancy occurring among the Trustees resulting from the resignation or removal of a DC Appointee may be filled by an appointment by DC.

2.2 Appointees of DC

- (a) DC shall have the right to appoint up to a majority of the Trustees serving on the board less one such Trustee provided that DC and its affiliates continue to beneficially own, in the aggregate, at least 2,000,000 Units or an aggregate number of REIT Units and LP Class B Units, Series 1 that, upon surrender or exchange of the LP Class B Units, Series 1, would equal at least 2,000,000 REIT Units or an equivalent amount resulting from any consolidation, subdivision or division of REIT Units or LP Class B Units, Series 1 (collectively the “**DC Ownership Threshold**”). DC may at any time determine to appoint less than its maximum entitlement. Any one of the Trustees appointed by DC may be changed by DC at any time. Subject to Section 2.1, the number of DC Appointees may only be decreased or increased up to DC’s maximum entitlement at the next annual meeting of Unitholders. Any appointment made by DC pursuant to this Subsection 2.2(a) shall be made by the delivery to the Trust of a written

instrument executed by DC. In determining the number of Units and LP Class B Units, Series 1 beneficially owned by DC, the Trustees may rely on a certificate of any officer or director of DC.

- (b) The Trustees appointed by DC pursuant to the rights granted by this Section 2.2 are referred to herein as the **“DC Appointees”**. For greater certainty the Chief Executive Officer and/or President of the Trust shall not be a DC Appointee and may stand for election as a Trustee in accordance with Section 2.1. Upon the Trust being notified in writing by DC that it no longer meets the DC Ownership Threshold or that DC chooses to permanently give up its right to appoint any Trustees pursuant to this Section 2.2, DC shall permanently lose its right to appoint any Trustees as DC Appointees pursuant to this Section 2.2.
- (c) The Unitholders shall elect all remaining Trustees at each annual meeting as set out in Subsection 2.4(a).

2.3 Trustees as of the Effective Date

On the Effective Date, unless otherwise removed pursuant to Article 2, the Trustees shall be Günther Bautz, Detlef Bierbaum, Donald K. Charter, Michael J. Cooper, Peter A Crossgrove, Robert G. Goodall, David J. Goodman, Ned Goodman, Gert Silber-Bonz. Messrs. Goodman, Goodman and Charter are DC Appointees.

2.4 Term of Office

- (a) The Trustees on the Effective Date, other than the DC Appointees, shall hold office for a term expiring at the close of the first annual meeting of the Unitholders or until their respective successors are elected or appointed and shall be eligible for re-election. Thereafter, the Trustees, other than the DC Appointees, shall be elected at each annual meeting of the Unitholders by a resolution passed by a majority of the votes cast at such meeting of the Unitholders for a term expiring at the conclusion of the next annual meeting or until their successors are elected or appointed and shall be eligible for re-election. Trustees appointed by the Trustees between meetings of the Unitholders or to fill a vacancy, in each case in accordance with Section 2.1, shall be appointed for a term expiring at the conclusion of the next annual meeting or until their successors are elected or appointed and shall be eligible for election or re-election.
- (b) The DC Appointees on the Effective Date shall hold office for a term expiring at the close of the first annual meeting of the Unitholders. Thereafter, the DC Appointees shall be appointed by DC at each annual meeting of the Unitholders for a term expiring at the conclusion of the next annual meeting unless removed earlier in accordance with Section 2.2.

2.5 Qualifications of Trustees

A Trustee shall be an individual at least 18 years of age who has not been found to be of unsound mind by a court in Canada or elsewhere, and who does not have the status of bankrupt. Trustees

are not required to hold Units. Each Trustee, at the commencement of his/her term, shall execute a non-competition agreement (the “**Non-Competition Agreement**”), in form and content similar to the non-competition agreements executed by the Trustees on the Effective Date or otherwise acceptable to both the President and the Governance and Environmental Committee, each acting reasonably. A majority of Trustees shall be at all times resident Canadians. If at any time a majority of Trustees are not resident Canadians because of the death, resignation, bankruptcy, adjudicated incompetence, removal or change in circumstance of any Trustee who was a resident Canadian Trustee, the remaining Trustees, whether or not they constitute a quorum, shall appoint a sufficient number of resident Canadian Trustees to comply with this requirement.

2.6 Election of Trustees

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

2.7 Resignations, Removal and Death of Trustees

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

2.8 Vacancies

The term of office of a Trustee shall terminate and a vacancy shall occur in the event of the death, resignation, bankruptcy, adjudicated incompetence or other incapacity to exercise the duties of the office or upon the removal of such Trustee. No such vacancy shall operate to annul

this Declaration of Trust or affect the continuity of the Trust. Until vacancies are filled, the remaining Trustee or Trustees (even if less than a quorum) may exercise the powers of the Trustees hereunder.

2.9 Successor and Additional Trustees

The right, title and interest of the Trustees in and to the property of the Trust shall vest automatically in all individuals who may hereafter become Trustees upon their due election or appointment and qualification without any further act, and they shall thereupon have all the rights, privileges, powers, obligations and immunities of Trustees hereunder. Such right, title and interest shall vest in the Trustees whether or not conveyancing documents have been executed and delivered pursuant to Section 2.7 or otherwise.

2.10 Compensation and Other Remuneration

The Trustees shall be paid such compensation for their services as the Trustees may from time to time unanimously determine. Until otherwise determined, Trustees, other than Trustees who are employees of the Trust or any Subsidiary of the Trust, shall receive an annual retainer in the amount of \$12,500 per year from the Trust plus a meeting fee of \$1,500 per day for meetings of the board of Trustees or a committee thereof that are attended in person or via teleconference and reimbursement for their out-of-pocket expenses incurred in acting as a Trustee. The Chair of the board of Trustees of the Trust, if not an employee of the Trust or any Subsidiary, shall receive an additional annual fee of \$100,000 but shall not receive any other fees for board or committee meetings, and the chair of each committee (except the Investment Committee when it is a committee of the board as a whole), if not an employee of the Trust or any Subsidiary, shall receive an additional annual fee of \$5,000. Each of the Trustees, either directly or indirectly, shall also be entitled to receive remuneration for services rendered to the Trust in any other capacity. Such services may include legal, accounting or other professional services or services as a broker, transfer agent or underwriter, whether performed by a Trustee or any Person affiliated with a Trustee. Trustees who are employees of and who receive salary from the Trust or its Subsidiaries shall not be entitled to receive any remuneration for their services as Trustees but shall be entitled to reimbursement from the Trust of their out-of-pocket expenses incurred in acting as a Trustee.

ARTICLE 3 TRUSTEES' POWERS AND DUTIES

3.1 General Powers

The Trustees, subject only to the specific limitations contained in this Declaration of Trust, including Sections 1.8, 4.1 and 4.2, shall have, without further or other authorization and free from any control or direction on the part of the Unitholders, full, absolute and exclusive power, control and authority over the assets and the affairs of the Trust to the same extent as if the Trustees were the sole owners of such assets in their own right, to do all such acts and things as in their sole judgment and discretion are necessary or incidental to, or desirable for, the carrying out of any of the purposes of the Trust or the conducting of the affairs of the Trust. In construing the provisions of this Declaration of Trust, there shall be a presumption in favour of the power and authority having been granted to the Trustees. The enumeration of any specific power or authority herein shall not be construed as limiting the general powers or authority or any other

specified power or authority conferred herein on the Trustees. Except as specifically required by law, the Trustees shall in carrying out investment activities not be in any way restricted by the provisions of the laws of any jurisdiction limiting or purporting to limit investments which may be made by trustees. Without limiting the generality of the foregoing, subject to Sections 1.8, 4.1 and 4.2, the Trustees may make any investments without being required to adhere to all of, or any particular portion of the investment criteria or diversification requirements set forth in the *Trustee Act* (Ontario), as amended from time to time, including investments in mutual funds, common trust funds, unit trusts and similar types of investment vehicles, to alter or vary such investments from time to time in a like manner, to retain such investments for such length of time as the Trustees, in their discretion determine and to delegate management and authority to discretionary managers of investment funds as the Trustees in their discretion determine appropriate.

3.2 Specific Powers and Authorities

Subject only to the express limitations contained in this Declaration of Trust, including Sections 1.8, 4.1 and 4.2, and in addition to any powers and authorities conferred by this Declaration of Trust or which the Trustees may have by virtue of any present or future statute or rule of law, the Trustees without any action or consent by the Unitholders shall have and may exercise, on behalf of the Trust, at any time and from time to time the following powers and authorities which may or may not be exercised by them in their sole judgment and discretion and in such manner and upon such terms and conditions as they may from time to time deem proper:

- (a) subject to Sections 5.2(e) and 5.4 to increase the capital of the Trust at any time by the issuance of additional Units for such consideration as they deem appropriate;
- (b) for such consideration as they deem proper, to invest in, purchase or otherwise acquire for cash or other property or through the issuance of Units or through the issuance of Notes, or other obligations or securities of the Trust and hold for investment Notes and units, or other obligations of the Partnerships;
- (c) to sell, rent, lease, hire, exchange, release, partition, assign, mortgage, pledge, hypothecate, grant security interests in, encumber, negotiate, convey, transfer or otherwise dispose of any or all of the property of the Trust by deeds, trust deeds, assignments, bills of sale, transfers, leases, mortgages, financing statements, security agreements and other instruments for any of such purposes executed and delivered for and on behalf of the Trust by one or more of the Trustees or by a duly authorized officer, employee, agent or any nominee of the Trust;
- (d) to enter into leases, contracts, obligations and other agreements for a term extending beyond the term of office of the Trustees and beyond the possible termination of the Trust or for a lesser term;
- (e) to borrow money from or incur indebtedness to any Person; to guarantee, indemnify or act as surety with respect to payment or performance of obligations of wholly owned Subsidiaries (other than Dundee Properties (GP) Inc. and any other wholly owned Subsidiaries that are general partners in partnerships that are not wholly owned by the Trust); to enter into other obligations on behalf of the

Trust; and to assign, convey, transfer, mortgage, subordinate, pledge, grant security interests in, encumber or hypothecate the property of the Trust to secure any of the foregoing;

- (f) to lend money or other property of the Trust, whether secured or unsecured;
- (g) entering into and performing its obligations under the Exchange and Support Agreement, the Master Property Management Agreement, the Governance Agreement, the Asset Management Agreement and the Administrative Services Agreement;
- (h) to maintain records and provide reports to Unitholders;
- (i) to establish systems (i) to monitor the qualification of the Trust as a “mutual fund trust” pursuant to subsections 132(6) and 132(7) of the Tax Act and a “registered investment” and a “real estate investment trust” within the meaning of the Tax Act, and (ii) to ensure that, prior to January 1, 2008, the Trust does not exceed “normal growth” as determined by the “normal growth guidelines” issued by the Department of Finance of Canada on December 15, 2006, as amended from time to time and that the Trust is not subject to tax under paragraph 122(1)(b) of the Tax Act;
- (j) to pay all taxes or assessments, of whatever kind or nature, whether within or outside Canada, imposed upon or against the Trustees in connection with the assets of the Trust, the undertaking or taxable income of the Trust, or imposed upon or against the assets of the Trust, the undertaking or taxable income of the Trust, or any part thereof and to settle or compromise disputed tax liabilities and for the foregoing purposes to make such returns, take such deductions, and make such designations, elections and determinations in respect of the income of the Trust or net realized capital gains of the Trust distributed to Unitholders and any other matter as shall be permitted under the Tax Act (provided that to the extent necessary the Trustees will seek the advice of the Trust’s counsel or its auditors), and do all such other acts and things as may be deemed by the Trustees in their sole discretion to be necessary, desirable or convenient in connection with such matters;
- (k) to incur and pay out of the property of the Trust any charges or expenses and disburse any funds of the Trust, which charges, expenses or disbursements are, in the opinion of the Trustees, necessary or incidental to or desirable for the carrying out of any of the purposes of the Trust or conducting the affairs of the Trust including taxes or other governmental levies, charges and assessments of whatever kind or nature, imposed upon or against the Trustees in connection with the undertaking or taxable income of the Trust or the property of the Trust or upon or against the undertaking, taxable income or property of the Trust or any part thereof and for any of the purposes herein;
- (l) to possess and exercise all the rights, powers and privileges appertaining to the ownership of or interest in all or any mortgages or securities, issued or created by any Person, forming part of the assets of the Trust, to the same extent that an

individual might and, without limiting the generality of the foregoing, to vote or give any consent, request or notice, or waive any notice, either in person or by proxy or power of attorney, with or without power of substitution, to one or more Persons, which proxies and powers of attorney may be for meetings or action generally or for any particular meeting or action and may include the exercise of discretionary power;

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

the Trust against any and all claims and liabilities of any nature asserted by any Person arising by reason of any action alleged to have been taken or omitted by the Trust or by the Trustees, the Unitholders, annuitants or the officers of the Trust;

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

3.3 Further Powers of the Trustees

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

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

3.4 Limitations on Powers

The Trustees hereby acknowledge that the LP is bound by certain investment guidelines and operating policies and the Trustees agree that at no time shall they act or cause the Trust to act in such a manner, including without limitation, through voting its units or shares, as applicable, in any of the Partnerships or the General Partner to effect any changes or amendments to the LP's investment guidelines or operating policies without the approval of at least 66 $\frac{2}{3}$ % of the Unitholders pursuant to Section 4.3.

3.5 Standard of Care

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

3.6 Reliance Upon Trustees

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

3.7 Determinations of Trustees Binding

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

3.8 Conflict of Interest

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

- (a) the disclosure required in the case of a Trustee shall be made:
 - (i) at the meeting of Trustees or the Investment Committee, as the case may be, at which a proposed contract or transaction is first considered;
 - (ii) if the Trustee was not then interested in a proposed contract or transaction, at the first such meeting after s/he becomes so interested;
 - (iii) if the Trustee becomes interested after a contract is made or a transaction is entered into, at the first meeting after s/he becomes so interested; or
 - (iv) if an individual who is interested in a contract or transaction later becomes a Trustee, at the first such meeting after s/he becomes a Trustee;

- (b) the disclosure required in the case of an officer of the Trust, who is not a Trustee, shall be made:
 - (i) forthwith after such officer becomes aware that the contract or transaction or proposed contract or transaction is to be considered or has been considered at a meeting of the Trustees or the Investment Committee;
 - (ii) if such officer becomes interested after a contract is made or transaction is entered into, forthwith after such individual becomes aware that s/he has become so interested; or
 - (iii) if an individual who is interested in a contract or a transaction later becomes an officer of the Trust, forthwith after s/he becomes an officer of the Trust;
- (c) notwithstanding Subsections 3.8(a) and (b), where this Section applies to a Trustee or officer of the Trust in respect of a material contract or transaction or proposed material contract or transaction that, in the ordinary course of the affairs of the Trust, would not require approval by the Trustees or the Unitholders, such Trustee or officer of the Trust shall disclose in writing to the Trustees or request to have entered into the minutes of meetings of the Trustees the nature and extent of the interest of such Trustee or officer of the Trust forthwith after s/he becomes aware of the contract or transaction or proposed contract or transaction;
- (d) a Trustee referred to in this Section 3.8 shall not vote on any resolution to approve the said contract or transaction unless the contract or transaction is:
 - (i) one relating primarily to his/her remuneration as a Trustee, officer, employee or agent of the Trust; or
 - (ii) one for indemnity under Section 13.1 or the purchase of liability insurance;
- (e) for the purposes hereof, a general notice to the Trustees by a Trustee or an officer of the Trust disclosing that s/he is a director or officer of or has a material interest in a Person and is to be regarded as interested in any contract made or any transaction entered into with that Person, is a sufficient disclosure of interest in relation to any contract so made or transaction so entered into. In the event that a meeting of the Unitholders is called to confirm or approve a contract or transaction which is the subject of a general notice to the Trustees, the nature and extent of the interest in the contract or transaction of the Persons giving such general notice shall be disclosed in reasonable detail in the notice calling the said meeting of the Unitholders or in any information circular to be provided by this Declaration of Trust or by law;
- (f) where a material contract is made or a material transaction is entered into between the Trust and a Trustee or an officer of the Trust, or between the Trust and another Person in which a Trustee or an officer of the Trust has a material interest:

(i) such Trustee or officer of the Trust is not accountable to the Trust or to the Unitholders for any profit or gain realized from the contract or transaction; and

(ii) the contract or transaction is neither void nor voidable,

by reason only of that relationship or by reason only that such Trustee or officer is present at or is counted to determine the presence of a quorum at the meeting of the Trustees or Investment Committee that authorized the contract or transaction, if such Trustee or officer of the Trust disclosed his/her interest in accordance with this Section 3.8, and the contract or transaction was reasonable and fair to the Trust at the time it was approved;

(g) notwithstanding anything in this Section, but without limiting the effect of Subsection 3.8(f), a Trustee or an officer of the Trust, acting honestly and in good faith, is not accountable to the Trust or to the Unitholders for any profit or gain realized from any such contract or transaction by reason only of his/her holding such office or position, and the contract or transaction, if it was reasonable and fair to the Trust at the time it was approved, is not by reason only of such Trustee's or officer's interest therein void or voidable, where:

(i) the contract or transaction is confirmed or approved at a meeting of the Unitholders duly called for that purpose; and

(ii) the nature and extent of such Person's interest in the contract or transaction are disclosed in reasonable detail in the notice calling the meeting or in any information circular to be provided by this Declaration of Trust or by law; and

(h) subject to Subsections 3.8(f) and 3.8(g), where a Trustee or an officer of the Trust fails to disclose his/her interest in a material contract or transaction in accordance with this Declaration of Trust or otherwise fails to comply with this Section 3.8, the Trustees or any Unitholder, in addition to exercising any other rights or remedies in connection with such failure exercisable at law or in equity, may apply to a court for an order setting aside the contract or transaction and directing that such Trustee or officer account to the Trust for any profit or gain realized.

3.9 Independent Trustee Matters

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

(a) to make a material change to the Plan of Arrangement;

(b) to permit the LP to make a material change to any of the Master Property Management Agreement, the Asset Management Agreement, the Administrative Services Agreement or the DMLP Agreement, change the fees payable

thereunder, if any, renew the Master Property Management Agreement, the Asset Management Agreement or the Administrative Services Agreement at the end of their respective terms, or appoint a substitute for the Manager after the end of the term of the Master Property Management Agreement, or appoint a substitute for the asset manager after the end of the term of the Asset Management Agreement, or to permit any material change to the Governance Agreement, and any change to the provisions of such agreements relating to Independent Trustee approval shall be deemed to be such a material change;

- (c) to enter into any agreement or transaction in which any Related Party has a material interest or make a material change to any such agreement or transaction;
- (d) relating to a claim by or against any Related Party;
- (e) relating to a claim in which the interests of a Related Party differ from the interests of the Trust;
- (f) to permit the LP to acquire any real or other property in which a Related Party has an interest or to sell any interest in any real or other property to a Related Party;
- (g) granting REIT Units under any unit incentive or unit compensation plan approved by the Trustees and, if required, by the Unitholders or awarding any right to acquire or other right or interest in the REIT Units or securities convertible into or exchangeable for REIT Units under any plan approved by the Trustees and, if required, by the Unitholders;
- (h) to approve or enforce any agreement entered into by the Trust or its Subsidiaries with a Trustee who is not an Independent Trustee or an associate thereof, with a Related Party, or with the Manager or any successor as property manager under the Master Property Management Agreement;
- (i) recommending to the holders of the Units to increase the number of Trustees serving on the board of Trustees or authorizing the Trustees to change the number of Trustees from time to time; and
- (j) a change to the compensation of any officer or employee of the Trust.

3.10 Transactions with Related Parties

Following the Effective Date, the Trustees shall obtain a valuation in respect of any real property that the LP intends to purchase from or sell to a Related Party prepared by a valuator engaged by, and prepared under the supervision of, a committee of two or more Independent Trustees who have no interest in such transaction. In addition, the Trust shall not permit the LP to effect a transaction with a Related Party unless the transaction is determined to be on commercially reasonable terms by, and is approved by, a majority of the Independent Trustees who have no interest in such transaction in accordance with Section 3.9.

3.11 Trust Bank Accounts

The Trust shall open and maintain only two bank accounts, the REIT Unit, Series A Bank Account and the REIT Unit, Series B Bank Account. The Trust shall deposit in the REIT Unit, Series A Bank Account all amounts received by the Trust in any manner whatever that are attributable to and derived from Partnership A, including proceeds from the disposition or mortgage of any interest held by the Trust in units or debt of such trust or from the issue of REIT Units, Series A and \$4.00 of the Initial Contribution. The Trust shall use the REIT Unit, Series A Bank Account to make all payments in respect of distributions, redemptions or for any other purpose, to holders of REIT Units, Series A. The Trust shall deposit in the REIT Unit, Series B Bank Account all amounts received by the Trust in any manner whatever that are attributable to and derived from Partnership B, including proceeds from the disposition or mortgage of any interest held by the Trust in units or debt of such trust or from the issue of REIT Units, Series B and \$4.00 of the Initial Contribution. The Trust shall use the REIT Unit, Series B Bank Account to make (a) all payments in respect of distributions, redemptions or for any other purpose to holders of REIT Units, Series B, (b) all payments required to be made by the Trust in respect of LP Class B Units, Series 1 pursuant to the Exchange and Support Agreement and (c) that portion of all payments in respect of distributions, redemptions or for any other purpose to holders of REIT Units, Series A in an amount equal to the Converted Percentage.

ARTICLE 4 INVESTMENT GUIDELINES AND OPERATING POLICIES

4.1 Investment Guidelines of the Trust

Following the Effective Date, notwithstanding anything contained herein to the contrary, the assets of the Trust may be invested only in accordance with the following investment guidelines:

- (a) the Trust shall only invest in units and Notes of Partnership A and Partnership B and shares of each of the General Partner and the general partners of Partnership A and Partnership B, amounts receivable in respect of such units, Notes and shares, in cash and similar deposits in a Canadian chartered bank or trust company and, subject to Subjection 4.1(b), such other investments as the Trustees deem advisable from time to time; and
- (b) the Trust shall not make or permit a Subsidiary to make any investment that would result in:
 - (i) the REIT Units of the Trust being disqualified for investment by any Deferred Income Plan;
 - (ii) the Trust being liable under the Tax Act to pay a tax imposed under either paragraph 122(1)(b) or Part XII.2 of the Tax Act;
 - (iii) the Trust failing or ceasing to qualify as a “mutual fund trust”, “real estate investment trust” or “registered investment” for purposes of the Tax Act;
or

- (iv) prior to January 1, 2008, the Trust exceeding “normal growth”, as determined by the “normal growth guidelines” issued by the Department of Finance on December 15, 2006, as amended from time to time.

4.2 Operating Policies of the Trust

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

- (a)
 - (i) any written instrument creating an obligation which is or includes the granting by the Trust of a mortgage; or
 - (ii) to the extent the Trustees determine to be practicable and consistent with their fiduciary duty to act in the best interests of the Unitholders, any written instrument which in the judgment of the Trustees is a material obligation;

must, in each case, contain a provision or be subject to an acknowledgement to the effect that the obligation being created is not personally binding upon, and that resort will not be had to, nor will recourse or satisfaction be sought from the private property of any of the Trustees, Unitholders, annuitants or officers, employees or agents of the Trust, but that only property of the Trust or a specific portion thereof will be bound;

- (b) the Trust shall not underwrite, sell or market, or participate in the underwriting, selling or marketing of securities other than Units and other securities of the Trust; and
- (c) the Trust shall only guarantee the obligations of its wholly owned Subsidiaries other than Dundee Properties (GP) Inc. and any other wholly owned Subsidiaries that are general partners in partnerships that are not wholly owned by the Trust, provided that the Trust may guarantee the obligations of the LP or Dundee Properties (GP) Inc. and any other wholly owned Subsidiaries that are general partners in partnerships that are not wholly owned by the Trust if the Trust has received an unqualified legal opinion that the Trust’s guarantee of the obligations of the LP or Dundee Properties (GP) Inc. and any other wholly owned Subsidiaries that are general partners in partnerships that are not wholly owned by the Trust, as the case may be, will not cause the Trust to cease to qualify as a “mutual fund trust”.

4.3 Amendments to Investment Guidelines and Operating Policies

Subject to Sections 4.4, and 11.1 any of the investment guidelines set forth in Section 4.1 may be amended only by the vote of a two-thirds majority of the votes cast at a meeting of the Unitholders called for that purpose. Subject to Section 11.1, the operating policies set forth in Section 4.2 may be amended by the vote of a majority of the votes cast at a meeting of the Unitholders called for that purpose.

4.4 Regulatory Matters

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

4.5 Operating Plan

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

ARTICLE 5 UNITS

5.1 Units

The beneficial interests in the Trust shall be divided into three classes described as “REIT Units”, “Special Trust Units” and “Transition Fund Units”, respectively. The REIT Units shall be issuable in one or more series and the initial series shall be REIT Units, Series A and REIT Units, Series B, with the rights and attributes provided for such REIT Units in Schedule A-1 or A-2 hereto. The number of Units of any series which the Trust may issue is unlimited. Units shall be issued only as fully paid and non-assessable. Each Unit when issued shall vest indefeasibly in the holder thereof. The issued and outstanding Units may be subdivided or consolidated from time to time by the Trustees with the approval of the majority of the Unitholders, or as otherwise provided in Section 5.5. The Units are not “deposits” within the meaning of the *Deposit Insurance Corporation Act* (Canada) and are not insured under the provisions of such act or any other legislation.

5.2 Terms and Ranking of Units

- (a) Each REIT Unit Series A and REIT Unit, Series B shall represent an undivided beneficial interest in the Trust and distributions by the Trust, whether of net income, net realized capital gains or other amounts, and, in the event of termination or winding up of the Trust, in the net assets of the Trust remaining after satisfaction of all liabilities, as provided in Schedule A-1 or A-2, as attached hereto. No REIT Unit, Series A or REIT Unit, Series B shall have preference or priority over any other. The distribution entitlement of each REIT Unit, Series A and REIT Unit, Series B are intended to and will be derived from different sources. In accordance with Sections 9.1 and 12.3, (i) in the case of the REIT Units, Series A the distribution entitlement of such units is derived from the securities of Partnership A and that percentage of the securities of Partnership B equal to the percentage of the total number of REIT Units, Series B ever issued and not redeemed or purchased for cancellation by the Trust that have been converted into REIT Units, Series A in accordance with Article 6 of Schedule A-2 to this Agreement and (ii), in the case of the REIT Units, Series B the distribution

entitlement of such units is derived from the remaining percentage of the securities of Partnership B. Notwithstanding the foregoing, it is the intention of the Trustees and they shall take all necessary steps to ensure, that the timing, amount and nature of distributions made by the Trust to the holder of each REIT Unit, Series A and REIT Unit, Series B in accordance with Sections 9.1 and 12.3 will be the same and to ensure that the timing, amount and nature of distributions made to the holder of the LP Class B Units, Series 1 are made in accordance with the provisions of the Exchange and Support Agreement and the rights attaching to such LP Class B Units, Series 1.

- (b) Special Trust Units shall be issued only in connection with or in relation to LP Class B Units, Series 1. A Special Trust Unit shall be issued in tandem with each LP Class B Unit, Series 1 issued. Each Special Trust Unit shall entitle the holder of record thereof to a number of votes at all meetings of the Unitholders or in respect of any written resolution of the Unitholders equal to the number of REIT Units which may be obtained upon the surrender of the LP Class B Unit, Series 1. The Special Trust Units shall rank equally and rateably without discrimination, preference or priority, with the REIT Units in respect of distributions and on a liquidation, dissolution or winding-up of the Trust. In the event of liquidation, dissolution or winding-up of the Trust, the holder of a Special Trust Unit shall be entitled, before any distribution of any part of the assets of the Trust among the Holders of Units ranking junior to the Special Trust Units, to an amount equal to the product of the Liquidated Net Assets of the Trust and the Special Trust Unit Pro Rata Share (the “**Special Trust Unit Liquidation Amount**”) provided that the aggregate Special Trust Unit Liquidation Amount shall not exceed 4.9% of the net value of the assets of the Trust.
- (c) Concurrently with the issue of the Special Trust Units, the Trust shall enter into the Exchange and Support Agreement.
- (d) A Special Trust Unit shall not be transferable separately from the LP Class B Unit, Series 1 issued in tandem with it, and, upon any transfer of such LP Class B Unit, Series 1, such Special Trust Unit shall automatically be transferred to the transferee of such LP Class B Unit, Series 1. For greater certainty, a Special Trust Unit shall only be transferred to a permitted transferee of LP Class B Units, Series 1 under the terms and conditions of the LP Agreement.
- (e) As LP Class B Units, Series 1 are surrendered for REIT Units, Series B or redeemed or purchased for cancellation by the Trust or by Partnership B, the corresponding Special Trust Units shall automatically be redeemed by the Trust for an amount, per each Special Trust Unit, equal to 0.0000001 of the Redemption Price (the “**Special Trust Unit Redemption Amount**”), cancelled, shall no longer be outstanding and may not be reissued.
- (f) Notwithstanding anything herein, the Trust shall not issue any additional REIT Units, Series B other than pursuant to the Arrangement or the Exchange and Support Agreement.

- (g) Except as set forth herein, each Transition Fund Unit represents an equal undivided beneficial interest in any distributions of the Trust and in any distributions by the Trust in the event of the termination of the Trust. All Transition Fund Units shall rank among themselves equally and ratably without discrimination, preference or priority. Each Transition Fund Unit shall vest indefeasibly in the holder thereof, and the interest of each Transition Fund Unitholder shall be determined by the number of Transition Fund Units registered in the name of the Transition Fund Unitholder. Each Transition Fund Unit shall entitle the holder thereof to one vote at all meetings of Unitholders.
- (h) Each holder of a Transition Fund Unit which is a Subsidiary of the Trust may, at any time, renounce, release, surrender and cancel, for no consideration, all rights and benefits and all of its interest (income, capital or otherwise) in the Trust, the assets of the Trust and the Transition Fund Units specified in a written notice of renunciation delivered to the Trustees in respect of such Transition Fund Unit.
- (i) REIT Units shall be subordinate to Transition Fund Units in that holders of REIT Units shall not be entitled to receive any distributions from the Trust in respect of their REIT Units until the earlier of:
 - (i) the date on which an aggregate amount has been paid to the Transition Fund Unitholder in respect of such Transition Fund Units equal to the Transition Fund Unit Redemption Price; or
 - (ii) the time at which there are no Transition Fund Units issued and outstanding.
- (j) The issued and outstanding Units may be divided and consolidated from time to time by the Trust with the consent of the Unitholders except for a consolidation of Units contemplated by Section 5.5 and except for a consolidation of Units in connection with the Telus Tower Transactions for which no consent shall be required.

5.3 Consideration for Units

A Unit shall not be fully paid until the consideration therefor has been received in full by or on behalf of the Trust. The consideration for any Unit shall be paid in money or in property or in past services received by the Trust that are not less in value than the fair equivalent of the money that the Trust would have received if the Unit had been issued for money. In determining whether property or past services are the fair equivalent of consideration paid in money, the Trustees may take into account reasonable charges and expenses of organization and reorganization and payments for property and past services reasonably expected to benefit the Trust.

5.4 Pre-Emptive Rights of DC and GE

Except for Units issued pursuant to the Distribution Reinvestment Plan, the Deferred Unit Incentive Plan or in accordance with the Exchange and Support Agreement, the Trustees shall not issue, or agree to issue, any Units, or any securities which are convertible or exchangeable

for or into Units (the “**Convertible Units**”), to any Person, unless, in addition to any other approvals required under this Agreement, the Trust first makes an offer (the “**Notice**”) to issue such Units or Convertible Units (collectively, the “**Offered Units**”), at a price per Offered Unit determined by the Trustees (who, for greater certainty, may delegate such authority to an officer of the Trust), to DC in the same proportion as the aggregate of the number of REIT Units and LP Class B Units, Series 1 held by DC and its affiliates on the date of the Notice is to the aggregate number of REIT Units and LP Class B Units, Series 1 outstanding on the date of the Notice and to GE in the same proportion as the aggregate number of REIT Units held by GE and its affiliates on the date of the Notice is to the aggregate number of REIT Units and LP Class B Units, Series 1 outstanding on the date of the Notice. The Notice shall be delivered to each of DC and GE no earlier than the fifth Business Day prior to the earlier of the date of issuance of Offered Units and the date the Trust enters into an agreement to issue Offered Units. The price per Offered Unit in the Notice may be expressed as a commercially reasonable range of prices and, in the event that the Notice is being delivered in connection with a proposed best-efforts or fully underwritten offering through an agent or underwriter, the Notice may in addition state that the actual price per Offered Unit being offered by the Trust shall be the offering price to be agreed upon by the Trust in the agency agreement, bid letter or underwriting agreement, as the case may be, relating to the issuance. DC shall have the option to specify whether it will acquire its proportionate share of such Offered Units by way of Units or the comparable number of LP Class B Units, Series 1 and accompanying Special Trust Units. The Notice shall specify such price, shall limit the time within which the Notice, if not accepted, will be deemed to be declined (which time shall be not less than 2 Business Days after the date on which such Notice is given), shall state that if DC or GE desires to subscribe for or purchase a number of Offered Units so offered in excess of its proportion, DC or GE shall in its reply (i) state how many Offered Units in excess of its proportion which it desires to subscribe for or purchase, (ii) if the price per Offered Unit is expressed in the Notice as a range of prices, specify the maximum price per Offered Unit at which DC or GE will exercise its right to subscribe for or purchase Offered Units under this Section 5.4 (provided further that the reply may specify more than one maximum price per Offered Unit together with the corresponding maximum number of Offered Units to be subscribed for or purchased at each such maximum price), and (iii) specify the date on which the Offered Units are requested to be issued and paid for (which date shall be, unless otherwise agreed to by the Trust, the same date as the completion of the issuance of the Offered Units to other Persons which gave rise to the notice requirement under this Section 5.4). Any excess portion of the Offered Units subscribed for by DC or GE in the Notice shall be issued to DC or GE on the same terms and conditions being offered to other Persons pursuant to the proposed issuance. Any Offered Units not taken up by DC or GE may be issued to any Person within 3 months of the date of such Notice at not less than the price offered to DC and GE; provided that there shall be no such restriction on the price at which such Offered Units may be issued if such issuance is subject to the notice requirement under this Section 5.4 that requires the Trust to offer to issue Offered Units to DC or GE at the new price.

The foregoing rights in this Section 5.4 shall terminate with respect to DC in the event that DC and its affiliates own, in the aggregate, less than 2% of the then-issued and outstanding Units. The foregoing rights in this Section 5.4 shall terminate with respect to GE in the event that GE and its affiliates own, in the aggregate, less than 2% of the then-issued and outstanding Units.

5.5 Consolidation of Each Series of Units and Fractional Units

- (a) Unless the Trustees determine otherwise, immediately after any *pro rata* distribution of additional REIT Units to all holders of REIT Units pursuant to Section 9.3(b), the number of the outstanding REIT Units, Series A and REIT Units, Series B, respectively, will automatically be consolidated such that each such holder will hold after the consolidation the same number of REIT Units, Series A and REIT Units, Series B, respectively, as such holder held before the distribution of additional REIT Units. In this case, each REIT Unit certificate representing the number of REIT Units prior to the distribution of additional REIT Units is deemed to represent the same number of REIT Units after the non-cash distribution of additional REIT Units and the consolidation. In no case shall REIT Units, Series A be consolidated with REIT Units, Series B or *vice versa*.
- (b) Notwithstanding the foregoing, where tax is required to be withheld from a Unitholder's share of the distribution, the consolidation will result in such Unitholder holding that number of Units equal to (i) the number of Units held by such Unitholder prior to the distribution plus the number of Units received by such Unitholder in connection with the distribution (net of the number of whole and part Units withheld on account of withholding taxes) multiplied by (ii) the fraction obtained by dividing the aggregate number of Units outstanding prior to the distribution by the aggregate number of Units that would be outstanding following the distribution and before the consolidation if no withholding were required in respect of any part of the distribution payable to any Unitholder. Such Unitholder will be required to surrender the Unit certificates, if any, representing such Unitholder's original Units, in exchange for a Unit certificate representing such Unitholder's post-consolidation Units.
- (c) If as a result of any act of the Trustees hereunder, any Person becomes entitled to a fraction of a Unit, such Person shall not be entitled to receive a certificate therefor. Fractional Units shall not, except to the extent that they may represent in the aggregate one or more whole Units, entitle the holders thereof to notice of or to attend or to vote at meetings of the Unitholders. Subject to the foregoing, such fractional Units shall have attached thereto the rights, restrictions, conditions and limitations attaching to whole Units in the proportion that they bear to a whole Unit.

5.6 Legal Ownership of Assets of the Trust

The legal ownership of the assets of the Trust and the right to conduct the affairs of the Trust are vested exclusively in the Trustees, and the Unitholders shall have no interest therein other than the beneficial interest in the Trust conferred by the Units issued hereunder as described in Section 1.7. The Unitholders shall have no right to compel any partition, division or distribution of the Trust or any of the assets of the Trust. The Units shall be personal property and shall confer upon the holders thereof only the interest and rights, and impose upon the holders thereof only those liabilities and obligations, specifically set forth in this Declaration of Trust. No Unitholder has or shall be deemed to have any right of ownership in any of the assets of the Trust.

5.7 Allotment and Issue

- (a) Subject to Section 5.4, the Trustees may allot and issue Units at such time or times and in such manner (including pursuant to any plan from time to time in effect relating to reinvestment by the Unitholders of distributions of the Trust in Units) and to such Person, Persons or class of Persons as the Trustees in their sole discretion shall determine. The price or the value of the consideration for which Units may be issued and the terms and conditions of issuance of the Units shall be determined by the Trustees in their sole discretion, generally (but not necessarily) in consultation with investment dealers or brokers who may act as underwriters in connection with offerings of Units. Subject to Section 5.13, Units shall not be issued in registered form. In the event that Units are issued in whole or in part for a consideration other than money, the resolution of the Trustees allotting and issuing such Units shall express the fair equivalent in money of the other consideration received.
- (b) The Trust shall enter into the Exchange and Support Agreement pursuant to which it shall provide certain support in respect of the surrender feature of the LP Class B Units, Series 1 and in respect of distributions.
- (c) It is hereby confirmed that the LP Class B Units, Series 1 are intended to be economically equivalent to the REIT Units, Series B that the holder may acquire on the surrender of the LP Class B Units, Series 1, particularly in respect of distribution entitlements and voting rights.

5.8 Rights, Warrants, Options and Other Securities

Subject to Section 5.4, the Trust may create and issue rights, warrants or options to subscribe for fully paid REIT Units which rights, warrants or options may be exercisable at such subscription price or prices and at such time or times as the Trustees may determine. The rights, warrants or options so created may be issued for such consideration or for no consideration, all as the Trustees may determine. A right, warrant or option shall not be a REIT Unit and a holder thereof shall not be a Unitholder. Upon the approval of any unit option plan for the Trustees, officers and/or employees of the Trust or any Subsidiary of the Trust and/or their personal holding companies or family trusts and/or Persons who provide services to the Trust, the Compensation Committee, Governance and Environmental Committee may, upon receiving authority from the Trustees, recommend to the Trustees the granting of options upon the terms and subject to the conditions set forth in such plan.

Subject to Sections 4.1 and 4.2, the Trustees may create and issue indebtedness of the Trust in respect of which interest, premium or principal payable thereon may be paid, at the option of the Trust or the holder, in fully paid REIT Units, or which indebtedness, by its terms, may be convertible into REIT Units at such time and for such prices as the Trustees may determine. Any indebtedness so created shall not be a REIT Unit, unless and until fully paid REIT Units are issued in accordance with the terms of such indebtedness.

5.9 Commissions

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

5.10 Transferability

Subject to Section 5.11, the REIT Units are freely transferable, and the Trustees shall not impose any restriction on the transfer of REIT Units. The Trustees shall use all reasonable efforts to obtain and maintain a listing for the REIT Units, Series A on one or more stock exchanges in Canada. The Special Trust Units shall be transferable only together with the related LP Class B Units, Series 1. Notwithstanding the foregoing, no transfer of Units shall be effective as against the Trustees or shall be in any way binding upon the Trustees until the transfer has been recorded on the Register and no transfer of a Unit shall be recognized unless such transfer is of a whole Unit.

5.11 Non-Resident Ownership Constraint

Notwithstanding any provision of this Declaration of Trust to the contrary, at no time may more than 49% of the REIT Units or the Special Trust Units or the Transition Fund Units then outstanding be held by or for the benefit of Persons who are not resident Canadians (“**Non-Resident Beneficiaries**”). The Trustees may require declarations as to the jurisdictions in which beneficial owners of Units are resident or declarations from holders of Units as to whether such Units are held for the benefit of Non-Resident Beneficiaries. If the Trustees become aware that more than 49% of the REIT Units or the Special Trust Units or the Transition Fund Units then outstanding are, or may be, held by or for the benefit of Non-Resident Beneficiaries or that such a situation is imminent, the Trustees may make a public announcement thereof and shall not accept a subscription for such Units from or issue or register a transfer of such Units to a Person unless the Person provides a declaration that the Person is not a non-resident for the purposes of the Tax Act (or, in the discretion of the Trustees, that the Person is not a Non-Resident Beneficiary) and does not hold his/her or its Units for a Non-Resident Beneficiary. If, notwithstanding the foregoing, the Trustees determine that more than 49% of the REIT Units or the Special Trust Units or the Transition Fund Units then outstanding are held by or for the benefit of Non-Resident Beneficiaries, the Trustees may send a notice to non-resident holders of the Units and holders of Units for Non-Resident Beneficiaries chosen in inverse order to the order of acquisition or registration or in such manner as the Trustees may consider equitable and practicable, requiring them to sell their Units or a portion thereof within a specified period of not more than 60 days. If the Unitholders receiving such notice have not sold or redeemed the specified number of Units or provided the Trustees with satisfactory evidence that they are not non-residents for the purpose of the Tax Act and do not hold their Units for the benefit of Non-Resident Beneficiaries within such period, the Trustees may sell or redeem such Units on behalf of such Unitholders (and the Trustees shall have the power of attorney of such Unitholders to do so) and, in the interim, the voting and distribution rights attached to such Units shall be suspended. Upon such sale the affected holders shall cease to be holders of Units and their rights shall be limited to receiving the net proceeds of sale upon surrender of the certificates representing such Units. In any situation where it is unclear whether Units are held for the benefit of Non-Resident Beneficiaries, the Trustees may exercise their discretion in determining

whether such Units are or are not so held, and any such exercise by them of their discretion shall be binding for the purposes of this Section 5.11.

5.12 Certificates

Subject to Section 5.13 each Unitholder or his/her duly authorized agent is entitled to a certificate bearing an identifying serial number in respect of the Units held by him/her, signed in the manner hereinafter prescribed, but the Trust is not bound to issue more than one certificate in respect of a Unit or Units or held jointly or in common by two or more persons and delivery of a certificate to any one of them shall be sufficient delivery to all.

5.13 Book-Based System for REIT Units, Series A; No Certificates for Special Trust Units or Transition Fund Units

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

No holder of a Special Trust Unit or Transition Fund Units shall be entitled to a certificate or other instrument from the Trust evidencing the holder's ownership of such Units. Such holder shall only be entitled to be entered on the Register in accordance with Sections 5.16 and 5.17.

5.14 Certificate Fee

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

5.15 Form of Certificate

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

5.16 Register

A register (the "**Register**") shall be kept by, or on behalf and under the direction of the Trustees, which Register shall contain the names and addresses of the Unitholders, the respective numbers of Units held by them, the certificate numbers of the certificates of such Units and a record of all transfers thereof. The Trustees may appoint one or more chartered banks or trust companies to act as transfer agents and to act as registrars for Units and may provide for the transfer of Units in one or more places within Canada. In the event of such appointment, such transfer agents and registrars shall keep all necessary registers and other books (which may be kept on a computer or similar device) for recording original issues and registering and transferring the Units of the Trust. If the Trustees have appointed a registrar and transfer agent, no certificate for Units shall

be valid unless countersigned by or on behalf of a transfer agent and/or registrar. Only the Unitholders whose Units are recorded on the Register shall be entitled to vote or to receive distributions or otherwise exercise or enjoy the rights of the Unitholders.

5.17 Entry on Register

Subject to Sections 5.11 and 5.13, upon any issue of Units, the name of the subscriber shall be promptly entered on the Register as the owner of the number of Units issued to such subscriber, or if the subscriber is already a Unitholder, the Register shall be amended to include his/her additional Units.

5.18 Successors in Interest to the Unitholders

Subject to Section 5.11, any Person becoming entitled to any Units as a consequence of the death, bankruptcy or incompetence of any Unitholder or otherwise by operation of law shall be recorded in the Register as the holder of such Units, but until such record is made, the Unitholder of record shall continue to be and shall be deemed to be the holder of such Units for all purposes whether or not the Trust, the Trustees or the transfer agent or registrar of the Trust shall have actual or other notice of such death, bankruptcy, incompetence or other event and the Persons becoming entitled to such Units shall be bound by every notice or other document in respect of the Units which shall have been duly given to the Persons from whom s/he derives his/her title to such Units. If such transfer will contravene the limitation set forth in Section 5.11, such Person will be deemed never to have been a Unitholder and such Units shall be deemed to have been tendered for redemption to the Trust on the day immediately preceding the day on which such entitlement arose and the rights of such Person will be limited to the rights of a redeeming Unitholder.

5.19 Units Held Jointly or in Fiduciary Capacity

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

5.20 Performance of Trusts

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

as having any interest therein, except for the Persons recorded as the Unitholder or holder of such security.

5.21 Lost Certificates

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

5.22 Death of the Unitholders

The death of a Unitholder during the continuance of the Trust shall not terminate the Trust or give the personal representatives or the heirs of the estate of the deceased Unitholder a right to an accounting or to take any action in the courts or otherwise against other Unitholders or the Trustees, officers of the Trust or the property of the Trust, but shall only entitle the personal representatives or the heirs of the estate of the deceased Unitholder, subject to Section 5.18, to succeed to all rights of the deceased Unitholder under this Declaration of Trust.

5.23 Unclaimed Payments

In the event that the Trustees hold any amounts to be paid to the Unitholders under Article 5, Article 9 or Article 12 or otherwise because such amounts are unclaimed or cannot be paid for any reason, neither the Trustees nor any distribution disbursing agent shall be under any obligation to invest or reinvest the same and shall only be obligated to hold the same in a current or other non-interest bearing account with a chartered bank or trust company pending payment to the Persons or Persons entitled thereto. The Trustees shall, as and when required by law, and may at any time prior to such required time, pay all or part of such amounts so held to a court in the province where the Trust has its principal office or to the Public Guardian and Trustee of Ontario (or other similar government official or agency in the province where the Trust has its principal office) whose receipt shall be a fulfilment and discharge of the obligations of the Trustees.

5.24 Redemption of REIT Units

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

- (a) To exercise a Unitholder's right to require redemption under this Section 5.24, a duly completed and properly executed notice requiring the Trust to redeem REIT Units, in a form approved by the Trustees, specifying the series of REIT Units and the number of REIT Units to be so redeemed, shall be sent to the Trust at the head office of the Trust. No form or manner of completion or execution shall be sufficient unless the same is in all respects satisfactory to the Trustees and is accompanied by any further evidence that the Trustees may reasonably require with respect to the identity, capacity or authority of the Person giving such notice.
- (b) Upon receipt by the Trust of the notice to redeem REIT Units, the Unitholder shall thereafter cease to have any rights with respect to the REIT Units tendered for redemption (other than to receive the redemption payment therefor) including ceasing to have the right to receive any distributions thereon which are declared payable to the Unitholders of record on a date which is subsequent to the day of receipt by the Trust of such notice. REIT Units shall be considered to be tendered for redemption on the date that the Trust has, to the satisfaction of the Trustees, received the notice and other required documents or evidence as aforesaid.
- (c) Upon receipt by the Trust of the notice to redeem REIT Units, in accordance with this Section 5.24, the holder of the REIT Units tendered for redemption shall be entitled to receive a price per REIT Unit (the "**Redemption Price**") of a series of REIT Units equal to the lesser of:
 - (i) 90% of the "market price" of the REIT Units of such series on the principal market on which the REIT Units of such series are quoted for trading on the trading day prior to the date on which the REIT Units of such series were surrendered to the Trust for redemption (the "**Redemption Date**"); and
 - (ii) 100% of the "closing market price" of the REIT Units of such series on the principal market on which the REIT Units of such series are quoted for trading on the Redemption Date.

For the purposes of this calculation, the "market price" in respect of REIT Units of a series will be an amount equal to the 20-day weighted average of the closing price of the REIT Units of such series for each of the trading days on which there was a closing price; provided that if the applicable exchange or market does not provide a closing price, but only provides the highest and lowest prices of the REIT Units of such series traded on a particular day, the "market price" shall be an amount equal to the average of the highest and lowest prices for each of the trading days on which there was a trade; and provided further that if there was trading on the applicable exchange or market for fewer than five of the 20 trading days, the "market price" shall be the weighted average of the following prices

established for each of the 20 trading days: (i) the weighted average of the last bid and last asking prices of REIT Units of such series for each day on which there was no trading; (ii) the closing price of the REIT Units of such series for each day on which there was trading if the exchange or market provides a closing price; and (iii) the weighted average of the highest and lowest prices of REIT Units of such series for each day that there was trading if the exchange or market does not provide a closing price but provides only the highest and lowest prices of REIT Units of such series traded on a particular day.

The “closing market price” in respect of REIT Units of a series shall be (i) an amount equal to the closing price of REIT Units of such series if there was a trade on the date and the exchange or market provides a closing price; (ii) an amount equal to the weighted average of the highest and lowest prices of REIT Units of such series if there was trading and the exchange or other market does not provide a closing price but provides only the highest and lowest trading prices of REIT Units of such series traded on a particular day; or (iii) the weighted average of the last bid and last asking price of REIT Units of such series if there was no trading on the date.

If a Unitholder is not entitled to receive cash upon the redemption of REIT Units in circumstances in which Subsections 5.24(e)(ii) or (iii) apply, then the Redemption Price shall be equal to the fair market value of the REIT Units as determined by the Trustees provided that the Redemption Price of the REIT Units, Series A shall only be attributed to and derived from Partnership A and, to the extent of the Converted Percentage of the Redemption Price, from Partnership B.

Where the REIT Units tendered for redemption are REIT Units, Series B and such series of REIT Units is not listed for trading, the provisions of this Section 5.24 shall apply to the REIT Units, Series B tendered for redemption, *mutatis mutandis*, as if the references herein to the “price”, “market price” “closing price” and “closing market price” in relation to such series referred to such amounts in relation to REIT Units, Series A. The Redemption Price of the REIT Units, Series B shall only be attributed to and derived from Partnership B.

- (d) Subject to Subsections 5.24(e) and 5.24(f), the Redemption Price payable in respect of the REIT Units tendered for redemption during any month shall be paid by cheque, drawn on a Canadian chartered bank or a trust company in lawful money of Canada, payable at par to or to the order of the Unitholder who exercised the right of redemption on or before the last day of the calendar month following the month in which the REIT Units were tendered for redemption. Payments made by the Trust of the Redemption Price are conclusively deemed to have been made upon the mailing of a cheque in a postage prepaid envelope addressed to the former Unitholder unless such cheque is dishonoured upon presentment. Upon such payment, the Trust shall be discharged from all liability to the former Unitholder in respect of the REIT Units so redeemed.
- (e) Subsection 5.24(d) shall not be applicable to REIT Units of a series tendered for redemption by a Unitholder, if:

- (i) the total amount payable by the Trust pursuant to Subsection 5.24(c) in respect of such REIT Units and all other REIT Units tendered for redemption prior thereto in the same calendar month exceeds \$50,000 (the “**Monthly Limit**”); provided that the Trustees may, in their sole discretion, waive such limitation in respect of all REIT Units tendered for redemption in any calendar month;
 - (ii) at the time the REIT Units of the series are tendered for redemption, the outstanding REIT Units of the series (or, in the case of REIT Units, Series B where that series is not listed, the REIT Units, Series A) are not listed for trading or quoted on any stock exchange or market which the Trustees consider, in their sole discretion, provides representative fair market value prices for the REIT Units of such series; or
 - (iii) the normal trading of the outstanding REIT Units of the series (or, in the case of REIT Units, Series B where that series is not listed, the REIT Units, Series A) is suspended or halted on any stock exchange on which the Units of such series are listed for trading or, if not so listed, on any market on which the Units of such series are quoted for trading, on the Redemption Date for the REIT Units of such series or for more than five trading days during the 10 trading day period commencing immediately after the Redemption Date for such REIT Units.
- (f) If, pursuant to Subsection 5.24(e)(ii) or Subsection 5.24(e)(iii), Subsection 5.24(d) is not applicable to REIT Units tendered for redemption by a Unitholder, the Redemption Price per REIT Unit specified in Subsection 5.24(c) to which the Unitholder would otherwise be entitled shall, subject to receipt of all necessary regulatory approvals, be paid and satisfied by way of a distribution *in specie* to such Unitholder of Subsidiary Securities having a fair market value equal to the product of: (i) the Redemption Price per REIT Unit of the REIT Units tendered for redemption; and (ii) the number of REIT Units tendered by such Unitholder for redemption. No Subsidiary Securities with a fair market value of less than \$100 will be transferred and where the number of Subsidiary Securities to be received by the former Unitholder upon redemption, *in specie*, would otherwise include a Subsidiary Security with a fair market value of less than a multiple of \$100, such number shall be rounded to the next lowest multiple of \$100 and the excess shall be paid in cash. The Redemption Price payable pursuant to this Subsection 5.24(f) in respect of REIT Units tendered for redemption during any month shall, subject to receipt of all necessary regulatory approvals, be paid by the transfer, to or to the order of the Unitholder who exercised the right of redemption, on the last day (the “**Transfer Date**”) of the calendar month following the month in which the REIT Units were tendered for redemption, of the fair market value of Subsidiary Securities determined as aforesaid and the cash payment, if any, in accordance with the provisions of Subsection 5.24(d) applied *mutatis mutandis*. The Trust shall be entitled to all interest paid or declared payable on the Subsidiary Securities being transferred, to and including the Transfer Date. Payments by the Trust of the Redemption Price are conclusively deemed to have been made upon the mailing of the Subsidiary

Securities and cheque, if any, by registered mail in a postage prepaid envelope addressed to the former Unitholder. Upon such payment, the Trust shall be discharged from all liability to the former Unitholder in respect of the REIT Units so redeemed. Except as set out above, the terms and conditions of the Subsidiary Securities shall be as set out in the applicable Note Indenture or similar agreement for such Subsidiary Securities.

- (g) If, pursuant to Subsection 5.24(e)(i), Subsection 5.24(d) is not applicable to the REIT Units tendered for redemption by a Unitholder, the Redemption Price per REIT Unit to which the Unitholder would otherwise be entitled shall be paid and satisfied as follows:
 - (i) a portion of the Redemption Price per REIT Unit equal to the Monthly Limit divided by the number of REIT Units tendered for redemption in the month shall be paid and satisfied in cash, in accordance with Subsection 5.24(d) applied *mutatis mutandis*; and
 - (ii) subject to receipt of all necessary regulatory approvals, the remainder of the Redemption Price per REIT Unit shall be paid and satisfied by way of a distribution *in specie* to such Unitholder of Subsidiary Securities, in accordance with Subsection 5.24(f) applied *mutatis mutandis*.

Upon such payment, the Trust shall be discharged from all liability to the former Unitholder in respect of the REIT Units so redeemed.

- (h) All REIT Units which are redeemed under this Section 5.24 shall be cancelled and such REIT Units shall no longer be outstanding and shall not be reissued.
- (i) Some or all of the income of the Trust, the net realized capital gains of the Trust and the net recapture income of the Trust for a year may, for purposes of computing the net income of the Trust and the net realized capital gains of the Trust under the Tax Act or other tax legislation be treated as having been paid in the year by the Trust to the Unitholders redeeming REIT Units in such year and, to the extent of the amount thereof so treated has been designated as taxable capital gains or income to such Unitholders, the holder's redemption proceeds shall be reduced accordingly. Any such amounts shall be determined at the discretion of a majority of the Trustees; however in all cases, a redeeming Unitholder will only be treated as having been paid an amount to which the Unitholders of the series of REIT Units redeemed would be entitled to receive.

5.25 Satisfaction of Redemption Amount

The payment of the Redemption Price to any Unitholder in cash as provided in Section 5.24 will be satisfied:

- (a) in the case of REIT Units, Series A of such Unitholder, from the REIT Unit, Series A Bank Account and the REIT Unit, Series B Bank Account, with the percentage of the Redemption Price payable from the REIT Unit, Series B Bank Account being equal to the Converted Percentage; and

- (b) in the case of REIT Units, Series B of such Unitholder, solely from the REIT Unit, Series B Bank Account,

and the payment of the Redemption Price to any Unitholder *in specie* as provided in Section 5.24 hereof will be satisfied:

- (c) in the case of REIT Units, Series A of such Unitholder, by the delivery of Subsidiary Securities of Partnership A and Subsidiary Securities of Partnership B or their Subsidiaries, with the percentage of the Redemption Price payable in Subsidiary Securities of Partnership B being equal to the Converted Percentage; and
- (d) in the case of REIT Units, Series B of such Unitholder, by the delivery of Subsidiary Securities of Partnership B or its Subsidiary,

it being the intention that the Trustees shall take such steps to ensure that the payment of the Redemption Price in cash or *in specie* is satisfied (i) in the case of REIT Units, Series A, by cash derived from, or Subsidiary Securities issued by, Partnership A and Partnership B or their Subsidiaries, with the percentage of the Redemption Price payable by cash derived from, or Subsidiary Securities issued by, Partnership B or its Subsidiary being equal to the Converted Percentage, and (ii) in the case of REIT Units, Series B, solely by cash derived from, or Subsidiary Securities issued by, Partnership B or its Subsidiary.

5.26 Purchase of REIT Units

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

5.27 Satisfaction of Purchase Price

The payment of the purchase price to any Unitholders in cash as provided in Section 5.26 will be satisfied:

- (a) in the case of REIT Units, Series A of such Unitholder, from the REIT Unit, Series A Bank Account and the REIT Unit, Series B Bank Account, with the percentage of the purchase price payable from the REIT Unit, Series B Bank Account being equal to the Converted Percentage; and
- (b) in the case of REIT Units, Series B of such Unitholder, solely from the REIT Unit, Series B Bank Account,

and the payment of the purchase price to any Unitholder *in specie* as provided in Section 5.26 will be satisfied:

- (c) in the case of REIT Units, Series A of such Unitholder, by the delivery of Subsidiary Securities of Partnership A and Subsidiary Securities of Partnership B or their Subsidiaries, with the percentage of the purchase price payable in

Subsidiary Securities of Partnership B or its Subsidiary being equal to the Converted Percentage; and

- (d) in the case of REIT Units, Series B of such Unitholder, by the delivery of Subsidiary Securities of Partnership B or its Subsidiary,

it being the intention that the Trustees shall take such steps to ensure that the payment of the purchase price in cash or *in specie* is satisfied (i) in the case of REIT Units, Series A, by cash derived from, or Subsidiary Securities issued by Partnership A and Partnership B or their Subsidiaries, with the percentage of the purchase price payable by cash derived from, or Subsidiary Securities issued by, Partnership B or its Subsidiary being equal to the Converted Percentage, and (ii) in the case of REIT Units, Series B, solely by cash derived from, or Subsidiary Securities issued by, Partnership B or its Subsidiary.

5.28 Right to Acquire

- (a) If within 120 days after the date of a take-over bid, as defined under the *Securities Act* (Ontario), the take-over bid is accepted by the holders of not less than 90% of the Units (including Units issuable upon the surrender or exchange of any securities for Units but not including any such Units held at the date of the take-over bid by or on behalf of the offeror or affiliates or associates of the offeror), other than Units held at the date of the take-over bid by or on behalf of the offeror or an affiliate or associate of the offeror, the offeror is entitled, on complying with this Section 5.28, to acquire the Units held by the dissenting offerees, provided that such Units have been or are legally required to be taken up and paid for by the offeror.
- (b) An offeror may acquire Units held by a dissenting offeree by sending by registered mail within 60 days after the date of termination of the take-over bid and in any event within 180 days after the date of the take-over bid, an offeror's notice to each dissenting offeree stating that:
 - (i) the offerees holding more than 90% of the Units to which the bid relates accepted the take-over bid;
 - (ii) the offeror is bound to take up and pay for or has taken up and paid for the Units of the offerees who accepted the take-over bid;
 - (iii) a dissenting offeree is required to elect:
 - (A) to transfer their Units to the offeror on the terms on which the offeror acquired the Units of the offerees who accepted the take-over bid, or
 - (B) to demand payment of the fair value of the Units in accordance with Subsections 5.28(i) to (r) by notifying the offeror within 20 days after receiving the offeror's notice;

- (iv) a dissenting offeree who does not notify the offeror in accordance with Subsection 5.28(d) is deemed to have elected to transfer the Units to the offeror on the same terms that the offeror acquired the Units from the offerees who accepted the take-over bid; and
 - (v) a dissenting offeree must send notice to the Trust within 20 days after s/he receives the offeror's notice.
- (c) Concurrently with sending the offeror's notice under Subsection 5.28(b), the offeror shall send to the Trust a notice of adverse claim disclosing the name and address of the offeror and the name of the dissenting offeree with respect to each Unit held by a dissenting offeree.
- (d) A dissenting offeree to whom an offeror's notice is sent under Subsection 5.28(b) shall, within 20 days after receiving that notice:
- (i) send the certificate(s) representing the Units to the Trust; and
 - (ii) elect:
 - (A) to transfer the Units to the offeror on the terms on which the offeror acquired the Units of the offerees who accepted the take-over bid; or
 - (B) to demand payment of the fair value of the Units in accordance with Subsections 5.28(i) to (r).
- (e) A dissenting offeree who does not notify the offeror in accordance with paragraph 5.28(d)(ii)(B) is deemed to have elected to transfer the Units to the offeror on the same terms on which the offeror acquired the Units from the offerees who accepted the take-over bid.
- (f) Within 20 days after the offeror sends an offeror's notice under Subsection 5.28(b), the offeror shall pay or transfer to the Trust the amount of money or other consideration that the offeror would have had to pay or transfer to a dissenting offeree if the dissenting offeree had elected to accept the take-over bid under paragraph 5.28(d)(ii)(A).
- (g) The Trust is deemed to hold in trust for the dissenting offeree the money or other consideration it receives under Subsection 5.28(f), and the Trust shall deposit the money in a separate account in a Canadian chartered bank and shall place the other consideration in the custody of a Canadian chartered bank or similar institution.
- (h) Within 30 days after the offeror sends an offeror's notice under Subsection 5.28(b), the Trust shall:
- (i) if the payment or transfer required by Subsection 5.28(f) is made, transfer to the offeror the Units that were held by dissenting offerees;

- (ii) give to each dissenting offeree who elects to accept the take-over bid terms under paragraph 5.28(d)(ii)(A) and who transferred his/her Units as required under Subsection 5.28(b), the money or other consideration to which the offeree is entitled, disregarding fractional Units, if any, which may be paid for in money; and
- (iii) if the payment or transfer required by Subsection 5.28(f) is made and the money or other consideration is deposited as required by Subsection 5.24(g), send to each dissenting offeree who has not sent notice as required under Subsection 5.28(d) a notice stating that:
 - (A) the dissenting offeree's Units have been cancelled,
 - (B) the Trust or some designated Person holds in trust for the dissenting offeree the money or other consideration to which the dissenting offeree is entitled as payment for or in exchange for the Units, and
 - (C) the Trust will, subject to Subsections 5.28(i) to 5.28(r), send that money or other consideration to that offeree without delay after receiving the Units.
- (i) If a dissenting offeree has elected to demand payment of the fair value of his/her Units under paragraph 5.28(d)(ii)(B), the offeror may, within 20 days after it has paid the money or transferred the other consideration under Subsection 5.28(f), apply to a court to fix the fair value of the Units of that dissenting offeree.
- (j) If an offeror fails to apply to a court under Subsection 5.28(i), a dissenting offeree may apply to a court for the same purpose within a further period of 20 days.
- (k) Where no application is made to a court under Subsection 5.28(j) within the period set out in that subsection, a dissenting offeree is deemed to have elected to transfer their Units to the offeror on the same terms that the offeror acquired the Units from the offerees who accepted the take-over bid.
- (l) An application under Subsection 5.28(i) or 5.28(j) shall be made to a court having jurisdiction in the place where the Trust has its registered office.
- (m) A dissenting offeree is not required to give security for costs in an application made under Subsection 5.28(i) or 5.28(j).
- (n) On an application under Subsection 5.28(i) or 5.28(j):
 - (i) all dissenting offerees referred to in paragraph 5.28(d)(ii)(B) whose Units have not been acquired by the offeror shall be joined as parties and are bound by the decision of the court; and
 - (ii) the offeror shall notify each affected dissenting offeree of the date, place and consequences of the application and of their right to appear and be heard in Person or by counsel.

- (o) On an application to a court under Subsection 5.28(i) or 5.28(j) the court may determine whether any other Person is a dissenting offeree who should be joined as a party, and the court shall then fix a fair value for the Units of all dissenting offerees.
- (p) A court may in its discretion appoint one or more appraisers to assist the court to fix a fair value for their Units of a dissenting offeree.
- (q) The final order of the court shall be made against the offeror in favour of each dissenting offeree and for the amount for the Units as fixed by the court.
- (r) In connection with proceedings under this Section 5.28, a court may make any order it thinks fit and, without limiting the generality of the foregoing, it may:
 - (i) fix the amount of money or other consideration that is required to be held in trust under Subsection 5.28(g);
 - (ii) order that money or other consideration be held in trust by a Person other than the Trust; and
 - (iii) allow a reasonable rate of interest on the amount payable to each dissenting offeree from the date they send or deliver notice under Subsection 5.28(d) until the date of payment.

5.29 Offers

- (a) If an offer, issuer bid, take-over bid or similar transaction with respect to the REIT Units, Series A and/or the REIT Units, Series B is proposed by the Trust or is proposed to the Trust or Unitholders of REIT Units, Series A and/or REIT Units, Series B and is recommended by the board of trustees of the Trust, or is otherwise effected or to be effected with the consent or approval of the board of trustees of the Trust (each, an “**Approved Offer**”), and the LP Class B Units, Series 1 are not acquired by the LP in accordance with their terms or exchanged in accordance with the Exchange and Support Agreement, the Trust will, expeditiously and in good faith, take all such actions and do all such things as are necessary or desirable to enable and permit holders of LP Class B Units, Series 1 to participate in such Approved Offer to the same extent and on an economically equivalent basis as the holders of REIT Units, Series A and/or REIT Units, Series B, without discrimination. Without limiting the generality of the foregoing, the Trust will, expeditiously and in good faith, ensure that holders of LP Class B Units, may participate in all such Approved Offers without being required to surrender their LP Class B Units, Series 1 for withdrawal or exercise their right to exchange LP Class B Units, Series 1 (or, if so required, to ensure that any such surrender or exchange will be effective only upon, and will be conditional upon, the successful completion of the Approved Offer and only to the extent necessary to tender to or deposit under the Approved Offer).
- (b) If an offer, issuer bid, take-over bid or similar transaction with respect to the REIT Units, Series A and/or the REIT Units, Series B is proposed to the Trust or

holders of REIT Units, Series A and/or REIT Units, Series B and is not recommended by the board of trustees of the Trust and not effected or to be effected with the consent or approval of the board of trustees of the Trust (each, a “Non-Approved Offer”), and the LP Class B Units, Series 1 are not acquired by Dundee Properties LP in accordance with their terms or exchanged in accordance with the Exchange and Support Agreement, the Trust will, to the extent possible in the circumstances, expeditiously and in good faith, take all such actions and do all such things as are necessary or desirable to enable and permit holders of LP Class B Units, Series 1 to participate in such Non-Approved Offer to the same extent and on an economically equivalent basis as the holders of REIT Units, Series A and/or REIT Units, Series B, without discrimination. Without limiting the generality of the foregoing, the Trust will, to the extent possible in the circumstances, expeditiously and in good faith, ensure that holders of LP Class B Units, Series 1 may participate in all such Non-Approved Offers without being required to surrender their LP Class B Units, Series 1 for withdrawal or exercise their right to exchange LP Class B Units, Series 1 (or, if so required, to ensure that any such surrender or exchange will be effective only upon, and will be conditional upon, the successful completion of the Non-Approved Offer and only to the extent necessary to tender to or deposit under the Non-Approved Offer).

5.30 Redemption of Initial REIT Unit

On the Effective Date, the Trust will redeem the Initial REIT Unit held by the Initial Unitholder for a redemption price of \$10.00 and upon the completion of such redemption, the Initial REIT Unit shall be cancelled and shall no longer be outstanding for any purpose pursuant to this Declaration of Trust.

5.31 Right of Redemption of Transition Fund Units

Each Transition Fund Unitholder will be entitled to require the Trust to redeem, at any time and from time to time, at the demand of such Transition Fund Unitholder (such date being the "**Transition Fund Unit Redemption Date**"), all or any part of the Transition Fund Units registered in the name of such Transition Fund Unitholder or Beneficial Transition Fund Unitholder at the prices determined and payable in accordance with the provisions of Sections 5.32 and 5.33.

5.32 Exercise of Redemption Right

- (a) A Beneficial Transition Fund Unitholder who desires to redeem Transition Fund Units held in the Book-Entry Only System must do so by causing a CDS Participant to deliver to CDS on behalf of the Beneficial Transition Fund Unitholder a written notice of the Beneficial Transition Fund Unitholder's intention to redeem Transition Fund Units. The form of redemption notice should be available from a CDS Participant, the Trust or the Transfer Agent. By causing a CDS Participant to deliver to CDS a notice of the Beneficial Transition Fund Unitholder's intention to redeem Transition Fund Units, a Beneficial Transition Fund Unitholder shall be deemed to have irrevocably surrendered the applicable Transition Fund Units for redemption and appointed such CDS Participant to act as his, her or its exclusive settlement agent with respect to the exercise of the

redemption privilege and the receipt of payment in connection with the settlement of obligations arising from such exercise. Any redemption notice that CDS 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. A failure by CDS or a CDS Participant to exercise redemption privileges or to give effect to the settlement thereof in accordance with the Beneficial Transition Fund Unitholder's instructions will not give rise to any obligations or liability on the part of the Trust or the Trustees to the CDS Participant or to the Beneficial Transition Fund Unitholder. A Beneficial Transition Fund Unitholder shall have no direct redemption rights as against the Trust or the Trustees.

- (b) As of the close of business on the date the Transition Fund Units are surrendered for redemption, the Transition Fund Unitholder shall cease to be the Transition Fund Unitholder of record in respect of such Transition Fund Units, such Transition Fund Units shall cease to have any rights associated therewith (other than to receive the Transition Fund Unit Redemption Price therefor) and shall cease to be entitled to share in the income or any participation in the assets of the Trust (other than the receipt of the Transition Fund Unit Redemption Price), and the Transition Fund Unitholder (or Beneficial Transition Fund Unitholder) shall not be entitled to exercise any of the rights of holders of Special Units in respect thereof (other than the right to receive the Transition Fund Unit Redemption Price) unless payment of the Transition Fund Unit Redemption Price shall not have been made prior to the Transition Fund Unit Redemption Date or shall have been dishonoured.

5.33 Cash Redemption

- (a) Upon receipt by the Trust of a notice to redeem Transition Fund Units in accordance with Section 5.32, the holder of the Transition Fund Units tendered for redemption will be entitled to receive a cash payment equal to the Transition Fund Unit Redemption Price per Transition Fund Unit. All payments made in respect of the redemption of Transition Fund Units will be rounded up to the nearest whole cent.
- (b) The redemption price payable in respect of the Transition Fund Units surrendered for redemption during any calendar month will be satisfied by way of cash payment no later than the last day of the calendar month following the calendar month in which the Transition Fund Units were tendered for redemption. Payments made by the Trust of the Transition Fund Unit Redemption Price for such Transition Fund Units will be conclusively deemed to have been made upon the mailing by the Trust of a cheque in a postage-prepaid envelope addressed to the former holder of the Transition Fund Units at the former holder's address appearing in the Register, unless such cheque is dishonoured upon presentment. Upon such payment, the Trust will be discharged from all liability to the former holder of the Transition Fund Units in respect of the redeemed Transition Fund Units; provided, however, that if such cheque is lost or destroyed then, upon the presentation of evidence satisfactory to the Trustees of such loss or destruction,

together with such indemnity as the Trustees may reasonably require, the Trust will issue a replacement cheque to the former holder of the Transition Fund Units.

ARTICLE 6 MEETINGS OF THE UNITHOLDERS

6.1 Annual Meeting

There shall be an annual meeting of the Unitholders, at such time and place in Canada as the Trustees shall prescribe, for the purpose of electing Trustees (except for the DC Appointees), appointing or changing the Auditors of the Trust, the Partnerships and the LP and transacting such other business as the Trustees may determine or as may properly be brought before the meeting. The annual meeting of the Unitholders shall be held after delivery to the Unitholders of the information referred to in Section 14.7 and, in any event, within 180 days after the end of each fiscal year of the Trust. The first annual meeting of Unitholders shall be no later than June 30, 2004.

6.2 Special Meetings

The Trustees shall have power at any time to call special meetings of the Unitholders at such time and place in Canada as the Trustees may determine. The Unitholders holding in the aggregate not less than 5% of the votes attaching to all outstanding Units (on a fully diluted basis) may requisition the Trustees in writing to call a special meeting of the Unitholders for the purposes stated in the requisition. The requisition must state in reasonable detail the business proposed to be transacted at the meeting and shall be sent to each of the Trustees and to the principal office of the Trust. The Unitholders have the right to obtain a list of the Unitholders to the same extent and upon the same conditions as those which apply to shareholders of a corporation governed by the CBCA. Upon receiving the requisition, the Trustees shall call a meeting of the Unitholders to transact the business referred to in the requisition, unless:

- (a) a record date for a meeting of the Unitholders has been fixed and notice thereof has been given to each stock exchange in Canada on which the REIT Units, Series A are listed for trading;
- (b) the Trustees have called a meeting of the Unitholders and have given notice thereof pursuant to Section 6.3; or
- (c) in connection with the business as stated in the requisition:
 - (i) it clearly appears to the Trustees that the primary purpose of the matter covered by the requisition is submitted by the Unitholder is to enforce a personal claim or to redress a personal grievance against the Trust, the Trustees, the officers of the Trust or its security holders;
 - (ii) it clearly appears to the Trustees that the matter covered by the requisition does not relate in a significant way to the business or affairs of the Trust;
 - (iii) the Trust, at the Unitholder's request, included a matter covered by a requisition in an information circular relating to a meeting of the

Unitholders held within two years preceding the receipt of such request, and the Unitholder failed to present the matter, in person or by proxy, at the meeting;

- (iv) substantially the same matter covered by the requisition was submitted to the Unitholders in an information circular (including a dissidents information circular) relating to a meeting of the Unitholders held within two years preceding the receipt of the Unitholder's request and the matter covered by the requisition did not receive the prescribed minimum amount of support at the meeting; or
- (v) the rights conferred by this Section 6.2 are being abused to secure publicity.

Subject to the foregoing, if the Trustees do not within 21 days after receiving the requisition call a meeting, any Unitholder who signed the requisition may call the meeting in accordance with the provisions of Sections 6.3 and 6.7 and the Trustees' Regulations, *mutatis mutandis*. If there shall be no Trustees, the officers of the Trust shall promptly call a special meeting of the Unitholders for the election of successor Trustees. The phrase "meeting of the Unitholders" wherever it appears in this Declaration of Trust shall mean and include both an annual meeting and any other meeting of the Unitholders.

6.3 Notice of Meeting of the Unitholders

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

6.4 Quorum

A quorum for any meeting of the Unitholders shall be individuals present not being less than two in number and being the Unitholders or representing by proxy the Unitholders who hold in the aggregate not less than 10% of the votes attached to all outstanding Units (on a fully diluted basis), provided that if the Trust has only one Unitholder, the Unitholder present in person or by proxy constitutes a meeting and a quorum for such meeting. In the event of such quorum not being present at the appointed place on the date for which the meeting is called within 30 minutes after the time fixed for the holding of such meeting, the meeting, if convened on the requisition of the Unitholders, shall be dissolved, but in any other case shall stand adjourned to such day being not less than 10 days later and to such place in Canada and time as may be appointed by the Chair of the meeting. If at such adjourned meeting a quorum as above defined is not present, the Unitholders present either personally or by proxy shall form a quorum, and any business may be brought before or dealt with at such an adjourned meeting which might have been brought before or dealt with at the original meeting in accordance with the notice calling the same. The Chair or, if the Chair is not present, the Vice-Chair, or any other Trustee determined by the Trustees, shall be the Chair of any meeting of the Unitholders.

In the case of a meeting of the holders of a series of Units, a quorum shall consist of Unitholders who hold in the aggregate not less than 10% of the votes attached to the Units of such series.

6.5 Voting

Holders of Units may attend and vote at all meetings of the Unitholders either in person or by proxy. Each Unit shall entitle the holder thereof to one vote at all meetings of the Unitholders. Any action to be taken by the Unitholders shall, except as otherwise required by this Declaration of Trust, or by law, be authorized when approved by a majority of the votes cast at a meeting of the Unitholders. The chair of any such meeting shall not have a second or casting vote.

6.6 Matters on which the Unitholders Shall Vote

None of the following shall occur unless the same has been duly approved by at least two-thirds (2/3) of the votes cast by the Unitholders at a meeting duly called and held:

- (a) any amendment to the Declaration of Trust (except as provided in Sections 4.3 or 11.1);
- (b) the sale of the assets of the Trust as an entirety or substantially as an entirety (other than as a part of an internal reorganization of the assets of the Trust as approved by the Trustees); or
- (c) the termination of the Trust pursuant to Section 12.2.

Nothing in this Section 6.6, however, shall prevent the Trustees from submitting to a vote of the Unitholders any matter which they deem appropriate. Except with respect to the matters specified in this Section 6.6, Sections 11.2 or 12.2 or matters submitted to a vote of the Unitholders by the Trustees, no vote of the Unitholders shall in any way bind the Trust or Trustees.

6.7 Series Approval

If any business to be transacted at a meeting of Unitholders would affect the rights of the holders of Units of one or more series in a manner different from the holders of Units of any other series then:

- (i) reference to such fact, indicating each series so affected, shall be made in the notice of such meeting; and
- (ii) the holders of Units of a series so affected shall not be bound or adversely affected by any action taken at such meeting unless in addition to compliance with the other provisions of this Section:
 - (A) there are present in person or by proxy holders of Units of such series who hold in the aggregate not less than 10% of the votes attached to such series, subject to the provisions of this Article as to quorum at adjourned meetings; and
 - (B) the resolution is passed by the affirmative vote of not less than at least two-thirds of the holders of Units of such series.

For the purposes of the foregoing, it is confirmed that each of the Special Trust Units and Transition Fund Units constitute a separate series of Units.

6.8 Record Dates

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

6.9 Proxies

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

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

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

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

6.10 Personal Representatives

Subject to Section 5.11, if a Unitholder is deceased, his/her personal representative, upon filing with the secretary of the meeting such proof of his/her appointment as the secretary considers sufficient, shall be entitled to exercise the same voting rights at any meeting of the Unitholders as the Unitholder would have been entitled to exercise if s/he were living and for the purpose of the meeting shall be considered to be a Unitholder. Subject to the provisions of the will of a deceased Unitholder, if there is more than one personal representative, the provisions of Section 5.12 relating to joint holders shall apply.

6.11 Attendance by Others

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

6.12 Conduct of Meetings

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

6.13 Binding Effect of Resolutions

Every resolution passed at a meeting in accordance with the provisions of this Article 6 shall be binding upon all Unitholders, whether present at or absent from the meeting.

6.14 Resolution in Lieu of Meeting

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

6.15 Actions by the Unitholders

Any action, change, approval, decision or determination required or permitted to be taken or made by the Unitholders hereunder shall be effected by a resolution passed by the Unitholders at a duly constituted meeting (or a special resolution in lieu thereof) in accordance with this Article 6.

ARTICLE 7 MEETINGS OF THE TRUSTEES

7.1 Trustees May Act Without Meeting

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

7.2 Notice of Meeting

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

7.3 Quorum

A quorum for all meetings of the Trustees or any committee thereof shall be at least three Trustees or three Trustees on such committee, as the case may be, present in person, at least two of whom shall be resident Canadian and at least two of whom shall be Independent Trustees; provided that if there is no quorum, the meeting may be adjourned to a Business Day on notice to all of the Trustees or members of such committee, as the case may be and, at the reconvened meeting, the presence of one resident Canadian Trustee or one resident Canadian member of such committee, as the case may be, is required in order to constitute a quorum.

7.4 Voting at Meetings

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

7.5 Meeting by Telephone

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

ARTICLE 8 DELEGATION OF POWERS

8.1 General

The Trustees may appoint from among their number a committee of Trustees and may delegate to such committee any of the powers of the Trustees. The Trustees shall have the power to appoint, employ or contract with any Person for any matter relating to the Trust or its assets or

affairs. For greater certainty, the Trustees may delegate to any Person (including any one or more officers of the Trust) the power to execute any document or enter into any agreement on behalf of the Trust or exercise any discretion or make any amendment in relation thereto. The Trustees may grant or delegate such authority to an advisor as the Trustees may in their sole discretion deem necessary or desirable without regard to whether such authority is normally granted or delegated by trustees. The Trustees shall have the power to determine the term and compensation of an advisor or any other Persons whom they may employ or with whom they may contract. The Trustees shall have the power to grant powers of attorney as required in connection with any financing or security relating thereto. Each member of a committee shall serve on such committee until s/he resigns from such committee or otherwise ceases to be a Trustee.

8.2 Investment Committee

The Trustees shall appoint an investment committee (the “**Investment Committee**”) consisting of at least, until determined otherwise by the Trustees, three Trustees, the majority of whom shall be resident Canadians. Each of the Trustees serving on the Investment Committee shall have a minimum of three years of substantial experience in the real estate industry which may include, without limitation, having been a board member or senior officer of a real estate company. The duties of the Investment Committee shall be: (i) to approve or reject proposed acquisitions and dispositions of investments by the Trust or its Subsidiaries; (ii) to authorize proposed transactions; and (iii) to approve all financing arrangements and the assumption or granting of any mortgage other than the renewal of any existing mortgage by any of the Trust’s Subsidiaries. Questions arising at any meeting of the Investment Committee shall be decided by a majority of the votes cast. Decisions may be taken by written consent signed by all of the members of the Investment Committee. Any member of the Investment Committee may call a meeting of the Investment Committee upon not less than 48 hours’ notice. Where for any reason a member of the Investment Committee is disqualified from voting on or participating in a decision, any other independent and disinterested Trustee who is resident Canadian not already a member of the Investment Committee may be designated by the Trustees to act as an alternate. Notwithstanding the appointment of the Investment Committee, the Trustees may consider and approve any matter which the Investment Committee has the authority to consider or approve. The Investment Committee may grant or delegate all or some of the duties set out in this Section 8.2 to the senior management of the Trust or the LP. On the Effective Date the Investment Committee shall consist of Detlef Bierbaum, Michael J. Cooper and Ned Goodman.

8.3 Audit Committee

The Trustees shall appoint an audit committee (the “**Audit Committee**”) consisting of at least three Trustees, a majority of whom shall be Independent Trustees and resident Canadians. The Chair of the Audit Committee shall be selected from the group of Independent Trustees who are resident Canadians appointed to serve on such Committee. The Audit Committee shall: (i) review the Trust’s procedures for internal control with the Auditors and Chief Financial Officer of the Trust; (ii) review the engagement of the Auditors; (iii) review and recommend to the Trustees for their approval annual and quarterly financial statements and management’s discussion and analyses of financial condition and results of operation; (iv) assess the Trust’s financial and accounting personnel; and (v) review any significant transactions outside the Trust’s ordinary activities and all pending litigation involving the Trust. The Auditors of the Trust are entitled to receive notice of every meeting of the Audit Committee and, at the expense of the Trust, to attend and be heard thereat and, if so requested by a member of the Audit

Committee, shall attend any meeting of the Audit Committee held during the term of office of the Auditors. Questions arising at any meeting of the Audit Committee shall be decided by a majority of the votes cast. Decisions may be taken by written consent signed by all of the members of the Audit Committee. The Auditors of the Trust or a member of the Audit Committee may call a meeting of the Audit Committee on not less than 48 hours' notice. On the Effective Date, the Audit Committee shall consist of Günther Bautz, Donald K. Charter and Robert G. Goodall.

8.4 Compensation Committee

The Trustees shall appoint a Compensation Committee (the “**Compensation Committee**”) consisting of at least three Trustees, the majority of such Trustees shall be Independent Trustees and resident Canadians. The Chair of the Compensation Committee shall be selected from the group of Independent Trustees who are resident Canadians appointed to serve on such Committee. The duties of the Compensation Committee shall be to review the compensation of the Trustees and the officers of the Trust. The Compensation Committee shall be generally responsible for the Trust's human resources and compensation policies and will have primary responsibility for: (i) administering the Trust's unit incentive plans; (ii) assessing the performance of the Chief Executive Officer; (iii) reviewing and approving the compensation of senior management and consultants of the Trust; and (iv) reviewing and making recommendations to the Trustees concerning the level and nature of compensation payable to the Trustees. Questions arising in any meeting of the Compensation Committee shall be decided by a majority of the votes cast. Decisions may be taken by written consent signed by all of the members of the Compensation Committee. Any member of the Compensation Committee may call a meeting of the Compensation Committee upon not less than 48 hours' notice. Where for any reason a member of the Compensation Committee is disqualified from voting on or participating in a decision, any other independent and disinterested Trustee who is resident Canadian not already a member of the Compensation Committee may be designated by the Trustees to act as a alternate. Notwithstanding the appointment of the Compensation Committee, the Trustees may consider and approve any matter which the Compensation Committee has the authority to consider or approve. On the Effective Date, the Compensation Committee shall consist of Peter A. Crossgrove, Robert G. Goodall and Ned Goodman.

8.5 Governance and Environmental Committee

The Trustees shall appoint a Governance and Environmental Committee (the “**Governance and Environmental Committee**”) consisting of at least three Trustees, a majority of whom shall be Independent Trustees and resident Canadians. The Chair of the Governance and Environmental Committee shall be selected from the group of Independent Trustees who are resident Canadian appointed to serve on such Committee. The duties of the Governance and Environmental Committee shall be to (a) review the governance policies of the Trust, including being responsible for (i) assessing the effectiveness of the board of Trustees and each of its committees; (ii) considering questions of management succession; (iii) participating along with management in the recruitment and selection of candidates for Trustees; and (iv) considering and approving proposals by the Trustees to engage outside advisors on behalf of the board of Trustees as a whole or on behalf of the Independent Trustees; and (b) reviewing the environmental state of any real property owned by the LP and establishing the formal policies and procedures in place to review and monitor environmental exposure to the Trust and its Subsidiaries. Questions arising in any meeting of the Governance and Environmental

Committee shall be decided by a majority of the votes cast. Decisions may be taken by written consent signed by all of the members of the Governance and Environmental Committee. Any member of the Governance and Environmental Committee may call a meeting of the Governance and Environmental Committee upon not less than 48 hours' notice. Where for any reason a member of the Governance and Environmental Committee is disqualified from voting on or participating in a decision, any other independent and disinterested Trustee who is resident Canadian not already a member of the Governance and Environmental Committee may be designated by the Trustees to act as an alternate. Notwithstanding the appointment of the Governance and Environmental Committee, the Trustees may consider and approve any matter which the Governance and Environmental Committee has the authority to consider or approve. On the Effective Date the Governance and Environmental Committee shall consist of Peter A. Crossgrove, David J. Goodman and Gert Silber-Bonz.

8.6 Additional Committees

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

8.7 Management of the Trust

- (a) The Trustees may exercise broad discretion in hiring officers, employees, agents and consultants to administer the Trust's day-to-day operations, all subject to the overriding authority of the Trustees over the management and affairs generally of the Trust.
- (b) As of the date of this Amended and Restated Declaration of Trust, the officers of the Trust shall be the following individuals:
 - (i) Ned Goodman - Chair of the board of Trustees;
 - (ii) Michael J. Cooper – Vice Chair of the board of Trustees and Chief Executive Officer;
 - (iii) J. Michael Knowlton - President and Chief Operating Officer;
 - (iv) Mario Barrafato - Senior Vice President and Chief Financial Officer;
 - (v) P. Jane Gavan - Secretary.

ARTICLE 9 DISTRIBUTIONS

9.1 Distributions

The Trust shall distribute:

- (a) to the Unitholders of REIT Units, Series A, to the extent possible, and such Unitholders shall have a right to receive, on or about each Distribution Date, not less than one-twelfth of such percentage of the Distributable Series A Income and the Converted Distributable Series B Income, on an annualized basis, as the Trustees in their sole discretion determine would be in the best interests of the Trust to distribute, based on the estimated Distributable Series A Income and Converted Distributable Series B Income for the calendar year; and
- (b) to the Unitholders of REIT Units, Series B, to the extent possible, and such Unitholders shall have a right to receive, on or about each Distribution Date, not less than one-twelfth of such percentage of the Unconverted Distributable Series B Income, on an annualized basis, as the Trustees in their sole discretion determine would be in the best interests of the Trust to distribute, based on the estimated Unconverted Distributable Series B Income for the calendar year.

Distributions may be adjusted for amounts paid in prior periods if the actual Distributable Series A Income, Converted Distributable Series B Income or Unconverted Distributable Series B Income for the prior periods is greater than or less than the Trustees' estimates for the prior periods. Distributions shall be made in cash and may be invested in similar Units pursuant to any distribution reinvestment plan or unit purchase plan adopted by the Trustees. Any distribution shall be made proportionately to Persons who are the Unitholders as at the close of business on the record date for such distribution, which shall be December 31 in the applicable year, in the case of a year-end distribution, and otherwise, the last day of the calendar month immediately preceding the month in which the Distribution Date falls, or if such date is not a Business Day then the next following Business Day, or such other date, if any, as is fixed by the Trustees in accordance with Section 6.8. Each year the Trust shall deduct in computing its income for purposes of the Tax Act such portion of the amounts paid or payable to the Unitholders for the year as is necessary to ensure that the Trust is not liable for income tax under Part I of the Tax Act for that taxation year.

In addition, the Trustees may declare to be payable and make distributions, from time to time, out of income of the Trust, net realized capital gains of the Trust, the net recapture income of the Trust, the capital of the Trust or otherwise, in any year, in such amount or amounts, and on such dates on or before December 30 of that year as the Trustees may determine, to the extent such income, capital gains and capital has not already been paid, allocated or distributed to:

- (c) to the Unitholders of REIT Units, Series A that are Unitholders at the record date for such distribution, to the extent such income, capital gains and capital may reasonably be considered to be attributable to and derived from Partnership A; and
- (d) to the Unitholders of REIT Units, Series A and REIT Units, Series B that are Unitholders at the record date for such distribution, to the extent such income, capital gains and capital may reasonably be considered to be attributable to and derived from Partnership B, with the percentage of the amount payable to holders of REIT Units, Series A being equal to the percentage of the total number of REIT Units, Series B ever issued and not redeemed or purchased for cancellation by the Trust that have been converted into REIT Units, Series A in accordance with Article 6 of Schedule A-2 to this Agreement.

The Trust shall also distribute, on December 31st of each year in respect of that taxation year of the Trust, to the Unitholder of each Special Trust Unit that is a Unitholder of record on December 31 of that year, an amount equal to the product of (i) the Special Trust Unit Pro Rata Share, and (ii) an amount equal to the sum of the reasonable estimate of the income of the Trust for such year and the net realized capital gains of the Trust for such year, provided that the aggregate annual distributions on the Special Trust Units shall not exceed 4.9% of the total annual distributions of the Units for that year.

Having regard to the present intention of the Trustees to allocate, distribute and make payable to Unitholders all of the income of the Trust, net realized capital gains of the Trust and any other applicable amounts so that the Trust will not have any liability for tax under Part I of the Tax Act in any taxation year, the total amount to be distributed on or before the January 15th Distribution Date of each year in respect of the most recent taxation year of the Trust ending on or before such date (the “**preceding taxation year**”) pursuant to this Section 9.1 shall not be less than the amount necessary to ensure that the Trust shall not be liable to pay income tax under Part I of the Tax Act for the preceding taxation year, after taking into account any entitlement to a capital gains refund, and:

- (e) the amount, if any, by which the income of the Trust for such year exceeds the aggregate of the portions, if any, of each distribution made by the Trust pursuant to this Section 9.1 which have been determined by the Trustees, pursuant to Section 9.6, to have been payable by the Trust out of income of the Trust for such year (including the above-mentioned distribution to the Holder of the Special Trust Units) and the amount of income treated as having been paid in the year pursuant to Section 5.24(i); and
- (f) the amount, if any, by which the net realized capital gains of the Trust for such year exceeds the aggregate of the portions, if any, of each distribution made by the Trust pursuant to this Section 9.1 which have been determined by the Trustees, pursuant to Section 9.6, to have been payable by the Trust out of net realized capital gains of the Trust for such year (including the above-mentioned distribution to the Holder of the Special Trust Units) and the amount of taxable capital gain treated as having been paid in the year pursuant to Section 5.24(i)

shall, without any further actions on the part of the Trustees, be due and payable (“**year-end distribution**”) to:

- (g) the Unitholders of REIT Units, Series A that are Unitholders of record on December 31 of the preceding taxation year, to the extent such income or capital gains may reasonably be considered to be attributable to and derived from Partnership A; and
- (h) the Unitholders of REIT Units, Series A and REIT Units, Series B that are Unitholders of record on December 31 of the preceding taxation year, to the extent such income or capital gains may reasonably be considered to be attributable to and derived from Partnership B, with the percentage of the amount payable to holders of REIT Units, Series A being equal to the percentage of the total number of REIT Units, Series B ever issued and not redeemed or purchased

for cancellation by the Trust that have been converted into REIT Units, Series A in accordance with Article 6 of Schedule A-2 to this Agreement.

In addition to the distributions which are made payable to Unitholders, the Trustees may designate and make payable any income or capital gains realized by the Trust (including any income realized by the Trust on the redemption of REIT Units *in specie*) to redeeming Unitholders, including redeeming Unitholders pursuant to any redemption of REIT Units in accordance with Article 15.

For greater certainty, it is hereby expressly declared that a Unitholder shall have the legal right to enforce payment of any amount on December 31 of any taxation year which is required to be distributed to a Unitholder hereunder on or before January 15 of the following year. The Trustees, if they so determine when income has been accrued but not collected may, on a temporary basis, transfer sufficient monies from the capital to the income account of the Trust to permit distributions of income which are payable to be effected.

Following the Effective Date, this Section 9.1 may be amended only by the vote of a majority of the votes cast at a meeting of the Unitholders called for that purpose, except where an amendment is required to ensure that the Trust is not liable to pay income tax under Part I of the Tax Act.

9.2 Allocation

Distributions payable to Unitholders pursuant to this Article 9 shall be deemed to be distributions of income of the Trust (including dividends), net realized taxable capital gains of the Trust, Trust capital or other items in such amounts as the Trustees in their absolute discretion, determine, and shall be allocated to the Unitholders in the same proportions as distributions received by the Unitholders, subject to the discretion of the Trustees to adopt an allocation method which the Trustees consider to be more reasonable in the circumstances including in accordance with Subsection 5.24(i).

9.3 Payment and Method of Distributions

- (a) Distributions shall be made by cheque payable to or to the order of the Unitholder or by such other manner of payment approved by the Trustees from time to time. Provided that, as provided in Section 3.1, distributions to holders of REIT Units, Series A, shall be paid by the Trustees from the REIT Unit, Series A Bank Account of the Trust and, to the extent required to distribute Converted Distributable Series B Income, the REIT Unit, Series B Bank Account of the Trust. Distributions to holders of REIT Units, Series B, shall be paid by the Trustees solely from the REIT Unit, Series B Bank Account of the Trust. The payment, if made by cheque, shall be conclusively deemed to have been made upon hand delivery of a cheque to the Unitholder or to his/her agent duly authorized in writing or upon the mailing of a cheque by prepaid first-class mail addressed to the Unitholder at his/her address as it appears on the Register unless the cheque is not paid on presentation, or in any other manner determined by the Trustees in their discretion. In the case of joint registered Unitholders, any cash payment required hereunder to be made to a Unitholder shall be deemed to be required to be made to such Unitholders jointly and shall be paid by cheque or

bank draft but may also be paid in such other manner as the joint registered Unitholders or any one of the joint registered Unitholders has designated to the Trustees and the Trustees have accepted. For greater certainty, a Unitholder or any one of the joint Unitholders may designate and the Trustees may accept that any payment required to be made hereunder shall be made by deposit to an account of such Unitholder or to a joint account of such Unitholder and any other person or in the case of joint registered Unitholders to an account of joint registered Unitholders or to an account of any one of the joint registered Unitholders. A cheque or bank draft shall, unless the joint registered Unitholders otherwise direct, be made payable to the order of all of the said joint registered Unitholders, and if more than one address appears on the books of the Trust in respect of such joint unitholding, the cheque or bank draft or payment in other acceptable manner as aforesaid shall satisfy and discharge all liability of the Trustees or the Trust for the amount so required to be paid unless the cheque or bank draft is not paid at par on presentation at any other place where it is by its terms payable. The receipt by the registered Unitholder in another acceptable manner of any payment not mailed or paid in accordance with this Subsection 9.3(a) shall be a valid and binding discharge to the Trust and to the Trustees for any payment made in respect of the registered Units and if several Persons are registered as joint registered Unitholders or, in consequence of the death, bankruptcy or incapacity of a Unitholder, one or several Persons are entitled so to be registered, subject to Section 5.18, in accordance with this Declaration of Trust, respectively, receipt of payment by any one of them shall be a valid and binding discharge to the Trust and to the Trustees for any such payment. The Trustees may issue a replacement cheque if they are satisfied that the original cheque has not been received or has been lost or destroyed upon being furnished with such evidence of loss, indemnity or other document in connection therewith that they may in their discretion consider necessary. No Holder of a Unit will be entitled to recover by action or other legal process against the Trust any distribution that is represented by a cheque that has not been duly presented to the Trust's banker for payment or that otherwise remains unclaimed for a period of six years from the date on which such distribution was payable.

- (b) Where the Trustees determine that the Trust does not have available cash in an amount sufficient to make payment of the full amount of any distribution which has been declared to be payable pursuant to this Article 9 on the due date for such payment, the payment may, at the option of the Trustees, include the issuance of additional REIT Units, Series A and REIT Units, Series B, as the case may be, or fractions of such REIT Units, Series A and REIT Units, Series B, as the case may be, if necessary, having a fair market value as determined by the Trustees equal to the difference between the amount of such distribution and the amount of cash which has been determined by the Trustees to be available for the payment of such distribution in the case of REIT Units, Series A and REIT Units, Series B, respectively. Notwithstanding the foregoing, distributions on the Special Trust Units will only be made in cash.

9.4 Equal Distributions

The Trustees will exercise their best efforts to ensure that the nature, amount and timing of distributions made in accordance with this Article 9 in respect of a REIT Unit, Series B shall be equal (subject to the provisions of the Distribution Reinvestment Plan) to the nature, amount and timing of distributions made in respect of REIT Units, Series A. As well, distributions in respect of LP Class B Units, Series 1, shall be equal (subject to the provisions of the LP Agreement and the Distribution Reinvestment Plan) in nature, amount and timing to distributions made in respect of REIT Units, Series B, or if no REIT Units, Series B are outstanding, REIT Units, Series A.

9.5 Income Tax Matters

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

9.6 Designations

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

9.7 Withholding Taxes

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

9.8 Definitions

Unless the context otherwise requires, any term in Article 1 and this Article 9 not otherwise defined herein shall have for the purposes of Article 1 and this Article 9 the meaning that it has in the Tax Act.

ARTICLE 10 FEES AND EXPENSES

10.1 Expenses

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

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

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

10.2 Allocation of Expenses

Each expense paid by the Trust shall be paid by the Trustees from each of the REIT Unit, Series A Bank Account and REIT Unit, Series B Bank Account in the following portions:

- (a) from the REIT Unit, Series A Bank Account, that portion of such expense that is determined by the formula $A/B \times C$ where, at the time the expense is paid:
 - A is the total number of outstanding LP Class A Units;
 - B is the aggregate of the total number of outstanding LP Class A Units and LP Class B Units, Series 2; and
 - C is such expense; and
- (b) from the REIT Unit, Series B Bank Account, that portion of such expense that is determined by the formula $A/B \times C$ where, at the time the expense is paid:
 - A is the total number of outstanding LP Class B Units, Series 2;

- B is the aggregate of the total number of outstanding LP Class A Units and LP Class B Units, Series 2; and
- C is such expense.

ARTICLE 11
AMENDMENTS TO THE DECLARATION OF TRUST

11.1 Amendments by the Trustees

- (a) A majority of all Trustees including a majority of the Independent Trustees may, without the approval of the Unitholders, make certain amendments to this Declaration of Trust, including amendments:
 - (i) for the purpose of ensuring continuing compliance with applicable laws, (including the Tax Act) regulations, requirements or policies of any governmental authority having jurisdiction over: (1) the Trustees or over the Trust; (2) the status of the Trust as a “mutual fund trust”, “unit trust”, “real estate investment trust” and a “registered investment” under the Tax Act; or (3) the distribution of Units;
 - (ii) which, in the opinion of the Trustees, acting reasonably, are necessary to maintain the rights of the Unitholders set out in this Declaration of Trust;
 - (iii) to remove any conflicts or inconsistencies in this Declaration of Trust or to make minor corrections which are, in the opinion of the Trustees, necessary or desirable and not prejudicial to the Unitholders;
 - (iv) which, in the opinion of the Trustees, are necessary or desirable as a result of changes in taxation or other laws or the administration or enforcement thereof;
 - (v) for any purpose (except one in respect of which a Unitholder vote is specifically otherwise required) which, in the opinion of the Trustees, are not prejudicial to the Unitholders and are necessary or desirable;
 - (vi) deemed necessary or advisable to ensure that the Trust has not been established nor maintained primarily for the benefit of persons who are not resident Canadians; and
 - (vii) to implement the Distribution Reinvestment Plan or any amendments thereto.
- (b) In no event may the Trustees amend this Declaration of Trust if such amendment would (i) amend this Article 11; (ii) amend the Unitholders’ voting rights; or (iii) cause the Trust to fail or cease to qualify as a “mutual fund trust”, “real estate investment trust”, “unit trust” or “registered investment” under the Tax Act or to be subject to tax under paragraph 122(1)(b) of the Tax Act.

11.2 Amendments by the Unitholders

Subject to Sections 4.3, 9.1, 11.1, 11.3 and 11.4, this Declaration of Trust may be amended only by the vote of at least a two-thirds majority of the votes cast at a meeting of the Unitholders called for that purpose. Without limiting the generality of the foregoing, the following amendments will require the approval of at least two-thirds of the votes cast by all Unitholders:

- (a) an exchange, reclassification or cancellation of all or part of the Units;
- (b) the addition, change or removal of the rights, privileges, restrictions or conditions attached to the Units, including, without limiting the generality of the foregoing,
 - (i) the removal or change of rights to distributions; or
 - (ii) the addition or removal of or change to conversion privileges, redemption privileges, voting, transfer or pre-emptive rights;
- (c) the creation of new rights or privileges attaching to certain of the Units; and
- (d) any change to the existing constraints on the issue, transfer or ownership of the Units.

In addition, the Trust will not agree to or approve any material change to the LP Agreement, the Partnerships' agreements or the Exchange and Support Agreement without approval of at least a two-thirds majority of the votes cast at a meeting of the Unitholders called for that purpose, provided however, that no Unitholder approval will be required to approve any change to the LP Agreement for the purposes of providing a distribution entitlement to the holders of LP Class B Units, Series 1 that is substantially equivalent to the entitlement provided by the Distribution Reinvestment Plan to holders of REIT Units, Series A. Furthermore, the Trust will not agree to or approve any change to Article 9 of the rights and attributes of the LP Class B Units, Series 1 without approval of at least two-thirds of the votes cast at a meeting of the Holders of REIT Units, Series A voting separately as a series called for that purpose. The Trust will not agree to or approve any change to Article 5 of the rights and attributes of the REIT Units, Series B set out in Schedule A-2 attached hereto without the approval of at least two-thirds of the votes cast at a meeting of the Holders of REIT Units, Series A voting separately as a series called for that purpose.

11.3 No Amendment to Section 2.2

For so long as any of the circumstances entitling DC to appoint one or more DC Appointees pursuant to Section 2.2 remain in effect, the Trustees may not amend Section 2.2 or this Section 11.3 in a manner that would adversely affect the right of DC to appoint Trustees in accordance with Section 2.2 without the prior written approval of DC.

11.4 No Termination

No amendment to or amendment and restatement of this Declaration of Trust, whether pursuant to this Article 11 or otherwise, shall be construed as a termination of the Trust and the settlement or establishment of a new trust.

ARTICLE 12 TERMINATION OF TRUST

12.1 Duration of the Trust

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

12.2 Termination by the Unitholders

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

12.3 Effect of Termination

Upon the termination of the Trust, the liabilities of the Trust shall be discharged with due speed, the net assets of the Trust shall be liquidated and the proceeds (“**Liquidated Net Assets of the Trust**”) distributed to the Unitholders in accordance with their entitlements as provided herein in Schedules A-1 and A-2, setting out the rights and attributes of the REIT Units, Series A and REIT Units, Series B, respectively, and in Subsection 5.2(b). Such distribution may be made in cash or in kind or partly in each, all as the Trustees in their sole discretion may determine.

ARTICLE 13 LIABILITIES OF THE TRUSTEES AND OTHERS

13.1 Liability and Indemnification of the Trustees

The Trustees shall at all times be indemnified and saved harmless out of the property of the Trust from and against all liabilities, damages, losses, debts and claims whatsoever, including costs, charges and expenses in connection therewith, sustained, incurred, brought, commenced or prosecuted against them for or in respect of any act, deed, matter or thing whatsoever made, done, acquiesced in or omitted in or about or in relation to the execution of their duties as Trustees and also from and against all other liabilities, damages, losses, debts, claims, costs, charges, and expenses (including legal fees and disbursements on a solicitor-and-his/her-own-client basis) which they sustain or incur in or about or in relation to the affairs of the Trust. Further, the Trustees shall not be liable to the Trust or to any Unitholder or annuitant for any loss or damages relating to any matter regarding the Trust, including any loss or diminution in the value of the Trust or its assets. The foregoing provisions of this Section 13.1 in favour of any Trustee do not apply unless:

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

13.2 Liability of the Trustees

The Trustees shall not be liable to the Trust or to any Unitholder, annuitant or any other Person for the acts, omissions, receipts, neglects or defaults of any Person, firm or corporation employed or engaged by them as permitted hereunder, or for joining in any receipt or act of conformity or for any loss, damage or expense caused to the Trust through the insufficiency or deficiency of any security in or upon which any of the monies of or belonging to the Trust shall be paid out or invested, or for any loss or damage arising from the bankruptcy, insolvency or tortious act of any Person, firm or corporation with whom or which any monies, securities or property of the Trust shall be lodged or deposited, or for any loss occasioned by error in judgment or oversight on the part of the Trustees, or for any other loss, damage or misfortune which may happen in the execution by the Trustees of their duties hereunder, except to the extent the Trustees have not acted in accordance with Subsections 13.1(a) and 13.1(b).

13.3 Reliance Upon Advice

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

13.4 Liability of the Unitholders and Others

- (a) Notwithstanding any other provision of this Declaration of Trust, no Unitholder or annuitant shall be held to have any personal liability as such, and no resort shall be had to, nor shall recourse or satisfaction be sought from, the private property of any Unitholder or annuitant for any liability whatsoever, in tort, contract or otherwise, to any Person in connection with the Trust property or the affairs of the Trust, including for satisfaction of any obligation or claim arising out of or in connection with any contract or obligation of the Trust or of the Trustees or any obligation which a Unitholder or annuitant would otherwise have to indemnify a Trustee for any personal liability incurred by the Trustee as such (“**Trust Liability**”), but rather the assets of the Trust only are intended to be liable and subject to levy or execution for satisfaction of such Trust Liability. Each Unitholder and annuitant shall be entitled to be reimbursed out of the assets of the Trust in respect of any payment of such Trust Liability made by such Unitholder or annuitant.
- (b) In addition to the policies set out in Article 4, the Trustees shall cause the operations of the Trust to be conducted, with the advice of counsel, in such a way and in such jurisdictions as to avoid, to the extent which they determine to be practicable and consistent with their fiduciary duty to act in the best interests of the Unitholders, any material risk of liability on the Unitholders for claims against the Trust, and shall, to the extent available on terms which they determine to be practicable, including the cost of premiums, cause the insurance carried by the Trust, to the extent applicable, to cover the Unitholders and annuitants as additional insureds. Any potential liability of the Trustees with respect to the foregoing obligations or their failure to perform the same shall be governed by the provisions of Sections 13.1, 13.2 and 13.3.

ARTICLE 14 GENERAL

14.1 Execution of Instruments

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

14.2 Manner of Giving Notice

Any notice required or permitted by the provisions of this Declaration of Trust to be given to a Unitholder, a Trustee or the Auditors of the Trust shall be deemed conclusively to have been given if given either by delivery or by prepaid first-class mail addressed to the Unitholder at his/her address shown on the Register, to the Trustee at the last address provided by such Trustee to the President of the Trust, or to the Auditors of the Trust at the last address provided by such Auditors to the President of the Trust, as the case may be.

14.3 Failure to Give Notice

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

14.4 Trust Auditors

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

14.5 Change of Auditors

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

14.6 Fiscal Year

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

14.7 Reports to the Unitholders

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

14.8 Trust Property to be Kept Separate

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

14.9 Trustees May Hold Units

Any Trustee or associate of a Trustee may be a Unitholder or may be an annuitant.

14.10 Trust Records

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

14.11 Right to Inspect Documents

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

14.12 Taxation Information

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

14.13 Income Tax Election

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

14.14 Consolidations

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

14.15 Counterparts

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

14.16 Severability

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

14.17 Governing Law

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

14.18 Language

Les parties aux présentes ont exigés que la présente convention ainsi que tous les documents et avis qui s’y rattachent et/ou qui en découleront soient rédigés en la langue anglaise. The parties hereto have required that this Declaration of Trust and all documents and notices resulting herefrom be drawn up in English.

ARTICLE 15 REDEMPTION AND TRANSFER IN CONNECTION WITH SALE OF EASTERN PORTFOLIO

15.1 Definitions

For the purposes of this Article 15 only:

“**Acquisition Notice**” means the notice advising of the Redemption and, if applicable, the Transfer, substantially in the following form:

“

FORM OF ACQUISITION NOTICE

TO: Computershare Investor Services Inc.
 100 University Avenue, 9th Floor
 Toronto, Ontario
 M5J 2Y1

FROM: Dundee Real Estate Investment Trust

DATE: [insert date]

All capitalized terms in this Acquisition Notice that are not defined herein have the meanings ascribed to such terms in Article 15 of the amended and restated declaration of trust governing Dundee Real Estate Investment Trust (“Dundee REIT”) dated August 24, 2007 (the “Declaration of Trust”).

In accordance with Article 15 of the Declaration of Trust, Dundee REIT hereby gives notice to Computershare Investor Services Inc. (the “Depository”) of the Redemption and the Transfer.

DUNDEE REAL ESTATE INVESTMENT TRUST

Per:

Date on which this Acquisition Notice is delivered to the Depository:

Time at which this Acquisition Notice is delivered to the Depository:

_____”

“Cap Ex and Development Amount” has the meaning given to it in the Purchase Agreement;

“CDS” means CDS Clearing and Depository Services Inc.;

“Cash Election” means an election pursuant to the Letter of Transmittal and Election Form to surrender, sell, assign and transfer REIT units representing 100% of the REIT units and LP Units held by a Holder;

“Cash Proceeds” means \$1,420,976,101.50, being the sum of (a) the actual amount of cash consideration received at Closing from GE Real Estate on account of the purchase price for the Purchased Assets acquired pursuant to the Purchase Agreement, being \$1,523,259,010, less the amount in respect of Holdback Properties to be deducted pursuant to Section 2.1(3) of the Purchase Agreement, but excluding any amounts paid in respect of the Cap Ex and Development Amount, plus (b) the cash consideration received from third parties on or before Closing with respect to Holdback Properties sold to them, less (c) the amount of \$5,492,149.50 to be paid by the Trust to certain trustees and officers of the Trust and employees of a subsidiary of the Trust who hold deferred units granted under the Trust’s Deferred Unit Incentive Plan;

“Closing” means the completion of the sale of the Purchased Assets to GE Real Estate pursuant to the Purchase Agreement;

“Closing Date” means the date on which the Closing occurs, being a date not later than October 31, 2007;

“Depository” means Computershare Investor Services Inc.;

“Effective Time” means the time at which the Acquisition Notice is delivered to the Depository in accordance with Section 15.2;

“Elected Number of Units” means the aggregate number of REIT units elected to be surrendered, sold, assigned and transferred pursuant to the Redemption and the Transfer pursuant to all validly completed and submitted Letters of Transmittal and Election Forms;

“GE Real Estate” means General Electric Capital Canada or its permitted assignee pursuant to Section 6.2 of the Purchase Agreement;

“Holdback Properties” has the meaning given to it in the Purchase Agreement;

“Holder” means a registered holder of REIT units, provided that (i) Dundee Corporation and its Affiliates, Limited Intelligence ESL Inc. and Michael J. Cooper shall be deemed to be one Holder of the aggregate number of REIT units and LP Units held by them (excluding the Pledged Securities); (ii) the Affiliate of Dundee Corporation that has pledged the Pledged Securities in support of the obligations of Dundee Corporation under its 5.85% Exchangeable Unsecured Subordinated Debentures due June 30, 2015 shall be deemed to be one Holder of the Pledged Securities; and (iii) CDS & Co. shall be deemed to be a separate Holder in respect of the REIT units deposited into each one of the Depository’s accounts with CDS established for the purpose of the Redemption and Transfer to facilitate use of the CDS book-based transfer system known as “CDSX”;

“Individual Acquired Number” means:

- (a) in the case of a Holder of REIT units who validly made a Pro Rata Election, that number of REIT units equal to the Pro Rata Percentage of the Holder’s REIT units and LP Units, rounded up (if there is a resulting fractional interest of 0.5 or more) or down (if there is a resulting fractional interest of less than 0.5) to the nearest whole number of REIT units;
- (b) in the case of a Holder of REIT units who validly made a Unit Election (or who made no election pursuant to the Letter of Transmittal and Election Form and therefore is deemed to have elected to have none of its REIT units acquired), that number of REIT units equal to (i) the percentage of the Holder’s REIT units and LP Units elected to be surrendered, sold, assigned and transferred (which shall be 0% in the case of a Holder who made no election pursuant to the Letter of Transmittal and Election Form), rounded up (if there is a resulting fractional interest of 0.5 or more) or down (if there is a resulting fractional interest of less than 0.5) to the nearest whole number of REIT units, plus (ii) the Required Percentage, if any, of the Holder’s REIT units and LP Units rounded up (if there is a resulting fractional interest of 0.5 or more) or down (if there is a resulting fractional interest of less than 0.5) to the nearest whole number of REIT units;
- (c) in the case of a Holder of REIT units who validly made a Cash Election, that number of REIT units equal to 100% of the Holder’s REIT units and LP Units;

provided that, if the Elected Number of Units exceeds the Total Acquired Number, the **“Individual Acquired Number”** in the case of a Holder of REIT units who validly made a Cash Election shall be that number of REIT units equal to the number of the Holder’s REIT units multiplied by a fraction, the numerator of which is the difference between the Total Acquired Number and the number of REIT units to be acquired (before rounding) from Holders who have validly made a Pro Rata Election or Unit Election and the denominator of which is the total number of REIT units in respect of which Holders have validly made a Cash Election, rounded up (if there is a resulting fractional interest of 0.5 or more) or rounded down (if there is a resulting fractional interest of less than 0.5) to the nearest whole number of REIT units;

“Individual Redemption Number” means the difference between the Individual Acquired Number and the Individual Transferred Number;

“Individual Transferred Number” means the product obtained when the Individual Acquired Number is multiplied by the quotient of the Total Transferred Number divided by the sum of every Holder’s Individual Acquired Number;

“Letter of Transmittal and Election Form” means a letter of transmittal and election form in the form prepared by Dundee REIT in connection with the Redemption and the Transfer;

“LP Units” means LP Class B Units, Series 1 of the LP;

“Pledged Securities” means LP Units and REIT units that have been pledged by an Affiliate of Dundee Corporation in support of the obligations of Dundee Corporation under its 5.85% Exchangeable Unsecured Subordinated Debentures due June 30, 2015;

“Pro Rata Election” means an election pursuant to the Letter of Transmittal and Election Form to surrender, sell, assign and transfer REIT units representing the Pro Rata Percentage of the REIT units and LP Units held by a Holder;

“Pro Rata Percentage” means the percentage equal to the quotient obtained by dividing the Total Acquired Number by the aggregate number of REIT units and LP Units issued and outstanding as of 5:00 p.m. (Toronto time) on the Closing Date;

“Purchase Agreement” means the purchase agreement dated June 3, 2007 between General Electric Capital Canada, the Trust, the Operating Trusts and the LP, as amended;

“Purchased Assets” has the meaning given to it in the Purchase Agreement;

“Redemption” means the redemption by the Trust of REIT units pursuant to Section 15.3(a) at the Redemption and Transfer Price less any amount paid under Section 15.10;

“Redemption and Transfer Date” means the first Business Day immediately following the Closing Date;

“Redemption and Transfer Price” means \$47.50 per REIT unit;

“REIT units” means, collectively, REIT Units, Series A and REIT Units, Series B;

“Required Percentage” means zero percent, unless the Elected Number of Units is less than the Total Acquired Number of Units, in which case the **“Required Percentage”** shall be the percentage determined by the following formula:

$$\text{Required Percentage (expressed as a percentage)} = \frac{V - X}{Y - Z} \times 100$$

where:

V = Total Acquired Number

X = Elected Number of Units

Y = total number of REIT units and LP Units outstanding (assuming the Redemption and the Transfer of the Elected Number of Units had become effective)

Z = total number of REIT units and LP Units held by unitholders who made a Pro Rata Election (assuming the Redemption and the Transfer of the Elected Number of Units had become effective)

“Total Acquired Number” means the Total Redemption Number plus the Total Transferred Number;

“Total Redemption Number” means the quotient obtained by dividing the Cash Proceeds by \$47.50, rounded down to the nearest whole number;

“Total Transferred Number” means 3,473,684 REIT units (consisting of a maximum of 694,736 REIT Units, Series B);

“Transaction Income, Gains and Recapture” has the meaning ascribed to it in the Purchase Agreement.

“Transfer” means the transfer of REIT units to GE Real Estate pursuant to Section 15.3(b) at the Redemption and Transfer Price; and

“Unit Election” means an election pursuant to the Letter of Transmittal and Election Form to surrender, sell, assign and transfer REIT units representing (i) 0%, (ii) 25%, (iii) 50%, or (iv) 58% of the REIT units and LP Units held by a Holder.

15.2 Delivery of Acquisition Notice

At any time on the Redemption and Transfer Date, the Trust may cause the Redemption and the Transfer to occur upon the delivery by the Trust of the Acquisition Notice to the Depositary by hand, e-mail or facsimile delivery to Computershare Investor Services Inc., 100 University Avenue, 9th Floor, Toronto, Ontario, M5J 2Y1, which delivery shall be deemed to be delivery of the Acquisition Notice to each holder of REIT units.

15.3 Redemption and Transfer

In the event that the Acquisition Notice is delivered by the Trust in accordance with Section 15.2, at the Effective Time:

- (a) the Trust shall redeem, and shall be deemed to have redeemed, from each Holder of REIT units, the Holder's Individual Redemption Number of REIT units, and each Holder of REIT units shall be deemed to have transferred all of such person's right, title and interest in and to its Individual Redemption Number of REIT units to the Trust, and the Trust shall acquire, and shall be deemed to have acquired, each such Holder's Individual Redemption Number of REIT units;
- (b) immediately following the Redemption, the Individual Transferred Number of REIT units of each Holder of REIT units shall be transferred, and each such Holder shall be deemed to have transferred, all of such person's right, title and interest in and to its Individual Transferred Number of REIT Units to GE Real Estate, and GE Real Estate shall acquire, and shall be deemed to have acquired, from each such Holder, such Holder's Individual Transferred Number of REIT units; and
- (c) each Holder of REIT units shall cease to be a Holder of its Individual Acquired Number of REIT units formerly held and shall not be entitled to exercise any of the rights of a Holder of REIT units in respect of its Individual Acquired Number of REIT units formerly held, other than the right to receive the Redemption and Transfer Price for such Holder's Individual Acquired Number of REIT units formerly held.

15.4 Deposit of Funds

Dundee REIT shall, on the Closing Date:

- (a) deposit with, or otherwise cause to be deposited with, the Depositary, sufficient funds to pay the aggregate Redemption and Transfer Price in respect of the Total Redemption Number of REIT units; and
- (b) instruct GE Real Estate to deposit with the Depositary sufficient funds to pay the aggregate Redemption and Transfer Price in respect of all REIT units acquired by GE Real Estate pursuant to the Transfer.

If, as a result of rounding, the aggregate number of REIT units acquired by the Trust pursuant to the Redemption exceeds the Total Redemption Number of REIT units, Dundee REIT shall deposit on the Redemption and Transfer Date sufficient funds to pay the Redemption and Transfer Price in respect of such additional REIT units.

15.5 Discharge of Obligations

In the event the Acquisition Notice is delivered by the Trust in accordance with Section 15.2, the deposits referred to in Section 15.4 shall constitute a full and complete discharge of the Trust's obligations to pay the Redemption and Transfer Price in respect of all REIT units acquired by the

Trust pursuant to the Redemption and of GE Real Estate's obligations to pay the Redemption and Transfer Price in respect of all REIT units acquired by GE Real Estate pursuant to the Transfer. On and after the Effective Time, any such funds deposited with the Depositary shall be held by the Depositary as agent for the Holders of REIT units acquired pursuant to the Redemption and the Transfer and receipt of payment by the Depositary shall be deemed to constitute receipt of payment of the Redemption and Transfer Price by the Holders of REIT units for all of the REIT units acquired pursuant to the Redemption and the Transfer. All interest on funds provided to and held by the Depositary shall accrue for the benefit of the Trust.

15.6 Payment of Redemption and Transfer Price

Each Holder of REIT units acquired pursuant to the Redemption and the Transfer shall be entitled to receive the Redemption and Transfer Price, without interest, for each REIT unit so acquired, as soon as practicable following the Redemption and Transfer Date (anticipated to be within two Business Days after such date), but only (i) following presentation and surrender of the certificate or certificates representing all REIT units formerly held by such Holder (or, in respect of any such certificate or certificates which have been lost, destroyed or wrongfully taken, an indemnity bond together with an affidavit confirming ownership, or other documents, each in a form satisfactory to the Trust, acting reasonably) or any other evidence of ownership with respect to the REIT units formerly held by such Holder which is satisfactory to the Trust, acting reasonably, and (ii) following presentation of a fully completed and duly executed Letter of Transmittal and Election Form in a form acceptable to the Trust and the Depositary, acting reasonably. Beneficial holders of REIT units and their respective CDS participants who utilize the CDS book-based transfer system known as "CDSX" to have REIT Units, Series A registered in the name of "CDS & Co." acquired by effecting a book-based transfer of REIT Units, Series A into one of the Depositary's accounts with CDS established for the purpose of the Redemption and Transfer shall be deemed to have completed and submitted a duly executed Letter of Transmittal and Election Form and to be bound by the terms thereof and to have acknowledged that the Trust and GE Real Estate may enforce such terms against the applicable beneficial holder and the applicable CDS participant, as the case may be, and therefore any book-based transfer of REIT Units, Series A into one of the Depositary's accounts at CDS in accordance with CDS procedures will be considered a valid election and transfer in accordance with the Redemption and the Transfer.

15.7 Time Limit

Should any Holder of any REIT units acquired pursuant to the Redemption and the Transfer fail to present and surrender the documentation referred to above, the Trust shall have the right, after two years from the Redemption and Transfer Date, to have all remaining funds deposited with the Depositary returned to the Trust and the Trust shall thereafter be responsible for payment of the Redemption and Transfer Price to any former Holder of REIT units upon presentation and surrender of such documentation as the Trust may require.

15.8 Withholding Taxes

The Trust shall be entitled to instruct the Depositary to deduct and withhold from any amounts payable on account of REIT units (including any amount paid as a Trust distribution in accordance with Article 15.10) acquired pursuant to the Redemption and the Transfer such amounts as are required or permitted to be deducted and withheld with respect to such payment

under the *Income Tax Act* (Canada), as amended, and the regulations thereunder, or any other provision of provincial, local or foreign tax law, in each case, as amended. To the extent that amounts are so withheld, such withheld amounts shall be treated for all purposes of this Article 15 as having been paid to Holders of REIT units in respect of which such deduction and withholding was made, provided that such withheld amounts are actually remitted to the appropriate taxing authority.

15.9 Cancellation of Redeemed Units

All REIT units which are acquired pursuant to the Redemption shall be cancelled and such REIT units shall be no longer outstanding and shall not be reissued.

15.10 Distribution and Designation of Income and Capital Gains

Subsection 5.24(i) and Section 9.2 shall apply *mutatis mutandis* to the Redemption and accordingly, the Trustees may, in their sole discretion, treat some or all of the Redemption and Transfer Price paid in respect of the Redemption as a distribution of Transaction Income, Gains and Recapture.

15.11 Satisfaction of Redemption and Transfer Price

The payment of the Redemption and Transfer Price to any holder of REIT units as provided in this Article 15 will be satisfied:

- (a) in the case of REIT Units, Series A, from the REIT Unit, Series A Bank Account and the REIT Unit, Series B Bank Account; and
- (b) in the case of REIT Units, Series B, solely from the REIT Unit, Series B Bank Account,

it being the intention that the Trustees shall take such steps to ensure that the payment of the Redemption and Transfer Price is satisfied (i) in the case of REIT Units, Series A, by cash derived from Dundee Properties Operating Trust A and Dundee Properties Operating Trust B, and (ii) in the case of REIT Units, Series B, solely by cash derived from Dundee Properties Operating Trust B.

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

SIGNED, SEALED & DELIVERED
In the presence of:

Witness

" Günther Bautz"
Günther Bautz, Trustee

SIGNED, SEALED & DELIVERED
In the presence of:

Witness

"Detlef Bierbaum"
Detlef Bierbaum, Trustee

SIGNED, SEALED & DELIVERED
In the presence of:

Witness

"Donald K. Charter"
Donald K. Charter, Trustee

SIGNED, SEALED & DELIVERED
In the presence of:

Witness

"Michael J. Cooper"
Michael J. Cooper, Trustee

SIGNED, SEALED & DELIVERED
In the presence of:

Witness

"Peter Crossgrove"
Peter Crossgrove, Trustee

SIGNED, SEALED & DELIVERED
In the presence of:

Witness

"Robert G. Goodall"
Robert G. Goodall, Trustee

SIGNED, SEALED & DELIVERED
In the presence of:

Witness

SIGNED, SEALED & DELIVERED
In the presence of:

Witness

SIGNED, SEALED & DELIVERED
In the presence of:

Witness

SIGNED, SEALED & DELIVERED
In the presence of:

Witness

SIGNED, SEALED & DELIVERED
In the presence of:

Witness

"David J. Goodman"
David J. Goodman, Trustee

"Ned Goodman"
Ned Goodman, Trustee

"Duncan N. R. Jackman"
Duncan N. R. Jackman, Trustee

"Robert J. Tweedy"
Robert J. Tweedy, Trustee

"Joanne Ferstman"
Joanne Ferstman, Trustee

SCHEDULE A-1
DUNDEE REIT UNITS, SERIES A PROVISIONS

REIT Units, Series A of Dundee Real Estate Investment Trust (the “**REIT**”) will have the following rights, privileges, restrictions and conditions:

ARTICLE 1
INTERPRETATION

1.1 Capitalized terms used in this Schedule A-1 and not defined below shall have the meanings given to them in the Declaration of Trust of the REIT (the “**Declaration**”) to which this schedule forms a part. References to “**Section**” shall, unless otherwise stated refer to Sections in this Schedule.

“**Distribution Amount**” means, at any date with respect to any REIT Unit, Series A, the full amount of all distributions, if any, declared and unpaid on each such REIT Unit, Series A held by a Holder on any distribution record date which occurred prior to such date.

“**Distribution Date**” means the date on which the Trustee declares any distributions on REIT Unit, Series A.

“*pro rata share*” means in respect of a REIT Unit, Series A, the Trust’s assets relating to the REIT Units, Series A, multiplied by a fraction, the numerator of which is one and the denominator of which is the total number of REIT Units, Series A outstanding.

“*pro rata share of the Special Trust Unit Liquidation Amount*” means in respect of a REIT Unit, Series A, the Special Trust Unit Liquidation Amount multiplied by a fraction, the numerator of which is equal to the total number of REIT Units, Series A outstanding and the denominator of which is equal to the total number of REIT Units outstanding.

“**REIT Unit, Series A Liquidation Amount**” has the meaning ascribed to it in Section 3.1.

“**REIT Liquidation Date**” has the meaning ascribed to it in Section 3.1.

“**Transfer Agent**” means such Person as may from time to time be appointed by the REIT as the register and transfer agent for the REIT Units, Series A and, in the absence of any such appointment, means the REIT.

1.2 In the event of any conflict or inconsistency between the terms of the Schedule and those in the Declaration, the terms of this Schedule shall govern.

ARTICLE 2
DISTRIBUTION

2.1 Holders of REIT Units, Series A will be entitled to receive and, subject to applicable law, the Trustees will declare, on each Distribution Date, a distribution on each REIT Unit, Series A as determined by the Trustees pursuant to Section 9.1 of the Declaration. Such distributions will be paid out of the Distributable Series A Income and Converted

Distributable Series B Income as provided in Section 9.1 of the Declaration and in the manner of payment as provided in Section 9.3 of the Declaration. It is intended and the Trustees shall take all necessary steps to ensure that the nature, timing and amount of distributions made by the REIT on each Distribution Date on each REIT Unit, Series A be the same as distributions made by the REIT on such Distribution Date on each REIT Unit, Series B.

- 2.2 If, on any payment date for any distribution declared on the REIT Units, Series A under Section 2.1 other than the year-end distribution, the distribution is not paid in full on all of the REIT Units, Series A then outstanding, any such distribution that remains unpaid will be paid on a subsequent date or dates in the year in which such distribution was declared as determined by the Trustee on which the REIT has sufficient money, assets or property properly applicable to the payment of such distribution or as provided in Section 9.3 of the Declaration. For greater certainty, it is hereby expressly declared that a holder of REIT Units, Series A, shall have the legal right to enforce payment of any such distribution which remains unpaid from the date on which such distribution was or was deemed to have been declared.

ARTICLE 3 DISTRIBUTION ON LIQUIDATION OF THE REIT

- 3.1 In the event of the liquidation, dissolution or winding-up of the REIT or any other distribution of the assets of the REIT among the Holders of units for the purpose of winding up its affairs, a Holder of REIT Units, Series A will be entitled, subject to applicable law, to receive from the assets of the REIT in respect of each REIT Unit, Series A held by such Holder on the effective date (the “**REIT Liquidation Date**”) of such liquidation, dissolution or winding-up, before any distribution of any part of the assets of the REIT among the Holders of Units ranking junior to the REIT Units, Series A, an amount per unit equal to the Holder’s *pro rata* share of (a) the assets of the REIT reasonably considered to be attributable to and derived from Partnership A and (b) that percentage of the assets of the REIT reasonably considered to be attributable to and derived from Partnership B, equal to the percentage of the total number of REIT Units, Series B ever issued and not redeemed or purchased for cancellation by the Trust that have been converted into REIT Units, Series A in accordance with Article 6 of Schedule A-2 to this Agreement, less (c) the *pro rata* share of the Special Trust Unit Liquidation Amount (the “**REIT Unit, Series A Liquidation Amount**”).
- 3.2 On or promptly after the REIT Liquidation Date, the REIT will cause to be delivered to the Holders of the REIT Units, Series A, the REIT Unit, Series A Liquidation Amount for each such REIT Unit, Series A upon presentation and surrender of the certificates representing such REIT Units, Series A, together with such other documents and instruments as the REIT may reasonably require, at the registered office of the REIT or at any office of the Transfer Agent as may be specified by the REIT by notice to the Holders of the REIT Units, Series A. Payment of the total REIT Unit, Series A Liquidation Amount for such REIT Units, Series A will be made by delivery to each Holder, at the address of the Holder recorded in the Register of the REIT for the REIT Units, Series A or by holding for pick-up by the Holder at the registered office of the REIT or at any office of the Transfer Agent as may be specified by the REIT by notice to the Holders of REIT Units, Series A, on behalf of the REIT, a cheque of the REIT

payable at any branch of the bankers of the REIT in respect of the applicable REIT Unit, Series A Liquidation Amount (without interest), in each case, less any amounts withheld pursuant to Section 4.1. On and after the REIT Liquidation Date, the Holders of the REIT Units, Series A will cease to be Holders of such REIT Units, Series A and will not be entitled to exercise any of the rights of Holders in respect thereof, other than the right to receive their proportionate part of the total REIT Unit, Series A Liquidation Amount, unless payment of the total REIT Unit, Series A Liquidation Amount for such REIT Units, Series A is not made upon presentation and surrender of share certificates in accordance with the foregoing provisions, in which case the rights of the Holders will remain unaffected until the total REIT Unit, Series A Liquidation Amount has been paid in the manner provided in this Section. The REIT will have the right at any time after the REIT Liquidation Date to deposit or cause to be deposited in a custodial account with any chartered bank or trust company in Canada the total REIT Unit, Series A Liquidation Amount in respect of the REIT Units, Series A represented by certificates that have not at the REIT Liquidation Date been surrendered by the Holders thereof. Upon such deposit being made, the rights of the Holders of REIT Units, Series A after such deposit will be limited to receiving their proportionate part of the total REIT Unit, Series A Liquidation Amount (without interest), in each case, less any amounts withheld pursuant to Section 4.1 for such REIT Units, Series A so deposited against presentation and surrender of the certificates held by them, respectively, in accordance with the foregoing provisions.

- 3.3** After the REIT has satisfied its obligations to pay the Holders of the REIT Units, Series A the REIT Unit, the REIT Unit, Series A Liquidation Amount pursuant to Section 3.1, such Holders will not be entitled to share in any further distribution of the assets of the REIT.
- 3.4** It is intended and the Trustees shall take all necessary steps to ensure that the nature and amount of the REIT Unit, Series A Liquidation Amount and the timing of the distribution of any such amount to Holders of REIT Units, Series A be the same as the nature and amount of the REIT Unit, Series B Liquidation Amount and the timing of the distribution of any such amount to Holders of REIT Units, Series B.

ARTICLE 4 WITHHOLDING TAX

- 4.1** The REIT or the Transfer Agent, as the case may be, will be entitled to deduct and withhold from any distribution or consideration otherwise payable to any Holder of REIT Units, Series A such amounts as the REIT or the Transfer Agent, as the case may be, is required to deduct and withhold with respect to such payment under the Tax Act, the *United States Internal Revenue Code of 1986* or any provisions of provincial, state, local or foreign tax law, in each case, as amended. To the extent that amounts are so withheld, such withheld amounts will be treated for all purposes hereof as having been paid to the Holder of the REIT Units, Series A in respect of which such deduction and withholding was made, provided that such amounts are remitted to the appropriate taxing authority. To the extent that the amount so required or permitted to be deducted or withheld from any payment to a Holder exceeds the cash portion of the consideration otherwise payable to the Holder, the REIT or the Transfer Agent, as the case may be, are hereby authorized to sell or otherwise dispose of such portion of the consideration as is necessary to provide

sufficient funds to the REIT or the Transfer Agent, as the case may be, to enable it to comply with such deduction or withholding requirement and the REIT or the Transfer Agent, as the case may be, will notify the Holder thereof and remit to such Holder any unapplied balance of the net proceeds of such sale.

ARTICLE 5
ISSUANCE OF REIT UNITS, SERIES A,
ON CONVERSION OF REIT UNITS, SERIES B

- 5.1** The REIT shall issue one fully-paid and non-assessable REIT Unit, Series A for each REIT Unit, Series B converted in accordance with Article 6 of the Dundee REIT Units, Series B Provisions.

SCHEDULE A-2
DUNDEE REIT UNITS, SERIES B PROVISIONS

REIT Units, Series B of Dundee Real Estate Investment Trust (the “**REIT**”) will have the following rights, privileges, restrictions and conditions:

ARTICLE 1
INTERPRETATION

1.1 Capitalized terms used in this Schedule A-2 and not defined below shall have the meanings given to them in the Declaration of Trust of the REIT (the “**Declaration**”) to which this schedule forms a part. References to “**Section**” shall, unless otherwise stated refer to Sections in this Schedule.

“**Distribution Amount**” means, at any date with respect to any REIT Unit, Series B, the full amount of all distributions, if any, declared and unpaid on each such REIT Unit, Series B held by a Holder on any distribution record date which occurred prior to such date.

“**Distribution Date**” means the date on which the Trustee declares any distributions on REIT Unit, Series B.

“*pro rata share*” means in respect of a REIT Unit, Series B, the Trust’s assets relating to the REIT Units, Series B, multiplied by a fraction, the numerator of which is one and the denominator of which is the total number of REIT Units, Series B outstanding.

“*pro rata share of the Special Trust Unit Liquidation Amount*” means in respect of a REIT Unit, Series B, the Special Trust Unit Liquidation Amount multiplied by a fraction, the numerator of which is equal to the total number of REIT Units, Series B outstanding and the denominator of which is equal to the total number of REIT Units outstanding.

“**REIT Unit, Series B Liquidation Amount**” has the meaning ascribed to it in Section 3.1.

“**REIT Liquidation Date**” has the meaning ascribed to it in Section 3.1.

“**Transfer Agent**” means such Person as may from time to time be appointed by the REIT as the registrar and transfer agent for the REIT Units, Series B and, in the absence of any such appointment, means the REIT.

1.2 In the event of any conflict or inconsistency between the terms of this Schedule and those in the Declaration, the terms of this Schedule shall govern.

ARTICLE 2 DISTRIBUTIONS

- 2.1** Holders of REIT Units, Series B will be entitled to receive and, subject to applicable law, the Trustees will declare, on each Distribution Date, a distribution on each REIT Unit, Series B as determined by the Trustee pursuant to Section 9.1 of the Declaration. Such distributions will be paid out of the Unconverted Distributable Series B Income as provided in Section 9.1 of the Declaration and in the manner of payment as provided in Section 9.3 of the Declaration. It is intended and the Trustees shall take all necessary steps to ensure that the nature, timing and amount of distributions made by the REIT on each Distribution Date on each REIT Unit, Series B be the same as distributions made by the REIT on such Distribution Date on each REIT Unit, Series A.
- 2.2** If, on any payment date for any distribution declared on the REIT Units, Series B under Section 2.1 other than the year-end distribution, the distribution is not paid in full on all of the REIT Units, Series B then outstanding, any such distribution that remains unpaid will be paid on a subsequent date or dates in the year in which such distribution was declared as determined by the Trustee on which the REIT has sufficient money, assets or property properly applicable to the payment of such distribution or as provided in Section 9.3 of the Declaration. For greater certainty, it is hereby expressly declared that a holder of REIT Units, Series B, shall have the legal right to enforce payment of any such distribution which remains unpaid from the date on which such distribution was or was deemed to have been declared.

ARTICLE 3 DISTRIBUTION ON LIQUIDATION OF THE REIT

- 3.1** In the event of the liquidation, dissolution or winding-up of the REIT or any other distribution of the assets of the REIT among the Holders of units for the purpose of winding up its affairs, a Holder of REIT Units, Series B will be entitled, subject to applicable law, to receive from the assets of the REIT in respect of each REIT Unit, Series B held by such Holder on the effective date (the **“REIT Liquidation Date”**) of such liquidation, dissolution or winding-up, before any distribution of any part of the assets of the REIT among the Holders of Units ranking junior to the REIT Units, Series B, an amount per unit equal to the Holder’s *pro rata* share of (a) that percentage of the assets of the REIT reasonably considered to be attributable to and derived from Dundee Properties Operating Trust B, equal to the percentage of the total number of REIT Units, Series B ever issued and not redeemed or purchased for cancellation by the Trust that have not been converted into REIT Units, Series A in accordance with Article 6 of Schedule A-2 to this Agreement, less (b) the *pro rata* share of the Special Trust Unit Liquidation Amount (the **“REIT Unit, Series B Liquidation Amount”**).
- 3.2** On or promptly after the REIT Liquidation Date, the REIT will cause to be delivered to the Holders of the REIT Units, Series B, the REIT Unit, Series B Liquidation Amount for each such REIT Unit, Series B upon presentation and surrender of the certificates representing such REIT Units, Series B, together with such other documents and instruments as the REIT may reasonably require, at the registered office of the REIT or at

any office of the Transfer Agent as may be specified by the REIT by notice to the Holders of the REIT Units, Series B. Payment of the total REIT Unit, Series B Liquidation Amount for such REIT Units, Series B will be made by delivery to each Holder, at the address of the Holder recorded in the Register of the REIT for the REIT Units, Series B or by holding for pick-up by the Holder at the registered office of the REIT or at any office of the Transfer Agent as may be specified by the REIT by notice to the Holders of REIT Units, Series B, on behalf of the REIT, a cheque of the REIT payable at any branch of the bankers of the REIT in respect of the applicable REIT Unit, Series B Liquidation Amount (without interest), in each case, less any amounts withheld pursuant to Section 4.1. On and after the REIT Liquidation Date, the Holders of the REIT Units, Series B will cease to be Holders of such REIT Units, Series B and will not be entitled to exercise any of the rights of Holders in respect thereof, other than the right to receive their proportionate part of the total REIT Unit, Series B Liquidation Amount, unless payment of the total REIT Unit, Series B Liquidation Amount for such REIT Units, Series B is not made upon presentation and surrender of share certificates in accordance with the foregoing provisions, in which case the rights of the Holders will remain unaffected until the total REIT Unit, Series B Liquidation Amount has been paid in the manner provided in this Section. The REIT will have the right at any time after the REIT Liquidation Date to deposit or cause to be deposited in a custodial account with any chartered bank or trust company in Canada the total REIT Unit, Series B Liquidation Amount in respect of the REIT Units, Series B represented by certificates that have not at the REIT Liquidation Date been surrendered by the Holders thereof. Upon such deposit being made, the rights of the Holders of REIT Units, Series B after such deposit will be limited to receiving their proportionate part of the total REIT Unit, Series B Liquidation Amount (without interest), in each case, less any amounts withheld pursuant to Section 4.1 for such REIT Units, Series B so deposited against presentation and surrender of the certificates held by them, respectively, in accordance with the foregoing provisions.

- 3.3** After the REIT has satisfied its obligations to pay the Holders of the REIT Units, Series B the REIT Unit, the REIT Unit, Series B Liquidation Amount per REIT Unit, Class B pursuant to Section 3.1, such Holders will not be entitled to share in any further distribution of the assets of the REIT.
- 3.4** It is intended and the Trustees shall take all necessary steps to ensure that the nature and amount of the REIT Unit, Series B Liquidation Amount and the timing of the distribution of any such amount to Holders of REIT Units, Series B be the same as the nature and amount of the REIT Unit, Series A Liquidation Amount and the timing of the distribution of any such amount to Holders of REIT Units, Series A.

ARTICLE 4 WITHHOLDING TAX

- 4.1** The REIT or the Transfer Agent, as the case may be, will be entitled to deduct and withhold from any distribution or consideration otherwise payable to any Holder of REIT Units, Series B such amounts as the REIT or the Transfer Agent, as the case may be, is required to deduct and withhold with respect to such payment under the Tax Act, the

United States Internal Revenue Code of 1986 or any provisions of provincial, state, local or foreign tax law, in each case, as amended. To the extent that amounts are so withheld, such withheld amounts will be treated for all purposes hereof as having been paid to the Holder of the REIT Units, Series B in respect of which such deduction and withholding was made, provided that such amounts are remitted to the appropriate taxing authority. To the extent that the amount so required or permitted to be deducted or withheld from any payment to a Holder exceeds the cash portion of the consideration otherwise payable to the Holder, the REIT or the Transfer Agent, as the case may be, are hereby authorized to sell or otherwise dispose of such portion of the consideration as is necessary to provide sufficient funds to the REIT or the Transfer Agent, as the case may be, to enable it to comply with such deduction or withholding requirement and the REIT or the Transfer Agent, as the case may be, will notify the Holder thereof and remit to such Holder any unapplied balance of the net proceeds of such sale.

ARTICLE 5 TAKE-OVER BIDS

- 5.1** For the purposes of Part XX of the *Securities Act* (Ontario), an acquisition of REIT Units, Series B (other than a treasury issuance) by a person other than Dundee Bancorp Inc. or any of its affiliates, or the initial holder thereof, shall be considered an acquisition of REIT Units, Series A, and, in order for any transfer of REIT Units, Series B by any Person to be effective: (a) an acquiror of REIT Units, Series B shall comply with the provisions of Part XX of the *Securities Act* (Ontario) as if such REIT Units, Series B were REIT Units, Series A, to the extent such provisions are applicable; and (b) the transfer shall be subject to the prior approval of The Toronto Stock Exchange if the transfer would, under applicable securities legislation, have required the same offer or a follow-up offer to be made to holders of REIT Units, Series A if the transfer had been of REIT Units, Series A rather than REIT Units, Series B.

ARTICLE 6 CONVERSION

- 6.1** Each REIT Unit, Series B shall be convertible at any time at the option of the holder into one fully-paid and non-assessable REIT Unit, Series A in accordance with the provisions of this Article 6.
- 6.2**
- (a) A holder of REIT Units, Series B desiring to convert such REIT Units, Series B into REIT Units, Series A shall surrender the certificate(s) representing such REIT Units, Series B at the principal office of the transfer agent appointed for the REIT Units, Series A together with the conversion form(s) on the back of such certificate(s), or any other written notice in a form satisfactory to such transfer agent, in either case duly executed by the holder or its executors or administrators or other legal representatives or its or their attorney duly appointed by an instrument in writing in a form and executed in a manner satisfactory to such

transfer agent, exercising its right to convert such REIT Units, Series B in accordance with the provisions of this Article. Thereupon, such holder of REIT Units, Series B or, subject to payment of all applicable stamp or security transfer taxes or other governmental charges and compliance with all reasonable requirements of the REIT, its nominee(s) or assignee(s), shall be entitled to be entered in the register for the REIT Units, Series A (the "Register"), as at the Date of Conversion (as defined in Section 6.2(b) below), as the holder of the number of REIT Units, Series A into which such REIT Units, Series B are convertible in accordance with the provisions of this Article and, as soon as practicable thereafter, the REIT shall cause to be delivered to such holder or, subject to the foregoing, its nominee(s) or assignee(s), a certificate or certificates for such REIT Units, Series A, which REIT Units, Series A will for all purposes be and be deemed to be issued and outstanding as fully-paid and non-assessable from the Date of Conversion.

- (b) For the purposes of this Article, a certificate representing REIT Units, Series B shall be deemed to be surrendered for conversion on the date (the "Date of Conversion") on which it is so surrendered in accordance with the provisions of this Article and, in the case of a certificate representing REIT Units, Series B so surrendered by post or other means of transmission, on the date on which it is received by the transfer agent; provided that if REIT Units, Series B are surrendered for conversion on a day on which the Register is closed, the Date of Conversion shall be the date on which the Register is next reopened and the person or persons entitled to receive REIT Units, Series A shall become the holder or holders of record of such REIT Units, Series A as at such date.
- (c) The holder of any certificate representing REIT Units, Series B of which only a part is converted shall, upon the exercise of its right of conversion, surrender such certificate to the transfer agent, and the transfer agent shall cancel such certificate and shall, without charge, forthwith issue and deliver to the holder a new certificate or certificates representing an aggregate number of REIT Units, Series B equal to the unconverted part of the REIT Units, Series B represented by the certificate so surrendered.
- (d) A registered holder of REIT Units, Series B on the record date for the determination of holders of REIT Units, Series B entitled to receive a distribution declared payable on REIT Units, Series B shall be entitled to receive such distribution (less any tax required to be withheld, if any) notwithstanding that the Date of Conversion is after such record date and before the payment date for such distribution, and the REIT Units, Series A issued upon any conversion of REIT Units, Series B shall rank equally with all other REIT Units, Series A in respect of all distributions declared payable to holders of REIT Units, Series A of record on any date on or after the Date of Conversion. Subject to the foregoing, no payment or adjustment shall be made on account of any distribution, accrued or otherwise, on the REIT Units, Series B converted or the REIT Units, Series A resulting from any conversion of REIT Units, Series B.

- (e) Notwithstanding anything herein contained to the contrary, no conversion of REIT Units, Series B may occur if, in the opinion of the Trustees, such conversion would (i) result in or create significant risk of the Trust failing or ceasing to qualify as a “mutual fund trust”, a “unit trust”, a “real estate investment trust” or a “registered investment”, each within the meaning of the Tax Act, or (ii) risk that, at any time prior to January 1, 2008, the Trust would exceed “normal growth” as determined by the “normal growth guidelines” issued by the Department of Finance of Canada on December 15, 2006, as amended from time to time, or (iii) cause the Trust to be or risk that the Trust would be liable under the Tax Act to pay a tax imposed under paragraph 122(1)(b) of the Tax Act.

6.3 All REIT Units, Series B converted pursuant to this Article shall be thereupon cancelled.

6.4 The REIT covenants that it will at all times reserve and keep available out of its authorized REIT Units, Series A (if the number becomes limited), solely for the purpose of issue upon conversion of REIT Units, Series B as provided in this Article, and conditionally allot to holders who may exercise their conversion rights hereunder, such number of REIT Units, Series A as shall then be issuable upon the conversion of all outstanding REIT Units, Series B.